

EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (PREVENTION OF AIR POLLUTION FROM SHIPS) AND MOTOR FUEL (COMPOSITION AND CONTENT) (AMENDMENT) REGULATIONS 2014

2014 No. 3076

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

2. Purpose of the instrument

2.1 These Regulations amend the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 (S.I.2008/2924) and the Motor Fuel (Composition and Content) Regulations 1999 (S.I.1999/3107) to take account of changes to the regime governing the sulphur content of marine fuels required by Council Directive 2012/33/EU ('the Directive').

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The UK is a party to Annex VI (Regulations for the Prevention of Air Pollution from Ships) to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 ("MARPOL Convention"). Annex VI contains provisions on the sulphur content of liquid fuels and is implemented by the 2008 Regulations as amended.

4.2 Annex VI was amended in 2008 to incorporate more stringent limits on sulphur emissions from ships. Within the European Union such emissions are regulated through Directive 1999/32/EC (as amended) and as a result consequential amendments to Community law were needed.

4.3 The Directive introduces stricter limits than those found in the existing European regime. The Communication on the review of the implementation of Directive 1999/32/EC related to the Sulphur Content of Certain Liquid Fuels and on further pollutant emission reduction from maritime transport was the subject of Explanatory Memoranda (EM) 12806/11 and 13016/11. The House of Commons European Scrutiny Committee considered the Explanatory Memoranda ("EM") on 12th October 2011. The Committee recommended that the documents were politically important and did not clear them pending further information (Report 42, Session 2010/2012, (33034) and (33028)).

4.4 The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B at the 1438th sif on 6 September 2011. The Chairman wrote to the Minister on 18th October 2011 holding the documents under scrutiny pending

further information. A Ministerial letter was sent to the Chairman on 23rd November 2011 and a reply received on 7th December 2011.

4.5 Ministerial letters were sent to both Committees on 12th July 2012. The House of Commons European Scrutiny Committee considered the letter on 5th September 2012. The Committee maintained their recommendation that the documents were politically important and also recommended that they should be debated in European Committee (Report. 11, Session 2012/2013). The debate took place on 15th October 2012. Sub-Committee B of the House of Lords Select Committee on the European Union considered the letter on 23rd July 2012 and cleared the documents from scrutiny.

4.6 A Transposition Note is attached at Annex A

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 Emissions from shipping, due to the combustion of marine fuels with high sulphur content, contribute significantly to air pollution in the form of sulphur dioxide and particulate matter. This damages the environment through acidification of ecosystems and harms human health, property and cultural heritage, particularly around coastal areas and in ports. The Directive includes measures that further regulate the sulphur content of marine fuels used by shipping in the EU in line with International Law and these Regulations implement the marine fuel elements of the Directive.

7.2 The Regulations deal with: –

- sulphur content of marine fuels used in sulphur oxide emission control areas. These are areas which are stipulated in Annex VI of the MARPOL Convention and include the English Channel and North Sea;
- sulphur content of marine fuels used by passenger ships operating on regular services to or from Community ports;
- the marketing of marine diesel oils with sulphur content exceeding 1.5% by mass;
- the marketing of marine gas oils with sulphur content exceeding 0.1% by mass; and

- trials and use of emission abatement technologies.

- ***Consolidation***

7.3 A consolidation exercise has not been undertaken at this time as these regulations amend only part of the air pollution regime for shipping. A wider review of the regulations is planned in 2015/16 once the international community has finalised amendments to the regime relating to NO_x.

8. Consultation outcome

8.1 An eight week public consultation was undertaken in addition to extensive contact with stakeholders throughout the development of the policy. Stakeholders were involved in policy discussions during the negotiation of the revised Annex VI and the Directive and particular effort was made to facilitate discussions between the shipping industry and marine equipment suppliers over the policy.

8.2 The majority of consultees welcomed the efforts to address air pollution and its negative impact on human health and the environment. A significant number of industry consultees raised concerns about the impact of increased fuel costs associated with burning cleaner fuels and the practicality of converting vessels to utilise alternative fuels such as LNG or retrofitting emissions abatement systems that would allow ships to continue to burn high sulphur fuel. Two specific issues relating to the proposed regime were highlighted by industry respondents.

