

## Summary: Intervention & Options

<b>Department /Agency:</b> <b>Maritime and Coastguard Agency</b>	<b>Title:</b> <b>Impact Assessment of The Merchant Shipping (Ship-to-Ship Operations) Regulations 2008</b>	
<b>Stage:</b> Consultation	<b>Version:</b> 1.3	<b>Date:</b> 07 May 2008
<b>Related Publications:</b> Draft Statutory Instrument, Draft MGN		

### Available to view or download at:

<http://www.mcga.gov.uk/c4mca/mcga-guidance-regulation/mcga-consultations.htm>

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### What is the problem under consideration? Why is government intervention necessary?

Cargo transfers and bunkering operations between ships are currently unregulated in the United Kingdom. There is no statutory requirement for parties engaged transfers at sea to have the necessary resources in place to respond to an oil pollution incident.

Intervention to bring all transfers within statutory harbour areas, where there is a statutory responsibility to have oil spill contingency plans in place, reduces risk. Additional measures can be applied specifically to cargo transfers, that are generally of a larger scale, incorporating additional environmental considerations.

### What are the policy objectives and the intended effects?

- 1) To regulate cargo transfers and bunkering operations between ships within the outer limit of the UK's 12 nautical mile territorial sea.
- 2) Ensure that impact upon European Sites under the Habitats Directive from a planned programme of cargo transfers is considered, and will not be significant.
- 3) Additionally ensure such a programme has obtained the environmental consent of the appropriate authority.

### What policy options have been considered? Please justify any preferred option.

Option 1): Do not regulate transfer operations in UK territorial seas.

Option 2): Ban transfer operations in UK territorial seas (excluding statutory harbour areas).

Option 3): Ban transfer operations in UK territorial seas (excluding statutory harbour areas). Ensure a programme of cargo transfers within a harbour area will not significantly impact upon European sites, and has the environmental consent of the appropriate authority.

Option 3 is the preferred option as it reduces risk and incorporates additional environmental

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** The MCA is committed to reviewing the effectiveness of the Regulations within three years to ensure they meet the needs of the environment and industry.

### **Ministerial Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

.....Date:

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' One-off costs borne by the port industry for oil spill contingency planning and assessment of environmental impact. Ongoing / annual costs borne by the shipping industry associated with port charges / fees for operations forced into harbour authority waters. Annual cost considered over 60 years.
	<b>One-off</b> (Transition) <span style="float: right;">Yrs</span>	
	<b>£ 630,000</b>	
	<b>Average Annual Cost</b> (excluding one-off)	
	<b>£ 1,300,000</b>	<b>Total Cost (PV)</b> <b>£ 37,687,000</b>
Other <b>key non-monetised costs</b> by 'main affected groups' Minimal health costs associated with reductions of local air quality around a port where a programme of transfers is permitted.		

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' Net present benefits to ports are assumed to equal the one-off costs to ports from this policy. Para 3.4.1 expands.
	<b>One-off</b> <span style="float: right;">Yrs</span>	
	<b>£ 0</b>	
	<b>Average Annual Benefit</b> (excluding one-off)	
	<b>£ n/a</b>	<b>Total Benefit (PV)</b> <b>£ 630,000</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Environment: Reduced risk of oil spill in UK waters Social / Economic: Localised benefits around harbour areas where a programme of cargo transfers between ships is permitted.		

**Key Assumptions/Sensitivities/Risks** The 20 cargo transfer operations carried out in UK territorial seas per year (mean) will now be carried out in UK ports . 3 ports will seek to bring new programmes of transfers into their waters. 3 ports that already permit cargo transfer operations will require to carry out environmental impact assessments.

