



Maritime &
Coastguard
Agency

Consultation on recasting the Merchant Shipping (Prevention of Oil Pollution) Regulations to reflect up to date requirements as contained in the International Convention for the Prevention of Pollution from Ships (MARPOL).

Consultation Outcome Report

Summary of consultee comments and government responses to them

October 2018

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Section 1: Introduction

1. The Maritime and Coastguard Agency (MCA), an executive Agency of the Department for Transport (DfT), carried out a public consultation from June to July 2018 on the proposed revocation and replacement of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1996 (S.I. 1996/2154: “the 1996 Regulations”) to transpose outstanding amendments to Annex I of the International Maritime Organisation’s (IMO) International Convention for the Prevention of Pollution from Ships (MARPOL). (The IMO is the United Nations competent body on maritime matters.) The consultation was published on.GOV.UK, and notifications of the consultation were sent to more than 200 shipping and marine industry companies, plus in excess of 40 government Departments and maritime bodies with professional and specialist functions.
2. It was further proposed to include an ambulatory reference provision within the Regulations to ensure future technical amendments to specified regulations within MARPOL I Convention are incorporated automatically into UK law instead of requiring further amendment to the regulations.
3. The International Convention for the Prevention of Pollution from Ships (MARPOL) is one of a number of Conventions adopted by the International Maritime Organization (IMO) to which the UK is signatory. As a signatory, the UK has an obligation to implement any amendments to them in UK law.
4. Annex I of MARPOL focuses on the prevention of pollution by oil. It prescribes constructional and operational standards for ships as well as regulating discharges. At the present time, it is principally transposed into UK law through the 1996 regulations. These regulations have been amended over time to reflect changes to the international requirements.
5. MARPOL (including Annex I) is regularly amended and updated in line with technical and environmental advancements. Each time an amendment is made to MARPOL, UK legislation must be updated. Given the number of amendments to Annex I since the 1996 regulations were last amended, a new set of regulations was proposed to consolidate all international requirements into one instrument.

Section 2: Ambulatory Reference

6. The Deregulation Act 2015 came into force on 26 March 2015. The Act inserted a new section 306A into the Merchant Shipping Act 1995 (“the 1995 Act”) under which ambulatory references may be made to international instruments. The Merchant Shipping (Prevention of Oil Pollution) Regulations 2019 will make use of this new power in respect of specified technical provisions in MARPOL I.
7. 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 (and not simply the version of the instrument that exists at the time the domestic legislation is made).
8. The main benefits of using ambulatory reference are simplification, clarity, cost saving for industry and the taxpayer and prompt compliance by the UK with international obligations. The UK government negotiating position in the IMO on any potential future amendments which will eventually be incorporated by ambulatory reference will be developed in conjunction with interested parties, mainly from industry and the Trades Unions.
9. Although the ambulatory reference procedure under section 306A enables future amendments to technical provisions in MARPOL I to be incorporated automatically into domestic law, proposed changes will nevertheless continue to be scrutinised in an international arena (in the IMO), and the impact assessed well before any amendment is due to come into force, which will inform decision making. UK industry and workers’ representatives will also be involved at the stage that the UK negotiating strategy is being formulated and will be able to influence it. The Secretary of State at all stages retains the power to request Parliament to take action to prevent an amendment becoming part of UK law by way of ambulatory reference. An amendment will be publicised in advance of its in force date by means of a Parliamentary Statement to both Houses of Parliament and by way of a Marine Guidance Note, which will be available from the MCA from Spring Place, 105 Commercial Road, Southampton SO15 1EG and on <https://www.gov.uk>
10. There is currently no EU legislation covering the subject matter of MARPOL I, and in any case EU legislation is outside the scope of the ambulatory reference power in the 1995 Act.

Section 3: Consultation

11. The consultation was carried out between 4 June and 29 July 2018. It can be found at: <https://www.gov.uk/government/consultations/consultation-on-recasting-the-merchant-shipping-prevention-of-oil-pollution-regulations>
12. A total of six responses were received, one from the main representative body for UK shipowners, the UK Chamber of Shipping, one from the Law Society of Scotland, one from Oil and Gas UK as well as the British Rig Owners Association plus one from Bluewater Energy Services and, finally one from the Department of Agriculture Environment and Rural Affairs (DAERA) Northern Ireland. Not all respondents answered all the questions posed. Some additional comments have been received. These have been fully considered.

Section 4: Consultation outcome

Questions posed

13. Questions were posed in the consultation, and these, together with the consultee comments on them and the government responses to the consultee comments, are shown in detail at Annex A. However, the main points are summarised below.

