

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (OIL POLLUTION) (BUNKERS
CONVENTION) REGULATIONS 2006

2006 No. 1244

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument amends the Merchant Shipping Act 1995 to give the force of law in the United Kingdom to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention).

2.2 Once the Bunkers Convention enters into force it will ensure that better arrangements are in place for cost recovery for pollution damage caused by ships' fuel oil (bunker oil).

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 A Council Decision (2002/762/EC) was issued in 2002 to ensure that, as far as Member States are concerned, the rules in Council Regulation 44/2001 on jurisdiction and recognition and enforcement of judgments override the corresponding provisions in the Bunkers Convention. The Council Decision therefore authorises ratification of the Bunkers Convention by Member States, subject to the making of the following Reservation:

“Judgements on matters covered by the Convention shall, when given by a court of [all the Member States to which this Decision is applicable except the Member State making the declaration] be recognised and enforced in [the Member State making the declaration] according to Community rules on the subject.”

4.2 The Council Decision was the subject of scrutiny (EM No. 14825/01 COM(2001) 675 final) and cleared the Lords on 29 Jan 2002 and the Commons on 22 May 2002.

4.3 This instrument is made under section 2(2) of the European Communities Act 1972 (1972 Act) as the Council Decision creates a community obligation on the United Kingdom to ratify and implement the Bunkers Convention.

4.4 This instrument implements the Bunkers Convention through amendments to Chapter III of Part VI of the Merchant Shipping Act 1995 (MSA 1995).

- 4.5 Chapter III implements the International Convention on Civil Liability for Oil Pollution Damage 1992 (the Liability Convention). The Liability Convention establishes strict liability on shipowners for oil pollution from tankers and allows shipowners to limit their liability to an amount established in accordance with the tonnage of the ship. Shipowners are also required to maintain insurance, to cover their liability, which must be certified by a State party to the Liability Convention. Claims for compensation for oil pollution damage may be brought directly against the insurer (right of direct action). The Liability Convention also provides immunity from liability for pollution damage for persons who respond to oil pollution incidents.
- 4.6 The Liability Convention only applies to pollution damage caused by persistent hydrocarbon mineral oil (e.g. crude oil, fuel oil or heavy diesel oil) carried by tankers but it has been used as a model for other maritime liability instruments, including the Bunkers Convention.
- 4.7 Chapter III of the MSA 1995 also makes provision, at section 154, for liability for pollution damage caused by persistent hydrocarbon mineral oil from vessels other than tankers at section 154. This is domestic legislation and is not based on an international treaty. Section 154 provides that the owner of any ship (including vessels which are not seagoing) will be strictly liable for pollution damage resulting from a discharge or escape of oil from that ship.

5. Extent

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 Stephen Ladyman the Minister of State for Transport has made the following statement regarding Human Rights:
- 6.2 In my view the provisions of the Merchant Shipping (Oil Pollution)(Bunkers Convention) Regulations 2006 are compatible with the Convention rights.

7. Policy Background

- 7.1 These Regulations will implement the Bunkers Convention in the UK. The effect of these Regulations will be to help anyone who has suffered damage as a result of bunker oil pollution, or the threat of such pollution, to obtain adequate recompense.
- 7.2 These Regulations will benefit anyone likely to be affected by a bunker oil incident including individuals, businesses such as local fishing and tourism industries, local authorities and the Government.

7.3 These Regulations will make it easier to obtain adequate recompense by introducing:

- strict liability on all shipowners for bunker oil pollution damage (this means that the claimant does not need to prove fault);
- a requirement for registered owners of vessels with a gross tonnage greater than 1,000 to maintain insurance;
- certification of insurance by a State party to the Bunkers Convention;
- A right of direct action against the insurer, which means that claimants can sue the ship's insurer direct if the registered owner is unable to pay.
- Jurisdiction in the State (or States) where the damage occurred.

7.4 Current legislation

Paragraphs 4.5 and 4.6 explain that shipowners are strictly liable under the MSA 1995 for pollution damage caused by persistent hydrocarbon mineral oil and that tanker owners are entitled to limit their liability in accordance with the Liability Convention.

7.5 All other shipowners are entitled to limit their liability in the United Kingdom in accordance with the Convention on Limitation of Liability for Maritime Claims (LLMC) 1976 as amended by its Protocol of 1996¹. Limits of liability start at approximately £1.6 million for ships with a tonnage not exceeding 2,000 and increase with the size of the ship.

7.6 There is no requirement to maintain insurance for pollution damage caused by bunker oils except for oil tankers carrying more than 2,000 tons of persistent oil as cargo (section 163 of the MSA 1995), and ships for which trans-shipment licences are in force (fish factory ships - SI 1998 No. 209²).

7.7 Where pollution damage results from bunker oils other than persistent hydrocarbon mineral oils, it is necessary to prove negligence on behalf of the shipowner as the first stage in cost recovery.

7.8 Even where negligence is established, or the shipowner is strictly liable under section 153 of the MSA 1995, it can still be difficult to obtain compensation if the shipowner is not insured and has no other assets. Whilst the majority of UK registered shipowners voluntarily maintain insurance, it is not possible to ascertain whether foreign flagged vessels entering UK ports are insured. Even where foreign vessels are insured, and liability is established, it can be difficult to enforce a judgment in a foreign jurisdiction.

