



**Consultation on UK Implementation and  
Ratification of the Hazardous and Noxious  
Substances (HNS) Convention**

**(Final stage)**

**April 2005**

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# **Section 1: Introduction**

## **The HNS Convention**

- 1.1 This is the second stage of public consultation on the Government's proposals for the implementation of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the HNS Convention). This was adopted following an international diplomatic conference at the International Maritime Organization (IMO) in 1996. The IMO is the United Nations agency responsible for matters relating to shipping safety and the prevention of pollution from ships.
- 1.2 The HNS Convention provides an international compensation and liability regime governing damage arising from the carriage of hazardous and noxious substances (HNS) by sea.
- 1.3 The Convention creates new liabilities on shipowners and on certain cargo interests to ensure that more effective liability and compensation arrangements are in place to cover damage arising from the carriage of a range of hazardous substances and products by sea

## **Consultation so far**

- 1.4 In December 2003 the DfT published an initial consultation paper entitled "Consultation on UK implementation and ratification of the HNS Convention". The paper set out the general principles of the HNS Convention and invited comments on the timing of UK ratification of the Convention, as well as a number of issues concerning implementation.
- 1.5 We received 78 responses (including completed questionnaires on HNS receipts) from the organisations listed at Annex I. Due to the volume and length of responses received, we have not included a full copy of every response in this document. Instead, key extracts from responses to the specific questions posed in the consultation can be found at that annex. The key issues arising from these responses have also been covered at Section 3 of this document. Responses that raised issues not directly related to the original questions posed at Stage I of the consultations are addressed at Section 4.
- 1.6 In analysing the responses, we have not used a statistical approach. Although in the majority of cases stakeholders were in agreement with the Government's proposals, we did not feel that it would be appropriate to consider the responses in terms of numbers for and against. Many of our stakeholders are organisations or associations who represent particular groups of industry so it would not be accurate to assume that a given number of responses represented a particular number or proportion of companies. Rather we have taken the view that the various responses represent a range of views and we have endeavoured to acknowledge and respond to all of them. We have tried to give an indication of

general views of stakeholders so we have made references to majorities or minorities, where appropriate.

- 1.7 In light of some of the comments received, it is important to explain at the outset that there is no prospect of the text of the Convention being amended and we cannot, therefore, make any changes to the underlying principles of the Convention or the specific provisions it contains.
- 1.8 Through the initial consultation paper we sought to consult on the provisions that would require further national legislation and issues that were not specifically covered by the Convention, such as a national reporting system or penalties for failure to maintain insurance. We have received a number of proposals that would have required amendments to the HNS Convention. These cannot be adopted for the reason explained above.

### **Aim of this document**

- 1.9 The purpose of this document is to:
  - Respond to issues raised during the initial public consultation;
  - Invite comments on the draft legislation that will allow the UK to ratify and implement the HNS Convention, including establishing a national reporting system;
  - Seek information on receipts of HNS by potential receivers.

### **Parliamentary procedure to date**

- 1.10 The enabling legislation which allows us to implement the HNS Convention is contained in Section 14 and Schedule 3 of the Merchant Shipping (Maritime and Security) Act, 1997. The need for the UK to become a party to the HNS Convention has, therefore, already been accepted by Parliament. All that remains is for Parliament and the Secretary of State to determine when and how.

### **Further legislative requirements**

- 1.11 The 1997 Act provides the *enabling powers* to ratify and implement the HNS Convention, but the Convention can only be given effect, or brought into force, by Her Majesty by Order in Council. This means that a draft Order has to be laid before, and approved by, both the House of Commons and the House of Lords and then agreed by Her Majesty in Council.
- 1.12 The Order will give the HNS Convention the full force of law once the Convention has entered into force internationally, see Section 6 for the draft legislation and explanation.

- 1.13 Regulations have also been drafted to implement the reporting system that is necessary in order to fully implement the Convention. The 1997 Act does not provide the necessary powers to adopt a reporting system so these Regulations are being made under the 1972 European Communities Act and will enter into force on the date the UK ratifies the Convention. This is so that the reporting system can be established before the Convention enters into force and therefore before there is any financial liability.

## **Structure of this consultation document**

- 1.13 The remainder of this document is structured as follows:

- Section 2** summarises the present maritime liability arrangements for HNS and sets out the basis for UK ratification of the Convention;
- Section 3** considers the issues raised by the initial consultation document and the Government's responses and outcome relating to the eight issues raised at the first stage;
- Section 4** deals with other issues arising from the responses to the first consultation document;
- Section 5** invites further comment on issues relating to the implementation of the HNS Convention
- Section 6** contains the drafts of Order and the Regulations needed to implement the existing Merchant Shipping legislation with a commentary.

A number of other documents that will be useful to those reading the consultation paper are attached to the main document as the following Annexes:

- Annex I** Responses to the key issues raised in the initial consultation document and a list of all stakeholders who responded to that consultation;
- Annex II** Overview of the HNS Convention;
- Annex III** Cover provided by the HNS Convention from the claimant's perspective;
- Annex IV** Shipowner liability under the HNS Convention;
- Annex V** The HNS Fund;
- Annex VI** Questionnaire on receipts of HNS between 2002 and 2004;
- Annex VII** Summary of issues for further consultation;
- Annex VIII** Partial Regulatory Impact Assessment

## Responses to this consultation

1.14 This consultation will run for 10 weeks. The deadline for submitting responses is **13 June 2005**.

1.15. Responses to this consultation should be submitted:

By email to: [hns@dft.gsi.gov.uk](mailto:hns@dft.gsi.gov.uk)

By post to Clare Boam  
Shipping Policy 1a  
Department for Transport  
Great Minster House  
76 Marsham Street  
London SW1P 4DR

Queries can also be made through the above addresses or by telephone, please call Clare Boam on 020 7944 5444.

1.16 A summary of responses will be published on the DfT website. Printed copies of the summary will also be made available on request from the address at paragraph 1.15. We will therefore assume that unless indicated otherwise, all responses may be made available in this way, although such responses may nonetheless be included in any numerical or unattributed summary of responses received.

1.17 However, if you ask for your response (including responses to the questionnaire at Annex VI) to be kept confidential this will only be possible if it is consistent with obligations under the Freedom of Information Act 2000, which entered into force on 1 January 2005. Where information has been provided in confidence, this would be considered for exemption, and while release is unlikely, it is dependant on the nature of the request, the nature of the information and the nature of the public interest at the time of a request.

## **Section 2: UK ratification of the HNS Convention**

### **The need for an international convention**

- 2.1 The current arrangements governing the carriage of hazardous and noxious substances (HNS) by sea do not ensure that those suffering damage receive provide adequate, prompt and effective compensation.

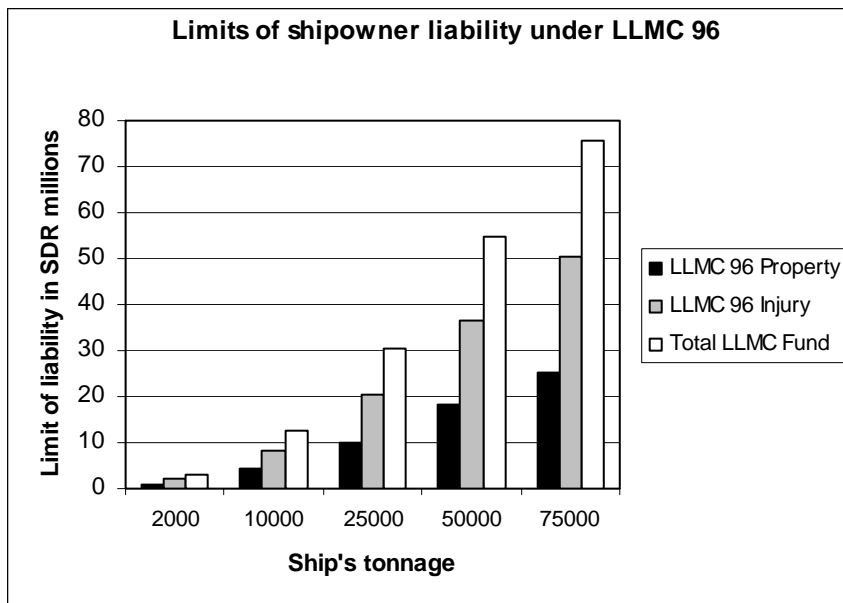
### **Current arrangements for damage arising from carriage of HNS by sea**

- 2.2 There are currently no specific international or national arrangements dealing with HNS. Instead, in the UK, shipowners' limitation of liability arising from an incident involving the carriage of HNS by sea is governed by the general rules on limitation under the 1996 Protocol to the International Convention on Limitation of Liability for Maritime Claims, 1976, (LLMC 96).
- 2.3 Under LLMC 96, claims are subject to limitation of liability depending on the tonnage of the vessel in question and are split into two categories; Claims fall into two categories; loss of life or personal injury and all other claims (i.e. property claims). The limit of liability for loss of life/personal injury is significantly higher than the limit of liability for property claims. Furthermore, if the cost of damages arising from loss of life/personal injury exceeds the limit of liability established for those claims, then the amount available for property claims can be used to pay loss of life/personal injury claims, although these claims will have to compete with any eligible property claims.
- 2.4 The regime requires claims to be pursued against a Limitation Fund established by the shipowner in the appropriate Court.
- 2.5 Under LLMC 96, the shipowner is entitled to limit his liability depending on the tonnage of the vessel and the type of damage. The shipowner must establish a Limitation Fund in the appropriate Court<sup>1</sup> and all claims must be pursued against that fund.

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<sup>1</sup> In England and Wales this will be the Admiralty Court, in Scotland the Court of Session and in Northern Ireland the High Court, Queen's Bench Division.

- 2.6 The limits of liability under LLMC 96 start at 2,000,000 SDR for loss of life personal injury claims and 1,000,000 SDR for property claims, based on vessels not exceeding 2000 units of tonnage. In comparison, liability under the HNS Convention starts at 10,000,000 SDR for vessels under 2,000 tonnes.
- 2.7 The limits of liability under LLMC 96 then increase by a set amount for each additional unit of tonnage. The chart below demonstrates the applicable limits of liability based on a range of different sized vessels.



- 2.8 In the event of an incident the limits of liability set out above would presently apply. However, there is currently no requirement for shipowners of vessels carrying HNS to maintain insurance to meet the limit of liability under LLMC 96<sup>2</sup>. Although it seems most shipowners do maintain insurance, there is no guarantee that insurance or other financial security would be available to meet the costs arising from an incident.

### **Insurance and cost recovery**

- 2.9 Cost recovery can prove extremely problematic whether insurance is in place or not, particularly because of the requirement to prove fault (of the shipowner as defined in the 1996 LLMC Protocol) in a court of law.

Ships operating as a so-called 'one ship company', if these are uninsured, are of particular concern. If an incident occurs involving such a ship and it is damaged, or becomes a total constructive loss, then there may be little or no hope of recovering costs. Furthermore, many shipowners will be based outside the jurisdiction of the European Union and it may be difficult in such instances to enforce a judgement in a UK court.

<sup>2</sup> Compulsory insurance under the Civil Liability Convention for vessels carrying persistent oil in bulk as cargo but this only provides cover for pollution damage. Non-pollution damage such as fire or explosion involving such cargoes will be covered under the HNS Convention - see Annex III.



There are no mandatory insurance requirements at present. An IMO resolution adopted in November 1999, encouraged owners of seagoing ships to maintain adequate insurance to meet their liabilities, and to ensure that their ships carry on board a certificate issued by the insurer. The Maritime and Coastguard agency set out these guidelines in Marine Guidance Note (MGN) 135(M). Until now the Government has looked to shipowners to comply with this recommendatory notice. Difficulties can still arise even when the ship is insured. This is because marine insurers will invariably be providing indemnity insurance which means that a claim must be pursued against the shipowner through the Courts. Only then will the insurer pay the claim. This is generally referred to as the 'pay-to-be-paid' rule. Pursuing a successful claim may, however, be prohibitively expensive for claimants, or impossible if the shipowner proves to be legally inaccessible.

## Risk of incidents

2.10 The partial Regulatory Impact Assessment (RIA) which was published with the initial consultation looked at the risk of incidents involving HNS occurring in UK waters. A chemical spill risk assessment commissioned by the Maritime and Coastguard Agency in 2000 looked at the number of vessels carrying HNS<sup>3</sup> both worldwide and in UK waters, and number of incidents which had occurred and from this predicted the likelihood of an incident occurring both worldwide and in UK waters. The assessment considered data available for the years 1989-1998. During this period a total of 220 casualties involving chemical tankers occurred worldwide, of these, 38 occurred in UK waters. For the same period there was a total of 105 casualties involving gas carriers with 13 of these occurring in UK waters.

3.3 From this, the average frequency of incidents per year was calculated:

	UK	Worldwide	Total
<b>Chemical Tankers</b>	3.8	18.2	22
<b>Gas Carriers</b>	1.3	9.2	10.5
<b>Total</b>	5.1	27.4	32.5

3.4 The report then looked at the number of spills arising from these incidents. (Gas ships do not tend to 'spill' as any product released is very rapidly vaporised. Most risk from gas ships is that of explosion and fire). A total of 24 spills occurred, which means that approximately 11% of incidents resulted in a cargo spill.

3.5 Whilst the majority of incidents do not result in a chemical spill, the HNS Convention also applies to preventive measures taken. A response to an incident involving HNS cargo could result in a claim to the HNS Fund. Any such

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<sup>3</sup> The report was restricted to chemical tankers and gas ships. The MCA are currently reviewing whether to commission a risk assessment on packaged goods.

claim however is likely to be considerably smaller than that which would have ensued if a spill had occurred giving rise to claims from third parties.

- 3.11 The risk of a high cost incident occurring either in UK waters is relatively low. However, it is impossible to predict what will happen and the HNS Convention puts in place insurance and mechanisms should an event occur.

### **Development of the HNS Convention**

- 2.10 Many of those aware of the HNS convention may also be familiar with the existing regime governing liability and compensation for damage arising from the carriage of persistent oil by sea. The Civil Liability/ International oil Pollution Compensation Fund regime (CLC/Fund) has been in force for more than 26 years and has been very successful, providing compensation in over 130 incidents involving persistent oil carried by sea. At the time of writing, there are currently 86 States parties to the regime.
- 2.11 The HNS Convention is largely modelled on the CLC/Fund regime and once it enters into force, most of the harmful or polluting substances carried by sea will then be governed through one or other of these regimes.
- 2.12 The HNS Convention will significantly increase the limit of liability of the shipowner and should also ensure that costs are recoverable, through the right of direct action against the person providing financial security (usually the insurer).

### **The HNS Convention as part of a framework of international regulation**

- 2.12 The provisions of the United Nations Convention on the Law of the Sea (UNCLOS) 1982 relating to the prevention, reduction and control of pollution of the marine environment from vessels strike a balance between the measures which coastal States can take in the territorial sea and in the exclusive economic zone (EEZ)<sup>4</sup> and the navigational rights of foreign vessels in those zones. This balance is reflected in article 211 (Pollution from vessels), which recognises not only the primacy of international rules and standards but also the interests of coastal States to the extent that they are compatible with the global legal regime.
- 2.13 The HNS Convention will add to the number of international liability conventions currently in force (or which should be in force relatively soon) and promotes the general rights and duties of other maritime conventions concerned with the protection of the marine environment. Article 194 of UNCLOS provides that States shall take all measures necessary to prevent, reduce and control pollution of the marine environment. Article 235 of UNCLOS further provides that, with the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall co-operate in the further development of relevant rules of international law.

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<sup>4</sup> The UK has a Pollution Control Zone which is accepted internationally as an area 'equivalent to an EEZ'.

