

Department of Economic Development

Isle of Man Ship Registry

Consultation - Merchant Shipping (MARPOL Annex VI – Prevention of Air Pollution from Ships) Order 2014

This consultation paper sets out a draft Order to give effect to the latest amendments to Annex VI of the MARPOL Convention – Regulations for the Prevention of Air Pollution from Ships.

This Order gives effect to MARPOL Annex VI up to and including amendments adopted by IMO resolution MEPC 234 (65) on 17 May 2013. However, it is expected that at MEPC 66 in April the IMO will decide upon the implementation date for Tier III NO_x Standards and this Order may be amended to reflect that decision.

This Order applies MARPOL Annex VI to a Manx ship wherever it may be, and fixed and floating platforms engaged in the exploration and exploitation of the seabed and subsoil in the territorial waters of the Island. Part 4 of the Order also applies MARPOL Annex VI to a foreign ship in the territorial waters of the Island. The draft Order should be read in conjunction with draft MSN 038 which provides information on how the Isle of Man intends to implement those parts of Annex VI which require a decision by the Administration or are subject to interpretation.

In addition to regulating ships, MARPOL Annex VI requires each country to implement certain requirements on fuel oil suppliers which deliver fuel to ships in their territories. Part 5 of this Order therefore applies the requirements of MARPOL Annex VI to any person who delivers fuel oil to a ship in the Island by barge or direct from shore. Part 5 of the Order should be read in conjunction with draft MSN 049 which provides information on requirements for local suppliers of fuel oil.

The Order revokes and replaces existing Regulations which give effect to Annex VI of the MARPOL Convention.

If approved by Tynwald, the Order will come into effect from 21 July 2014.

If you would like to make any comments on the draft Order, draft MSN 038 or MSN 049, please send them (preferably by email) to David Morter, Deputy Director by **5pm on Tuesday 6th May 2014**.

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MERCHANT SHIPPING (MARPOL ANNEX VI - PREVENTION OF AIR POLLUTION FROM SHIPS) ORDER 2014

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Statutory Document No. XX/20XX



Oil Pollution Act 1986

MERCHANT SHIPPING (MARPOL ANNEX VI - PREVENTION OF AIR POLLUTION FROM SHIPS) ORDER 2014

Approved by Tynwald:

Coming into Operation:

21 July 2014

The Department of Economic Development, after consulting the Secretary of State, makes the following Order under section 14 of the Oil Pollution Act 1986.

1 Title

This Order is the Merchant Shipping (MARPOL Annex VI - Prevention of Air Pollution from Ships) Order 2014.

2 Commencement

If approved by Tynwald this Order comes into operation on 21 July 2014.

3 Application

- (1) Unless provided otherwise, this Order applies to –
 - (a) a Manx ship wherever it may be; and
 - (b) a fixed or floating platform engaged in exploration and exploitation of the sea-bed and subsoil in the territorial waters of the Island.
- (2) Part 4 applies to a foreign ship in the territorial waters of the Island.
- (3) Part 5 applies to a fuel oil supplier and a local supplier of fuel oil.
- (4) 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 –

- (a) **“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;
- (b) **“MARPOL Annex VI”** means the revised Annex VI to the MARPOL Convention containing regulations for the prevention of air pollution from ships up to and including amendments adopted by IMO resolution MEPC. 234 (65) on 17 May 2013;
- (c) **“IMO”** means the International Maritime Organization; and
- (d) **“the Department”** means the Department of Economic Development.
- (2) 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 which has consented to be bound by the MARPOL Convention;
- “foreign ship”** means any ship that is not a Manx ship;
- “fuel oil”** means any fuel delivered to and intended for combustion purposes for propulsion or operation on board a ship, including distillate and residual fuels;
- “fuel oil supplier”** means a person who is responsible for the final blend of fuel oil supplied to a local supplier of fuel oil;
- “gross tonnage”** means the gross tonnage calculated in accordance with the tonnage measurements regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 or any successor Convention;
- “IAPP Certificate”** means the International Air Pollution Prevention Certificate specified in MARPOL Annex VI;
- “IEE Certificate”** means the International Energy Efficiency Certificate specified in MARPOL Annex VI;
- “local supplier of fuel oil”** means a person who receives fuel oil with a view to its delivery to and use on board a ship whilst it is in the Island or the territorial waters of the Island by barge or direct from shore;
- “Manx ship”** has the meaning given by section 1 of the Merchant Shipping Registration Act 1991 and includes a ship registered under Part IV of that Act (the Demise Charter Register) or under 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;

“**operator**” means the person registered as the owner of a Manx ship in accordance with the Merchant Shipping Registration Act 1991 or Part 3 of the Harbours Act 2010 (as the case may be), 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; 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 a ship complies with the requirements of this Order.

