



Law Society
of Scotland

Consultation response

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

March 2020



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Marine Law Sub-committee welcomes the opportunity to respond to the Maritime and Coastguard Agency's Consultation on the draft Merchant Shipping (Prevention of Pollution by Garbage from Ships) Regulations 2020¹. We have the following comments to put forward for consideration.

General comments

We consider that the proposed approach to ambulatory reference appears to be sensible and we note the potential benefits of using such power. In particular, we support the simplicity and savings, legal certainty and clarity, and reduced burdens on businesses which this approach is likely to deliver.

However, we note that it remains important that there are suitable opportunities for consultation and scrutiny. It will therefore remain crucial for the UK to be part of the consultation and negotiation process in relation to any proposed changes to Annex V of MARPOL. There may require to be enhanced opportunities for consultation and scrutiny when changes are being considered at IMO level. It is important that relevant stakeholders who will be affected by any changes are consulted. Consultations themselves are often a trigger point for the industry to become aware of planned rule changes. We therefore consider that awareness raising will be crucial to the success of use of the ambulatory reference provisions. This will help to ensure that industry stakeholders have the ability to influence and scrutinise the provisions, and may guide their conduct based on a clear understanding of the legal framework.

We consider it appropriate that the Secretary of State will retain the power to make regulations to prevent an unwanted amendment to the Annex from becoming UK law, recognising, however, that the measures are likely to be international obligations which the UK is required to fulfil and international standards with which UK ships are required to comply. It is important that these obligations are respected. We consider that there

¹ <https://www.gov.uk/government/consultations/consultation-on-the-draft-merchant-shipping-prevention-of-pollution-by-garbage-from-ships-regulations-2020>



requires to continue to be opportunities for flag states, including the UK in the form of the Maritime and Coastguard Agency, to grant exemptions and equivalents. It is also important that there remains sufficient discretion for higher standards to be applied where this can be achieved.

For further information, please contact:

Alison McNab

Policy Team

Law Society of Scotland

DD: 0131 476 8109

alisonmcnab@lawscot.org.uk