- 2.14 With these internationally established principles in place the HNS Convention was developed to ensure that adequate, prompt, and effective compensation is available to persons who suffer damage arising from HNS when carried by sea.
- 2.15 A key gap in marine liability that governments are seeking to fill by means of an international convention is pollution from ships' fuel oil (bunker fuel) and to address this, another Convention, the Bunkers Convention<sup>5</sup>, has been adopted. The UK has signed the Bunkers Convention and intends to ratify as soon as practicable and in any case by June 2006, which is the deadline set by the European Council Decision of 19 September 2002 (2002/762/EC). The Government intends to consult separately on the implementation of the Bunkers Convention.
- 2.16 The HNS Convention therefore forms an important part of the overall framework of instruments developed to ensure that where pollutants and dangerous substances are carried by sea, there is a suitable and effective system in place to ensure that when accidents happen, victims are properly compensated.
- 2.17 Taken together with the existing oil pollution compensation regime and LLMC 96, the HNS and Bunkers Conventions will form part of the Government's strategic approach to improve shipping standards and providing for more effective compensation arrangements for claimants by means of appropriate increases in the liability for shipping incidents.

### **Measures to improve safety**

- 2.18 Of course, it is not enough to ensure that financial arrangements are in place for when things go wrong, it is also important to seek (a) to reduce the occurrence of incidents as far as possible and (b) to ensure that if the worst does happen, we are well prepared to respond promptly and efficiently.
- 2.19 UK is committed to promoting safer shipping and to minimising the incidence of accidents at sea. As a global industry, shipping is best regulated at the International Maritime Organization (IMO). UK is a party to the IMO Safety of Life at Sea (SOLAS) and Prevention of Marine Pollution (MARPOL) Conventions, as well as to the STCW Convention which governs standards for seafarers' training, certification and watch-keeping. Flag State Control exercised by the Maritime and Coastguard Agency (MCA) ensures that UK ships conform to Convention requirements.
- 2.20 UK has been playing a leading role at the International Maritime Organization (IMO) in taking forward a proposal to introduce an IMO Audit Scheme. The Audit Scheme, which would assess the effectiveness of IMO Member States' implementation and enforcement of relevant IMO safety and pollution prevention Convention standards, should serve to encourage further strengthening of flag State implementation world-wide.

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<sup>5</sup> The International Convention on Civil Liability for Bunker Oil Pollution Damage (2001).

- 2.21 While primary responsibility for the safety of any ship lies with its owner and with its Flag State, Port State Control provides a necessary safety net. The UK has implemented the latest European legislation on Port State Control, which targets inspection resources more effectively against substandard ships.
- 2.22 We have also implemented legislation on the supervision of organisations that survey ships (classification societies). We are working together with the maritime industry through the international Quality Shipping Campaign to improve performance and rid the seas of substandard ships.

## **Contingency arrangements**

- 2.23 As part of the Government's overall policy in respect of incidents involving HNS, it is also necessary to consider the contingency arrangements that apply for responding to incidents.
- 2.24 The Protocol of 2000 to the International Convention on Oil Pollution Preparedness, Response and Co-operation Relating to Pollution Incidents by Hazardous and Noxious Substances, 1990 (OPRC-HNS) provides a global framework for international response and co-operation in combating incidents or threats of marine pollution from ships carrying Hazardous and Noxious Substances, such as chemicals. Parties to the HNS Protocol are required to establish measures for dealing with pollution incidents, either nationally or in co-operation with other countries. Ships will be required to carry a shipboard pollution emergency plan to deal specifically with incidents involving HNS. This protocol to OPRC is not yet in force: it requires 15 accessions and currently there are 8.
- 2.25 The Maritime and Coastguard Agency (MCA) anticipate that there will be four HNS levels of response, in part provided by the Chemsafe scheme. The MCA anticipate that the HNS level four response will be provided by the existing National Hazardous and Noxious Substances Response Team contracting to the MCA. The existing contract has been in place since 1992.
- 2.26 An HNS Level three response could be provided by one of the twelve Firefighting Teams which are being developed by the Office of the Deputy Prime Minister in conjunction with the MCA. This is the Sea of Change Project which was initiated after the reduction and removal of Fire Teams around the UK. These teams had been trained in offshore firefighting. However, work is incomplete and at this stage the MCA cannot be specific about its planning and implementation schedule. It is anticipated the 12 teams will have the remit to attend ship casualty fires and in addition an HNS response capability. There are no other teams available for this type of response.
- 2.27 Once the operational responses have been developed and agreed, the MCA will be in a stronger position to review and revise the draft legislation. A revised OPRC Port and Harbour Response plan will also have been amended to take into account the future arrangements for ports and harbours to respond to HNS incidents. These will have to be subject to the appropriate consultation process.

## **National Contingency Plan**

- 2.28 The UK has a National Contingency Plan for Marine Pollution from Shipping and Offshore Installations. The text which is currently in operation was published in February 2000.

The legal basis for the plan is section 293 of the Merchant Shipping Act 1995, as amended by the Merchant Shipping and Maritime Security Act 1997. This section gives the Secretary of State for Transport the function of taking, or co-ordinating, measures to prevent, reduce and minimise the effects of marine pollution. The plan meets one of the UK's obligations under the International Convention on Oil Pollution Preparedness, Response and Co-operation 1990 (the OPRC Convention).

The purpose of the plan is to ensure that there is a timely, measured and effective response to incidents. It provides for the roles and responsibilities of local authorities and Government in the response to an incident. Coastal local authorities may face incidents that require equipment or expertise beyond their capabilities. Therefore, the MCA may need to use national assets in the response to a marine pollution incident.

The scope of the plan matches the scope of the Secretary of State's powers of intervention. It, therefore, refers to pollution by oil and also other hazardous substances.

There is currently a review of the plan in progress and we anticipate that the new National Contingency Plan will come into effect in Spring 2005.



## **Section 3: Outcome of the initial consultation**

### **Initial consultation**

- 3.1 In the initial consultation paper we invited comments on the following issues which needed to be addressed before implementation of the HNS Convention.
- the timing of UK ratification of the Convention;
  - the definition of 'receiver';
  - the agent/principal relationship;
  - lower national thresholds for reporting receipts of HNS;
  - compliance and verification of reporting receipts of HNS;
  - shipowners' insurance cover;
  - compulsory insurance certificates;
  - the option to exclude types of domestic vessels; and
  - national arrangements for levying for domestic HNS cargoes.
- 3.2 A summary of the responses to each issue appears below, followed by the Government's position in the light of the comments received. A list of the responses received is attached at Annex I.

### **Question 1 - Timing**

- 3.3 In the initial consultation we asked if stakeholders agreed that UK ratification of the Convention in mid 2004 would provide an appropriate time period between implementation of a UK reporting system and the earliest likely entry into force date of the HNS Convention. If stakeholders did not agree we invited suggestions for a suitable date for UK ratification of the convention.

### **Summary of responses received**

- 3.4 Some respondents were content with the Department's proposal to ratify the HNS Convention during 2004 so as to allow the maximum time to become familiar with the reporting arrangements before the financial obligations apply once the convention comes into force internationally. The Department has taken into account, however, the concern of others that early implementation of the reporting requirements in the UK would be unfavourable to some parts of industry. Over the following pages we have summarised the issues raised and sought to address them topic by topic.

### **Burden of premature ratification**

- 3.5 It has been argued, particularly by the storage industry (which seems generally to act as agents on behalf of principal receivers), that "premature ratification" would be excessively burdensome.

### **Government response**

As explained in the initial consultation document, a European Council Decision was adopted on 18 November 2002 authorising EU Member States to ratify the HNS Convention, and if possible, by June 2006. Taking this into account, as well as indications from other States (see paragraph 3.6) a realistic entry into force date for the Convention would be December 2007 (it is possible, although unlikely, that the Convention could enter into force even sooner).

The HNS Convention will place financial liabilities on certain parts of industry. To ensure that liable companies are correctly identified, implementation of the Convention will require affected companies to comply with certain reporting obligations.

To delay UK ratification until June 2006 could allow industry only 18 months, (i.e. just one full cycle of the reporting system) to prepare, and to become accustomed to the system, before they would be financially liable. This would not allow time for possible refinements of regulations in the light of practical experience, before international entry into force of the Convention. Early introduction of the legislation is intended to allow for such amendments to the reporting regulations. We consider this flexibility vital to ensure that the most effective system is in place, in particular through the accurate identification of contributors and companies with reporting obligations.

### **Likely participation by other States**

- 3.6 We were asked what is the position with regards to other States and whether the UK position as chair of the International Maritime Organization's HNS Correspondence Group would be of any assistance in obtaining information on other State's positions.

### **Government response**

The UK submits a regular report to the IMO Legal Committee, detailing States' progress towards ratification of the HNS Convention. Since April 2004 the following States have reported on their considerations of possible ratification: Japan, Netherlands, Denmark, New Zealand, Ireland, Italy, Singapore, Germany, Sweden Canada, Finland, Norway, Greece, Latvia and Spain. These reports only cover those States that have been active participants in the correspondence group. We will continue to monitor progress towards ratification and entry into force of the Convention.



## **Need to protect UK coastal waters**

- 3.7 Some respondents commented that the proposals do nothing to decrease the risk of environmental damage.

### **Government response**

Certainly, the aim of the Convention is to ensure that adequate and effective compensation is available in the event of an incident. Other measures (as described in Section 2) exist for the purpose of reducing and minimising risk to the environment from damage from shipping, including carriage of HNS.

The requirement on shipowners to maintain insurance and the provision of strict liability ought to play a part in encouraging all shipowners to behave responsibly - as most do. However, even with the very best managed vessels, the nature of maritime transport is that accidents will happen and compensation should be available for victims where they incur damage. That compensation should not be subject to the present complex legal arrangements and uncertainty of cost recovery.

## **Safe construction of vessels**

- 3.8 One Stakeholder suggested that the ratification of the Convention should be associated with strong support from all countries to comply with the various IMO codes for the construction of safe vessels and should emphasise the need for thorough and controlled ship crew training for the carriage of dangerous goods - in line with road transport requirements - as detailed in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). It should also be combined with an increase level of physical inspections to determine ships' sea viability.

### **Government response**

The International Maritime Organisation is the international body responsible for the research, development and drafting of maritime conventions. Once a State becomes party to a convention it is obliged to enact the appropriate mechanisms to give force to such conventions. The Organisation encourages States to ratify or accede to international agreements addressing the safety and safe operation of ships, and to adopt the necessary measures consistent with such Conventions. It encourages flag and port States to take appropriate measures to enforce international instruments to prevent the operation of sub-standard ships and poorly trained crews. Ships' insurers and cargo owners working in partnership with Classification Societies and Governments also carry out work to ensure that those ships transporting polluting substances meet international standards.

*Cont'd*

Annex II of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) sets out the regulations for the control of pollution of HNS. The regulations include the requirement to comply with operational procedures ensuring the safe handling of cargoes, tank cleaning, and slops handling as well setting out constructional standards for existing ships and new builds. These existing measures taken with the developments in STCW should ensure that accidental discharges are kept to a minimum. However, any sea transport is exposed to the full force of the weather and sea conditions could render even the best maintained ships and best trained crews helpless. It is therefore appropriate that measures are in place to provide compensation to relatives of those who may be killed, or to those who are injured or suffer pollution, or other damage, from the carriage of HNS by sea.

### **Participation in the consultation**

- 3.9 Concern was expressed that the proposal to implement the HNS Convention is not widely known.

#### Government response

The initial consultation document was sent to over 70 contacts in industry including over 20 trade associations. Further, we wrote to over 1200 companies identified through the Health and Safety Executive as handlers of substances that may be governed by the HNS Convention to inform them of the proposals and inviting them to participate in the consultation. We received a total of 71 responses. To this end we would urge trade associations to encourage their members to participate in this final consultation process. All documents are freely available via the Internet and hard copies can be provided on request (email: [hns@dft.gsi.gov.uk](mailto:hns@dft.gsi.gov.uk)). The Government has also contributed to trade journal articles and participated a number of international, regional and national efforts involving industry representation.

### **Identification of HNS**

- 3.10 It has been pointed out that the lack of a complete list of chemicals classified as HNS makes it difficult to identify all companies affected by the proposed legislation.

#### Government response

An electronic system has been developed to provide an optional reporting system for use by industry, States and the HNS Fund Secretariat. Not only will this function as a reporting system it also contains a database of all chemicals covered by the Convention. The system has now been finalised - see Section 5 explains how the system works and provides details for obtaining copies.

- 3.11 Having regard to the responses to the initial consultation exercise, further work on the development of the electronic system and further discussion at regional and international level the Government's view in respect of ratification is set out below.

**Outcome on timing of ratification**

**In light of the comments received, the Government has altered the timetable for implementation, with a view to now ratifying the Convention in 2005.**

**The Government is satisfied that this will allow time for the industry to become acquainted with the procedures and to ensure that those likely to become contributors are identified so that the obligations under the HNS Convention can be applied equitably once the convention is in force. We consider it is advantageous to be able to implement the reporting system in advance of the target date set by the European Council Decision (2002/971/EC) and ratification in 2005 will allow this.**

## Question 2 - Definition of receiver

- 3.12 We asked if stakeholders agreed with our proposal to use of the definition of receiver as set out in the Convention in Article 1(4)(a). We felt, following consultations with other States, that this would help achieve a harmonised approach to the definition of receiver by key potential States Parties, and would be preferable to developing an alternative definition, which would be easier to implement and less burdensome on industry.

### Summary of responses

- 3.13 There was support for the Department's intention to use Article 1(4)(a) to define the 'receivers' in the UK. There were, however, some respondents that disagreed and most of these argued for a definition of 'receiver' to be determined in accordance with national legislation.
- 3.14 Those who disagreed did, however, clearly support the option that those first taking delivery of HNS from a ship should be able to pass on the responsibility for payment of levies to the principal. The main objection to implementing the definition a receiver set out at Article 1(4)(a) was to the practicalities arising from the reporting obligations on agents when acting on behalf of a principal.
- 3.15 This is clearly a situation that will arise in the storage industry. Stakeholders representing the storage industry did not believe that they should be liable to pay levies and also feared that there may be many instances where they are unable to pass on liability to a principal on whose behalf they are acting and will therefore be burdened with responsibility to pay any levies.
- 3.16 It was suggested that the Government could use Article 1(4)(b) to implement a national definition of receiver that would entirely remove the storage industry from the scope of the Convention.

#### **Government response**

It should be noted that the provision allowing a person acting as an agent to pass on liability was agreed precisely to provide a mechanism which could prevent agents from having to contribute to the HNS Fund. This is in contrast to the equivalent regime for oil where there is no such provision: the person who receives the oil cargo is liable and must pay even if they act as an agent for a principal (this provision was also carried over into the HNS Convention in respect of persistent oil). This system is administratively simpler. However, it requires any agents who do not wish to make contributions to make their own contractual arrangements with the principal to cover any such costs arising from import of the product.

When the HNS Convention was being negotiated there was strong representation, especially from the storage sector, that the oil pollution model was inappropriate for the vast number of other HNS products involved. The provision allowing financial responsibility to be passed to a principal, therefore, adds an extra layer of complexity to the system in order to provide this concession.

**Cont'd**

The Government has opted to use Article 1(4)(a) to define the 'receiver' because it is clear that this is now the preferred international solution of states actively pursuing implementation of the Convention, including a number of EU Member States. This view has also been endorsed by the International Maritime Organization's Legal Committee and an EU meeting considering regional implementation.

This approach is likely to lead to a more uniform application of the convention and this will particularly relevant to ensure fairness and equal treatment between competitors, especially within the EU.

While Article 1(4)(b) may appear a more flexible option it has to be appreciated that it would, in practise, also carry a heavy administrative consequence.

It is clear that use of Article 1(4)(b) would be particularly onerous for businesses in any state that were to adopt it. This is because the provision requires the state to demonstrate that the "total contributing cargo received according to such national law is substantially the same as that which would have been received under Article 1 (4)(a)." To achieve this, while still providing for passing on the liability for levies to the principal, would involve reporting by more of those involved in the chain of supply than will be the case by use of Article 1(4)(a).