Price Base Year 2008	Time Period Years 60	<b>Net Benefit Range (NPV)</b> <b>£ -37,687,000</b>	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ -37,687,000</b>
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What is the geographic coverage of the policy/option?	United Kingdom			
On what date will the policy be implemented?	TBA			
Which organisation(s) will enforce the policy?	MCA			
What is the total annual cost of enforcement for these organisations?	£			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of £ 0	Decrease of £ 0	<b>Net Impact</b> £ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### 1. Background

- 1.1 Cargo transfers between ships (normally referred to as Ship-to-Ship (STS) Transfers) involve the transfer of oil, carried as cargo, from one tanker to another. It is an internationally recognised practice, which takes place worldwide. There are voluntary industry guidelines issued under the aegis of the International Chamber of Shipping (ICS) and the Oil Companies International Marine Forum (OCIMF), which set out the procedures to be followed when carrying out cargo transfers. Domestically, these transfer operations have a very good record, both in respect of safety and in respect of the environment.
- 1.2 Bunkering operations between ships (normally referred to as bunkering) involves the replenishment of bunker fuel for use by a ship receiving the transfer for propulsion of the engines. This can be considered as a lesser form of transfer with usually much smaller volumes being transferred.
- 1.3 Routine cargo and bunkering transfers between ships are currently unregulated and ships can conduct transfers anywhere in the UK Pollution Control Zone.
- 1.4 Current situation for Cargo Transfers (STS Transfers)
  - 1.4.1 Historically, STS transfers have been carried out in the UK territorial seas in locations off Southwold (Suffolk) and in Lyme Bay (Devon/Dorset), as well as in the Harbour Authority areas of Scapa Flow, Nigg and Sullom Voe. In recent years there has been an increased demand for in STS transfers in UK waters, brought about by new trading patterns within Europe and Russia, namely the noted increase in trade through European waters of Russian export blend crude oil and heavy fuel oil.
  - 1.4.2 The specific reason for the requirement to carry out the transfers is that the oil emanating from Baltic and Russian ports initially has to be shipped using relatively small tankers due to the shallow waters of the Baltic Sea and some of the approaches to the Northern Maritime Corridor ports. However, once this stage of the journey has been negotiated it is then more economically viable to transfer the oil into larger tankers for the onward journey to its eventual destination in either the Americas or the Far East. Hence the transfer operations tend to involve transfer of oil from a number of smaller vessels (approx 2-6) into one larger vessel.
- 1.5 Current Situation for Bunkering Transfers (Bunkering)
  - 1.5.1 The majority of ports have the necessary facilities for bunkering transfers to be carried out within their statutory harbour areas. The vast majority of all bunkering transfers are carried out within these harbour areas. However, occasionally bunkering transfer operations take place outside of statutory harbour areas, where there is a lack of control.
- 1.6 Regulatory Background
  - 1.6.1 One of the recommendations in the report “Safer Ships, Cleaner Seas”, overseen by Lord Donaldson of Lymington following the Braer incident, was that the Government should bring new Regulations into force as soon as practicable to control transshipments such as cargo transfer and bunkering transfer operations.

## 1.7 The OPRC Regulations

- 1.7.1 All statutory harbour areas must comply with the International Convention on Oil Pollution Preparedness, Response and Co-operation Convention (OPRC) 1990 and associated domestic legislation under the Merchant Shipping (OPRC) Regulations 1998.
- 1.7.2 The OPRC Regulations require ports and harbours to have an approved oil spill contingency plan which includes a risk assessment and the provision of oil combating equipment commensurate to the identified risk. The plans are designed to ensure that trained personnel and the necessary equipment for responding to a spill are close at hand, and can be deployed in a timely manner. Were cargo transfers or bunkering transfers to be carried out in a statutory harbour area the port / harbour would be required to give this due consideration as part of its oil spill contingency plan which must in turn be approved by the MCA (as decision-maker in the process of approving oil spill contingency plans) having been prepared in consultation with other statutory authorities.
- 1.7.3 The OPRC Regulations do not apply to cargo or bunkering transfer operations which take place outside of statutory harbour areas. As a result there are no statutory requirements placed on operators to have in place the necessary resources to respond to a pollution incident arising from their operations if they take place outside of statutory harbour areas.