This does not apply to Part 4 (Foreign ships) or Part 5 (Fuel oil quality).

- (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 information, to imprisonment for a term not exceeding 2 years and a fine.

PART 2 – PREVENTION OF AIR POLLUTION

6 Requirement to comply with MARPOL Annex VI

- (1) Subject to paragraphs (2) to (8) and articles 7 to 12, a ship must comply with the requirements of MARPOL Annex VI as apply in relation to a ship of its description.
- (2) In accordance with MARPOL Annex VI regulation 13.1.3, MARPOL Annex VI regulation 13 does not apply to any marine diesel engine which is installed on a ship constructed, or any marine diesel engine which undergoes a major conversion, before 19 May 2005 provided the

ship is engaged solely on voyages within the territorial waters of the Island.

- (3) In accordance with MARPOL Annex VI regulation 16.6.2, MARPOL Annex VI regulation 16.6.1 does not apply to any incinerator which is installed on board a ship before 19 May 2005 provided the ship is engaged solely on voyages within the territorial waters of the Island.
- (4) Subject to articles 7 to 12 references in MARPOL Annex VI to “Administration” are to be read as a reference to the Department.
- (5) For the purposes of MARPOL Annex VI regulation 2.8, emission control areas shall include those listed in or designated under MSN 038 in accordance with MARPOL Annex VI.
- (6) For the purposes of MARPOL Annex VI regulation 5.1.2, a renewal survey must be conducted at intervals not exceeding 5 years.
- (7) For the purposes of MARPOL Annex VI regulation 9.7, the special circumstances are as specified in MSN 038.
- (8) For the purposes of MARPOL Annex VI regulation 14.6, the prescribed log book is as specified in MSN 038.

7 Approvals

- (1) If MARPOL Annex VI requires any plan or manual to be approved by the Administration, the plan or manual must be approved in writing by the Department or RO.
- (2) If MARPOL Annex VI requires any system or equipment to be approved by the Administration, the system or equipment must be approved by the Department or RO.
- (3) The approval specified in paragraph (2) is only valid –
 - (a) if it is in writing; and
 - (b) if any conditions stated in it are complied with.

8 No change to be made after survey

- (1) For the purposes of MARPOL Annex VI regulation 5.5 after any survey has been completed no change may be made to the equipment, systems, fittings, arrangements or material covered by the survey, without the express approval of the Department or RO.

This is subject to the following qualification.
- (2) The direct replacement of such equipment and fittings with equipment and fittings that conform with the provisions of MARPOL Annex VI is permitted.

9 Accident or defect with a ship

- (1) For the purposes of MARPOL Annex VI regulation 5.6, if an accident occurs to a ship, or a defect is discovered that substantially affects the efficiency or completeness of its equipment covered by MARPOL Annex VI, the ship's master or operator must report at the earliest opportunity to the Department and RO responsible for issuing the relevant certificate, and in any case no later than 48 hours after the accident or discovery of the defect.
- (2) 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.

10 Exemption

- (1) In accordance with MARPOL Annex VI regulation 3.2, the Department may in co-operation with other Administrations as appropriate, issue an exemption from specific provision of MARPOL Annex VI for a ship to conduct trials for the development of ship emission reduction and control technologies and engine design programmes.
- (2) An exemption issued in accordance with paragraph (1) may only be issued in accordance with the provisions of MARPOL Annex VI regulation 3.2.

11 Equivalentents

- (1) In accordance with MARPOL Annex VI regulation 4, the Department may allow any fitting, material, appliance or apparatus to be fitted in a ship or other procedures, alternative fuel oils, or compliance methods used as an alternative to that required by this Annex if such fitting, material, appliance or apparatus or other procedures, alternative fuel oils, or compliance methods are at least as effective in terms of emissions reductions as that required by MARPOL Annex VI, including any of the standards set out in MARPOL Annex VI regulations 13 and 14.
- (2) In accordance with MARPOL Annex VI regulation 18.11, for a ship of 400 gross tonnage or above on scheduled services with frequent and regular port calls, the Department may decide after application and consultation with affected States that compliance with MARPOL Annex VI regulation 18.6 may be documented in an alternative manner which gives similar certainty of compliance with MARPOL Annex VI regulations 14 and 18.

12 Waiver from application of MARPOL Annex VI regulation 19.4

- (1) In accordance with MARPOL Annex VI regulation 19.4, the Department may waive the requirement for a ship of 400 gross tonnage or above to comply with MARPOL Annex VI regulations 20 and 21.
- (2) A waiver is only valid –
 - (a) if it is in writing;
 - (b) from the date stated in it; and
 - (c) if any conditions stated in it are complied with.