¹ This was implemented in the United Kingdom by the Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) (Amendment) Order 1998, made under section 185(2A) of the MSA 1995.

² The Merchant Shipping (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998.

- 7.9 Local authorities and the Government have experienced problems in recovering costs for deploying vessels and equipment used for preventive measures and for clean-up operations arising from bunker oil incidents.

Amendments made by these Regulations

- 7.10 These Regulations will amend Chapter III of the MSA 1995 by inserting new section 153A which provides that shipowners will be strictly liable for pollution damage caused by bunker oil.
- 7.11 These Regulations also insert a new section 163A which requires registered owners of United Kingdom ships, or other ships entering or leaving United Kingdom ports, to maintain insurance as required under the Bunkers Convention. Article 7 of the Bunkers Convention requires registered owners to maintain insurance or other financial security in an amount equal to the applicable national or international limitation regime but not exceeding an amount calculated in accordance with the LLMC Convention. The insurance must be certified by a State party.
- 7.12 As explained at paragraph 7.5, the applicable limitation regime in the United Kingdom is the LLMC Convention as amended by its Protocol of 1996 (LLMC 96). Registered owners of vessels entering or leaving UK ports will therefore be required to maintain insurance in an amount equal to their limit of liability calculated under LLMC 1996.
- 7.13 Section 164 of the MSA 1995 provides for the Secretary of State to issue certificates attesting that insurance is in place to meet the requirements of the Civil Liability Convention to United Kingdom ships, or to ships that are registered in a country which is not party to the Civil Liability Convention.
- 7.14 These Regulations amend section 164 to provide for the Secretary of State to issue certificates attesting that insurance is in place to meet the requirements of the Bunkers Convention.
- 7.15 Section 156 of the MSA 1995 excludes certain persons other than the shipowner from liability for oil pollution, whether under the Civil Liability Convention at section 153 of the MSA 1995, or in respect of liability for other oil pollution under section 154 of the MSA 1995. Persons excluded from liability include any servant or agent of the shipowner, any charter of the ship, any person performing salvage operations with the consent of the shipowner or on the instructions of a competent public authority, and any persons taking measures to prevent or minimise pollution.
- 7.16 A key purpose of this provision is to ensure salvors or persons capable of undertaking preventive measures are not deterred from responding to an incident for fear of incurring liability if pollution results from their actions. To do otherwise could deter such parties from responding to an incident.

- 7.17 These Regulations therefore amend section 156 to provide immunity from liability for pollution damage in respect of Bunker oils which are not persistent hydrocarbon mineral oils for servants or agents of the shipowner, persons providing salvage operations and for persons taking measures to prevent or minimise pollution
- 7.18 These Regulations also contain a number of consequential amendments the main purpose of which is to substitute references to 'owner' in Chapter III with 'registered owner'. This is necessary because the Bunkers Convention uses both terms and each has its own definition. Chapter III of the MSA currently refers only to the 'owner' which has the same meaning as 'registered owner' in the Bunkers Convention. Therefore all previous references to 'owner' are changed to 'registered owner' and the term 'owner' is used exclusively in the context of liability under the Bunkers Convention. The regulations also amend section 170 to clarify the definitions of 'owner' and 'registered owner'.

Consultation

- 7.19 In September 2005 a public consultation document was sent to over 170 Stakeholders including the Chamber of Shipping, Oil Companies International Marine Forum, the British Maritime Law Association, the International Group of Protection and Indemnity Clubs as well as Harbourer Authorities and Local Coastal Authorities. The Consultation invited comments on the Government's proposals to:
- ratify the Bunkers Convention by June 2006;
 - apply the Bunkers Convention to UK ships on domestic voyages (i.e. travelling from one UK port to another) as well as to those on international voyages; and
 - ensure that persons who perform salvage operations or take preventive measures do not face liability for bunker oil pollution which results from their actions (unless caused with intent or recklessly).
- 7.20 A total of 16 responses were received with 11 being from the main industry stakeholders. All 16 stakeholders agreed with the Government's proposals. This shows that although the level of public interest, whilst fairly low, has been positive.
- 7.21 The United Kingdom will ratify the Bunkers Convention after these Regulations have been made. The regulations will not enter into force until the Bunkers Convention enters into force, except for the provisions relating to the certification of registered owners' insurance which will enter into force on 15 July in order that certificates can be issued prior to the entry into force of the Bunkers Convention and the remaining regulations.
- 7.22 The Bunkers Convention will enter into force 1 year after it has been ratified by 18 States, provided 5 of them have ships whose combined gross tonnage is not less than 1 million.

7.23 As at 1 January 2006, the Bunkers Convention had been ratified by 9 States. This number is expected to increase, particularly as the target date for ratification contained in the EU Council Decision approaches. It is theoretically possible for the Bunkers Convention to enter into force by June 2007.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is negligible. The Competent Authority (the Maritime and Coastguard Agency (MCA)) will be required to certify that insurance is in place for all UK registered vessels, as well as other vessels wishing to enter UK's where they are not registered in a State party to the Bunkers Convention. The MCA carries out a similar function in respect of insurance for oil tankers and charges a £30 fee to certify that insurance is in place. It is proposed that this fee will also be charged to vessels requiring certification under the Bunkers Convention so there will be no net cost to the MCA.