This might work in respect of a state that had just one or two companies dealing in particular HNS. However, in the case of the UK where there would be a number of potential contributors and many different types of HNS, the overall administrative burden on both industry and government required in order to demonstrate that other states' contributors were not in any way financially disadvantaged by the use of option (b) would be unduly onerous and, in practice, worse than that required under option (a) because of the need for additional reporting and verification.

The Government also believes that a number of the concerns raised, such as liability when a principal is based outside of the jurisdiction of the Convention, can also be addressed. Section 9 looks specifically at the reporting system and explains why and how, in most cases, a physical receiver **will** be able to pass on financial liability.

### **Outcome - Definition of receiver**

**The Government still considers the use of the definition of the 'receiver' in Article 1 (4)(a) to be the most appropriate. It is the preferred international solution of states actively pursuing implementation of the convention and is likely to lead to a more uniform application of the Convention.**

**While a national definition may appear to be the more flexible option, it has to be appreciated that it would, in practise, also carry a heavy administrative consequence. This is because it would be necessary to demonstrate that the total contributing cargo received according to such national law would be the same as if the Convention definition had been applied.**

**The most practical alternative for use of Article 1 (4)(b) would be to abandon the scope for the initial receiver to pass on the financial responsibility to a Principal. But the Government believes this would not be in the best interest of UK businesses - particularly in the storage industry.**

### Question 3 - Agent and principal

- 3.17 We invited comments on the application of the agent/principal relationship contained within the Convention definition of receiver which allows a physical receiver of an HNS cargo to pass on financial liability.

#### Summary of responses

- 3.18 While, in general, there was support for the Department's proposals in respect of the role and responsibilities of agents when a principal can be identified, there were some stakeholders who did not agree, especially the storage industry. Concerns were expressed that the proposals would be administratively burdensome, although others did not anticipate great problems in passing on details of the receiver.

#### **Government Response**

To some extent the concerns raised on this issue also related to the obligations to identify the receiver so as to ensure that the financial responsibilities under the convention can be passed on - so the comments in respect of Question 2 are also relevant.

The agent/principal relationship is an integral part of the definition of receiver which will apply when the UK ratifies the Convention. There will undoubtedly be some additional administrative burden on those agents wishing to make use of the provision. However this is necessary to enable them to pass on liability.

We consider the information required for reporting purposes does not exceed information within the knowledge and reasonable control of those companies. The information required is contact details of the principal, evidence that the agent is indeed acting on behalf of a principal, and information of the HNS in question. We have not been made aware of any situation where an agent is acting on behalf of a principal but yet that principal cannot be adequately identified.

The purpose of inviting comments on this particular provision was to provide an opportunity for industry to raise any concerns over the practicalities of this provision.

It should also be noted that the agent/principal relationship does not apply in respect of persistent oil and LNG cargoes.

- 3.19 The following paragraphs summarise the issues that were raised in respect of the practical application of the agent/principal relationship along with the Government's comments.

### **Liability on receivers (agents) when the principal is outside the jurisdiction of the Convention**

- 3.20 The storage industry expressed concern that there will be many instances where independent storage companies could not pass on liability as their principal would not be subject to the Convention.
- 3.21 Two situations were identified whereby a storage company may receive HNS cargo on behalf of a principal based outside of the UK (in a State not expected to ratify the HNS Convention). In the first scenario, a cargo is temporarily stored in the UK en route to another country that is not party to the Convention.

#### **Government Response**

We believe that concerns over this situation will be addressed largely by the provisions within the Convention for cargo in transit. Under article 1(10) of the Convention, cargo in transit is only considered to be contributing cargo at the final destination. Cargo which is transferred from one ship to another either directly **or through a port or terminal in the course of carriage** is only considered to be contributing cargo at the final destination. Therefore, where such cargo is received as *cargo in transit* there will be no liability for the receiver, nor will they be required to report receipts of such cargo. See Section 6 for draft legislation.

A second scenario was put forward whereby a cargo is delivered within the UK but the contract is between the storage company and another company registered overseas.

In this situation the agent is not prevented from passing on liability. Provided that the cargo is destined for premises within the UK then the person at that address will be liable for financial contributions. The agent will need to provide a name and address and documentation demonstrating that they are acting as an agent and the HNS cargo is destined for that address.

We have noted concerns that multi-national companies may change their contracts with agents so that the contract is with a company outside of the jurisdiction of the UK in order to avoid liability although the HNS is received in the UK. Where a delivery address is in the UK then as long as the agent discloses the person at that address as the principal, the person at that address will be considered to be the principal. This is the case even if the contract is with a company with a presence outside of the UK. Any such delivery address will always be within the jurisdiction of the UK and the regulations are being drafted to ensure that the agent will only need to demonstrate an agreement to deliver to that address as evidence of the agent/principal relationship.



- 4.14 A stakeholder asked if HNS which undergoes ship-to-ship transfers would be classified as contributing cargo. Another stakeholder, noting the particular risk of pollution presented by ship-to-ship transfers for a variety of reasons including inclement weather, asked if damage arising from ship-to-ship transfers would be covered under the HNS Convention.

#### **Government Response**

The definition of contributing cargo (Article 10) specifically excludes cargoes transferred ship-to-ship or through a port or terminal, although they will be classified as contributing cargo at the final destination (see section 5). However, any damage arising from HNS undergoing such a transfer *will* be covered by the Convention.

However, with the increase in at sea ship-to-ship transfers in north-west European waters over recent months, the UK is in the process of establishing a control regime on a statutory basis. The Department undertook public consultations in 2003 together with draft regulations, and revised Regulations - which will take the results of that consultation into account - are being drafted.

In this context it should be noted that currently, ship-to-ship transfers in UK waters are carried out in accordance with non-statutory guidelines. The application of these guidelines is overseen by the UK's Maritime and Coastguard Agency. In accordance with these guidelines, ship-to-ship transfers may be carried out in only two localised sea areas within UK waters.

#### **Intermediary distributors**

- 4.15 We have noted concerns that intermediary distributors may find themselves liable under the Convention when this was not the original intent

#### **Government Response**

Where intermediary distributors form part of the transport chain between port or terminal to the end user they are not expected to become liable under the Convention as they should be able to identify a principal within the UK. We invite comment from this industry sector on whether they consider they are likely to be identified by a physical receiver of HNS as a principal.

## **Fairness**

- 3.23 One stakeholder was concerned that subsidiaries of larger companies will become involved in the reporting process, whereas stand alone legal entities of exactly the same size will not. They felt that this would be unfair and not within the spirit of the single market and competition policy. Instead, they suggested that the reporting procedure for subsidiaries should be broken down into type of business and only the totals for those in the same business should be agglomerated. It was suggested that this would overcome the concern that businesses could split themselves up artificially (e.g. regional companies but in the same sector) to avoid the potential charges, whilst maintaining competitive neutrality across different companies in the same sector.

### **Government Response**

The reporting procedure is already segregated in terms of different groups of HNS, with separate accounts for oil, LPG etc. The reporting system cannot be broken down further as its purpose is to determine liability to contribute to the HNS Fund which is based on the same accounts.

## **Evidence of the agent/principal relationship**

- 3.24 It was proposed that a signed form, including faxed signatures, could be submitted as evidence of a contractual relationship between the agent and principal.

### **Government Response**

The draft regulations do not specify what information will be used to determine the existence of an agent principal relationship but requires an agent to provide information in his possession to be able to ascertain the relationship of receiver and principal. Under the terms of the Convention, the agent is only required to 'disclose' a principal. Therefore an agent will need to provide the name and address of the principal, the quantity of each category of substance received on behalf of that principal and be able to show that he is acting as an agent on behalf of a principal.

The regulations have been drafted so there is no requirement to provide a specific document, such as a contract, in order to demonstrate that the relationship exists, (indeed our consultations with industry have revealed that a contract may not exist). Rather, the agent will be free to submit whatever information he or she has available to demonstrate such a relationship; for example a delivery note, an invoice, a contract or agreement etc.

## **Financial liability of the agent**

- 3.25 One stakeholder queried what would happen if the principal is liable to contribute but does not pay.

**Government Response**

Provided that the principal/agent relationship is satisfactorily demonstrated in relation to a particular cargo, the agent will not be liable for financial contributions as respects that cargo, even if the principal does not pay. Once a principal is disclosed in respect of a cargo in accordance with the Regulations, the liability remains with that principal and will not revert to the agent.

**Application to ports and terminals**

- 3.26 There was some concern expressed at the potential administrative burden that would arise if ports and terminals were required to identify the principals of all HNS cargoes.

**Government Response**

We do not believe that it will be necessary for ports and terminals to be unduly affected by the HNS reporting and contributing system. Where a port or terminal only provides the necessary infrastructure to transfer HNS cargo from ships to other ships, the cargo will be in transit and so not subject to the Convention within the UK. Where the cargo is being transferred to other modes of transport, the port is likely only to be providing the means by which the cargo is transferred to the person who physically receives it and the port or terminal shall not be considered a receiver.

Circumstances where liability may arise is when the port or terminal acts as a storage facility for an HNS cargo. In this case, the port or terminal may be acting as an agent for another person and will simply need to provide contact details of the person on whose behalf the substance is being stored, along with evidence of the relationship between the two parties, as set out in the previous paragraphs on the agent/principal relationship. The person on whose behalf the product is being stored will then be liable for financial contributions to the HNS Fund, depending on total annual receipts.

**Outcome - agent/principal relationship**

**As explained in respect of Question 2, it is not our intention to apply a national definition of receiver. We acknowledge the administrative burden that those who receive HNS on behalf of others will face when acting on behalf of a principal, but they are an integral part of the HNS supply chain and will not have to contribute financially.**

**In this regard it is important to again recall that this provision was granted as a concession to the storage industry which would otherwise have been liable to contribute financially.**

**The most workable alternative would be to apply, on a national basis, the same definition of 'receiver' as applies for the IOPC Fund (ie the person who first takes delivery from the ship) so as to avoid creating long reporting chains within UK industry - but this would defeat the purpose of the provision negotiated in Article 1 (4)(a) and is not therefore being offered as an option.**

## Question 4 - Lower reporting thresholds

3.27 We proposed lower thresholds for reporting receipts of non persistent oil, LPG and bulks solids and other HNS, than those contained in the Convention for the purposes of monitoring potential contributing cargo. We asked for responses to the following questions:

- What would be an appropriate level for such thresholds?
- Should the thresholds be the same for each separate account?
- Are there significant fluctuations in the quantities of HNS received in the UK following carriage by sea, from year to year, by individual importers?

### Summary of responses

3.28 Regarding the overall proposal of lower national thresholds for reporting purposes only, responses received tended to fall into one of three groups:

- Those who felt the thresholds set out in the HNS Convention were too high or should be amended to reflect the different levels of threat posed by different substances.
- Those who agreed with the proposal to introduce lower reporting thresholds - levels suggested ranged from 25% - 5% below the HNS Convention threshold.
- Those who felt that lower thresholds were not appropriate citing the following reasons:
  - Lack of justification,
  - increased burden,
  - disadvantage to UK companies,
  - need to implement different accounting practices across multi-national companies.

#### **Government Response**

##### **Proposals to amend the HNS Convention thresholds:**

The text of the HNS Convention was agreed by the IMO Diplomatic Conference and the UK cannot change the provisions within it. We cannot therefore increase the thresholds either for reporting or contributing purposes. Nor can we amend the thresholds of separate accounts to take into consideration the perceived levels of risk posed by different substances.

***Cont'd***

### **Justification for lower national thresholds**

The initial consultation paper set out the reasons for implementing lower reporting thresholds. The primary reason is to take account of the fact that quantities of HNS received can fluctuate from one year to the next. Lower national thresholds will help to ensure that persons whose imports fluctuate, report under the system, so that in years when they are liable, this is reported back to the IMO/ HNS Fund as appropriate.

The proposed lower national threshold can therefore provide a significant step in terms of ensuring fairness among the contributors. It will also ensure that the UK is fully meeting its international obligations under the convention so as to be able to identify those who should contribute.

The position in respect of persistent oil is different insofar as the IOPC Fund has been operating for over 26 years and the numbers of contributors are few and are known. There are likely to be more contributing companies under the HNS Convention. The proposed thresholds for the HNS Fund are, in practice, likely to ensure that only those companies with a significant throughput of HNS cargoes will be involved in the reporting arrangements.

### **Potential disadvantage to UK industry/common accounting practices**

We expect that the majority of the other States that will ratify the HNS Convention will also implement lower national reporting thresholds for the same reasons as the UK, in accordance with the recommendation agreed by the IMO Legal Committee in October 2003.

### **Outcome - lower national reporting thresholds**

**Lower reporting thresholds will provide a means of monitoring fluctuations of HNS from one year to the next and will help to ensure that where receipts do vary, the persons liable for any levies can be identified when necessary. The Government therefore proposes to implement lower thresholds for reporting purposes only. See section 5 for details.**

## Question 5 - Reporting regulations

- 3.29 We invited comments on the establishment of reporting Regulations to monitor compliance and provide for statutory fines and legal rights to recover unpaid levies for those persons who will be liable to contribute to the HNS

### Summary of responses

- 3.30 Stakeholders were supportive of a compliance and verification system to cover the reporting of HNS and contributions to the HNS Fund. But one stakeholder suggested that a self-policing system along the lines of HMCE tax warehouse compliance should be introduced and that the responsible Government Department should audit reported contributing cargoes against CHIEF/Intrastat declarations.

#### Government response

Reporting Regulations have been prepared on the basis of the Government's proposals to ensure appropriate monitoring and compliance.

### Other issues raised in relation to the reporting system

#### Transshipment

- 3.31 A stakeholder asked if two separate charges would arise from the same cargo when a cargo is received at a port and then subsequently transported by sea to a refinery.

#### Government response

In such cases, the Convention will only apply at the final destination. There will be no requirement to report the cargo at the point where it is transhipped. Article 1 (10) of the Convention defines contributing cargo and states that cargo in transit which is transferred directly from one ship to another, or through a port or terminal, either wholly or in part in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination.

Receivers of persistent oil should note that this provision differs to the IOPC Fund regime, because it means that storage of HNS at an intermediary stage between the loading and final destination of the cargo does not constitute a receipt of contributing cargo provided that it occurs in the "course of carriage".

## Alternative reporting systems

- 3.32 Responses to the initial consultation suggested that existing reporting systems, specifically Intrastat and Chief (Customs Handling of Import and Export Freight) system may be of use for the purposes of obtaining information on receipts of HNS under the Convention.

### Government response

The Government continues to consider whether reporting systems such as CHIEF, Intrastat and, in due course, the Safe Sea Net programme developed in response to the Traffic Monitoring Directive can be of use in the context of the HNS Convention.

However, these systems have been developed in response to a specific need so are not immediately compatible with the requirements of the HNS Convention for example, CHIEF is only used to record third country imports i.e. goods imported from outside the EU.

Intrastat is also unsuitable for these purposes. Although, unlike the Chief system, it is used to record all trade between EU Member States, declarations are only required above the Intrastat assimilation threshold which is based on the *value* of trade and is currently set at £221,000 per annum. This is obviously not appropriate for monitoring HNS cargoes as the Convention applies to all cargoes, not just those traded within the EU and because the HNS Convention thresholds are tonnage based.

The Safe Sea Net will provide information on request to any EU Member State relating to a ship's cargo during the time it is in transit between Member States. The system would not provide any detail on the cargo's destination and had not been designed for long term data storage.

Nevertheless, these systems may well be of use in verifying reports made under the HNS Convention and we will continue to consult with HMC&E in this respect.

### Voluntary reporting system

- 3.32 It was suggested that a voluntary reporting system could be introduced prior to UK ratification of the HNS Convention.

