

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT MERCHANT SHIPPING (CONTROL OF HARMFUL ANTI-FOULING SYSTEMS ON SHIPS) ORDER 2022

Monday 7 November 2022

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The Committee consisted of the following Members:

Chair: MRS SHERYLL MURRAY

Abbott, Ms Diane (*Hackney North and Stoke Newington*) (Lab)

† Cryer, John (*Leyton and Wanstead*) (Lab)

† Elphicke, Mrs Natalie (*Dover*) (Con)

† Fletcher, Colleen (*Coventry North East*) (Lab)

Gullis, Jonathan (*Stoke-on-Trent North*) (Con)

† Hayes, Sir John (*South Holland and The Deepings*) (Con)

† Holden, Mr Richard (*Parliamentary Under-Secretary of State for Transport*)

† Kane, Mike (*Wythenshawe and Sale East*) (Lab)

Kniveton, Kate (*Burton*) (Con)

† Mahmood, Mr Khalid (*Birmingham, Perry Barr*) (Lab)

† Milling, Amanda (*Cannock Chase*) (Con)

† Mullan, Dr Kieran (*Crewe and Nantwich*) (Con)

Rimmer, Ms Marie (*St Helens South and Whiston*) (Lab)

† Saxby, Selaine (*North Devon*) (Con)

† Villiers, Theresa (*Chipping Barnet*) (Con)

† Whittome, Nadia (*Nottingham East*) (Lab)

† Young, Jacob (*Redcar*) (Con)

Liam Laurence Smyth, *Committee Clerk*

† **attended the Committee**

First Delegated Legislation Committee

Monday 7 November 2022

[MRS SHERYLL MURRAY *in the Chair*]

Draft Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Order 2022

4.36 pm

The Parliamentary Under-Secretary of State for Transport (Mr Richard Holden): I beg to move,

That the Committee has considered the draft Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Order 2022.

It is a pleasure to serve under your chairmanship, Mrs Murray, in my first statutory instrument debate. The purpose of this order is to give the Government the powers that we need to implement in UK law amendments to the International Maritime Organisation's 2001 convention on the control of harmful anti-fouling systems on ships, which I shall now refer to as the convention. The order relies on powers under section 128(1)(e) of the Merchant Shipping Act 1995. The draft order was laid before the House on 17 October this year. If approved, the powers in the order will be used to make a new statutory instrument next year to implement the convention amendments. The order will also allow the convention to be entirely re-implementable in regulations should that be necessary.

Before continuing, I would like to give a small amount of background about what the Government have done regarding the convention and to outline the Government's reasons for wanting to implement amendments to it. In doing so, I remind hon. Members that our purpose here today is to discuss the use of this order as a mechanism to provide the powers for implementation of the amendments to the convention, rather than to discuss the detail and implementation of the convention itself.

The convention entered into force internationally on 17 September 2008, and the UK acceded to it in 2010. It aims to protect the marine environment and human health from the adverse effects of anti-fouling systems used by ships. An anti-fouling system is a coating, paint or surface treatment used by a ship to control or prevent the attachment of unwanted organisms to the ship's hull. The convention addresses the harmful impacts of anti-fouling systems by prohibiting the use of certain substances in those systems. In 2021, the IMO adopted amendments to the convention to prohibit the use of a new compound in anti-fouling systems, and those will come into force on 1 January 2023.

As the convention took effect 14 years ago, hon. Members may ask why we are now seeking powers to implement amendments to it. The reason is that the convention was implemented in the UK through a combination of a European Community regulation and the Merchant Shipping (Anti-Fouling Systems) Regulations 2009, but both instruments derive from EU powers and now comprise EU retained law. Consequently, implementing the convention amendments through the instruments would now require primary legislation. Therefore, to

implement the amendments more efficiently in UK law, we will need to introduce an Order in Council to provide the powers required for this purpose.