## 1.8 The Habitats Directive

- 1.8.1 Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora (The Habitats Directive) has the aim of preserving, protecting and improving the quality of the environment, including the conservation of natural habitats and of wild fauna and flora.
- 1.8.2 The Merchant Shipping (ship-to-ship operations) Regulations will implement the Habitats Directive in respect of ship-to-ship transfers.

## 1.9 Reasons for Government Intervention

- 1.9.1 The UK Government is committed to reducing maritime pollution in UK waters as part of its commitment to 'Cleaner Seas'. The UK considers that these Regulations will ensure that ship to ship transfers are carried out safely and that the impact on the marine environment of any potential oil spill is as minimised in line with this commitment, through creation of additional safeguards.
- 1.9.2 The UK has been successfully controlling cargo transfers and bunkering transfers in UK waters through voluntary measures and guidelines for a number of years, whilst industry has also provided effective self regulation for cargo transfers through use of best practice guidance prepared by OCIMF and ICS. However, it is thought that the implementation of legislation will provide for a more effective tool against any operators that could, at present, operate outside of voluntary guidelines without fear of sanction.
- 1.9.3 In particular, it should be noted that new trading patterns in Europe and Russia, associated with growing markets for Russian export blend crude oil have meant an increased number of cargo transfers occurring in UK waters in recent years, and further growth is expected. This means legislative measures controlling cargo transfers can be of increasing benefit in future.
- 1.9.4 Cargo transfer operations are also of concern to local communities.

## 2. **Options**

### 2.1 Option 1) Do not regulate cargo and bunkering transfers between ships in UK territorial seas.

- 2.1.1 This option would leave all transfer operations unregulated. Evidence shows that the UK has a generally responsible shipping industry which operates within international industry guidelines for the conduct of cargo transfer operations and voluntary UK measures for cargo and bunkering transfers. However, the absence of any regulatory control makes it impossible to guarantee the excellent safety record that has been established.

- 2.1.2 The option also ignores the potential future hazards posed by operators who may wish to set up such activities without the necessary pollution control resources in place.
- 2.2 Option 2) Ban cargo transfer and bunkering transfer between ships in United Kingdom territorial seas (excluding statutory harbour areas)
- 2.2.1 This option would force operators to conduct STS operations and bunker transferring operations within statutory harbour areas. Within these harbour areas oil spill contingency planning for STS and bunker transferring operations would be brought under the auspices of the OPRC Regulations, providing an additional element of control. Any port or harbour allowing such operations to take place within its statutory harbour area would be legally bound to consider the operations as part of the OPRC contingency planning process.
- 2.2.2 Furthermore there are additional resources in harbour areas, such as tugs, that would be of particular use in an emergency situation.
- 2.2.3 The measures recommended in this option would only be effective up to the 12 nautical mile (NM) limit of the UK territorial seas. It would still notionally be possible for large tankers to conduct cargo or bunkering transfer operations just outside of the territorial sea. The UK is currently involved in negotiations at the International Maritime Organization (IMO) to draft a new chapter of Annex I of MARPOL (The International Convention for the Prevention of Pollution by Ships) which will regulate ship-to-ship transfers outside UK territorial waters but within the Pollution Control Zone.
- 2.2.4 As an interim measure, the MCA will seek to discourage operators from conducting operations just outside of UK territorial seas.
- 2.2.5 Option 2 would be a viable way to proceed due to the additional control that the OPRC contingency planning process will place over contingency planning and pollution response when STS operations are carried out in statutory harbour areas. This option will remove the risks associated with STS and bunkering transfer operations that are carried out in UK territorial seas outside of statutory harbour areas.
- 2.3 Option 3): Ban cargo transfer and bunkering transfer between ships in UK territorial seas (excluding statutory harbour areas). Ensure a programme of cargo transfers within a harbour area will not significantly impact upon European sites, and has the environmental consent of the appropriate authority.
- 2.3.1 Option 3 would maintain all of the benefits of Option 2, but would provide for additional safeguards against environmental impact of a cargo transfer operation within harbour authority areas.
- 2.3.2 A proposed programme of cargo transfers between ships would be subject to additional requirements for assessment of environmental impact before they were allowed to proceed.
- 2.3.3 A harbour authority may only allow cargo transfer operations within its waters as part of a programme of transfers for which consent has to be granted. Due consideration must be given to the potential impact it would have on any European Sites within the Harbour Authority Area (sites designated as having a particular importance for conservation reasons).
- 2.3.4 Furthermore, requirement to obtain environmental consent for such a programme from the appropriate authority would mean that, even where there was no designated European site within harbour authority waters, there would still be a requirement to assess the potential environmental impact of a programme of cargo transfers.

