



Maritime &
Coastguard
Agency

Consultation on the draft Merchant Shipping (Prevention of Pollution by Garbage from Ships) Regulations 2020

Consultation Outcome Report

Summary of consultee comments and government responses
to them

April 2020

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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 3rd February to 30th March 2020 on the draft Merchant Shipping (Prevention of Pollution by Garbage from Ships) Regulations 2020 (“the draft Regulations”) This instrument would replace the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008 (“the 2008 Regulations”) ¹. The draft Regulations will bring UK legislation up to date with the latest requirements of Annex V (Regulations for the Prevention of Pollution by Garbage from Ships) 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 100 shipping and marine industry companies, plus in excess of 30 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 V 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 V of MARPOL prohibits the discharge of garbage from ships into the sea, providing exceptions regulating the circumstances under which garbage may be discharged, and the treatment of garbage onboard ships. Consequently, it has great significance for the protection of the environment.
5. Annex V is regularly amended to protect the environment by improving the measures with which ships must comply. Given the number of amendments to Annex V since the 2008 Regulations came into force, and the entry into force of requirements related to the discharge of garbage in polar waters (via the Polar Code), a new set of UK regulations is proposed to ensure that UK domestic legislation reflects current international requirements.

¹ The provisions which relate to the prevention of pollution by sewage from ships would be covered in a separate instrument and this instrument is the subject of a simultaneous consultation.

Section 2: Ambulatory Reference

6. 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”). It is proposed that the draft Regulations will make use of this ambulatory reference power. The power has already been used in a number of merchant shipping regulations.²
7. An ambulatory reference for the purposes of this consultation is a reference in domestic legislation to a specific provision in an international instrument which is to be 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). This means that the reference will always be to the current international requirement.
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 V 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 Annex V, and EU legislation is in any case outside the scope of the ambulatory reference power in s.306A of the MSA 95.

² See the Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018 (S.I. 2018/68), the Merchant Shipping (International Load Line Convention) (Amendment) Regulations 2018 (S.I. 2018/155), and the Merchant Shipping (Prevention of Oil Pollution) Regulations 2019 (S.I. 2019/42).

Section 3: Consultation

11. The consultation was carried out between 3rd February and 30th March 2020. It can be found at: <https://www.gov.uk/government/consultations/consultation-on-the-draft-merchant-shipping-prevention-of-pollution-by-garbage-from-ships-regulations-2020>
12. A total of five responses were received, one from the Law Society of Scotland, one from Oil and Gas UK Association, plus one from Class NK, one from the Forestry Commission 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

Use of Ambulatory Reference

14. There were no negative responses to the proposed inclusion of an ambulatory reference provision. Two of the five consultees, were supportive of the recommendations on ambulatory referencing which will promote harmonisation with IMO legislation, provide greater clarity and reduce cost and time to the industry.

Government response:

The unanimous opinion agrees with the government view that the use of an ambulatory reference provision will assist with harmonising with international legislation and reduce cost to industry.

15. One of the consultees responded noting the importance of suitable opportunities for consultation and scrutiny when changes to Annex V are being considered at an international level. The consultation response notes that it is crucial that the UK is part of the consultation and negotiation process in relation to any proposed changes to Annex V of MARPOL, and that consultation and awareness raising is needed for Ambulatory Referencing to succeed. The consultee considers it appropriate for the Secretary of State to retain the power to make regulations and prevent unwanted amendments from becoming UK law, whilst respecting international obligations which may be made on UK ships.

Government response:

The government would like to issue reassurance that the government will continue to engage our stakeholders through the policy design, development and implementation of new amendments to MARPOL.

Updates to bring UK requirements up to date with international ones.

16. There were no objections from consultees with respect to bringing UK requirements up to date with international requirements.

Government response:

Only positive responses were received to the consultation, and therefore the government is confident that the proposed alignment of UK requirements to international requirements is achieved through the package.

Application

17. There were no objections to the proposed scope of application.

Government response:

There were no comments which raised concern about the scope of application, and therefore the government is confident that the proposed scope of application is suitable.

Penalties and offences

18. There was one consultation response which provided support with respect to the changes where offences will be updated.

Government response:

This is a positive response which supports the proposals for offences which have been made within the draft legislation.

Guidance for Merchant Shipping (Prevention of Pollution from Garbage) Regulations

One consultee offered input regarding the new Annex V Marine Guidance Note (MGN), with regard to information on non-compliant dunnage material. The stakeholder had previously assisted in this with an MGN for Port Waste Reception Facilities.

Government response:

The Government appreciates that dunnage does fall under Annex V, however the material must be landed ashore, where it will then fall under Port Waste Reception Facilities. As the consultee notes, the MGN for Port Waste Reception Facility is already in place and dunnage is captured as part of this MGN.

Section 5: Next steps

19. The government will finalise the Regulations with a view to bringing them into force Summer 2020.

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 that the approach of using ambulatory references to implement Annex V will make familiarisation easier?

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 it is important that there should remain suitable opportunities for consultation and scrutiny, and that the UK should remain part of the process in relation to proposed changes to Annex V at international level. The consultee supports that the Secretary of State should retain the power to make regulations to prevent unwanted amendments to the Annex from becoming UK law, whilst recognising the UK must fulfil the international standard to which UK ships are required to comply.

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 Annex V?

Summary of
consultee views

No comments were received in response to this question.

Government
response

The government has noted the comments.

Section 5, Question 2 - Impact

Question

a) Do you agree with the government's interpretation of the latest amendments to Annex V?

Summary of
consultee views

No comments were received in response to this question.

Government
response

The government has noted the comments

Question **b) Do you feel that the costs and benefits assessment outline in the DMA is a reasonable reflection of the costs and benefits?**

Summary of
consultee views No comments were received in response to this question.

Government
response The government has noted the comments

Question **c) Consultees are requested to provide estimates of cost savings resulting from having to refer only to the technical standards in the international text rather than also referring to UK text transposing the standards, and to comment generally on this approach (the “Familiarisations Costs” paragraph of section 5 of the DMA refers)?**

Summary of
consultee views No comments were received in response to this question.

Government
response The government has noted the comments

Question **d) Do you agree with the costs identified in section 6 of the DMA? If not please provide alternative evaluations (section 6 of the DMA refers)?**

Summary of
consultee views No comments were received in response to this question.

Government
response The government has noted the comments

Question e) Do you agree with the above assumptions (which are contained in section 6 of the DMA and relate to the monetary analysis?)

Summary of
consultee views No comments were received in response to this question.

Government
response The government has noted the comments

Section 5, Question 3 - Application

Question a) Do you feel that the MCA has successfully determined the extent of the application for Annex V requirements?

Summary of
consultee views No comments were received in response to this question.

Government
response The government has noted the comments.

Section 5, Question 4 - Offences and Penalties

Question a) Do you feel that the new and re-made offences and penalties are necessary, fair and proportionate?

Summary of
consultee views One consultee agreed.

Government response

The government has noted the comments.

Question

b) Is there a way that the penalties can be further streamlined?

Summary of consultee views

No comments were received in response to this question.

Government response

The government has noted the comments.

Question

c) Is there a way through which the offences can be ‘future proofed’ to allow enforcement action to be taken without changing the legislation?

Summary of consultee views

No comments were received in response to this question.

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 with the requirements of the Annex V?

Summary of consultee views

No comments were received in response to this question.

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

No comments were received in response to this question.

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 V requirements?

Summary of consultee views

No comments were received in response to this question. One consultee offered assistance with determining requirements for the guidance with respect to non compliant dunnage material.

Government response

The government has noted the comments.