### Government response

We have previously considered this option but concluded that this would not provide a full picture of the HNS chain of supply. Our previous request for information to be provided on a voluntary basis was only partly successful, and we consider it fairer to all to proceed on the basis of a legislative requirement being placed on all affected companies to identify themselves and fulfil the reporting requirements.



### **Phase-in period**

- 3.33 It was suggested that a phase-in period might be more appropriate with a voluntary reporting commitment from industry to be given consideration prior to ratification.

#### **Government response**

We consider that UK ratification of the HNS Convention prior to its entry into force will amount to a phase-in period, whereby both Government and industry will be able to test the reporting system before there is any liability to make financial contributions to the HNS Fund. Introduction of the statutory reporting requirements before the Convention enters into force will do much to ensure that the system can be applied equitably once the financial obligations apply following the Convention coming into force internationally.

### **Use of electronic reporting system**

- 3.34 One Stakeholder suggested that the electronic reporting system should not be mandatory.

#### **Government response**

We agree with this comment. Many companies already use sophisticated electronic reporting and accounting systems and would prefer to continue to use them, adapting as necessary to comply with the reporting regulations.

#### **Outcome - reporting regulations**

**Regulations have been drafted to enforce compliance and to assist in the verification of reports submitted in respect of the HNS Convention. See section 6.**

## Question 6 - Insurance regulations

- 3.35 In the initial consultation we suggested that the sanctions contained in Section 163 of the 1995 Merchant Shipping Act should be applied to shipowners who fail to maintain insurance as required under the Convention.

### Summary of responses

- 3.36 Responses were supportive of the suggested sanctions and the following particular issues were raised:

#### Power to detain vessels

- 3.37 It was suggested that the power to detain ships should mirror the power in the regulations which apply the CLC in UK law.

#### Government Response

We agree that we should apply consistent measures and the regulations have been drafted so that a ship can be detained as soon as it is discovered that it does not carry a valid certificate of insurance, rather than detaining only when the ship attempts to leave port. See article 8 (2) of the draft Order which applies the relevant provisions sections 163 and 164 of the Merchant Shipping Act 1995 to shipowners under the HNS Convention.

#### Monies recovered through fines

- 3.38 It was suggested that any recovered monies should be paid into the HNS Fund.

#### Government Response

As with all statutory fines, monies recovered would go to the Crown Prosecution Service.

## **Non-compliant Governments**

- 3.39 One stakeholder asked what would be done in respect of non-compliant Governments.

### **Government Response**

We agree that it is important to ensure the system is applied equitably across all States. If there was a concern that governments were not fulfilling their obligations under the Convention we would seek to address the issue through the Assembly of the HNS Fund.

### **Outcome - insurance regulations**

**An Order has been drafted to apply the sanctions as described and can be found a section 6.**

## Question 7 - Compulsory insurance certificates

- 3.40 In the initial consultation we suggested that the IMO Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims to provide the benchmark for issuing insurance certificates attesting that insurance or other financial security is in place.

### Summary of responses

- 3.41 We received no objections to this proposal but following consultation with other potential State parties we now consider that the provisions contained in Article 12 of the HNS Convention are sufficiently broad enough to render any linkage with the IMO Guidelines superfluous. The following issues were raised in connection with compulsory insurance certificates.

### Certificates issued by other States

- 3.43 We were asked what would happen if certificates issued by other States do not comply with the IMO Guidelines.

#### Government Response

As explained in paragraph 3.42, the IMO Guidelines are not relevant when issuing a compulsory insurance certificate under the HNS Convention, however there is still a valid question as the standards applied by other States issuing such certificates. Under the Convention, certificates issued by another State must be regarded as having the same force as one issued by the UK. However if a State does not believe that the insurer or guarantor named in the compulsory insurance certificate is capable of meeting the financial obligations then the State can request consultation with the issuing State.

### International Group of P&I Club involvement

- 3.44 One stakeholder asked what had been done in terms of consultation with the P&I Clubs (who in most cases will be providing the insurance).

#### Government Response

We have informed the International Group of P&I Clubs that the UK expects to ratify the HNS Convention during 2005 and have requested that the issue of coverage for risks under the HNS Convention be raised with the individual Club boards. We have been informed that the Clubs' Boards will make a formal decision on the provision of insurance under the HNS Convention when the Convention is closer to entry into force but Clubs have indicated that they expect that, when requested, the Club Boards to give an affirmative reply.

## **Question 8 - Domestic vessels**

- 3.45 In the initial consultation the Government explained that it would not wish to make use of the provision which allows States to exclude certain domestic vessels from the Convention, in order to provide full financial protection for UK coastal communities, industries and other interests.

### **Summary of responses**

- 3.46 The majority of stakeholders agreed with the proposal to apply the Convention to domestic voyages although some felt that the UK should not apply the HNS Convention to such domestic journeys.

#### **Government response**

**Exclusion of domestic HNS ships would mean that coastal communities may not have fully effective compensation arrangements in the event that the ship involved was trading solely within the UK.**

#### **Outcome - Domestic vessels**

**We do not consider that it would be acceptable to exclude domestic ships from the national implementation of the Convention when the damage could be the same as from a ship engaged in international trade. The Convention will provide more certain compensation arrangements and will, therefore, be applied to all sea-going vessels carrying HNS.**

## **Question 9 - Invoices for levies**

- 3.47 In the initial consultation we said that the Government was minded to instruct the HNS Fund to invoice individual receivers for the amount payable, rather than invoicing the State which would then obtain payment from industry.

### **Summary of responses**

- 3.48 Stakeholders (with the exception of one, who wanted the UK to exclude domestic carriage of HNS) agreed with the approach outlined.

#### **Outcome - invoicing**

**The HNS Fund will invoice industry directly for any necessary payments.**

## Section 4: Other issues arising from initial consultation

- 4.1 Most of the other issues raised were of a financial nature and will therefore be addressed through a Regulatory Impact Assessment (RIA). A partial RIA was published alongside the initial consultation (and is replicated at Annex VIII of this paper) and any comments that related to that RIA are being taken into account during the development of the final RIA. The final RIA will not be completed until this public consultation has closed. Stakeholders are urged to complete the questionnaire contained at Annex VI as responses received will be vital to ensuring a proper balance in the final RIA.
- 4.2 However, we have summarised the key issues raised and responded to them as far as possible, subject to further data arising from responses to this consultation.

### **'Polluter pays' principle**

- 4.3 We have previously stated that the HNS Convention and the HNS Fund contribution arrangements are consistent with the 'polluter pays' principle. During the initial consultation a number of respondents argued that the regime is inconsistent with this principle.

#### **Government Response**

The consequences of a major shipping incident will partly relate to the ship but in many cases the nature of the cargo has at least equal impact. Therefore, liability under the HNS regime becomes a shared responsibility between the shipowner and the receiver of the HNS after the incident. One engaged in the shipment of the HNS the other who is involved in the supply chain in the state in which the cargo has been discharged from a ship.

### **Financial impact**

- 4.4 Concern was expressed at the potential financial impact in any one year with the HNS total Fund set at of 250 million SDR and the effect this could have on a company's profitability. It was suggested that the upper threshold of the Fund could be reduced or that there could be a restriction on the levy per tonne payable by contributors, compensation falling outside of this scope would be met through general taxation. Shipowners' liability should also be increased (and covered by compulsory insurance).
- 4.5 An alternative suggestion to deal with the same concern was put forward whereby the amount chargeable to a company would be based on quantities

of material used and capped to an affordable level for that specific company. For example, the cap could be linked to turnover. If need be, repayments could be tailored to companies' ability to pay so that the cost would be controllable for smaller companies.

- 4.6 One stakeholder suggested that the entire HNS Fund should be financed nationally (as opposed to a cap on industry contributions as suggested above) rather than by charging importers, whether or not they are culpable and in effect penalising UK manufacturing.

#### **Government Response**

It is not possible to amend the Convention to provide for the proposals suggested above. Whilst it may in theory be possible to implement such arrangements on a domestic level, with any shortfall being met through general taxation, we do not consider that it would be appropriate to expect the tax payer to subsidise industry in this way.

We note concerns raised over the levies that could be generated under the HNS. We will be able to build up a more accurate idea as more States ratify the Convention and this will be looked at in greater detail for the full RIA, although the following points should be considered:

- since the Convention was adopted in 1996 we have identified few incidents worldwide that would have required payments from the HNS Fund.
- If an incident did lead to the maximum amount of compensation (250m SDR) these payments would be levied over several years. The full extent of the damage will not be known straight away and would have to be verified.
- The Assembly of the HNS Fund i.e. those States that are parties to the Convention will have to agree any levies so the Fund could not impose levies without the agreement of the Assembly.
- Claims must be substantiated and will only be deemed admissible if they fall within definitions of *damage* or *preventive measures* as laid down in the HNS Convention.



## **Cost to industry**

- 4.7 The potential costs to contributors to the HNS Fund in all States party to the Fund can range from:
- payment to cover the administrative running of the HNS Fund (including the Secretariat and working capital), estimated by the Director of the 1992 IOPC Fund<sup>7</sup> to be in the region of £2.5 million per year, to
  - payments to meet the cost of the worst case scenario i.e. where the total cost of compensation reaches the maximum limit of the HNS Fund of approx. £199.65 million, and there is no contribution from the shipowner.
- 4.8 It is impossible to predict with certainty the levies that will be charged to UK receivers of HNS following implementation of the Convention. Several factors will determine the cost of levies:
- the number of Contracting States to the regime;
  - the total contributing cargo in each Contracting State in the year preceding the incident;
  - the frequency of incidents exceeding shipowner's limit of liability,
  - the total costs of each incident exceeding the limit established under the HNS Convention, and
  - the exchange rate between the SDR and the pound sterling
- 4.9 A partial RIA was prepared and published alongside the initial public consultation. Responses received in response to that consultation along with information arising from this one will be used to build up a final regulatory impact assessment. This partial RIA is reproduced at Annex VIII.
- 4.10 The Assembly of the HNS Fund (consisting of the States that are parties to the Convention) will decide on the amount of contributions to be levied (on the basis of the details of any particular incident) and will also decide the date on which payments should be made. The Secretariat of the HNS Fund will then determine the amount of contributions required from each company based on the annual reports of HNS receipts.

## **Participation by other States**

- 4.11 It was suggested that the Government should first establish the true commitment of countries with significant chemical industries by establishing, for example, the progress made in amending existing legislation to accommodate some of the Conventions needs, etc. It was further suggested that this could be easily monitored through effective working of the HNS Correspondence Group (established through the IMO's Legal Committee.

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<sup>7</sup> It is possible that the Director and Secretariat of the 1992 IOPC Fund will also act as Director and Secretariat to the HNS Fund; this would allow for sharing of running costs.

- 4.12 There is a concern that the UK could become one of the main contributors to the Fund for the foreseeable future with direct impact on industry's competitiveness. It was argued that any increase in import prices would erode margins because in a global, competitive market place, such costs can rarely be passed down the supply chain.

#### **Government Response**

The UK, as chair of the HNS Correspondence Group, co-ordinates bi-annual progress reports. The following States have recently reported that they are considering ratification: Canada, Denmark, Finland, Greece, Ireland, Latvia, the Netherlands, New Zealand, Norway, Singapore, Spain and Sweden. Other States (i.e. not members of the correspondence group) are also making progress. As at 1 December 2004 the following seven States have already ratified: Angola, Morocco, the Russian Federation, St Kitts and Nevis, Samoa, Slovenia and Tonga.

In addition, under the related European Council Decision (2002/971/EC) EU Member States are expected to ratify the HNS Convention before 30 June 2006 if possible.

With regards to competition, all UK importers would be subject to the same potential costs, per tonne of product imported and it is right that the larger importers should be subject to higher (potential) costs. The requirement for all EU member States to ratify the Convention should help to ensure that any effects on competition at a global level are minimal, i.e. industries in our neighbour States will also be subject to the same relative costs.

#### **Administrative costs**

- 4.13 One respondent commented that the proposals introduce a layer of bureaucracy through the creation of the HNS Fund Secretariat (estimated to cost about £2.5 million, globally, per annum) which must be paid irrespective of an incident actually occurring. It was suggested that a fairer and more cost-effective option would be to require ship operators involved in HNS cargoes to maintain higher insurance cover. The costs of increased premiums would be passed through the supply chain, therefore those companies involved in the most movements of HNS cargoes would pay a larger proportion of the increased premiums. If all vessels carrying HNS cargoes in European waters are required to have evidence of adequate insurance cover, this would also prevent "free riders" from non-signatory nations from gaining a cost advantage.

### **Government Response**

We consider that this suggestion *does*, in fact, closely mirror what is provided for by the HNS Convention. Shipowners *will* be required to obtain insurance to meet higher levels of liability and in the majority of incidents will be the sole providers of compensation payments. However, to provide for exceptional circumstances, and to ensure the viability of the insurance market (insurance providers cannot cover unlimited liability so a cap is necessary), industry will also be required to contribute, on a global basis, when exceptional incidents occur.

The highest projected annual administrative costs of £2.5m for the Secretariat of the HNS Fund will be spread across all States that are major importers of HNS that are party to the Convention.

The Convention cannot enter into force until the quantity of contributing cargo reported in respect of the general account equals at least 40 million tonnes. Therefore, if the minimum entry into force requirements applied, along with the maximum predicted administrative costs, the actual levy per tonne could be 6.25p. In practice, we expect the figure for contributing cargo to be considerably higher than 40 million tonnes, and the administrative costs to be lower than £2.5 million, so the levy per tonne will also be lower than the predicted maximum of 6.25p.

### **Frequency of calls for payment**

- 4.14 In response to the proposed reporting regulations, we were asked whether there could be an open-ended annual call for costs associated with a particular incident.

### **Government response**

This is not the case. Compensation payments in respect of a single incident are **limited** to an overall total of 250 million SDR, approximately £210 million (depending on exchange rate), *including* any amount payable by the shipowner - potentially up to 100 million SDR, or approx. £84 million (depending on the ship's tonnage). Payments in respect of any one incident will normally be levied over the course of several years but will not exceed this total overall. Levies will be set annually on a per tonne basis and will then be shared among all contributors in all states that are parties to the HNS Convention. These levies will be calculated as the likely level of compensation is evaluated and having regard to the timing and rate of assessment and settlement of claims.

## **Raising standards**

- 4.15 Two stakeholders commented that 'blanket' legislation of this nature penalised responsible companies with a good safety record whilst subsidising less careful operators. Particular reference was made to the use of independent SQAS Marine Inspection for bulk cargoes in tankers and inland waterway barges prior to contracts being awarded.

### **Government Response**

We agree that States must strive to raise standards and would refer to the comments at in Section 2 on safer shipping.

## **Materials transported by ferry**

- 4.16 It has been suggested that HNS materials transported by ferry "should be excluded from the Convention as a matter of course since the numbers of receivers of HNS materials will be high, but, more likely than not, low in volume".
- 4.17 We have also noted a related concern raised regarding packaged dangerous goods transported in containers or by ro/ro. In these instances a physical receiver such as a port will have no information on the ultimate destination or end user of the product.

### **Government Response**

We accept that difficulties would arise if we required such cargoes to be reported on entering the country by the port or terminal, we do not however feel that such cargoes should be excluded from the Convention, rather that they will only need to be reported by the principal if they exceed the reporting thresholds.

## **Damage caused by vessels flagged in States that are not party to the Convention and unknown vessels**

- 4.18 We have noted concerns from certain Stakeholders that the HNS Fund can be used to cover costs incurred when damage occurs in the waters of a State party and the vessel is either unidentified or based in a State that has not ratified the HNS Convention.

### **Government Response**

From a public policy point of view we consider this to be a *benefit* of the system. Such costs, if they did arise, would be spread among all contributors throughout all the States that are parties to the HNS Convention. If the Convention did not cover such costs, there would be the potential for an incident in UK waters with no provision for recovery of clean-up costs or payment of compensation.

