

<p>Title: Post Implementation Review: The Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 as amended.</p> <p>PIR No: DfTPIR0056</p> <p>Original IA/RPC No: DfTRTA00089</p> <p>Lead department or agency: Maritime and Coastguard Agency</p> <p>Other departments or agencies: N/A</p> <p>Contact for enquiries: Ian Platts@mcga.gov.uk</p>	Post Implementation Review
	Date: 04/05/2023
	Type of regulation: EU
	Type of review: Statutory
	Date measure came into force: 15/07/2003
	Recommendation: Amend
RPC Opinion: N/A	

Recommendation and Summary of Justification

This is a review of the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 (SI 2003/1809 – “the 2003 Regulations”)¹. These regulations have been amended by:

- the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) (Amendment) Regulations 2009 (SI 2009/1176);
- the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) (Amendment) Regulations 2016 (SI 2016/1211 – “the 2016 Regulations”)²;
- the Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018 (SI 2018/68); and
- the Merchant Shipping (Miscellaneous Provisions) (Amendments etc) (EU Exit) Regulations 2018 (SI 2018/1221).

The scope of the review as set out in the provisions of the 2003 Regulations, inserted by the 2016 Regulations, explicitly require a review of the operation and effect of regulation 11(1) (Notification) of the 2003 Regulations and Schedule 2 (Information to be notified) as substituted by the 2016 Regulations.

The 2003 Regulations transposed into United Kingdom (UK) law Directive 2000/59/EC (‘**Directive 2000/59**’) of the European Parliament and the Council on port reception facilities for ship-generated waste and cargo residues. Directive 2000/59 was subsequently amended by Commission Directive 2015/2087 (‘**Directive 2015/2087**’) of 18 November 2015 which was transposed into UK law by the 2016 Regulations.

Since the UK implemented Directive 2015/2087 via the 2016 Regulations the European Commission have undertaken a comprehensive review of Directive 2000/59, as amended, on port waste reception facilities for ship-generated waste and cargo residues. The European Commission consulted Member States throughout the revision process of Directive 2000/59, as amended. Throughout this process the UK played an active role in negotiations of which the outcome was a new Directive, Directive (EU) 2019/883 of the European parliament and of the Council, on port reception facilities for the delivery of waste from ships. This prevents marine pollution from ships by ensuring that waste generated on ships are returned to land and adequately managed and was adopted on the 17 April 2019 (‘**Directive 2019/883**’).

The UK has not implemented Directive 2019/883 as the UK had left the European Union prior to the transposition date. Changes made by Directive 2019/883 will be taken into consideration as part of a

¹ <https://www.legislation.gov.uk/ukSI/2003/1809/contents/made>

² <https://www.legislation.gov.uk/ukSI/2016/1211/contents/made>

review of the entire PRF regime, which the MCA will undertake. The MCA's forthcoming review will ensure that the UK's PRF regime is still fit for purpose. It will also identify MARPOL amendments and any other regulatory changes to ensure alignment. The review will also ensure that the UK PLC is competitive, and that the environment is protected.

Overall, the 2003 Regulations, as amended, are fit for purpose but as they are now at odds with international standards the MCA recommend that they should reviewed and amended.

1. What were the policy objectives of the measure?

The objective of the 2016 Regulations at the time of implementation was to amend the existing 2003 Regulations so as to re-align the content of the prescribed advanced notification form with the discharge categories under the International Convention for the Prevention of Pollution from Ships (MARPOL), in particular Annex V – Garbage, and to provide an additional column on the form to record waste delivered at the previous port of call. The form is a requirement of ships' masters to notify ports in advance of the waste that they wish to discharge on arrival.

2. What evidence has informed the PIR?

Prior to implementation, the draft 2016 Regulations were issued as an official consultation package on 20th October 2016, providing a 6-week formal consultation period. As the industry affected had been fully expecting these changes, there was little response to the formal consultation process, and those responses received fully supported the proposed changes. The MCA host and attend several meetings per year that afford stakeholders the opportunity to discuss matters relating to regulation and in the years since the 2016 Regulations have been in place no issues have been recorded.

3. To what extent have the policy objectives been achieved?

The objective to align with the most up to date version of MARPOL at the time has been achieved. The 2016 Regulations amended the existing regime and re-aligned the content of the prescribed advanced notification form with the waste categories listed in MARPOL, in particular Annex V – Garbage, and provided an additional column on the form to record waste delivered at the previous port of call.

With the additional column the MCA are better aware of what waste is being delivered to ports.

As the information as requested helps to establish a vessel's suitability to enter a port any deviation from the instructions would be quickly identified by the port and the vessel asked to conform and resend.

Sign-off for Post Implementation Review: Director, UK Maritime Services and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: Katy Ware, Director, UK Maritime Services, MCA

Date: 5 April 2023

Signed: Vene of Narbithan

Date: 16 May 2023

4. What were the original assumptions?

The original assumptions were that the Port Reception Facilities regime could be improved and marine debris from shipping could be further reduced/eliminated by capturing additional data on quantities and types of waste that has been delivered at the previous port of call. The 2016 Regulations brought the pre-notification form in line with MARPOL. It was assumed that such alignment would prevent confusion and allow for a more streamlined process for ship operators and ports.

