



Isle of Man

Ellan Vannin

Merchant Shipping (MARPOL Annex IV – Prevention of Pollution by Sewage) Order 2014

This consultation paper sets out a draft Order to give effect to the latest amendments to Annex IV of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL Annex IV). The Order will give effect to MARPOL Annex IV amendments up to and including the International Maritime Organisation's Marine Environment Protection Committee Resolution MEPC.216(63) which entered into force internationally on 1 August 2013.

The Order will apply to a Manx ship which is of 400 gross tonnage or above, a Manx ship which is less than 400 gross tonnage and certified to carry more than 15 people, and any fixed or floating platform engaged in exploration and exploitation of the seabed and subsoil within Manx territorial waters. Part 5 of the Order will apply MARPOL Annex IV to a foreign ship in a Manx port or offshore terminal.

If approved by Tynwald, the Order will come into effect from 1 April 2014 and will revoke the Merchant Shipping (Prevention of Pollution by Sewage from Ships) Order 2000 (SD 46/00) and the Merchant Shipping (Prevention of Pollution by Sewage from Ships) Regulations 2003 (SD 266/03).

If you would like to make any comments on the draft Order, please send them (preferably by email) to David Morter, Deputy Director by **5pm on *date***

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MERCHANT SHIPPING (MARPOL ANNEX IV - PREVENTION OF POLLUTION BY SEWAGE) ORDER 2014

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Statutory Document 2014/XXXX

*Oil Pollution Act 1986*

MERCHANT SHIPPING (MARPOL ANNEX IV - PREVENTION OF POLLUTION BY SEWAGE) ORDER 2014

*Approved by Tynwald:**Coming into Operation:**1 April 2014*

The Department of Economic Development makes the following Order under section 14 of the Oil Pollution Act 1986.

PART 1 - INTRODUCTORY

1 Title

This Order is the Merchant Shipping (MARPOL Annex IV - Prevention of Pollution by Sewage) Order 2014.

2 Commencement

If approved by Tynwald¹ this Order comes into operation on 1 April 2014.

3 Application

- (1) Unless provided otherwise, this Order applies to –
- (a) a Manx ship engaged in international voyages, wherever it might be, and which is –
 - (i) of 400 gross tonnage and above; or
 - (ii) less than 400 gross tonnage and certified to carry more than 15 people; and
 - (b) a fixed or floating platform engaged in exploration and exploitation of the sea-bed and subsoil within the territorial sea of the Island.

¹ as required by s.17 of the Oil Pollution Act 1986



- (2) Part 5 applies to a foreign ship engaged in international voyages, when it is in a Manx port or offshore terminal and which is –
 - (a) of 400 gross tonnage and above; or
 - (b) less than 400 gross tonnage and certified to carry more than 15 people.
- (3) This Order does not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government, non-commercial service.

4 Interpretation

- (1) In this Order –
 - “**authorised officer**” means a person appointed as an inspector in accordance with section 3 of the Merchant Shipping Act 1985;
 - “**Convention country**” means a country that has consented to be bound by the MARPOL Convention;
 - “**Department**” means the Department of Economic Development;
 - “**foreign ship**” means any ship that is not a Manx ship;
 - “**IMO**” means the International Maritime Organisation;
 - “**inspector**” means a person appointed as an inspector under section 3 of the Merchant Shipping Act 1985 or a surveyor of an RO authorised by the Department to conduct inspections for compliance with the requirements of this Order;
 - “**international voyage**” means a voyage from a country to a port outside that country;
 - “**ISPP Certificate**” means an International Sewage Pollution Prevention Certificate issued in accordance with regulation 5 of MARPOL Annex IV;
 - “**Manx ship**” has the meaning given by section 1 of the Merchant Shipping Registration Act 1991 including ships registered under Part IV of that Act (the Demise Charter Register) and Part 3 of the Harbours Act 2010;
 - “**Manx Shipping Notice**” or “**MSN**” means a notice described as such and issued by the Department and includes any document amending the same which the Department considers relevant from time to time;
 - “**MARPOL Annex IV**” means the revised Annex IV to the MARPOL Convention containing regulations for the prevention of pollution by sewage from ships up to and including amendments adopted by IMO resolution MEPC.216(63) which entered into force on 1 August 2013;