Incidents from unidentified sources tend to be infrequent and relatively small. It is worth noting that at the time of writing, the equivalent oil pollution compensation regime (the 1992 IOPC Fund) has so far paid out in respect of only one incident where a vessel has not been identified. The incident occurred in the UK and clean-up costs of £5,400 were recovered from the 1992 IOPC Fund. We consider that the vulnerability of UK coastline makes this provision of particular value to the UK.

In addition, all vessels entering UK ports or terminals will be required to maintain insurance under the terms of the Convention, irrespective of where they are flagged.

### **Damage excluded from the HNS Convention**

4.19 It was suggested that the HNS Convention could be amended to mirror the Environmental Liability Directive whereby damage caused by the following events is excluded from the HNS Convention:

- (i) an act of armed conflict, hostilities, civil war or insurrection;
- (ii) a natural phenomenon of exceptional, inevitable and irresistible character.

### **Government Response**

In fact the circumstances covered in sub paragraph (a) are already excluded from the HNS Fund (article 14.3.a); however the Fund will pay compensation in the circumstances listed at (b).

The aim of the Convention is to provide compensation and it would not be appropriate to exclude those incidents arising from a *force majeure*. Shipowner's insurance does not cover such incidents, so when developing the HNS Convention, the IMO Member governments felt that a levy spread across industries of all parties to the Convention would be the fairest way of providing for such events.

It should be noted that under the Convention if the Fund is required to pay out as a result of a phenomenon listed at (b) then the limit of 250m SDR will be the aggregate amount of compensation payable in respect of damage arising from natural phenomenon.



## **Section 5: Further Consultation**

- 5.1.1 This section builds on the initial consultation by inviting further comment on the reporting system which is needed to implement the HNS Convention in the UK.

### **The Reporting System - obligations arising under the HNS Convention**

- 5.1.2 When ratifying the HNS Convention, Article 43 requires all States to provide the Secretary General of the IMO with details of the total quantities of HNS received (or in the case of LNG discharged) in that State in the preceding calendar year. The information must then be submitted to the Secretary General each year until the HNS Convention enters into force.
- 5.1.3 Once the Convention has entered into force, Article 21 of the Convention requires all States Parties to provide the Director of the HNS Fund with the name and address of all persons liable to contribute under the Convention in respect of that State, along with details of quantities of contributing cargo.
- 5.1.4 The time and manner in which this information must be given to the Director will be laid down in the internal regulations of the HNS Fund. These in turn will be agreed during the first meeting of the HNS Fund Assembly, i.e. those States that are party to the Convention when it enters into force.
- 5.1.5 In order to meet these obligations, it is necessary to implement a national reporting system.

### **Competent Authority in the UK**

- 5.1.6 It has been agreed, in consultation with the Department for Trade and Industry, that the competent authority for receiving and submitting the UK's HNS contributing cargoes will be the Department for Transport (DfT). This means that persons will be required to submit reports to the DfT, which will submit the required reports to the Director of the HNS Fund or the Secretary General of the IMO. For the foreseeable future, persistent oil reports will continue to be processed by the DTI. The two Departments will co-operate to ensure that reports on persistent oil receipts are also submitted to the IMO Secretary General or HNS Fund Director, as appropriate, as well as to the Director of the IOPC Fund.

### **The reporting cycle**

- 5.1.7 Under the Convention, the obligation on the State to report HNS imports is different, depending on whether or not the Convention has actually entered into force internationally.

### **Prior to entry into force of the HNS Convention:**

- 5.8 Once the UK ratifies the Convention, the DfT will be required to submit an annual report of the total quantity of contributing cargo received (or in the case of LNG discharged) in the UK in the previous calendar year. This report must be submitted for the first time on the date the UK ratifies the HNS Convention, and then yearly thereafter.
- 5.9 To fulfil this obligation, the UK will implement the reporting requirements as if the Convention were in force from the date of ratification. The DfT will endeavour to identify all those persons who should be reporting under the HNS Convention.
- 5.10 In order to provide an initial report at the point of ratification, data obtained to-date will be used, along with that received in response to this document.

### **When the HNS Convention is in force:**

- 5.11 The HNS Secretariat will write to the competent authority in each State Party to the HNS Convention requesting returns on contributing cargo receipts in respect of the previous calendar year. It is expected that the Secretariat will prepare a standard reporting form and guidance for completion, in order to ensure a consistent approach is used by all States.
- 5.12 The DfT, as competent authority will then write to all known or possible receivers of HNS in that State requesting that the form be completed and returned to the competent authority by a given date.
- 5.13 Once receivers have completed and returned the form, the DfT will collate the information, cross-checking any principals identified and associated persons, and submit the name, address and data on quantities of contributing cargo of all persons to the HNS Secretariat.
- 5.14 If a levy is required, the HNS Secretariat will invoice the relevant persons based on the information provided.
- 5.16 The reports may also be requested, completed and submitted electronically at all stages, although this will not be a mandatory requirement.



## Further consultation on the implementation of a reporting system

### Thresholds for reporting

- 5.17 The HNS Convention requires reports from anyone who would be liable to contribute to the HNS Fund based on certain annual thresholds in respect of the separate accounts that make up the HNS Fund.
- 5.18 In the initial public consultation the Government proposed the implementation of lower UK thresholds for reporting annual receipts of HNS. As explained at section 3, the Government intends to implement lower thresholds for reporting purposes only and we propose a threshold of 17,000 tonnes per annum.

### Summary of thresholds

nt	Convention threshold tonnes / calendar year (financial liability)	Proposed national threshold in tonnes per calendar year (reporting only)
Oil: persistent	150,000	150,000
non-persistent	20,000	17,000
LNG	No threshold	No threshold
LPG	20,000	20,000
General: bulk solids	20,000	17,000
other HNS	20,000	17,000

- 5.20 In any event, it is our intention to keep the UK's national threshold under review and we will also undertake further consultation with other States, in particular EU Member States, with a view to obtaining at least a regional consensus on the appropriate level of national thresholds.
- 5.21 As stated in the initial consultation document, we would not seek to apply lower reporting thresholds for persistent oil, as the equivalent reporting regime under the IOPC Fund is well established after more than 26 years of operation and the contributors are already known. We have also considered, as a result of consultation responses that it would not be necessary to implement lower thresholds for LPG as we understand that the quantities transported do not tend to fluctuate greatly.

#### Further consultation question 1

**We invite comments on the proposed reporting threshold of 17,000 tonnes per annum.**

## **Transshipment - exclusion of cargo in transit**

- 5.22 Under the HNS Convention, cargoes which undergo "transshipment" are not classified as contributing cargo.
- 5.23 The definition of contributing cargo at article 1(10) states that "Cargo in transit which is transferred directly, or through a port or terminal, from one ship to another, either wholly or in part, in the course of carriage from the port or terminal of original loading to the port or terminal of final destination shall be considered as contributing cargo only in respect of receipt at the final destination".
- 5.24 This provision clarifies that transshipments (within the limits prescribed) do not constitute a receipt of "contributing cargo. Where the HNS is stored as an intermediary stage between carriage by sea from the port or terminal of original loading and carriage by sea to the port or terminal of final destination, a receipt of that HNS in such storage does not constitute a receipt of contributing cargo, provided this all happens "in the course of carriage".
- 5.25 We have considered whether it is necessary to determine what would be considered to fall within the term "in the course of carriage". The intention is to distinguish genuine cases of transshipment in order that a levy, if required, is only imposed on the receiver only in the port or terminal of final destination, and also to provide clarity for industry in respect of what they are required to report.
- 5.26 If the interpretation is stretched too widely, then a loophole would be created. We have consulted with other States and the general view is that the first Assembly of the HNS Fund should decide on the criteria to be fulfilled in order for a transshipment to be exempted from contribution.
- 5.27 It was suggested that the following criteria could be considered:
- The HNS should not leave the port or terminal area between the two voyages by sea. Firstly this would break "the course of carriage" (by sea) because any other mode of transport would have to be involved and secondly this would effectively make it impossible for States to monitor the reporting.
  - The HNS should not in any way be used between the two sea legs, since that would break "the course of carriage".
  - What is actually declared in the relevant bill of lading or cargo manifest.
  - Whether a maximum period of storage could be determined.
- 5.28 The first meeting of the HNS Assembly is unlikely to take place until the Convention has entered into force. This will be 18 months after the entry into force criteria has been met. Once a firm position has been agreed by the HNS Fund Assembly, this will be implemented into UK legislation by Regulation.

5.29 However, the UK's reporting system should already be well established by the time the Convention enters into force (and financial liability arises). In order to give industry clear guidance on what should be reported until such a time as the HNS assembly makes recommendations on this issue, we propose that industry should report in line with the following guidance:

Proposed guidelines for industry

- The cargo should not leave the intermediate port or terminal;
- The cargo should not in any way be used or modified;
- The cargo should not remain in the intermediate port or terminal for a period exceeding 10 days.

5.30 Any cargo which falls outside of *any* of the above listed criteria will not be considered to be cargo in transit and must therefore be reported under the HNS Reporting Regulations as contributing cargo.

5.31 Industry members need to be aware that this is guidance only and has no bearing on the application on the HNS Convention. If a person does not declare a cargo as they consider it to be 'in transit' but it later transpires that the cargo was not in fact in transit, that person will be liable to contribute to the HNS Fund and the Director of the Fund will be entitled to take appropriate action, including court action against such a person, if necessary.

**Further consultation question 2**

Do you agree with the proposed guidelines? If not, we invite alternative suggestions supported up by details of industry practice concerning transshipment.

Would you like to see any other criteria taken into account when determining whether or not cargo is in transit?

We invite comments on the criteria by which the issue of transshipment will be considered by the HNS Assembly.

## **Liability to contribute in respect of LNG cargoes**

- 5.59 Under the HNS Convention, liability to contribute in respect of Liquid Natural Gas (LNG) lies with the person who held title to the cargo immediately before it is discharged in a port or terminal in a State party to the HNS Convention.
- 5.60 The LNG industry has undergone considerable expansion in the nine years since the HNS Convention was adopted. Many more States are now trading in LNG with new, dedicated terminals opening to handle significant flows of LNG traffic. The effect of the changing trends is that a relatively large number of States import LNG from a small number of exporting States.
- 5.61 The persons who held title to an LNG cargo immediately prior to discharge will depend on the contract of carriage used. The title of the cargo may transfer from the seller to the buyer either at the port of loading, or when the cargo passes the ship's rail at the port of destination.
- 5.62 Where the title of an LNG cargo transfers from the seller to the buyer at the port of loading, the buyer is normally the person who receives the cargo in a port or terminal. LNG cargoes do not tend to change hands whilst on voyage (i.e. they are not traded on the spot market), nor do they tend to undergo temporary, independent storage. Instead the industry is characterized by long-term contracts and cargoes are discharged into dedicated terminals where they are processed on-site. This means that when this type of contract of carriage is used the person who will be liable to make contributions will normally be the person who receives the cargo in the UK.
- 5.63 However, when the contract of carriage is such that the cargo does not transfer to the buyer until it passes the ship's rail at the port of destination, it will be the seller who held title to the cargo immediately before discharge. The seller is unlikely to be based in the receiving State.
- 5.64 The UK cannot impose a liability to contribute on persons outside of UK jurisdiction (i.e. persons in other States), unless they are based in a State that is also party to the HNS Convention; in that case the State concerned would be required to enforce the liability.
- 5.65 It is clear that there will be a discrepancy in the way in which, otherwise identical LNG cargoes, are covered under the HNS Convention depending on the contract of carriage used and the originating State. It is possible that the usual pattern of sale and purchase contracts may alter with the result that the number of persons liable under the HNS Convention in respect of LNG cargoes is reduced. The reporting system will allow us to monitor significant changes in carriage trends although it is considered that the structure of the LNG market makes it unlikely that liability under the HNS Convention would in itself lead industry to alter their trading patterns.
- 5.66 As more States become party to the HNS Convention, it will also become clearer whether the main exporting States are joining the Convention and therefore required to comply with the obligations on the LNG owner.

- 5.67 The LNG account does not become effective until the level of contributing cargo (i.e. that reported under the HNS Convention) exceeds 20 million tonnes. Until this happens the LNG account will form a separate sector within the General Account. If an incident occurs and payments are required, the General Account will meet the costs, with the contributions from the separate sectors calculated in accordance with the Regulations annexed to the HNS Convention.
- 5.68 If the structure of the LNG market prevents the separate LNG account from coming into existence, (either because the main exporting States are not party to the HNS Convention or because there is a shift in trading arrangements) this could lead to a situation where the other account sectors may in effect subsidise compensation payments arising from LNG incidents. For this reason, the States that are party to the HNS Convention may consider it necessary to re-consider the way in which liability for LNG cargoes is arranged.
- 5.69 Furthermore, as more States move to become parties to the HNS Convention, and consider the provisions in greater depth, it may be that through the IMO Legal Committee, Member States of the IMO, will seek to address this issue to ensure that liability for the levies in respect of LNG falls to those most closely engaged in the trade of LNG, possibly including the person who takes delivery.
- 5.70 The UK will continue its work through the HNS correspondence group to monitor this situation and consult with the LNG industry.

### **Further consultation question 3**

Do you agree that the UK should seek to ensure that a liable party can be identified to contribute in respect of the LNG account?

### **Associated persons**

- 5.40 Article 16(5) of the HNS Convention requires that where the aggregate quantity of HNS received by associated persons exceeds the Convention thresholds then those persons will be liable to contribute to the HNS Fund in respect of the quantities actually received.
- 5.41 The Convention states that associated persons "means any subsidiary or commonly controlled entity. The question of whether a person comes within this definition shall be determined by the law of the State concerned" (article 16(6)).

5.42 As the Convention leaves the State to determine who falls within the definition of associated person we intend to use the same terms as those in section 173(6) and (10) of the Merchant Shipping Act 1995, which relates to contributions to the IOPC Fund. We have therefore inserted the following text at the Schedule to the draft Order:

"For the purposes of article 16 of the Convention, "associated person" means the subsidiaries of a holding company, [or any two or more companies which have been amalgamated into a single company], and for these purposes:

"company" means a body incorporated under the law of the United Kingdom or of any other country,

"subsidiary" and "holding company" have the meanings given by section 736 of the Companies Act 1985 (or for companies in Northern Ireland Article 4 of the Companies (Northern Ireland) Order 1986), subject, in the case of a company incorporated outside the United Kingdom, to any necessary modification of those definitions."

5.43 We propose to deal with associated persons in UK legislation by placing the liability to contribute to the HNS Fund on the parent company of a group of one or more associated persons when the aggregated annual receipts of those companies exceed the Convention thresholds. We have drafted the legislation in this way because of the difficulties in identifying associated persons who receive small quantities of HNS.

5.44 The Order has been drafted to give effect to the provision as follows:

"5.-(3) Where:

a person has in a calendar year one or more associated persons who are the receivers of a cargo mentioned in paragraph [(1)] or [(3)] in quantities equal to or less than the quantities mentioned in those paragraphs, and

the aggregated quantity of that cargo received by that person and those associated persons exceeds the quantity mentioned in paragraph [(1)] or [(3)] (as appropriate),

that person shall make annual contributions to the general or appropriate separate account for each unit of contributing cargo received by that person and those associated persons, as determined under the Convention."

5.45 This puts the liability to contribute onto the parent company of any group of one or more associated companies. The parent company will also be required to report all such receipts under draft regulation 2, through the insertion of a similar provision in the Regulations, as follows:

"2(6) Paragraphs (1), (4) and (5) above apply to a person:

(a) as respects cargo received in the United Kingdom by an associated person of that person, and

(b) LNG to which an associated person of that person held title immediately before its discharge in the United Kingdom,

as though that cargo had been received (or title to that LNG held immediately before discharge) by that person...”