The Government consider implementation of the convention amendments in UK law an important step to ensure that the United Kingdom continues to comply with its international obligations and that our waters continue to be protected from the use of prohibited substances in the anti-fouling systems of visiting ships. The convention and its subsequent amendments were negotiated at the IMO by representatives of the Government, the shipping industry, and environmental interest groups. The Maritime and Coastguard Agency played an active role in negotiations at the IMO throughout the development of the convention and its amendments.

The Government's proposals for implementing the amendments to the convention by way of a new statutory instrument will be the subject of public consultation. The MCA will refine its proposals on the basis of any comments received. The amendments to the convention cannot be efficiently implemented into UK law unless the Government have the powers to do so. The draft order provides those powers.

I will provide some information about the power we are relying on to make the draft instrument and, in turn, to implement the amendments to the convention. Section 128(1)(e) of the 1995 Act provides that His Majesty may by Order in Council make such provision as he considers appropriate for the purpose of implementing any international agreement that has been ratified by the United Kingdom and relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships.

The draft order will authorise the making of regulations by the Secretary of State to give effect to the convention, including amendments to it. Section 128 only allows for an order to be made in respect of a convention that has been ratified by the United Kingdom, which has acceded to the convention. To ensure that the United Kingdom can fulfil its international obligations, the amendments to the convention must be implemented. To ensure that the United Kingdom's domestic law implements its international obligations, the Government intend that the United Kingdom will submit the draft order to the Privy Council. That will ensure that the regulations can be made.

I have highlighted the importance of the Order in Council so that we can implement the amendments to this important convention for the environmental protection of our seas and waterways. The draft order is intended to ensure that the Government have the powers to implement the convention amendments into domestic law. It is fully supported by the UK Government. I therefore propose that the order be approved. It will enable the United Kingdom to play its part in protecting the biodiversity of our oceans and seas.

4.42 pm

Mike Kane (Wythenshawe and Sale East) (Lab): It is a pleasure, as always, to serve under your chairmanship, Mrs Murray. I had a few nice, dulcet things to say about the right hon. Member for Gainsborough (Sir Edward Leigh), but we do not have him in the Chair, so thank you for stepping into the breach; it is good of you.

I welcome the Minister to his place. North West Durham is a beautiful part of the world, and I know Lanchester well. I am sure Members agree that in his first outing at an SI Committee, the Minister has done extraordinarily well. I am also sure that we all came into politics to discuss statutory instruments about barnacles on boats. I might have to take some anti-fouling measures myself; I will check my deodorant, because the Minister is about the fourth or fifth on my watch as shadow spokesperson for aviation and maritime. I wish him well in his time in office.

That is enough of the niceties. The implementation of the convention will protect United Kingdom waters from harmful effects occurring from the use of prohibited substances, not just on UK ships but on non-UK ships visiting our waters. We will be supporting the draft order, as it is vital to take every step within our power to reduce the leaching of toxins into water.

There are two major and interlinked environmental challenges in the marine industry: reducing emissions, and preventing the transfer of invasive species through biofouling. The formation of barnacles and other unwanted attachments, such as molluscs and algae, increase the consumption of fuel and slow ships down. In order to address that, ships' hulls are coated with anti-fouling paints. Historically, coatings such as lime and arsenic were used to coat the hulls, but advances in chemistry enabled that problem to be resolved in a modern and effective way using metallic compounds.

Bulk carriers, tankers and general cargo ships can spend long periods in ports being loaded and unloaded. Some might also be prevented from berthing for long periods by neap tides. In such cases, shallow water and temperate environments can lead to accelerated fouling. Many shipowners must deal with those challenging operations on a regular basis. Only today, there was an interesting article in *The Times* about the sequestration of Russian yachts and the need to keep them moving to stop their deterioration.

Many ships have unpredictable trading patterns and must find cargoes where they can. That can mean that after operating in an area such as the north Atlantic with a coating chosen for that environment, the ship is switched to tropical zones and operation in different climates. The lower the predictability in operations, the higher the risk for fouling on the ship's hull, potentially leading to increased fuel consumption and higher environmental impact.