“**MARPOL Convention**” means the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocols of 1978 and 1997 and as amended;

“**operator**” means the person registered as the owner of a Manx ship in accordance with the Merchant Shipping Registration Act 1991 or any other person who has assumed responsibility for the operation of the ship from the owner and who on assuming that responsibility has agreed to take over all the duties and responsibilities imposed by the MARPOL Convention;

“**RO**” means any recognised organisation specified in Manx Shipping Notice 020 which is authorised by the Department to undertake the specified function;

“**ship**” means a vessel of any type operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms;

“**short international voyage**” means an international voyage which does not exceed 1,000 nautical miles between the last port of call in the country in which the voyage begins and the last port of call in the voyage before beginning any return voyage, and that on any return voyage does not exceed 1,000 nautical miles between the port of call in which the ship begins its return voyage and the first port of call in the country in which the voyage originally began.

For the purposes of this definition no account is to be taken of any deviation by a ship from its intended voyage due solely to stress of weather or any other circumstances which could have been prevented; and

“**territorial waters of the Island**” means –

- (a) the territorial sea adjacent to the Island; and
- (b) any waters within the area that extend landward from the baselines from which the breadth of the territorial sea is measured as far as the mean high water mark of ordinary spring tides.

5 Operator’s responsibility

- (1) An operator must ensure that a ship complies with the requirements of this Order.
- (2) Paragraph (1) applies whether or not this Order imposes an obligation on another person.
- (3) An operator who fails to comply with paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding £5,000 or, on conviction on indictment, to imprisonment for a term not exceeding 2 years and a fine.

PART 2 – APPLICATION OF MARPOL ANNEX IV TO MANX SHIPS

6 Requirement to comply with MARPOL Annex IV

The condition of a ship and its equipment must be maintained and operated in accordance with the requirements of MARPOL Annex IV and in all respects remain fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

7 Isle of Man Interpretation of MARPOL Annex IV

- (1) References in MARPOL Annex IV to “Administration” are to be read as a reference to the “Department”.
- (2) If MARPOL Annex IV requires any system or equipment to be approved by the Administration, the systems or equipment must be approved by the Department or RO.
- (3) Any approval -
 - (a) must be in writing;
 - (b) must specify the standards to which the system or equipment is approved;
 - (c) must specify the date on which it takes effect;
 - (d) must specify any conditions on which the approval is granted; and
 - (e) may, on giving reasonable notice, be altered or cancelled by the Department or RO.
- (4) If MARPOL Annex IV requires any system or equipment to be to the satisfaction of the Administration, the system or equipment must meet the requirements specified in MSN 41.

8 Accident or defect with a ship

- (1) If an accident occurs to a ship, or a defect is discovered that substantially affects the integrity of the ship or the efficiency or completeness of its equipment covered by MARPOL Annex IV, the ship’s master or operator must report –
 - (a) at the earliest opportunity to the Department and RO responsible for issuing the ISPP Certificate, and in any case no later than 48 hours after the accident or discovery of the defect; and
 - (b) immediately to the appropriate authorities of the Port State if the ship is in a port of another Convention country.

- (2) Upon receipt of the report described in paragraph (1)(a), the Department or RO will cause investigations to be initiated to determine whether an additional survey is necessary.
- (3) A master who fails to comply with paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding £5,000 or, on conviction on information, to imprisonment for a term not exceeding 2 years and a fine.

9 No change to be made after survey

After any survey has been completed no change may be made to the structure, equipment, systems, fittings, arrangements or materials covered by the survey, without the approval of the Department or RO, except the direct replacement of such equipment or fittings.

10 Temporary dispensation from provisions of MARPOL Annex IV

- (1) A person may apply to the Department for a temporary dispensation from a provision of MARPOL Annex IV if the condition of the vessel is substantially compliant with the requirements of MARPOL Annex IV, but equipment malfunction renders a vessel partially non-compliant.
- (2) A temporary dispensation is only valid –
 - (a) if it is in writing;
 - (b) for the period stated in it; and
 - (c) when any conditions stated in it are complied with.

