

## SUMMARY OF CONSULTATION RESPONSES:

### THE SHIP RECYCLING (REQUIREMENTS IN RELATION TO HAZARDOUS MATERIALS ON SHIPS) REGULATIONS 2018

Summary of Comments	Response
<p>There is an unreasonable responsibility being placed on surveyors to recognise Annex II substances. MCA-appointed specialists should be responsible for this.</p> <p>It is not clear in the SI (or EU Regulation) how minor compliance issues will be managed.</p>	<p>It is likely that most Article 8 surveys will be conducted by specialists from Recognised Organisations. Port State Control inspections should not usually require thorough investigation if a valid Inventory of Hazardous Materials (IHM) is in place. The wording of the SI allows the MCA to appoint 'specialists' as appropriate, and in fact Regulation 5(1)(b) requires an officer of a Recognised Organisation to be "suitably qualified and experienced to carry out an Article 8 survey".</p> <p>These will be managed in keeping with regular Port State Control processes.</p>
<p>Consider introducing measures to notify appropriate organisations in devolved administrations when pertinent cases/situations arise.</p> <p>Ensure the slightly different wording relating to fines in England/Wales &amp; Scotland/NI does not cause inequity in the application of fines dependant on the geography of the court administration.</p>	<p>Noted.</p> <p>The difference in drafting is due to the criminal justice systems being different in each of the jurisdictions.</p>
<p>Surveys could be carried out by officials from BEIS or HSE, given their knowledge of the oil &amp; gas industry.</p>	<p>This would be possible under the language used in Regulation 3(2): <i>persons in Crown employment who are authorised by the Secretary of State to carry out Article 8 surveys.</i></p>

<p>Clarification is needed to understand how the MCA would conduct its role. The RTA suggests that verification of the Inventory of Hazardous Materials (IHM) is simply a 'desk-based' exercise to identify whether an inventory exists or not. The time allocated for the task appears insufficient to include the comparison of a ship's records with the physical presence/type/amount of hazardous materials. The RTA should either increase the scope (and therefore estimate cost) of the inventory check, or explain how an adequate inspection of the ship – and establishment of the validity of the IHM – is to be made (the cost of which is not included in the current RTA).</p> <p>These Regulations should provide for demonstrable transparency, consistency and proportionality in the exercise of these functions e.g. by committing to or incorporating reporting requirements for compliance such as numbers of inspections made, detentions etc. This is needed to determine the effectiveness of the implementation and compliance with the Regulations.</p> <p>The comment in the RTA that the EU Waste Shipment Regulations (WSR) have “onerous requirements” has no foundation. The word 'onerous' should be deleted.</p> <p>The word “sound” is missing in the first sentence of the RTA's Viable Policy Options section: “...environmentally <i>sound</i> manner”</p> <p>The issue of reflagging vessels is mentioned but not prevented so this must at least be closely monitored.</p> <p>The explanatory note to the Regulations should state clearly that ships not covered by the EU Regulation are still subject to the EU WSR.</p>	<p>It is likely that most Article 8 surveys will be conducted by specialists from Recognised Organisations. Port State Control inspections should not usually require thorough investigation if a valid Inventory of Hazardous Materials (IHM) is in place.</p> <p>This is an existing requirement under the SRR where all Member States have to report enforcement and compliance data to the European Commission. The Commission will publish the results of these reports.</p> <p>Noted and will be actioned.</p> <p>Noted and will be actioned.</p> <p>Noted, although it is difficult to link reflagging specifically to recycling.</p> <p>Noted.</p>
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<p>Please confirm the means of promulgating these Regulations (eg. MCA notices) so relevant stakeholders can take note and prepare.</p> <p>Consideration should be given to providing guidance to courts on appropriate levels of penalties to ensure any fines are proportionate and dissuasive.</p> <p>Government should update the UK Ship Recycling Strategy (2007) to reflect the impending changes.</p> <p>Please identify any territorial application of these Regulations e.g. Crown Dependencies</p>	<p>MCA guidance will be issued.</p> <p>Noted and will be discussed with our Legal team.</p> <p>Noted.</p> <p>Crown Dependencies are not part of the EU, therefore these Regulations do not apply. However Gibraltar, for example, is producing its own set of Regulations.</p>
<p>Is non-disclosure of information (in order to hinder officers from exercising their powers or inhibit them from carrying out a thorough inspection) an obstruction under Regulation 5(4)?</p> <p>Is changing flag in order to alter the powers of officers an offence under the Regulations?</p> <p>Do Red Ensign ships fall under the category of EU ships or third country ships?</p>	<p>Withholding information may be considered an offence if an inspector/surveyor has requested to inspect documents under the Merchant Shipping Act. However, withholding information outside this context may not necessarily be an offence.</p> <p>The EU Regulation does not create such an offence, due to the difficulty in linking reflagging to the intention to avoid requirements related to waste shipments or recycling.</p> <p>Third country, as most Red Ensign Group countries are not part of the EU?</p>

