



Department
for Transport

Post Implementation Review: Report on the Key Findings of the review of the Merchant Shipping (Ship- to-Ship Transfers) Regulations 2010 and (Amendment) Regulations 2012.

Moving Britain Ahead

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Introduction

- 1.1 This document provides an overview of the Post Implementation Review (“the Review”) of the Merchant Shipping (Ship-to-Ship Transfers) (Amendment) Regulations 2012¹, including the Merchant Shipping (Ship to Ship Transfers) Regulations 2010² (the ‘STS Regulations’), both of which came into force on 31 March 2012. The STS Regulations restrict ship-to-ship (STS) transfers of cargo and bunkers wholly or mainly of oil (fuel used for international aviation and maritime transport) to harbour authority areas and one designated area within the UK territorial sea (near Southwold in Suffolk), to maintain the good safety record for this type of activity. The 2012 Regulations were implemented to give ships a wider choice of safe locations to conduct STS operations. Without this amendment, the deferred 2010 Regulations would have restricted STS transfers to licenced harbour authority areas.
- 1.2 As part of the consultation process for the Review, a stakeholder engagement letter and questionnaire was sent to 17 stakeholders on 13 November 2015 seeking views from industry and interested organisations about the effectiveness of the STS Regulations. The consultation finished on 5 January 2016, at which point the Department had received eight replies.
- 1.3 The Review evaluated the effectiveness of our actions and decisions, set out in the [Impact Assessment](#) (IA)³, now the STS Regulations have been operational for five years. The IA concluded that the 2012 Regulations provided a modest benefit to business. This prompted the Department to carry out a light touch review of the Regulations, to consider if the policy:
 - has achieved its original objectives;
 - has objectives which are still valid;
 - has had any unintended impacts;
 - is still required and remains the best option for achieving those objectives; and
 - can be improved to reduce the burden on business and its overall costs.
- 1.4 The STS Regulations have a sunset clause, meaning they will cease to have effect as of 1 April 2019. The Review considered whether the STS Regulations should lapse, or be retained by renewing the Regulations. Based on the outcome of this exercise, the conclusion from the review is that the STS Regulations should be retained. New legislation will be required to renew the existing measures before the existing legislation ceases to have effect.
- 1.5 Separate to the Review exercise, as part of ongoing activity under the 2010 Regulations, we have identified a number of areas which could be enhanced and improved with regard to the application and assessment of STS oil transfer licences which are submitted to the Maritime and Coastguard Agency (MCA) by harbour authorities.

¹ SI 2012 No. 742 <http://www.legislation.gov.uk/uksi/2012/742/contents/made>

² SI 2010 No.1228, <http://www.legislation.gov.uk/uksi/2010/1228/contents/made>

³ http://www.legislation.gov.uk/ukia/2011/473/pdfs/ukia_20110473_en.pdf

Background to Ship to Ship Transfers

- 1.6 In July 2010, the Government laid a Statutory Instrument to defer the entry into force of the 2010 Regulations, to allow time for a review of the Regulations, including representations by affected parties.
- 1.7 This review took place in 2011. It found that restricting all STS transfers to harbour waters as proposed by the 2010 Regulations, when evidence showed that a limited use of a designated area off the UK territorial sea would not adversely impact safety, would impose disproportionate and unintended restrictions on shipowners. The 2012 amending Regulations designated an area off the coast of Southwold, to avoid additional and unnecessary costs for industry.
- 1.8 Moreover, the new amendment also incorporated into UK legislation Chapter 8 of the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex I⁴, which came into force internationally on 1 January 2011 for STS operations conducted after April 2012. This requires that any oil tanker of 150 gross tonnes or above involved in STS operations at sea, must carry a STS operations plan which has been approved by the Flag Administration. Furthermore, any tanker that plans STS operations within the territorial sea or the economic exclusion zone shall notify the Maritime and Coastguard Agency (MCA) not less than 48 hours in advance of the scheduled STS operations.
- 1.9 In 2011, the MCA produced an IA to assess the need for action. The IA for the amending 2012 Regulations assessed the measure as deregulatory, with benefits (£5.44m in 2011 prices) significantly outweighing the costs (-£0.08m in 2011 prices) and an annual saving to business of £0.56m (2009 prices).
- 1.10 The IA also identified that there were other potential benefits to operators but these benefits could not be presented in monetary terms. These included if the number of STS transfers undertaken within the waters of harbour authorities declines, there could be environmental benefits if ships required shorter journeys and/or carried out fewer transfers outside the UK territorial sea and from new notification arrangements reducing response times. It also identified that there could be benefits for operators due to relaxing regulations on bunkering operations and lightering (transferring fuel and cargo between ships).
- 1.11 According to the data held by the MCA, the level of STS transfers taking place off the coast of Southwold has dropped significantly since 2012 (from 201 in 2012 to 39 in 2014). The Department for Transport does not hold data on the number of STS transfers taking place in harbour waters.

Summary of the Regulation's Objectives

- 1.12 The policy objective of the 2012 Regulations was to ensure STS transfers are conducted safely but in a less restrictive way than allowed for under the 2010 Regulations while minimising the risk to the UK's seas and coasts by reducing the likelihood of the activity being displaced to less safe international waters. This involved allowing STS transfers within a designated area of the UK territorial sea off the coast of Southwold.