2.3.5 Option 3 is the preferred option. The benefits of Option 2 as identified in para 2.2.5 all still apply but there needs to be additional consideration of potential impact of cargo transfers on the local environment. This is provided for by the requirement to consider impact upon European sites, and gain environmental consent from the appropriate authority.

### **3. Costs and Benefits of the Preferred Option**

3.1 Where costs and benefits are monetised this is largely associated with cargo transfer operations, rather than bunkering transfer operations that are also prohibited at sea under the proposed regulations. The vast majority of all bunkering transfers are already carried out within harbour authority areas. Furthermore, cargo transfer operations are of higher value, and there is more data available about the cost and volumes of such operations. When considering non-monetised, more generic costs and benefits of the regulations however, all forms of transfer operations including bunkering transfer operations are under consideration.

#### 3.2 Economic Costs and Benefits

3.2.1 Economic costs of the Regulations will largely be borne by the shipping industry. Economic benefits may be apparent to ports and harbours, although with regards to cargo transfers, there will be initial costs. It is envisaged that the impact upon cargo transfer and bunkering transfer service providers should be minimal, with costs and benefits associated. In the long run, reduced risk of a serious oil spill may be of economic benefit to a wide range of interests in society.

#### 3.2 Costs

3.3.1 Owners, operators and managers of ships will incur additional costs which will include port fees, use of port facilities including pilotage, tug fees, and light dues, when required to carry out transfer operations within harbour authority areas, which were previously carried out at sea. These will vary according to the level at which individual organisations choose to set them at.

3.3.2 However, by considering costs that are levied by various ports that are suitable for cargo transfer operations to take place and taking an average, we are able to estimate that the overall costs for port charges such as those listed above, would be in the region of £0.45 per tonne of oil transferred as part of an operation (this includes ship dues / pilotage / mooring fees etc).

3.3.3 Taking averages from the years 2006 and 2007, 20 cargo transfer operations per year would additionally be forced into harbour areas by the regulations, with an average of 142,000 tonnes being transferred as part of each operation. Using the average charges from para 3.3.2 we can estimate that ship owners / operators would face an additional outlay of approximately £63,900 per operation, which would be an overall cost of £1.3m per annum from port charges as a result of operations being banned in UK territorial seas (presuming that all of the STS Operations are moved to UK ports, and not to locations overseas).

3.3.4 The existing service providers for cargo transfer operations / bunkering transfer operations and pollution response will remain in business but will conduct the support mechanisms to the STS Operations within a statutory harbour area. This service provision may be at a lower cost due to the proximity of the port and port facilities. However, some trade could theoretically be lost through inability to do business in UK waters with ships that do not want to enter port to carry out transfer operations.

3.3.5 There may be some costs associated with delays incurred through ships having to alter course to enter suitable ports in which to carry out cargo transfer operations. Hire charge for one of the smaller tankers emanating from the Baltic would be in the region of £20k per day and any delays could be costed against this. However, the location of those ports currently conducting STS Operations is such that they require little deviation from trading routes. It can be assumed that

coming into port will add around six additional hours to voyage, meaning additional costs of £100,000 for 20 cargo transfers that are forced into harbour authority areas per year.