PART 3 – SURVEY AND CERTIFICATION

11 Surveys

A ship is subject to the following surveys –

- (1) an initial survey before the ship is put into service or before the ISPP Certificate is issued for the first time;
- (2) a renewal survey at intervals not exceeding 5 years, except if article 15(3), (4), (5) or (6) are applicable; and
- (3) a general or partial survey in accordance with article 13.

12 Renewal survey

- (1) If a renewal survey is completed within 3 months before the expiry date of an existing certificate, the new certificate is valid from the date of completion of the renewal survey to a date not exceeding 5 years from the date of expiry of the existing certificate.

- (2) If a renewal survey is completed after the expiry date of an existing certificate, the new certificate is valid from the date of completion of the renewal survey to a date not exceeding 5 years from the date of expiry of the existing certificate.
- (3) If a renewal survey is completed more than 3 months before the expiry date of the existing certificate, the new certificate is valid from the date of completion of the renewal survey to a date not exceeding 5 years from the date of completion of the renewal survey.

13 Additional survey

- (1) If, following an investigation in accordance with article 8(2) the Department or RO determines an additional survey is necessary, the ship will be subject to an additional survey, either partial or general.
- (2) The additional survey will ensure the necessary repairs or renewals are effective, that the material and workmanship used are in all respects satisfactory and that the ship complies with the requirements of MARPOL Annex IV.

14 ISPP Certificate

- (1) Every ship must carry a current valid ISPP Certificate issued by the Department or RO.
- (2) The ISPP Certificate may be issued only if the Department or RO has ascertained through an initial or renewal survey that the ship's structure, equipment, systems, fittings, arrangements and material fully comply with the applicable requirements of MARPOL Annex IV.
- (3) An ISPP Certificate is valid for the period stated in it, which must not exceed 5 years, except if article 12(1), 15(2), 15(3) or 15(4) applies.
- (4) An ISPP Certificate ceases to be valid in the following circumstances –
 - (a) if the relevant surveys are not completed within the periods specified under article 11; or
 - (b) when a ship changes flag.
- (5) The Department or RO may require a certificate that is no longer valid to be surrendered in the time and manner as it may direct in writing.

15 Extension of ISPP Certificate

- (1) If an ISPP Certificate is issued for a period of less than 5 years, the Department or RO may extend the validity of the certificate beyond the expiry date to a maximum of 5 years.
- (2) If a renewal survey has been completed and a new ISPP Certificate cannot be issued or placed on board the ship before the expiry date of the existing certificate, the Department or RO may endorse the existing

certificate to make it valid for a further period that may not exceed 5 months from the expiry date.

- (3) If a ship is not in a port in which it is to be surveyed at the time when the ISPP Certificate expires, the Department or RO may extend the period of validity of the certificate subject to the following conditions –
- (a) the extension is granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed and then only in cases where it appears proper and reasonable to do so;
 - (b) no ISPP Certificate may be extended for a period longer than 3 months;
 - (c) a ship to which an extension is granted must not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of that extension to leave the port without having a new ISPP Certificate; and
 - (d) when the renewal survey is completed, the new ISPP Certificate is valid to a date not exceeding 5 years from the date of expiry of the existing ISPP Certificate before the extension was granted.
- (4) The Department or RO may extend an ISPP Certificate for a period of grace of up to one month from the date of expiry stated on it to a ship engaged on short international voyages which has not had the certificate extended under any other provisions of this article.

This is subject to the following qualification -

- (5) If an ISPP Certificate is extended under the provision of paragraph (4), upon completion of the renewal survey, the new ISPP Certificate will be valid to a date not exceeding 5 years from the date of expiry of the existing certificate before the extension was granted.
- (6) In the special circumstances specified in MSN 041, a new ISPP Certificate need not be dated from the date of expiry of the existing certificate as required by paragraphs (3), (4) or (5), but will be valid to a date not exceeding 5 years from the date of completion of the renewal survey.
- (7) The ISPP Certificate must be readily available on board the ship for inspection at all times.