Main subject areas

Ambulatory Reference and Resolution amendments

14. There were no negative responses to the proposed inclusion of an ambulatory reference provision. Two of the six consultees, including the main representative body for shipowners, were delighted to see the Government responding positively to the Chamber's Red Tape Challenge recommendations on ambulatory referencing which will promote harmonisation with IMO legislation, provide greater clarity and reduce cost and time to the industry. Another agreed there is merit in the proposal that the draft regulations use ambulatory reference powers to ensure that technical details are kept up to date. They also considered that this use should be narrow in scope to ensure that such changes, which will not be subject to the same level of parliamentary scrutiny as amending regulations, are only made where appropriate.

Government response:

The unanimous opinion agrees with the government view that the use of an ambulatory reference provision will assist with understanding of the technical requirements

15. One consultee asked us to consider that it will be of utmost importance to ensure that ship-owners and other interested or affected parties are aware of these powers and fully understand their implications. It would be of assistance to understand how it is proposed that this process be managed. They also noted the importance of using plain English when explaining the concept and process to ensure it is as fair and accessible as possible. It will be necessary to ensure any changes made are well promoted to those that will be affected.

Two consultees also stated there is no reference where the updated law and the future consolidated version of the MARPOL Annex I will be available. It is paramount that the MCA makes a copy of the consolidated amendments of MARPOL Annex 1 publicly available and freely accessible on the GOV.UK website, to enable the industry and other interested parties to view and comply with the regulations.

Government response:

The government agrees the importance of ensuring that ship-owners and other interested parties are aware of these powers and the consolidated amendments. The government cannot provide the entire Convention text for free as this would infringe on the IMOs copyright laws. The government can, however, provide the base text from the amending Resolutions which are included in this transposition. The MCA will publish a Marine Information Notice which covers the base text and make this available

on the Gov.UK web site. We will also seek to publish the amendments onto the Foreign and Commonwealth Office (FCO) Treaties Database when the SI comes into force.

Definition of Owner, Manager, Demise Charterer and Master

16. Two consultees suggested the provision of a definition of owner, manager, demise charterer or master.

Government response:

“Master” is defined in section 313 of the Merchant Shipping Act 1995 and that definition carries through into these regulations. The other terms take their natural meaning (as in other similar maritime legislation).

Further reference to other fixed or floating production platforms

17. One consultee appreciates, with reference to fixed and floating platforms, that this is based on the underlying regulations, however they considered that this could usefully be clarified to include reference to all floating platforms and units, for example Floating Storage Regasification Units (FSRU) and floating liquefied natural gas platforms (FLNG) if that is the intention.

Government response:

The government appreciates the idea to incorporate FSRU and FLNG. However, the government, including IMO, is aware of the complexity of the construction and design of fixed and floating platforms. Hence, MARPOL Annex I’s regulation 39.1 (convention text) which says fixed or floating platforms including drilling rigs, floating production, storage and offloading facilities (FPSOs) used for the offshore production and storage of oil and floating storage units (FSUs) used for the offshore storage of produced oil covers a broad range. FSRU and FLNG fall under this Regulation provided they are engaged in what is said in Reg 33(1) of the draft SI Regulations.

Further definition of phrase “capable of being propelled through the water under their own power”

18. One consultee suggested further definition for the phrase ‘capable of being propelled through the water under its own power’ to exclude installations that require the use of engines for propulsion or thruster support for station keeping / weather veining whilst fixed to the seabed undertaking oil and gas related activities.

Government response:

This phrase is set as one of the caveats for fixed or floating production platforms engaged in oil and gas operation on the UK Continental Shelf and requires compliance with OPPC only. Expanding the phrase for installations that require the use of engines for propulsion or thrust whilst fixed to the seabed was not the intent of the original policy decision. We understand the consultee suggestion. We are cautious that the same engine or engines that are deployed to maintain the installation positioning may also switch over for propulsion. Therefore, we did not want to categorically exclude those engines for station keeping/veining. However, the installation operator/owner can demonstrate to the Administration the arrangement in detail for consideration.

Regulation 33(3) of the draft SI is the deciding factor as to whether the installation meets the requirement under Regulation 33(2). The Government will stick with the principle described by Reg 33.

Clarity for Mobile Offshore Drilling Units (MODU)

One consultee stated greater clarity for Mobile Offshore Drilling Unit (MODU) and rig owners is required. There is some concern that there does not appear to be a mechanism in UK legislation to address MODUs but more specifically MODUs registered to a non-UK flag state operating outside of UK territorial waters (12NM as defined by the Act of 1987) but on the UK Continental Shelf. This matter has arisen in other circumstances, notably the implementation of the Industrial Personnel Code and parallel references to the IMO MODU Codes which are not referenced in UK legislation have been required to be handled via individual Statements of Compliance to IMO. As such a regulatory gap exists and needs addressing.