⁴ MARPOL Annex I details the discharge and control requirements for the prevention of pollution by oil and oily materials

- 1.13 The intended effects of the 2010 Regulations as amended by the 2012 Regulations were:
- a. that operators should have a wider choice of safe locations for STS operations either within approved harbour areas or within a designated area of the UK territorial sea while not compromising safety;
 - b. to reduce the risks of STS transfers being undertaken in less safe areas outside of the UK territorial sea by allowing STS transfers to be undertaken within the UK territorial sea at a designated area;
 - c. to implement the notification system set out in Chapter 8 of MARPOL Annex I for transfers outside UK territorial waters in UK law;
 - d. that small scale bunkering and lightering (the process of transferring cargo between vessels of different sizes) operations should be unaffected by the regulations; and
 - e. to implement Article 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna where cargo transfers are likely to have a significant effect on a European site (as defined in the Regulations).

Have the Original Objectives Been Achieved?

- 1.14 A full assessment of the options available is provided in section 4 of the Review. The Review concludes that the objectives and intended effects of the Regulations have been successfully achieved, and found no significant evidence that a change would be necessary or beneficial. There was one instance of negative feedback which was excluded from the analysis, because the incidents it described were with regards to alleged cases of ships failing to comply with ship tank cleaning regulations and were not linked to STS transfer activity.
- 1.15 The stakeholder responses were generally positive. Although two respondees stated that harbour authorities areas are the safest location, the overall feeling was that safety had either improved as a result of the STS Regulations, or remained the same. None of the respondees were aware of any:
- pollution or safety incidents linked to STS transfers occurring off the coast of Southwold;
 - elements of Chapter 8 of MARPOL Annex I which have not been incorporated into domestic legislation;
 - instances where the reporting requirements or the provision of STS Transfer plans were not being carried out; and
 - occasions where small scale bunkering and lightering operations had been negatively affected by the Regulations.
- 1.16 The Review concludes that the reduction in STS transfers off Southwold is probably due to a combination of factors. In part, it might be linked to the introduction of the 2012 Regulations, but we consider the main factor to be a change in the economic environment following changes in the oil market. The demand for STS transfers was highest when oil prices were increasing, as operators would often retain some of their cargo and transfer small amounts offshore. In a stable market, or with falling prices operators have sold their cargos quickly.

- 1.17 It is not clear if the introduction of the 2012 Regulations has influenced the number of STS operations – by allowing them to take place in UK territorial seas. The IA states that operators might not have opted to undertake STS transfers in harbour authority waters under the 2010 Regulations. Instead, if they wanted to avoid paying harbour fees, they might have ignored the 2010 Regulations by undertaking STS transfers outside of UK territorial waters.
- 1.18 The MCA data and the results of the consultation show that since the implementation of the STS Regulations there have been no spillages within UK territorial seas. There were two incidents in harbour waters which resulted in a spillage of up to 10 litres of oil, the other occurred outside of UK territorial waters (off Southwold) and comprised a spill of c.250 litres.

Are the Original Objectives Still Valid and Required?

- 1.19 Based on the evidence available, we conclude that the STS Regulations are still valid and still required. Despite a significant drop in STS transfers taking place in the UK territorial sea off the coast of Southwold, there is still a demand for this facility and it avoids ships using less safe areas further out to sea, or having to come into harbours in order to carry out these operations.
- 1.20 One of the objectives of the STS Regulations was to ensure compliance with the requirements set out in Chapter 8 of Annex I of MARPOL. The Review found that this has been achieved but that continued monitoring of compliance would still be needed. It also found that the other aspects of the STS Regulations should also remain, to ensure continued opportunity for safe STS transfers at minimal risk to UK waters and coastline. The lack of spillages within the UK territorial sea since the implementation of the STS Regulations, also indicates that STS operations can be conducted safely in UK territorial waters.

Is the Regulation Still the Best Option Available?

- 1.21 Based upon the information provided via our stakeholder engagement exercise and the evidence available on STS transfers, we conclude that the Regulations are appropriate and remain the most appropriate option available. The original 2010 Regulations, which would have limited STS transfers to harbour authority areas, appear relatively restrictive given the lack of incidents off the coast of Southwold. At the same time, given the trend towards fewer STS transfers, there seems little justification in having more than one designated area outside of harbour authority waters for STS transfers.

Cost and Benefits

- 1.22 The stakeholder engagement exercise found that in general, the costs and benefits were as expected and in line with those highlighted in Section 5 of the Review. Two respondents were concerned about the cost to small harbour authorities performing an environmental impact assessment, where this was needed to obtain the STS oil transfer licence. They felt this could limit the number of harbours where ship to ship transfers could take place.
- 1.23 Through our analysis of evidence provided by the MCA and our stakeholder engagement exercise, we consider that the costs and benefits identified in the IA in

2011 remain accurate and as a consequence there was no need to produce new IA for this review.

Next Steps for the Regulations and Conclusions

- 1.24 Based on the information held by the MCA and the replies to the consultation exercise, the Review found that the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010 and (Amendment) Regulations 2012 should be renewed.
- 1.25 The Government will renew the existing Regulations before the existing legislation ceases to have effect on 1 April 2019. The new legislation will also have a review clause and a sunset clause which would see the new Regulations lapse in April 2024.

The Operation of the Regulations

- 1.26 Separate to the Review exercise, we have identified that some of the procedures which support the operation of the 2010 Regulations could be improved. Our intention is to give broader consideration to the operation of the 2010 Regulations. In particular, the Department and the MCA will consider what improvements should be made to the oil transfer licencing arrangements, including guidance on applications and their assessment. As part of this exercise, we will seek views from all the devolved administrations on how we could enhance the effectiveness of this process, including stakeholder consultation. At this stage, we do not anticipate these operational improvements will lead to any substantive revisions to the existing Regulations when they are renewed.