8.3 It will also be necessary to ensure that all UK registered vessels wherever trading, and any vessel entering a UK port, carry evidence of insurance certified by a State party to the Bunkers Convention. This will be done under the usual Flag State and Port State Control procedures at [no additional cost].

9. Contact

9.1 Victoria Bouwer at the Department for Transport (telephone: 0207 944 8674; email victoria.bouwer@dft.gsi.gov.uk) can answer any queries about the instrument.

Final Regulatory Impact Assessment on Implementation of the Bunkers Convention

1. Title

1.1 This final Regulatory Impact Assessment (RIA) considers the impact of implementing the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunkers Convention).

2. Purpose and intended effect of measure

(i) Objective

2.1 To close an existing gap in maritime liability conventions and to improve the process by which claimants are able to recover costs incurred as a result of pollution from ships' bunker fuel oils³.

2.2 Maritime powers under the Merchant Shipping Act are not devolved, so the Bunkers Convention as a reserved subject matter will apply to the whole of the UK.

(ii) Background

2.3 Despite the successful introduction 25 years ago of the liability and compensation regime for oil pollution from tankers⁴, a number of pollution incidents from ships other than tankers, in the UK and elsewhere, illustrated the need to plug a gap in the oil pollution regime. In response, the International Maritime Organization adopted the Bunkers Convention at a diplomatic conference in 2001.

2.4 The aim of the Bunkers Convention is to improve the process by which claimants are able to recover costs incurred as a result of pollution from ships' bunker fuel oils, whether in responding to a bunker pollution incident or as a result of damage caused by bunker oil pollution. The Bunkers Convention will help to achieve this by:

- establishing a strict liability regime on the shipowner⁵ for pollution damage arising from all types of oil used in the operation or propulsion of ships (i.e. the shipowner is liable regardless of fault);
- requiring all registered owners of vessels over 1,000 gt entering or leaving a UK port or terminal to maintain insurance certified by the State to meet their liability; and
- introducing a provision that entitles claimants to sue ships' insurers via the right of direct action.
- Allowing claims to be pursued in the State in which the damage occurred. This makes it much easier for victims to pursue a claim for cost recovery.

2.5 Whilst all shipowners are liable for pollution damage under the Bunkers Convention, only those operating vessels of 1,000 gt and over will be required to maintain insurance to cover their liability.

(iii) Rational for Government intervention

³ Any hydrocarbon mineral oil used for the operation or propulsion of the ship

⁴ The International Convention of Civil Liability for Oil Pollution Damage 1992 (CLC) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992 (Fund Convention).

⁵ Shipowner is defined in the Bunkers Convention and means the owner, including the registered owner, bareboat charterer, manager and operator of the ship.

- 2.6 It is often difficult, and sometimes impossible, to obtain compensation for pollution damage caused by bunker oil from ships other than tankers. Local Authorities and the Government have experienced difficulties recovering costs for deploying vessels and equipment used as preventive measures and for clean-up operations arising from a bunker oil incident or threat of such an incident.
- 2.7 If the Government does not ratify and implement the Bunkers Convention and a pollution incident occurs in UK waters, the Government is likely to face severe criticism especially from coastal local authorities, charities and coastal communities who may be unable to recover their losses.
- 2.8 The Government carried out a public consultation from 1 September to 25 November 2005 setting out its proposals and inviting comments on draft implementing Regulations. The consultation was circulated among key stakeholders including the fishing industry, Harbour Authorities, Marine Insurers, Coastal Local Authorities, Environmental groups and Charities. Of those that responded, all were in favour of implementing the Bunkers Convention. The Government's response to the consultation will be published soon.
- 2.9 Council Decision (2002/762/EC) authorises Member States to give force of law to the Bunkers Convention by 30th June 2006, if possible.
- 2.10 Shipping is a vital economic activity and the UK relies on shipping for 95 per cent of its visible trade. The UK's coastline extends over 10,000 miles and is peppered with some 600 ports varying in size, capacity and access. Its coastline contains a number of major shipping routes. The English Channel is the world's second busiest international waterway: in 2004 there were some 87,123 traffic movements through the traffic separation scheme in the Dover Straits. The potential for environmental and economic damage stemming from a bunker oil pollution incident is significant.
- 2.11 Each year the Advisory Committee on the Protection of the Sea (ACOPS) publishes the results of its oil pollution survey around the coast of the UK. It records the different types of oil pollution that occur each year in various areas of the country. It is from this data that we have compiled the following table listing the number of Bunkers incidents that have been reported in UK waters each year since 1993.