8.3 *Exemptions* –Following external consultation a number of ferry operators and the UK Chamber of Shipping proposed an additional policy option that would involve amending the draft regulations to allow the Government to issue an exemption or waiver for a restricted period of up to five years allowing vessels to continue to burn high sulphur fuel while operators followed a ‘structured route to compliance’. This proposal was explored in some detail but is not considered an acceptable policy outcome by Government as it would not deliver full transposition of the Directive. This issue is explored in detail within the Impact Assessment.

8.4 *Exhaust Gas Cleaning Systems* – In general there were mixed views from consultees on maturity of emission abatement systems such as exhaust gas cleaning systems (‘scrubbers’). There was some information from the consultation responses indicating that scrubbers pose significantly larger engineering challenges for complex, multi-engined craft, such as existing ro-ro ferries, with attendant increases in cost, while for single engine newbuilds they are relatively straightforward.

9. Guidance

9.1 In line with usual practice, a Merchant Shipping Notice and a Marine Guidance Note have been prepared and will be issued to industry to provide guidance on the new requirements of the Merchant Shipping (Prevention of Air Pollution from Ships) and (Motor Fuel) (Composition and Content) (Amendment) Regulations 2014.

10. Impact

10.1 The impact on business, charities or voluntary bodies is to require the use of significantly cleaner fuel or require the fitting of emission abatement systems to deliver a comparable reduction. This will result in an increase in the cost of marine fuel for all users. The scale of the impact will depend on the quantity and type of fuel consumed by an operator and if the operations occur in a Sulphur Oxide Emissions Control Area.

10.2 The impact on the public sector is expected to be minimal as no significant changes are expected to the existing inspection and enforcement regime.

10.3 An Impact Assessment is attached to this memorandum on and will be published at www.legislation.gov.uk

11. Regulating small business

11.1 The legislation applies to small business.

11.2 Whilst being mindful of a need to minimise impact of regulation on small business where possible, inclusion of all consumers of marine fuel is necessary to achieve the policy outcomes. The impact of the regulations to an individual business will depend upon the amounts of fuel supplied or consumed and it is not expected that small businesses will experience an unfair share of the regulatory burden

12. Monitoring & review

12.1 The impact of the policy will be kept under review and will be assessed in 2019 by the Maritime and Coastguard Agency following a wider review of fuel availability being carried out by the International Maritime Organization.

13. Contact

13.1 Ian Timpson at the Department for Transport Tel: 0207 944 4446 or email: ian.timpson@dft.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX A

Transposition Note

Directive 2012/33/EU of the European Parliament and of the Council amending Council Directive 1999/32/EC as regards the sulphur content of liquid fuels

1. This note describes the partial implementation in the United Kingdom of Directive 2012/33/EU of the European Parliament and of the Council amending Council Directive 1999/32/EC (“the 1999 Directive”) as regards the sulphur content of marine fuels.
2. The 1999 Directive deals with the sulphur content of certain land-based liquid fuels and marine fuels. The Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007 (S.I. 2007/79) implements, in England and Wales, the requirements of the 1999 Directive 1999/32/EC in relation to land-based liquid fuels. The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 (S.I.2008/2924) and the Motor Fuel (Composition and Content) Regulations 2009 (S.I.2009/3107) implement the 1999 Directive in relation to marine fuels for the whole of the United Kingdom.
3. The Directive amends the requirements of the 1999 Directive in relation to both land-based liquid fuels and marine fuels. As regards marine fuels the changes include new definitions of ‘marine diesel’, ‘marine gas oil’ and “marine fuel”.
4. This instrument implements, throughout the whole of the United Kingdom the requirements in the Directive that relate to marine fuels by amending the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 and the Motor Fuel (Composition and Content) Regulations 2009. The requirements in the Directive concerning land based fuels have been implemented separately.
5. National laws, regulations and administrative provisions implementing the Directive must enter into force by 18 June 2014.
6. All relevant derogations permitted by the Directive in relation to marine fuels have been transposed.
7. The instrument uses “copy out” to transpose the Directive where appropriate.
8. The amending regulations are intended, subject to the will of Parliament, as to come into force 16th December 2014
9. Regulation 2(5) of this instrument will insert a new review clause into the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 imposing a statutory duty on the Secretary of State to review, those regulations every five years.
10. The table below describes the main substantive provisions of the legislation implementing the Directive. Except where indicated the references are to provisions of this instrument.