5.56 We consider these provisions in the Order and Regulations to be the most effective way of implementing the requirements of the Convention as respects associated persons, and that they reflect the intention of the Convention to act as an anti-avoidance mechanism. Subsidiary companies will be owned and under the control of one parent company and it is therefore fitting to put the onus to contribute (and report) on that parent company, which has the discretion to determine how the contributions will be financed by the relevant subsidiary entities.

5.57 The alternative option we have considered would be to use the national reporting thresholds but at a very low level, perhaps even nil. This would ensure that we could identify all those receivers of small quantities of HNS whose total receipts, when aggregated with those of associated persons, would actually exceed the Convention thresholds for contributions. The disadvantage of this approach would be the considerable administrative burden of requiring every single receiver of HNS to report, regardless of quantity, and for this reason we consider it is more effective to place the financial responsibility with the controlling entity. Subsidiary companies will be owned and under the control of one parent company and it is therefore fitting to put the onus to contribute (and report) on that parent company, which has the discretion to determine how the contributions will be financed by the relevant subsidiary entities.

5.58 We believe the proposed approach strikes a fair balance between implementing the anti-avoidance mechanism intended by the Convention, and minimising the burden on industry.

**Further consultation question 4**

**Do you agree with the proposal to put the liability to report and contribute on to the parent company of any group of two or more associated persons?**

**If stakeholders do not agree to this approach, we would welcome suggestions as to how associated persons can be identified *without further lowering the reporting threshold*.**

## **Electronic Database - HNS Cargo Contribution Calculator**

- 5.31 In recognition of the complexities of the HNS Convention, not least the 6,000 substances that would fall within the scope of the Convention, the IMO HNS Correspondence Group suggested that a software programme which would identify all substances covered by the HNS Convention could be developed. The IOPC Fund undertook to develop such a system. As well as providing a database of hazardous & noxious substances, the system has been developed so that it can be used as a reporting tool by industry, Governments and the HNS Fund Secretariat.
- 5.32 The system, known as the HNS Cargo Contribution Calculator, or HNS CCC, is currently available on CD ROM, users will need to download the software but once this has been done the system can be accessed quickly and provides secure data storage. To obtain a copy email [hns@dft.gsi.gov.uk](mailto:hns@dft.gsi.gov.uk) or call: Clare Boam at DfT on 020 7944 5444.
- 5.33 The HNS CCC will also be available through a website. The advantage of this will be that users will not have to install software, and the database of HNS can be easily updated. The Website should be available later this year.
- 5.34 Industry users will be able to register as a contributor and log receipts of HNS. If the user does not know whether a cargo falls within the definition of HNS he can enter the name or UN number of the substance and the HNS CCC will show whether or not it does fall under HNS and if so, which account sector it belongs in. The HNS CCC will keep a total of all entries and show when receipts exceed the contribution thresholds of relevant account sectors. Users can enter information on cargoes as frequently as they wish, whether that it is after each consignment is received, or at the end of the calendar year.
- 5.35 The DfT will initiate the reporting process by requesting a report of the HNS received in the preceding calendar year. It is expected that when the Convention enters into force these requests will be made around January. Industry will be required to respond within a given period. Requests may be made electronically or through traditional correspondence. The DfT has not yet decided which approach will be used, this will depend on feedback received in respect of the HNS CCC.
- 5.36 Users will also be able to enter details of associated persons so that contributions can be aggregated. Where a user is associated with other persons, it will be necessary for the user to submit details of HNS cargoes even if they do not exceed the Convention thresholds.

The calculator can also be used by agents wishing to disclose a principal on whose behalf they are acting. At the moment, an agent would need to set up a user account for each principal on whose behalf they are acting. However, if it becomes apparent that many individual agents are acting on behalf of several principals, the system could be amended to allow the agent to specify in respect of which principal a cargo has been received.



For this reason it is important that Stakeholders try out the system and provide feedback both to us and to the IOPC Funds. It is also important that any agents who do act on behalf on several principals complete the questionnaire at Annex VI so that we can build a better idea of the numbers affected.

**Further consultation point 5**

**Comments on the HNS CCC can be made directly to Catherine Grey at the IOPC Funds Secretariat, although DfT would also like to receive your feedback. Please copy any comments to the DfT at [hns@dft.gsi.gov.uk](mailto:hns@dft.gsi.gov.uk) .**

**Information on receipts**

- 5.28 Through this consultation paper, we invite all parties who believe that they may be affected by the reporting system to provide information on the type and quantity of HNS they receive on an annual basis, and their role in the transport and supply chain. To assist those stakeholders, a questionnaire is attached at Annex VI.
- 5.29 The responses we receive will be used to complete a full regulatory impact assessment which must be presented to Parliament before the Convention can be ratified. This information will allow us to build up a clear picture of the extent to which industry will be involved in and affected by the HNS Convention, and to allow us to fully assess the impact of the legislation.
- 5.29 Those respondents who have previously provided information are encouraged to respond, particularly if they can provide more recent or accurate information.
- 5.30 The information will also be used in the Government's report of total HNS receipts to the Secretary General of the IMO when the UK ratifies the HNS Convention.

**Further consultation point 6**

**We invite stakeholders to complete and return the questionnaire on HNS receipts attached at Annex VI.**



## **Section 6 - Implementing legislation**

- 6.1 As explained at section 1.10, the text of the HNS Convention is contained in UK legislation at Schedule 5A of the Merchant Shipping Act 1995 which was inserted into that Act by the Merchant Shipping and Maritime Security Act 1997 (the 1997 Act).
- 6.2 The Act 1997 also inserted a provision into the 1995 Act (Section 182B) to provide a power to give effect to the HNS Convention by Her Majesty by Order in Council. Before the Order can enter into force a draft Order has to be approved by a resolution of each House of Parliament and then agreed by her Majesty in Council.
- 6.3 The Order brings Schedule 5 into effect and also allows certain regulations to be made to implement the Convention as it is contained in the 1997 Act. The Convention does not make specific reference to the establishment of a reporting system (although this is implicit in the requirement to report under Articles 21 and 43), this is not therefore provided through the powers contained in the 1997 Act. Instead, the reporting Regulations have been made under the 1972 European Communities Act - see next section on the Regulations.

### **Further consultation - point 7**

**We invite comments on any aspect of the following draft Order and Regulations**

## Section 6(a) Draft Order

*Draft Order in Council laid before Parliament under section 185(5) of the Merchant Shipping Act 1995, for approval by resolution of each House of Parliament.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2004 No. [25.02.2005]**

### **MERCHANT SHIPPING**

#### **The Merchant Shipping (Hazardous and Noxious Substances Convention 1996) Order 2005**

*Made* - - - - - 2005

At the Court at [Buckingham Palace], the day of 2005

Present,

The Queen's Most Excellent Majesty in Council

Whereas by virtue of section 182B(1) of the Merchant Shipping Act 1995<sup>(1)</sup> Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of giving effect to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 on or after its ratification by the United Kingdom,

And whereas the United Kingdom has ratified the Convention,

And whereas a draft of this Order has, in pursuance of section 182B(5) of the Merchant Shipping Act 1995 been approved by a resolution of each House of Parliament,

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 182B(1) to (4) of the Merchant Shipping Act 1995 is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

#### **Citation and commencement**

**1.**—(1) This Order may be cited as the Merchant Shipping (Hazardous and Noxious Substances Convention 1996) Order 2005.

(2) Subject to paragraph (3), this Order shall come into force on 2005.

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<sup>(1)</sup> 1995 c.21, section 182B was inserted by the Merchant Shipping and Maritime Security Act 1997 (c.28), section 14.

(3) Articles 3 to 9 of this Order shall come into force on the date, to be notified in the London, Edinburgh and Belfast Gazettes, on which the Convention enters into force in accordance with Article 46 of the Convention.

### **Interpretation**

2. Words and phrases used in the Convention shall have the same meaning in this Order.

### **Convention to have the force of law**

3. The Convention, other than Articles 4(5), 5(1) to (4) and 23, shall have the force of law in the United Kingdom.

### **Provisions having effect in connection with the Convention**

4. The provisions set out in the Schedule to this Order shall have effect in connection with the Convention, and article 3 above shall have effect subject to the provisions of the Schedule.

### **Contributions to the Convention Fund general account**

5.—(1) Any person who was the receiver in the United Kingdom in a preceding calendar year, or such other year as the Assembly of the HNS Fund may decide, of aggregate quantities exceeding 20,000 tonnes of contributing cargo, other than substances referred to in article 19, paragraph 1 of the Convention, which fall within the following sectors:

- (a) solid bulk materials referred to in article 1, paragraph 5(a)(vii),
- (b) substances referred to in paragraph 2, and
- (c) other substances,

shall make annual contributions to the general account as determined under the Convention.

(2) Where the operation of a separate account has been postponed or suspended in accordance with Article 19 of the Convention, any person who would be liable to pay a contribution to that account in accordance with articles 6 and 7 below shall pay into the general account the contributions due by that person in respect of that separate account.

(3) Where:

- (a) a person has in a calendar year one or more associated persons who are the receivers of a cargo mentioned in paragraph (1) in quantities equal to or less than the quantities mentioned in that paragraph, and
- (b) the aggregated quantity of that cargo received by that person and those associated persons exceeds the quantity mentioned in paragraph (1),

that person shall make annual contributions to the general account for each unit of contributing cargo received by that person and those associated persons, as determined under the Convention.

### **Contributions to the Convention Fund separate accounts**

6.—(1) Any person-

- (a) who has received in the United Kingdom in a preceding calendar year, or such other year as the Assembly of the HNS Fund may decide, total quantities exceeding 150,000 tonnes of contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, and who is or would be liable to pay contributions to the International Oil Pollution Compensation Fund in accordance with article 10 of that Convention, or
- (b) who was the receiver in the United Kingdom in a preceding calendar year, or such other year as the Assembly of the HNS Fund may decide, of total quantities exceeding 20,000 tonnes of other oils carried in bulk listed in appendix I of Annex I to the International

Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended,

shall make annual contributions to the separate oil account as determined under the Convention.

(2) Any person who in a preceding calendar year, or such other year as the Assembly of the HNS Fund may decide, immediately prior to its discharge held title to an LNG cargo discharged in a port or terminal in the United Kingdom, shall make annual contributions to the separate LNG account as determined under the Convention.

(3) Any person who was the receiver in the United Kingdom in a preceding calendar year, or such other year as the Assembly of the HNS Fund may decide, of total quantities exceeding 20,000 tonnes of LPG shall make annual contributions to the separate LPG account as determined under the Convention.

(4) Where:

- (a) a person has in a calendar year one or more associated persons who are the receivers of a cargo mentioned in paragraph (1) or (3) in quantities equal to or less than the quantities mentioned in those paragraphs, and
- (b) the aggregated quantity of that cargo received by that person and those associated persons exceeds the quantity mentioned in paragraph (1) or (3) (as appropriate),

that person shall make annual contributions to the appropriate separate account for each unit of such contributing cargo received by that person and those associated persons, as determined under the Convention.

#### **Initial contributions to Convention Fund**

7.—(1) This article applies to a person who would be liable to pay contributions in accordance with articles 5 and 6 above in relation to the receipt in the United Kingdom (or in the case of LNG as the holding of title immediately prior to discharge in the United Kingdom) in the calendar year preceding that in which the Convention enters into force in the United Kingdom if the Convention were in force in that preceding year.

(2) A person to whom this article applies shall make initial contributions calculated under the Convention on the basis of a fixed sum, equal for the general account and each separate account, for each unit of contributing cargo received in the United Kingdom (or in the case of LNG to which title was held immediately before discharge in the United Kingdom) during the calendar year preceding that in which the Convention enters into force in the United Kingdom.

#### **Compulsory insurance**

8.—(1) Section 163(2) to (6) and section 164(2) (5) of the Merchant Shipping Act 1995 shall have effect in relation to a ship to which Article 12 of the Convention applies as if:

- (a) in section 163(2), for the words “Article VII of the Liability Convention (cover for owner’s liability)” there were substituted the words “Article 12 of the Convention (compulsory insurance of the owner)”,
- (b) in section 163(3), for the words “Liability Convention”, wherever they appear, there were substituted the words “Convention”, and
- (c) in section 164(2), for the words “section 153” there were substituted the words “Article & of the Convention (liability of the owner)”.

(2) In any case where a ship does not comply with the requirements of Article 12 of the Convention, the ship shall be liable to be detained and section 284(1) to (6) and (8) of the Merchant Shipping Act 1995 (which relates to the detention of a ship) shall have effect in relation to that ship as if:

- (a) for the words “this Act”, wherever they appear, there were substituted the words “the Merchant Shipping (Hazardous and Noxious Substances Convention) Order 2005”, and
- (b) at the end of subsection (1) there were added the words:

“and

(e) a harbour master appointed, by any person in whom are vested under the Harbours Act 1964<sup>(2)</sup>, by another Act or by an order or other instrument (except a provisional order) made under another Act or by a provisional order powers or duties of improving, maintaining or managing a harbour, to be a harbour master or an assistant of a harbour master.”.

### **Modifications of enactments and instruments in order to give effect to the Convention**

9. For paragraph 4(1) of Part II of Schedule 7 to the Merchant Shipping Act 1995<sup>(3)</sup> (Convention on Limitation of Liability for Maritime Claims) there shall be substituted:

“(1) Claims for damage to which the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, or any amendment of or Protocol to that Convention, applies shall be excluded from the Convention.”.

### **Power to make Regulations**

10.—(1) The Secretary of State may make regulations for the purposes of giving effect to:

- (a) the Convention on or after its ratification by the United Kingdom, or
- (b) any revision of the Convention which appears to Her Majesty in Council to have been agreed by the Government of the United Kingdom,

other than the purposes of section 182B(3)(a), (b) and (c).

(2) The power conferred by this article to make regulations for the purpose of giving effect to the Convention or an agreement revising the Convention includes power to provide for the Regulations to come into force even though the Convention or the agreement has not come into force.

(3) Without prejudice to the generality of paragraph (1), the regulations may in particular:

- (a) include provision with respect to the application of the Order to the Crown,
- (b) include provision for detaining any ship in respect of which a contravention of a provision made by the regulations is suspected to have occurred and, in relation to such a ship, for applying section 284 with such modifications, if any, as are prescribed by the regulations,
- (c) for a certificate issued by or on behalf of the Secretary of State and stating that at a particular time a particular substance was, or was not, a hazardous or noxious substance for the purposes of the Convention to be conclusive evidence of that matter,
- (d) make different provision for different circumstances,
- (e) make provision for references in the Regulations to any specified document to operate as references to that document as revised or re-issued from time to time,
- (f) include such incidental, supplemental and transitional provision as appears to Her Majesty to be expedient for the purposes of the Regulations.

Clerk of the Privy Council

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<sup>(2)</sup> 1964 c.40.

<sup>(3)</sup> 1995 c.21; paragraph 4 of Part II of Schedule 7 to that Act was amended by the Merchant Shipping (Convention on Limitation of Liability for Maritime Claims) Order 1998 (S.I. 1998/1258), article 7(c).





SCHEDULE

Provisions having effect in connection with the Convention

**Article 3: Scope of Application**

1. The Convention shall apply to the United Kingdom as respects Article 3 paragraph (b) to the Pollution Control Zone designated by the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 1996(4).

**Article 12: Compulsory Insurance of the Owner**

2. In relation to a ship owned by a State and for the time being used for commercial purposes it shall be a sufficient compliance with Article 12 paragraph 1 if there is in force a certificate issued by the government of that State and showing that the ship is owned by that State and that any liability for damage under the Convention will be met up to the limit prescribed by the Convention.