Table showing number of bunker pollution incidents in UK waters

Year	Bunker fuel (including diesel fuel and gas oils)	Other oils covered by Bunkers Convention (including lubrication and hydraulic oils)
2004	105	23
2003	108	18
2002	140	20

2001	156	19
2000	182	26
1999	203	67
1998	241	55
1997	241	54
1996	214	42
1995	226	58
1994	164	59
1993	208	109

Current legislation

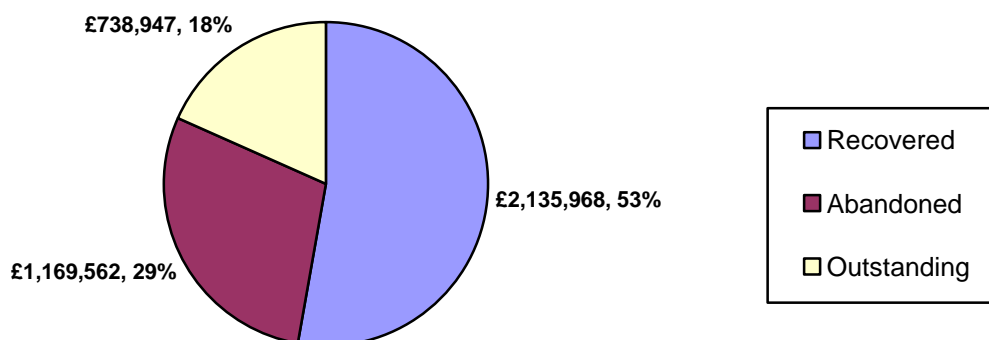
- 2.12 Shipowners are entitled to limit their liability for damage caused by bunker oil pollution under the International Convention on Limitation of Liability for Maritime Claims (LLMC Convention) 1976 as amended by its Protocol of 1996. Limits of liability start at approximately £800,000 for shipowners of vessels with a tonnage less than 2,000 tons, and increase with the size of the vessel. Shipowner liability for a medium-sized vessel of, for example, 40,000 tons would be about £12.5 million.
- 2.13 However, there is currently no corresponding requirement for registered shipowners operating in UK waters to maintain insurance to cover their liability in respect of bunker fuel pollution, other than for fish processing vessels (Klondykers) or when oil is carried as cargo by tankers.
- 2.14 Responses to the Government's public consultation confirm that while most UK registered shipowners maintain adequate levels of insurance to meet their liabilities, the extent to which non-UK registered shipowners do so is unknown. In recent years the UK has experienced a number of incidents involving bunker oil spills where cost recovery for damages and clean-up operations has proved difficult, and in some cases, impossible.

Cost recovery problems

- 2.15 The chart below illustrates the total cost to the Government of responding to pollution incidents that have occurred since 1993 and the percentage of expenditure that has been recovered, abandoned or remains outstanding.
- 2.16 Cost recovery for spills of oils not covered by an existing liability regime is currently not guaranteed. This leaves sea areas and coastlines vulnerable to a huge range of potential contaminants and the effects of such oils in the marine environment and the damage they cause will determine the type of response required. The costs of responding to oil spills is determined by a number of factors, some of which are variable, e.g. the amount and type of oil spilled, some constant e.g. the need to deploy vessels and equipment to

contain the spilled oil. It is difficult, therefore, to be precise about the likely cost of any future spill. But cost recovery for all claimants should be easier once the Convention is given force of law.

Analysis of cost recovery for UK bunkers incidents 1993 - 2004



2.17 The Government has had to abandon a number of substantial claims for compensation for damages as a result of bunker oil pollution including:

- The *Kandalashka* which ran aground in 1993 at a cost to the Government of £48,573.
- The *Borodinskye Polye* also ran aground in 1993. The Government spent £655,453 responding to the incident.
- The *Cita* ran aground off the Isles of Scilly in 1997 at a cost to the Government of £192,284.

2.18 In each case the Government was unable to recover costs. In the cases of the *Kandalashka* and *Borodinskye Polye* this was because neither ship had maintained insurance of any kind. Whilst the *Cita* was insured, a combination of factors, including legal inaccessibility of the registered shipowner and insolvency of the insurer, meant that the Government has been unable to recover the cost of responding to the incident.

2.19 Problems in cost recovery can result from one or more of the following:

- The registered shipowner has no insurance;
- The shipowner has no assets;
- The vessel is insured but the insurer invokes the 'pay to be paid' rule and will only indemnify the shipowner after a legal obligation to pay has been established. If the registered shipowner cannot pay, for example he becomes insolvent, the insurer will not pay the claim;

- Claimants may have to prove fault where a spill involves non-persistent oil;
- The legal costs of pursuing a claim can be prohibitive;
- The vessel is flagged in another State and it may be difficult to enforce a judgement; and
- No automatic right to pursue a claim in the State where the spill occurred;

2.20 With the implementation of the Bunkers Convention these problems should be alleviated because:

- The shipowner will be strictly liable for all forms of bunker oil pollution damage. This means that the shipowner will be liable even when he is not at fault;
- the registered shipowner of any vessel over 1000gt will be required to maintain compulsory insurance backed by State certification;
- claims can be pursued in the State party where the spill occurred; and
- claimants will have the right of direct action so can claim directly against the insurer.

3. Consultation

(i) Within Government

3.1 Policy clearance to ratify and implement the Bunkers Convention in principle was received from the Domestic Affairs Committee on 7 September 2005. The Devolved Administrations have also been informed of the proposal to ratify and implement the Bunkers Convention.