At the time of implementation engagement exercises ascertained that it would take masters of ships between approximately 5 to 10 minutes to complete the additional columns on the waste notification form. DfT Maritime Statistics provided data that showed that over the period 2010 to 2014, on average 30,489 vessels to whom the regulations apply arrived at UK ports each year and thus would be required to complete the form. The average Masters' wages were estimated to be £15.82 per hour, taken from Office for National Statistics (ONS) data, with a 30% uplift for non-wage costs.

In the time that the 2016 Regulations have been extant the MCA has not received any information that deviated from the assumption on how long the notification form took to complete.

5. Were there any unintended consequences?

No unintended consequences have been reported to the MCA in the years since these requirements were put in place in 2016. As the pre-notification form is completed by the crew onboard on a per vessel basis the MCA believe that no business, regardless of size, is disproportionately impacted by the 2016 Regulations.

6. Has the evidence identified any opportunities for reducing the burden on business?

These regulations deal with the notification form and implement minimum international and EU standards with no addition; therefore, there is no scope for reducing the burden on business unless UK ships depart from compliance with those standards. Such a departure is not considered favourable to UK industry as it: (a) would limit the competitiveness of UK ships operating in areas where such standards are mandatory; and (b) would render UK safety standards inferior to those of non-UK ships. Many of the ongoing and initial costs of compliance have already been incurred by businesses too, so lessening these standards would result in little saving.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU Member States implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?

As the 2003 Regulations, as amended, transposed EU law, they now form part of retained EU law (REUL). Therefore, the UK approach is considered compatible with implementation in EU Member States, and standards imposed on non-EU seagoing ships in UK and EU waters. As the 2003 Regulations, as amended, apply to ships that trade internationally it is reasonable to assume that most other contracting countries have applied the Directive in a similar way. Should that not be the case any foreign flagged vessels that deviate from the pre-notification form parameters would be asked to conform or risk being denied entry to a UK port.

Since the UK left the EU, however, the EU has issued a new Directive 2019/883 which repeals Directive 2009/59. Consequently, there are now variations between the UK notification form and the form used by EU Member States. The variations are as follows:

- Under MARPOL Annex II garbage type, 'Other Substance' is included on the EU Member States form and not on the UK version.
- Under MARPOL Annex V garbage type, there are some variations in the ordering of animal carcasses and fishing gear between the EU Member States form and the UK version.
- Under MARPOL Annex V garbage type, E-waste, other waste not covered by MARPOL and passively fished waste are included on the EU Member States form. These are not on the UK form. The EU Member States form also separates cargo residues into cargo residues harmful to the marine environment and cargo residues non harmful to the marine environments whereas the UK form has the single category for cargo residues.

As previously stated, the MCA are currently undertaking a review of the PRF regime in-light of the Retained EU Law (REUL) project and any variations in MARPOL categories will be addressed as part of this.

Summary

➤ Post Implementation Review:

- The review provisions requiring this post implementation review were inserted in the 2003 Regulations by the 2016 Regulations. These provisions came into force on the 13/01/2017.
- The provisions of the review explicitly require a review of the operation and effect of regulation 11(1) (Notification) of the 2003 Regulations and Schedule 2 (Information to be notified) as substituted by the 2016 Regulations.

➤ Recommendation:

- Amend - The MCA recommend that regulation 11(1) (Notification) of the 2003 Regulations and Schedule 2 (Information to be notified) as substituted by the 2016 Regulations are fit for purpose and should continue to form part of the retained EU law. However, the EU published a new Directive in 2019, which the UK were fully active in negotiating and the MCA are aware that a review of the whole of the UK PRF regime would be prudent to maintain UK PLC competitiveness and keep pace with international change for the protection of the environment. MCA are in the process of reviewing the whole of the port reception facility UK regime which will also consider the Retained EU Law (REUL) project work. This will also look at the possibility to reduce any burden on industry.
- In addition, the MCA monitor all avenues of feedback regarding the implementation, adoption, and continual applicability of these Regulations through, for example:
 - regular communication with stakeholders or stakeholder representative groups to whom these regulations apply.
 - contact with surveyors through the survey and certification system.
 - enforcement branch where applicable.
 - The post implementation review process, including, where applicable, data analysis.

➤ Cost Summary:

- Negligible - The assumptions underpinning the implementation of the 2016 Regulations that they would realise a negligible cost/benefit appears to be reliable.

➤ Proportionality:

- Low – The MCA have adopted a proportionately low approach to this review. The 2003 Regulations have been in effect for 20 years and the 2016 Regulations in effect for 7 years. They have been working effectively in that time and any issues would have arisen and been acknowledged in that time. The scope of this review has been targeted at the amendment to the form that vessels are required to complete regarding waste offload. At the time of implementation, they were not contentious and no other department had a vested interest.

➤ Lessons Learned:

- The MCA analyse every available avenue of feedback to ensure regulations remain up to date, relevant and avoid overly burdensome governance. To that end, the MCA manage a raft of stakeholder engagement activities and provide opportunity for individuals, companies or stakeholder bodies to voice their opinions. The MCA will continue to monitor the international scene to ensure these Regulations remain current.

➤ Next Steps:

- The post implementation review process is a cyclical mechanism resulting in a published recommendation every 5 years. The next review is due to be published before 13/01/2027.

However, the MCA consider that these regulations are likely to have been updated in that time and a new post implementation review provision adopted.

- As noted above the MCA are in the process of reviewing the whole of the port reception facility UK regime which will also take in the REUL project work.