3. For the purposes of Article 12 paragraph 2 the appropriate authority of the United Kingdom is the Secretary of State. The compulsory insurance certificate required by Article 12 paragraph 2 shall be in English in the form of the following model:

**“CERTIFICATE OF INSURANCE OR OTHER FINANCIAL SECURITY IN RESPECT OF LIABILITY FOR DAMAGE CAUSED BY HAZARDOUS AND NOXIOUS SUBSTANCES (HNS)”**

Issued in accordance with the provisions of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996

Name of ship	Distinctive number or letters	IMO ship identification number	Port of registry	Name and full address of the principal place of business of the owner

This is to certify that there is in force in respect of the above-named ship a policy of insurance or other financial security satisfying the requirements of Article 12 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996.

Type of security .....

Duration of security .....

(4) S.I. 1996/2128.

Name and address of the insurer(s) and/or guarantor(s)

Name.....

Address.....

This certificate is valid until .....

Issued or certified by the Government of .....

(Full designation of the State)

At

On.....

(Place)

(Date)

(Signature and Title of issuing or certifying official)

**Explanatory Notes:**

1. If desired, the designation of the State may include a reference to the competent public authority of the country where the certificate is issued.
2. If the total amount of security has been furnished by more than one source, the amount of each of them should be indicated.
3. If security is furnished in several forms, these should be enumerated.
4. The entry "Duration of the Security" must stipulate the date on which such security takes effect.
5. The entry "Address" of the insurer(s) and/or guarantor(s) must indicate the principal place of business of the insurer(s) and/or guarantor(s). If appropriate, the place of business where the insurance or other security is established shall be indicated."

4. The Third Parties (Rights Against Insurers) Act 1930(5) and the Third Parties (Rights against Insurers) Act (Northern Ireland) 1930(6) shall not apply in relation to any contract of insurance to which such a certificate as is mentioned in Article 12 relates.

5. The requirements of Article 12 paragraph 1 shall apply to any ship not registered in a State Party which is carrying hazardous and noxious substances and is entering or leaving a port in the United Kingdom, or arriving at or leaving an offshore facility in the territorial waters of the United

(5)  
(6)

Kingdom. The compulsory insurance certificate required by Article 12 paragraph 2 in relation to such a ship certificate may be issued by the Secretary of State or by or under the authority of the government of a State Party other than the United Kingdom, and any such certificate issued by the Secretary of State shall be in English and shall be in the form set out in paragraph 4 above.

#### **Article 16 General provisions on contributions**

6. For the purposes of article 16 of the Convention, “associated person” means the members of a subsidiaries of a holding company, [or any two or more companies which have been amalgamated into a single company], and for these purposes:

“company” means a body incorporated under the law of the United Kingdom or of any other country,

“subsidiary” and “holding company” have the meanings given by section 736 of the Companies Act 1985(7) (or for companies in Northern Ireland Article 4 of the Companies (Northern Ireland) Order 1986(8)), subject, in the case of a company incorporated outside the United Kingdom, to any necessary modification of those definitions.

#### **Article 17: General provisions on annual contributions**

7. For the purposes of Article 17, paragraph 3 (calculation of annual contributions levied to the general account), the following regulations shall apply:

#### **“REGULATIONS FOR THE CALCULATION OF ANNUAL CONTRIBUTIONS TO THE GENERAL ACCOUNT**

##### **Regulation 1**

1 The fixed sum referred to in article 17, paragraph 3 shall be determined for each sector in accordance with these regulations.

2 When it is necessary to calculate contributions for more than one sector of the general account, a separate fixed sum per unit of contributing cargo shall be calculated for each of the following sectors as may be required:

- (a) solid bulk materials referred to in article 1, paragraph 5(a)(vii);
- (b) oil, if the operation of the oil account is postponed or suspended;
- (c) LNG, if the operation of the LNG account is postponed or suspended;
- (d) LPG, if the operation of the LPG account is postponed or suspended;
- (e) other substances.

##### **Regulation 2**

1 For each sector, the fixed sum per unit of contributing cargo shall be the product of the levy per HNS point and the sector factor for that sector.

2 The levy per HNS point shall be the total annual contributions to be levied to the general account divided by the total HNS points for all sectors.

3 The total HNS points for each sector shall be the product of the total volume, measured in metric tonnes, of contributing cargo for that sector and the corresponding sector factor.

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(7) 1985 c. . .  
(8) N.I. S.I. 1986/ . . .

4 A sector factor shall be calculated as the weighted arithmetic average of the claims/volume ratio for that sector for the relevant year and the previous nine years, according to this regulation.

5 Except as provided in paragraph 6, the claims/volume ratio for each of these years shall be calculated as follows:

- (a) established claims, measured in units of account converted from the claim currency using the rate applicable on the date of the incident in question, for damage caused by substances in respect of which contributions to the HNS Fund are due for the relevant year; divided by
- (b) the volume of contributing cargo corresponding to the relevant year.

6 In cases where the information required in paragraphs 5(a) and (b) is not available, the following values shall be used for the claims/volume ratio for each of the missing years:

- |     |   |        |
|-----|---|--------|
| (a) | solid bulk materials referred to in article 1, paragraph 5 (a)(vii) | 0      |
| (b) | oil, if the operation of the oil account is postponed               | 0      |
| (c) | LNG, if the operation of the LNG account is postponed               | 0      |
| (d) | LPG, if the operation of the LPG account is postponed               | 0      |
| (e) | other substances  | 0.0001 |

7 The arithmetic average of the ten years shall be weighted on a decreasing linear scale, so that the ratio of the relevant year shall have a weight of 10, the year prior to the relevant year shall have a weight of 9, the next preceding year shall have a weight of 8, and so on, until the tenth year has a weight of 1.

8 If the operation of a separate account has been suspended, the relevant sector factor shall be calculated in accordance with those provisions of this regulation which the Assembly shall consider appropriate.”

8. A person required to make an annual contribution to the general account or to one or more separate accounts shall make contributions for administrative costs in respect of that year and those accounts in accordance with any levy by the Assembly under Article 17 paragraph 4.

#### **Articles 39 and 40: Jurisdiction and enforcement**

9. Article 39(7) and Article 40 of the Convention shall not apply to any action under the Convention which falls within the scope of Council Regulation (EC) 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters(9).

10. Rules of court may provide for the manner in which proceedings to enforce a claim against a State Party in respect of a liability incurred under the Convention, are to be commenced and carried on; but nothing in this paragraph shall authorise the issue of execution, or in Scotland the execution of diligence, against the property of any State.

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(9) O.J. L 012, 16.01.2001, p.1.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order brings into effect Schedule 5A of the Merchant Shipping Act 1995 (c.21), which was inserted into that Act by the Merchant Shipping and Maritime Security Act 1997 (c.28), section 14. Schedule 5A sets out the provisions of the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996 (“the Convention”).

Article 4 and the Schedule to the Order set out the provisions subject to which the Convention is to have effect in the United Kingdom.

Articles 5 to 7 set out the obligation to make contributions to the Convention’s HNS Fund in relation to the receipt of specified cargoes in the United Kingdom.

Article 8 requires any ship which is carrying cargoes to which the Convention applies to have insurance satisfying the owner’s liability provisions of the Convention when that ship is entering or leaving a port in the United Kingdom, or if it is a United Kingdom ship when entering or leaving port in any other country.

Article 9 makes a consequential amendment to Part II of Schedule 7 to the Merchant Shipping Act 1995(c.21) (Convention on Limitation of Liability for Maritime Claims). Article 10 gives the Secretary of State the power to make regulations for the purposes of giving effect to the Convention.

A Regulatory Impact Assessment and Transposition Note have been prepared and copies can be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, S15 1EG. Copies have been placed in the library of each House of Parliament.

# Commentary on the Draft Order

## Article 1 of the Order - Citation and commencement

- 1.1 This article sets out the full title of the Order and when it will enter into force. The Order itself will enter into force once it has been approved by the Privy Council. This will occur once the Order has been approved by both Houses of Parliament. However, the operative parts of the Order (i.e. those concerning the liability to contribute to the HNS Convention and the requirement for shipowners to maintain insurance) do not come into effect until the same date on which the Convention enters into force. This cannot happen until the entry into force conditions contained in the Convention are met (see section).

## Article 2 of the Order - Interpretation

- 2.1 This article provides that words and phrases used in the regulations shall have the same meaning as in the HNS Convention as the terms used are described in the HNS Convention or should be considered in the context of that Convention. This prevents the need for a lengthy list of definitions.

## Article 3 of the Order - Provisions to have the force of law in the UK

- 3.1 The purpose of this article is to give the Convention the force of law in the UK, with the exception of the following Articles of the Convention:
- 3.2 Convention Article 4 subparagraph (5): this Article allows the Government to apply the Convention to its warships and other State owned/operated vessels on non-commercial service. As with similar Conventions, the Government does not intend to apply the HNS Convention to such vessels and so this Article is not given the force of law.
- 3.3 Convention Article 5, subparagraph (1): this Article allows States to disapply the Convention to certain domestic voyages. As explained at section 3 the UK is not going to apply this provision so it is not given the force of law.
- 3.4 Convention Article 5, subparagraph (2): this Article allows neighbouring States to disapply the Convention to certain voyages (small vessels carrying packaged HNS), again the UK is not making use of this provision so the Article is not given the force of law.
- 3.5 Convention Article 5 subparagraphs (3) and (4) relate to the implementation of the previous subparagraphs and are not required in UK law.
- 3.6 Convention Article 23: This Article allows States to take on liability of for the payment of contributions due under the Convention. This Article is not given the force of law because the UK will not be taking on liability for the payment of contributions, as set out in section 3.

## **Article 4 of the Order - Provisions having effect in connection with the Convention**

- 4.1 Additional legislation, necessary for the implementation of the HNS Convention, which is not already contained in the 1997 Act, appears in the Schedule to the Order and is given the force of law by this section. This legislation comprises:
- Application of the Pollution Control Zone instead of an Exclusive Economic Zone
  - Copy of the model State-issued certificate of insurance as contained in the Convention
  - Definitions relating to associated persons
  - Regulations for calculating annual contributions to the general account
  - Provision to disapply articles of the HNS Convention relating to jurisdiction and enforcement where the European Community has exclusive competence on these issues.

## **Article 5 of the Order - Contributions to the Convention Fund general account**

- 5.1 Subparagraph (1) replicates the liability to make contributions to the General Account as set out in the Convention, making specific reference to UK receivers.
- 5.2 Subparagraph (2) replicates the liability set out in the Convention to contribute to the general account when the operation of separate accounts is postponed or suspended.
- 5.3 Article 16(5) of the HNS Convention requires that where the aggregate quantity of HNS received (or in the case of LNG discharged) by associated persons exceeds the Convention thresholds then those persons will be liable to contribute to the HNS Fund in respect of the quantities actually received.
- 5.4 Subparagraph (3) sets out how associated persons are dealt with and has been drafted in such a way that the liability to contribute falls on to the parent company of any group of one or more associated companies - see Section 5, consultation question 4.

## **Article 6 of the Order - Contributions to the Convention Fund separate accounts**

- 6.1 Subparagraphs (1) to (3) replicate the requirement under the Convention to contribute to the separate accounts, depending on the type and quantity of HNS received (or owned prior to discharge, in the case of LNG), with specific reference to the UK.

6.2 Subparagraph (4) concerns associated persons and deals with them in the same way as under the general account with the liability to contribute falling on the parent company of a group or one or more associated companies.

### **Article 7 of the Order - Initial Contributions to Convention Fund**

7.1 This section is in two parts. The first paragraph explains who is covered by this Article of the Order. The second paragraph requires those persons to make initial contributions under the Convention.

7.2 The Article applies to those persons who in the calendar year before the HNS Convention enters into force:

- Held title to any LNG cargo immediately prior to discharge in the UK
- Received more than:

150,000 tonnes of persistent oils  
20,000 tonnes of non-persistent oils  
20,000 tonnes of LPG  
20,000 tonnes of bulk solids  
20,000 of other HNS

7.3 The Order is written in terms of who would have be liable to make contributions to the separate and/or general accounts had the HNS Convention been in force (rather than repeating the contribution thresholds) as this reflects the way in which the corresponding Article of the Convention has been written.

7.4 If the Convention were to enter into force in the UK in December 2007, for example, persons fitting the above criteria in respect of the year January 2006 - December 2006 would be required to make initial contributions.

### **Article 8 of the Order - Compulsory insurance**

8.1 This section extends the provisions of the 1995 Act relating to the Oil Pollution Compensation Regime to the HNS Convention. This is done by reference to the relevant Sections of the 1995 Act, substituting words and phrases as necessary to give specific meaning to the HNS Convention.

8.2 If a ship enters or leaves (or attempts to enter or leave) a port or terminal in the UK without a State Certificate attesting that insurance is in place, the Master or owner will be liable to the following fines depending one where he or she is tried:

on summary conviction (in a Magistrates Court) up to £50,000  
on conviction on indictment (Crown Court) an unlimited fine



- 8.3 In addition, if a ship does not comply with any of the requirements of Article 12 of the HNS Convention then the ship shall be liable to be detained. The enforcement provisions contained at Section 284 will then apply.
- 8.4 For ease of reference, a consolidated text of the 1995 Act as it would read amended by the HNS Order is contained at the end of this commentary.

### **Article 9 of the Order - Modifications of enactments and instruments to give effect to the Convention**

- 9.1 This section deals with the link between the HNS Convention and the 1996 Protocol to the International Convention on Limitation of Liability for Maritime Claims (LLMC 96). Currently, if an incident occurs that would fall under the HNS Convention if it were in force, the shipowner is entitled to limit his liability under LLMC 96 (see section 2). Once the HNS Convention enters into force, the liability provisions of that Convention will supersede those of LLMC 96.
- 9.2 Statutory Instrument 1998 No. 1258 (which brought LLMC 96 into force) amended paragraph 4(1) of Part II of Schedule 7 to the Merchant Shipping Act 1995 so that once an Order in Council was made under the 1997 Act in respect of the HNS Convention, claims for HNS damage would no longer be covered under LLMC.
- 9.3 However, the Convention will not be in force when that Order in Council is made, and it is necessary to ensure that LLMC 96 will still apply. Section 9 of this Order therefore provides that claims are only excluded from LLMC 96 if the HNS Convention *applies* to them. The Convention can only be deemed to apply to claims once it is in force. In the period between the UK ratifying the HNS Convention and the date on which the Convention enters into force, LLMC 96 will continue to apply.

### **Article 10 of the Order - Power to make regulations**

- 10.1 This Article provides the power to make regulations to give effect to the Convention and describes the scope of regulations that may be drafted. In fact the UK is not making any such regulations at this time. However if at some future point further regulation was necessary, this would be possible (only to the extent provided for in this Order) without the need for lengthy Parliamentary procedures.

# 1995 Merchant Shipping Act - Consolidated Text

*(This text is to assist stakeholders to see how the legislation will apply following the proposed Order)*

## Compulsory insurance against liability for pollution

**163.** [(1) does not apply]

(2) The ship shall not enter or leave a port in the United Kingdom or arrive at or leave a terminal in the territorial sea of the United Kingdom nor, if the ship is a United Kingdom ship, a port in any other country or a terminal in the territorial sea of any other country, unless there is in force a certificate complying with the provisions of subsection (3) below and showing that there is in force in respect of the ship a contract of insurance or other security satisfying the requirements of Article 12 of the Convention (compulsory insurance of the owner).

(3) The certificate must be—

(a) if the ship is a United Kingdom ship, a certificate issued by the Secretary of State;

(b) if the ship is registered in a Convention country other than the United Kingdom, a certificate issued by or under the authority of the government of the other Convention country; and

(c) if the ship is registered in a country which is not a Convention country, a certificate issued by the Secretary of State or by or under the authority of the government of any Convention country other than the United Kingdom.

(4) Any certificate required by this section to be in force in respect of a ship shall be carried in the ship and shall, on demand, be produced by the master to any officer of customs and excise or of the Secretary of State and, if the ship is a United Kingdom ship, to any proper officer.

(5) If a ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in contravention of subsection (2) above, the master or owner shall be liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding £50,000.