PART 4 - ENFORCEMENT

16 ISPP Certificate may be withdrawn

The Department or, with the permission of the Department an RO, may withdraw an ISPP Certificate if –

- (a) the condition of the ship or its equipment does not correspond substantially with the particulars of the ISPP Certificate; or
- (b) there is evidence the ship is not in compliance with MARPOL Annex IV and any required corrective action has not been taken.

17 Prohibition on going to sea without a valid ISPP Certificate

- (1) Proceeding to sea or attempting to proceed to sea without a valid ISPP Certificate is prohibited.
- (2) If a ship proceeds or attempts to proceed to sea without a valid ISPP Certificate, the master commits an offence and is liable on summary conviction to a fine not exceeding £5,000 or, on conviction on information, to imprisonment for a term not exceeding 2 years and a fine.

18 Powers of an inspector

- (1) Without limiting any wider powers that may be granted to an inspector under any other statutory provision, an inspector has the following powers –
 - (a) to board a ship;
 - (b) to carry out any examination, test or inquiry that he or she may consider necessary in order to be satisfied that the ship complies with this Order; and
 - (c) to require that any deficiency is remedied.
- (2) A person who wilfully obstructs an inspector in the exercise of a power conferred by paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding £5,000 or, on conviction on information, to imprisonment for a term not exceeding 2 years and a fine.

19 Provisions relating to delay of ships

- (1) If an operator considers a ship has been unreasonably delayed, the operator may apply to the High Bailiff for a declaration to that effect.
- (2) An application under paragraph (1) –
 - (a) may not be made more than 7 days after the delay has ceased;
 - (b) must be made in writing; and
 - (c) must be served on the Department as well as the High Bailiff.
- (3) On an application under paragraph (1) it is for the applicant to show, on the balance of probabilities, that –
 - (a) the ship's delay was unreasonable in all the circumstances; and
 - (b) the operator has suffered loss in consequence of that delay.

- (4) If it appears to the High Bailiff that both sub-paragraphs of paragraph (3) are met the High Bailiff may order the Department to pay such compensation as appears appropriate.

20 Provisions relating to offences

- (1) It is a defence for a person charged under this Order to show that he or she took all reasonable steps to avoid the commission of an offence.
- (2) If the commission by any person of an offence under this Order is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this article whether or not proceedings are taken against the first-mentioned person.
- (3) If a body corporate is guilty of an offence under this Order, and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he or she, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly.
- (4) If the affairs of a body corporate are managed by its members, the preceding paragraph applies in relation to the acts and defaults of a member in connection with his or her functions of management as if the member were a director of the body corporate.
- (5) For the purposes of this article, “body corporate” includes a limited liability company constituted under the Limited Liability Companies Act 1996 and, in relation to that company, any reference to a director or other officer of a body corporate is a reference to a member and to the company’s manager and registered agent.

PART 5 – FOREIGN SHIPS

21 Operator of a foreign ship’s responsibility

- (1) An operator of a foreign ship must ensure that the condition of a foreign ship and its equipment are maintained and operated in accordance with the requirements of MARPOL Annex IV and that the foreign ship in all respects remains fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.
- (2) An operator of a foreign ship who fails to comply with paragraph (1) commits an offence and is liable on summary conviction to a fine not exceeding £5,000 or, on conviction on indictment, to imprisonment for a term not exceeding 2 years and a fine.
- (3) In this article –

“**operator of a foreign ship**” means the owner of the foreign ship or any other person who has assumed responsibility for the operation of the ship from the owner and who on assuming that responsibility has agreed to take over all the duties and responsibilities imposed by the MARPOL Convention.

22 Inspection of foreign ships

A foreign ship in a Manx port or offshore terminal may be subject to inspection by an authorised officer concerning operational requirements under MARPOL Annex IV, in the following circumstances -

- (a) to verify that there is on board a valid ISPP Certificate;
- (b) if there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by sewage; or
- (c) to verify whether the ship has discharged sewage in violation of the provisions of MARPOL Annex IV.