- 3.3.6 A small cost will also be incurred by any port that wants to bring STS Operations into its harbour area in light of the new legislation, for preparing a new OPRC Oil Spill Contingency Plan. This is as a proposal to allow STS Operations constitutes a ‘major change... which affects or could affect the validity or effectiveness of a (contingency) plan to a material extent’ under the OPRC Regulations (see Article 4(5)(b)). It is likely that a port or harbour would incur costs of around £10k for preparation of a new plan. Whereas we do not have firm information, we are working on the assumption that potentially three ports over and above those that already permit cargo transfer operations will wish to bring such operations into port thus requiring an amended contingency plan, leading to a one-off cost of £30,000.
- 3.3.7 More significantly, a port or harbour would expect to incur costs of up to £100k for work with regards to assessment of impact upon European sites and associated with obtaining environmental consent from the appropriate authority ahead of a programme of transfer occurring within its waters (these costs may alternatively be borne by the cargo transfer service providers, or shared between the organisations), although this figure is likely to vary between ports. However, as a worst case scenario, six ports carrying out environmental impact assessments (the three that currently permit cargo transfer operations and the three potential additional ports alluded to in para 3.3.6) would lead a one-off cost of £600,000.

#### 3.4 Benefits

- 3.4.1 Ports and harbours may potentially benefit from the regulations through the levying of charges to the shipping industry as described in para 3.3.1 – 3.3.3 for carrying out operations inside of their waters, where the operations would previously have been carried out at sea. However, much of this revenue will be absorbed by additional factor costs such as labour involved in the provision of services provided to the ships. In the absence of data on the mark-up on port dues, it will be assumed that the industry is competitive and net profits are negligible and that fees received by the port will just off-set costs. To reflect this, net present benefits to ports are assumed to equal the one-off costs to ports from this policy. It should be noted however that ports do make some profit from fees.
- 3.4.2 On top of this, there is potential for new large scale programmes of transfer to occur within the new legal framework. Previously an application to carry out 105 cargo transfers per year in a UK Port has been made but ultimately not come to fruition, but this would suggest that there is a market out there for carrying out cargo transfer operations within ports (these would be operations currently conducted outside of UK waters, or new operations, being brought into the UK). Using figures from para 3.3.2/3 we can anticipate that 100 transfers carried would mean approximately £6.5m in charges received by the port in question, although again, net present benefits will be assumed to equal one-off costs to ports.
- 3.4.3 Historical evidence shows that cargo transfer operations (as well as bunkering transfers) carried out in UK territorial waters have been carried out in a responsible manner, in line with industry guidelines. There have been no pollution incidents of note occurring from such an operation in the UK. However, forcing these operations into statutory harbour areas further reduces the risk of a pollution incident. In the unlikely event of a spill occurring, there will also be additional, useful resources available inside a statutory harbour area that would not be available out to sea.
- 3.4.4 When assessing the benefits of the regulations it is thus important to consider the cost of an oil spill. However, this is far from an exact science. Many costs associated with the clean-up of oil spills are the subject of confidential business arrangements and are not readily available. There are also a number of variables that make it difficult to quantify the cost of an ‘average’ oil spill. In many cases, the amount of oil spilled has had less impact upon the overall cost of the spill than

the location of the spill or the type of oil spilled (something that is touch on further in the environmental costs and benefits), and the rate of spillage is another factor that should be considered.

- 3.4.5 However, estimated total costs are available for some of the world’s most serious oil spills (See below). The variance in cost per tonne of oil spilled further emphasises the un-exact nature of costing an oil spill but an average cost for clean up of an oil spill can be taken from these figures.