Government response:

The Government appreciates that MODU issues (IP Code and MODU Code) should be discussed separately as it touches on the other policy areas and not MARPOL I.

Section 5: Next steps

19. The government will finalise the Regulations with a view to bringing them into force early in 2019.

Consultation questions and answers

Annex A

CONSULTATION QUESTIONS, CONSULTEE ANSWERS AND GOVERNMENT RESPONSES TO THE ANSWERS

The Response form was Section 5 of the Consultation Document

Section 5, Question 1 - Questionnaire

Question a) Do you agree with the approach of using ambulatory references to implement MARPOL Annex I?

Summary of
consultee views The view was generally expressed that the use of an ambulatory reference provision was a positive tool which will help to promote harmonisation with IMO legislation, provide greater clarity and reduce cost and time to the industry.

Government
response

The government has noted the comments.

Question b) Can you see any other benefits or drawbacks of using ambulatory referencing in UK legislation, for implementing international Conventions?

Summary of
consultee views One consultee expressed the opinion that the ease of referencing will reduce ambiguity between international and national law.

Government response

The government has noted the comments.

Question

c) On average, how many hours each year does your company spend reading and understanding the requirements of the MARPOL Annex I convention.

Summary of consultee views

One consultee stated it would take core members up to 5 hours.

Government response

The government has noted the comments

Section 5, Question 2 - Impact

Question

a) Are the estimates of the cost of Regulation 12A (oil fuel tank protection), which range from 1% of build costs to \$3m per ship, an accurate representation of the costs to business? If not, can you provide a better estimate of the cost?

Summary of consultee views

No comments bar one which stated this would be outside their technical remit to comment.

Government response

The government has noted the comments

Question **b) Does Regulation 12A (oil fuel tank protection) represent an additional cost to a new build? If so, what is the scale of this cost?**

Summary of
consultee views No comments bar one which stated this would be outside their technical remit to comment.

Government
response The government has noted the comments

Question **c) On average how many hours does it take for a member of your organisation to familiarise themselves with UK legislation on MARPOL I?**

Summary of
consultee views One consultee stated it would take core members up to 5 hours.

Government
response The government has noted the comments

Question **d) At what level of seniority would a member of staff be expected to be (on behalf of the organisation) familiar with UK legislation on MARPOL I?**

Summary of
consultee views One consultee comment stated Higher Scientific Officer

Government
response The government has noted the comments

Question e) Do you feel that the costs and benefits assessment outlined in the Impact Assessment is a reasonable reflection of the costs and benefits?

Summary of
consultee views One consultee agreed.

Government
response The government has noted the comments

Section 5, Question 3 - Application

Question a) Do you agree with the way the MCA has applied MARPOL Annex I requirements?

Summary of
consultee views One consultee agreed

Government
response The government has noted the comments.

Question b) Within the parameters set by Regulation 2 of MARPOL Annex I, are there any further areas where the MCA should apply or dis-apply the requirements?

Summary of
consultee views One consultee stated there are no further areas the MCA apply/dis-apply

Government
response The government has noted the comments.

Section 5, Question 4 - Offences and Penalties

Question a) Do you agree that the possible penalty of, on summary conviction, a fine; or, on conviction on indictment, a fine is reasonable and acceptable for all offences highlighted in the new proposed regulations for MARPOL Annex I?

Summary of
consultee views One consultee agreed.

Government
response The government has noted the comments.

Question b) Is there any other way in which the penalties should be streamlined?

Summary of
consultee views One consultee stated there was not.

Government
response The government has noted the comments.

Question c) Do you feel that the proposed penalties are fair?

Summary of
consultee views One consultee stated they were fair.

Government
response The government has noted the comments.

Question d) Do you feel that the proposed penalties will act as an effective deterrent for non-compliance?

Summary of
consultee views

One consultee stated the proposed penalties will act as an effective deterrent.

Government
response

The government has noted the comments.

Section 5, Question 5 - Format

Question

a) Does the proposed guidance meet your needs in terms of (i) format: and (ii) content?

Summary of
consultee views

One consultee agreed

Government
response

The government has noted the comments.

Question

b) Do you feel there is a better way of providing guidance for the MARPOL Annex I requirements?

Summary of
consultee views

One consultee stated no.

Government
response

The government has noted the comments.