(ii) Public consultation

3.2 Prior to the adoption of the Bunkers Convention at the IMO in 2001, the Government sought views from a cross-section of maritime interest groups including industry representatives. Their views helped to shape the UK's negotiating objectives. The text of the Convention broadly reflects the views held by many stakeholders.

3.3 A further public consultation on the ratification and implementation of the Conventions took place in the autumn of 2005. The Government sought views on its proposal to ratify and implement the Bunkers Convention and apply it to ships on domestic voyages. Both received unanimous support.

3.4 Stakeholders also agreed with the Government's proposal to implement the diplomatic conference Resolution to provide responder immunity. This is consistent with existing legislation in respect of spills from tankers and not to

apply the same protection to those responding to others ships would be inconsistent.

- 3.5 The British Chamber of Shipping in their response informed the Government that all their ship operator members and associate members maintain third party insurance. The Chamber's membership comprises 125 members and associate members who own or manage 730 merchant ships totalling about 18 million gross tonnes. This accounts for 90% of British shipping by tonnage.

4. Options

- 4.1 Two options have been identified:

Option 1 - Do nothing

- 4.2 This option would be to make no provision in respect of liability for bunker oil pollution and continue to rely on existing legislation.
- 4.3 Under this option, shipowners would continue to be entitled to limit their liability for bunker oil pollution damage under the LLMC Convention.
- 4.4 There would be no requirement on shipowners to make financial provision to cover their liabilities.
- 4.5 Currently the Government encourages shipowners to voluntarily maintain insurance under Marine Guidance Note 135(M). The Marine Guidance Note contains guidelines on shipowners' responsibilities adopted by IMO Assembly Resolution A.898 (21), which encourages States to recommend that all shipowners maintain effective third party insurance.
- 4.6 Whilst most UK shipowners maintain third party insurance voluntarily, we have no way of determining whether shipowners of foreign-flagged vessels do so.
- 4.7 Even when insurance is in place, cost recovery can be problematic for the reasons explained at paragraph 2.21. If the Government makes no changes to the legislation in respect of pollution damage caused by bunker oil, cost recovery will continue to be problematic.
- 4.8 If the UK does not make provision to ratify and implement the Bunkers Convention, we may be in breach of EU Council Decision (2002/762/EC) of 2002 which authorised all Member States to ratify the Convention within a reasonable time.

Option 2 - Implementation of the Bunkers Convention

- 4.9 Under this option the UK would ratify and implement the Bunkers Convention. This would significantly improve the cost recovery arrangements following a

bunker oil pollution incident. The Bunkers Convention introduces provisions to ensure that shipowners are financially capable of meeting their liabilities for bunker oil pollution damage. The Bunkers Convention would apply to all UK shipowners as well as any ship entering or leaving a UK port or terminal.

- 4.10 Implementing the Convention would improve the effectiveness of UK maritime liability legislation and satisfy the UK's obligations to the European Community.

5. Costs and Benefits

(i) Sectors and groups affected

- 5.1 The main sectors that would be affected are:

Shipowners of vessels over 1,000gt.

- 5.2 All shipowners are strictly liable for bunker oil pollution damage under the Convention, but the compulsory insurance requirement only applies to vessels over 1,000gt. The registered shipowner must maintain insurance to meet his liability and obtain a State Certificate attesting to the effectiveness of insurance or other financial security. The recent public consultation has shown that most UK registered shipowners already maintain third party insurance so the only additional requirement on the shipowner is to obtain the State Certificate from MCA. Figures obtained from June 2005 indicate that of the 1,845 UK registered ships 689 (37%) are over 1,000gt and would therefore be caught by the Bunkers Convention.

Maritime and Coastguard Agency (MCA)

- 5.3 The MCA has responsibility for issuing State Certificates under the CLC regime and will issue certificates for the Bunkers regime.
- 5.4 The existing International Convention on Civil liability for Oil Pollution Damage (CLC) provides that shipowners of oil tankers are required to maintain compulsory insurance and obtain State Certification attesting that insurance or other financial security is in place for spills of persistent oil. The certificates are issued by the MCA and it is envisaged that the Agency will issue State Certificates under the Bunkers Convention.
- 5.5 When the Convention enters into force, Port State Control (PSC) inspections will be extended to ensure that ships comply with entry into UK port (or terminal) requirements. This will include an examination of State Certificates issued under the Bunkers Convention.

Providers of Financial Services

- 5.6 The International Group of Protection and Indemnity Clubs (IG P&I Clubs) insure approximately 90% of the tonnage of the world's seagoing fleet for

certain third party risks and agree with the Government that it should ratify and implement the Convention by June 2006. The International Group do not consider implementation of the Convention to be an additional cost burden.

Coastal Businesses and Local Authorities

- 5.7 Socio-economic factors and resources at risk will vary according to which part of the coastline is affected. Some areas will be regarded as highly important for fishing, mariculture, tourism, other associated industries or conservation. Seasonal activities will also determine the sensitivity of these areas to oil pollution and therefore the economic, social and environmental impact of a spill will vary according to different factors present at the time a spill occurs.
- 5.8 Local communities and authorities affected by bunker oil pollution damage will benefit from the Convention's strict liability and compulsory insurance provisions, which should facilitate cost recovery for claimants.