Fig 1.0: Costs associated with some of the world’s major oil spills (source International Tanker Owners Pollution Federation (ITOPF))

SHIP	YEAR	OIL (TONNES)	COST (£)	COST PER TONNE (£)
Amoco Cadiz	1978	223,000	150,000,000	673
Exxon Valdez	1989	37,000	1,300,000,000	35,135
Braer	1993	84,000	52,000,000	619
Sea Empress	1996	73,000	36,800,000	504
Erika	1999	19,800	165,000,000	8,333
Prestige	2002	63,000	962,000,000	15,270
<b>AVERAGE COST PER TONNE (£):</b>				<b>10,089</b>

- 3.4.6 The regulations, by providing further control over cargo transfer operations, further minimise the already small risks of a serious oil spill requiring a tier 3 response (according to the OPRC regulations) occurring as a result of such an operation. As a consequence the potential for extremely high-cost clean up operations similar to those above occurring is also reduced. This benefit would actually be transferred onto the shipping industry, who would be liable for costs of a major clean-up operation under the ‘polluter pays’ principle, although in reality the cost of a major oil spill is likely to be bourn by a wide range of groups including the shipping industry, government and NGOs.

- 3.4.7 Furthermore if a port was able to establish itself as a location for cargo transfer operators this could be of further economic benefit as the trade in Russian / Baltic oil increases as predicted. A recent proposal put together to carry out cargo transfer operations in one UK port estimated that 105 operations would be carried out per year. Such trade would be of economic benefit to the port, to oil spill responders who would be required to provide on site resources, for cargo transfer service providers and also potentially for the local economy as a whole through provision of additional jobs etc.

### 3.5 Environmental Costs and Benefits

#### Costs

- 3.5.1 Communities centred around ports and harbours that allow new / additional cargo transfer operations to be carried out inside their statutory harbour areas could argue that this brings an increased risk of an oil spill, with associated environmental costs to their locality. However, it can be argued that bringing operations under the control of the OPRC Regulation, and ensuring harbour authorities consider potential environmental impact in advance of a programme of transfers helps to mitigate this risk.

#### Benefits

- 3.5.2 When considering the impact of the regulations as a whole it should be argued that they are more likely to be of environmental benefit. By forcing cargo transfer and bunkering transfer operations into statutory harbour areas they are being forced into areas where there is a legal requirement to conduct suitable oil spill contingency planning under the OPRC Regulations, as well as areas where there are a number of additional resources on sight that may be of value, notably harbour

tugs. This will provide an additional safeguard against the impact of an oil spill, in the unlikely event that a spill should occur considering the safety record both domestically and internationally that these operations have.

- 3.5.3 Placing a requirement on the harbour authority to gain consent before agreeing to a programme of transfers ensures that any potential impacts on the marine environment are fully considered.

### 3.6 Social Costs and Benefits

#### Costs

- 3.6.1 It is not thought there will be any particularly notable social costs brought about by the Regulations. However, an increase in cargo transfer operations within a harbour authority area is likely to bring about a reduction in local air quality, which in turn may bring about localised health costs. It is estimated that a hospital admission associated with respiratory conditions (as caused by poor air quality), of an average of 8 days in duration, would have an associated cost of between £1,900 and £9,600 at 2004 prices (source: [www.defra.gov.uk/environment/airquality/publications/stratereview-analysis/damagecosts](http://www.defra.gov.uk/environment/airquality/publications/stratereview-analysis/damagecosts))

#### Benefits

- 3.6.2 It is not thought that there will be any particularly notable social benefits brought about by the Regulations although some of the non-monetised economic benefits as described in para 3.4.5, namely increased employment on a local scale created by increasing trade in a port or harbour could have additional social benefits that are associated with reduced unemployment.