<p>When exactly is a ship owner required to notify the Secretary of State that the ship is going for scrap? Would a change of flag in order to avoid this requirement be an offence?</p> <p>Introducing a positive financial mechanism would ensure there is no incentive for ship owners to circumvent the law by flagging out.</p>	<p>Regulation 4 states that notification is required “before the date on which the ship is sent for recycling”. However, a more specific timeframe may be included in the guidance. The EU Regulation does not prohibit changing flag to avoid the requirements it imposes.</p> <p>The possibility of a financial mechanism was considered by the European Commission and they decided not to implement one at this stage. However, they have kept open the possibility of reassessing the financial mechanism at a later stage.</p>
<p>Nautilus agrees with the proposed approach to enforce the EU Regulation</p>	<p>Noted</p>
<p>The requirement for notification under Article 6(i)(b) “before the date on which a ship is sent for recycling” is not realistic. Having decided to recycle a ship, it takes some time to make arrangements with the relevant recycling facility. We would suggest a more educated approach e.g. “not less than the 14 days prior to the date of intended delivery to the relevant recycling facility”.</p> <p>There could be an over zealous application in respect of Port State Control inspections/detentions. How, for example, will deficiencies be considered ‘rectified’ in the manner applicable to regular Port State Control requirements? There should be provision for the introduction of detailed guidance with respect to the manner in which these powers are to be exercised and the tests to be applied for assessment of compliance/non-compliance.</p>	<p>Noted. A more specific timeframe may be included in the guidance.</p> <p>EMSA have produced guidelines for enforcement officers which we intend to apply.</p>

<p>It would be appropriate to make reference to existing guidelines and allowances for the development of a UK-specific approach.</p>	<p>Noted.</p>
<p>The exit from the EU will provide the UK with an opportunity to go further in this area of shipping policy than the EU or IMO are able to. This is apposite given the status of EU Member States Malta &amp; Cyprus as Flag of Convenience (FoC) registers, and the predominance of FoCs Liberia, Panama &amp; Marshall Islands in the international shipping industry.</p> <p>The UK must ratify the Hong Kong Convention as a matter of urgency.</p> <p>There are concerns over the increased use of Recognised Organisations to carry out MCA survey work. We believe that Regulation 3(2) does not apply to employees of Recognised Organisations: “...<i>persons in Crown employment who are authorised by the Secretary of State to carry out Article 8 surveys</i>”. Yet Regulation 5(1)(b) affords “<i>an officer of an authorised recognised organisation</i>” to “<i>carry out an Article 8 survey</i>”. Furthermore, it is not clear whether the Merchant Shipping Act clauses (referred to in Regulation 12) enables an officer from a Recognised Organisation to be an “inspector”. Clarification is needed.</p>	<p>Noted.</p> <p>It has not been possible to ratify the Hong Kong Convention at the same time as implementing the EU Regulation. However, once these domestic regulations are in place, we will consider what needs to be done to ratify the international Convention.</p> <p>Article 8 states that surveys shall be carried out by “officers of the administration, or of a recognised organisation authorised by it”. Regulation 3(2) identifies who “officers of the administration” are for the purposes of UK implementation. The MCA is able to delegate survey work to Recognised Organisations in accordance with Regulation 5: regulation 5(1) recognises that a survey may be carried out by an officer of either the administration or a recognised organisation, in line with Article 8. Regulation 12 permits the Secretary of State to appoint “any person”, including an officer of a recognised organisation, as an inspector, and the Merchant Shipping Act</p>

<p>Red Ensign Group vessels should be added to the interpretation of “United Kingdom ship”. This may not be necessary when transposing the EU Regulation but is essential when the UK ratifies the Hong Kong Convention.</p> <p>It is not clear how the SI or EU Regulation will prevent late flag changes by ship owners in order to avoid higher compliance costs.</p> <p>The draft SI should contain a deadline for review of the effectiveness of the new Regulation.</p>	<p>powers referred to are conferred upon any inspector.</p> <p>Noted for future consideration with respect to the Hong Kong Convention.</p> <p>The EU Regulation does not create such an offence, due to the difficulty in linking reflagging to the intention to avoid requirements related to waste shipments or recycling.</p> <p>This is stipulated in Regulation 13 of the SI.</p>
<p>Does the EU Regulation add more value than adoption of IMO (Hong Kong Convention)?</p> <p>Only EU vessels will benefit from the “exemption” from WSR which seems illogical and restricts EU facilities’ access to a wider market.</p>	<p>The EU Regulation is based on the Hong Kong Convention but will enter into force earlier than HKC.</p> <p>It is not possible under EU legislation, to require non-EU flagged vessels to be subject to the same requirements as EU flagged ships, and be recycled at a ship recycling facility on the approved European list. However, once the EU Regulation enters into force, this will supersede the</p>

	<p>WSR for in-scope vessels over 500 gross tonnes.</p> <p>EU facilities are not restricted to EU vessels only, as long as third country vessels comply with the EU Regulation.</p>
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