Issues of equity and fairness

- 5.9 UK shipowners will not be competitively disadvantaged by the UK's ratification of the Bunkers Convention. By virtue of the Council Decision all European Union Members will be required to become parties, so before any ship (save those excluded under the Convention, warships, for example) over 1,000gt enters EU Member State ports or terminals it will be required to maintain appropriate insurance and have on board a valid State Certificate issued by a State Party to the Convention.
- 5.10 This policy has been assessed for race relevance; a Race Impact Assessment is not required.

(ii) Benefits

Option 1

Economic

- 5.11 No implementation costs. The only economic value would be to those shipowners who do not currently maintain insurance, as there would be no requirement to do so.

Social and Environmental

- 5.12 No social or environmental benefits.

Option 2

Economic

- 5.13 The greatest benefit would fall to those who have incurred a loss due to bunker oil pollution. Those that have been involved in the clean up operations,

and those that have suffered loss as a result of bunker pollution damage, are more likely to obtain recompense through the strict liability, compulsory insurance and direct action provisions.

- 5.14 The process of cost recovery should be easier for all claimants, possibly reducing the length and cost of court action.

Social

- 5.15 Victims of bunker oil pollution, including local fishing and tourism industries, are less likely to suffer financial hardship as a result of improved cost recovery provisions.

Environmental

- 5.16 Improved prospects of cost recovery for reasonable measures taken to reinstate the environment.
- 5.17 It is considered that the requirement to maintain insurance provides an incentive for shipowners to operate well-maintained vessels, so decreasing the chance of a spill occurring, as insurers should consider the quality and record of the vessel when calculating insurance premiums.

(iii) Costs

Option 1

Economic

- 5.18 There would be no additional costs to UK shipowners trading in the UK and other States that do not become party to the Bunkers Convention. However, any UK shipowners wishing to trade in a State that is party to the Bunkers Convention would be required to comply with the insurance and certification requirements.
- 5.19 For a fee of £30.00, owners of UK registered ships over 1,000 gt would need to obtain a certificate from the Maritime and Coastguard Agency attesting that insurance is in place. The EU average is approximately £90.00.
- 5.20 There would be no implementation or policy costs for the Government under option 1.
- 5.21 However, there would be potential costs for the Maritime and Coastguard Agency (MCA) which would engage in preventive measures and clean up operations following pollution damage.
- 5.22 Cost recovery can be a lengthy and expensive process and there is no guarantee of success.

Social:

- 5.23 Local communities may face financial hardship in the event of a major spill for which they are unable to recover the cost of damage incurred. Fishing and tourism industries would be particularly affected.

Environmental:

- 5.24 If bunker oil pollution causes damage to the environment, it will remain difficult to recover the cost of reasonable measures taken to reinstate the environment.

Option 2

Economic

- 5.25 There would be costs to shipowners of vessels over 1,000gt who would be required to maintain insurance to meet their liability. This will affect about 689 UK registered vessels over 1,000gt. However, the UK Chamber of Shipping, which represents 90% of the UK fleet by tonnage, has confirmed that all its member already maintain insurance for third party liabilities. The International Group of P&I Clubs has also confirmed that they insure around 90% by tonnage (82% by number) of the world's ocean going fleet.
- 5.26 This information indicates that most UK shipowners already maintain insurance for third party liabilities and so will face no additional insurance charges if a mandatory requirement to maintain insurance is introduced.
- 5.27 As explained at paragraph 2.14, shipowners are already entitled to limit their liability for bunker oil pollution damage under the LLMC Convention. The LLMC Convention would continue to apply under this option – there would be no increase to the limit of shipowner liability and so ratification of the Bunkers Convention is unlikely to have any affect on insurance premiums.
- 5.28 However, insurance premiums are subject to market forces and may increase if the number of claims and, therefore, the level of payments in respect of bunker oil pollution were to increase. In calculating premiums insurers will consider the quality and record of the vessel in question, as well as the applicable limit of liability. So well-maintained vessels with a good safety record can expect to be less affected by any increase to insurance premiums than poorly maintained vessels with a poor record.
- 5.29 It is not possible to identify whether the 10% of vessels which are not members of the UK Chamber of Shipping maintain insurance. Furthermore, there are other insurance providers outside of the International Group of P&I Clubs so a lack of International Group cover does not indicate that a vessel is uninsured.
- 5.30 The Government considers that all vessels trading in UK waters should maintain adequate insurance in respect of their liabilities and believes that the

compulsory insurance provisions in the Bunkers Convention are proportionate and will ensure that consistent measures apply to all vessels trading in the UK, wherever they are registered.

- 5.31 In addition to the requirement to maintain insurance, shipowners would also be required to obtain a State Certificate attesting that insurance is in place.
- 5.32 For a fee of £30.00, the MCA issue State Certificates under the CLC regime to shipowners of tankers carrying more than 2,000 tonnes of oil as cargo. The same fee will apply for State Certificates under the Bunkers Convention. However, the certification charge is kept under review by the MCA and may be increased from time to time. There may be a small resource cost to the MCA for issuing the additional State Certificates.
- 5.33 The MCA's Port State Control inspectors would be required to check that foreign vessels over 1,000 gt entering a UK port or terminal carry a Certificate issued by a State party to the Bunkers Convention. Compliance with the regulations will be considered as part of the overall inspection regime for both UK and non-UK ships (see section 8 on enforcement, sanctions and monitoring). No additional cost for MCA is envisaged as a result of inspection under these regulations.