Article	Objective	Implementation
Article 1.1	Amends Article 1(2) of Council Directive 1999/32/EC on scope	
Article 1.2(a)	Amends Article 2 of Council Directive 1999/32/EC	See transposition Note to S.I.2014/1975.
Article 1.2(b)	Amends Article 2 of the Council Directive 1999/32/EC. New definitions of 'marine diesel oil' and 'marine gas oil' are substituted.	Regulation 3.
Article 1.2((c)	Amends Article 2 of Council Directive 1999/32/EC. A definition of "emission. A definition of "emission abatement method" is added.	Regulation 2(6)(a).
Article 1.3	Amends Article 3 of Council Directive 1999/32/EC.	See transposition Note to S.I.2014/1975.
Article 1.4	Inserts new Article 3a to Council Directive 1999/32/EC on the maximum sulphur content of marine fuel.	Regulation 2(6)(b).
Article 1.5	Amends Article 4 of Council Directive 1999/32/EC on maximum sulphur content of gas oil	See transposition Note to S.I.2014/1975.
Article 1.6	Amends Article 4a on the maximum sulphur content of marine fuels used in territorial seas, exclusive economic zones and pollution control zones of Member States, including SOx Emission Control Areas and by passenger ships operating on regular services to or from Union ports.	Regulation 2(3).
Article 1.7	Replaces Articles 4b and 4c. These articles deal with the maximum sulphur content of marine fuels used by ships at berth in Union ports and emission abatement methods	Regulation 2(6) (c) and (d).
Article 1.8	Inserts Articles 4d, 4e and 4f. These articles deal with approval of emission abatement methods for use on board ships flying the flag of a Member State, trials of new emission abatement methods and financial measures.	No
Article 1.9	Replaces article 6 of Council Directive 1999/32/EC. Member States are obliged to carry out sampling and analysis to	Regulation 2(6)(g).

Article	Objective	Implementation
	ensure that the sulphur content of fuels used complies with Articles 3 and 4. The reference method adopted for determining the sulphur content of sampled fuels shall be ISO method 8754 (2003) or PrEN ISO 14596 (2007).	
Article 1.10	Amends article 7 of Council Directive 1999/32/EC on reporting and review	No implementation required in national legislation
Article 1.11	Deletes article 8 of Council Directive 1999/32/EC	No implementation required in national legislation
Article 1.12	Replaces article 9 of Council Directive 1999/32/EC on committee procedure	No implementation required in national legislation
Article 1.13	Inserts article 9a on exercise of delegation by Commission	No implementation required in national legislation
Article 1.14	Replaces article 11 of Council Directive 1999/32/EC on penalties. Member States are obliged to effective, proportionate and dissuasive penalties for enforcement.	No transposition required as an enforcement regime, including penalties is already in national legislation.
Article 1.15	Replaces the annex to the Council Directive 1999/32/EC with the annex to the Directive. This annex contains two new annexes which deal with equivalent emission values for emission abatement methods and criteria for the use of emission abatement methods	No transposition required the relevant provisions are already in national legislation.
Article 2.1	Laws, regulations and administrative provisions implementing the Directive to enter into force by 18th June 2014 and notify the Commission forthwith. Implementing legislation to refer to, or be accompanied by a reference to the Directive when published.	Regulation 1(1) provides that this instrument shall enter into force on 18th June 2014. The requirement to notify the Commission and for implementing legislation to refer to, or be accompanied by a reference to, the Directive when published does not require implementation in national legislation.
2.2	Member States to communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by the Directive	No implementation required in national legislation
Article 3	Directive enters into force 20 days after publication	No implementation required in national legislation

Article	Objective	Implementation
Article 4	Directive addressed to Member States	No implementation required in national legislation