Coatings are usually developed for specific operating conditions, meaning that their anti-fouling performance is highly problematic. Any changes to the expected operating conditions mean that the coating will not perform as expected. The main factors that increase the probability of fouling are unfavourable conditions such as location and duration during long idling periods. Modern coatings have also been proven to leach into water, and the results have been devastating for marine ecosystems.

As people have tried to do the right thing by coating ships to prevent the formation of barnacles and the attachment of other undesirables, and thereby reduce fuel burn, the issue has recurred with the newer metallic compounds. Those compounds have been proven to cause sex changes in whelks and deformation in oysters, and they may have entered the food chain.

Mr Khalid Mahmood (Birmingham, Perry Barr) (Lab): This issue has a huge effect on the environment and on those who reside in our seas, particularly turtles, whales and larger fish, as well as whatever is attaching to ships. Whatever we do in our seas will ultimately have an effect on the food chain, as my hon. Friend said, and on those who inhabit that environment. Perhaps the Government will come back with something more concrete on the environment and the seas.

Mike Kane: Pope Francis reminded us in "Laudato Si" that we are leaving an enormous pile of filth on this planet, so anything that we can do to reduce that filth and to ensure that it does not leach into the food chain of marine life is extraordinarily important. My hon. Friend is right to intervene to make that point.

Sir John Hayes (South Holland and The Deepings) (Con): With your indulgence, Mrs Murray, I want to identify the problem of industrial fishing, which you will know a great deal about. It has precisely the same effect on the ecosystem that the hon. Gentleman talked about, and particularly on smaller sea creatures of the kind he mentioned. That is an aside, but it is relevant, given what we are discussing. I know that you will want to bring us back to the subject in hand.

The Chair: Absolutely. I think the shadow Minister would like to stick to the confines of the draft statutory instrument.

Mike Kane: Indeed I would, Mrs Murray. The right hon. Member for South Holland and The Deepings is right that marine life is important, and the draft order is part of that. The Minister knows of the marine biology problems along the coastline of North West Durham, although we do not know what the issue is just yet.

A team at the University of Oldenburg's Institute of Chemistry and Biology of the Marine Environment conducted a study on the matter, which was published in February 2021. The group is continuing its research, having found that most of the plastic particles in water samples taken from the German Bight—an area of the North sea that encompasses some of the world's busiest shipping lanes—originate from binders used in marine paints. The hypothesis is that ships literally leave a kind of skid mark in the water, and that as a source of microplastics, it is of a significance similar to that of tyre wear particles from cars on land. I am sure that that will cross the Minister's desk as part of his new portfolio with responsibility for roads.

Of all plastic entering the ocean, 94% ends up on the seabed, where it will take centuries to degrade. In the process, it will release chemicals, microplastics and nanoparticles, all of which are harmful for marine life and for the ecosystem balance. With that in mind, will the Minister apprise me of which, if any, of the anti-fouling coatings are proven not to leach microplastics into the sea? We do not want to replace one pollutant with another.

I notice that no consultation was done on this draft statutory instrument, but we broadly support its intention. However, we do not want to find ourselves here again in 20 years debating the leaching of microplastics into our waters.

4.49 pm

Mr Holden: I thank hon. Members for their contributions. I will address a couple of issues directly and will certainly write to the hon. Member for Wythenshawe and Sale East about the points that he raised. I will also put them to the Maritime and Coastguard Agency, which will look at the measures.

The hon. Member for Birmingham, Perry Barr made an important point. As the Durham miners put it, “The past we inherit, the future we build”. I am sure that we all, on both sides of the Committee, want to build proper regulations for international waters to address the issues he has raised.

With that, I thank the Committee for its consideration of the draft order, which is intended to ensure that the Government have the powers to implement the convention and its amendments into domestic law, thereby protecting the UK’s marine environment and fulfilling the UK’s international obligations.

Question put and agreed to.

4.51 pm

Committee rose.