Social and Environmental

- 5.34 No social or environmental costs identified under option 2.

6. Small Firms Impact Test

- 6.1 We do not consider that implementation of the Bunkers Convention would have a significant impact on small businesses. The businesses affected by the Bunker Convention are registered shipowners and insurers who have responded to it positively.
- 6.2 Whilst some UK registered shipowners may be small businesses, particularly those that operate as one-ship companies, all responsible UK registered shipowners already maintain third party insurance and would not be directly affected by the Bunkers Convention requirement to maintain insurance. They would, however, be obliged to obtain a State certificate to verify that effective insurance is in place.

7. Competition assessment

- 7.1 Implementation of the Bunkers Convention is unlikely to have a significant effect on competition. The Bunkers Convention will only affect a small market (registered owners of 689 UK-flagged ships over 1,000 gt). It is widely understood that most registered shipowners already maintain insurance or other financial security so the only additional burden is the requirement to obtain a State Certificate as evidence that insurance is in place.

- 7.2 The obligations under the Bunkers Convention will apply to all vessels entering or leaving UK ports or terminals, not just those registered in the UK. So far the Bunkers Convention has been ratified by 7 States⁶. Furthermore, all EU Member States are bound by the Council Decision which requires Member States to become party to the Bunkers Convention. Therefore UK registered vessels will be required to comply with the provisions of the Bunkers Convention if they wish to trade in any of the States that become party to the Convention, whether or not the UK becomes a party.
- 7.3 The proposed new mandatory measures would not place additional burdens on any new firms that would not also apply to existing firms.

8. Enforcement, sanctions and monitoring

- 8.1 The Bunkers Convention does not itself impose any specific measures relating to enforcement or sanctions but imposes the following obligations on States:
- States must ensure that any vessels registered in that State does not operate unless a State Certificate of insurance has been issued for that vessel (article 7.11)
 - States must ensure under their national law that insurance (or other security) is in force in respect of any ship over 1,000gt entering or leaving a port or terminal in its territory (article 7.12).

Regulations

- 8.2 It is proposed that the Bunkers Convention will be implemented in the UK by Regulations made under the European Communities Act 1972 (ECA). This will restrict the level of enforcement and sanctions that can be applied, as the ECA states that a criminal offence can not be created that can be punishable with imprisonment for more than two years or punishable on summary conviction with imprisonment for more than three months or with a fine of more than level 5 on the standard scale (if not calculated on a daily basis) or with a fine of more than £100 a day.
- 8.3 In order to fulfil the obligations of the Bunkers Convention, it is proposed that the following sanctions and fines (the maximum permitted under the ECA) will apply by virtue of Regulation 17, subsection 5.
- (i) If a ship enters or leaves (or attempts to enter or leave) a UK port or terminal and does not carry a State Certificate in respect of insurance under the Bunkers Convention, the master or the owner shall be liable:
- On summary conviction to a fine not exceeding the statutory maximum (at time of issue this was £5000);

⁶ Cyprus, Spain, Jamaica, Tonga, Latvia, Slovenia and Samoa.

- On conviction on indictment to a fine (no statutory maximum).
- (ii) If a ship fails to carry, or the Master of the Ship fails to produce a State Certificate, the Master shall be liable under Regulation 17, subsection 6:
- On summary conviction to a fine not exceeding £5,000 on the standard scale.

8.4 In addition, if the obligation to maintain insurance is not met, or a State Certificate is not carried on board a ship, the ship can be detained under the powers at Regulation 17 Subsection 7. If a ship attempts to leave a port or terminal before that detention has been lifted then under provisions already in the Merchant Shipping Act 1995 the master of the ship will be liable to a fine of up to £50,000. Where a Court has ordered the owner to pay a fine and the owner has not complied then under section 285 of the Merchant Shipping Act 1995 an order for distress can be made against the ship.

Monitoring UK registered shipowner compliance

8.5 Once the Bunkers Convention is in force it will be possible to assess if there has been full compliance by UK registered owners in respect of the insurance provisions. The number of vessels of 1,000 gt and over registered in the UK is known and Government will be able to determine the number of applications for State Certificates.

Monitoring compliance of non-UK registered shipowners

8.6 Monitoring of other vessels entering UK ports and terminals will be through the existing Port and Flag State inspections carried out by the Maritime Coastguard Agency (MCA). The MCA is obliged to inspect at least 25% of all vessels that enter into UK ports to ensure that they meet the UK's national requirements for ships' certification, safety, pollution prevention and maintenance. If a vessel cannot show that it has State Certification for Bunkers the ship can be detained under the powers proposed at Regulation 17. The MCA produces on its website each month all the ships that it has detained, the length and the reason for the detention. No additional cost for MCA is envisaged as a result of inspection under these regulations.

8.7 It is also possible to monitor whether any UK flagged ships are detained in any other States that are part of the Paris Port State Control Memorandum of Understanding (Paris MoU). This is an agreement between 20 maritime administrations covering the waters of European Coastal States and North Atlantic basin. Each quarter, a list of all ships that have been detained within group, and the reason why, is published on the Paris MOU website.