23 Provisions relating to enforcement, detention of foreign ships and offences

- (1) If an authorised officer carries out an inspection in accordance with article 22 and finds that –
 - (a) the ISPP Certificate is not produced or maintained, is falsely maintained, does not contain the information required by MARPOL Annex IV, or is otherwise invalid;
 - (b) there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate; or
 - (c) there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures relating to the prevention of pollution by sewage,

the ship may be detained until the situation has been brought into order in accordance with the requirements of MARPOL Annex IV and it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.

- (2) An authorised officer may detain the ship until any deficiencies have been rectified or until the authorised officer has accepted a plan of action to rectify the deficiency and is satisfied that the plan will be implemented in an expeditious manner.
- (3) If an inspection is conducted or when measures are taken in accordance with paragraphs (1) or (2), all reasonable efforts must be made to avoid a ship being unreasonably delayed or detained.

- (4) If an operator considers a ship has been unreasonably detained or delayed the operator may apply to the High Bailiff for a declaration to that effect.
- (5) An application under paragraph (4) –
 - (a) may not be made more than 7 days after the detention or delay has ceased;
 - (b) must be made in writing; and
 - (c) must be served on the Department as well as the High Bailiff.
- (6) On an application under paragraph (4) it is for the applicant to show, on the balance of probabilities, that –
 - (a) the ship's detention or delay was unreasonable in all the circumstances; and
 - (b) the operator has suffered loss in consequence of that detention or delay.
- (7) If it appears to the High Bailiff that both sub-paragraphs of paragraph (6) are met the High Bailiff may order the Department to pay such compensation as appears appropriate.
- (8) If a foreign ship is detained in accordance with this article, section 74 of the Merchant Shipping Registration Act 1991 (which relates to the detention of a ship) has effect, subject to the modifications –
 - (a) in sub-sections (1) and (2), after “any officer of the Department” insert **“any authorised officer,”**
 - (b) in sub-section (3), for “this Act” (wherever occurring) substitute **“the MARPOL Annex IV Order”**; and
 - (c) after sub-section (3) add –

“(4) In this section –

“authorised officer” has the meaning given by article 4 of the MARPOL Annex IV Order; and

“MARPOL Annex IV Order” means the Merchant Shipping (MARPOL Annex IV – Prevention of Pollution by Sewage) Order 2014.”
- (9) It is a defence for a person charged under this Part to show that he or she took all reasonable steps to avoid the commission of an offence.
- (10) If the commission by any person of an offence under this Part is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this article whether or not proceedings are taken against the first-mentioned person.

PART 6 – REVOCATIONS

24 Revocations

The Merchant Shipping (Prevention of Pollution by Sewage from Ships) Order 2000² and the Merchant Shipping (Prevention of Pollution by Sewage from Ships) Regulations 2003³ are revoked.

MADE

JOHN SHIMMIN

Minister for Economic Development

² SD 46/00

³ SD 266/03

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to Annex IV of the MARPOL Convention, Regulations for the Prevention of Pollution by Sewage and gives effect to amendments up to and including Resolution MEPC 216(63) of the Marine Environment Protection Committee of the International Maritime Organisation (IMO).

The Order applies to a Manx ship engaged in international voyages which is of 400 gross tonnage or above, a Manx ship which is less than 400 gross tonnage and certified to carry more than 15 people, and any fixed and floating platform engaged in the exploration and exploitation of the sea-bed and subsoil within the territorial waters of the Isle of Man. Part 5 of the Order applies MARPOL Annex IV to a foreign ship when it is in a Manx port or offshore terminal.

The Order revokes and replaces the Merchant Shipping (Prevention of Pollution by Sewage from Ships) Order 2000 (SD 46/00) and the Merchant Shipping (Prevention of Pollution by Ships) Regulations 2003 (SD 266/03)

Copies of this document and Manx Shipping Notices are obtainable from the Isle of Man Ship Registry, Department of Economic Development, St Georges Court, Upper Church Street, Douglas, Isle of Man, IM1 1EX and can be accessed via the website: <http://www.iomshipregistry.com>

The International Convention for the Prevention of Pollution from Ships 1973, its Protocols, IMO resolutions and circulars can be obtained from the International Maritime Organisation, 4 Albert Embankment, London SE1 7SR.