13 IAPP Certificate

- (1) A ship of 400 gross tonnage or above engaged in voyages to ports or offshore terminals under the jurisdiction of other Convention countries must carry a valid IAPP Certificate –
 - (a) issued in accordance with MARPOL Annex VI regulations 6 or 7; and
 - (b) endorsed in accordance with MARPOL Annex VI regulations 5.1.3 and 5.1.4.
- (2) Platforms and drilling rigs engaged in voyages to waters under the sovereignty or jurisdiction of other Convention countries must carry a valid IAPP Certificate –
 - (a) issued in accordance with MARPOL Annex VI regulations 6 or 7; and
 - (b) endorsed in accordance with MARPOL Annex VI regulations 5.1.3 and 5.1.4.
- (3) For the purposes of MARPOL Annex VI regulation 9.1, an IAPP Certificate is valid for the period stated in it, which must not exceed 5 years.
- (4) In accordance with MARPOL Annex VI regulations 9.3 and 9.5, the Department or, with the permission of the Department an RO, may extend the validity of an IAPP certificate.
- (5) In accordance with MARPOL Annex VI regulation 9.9, an IAPP certificate ceases to be valid –
 - (a) if the relevant surveys are not completed within the periods specified in MARPOL Annex VI regulation 5.1;
 - (b) if the certificate is not endorsed in accordance with MARPOL Annex VI regulations 5.1.3 or 5.1.4; or
 - (c) when a ship changes flag.

14 IEE Certificate

- (1) A ship of 400 gross tonnage or above engaged in voyages to ports or offshore terminals under the jurisdiction of other Convention countries must carry a valid IEE Certificate issued in accordance with MARPOL Annex VI regulations 6 or 7.
- (2) In accordance with MARPOL Annex VI regulation 9.11, an IEE Certificate ceases to be valid –
 - (a) if the ship is withdrawn from service or if a new certificate is issued following a major conversion of the ship; or
 - (b) when a ship changes flag.

PART 3 – ENFORCEMENT

15 IAPP Certificate may be withdrawn

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

- (a) the condition of the equipment does not correspond substantially with the particulars of the certificate and any required corrective action has not been taken; or
- (b) the ship is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

16 Prohibition on engaging on certain voyages without a valid IAPP Certificate

- (1) A ship of 400 gross tonnage or above is prohibited from engaging on a voyage to a port or offshore terminal under the jurisdiction of another Convention country without a valid IAPP Certificate.
- (2) A platform or drilling rig is prohibited from engaging on a voyage to waters under the sovereignty or jurisdiction of another Convention country without a valid IAPP Certificate.
- (3) If a ship, platform or drilling rig attempts to engage on a voyage in contravention of paragraphs (1) or (2), the master 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.

17 Prohibition on engaging on certain voyages without a valid IEE Certificate

- (1) A ship of 400 gross tonnage or above is prohibited from engaging on a voyage to a port or offshore terminal under the jurisdiction of another Convention country without a valid IEE Certificate.
- (2) If a ship attempts to engage on a voyage in contravention of paragraph (1), the master 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.

18 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 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 compensation as appears appropriate.

19 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 the 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 or, or to have been attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body 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 4 – FOREIGN SHIPS

20 Interpretation for this part

In this Part “**foreign ship operator**” 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.

21 Foreign ship operator’s responsibility

- (1) A foreign ship in the territorial waters of the Island must comply with the requirements of MARPOL Annex VI as apply in relation to a ship of its description.
- (2) A foreign ship 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 information, to imprisonment for a term not exceeding 2 years and a fine.

22 Inspection of a foreign ship

A foreign ship in a port or offshore terminal of the Island may be subject to any of the following inspections –

- (a) to verify that there is on board a valid IAPP Certificate or valid IEE Certificate if the ship is required by MARPOL Annex VI to have that certificate;
- (b) concerning operational requirements under MARPOL Annex VI if there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures relating to the prevention of air pollution from ships;
- (c) to verify whether the ship has emitted any of the substances covered by MARPOL Annex VI in violation of the provisions of MARPOL Annex VI.

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

- (1) If an authorised officer carries out an inspection in accordance with article 22(a) and finds that –
 - (a) the IAPP Certificate or IEE Certificate is not produced or maintained, does not contain the information required by MARPOL Annex VI, or is otherwise invalid; or
 - (b) there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the certificate;

the ship may be detained until it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.