9. Implementation and delivery plan

- 9.1 The UK signed the Bunkers Convention in September 2002. This is not binding but indicates the UK's intention to proceed to full ratification at a later date. The text of the Bunkers Convention was also published as a Command Paper (Cm 6693) and laid before Parliament in November 2005. This does not bind the UK to the treaty but is carried out as UK constitutional practice.
- 9.2 To become a party to the Bunkers Convention, the UK must formally ratify the treaty. In doing so, the UK must be in a position to fulfil its obligations under the Bunkers Convention and must therefore ensure that necessary domestic powers to give effect to the treaty are in place.
- 9.3 Regulations have been prepared for the domestic implementation of the Bunkers Convention and were the subject of public consultation earlier in 2005.
- 9.4 The Bunkers Convention will enter into force internationally 1 year after 18 States have ratified, providing 5 of them have a combined gross tonnage of not less than 1 million.
- 9.5 As at 1 December 2005, 7 States had ratified the Bunkers Convention. Ratification should increase, particularly as the Council Decision (June 2006) deadline approaches. It is possible, therefore, for the Bunkers Convention to enter into force by June 2007. It is the Government's intention to ratify the Bunkers Convention as soon as possible ensuring that claimants benefit from the provisions of the Convention from the outset.
- 9.6 In accordance with FCO practice, the implementing Regulations will be laid before Parliament before the UK ratifies the Bunkers Convention.
- 9.7 It is expected that this will take place early in 2006 and once the appropriate Parliamentary procedure is complete⁷ the UK will ratify the Convention.
- 9.8 The Regulations will then lie dormant until the entry into force conditions of the Bunkers Convention are met. At this point, the Secretary General of the International Maritime Organization will write to all States that have ratified the Convention informing them of the entry into force date (which will be 12 months after the conditions are met). In line with usual practice, the Government will then place the entry into force date in the London, Belfast and Edinburgh Gazettes.
- 9.9 On the date the Bunkers Convention enters into force internationally, the rest of the Regulations will enter into force and the MCA will begin to monitor compliance.

10. Post-implementation Review

⁷ The Regulations will be subject to negative procedure.

10.1 The MCA maintains a list of cost recovery actions and once the Bunkers Convention has been in force for a number of years, it should be possible to identify whether there has been an improvement in cost recovery for bunker oil pollution damage, both in terms of successful recovery, and quicker settlements.

11. Summary and recommendation

11.1 The policy object is to ensure that costs incurred as a result of pollution from ships' bunker fuel oil can be more easily and successfully recovered.

11.2 The Government believes that it is entirely reasonable for registered shipowners to maintain insurance in accordance with the limit of their liability to cover costs caused by a bunker oil incident. The Government's consultation has shown that the majority of registered shipowners already have some degree of third party insurance in place, and the only additional cost is £30 to obtain a State Certificate.

11.3 Other provisions of the Bunkers Convention, including the right of direct action against the insurer, and the right to pursue a claim in the country where the damage occurred, will simplify the cost recovery process.

11.4 This policy is consistent with the Polluter Pays principle and will also ensure that the UK meets its EU obligations.

11.5 Summary costs and benefits table

Option	Total cost per annum	Total benefit per annum
1 Continue to apply existing legislation.	<p><u>Economic:</u> no additional cost to UK shipowners. However, any UK shipowners wishing to trade in a State Party to the Bunkers Convention would be required to comply with the insurance and certification requirements.</p> <p>Cost recovery for responding to bunker oil pollution, or for loss arising from bunker oil pollution damage remains problematic. Government and other claimants often unable to recover full costs.</p> <p><u>Environmental:</u> Difficulty in recovering costs for: clean-up, pollution damage (e.g. to fisheries and aquaculture), and environmental restoration.</p>	<p><u>Economic:</u> no additional cost to industry.</p> <p><u>Environmental:</u> No additional benefit.</p> <p><u>Social:</u> No additional benefit.</p>

Social: Potential hardship for victims of bunker pollution who cannot obtain compensation.

2. Ratify and implement the Bunkers Convention

Economic:
Shipowners will be required to maintain insurance to meet their liability. Indications from industry are that most responsible UK shipowners already maintain insurance for third party liabilities so no additional cost expected.

UK shipowners (and any other shipowner wishing to enter a UK port) will be required to obtain State Certificate attesting that insurance is in place. Annual cost of £30 per vessel.

Environmental:
No environmental costs

Social:
No social costs

Economic:
Victims of bunker oil pollution will be more likely to receive compensation for loss caused by pollution damage. Government and those who respond to bunker oil pollution incidents more likely to recover costs of doing so.

Litigation process will be simplified and therefore less expensive.

Environmental:
Easier to recover costs for clean-up operations, damage to fisheries and aquaculture, and environmental restoration.

Social:
Victims of oil pollution should find it easier to obtain compensation and so less likely to suffer financial hardship.

12. Declaration and publication

I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Signed 

Date: 23.3.06

Dr Stephen Ladyman MP, Minister of State for Transport, Department for Transport

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