## 4. **Small Firms Impact Test**

- 4.1 Due to the size and scale of the operations that are under consideration, it is extremely difficult to envisage impact to smaller firms. It is likely that the regulations would impact, in one way or another upon cargo transfer service providers, bunkering companies, oil spill response organisations, major (large) ports, tanker owners and oil traders. It is likely that the companies involved are large scale organisations, capable of undertaking high-finance operations.
- 4.2 However, a wide range of industry representatives, such as the British Ports Association, the Chamber of Shipping and UK Spill are included in the consultation exercise.
- 4.3 We consider the impact on small businesses to be minimal but this will be kept under review during the consultation process and through the different stages of the Impact Assessment.

## 5. **Competition Assessment**

- 5.1 These regulations may be seen to have some initial impact upon the international competitiveness of the UK. At this stage there is no international legislation in place via MARPOL governing STS operations. It is possible to envisage operations taking place in other nations territorial seas, using cargo transfer service providers / oil spill responders etc from the nation in question.
- 5.2 However, it should be noted that owners, operators, agents, brokers, oil spill responders and cargo transfer service providers that would be involved in cargo transfer between ships and also larger scale bunkering operations are often of a global nature. Furthermore, due to the UK's location on the trading route for export oil originating from Russia / the Baltic it is highly likely that operators will choose to carry out operations inside UK ports once the Regulations are in place.
- 5.3 Work is also underway at IMO to draft an 8<sup>th</sup> chapter to Annex I of the MARPOL convention entitled "Prevention of Pollution during oil transfer operations between ships at sea" which, if

adopted will provide for an international control measure for transfer operations and a responsibility for all parties to the convention to implement domestic legislation.

## **6. Enforcement, Sanctions and Monitoring**

- 6.1 Enforcement would be carried out by the Maritime and Coastguard Agency as part of its existing enforcement activities. The Regulations, when introduced, would provide for sanctions and will impose criminal sanctions for non-compliance. This will include provisions on summary conviction to fine the relevant parties an amount not exceeding £25,000, and on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or both. These penalties are in line with those for other maritime offences and are considered to be proportionate to the nature of the offences.
- 6.2 It should be noted that if a transfer is made to or from a ship in contravention of the Regulations the owner, the manager and the master of the ship shall each be guilty of an offence. It will however be a defence when charged under the Regulations to prove that the transfer was for the purpose of securing the safety of a ship, prevention of damage to a ship or its cargo or for the purpose of saving life.
- 6.3 The Home Office and the Scottish Executive Justice Department have indicated their satisfaction with these provisions.

## **7. Implementation and Delivery Plan**

- 7.1 It is not thought that implementation of the Regulations will be onerous as they will simply place restrictions on the locations in which operations can take place. The ships will still be carrying out the same operations as before.
- 7.2 There may however be some burden on harbour authorities who envisage a programme of transfers within their waters. They will need to ensure the operations are adequately covered by oil spill contingency planning under the OPRC Regulations. They will also have to consider impact on any European Sites, and obtain environmental consent from the appropriate authority. There may be a fair amount of scrutiny over this process.
- 7.3 The shipping industry generally has an excellent record with co-operation on matters regarding cargo transfer and bunkering transfer operations (previously operators have complied with various voluntary measures on locations where cargo transfers between ships may be carried out). This is likely to assist with the implementation of the regulations.
- 7.4 A Marine Guidance Note (MGN) [and Merchant Shipping Notice (MSN)] will be included as part of the regulatory package to provide further guidance and clarification on certain issues for industry. [This / these] documents will be consulted upon alongside the regulations.

## **8. Post-Implementation Review**

- 8.1 The MCA is committed to reviewing the effectiveness of the Regulations within three years, to ensure that they meet the needs of the environment and industry.
- 8.2 The implementation of the Regulations will be reviewed domestically through the MCA's normal contact with industry and NGO groups at regular stakeholder meetings. In addition the UK is active in ongoing work within the international community to tackle pollution from shipping both within the IMO's Marine Environment Protection Committee structure and through other UN and EU initiatives. For all of these bodies the input of the industry and NGOs is sought when developing a UK position both through standing meetings before IMO Committee meetings and ad hoc consultation

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

## Annexes

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