This is subject to the qualification in paragraph (2).
- (2) An authorised officer may grant a detained ship permission to leave the port or offshore terminal for the purpose of proceeding to the nearest appropriate repair yard available.
- (3) If an authorised officer carries out an inspection in accordance with article 22(b) the ship may be detained until the situation has been brought into order in accordance with the requirements of MARPOL Annex VI.
- (4) If an inspection is conducted or when measures are taken in accordance with paragraphs (1) to (3), all reasonable efforts must be made to avoid a ship being unreasonably detained or delayed.
- (5) If a foreign ship operator considers a ship has been unreasonably detained or delayed the foreign ship operator may apply to the High Bailiff for a declaration to that effect.
- (6) An application under paragraph (5) –
 - (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.
- (7) On an application under paragraph (5) 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 foreign ship operator has suffered loss in consequence of that detention or delay.

- (8) If it appears to the High Bailiff that both sub-paragraphs of paragraph (7) are met the High Bailiff may order the Department to pay such compensation as appears appropriate.
- (9) If a 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 VI 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 VI Order; and
 - “MARPOL Annex VI Order”** means the Merchant Shipping (MARPOL Annex VI - Prevention of Air Pollution) Order 2014. **”**
- (10) 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 the offence.
- (11) 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 5 – FUEL OIL QUALITY

24 Application for this part

This Part does not apply to -

- (a) coal in its solid form; or
- (b) the use of hydrocarbons which are produced and subsequently used on site as fuel, if that use has been approved in writing by the Department.

25 Interpretation for this Part

In this Part –

“fuel oil suppliers representative” means a person appointed by a fuel oil supplier to provide a declaration on the bunker delivery note that the

fuel supplied complies with MARPOL Annex VI regulations 14(1) or 14(4) (as applicable) and 18(3); and

“**local supplier’s representative**” means a person who delivers fuel oil to a ship whilst it is in the Island or the territorial waters of the Island by barge or direct from shore on behalf of a local supplier of fuel oil.

26 Register of local supplier of fuel oil

A local supplier of fuel oil who delivers fuel oil for combustion purposes to a ship must register with the Department in accordance with the provisions of MSN 049.

27 Bunker delivery note and representative sample of fuel oil

- (1) A local supplier of fuel oil who delivers fuel oil for combustion purposes to a ship to which MARPOL Annex VI regulations 5 and 6 applies must provide a ship with a bunker delivery note.
- (2) The bunker delivery note must –
 - (a) contain the information specified in MARPOL Annex VI appendix V;
 - (b) be certified by fuel oil suppliers representative that the fuel oil supplied complies with MARPOL Annex VI regulations 14(1) or 14(4) (as applicable) and 18(3);
 - (c) be retained by the local supplier of fuel oil for three years from the date of delivery for inspection and verification purposes; and
 - (d) be accompanied by a representative sample of the fuel oil delivered.
- (3) The representative sample of fuel oil referred to in paragraph (2)(d) must be collected taking into account any guidelines developed by the IMO and on completion of the bunkering operations be signed and sealed by the local supplier’s representative and the master or officer in charge of the bunker operation.
- (4) This regulation does not apply to gas fuels such as liquefied natural gas, compressed natural gas or liquefied petroleum gas.

The sulphur content of gas fuels delivered to a ship specifically for combustion purposes on board that ship must be documented by the supplier.

28 Offences and penalties

- (1) A fuel oil supplier who delivers fuel oil to a local supplier of fuel oil that does not comply with the declaration stated on the bunker delivery note 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.

- (2) A local supplier of fuel oil who fails to comply with this Part 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.

PART 6 – CONSEQUENTIAL AMENDMENTS

29 Consequential amendments

- (1) The Merchant Shipping (Prevention of Air Pollution from Ships) Order 2005¹ is revoked.
- (2) The Merchant Shipping (Prevention of Air Pollution from Ships) Regulations² are revoked.
- (3) The Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2012³ are revoked.

MADE

JOHN SHIMMIN
Minister for Economic Development

¹ SD175/05

² SD239/05

³ SD77/12

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to MARPOL Annex VI – Regulations for the Prevention of Air Pollution from Ships up to and including amendments adopted by IMO resolution MEPC. 234 (65) on 17 May 2013.

The order applies MARPOL Annex VI to a Manx ship wherever it may be, and fixed and floating platforms engaged in the exploration and exploitation of the seabed and subsoil in the territorial waters of the Island. Part 4 of the Order also applies MARPOL Annex VI to a foreign ship in the territorial waters of the Island.

In addition to regulating ships, MARPOL Annex VI requires each country to implement certain requirements on fuel oil suppliers which deliver fuel to ships in their territories. Part 5 of this Order therefore applies the requirements of MARPOL Annex VI to any person who delivers fuel oil to a ship in the Island by barge or direct from shore.

The Order revokes and replaces existing Regulations which give effect to Annex VI of the MARPOL Convention.

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 and can be accessed via their website: <http://www.imo.org>