(6) If a ship fails to carry, or the master of a ship fails to produce, a certificate as required by subsection (4) above, the master shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

## Issue of certificate by Secretary of State

**164** (1) does not apply

(2) If the Secretary of State is of opinion that there is a doubt whether the person providing the insurance or other security will be able to meet his obligations thereunder, or whether the insurance or other security will cover the owner's liability under Article 7 of the Convention (liability of the owner) in all circumstances, he may refuse the certificate.

(3) The Secretary of State may make regulations providing for the cancellation and delivery up of a certificate under this section in such circumstances as may be prescribed by the regulations.

(4) If a person required by regulations under subsection (3) above to deliver up a certificate fails to do so he shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) The Secretary of State shall send a copy of any certificate issued by him under this section in respect of a United Kingdom ship to the Registrar General of Shipping and Seamen, and the Registrar shall make the copy available for public inspection.

### **Enforcing detention of ship**

**284.**—(1) Where under the Merchant Shipping (Hazardous and Noxious Substances Convention) Order 2005 a ship is to be or may be detained any of the following officers may detain the ship—

- (a) any commissioned naval or military officer,
- (b) any Departmental officer,
- (c) any officer of customs and excise,
- (d) any British consular officer, and
- (e) a harbour master appointed, by any person in whom are vested under the Harbours Act 1964(10), by another Act or by an order or other instrument (except a provisional order) made under another Act or by a provisional order powers or duties of improving, maintaining or managing a harbour, to be a harbour master or an assistant of a harbour master.

(2) If a ship which has been detained or as respects which notice of detention or an order for detention has been served on the master proceeds to sea before it is released by competent authority the master of the ship shall be liable—

- (a) on summary conviction, to a fine not exceeding £50,000;
- (b) on conviction on indictment, to a fine.

(3) The owner of a ship, and any person who sends to sea a ship, as respects which an offence is committed under subsection (2) above shall, if party or privy to the offence, also be guilty of an offence under that subsection and liable accordingly.

(4) Where a ship proceeding to sea in contravention of subsection (2) above takes to sea any of the following who is on board the ship in the execution of his duty, namely—

- (a) any officer authorised by subsection (1) above to detain the ship, or
- (b) any surveyor of ships,

the owner and master of the ship shall each—

- (i) be liable to pay all expenses of and incidental to the officer or surveyor being so taken to sea; and
- (ii) be guilty of an offence.

(5) A person guilty of an offence under subsection (4) above shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(6) Where under the Merchant Shipping (Hazardous and Noxious Substances Convention) Order 2005 a ship is to be detained an officer of customs and excise shall, and where under the Merchant Shipping (Hazardous and Noxious Substances Convention) Order 2005 a ship may be detained an officer of customs and excise may,

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(10) 1964 c.40.

refuse to clear the ship outwards or grant a transire to the ship.

[(7) does not apply]

(8) Any reference in this section to proceeding to sea includes a reference to going on a voyage or excursion that does not involve going to sea, and references to sending or taking to sea shall be construed accordingly.

## Section 6(b) Draft Regulations

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### STATUTORY INSTRUMENTS

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2005 No. [25.02.2005]

## MERCHANT SHIPPING

### The Merchant Shipping (Liability and Compensation for Hazardous and Noxious Substances) Regulations 2005

<i>Made</i> - - - -	2005
<i>Laid before Parliament</i>	2005
<i>Coming into force</i> - -	2005

The Secretary of State, in exercise of the powers conferred upon him by article 9 of the Merchant Shipping (Hazardous and Noxious Substances Convention 1996) Order 2005<sup>(11)</sup> and, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972<sup>(12)</sup> in relation to measures relating to maritime transport<sup>(13)</sup>, in exercise of the powers conferred on him by the said section 2(2), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Merchant Shipping (Liability and Compensation for Hazardous and Noxious Substances) Regulations 2005 and shall come into force on [ ] 2005.

(2) In these Regulations:

“calendar year” means a year beginning on 1st January,

“the HNS Convention Order” means the Merchant Shipping (Hazardous and Noxious Substances Convention 1996) Order 2005,

(3) Words and phrases used in these Regulations shall have the same meaning as in the Convention.

#### Persons required to report receipt of cargoes

2.—(1) Subject to paragraphs (4) and (5), a person -

- (a) who is (or who is notified by the Secretary of State that in the Secretary of State’s opinion he is likely to be) the receiver in the United Kingdom, in a calendar year in which articles 5 to 7 of the HNS Convention Order are not in force, of quantities of cargo in relation to which that person would be required to make an initial or annual contribution were those provisions in force, or

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(11) S.I. 2004/ .  
(12) 1972 c.68.  
(13) S.I. 1994/757.

- (b) who has received, (or who is notified by the Secretary of State that in the Secretary of State's opinion he is likely to have received), in a calendar year in which articles 5 to 7 of the HNS Convention Order are not in force, quantities of cargo in relation to which that person would be required to make an initial or annual contribution were those provisions in force,

shall comply with a notice given under regulation 3 as respects each calendar year before articles 5 to 7 of the HNS Convention Order come into force.

(2) A person who is (or who is notified by the Secretary of State that in the Secretary of State's opinion he is likely to be) required to make an initial contribution in accordance with article 7 of the HNS Convention Order shall comply with a notice given under regulation 3 as respects the calendar year in which articles 5 to 7 of the HNS Convention Order come into force.

(3) A person who is (or who is notified by the Secretary of State that in the Secretary of State's opinion he is likely to be) required to make an annual contribution in accordance with article 5 or 6 of the HNS Convention Order shall comply with a notice given under regulation 3 as respects each calendar year in which that person is required to make an annual contribution.

(4) A person who is (or who is notified by the Secretary of State that in the Secretary of State's opinion he is likely to be) the receiver in a calendar year of aggregate quantities between 17,000 and 20,000 tonnes of a contributing cargo other than:

- (a) contributing oil as defined in article 1, paragraph 3 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971, as amended, or
- (b) LNG, or
- (c) LPG

shall comply with a notice given under regulation 3.

(5) A person who immediately prior to its discharge in the United Kingdom, in a calendar year in which articles 5 to 7 of the HNS Convention Order are not in force, held title to an LNG cargo shall comply with a notice given under regulation 3 as respects each calendar year before articles 5 to 7 of the HNS Convention Order come into force.

(6) Paragraphs (1), (4) and (5) above apply to a person:

- (a) as respects cargo received in the United Kingdom by an associated person of that person, and
- (b) LNG to which an associated person of that person held title immediately before its discharge in the United Kingdom,

as though that cargo had been received (or that title to LNG held immediately before discharge) by that person.

### **Reporting requirements**

**3.**—(1) For the purpose of complying with his obligations under Article 21 of the Convention, the Secretary of State may by notice require a person to whom regulation 2 applies as respects a calendar year to furnish such information as may be specified in the notice within such a period or periods as may be specified in the notice.

(2) A notice given by the Secretary of State may in particular require a person to whom regulation 2 applies to furnish:

- (a) his name and address,
- (b) the quantity of each of the categories of hazardous and noxious substances set out in Article 1, paragraph 5(a)(i) to (vii), other than oil to which Article 19, paragraph 1(a) of the Convention applies, of which he was the receiver (or in the case of LNG held title immediately before it was discharged) in the United Kingdom in a calendar year, and
- (c) such information in his possession as may be required to ascertain whether the person on whom the notice is served is:

- (i) a person liable to make an initial or annual contribution in accordance with articles 5 to 7 of the HNS Convention Order, or
- (ii) an associated person for the purposes of the HNS Convention Order.

(3) Where a person to whom regulation 2 would otherwise apply is acting on behalf of a principal who is subject to the jurisdiction of the United Kingdom and chooses to disclose that fact, a notice given by the Secretary of State may also require that person to furnish:

- (a) the name and address of that principal on whose behalf he is acting,
- (b) the quantity of each of the categories of substances mentioned in paragraph 2(b) which he received on behalf of that principal, and
- (c) such information in his possession as may be required to ascertain the relationship of receiver and principal.

(4) A notice under this section may specify the way in which, and the time within which, it is to be complied with, and in particular may require a person who chooses to disclose that he is acting on behalf of a principal to notify that principal of that disclosure at the same time as he furnishes that information to the Secretary of State.

(5) In any action, including court action, taken by the Director of the HNS Fund in accordance with Article 22 of the Convention, particulars contained in any communication to the Director by the Secretary of State in accordance with Article 21 of the Convention shall, so far as those particulars are based on information obtained under this article, be admissible as evidence of the facts stated in the list; and so far as particulars which are so admissible are based on information given by the person against whom the action is brought, those particulars shall be presumed to be accurate until the contrary is proved.

#### **Offences and penalties**

4. A person who:

- (a) refuses or wilfully neglects to comply with a notice given under regulation 3, or
- (b) in furnishing any information in compliance with a notice given under regulation 3 makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular,

shall be liable:

- (i) on summary conviction to a fine not exceeding level 4 on the standard scale in the case of an offence under paragraph (a) above and not exceeding the statutory maximum in the case of an offence under paragraph (b) above, and
- (ii) on conviction on indictment to a fine, or imprisonment for a term not exceeding twelve months, or to both.

Date

Parliamentary Under Secretary of State  
Department for Transport

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision for the purpose of giving effect to the reporting and certification requirements of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 ("the HNS Convention"), which is set out in Schedule 5A to the Merchant Shipping Act 1995 (c.21) as inserted by section 14 of the Merchant Shipping and Maritime Security Act 1997 (c.28).

The offences and penalties provision is made under section 2(2) of the European Communities Act. It enforces the reporting requirements of Article 21 of the Convention, which is made an obligation on the Member States by Council Decision of 18th November 2002 authorising the Member States, in the interest of the Community, to ratify or accede to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the HNS Convention), 2002/971/EC, O.J. L 337/55, 13.12.2002.

A Regulatory Impact Assessment and Transposition Note have been prepared and copies can be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, S)15 1EG. Copies have been placed in the library of each House of Parliament.



# Commentary on the Draft Regulations

## Regulation 1 - Citation, commencement and interpretation

- 1.1 The Regulations will enter into force when the UK ratifies the HNS Convention. This can only take place once the Order has been made. As this is dependent on the Parliamentary timetable as well as the sitting dates of the Privy Council, a date for entry into force of the regulations has been left blank for now.
- 1.2 In order to prevent the need to include a lengthy list of definitions, subparagraph (3) provides that words and phrases used in the regulations shall have the same meaning as in the HNS Convention. Many of the terms used are described in the HNS Convention or should be considered in the context of that Convention. However, separate definitions for 'calendar year' and 'the HNS Convention Order' have been included as they are not covered in the HNS Convention.

## Regulation 2 - Persons required to report receipts of cargoes

- 2.1 The requirement to report arises from the liability to contribute under the Convention
- 2.2 Regulation 2 has been drafted to cover persons required to report both before and after the HNS Convention enters into force. In all case the regulations apply to persons who are, or would be liable to contribute, or who the Secretary of State's opinion may be liable to contribute. This allows the Secretary of State issue a notice to persons who he has grounds to believe would be liable to contribute under the Convention if it were in force. This means that the DfT will not request reports indiscriminately. This is in order to ensure minimal administrative burden on those persons who would not in any event be liable to contribute to the Conventions. However, persons who receive a notice must comply with it even if they would not be liable under the Convention because their HNS receipts are below the national and Convention thresholds.
- 2.3 Subparagraph (1) concerns receivers of HNS ***before the Convention enters into force.***
- 2.4 All persons that would be liable to contribute to the HNS Fund by virtue of their HNS receipts had the Convention been in force are required to comply with the reporting requirements. This is so that the DfT can submit annual reports to the Secretary General of the IMO, in accordance with Article 43 of the Convention, until the Convention enters into force.
- 2.5 Subparagraphs (2) and (3) concern those persons required to report by virtue of their receipts of HNS ***after the Convention has entered into force.***

- 2.6 Subparagraph (2) relates to initial contributions which are only required once and are based on quantities of HNS received in the calendar year preceding that in which the Convention enters into force for the UK. This means that in the year the Convention enters into force in the UK, persons who received HNS in excess of the Convention thresholds in the preceding year will be liable to make an initial contribution.
- 2.7 Subparagraph (3) concerns contributions to the general and separate accounts of the HNS Fund. That is, contributions in respect of all receivers (persistent and non-persistent oils, LPG, bulk solids and other HNS) and owners of LNG cargoes. Once the Convention has entered into force, persons who would be liable to make contributions under the Convention by virtue of their HNS receipts or ownership of LNG cargoes are required to comply with the reporting requirements.
- 2.8 Subparagraph (4) covers the national reporting thresholds. It requires persons who receive HNS (other than persistent oil, LNG and LPG as the national reporting thresholds do not apply to these substances). In quantities between 17,000 and 20,000 to comply with the reporting regulations. This requirement is not linked to the entry into force of the Convention as it is only for reporting purposes, it will therefore apply as soon as the regulations enter into force.
- 2.9 Subparagraph (5) deals with LNG cargoes separately as it is the person who held title to the cargo immediately before its discharge in a UK port or terminal that is liable to contribute under the Convention. Regulation (5) therefore requires such persons to fulfil the reporting requirements before the Convention enters into force.
- 2.9 Subparagraph (6) covers associated persons. Under the Convention, HNS cargoes received (or in the case of LNG owned) by associated persons are aggregated and liability will arise if the total cargo exceeds the contribution thresholds. Subparagraph (6) therefore requires a persons to include cargo received (or LNG owned) by associated persons.

### **Regulation 3 - Reporting requirements.**

- 3.1 This Regulation sets out what persons falling under Regulation (2) are required to report.
- 3.2 Subparagraph (1) sets out the basic requirement that the Secretary of State may issue a notice to those persons to whom Regulation (2) applies, requiring them to provide information within a given period.
- 3.3 In practice, such a notice will normally be a letter issued by the Department for Transport under the authority of the Secretary of State.
- 3.4 Subparagraph (2) sets out the information which may be required by such a notice.

- 3.5 Subparagraph (3) requires a receiver acting as an agent on behalf of a principal and wishing to pass financial liability on to that principal to identify the principal (name and address), provide details of the cargoes concerned (quantity of each substance) and demonstrate the agent/principal relationship. In respect of the last point, the legislation does not specify what information is needed to demonstrate the relationship, but that it should be in the possession of the agent. The agent will therefore be free to submit whatever information he or she has available to demonstrate such a relationship; for example a delivery note, an invoice, a contract or agreement etc.
- 3.6 Subparagraph (4) provides for a notice to state the way in which it should be complied with. It is our intention to be as flexible as possible in this respect. Persons will be able to respond by completing a paper form or, in due course, by using the electronic reporting system.<sup>14</sup> It also allows the notice to contain a deadline within which it must be complied with. The notice can also require agents that are disclosing a principal to also notify the principal when responding to the notice. This will assist during the verification of reports.
- 3.7 Subparagraph (4) provides that any information submitted under regulation (3) may be used as evidence in any Court action against the person concerned.

#### **Regulation 4 - Offences and penalties**

- 4.1 The offences and penalties provision is made under section 2(2) of the European Communities Act. It enforces the reporting requirements of Article 21 of the Convention, which is made an obligation on the Member States by Council Decision of 18th November 2002 authorising the Member States, in the interest of the Community, to ratify or accede to the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the HNS Convention), 2002/971/EC, O.J. L 337/55, 13.12.2002.
- 4.2 This regulation creates two offences;
- refusing or wilfully neglecting to comply with a noticed issued by the Secretary of State; and
  - knowingly providing false information or recklessly making a false statement.
- 4.3 For refusing or wilfully neglecting to comply with a notice a person can be fined in a Magistrates Court (summary conviction) up to £2,500. Providing false information/making a false statement can be fined (in a Magistrates Court) up to £5,000.
- 4.4 In both cases a person can also be tried in a Crown Court (conviction on indictment) in which case an unlimited fine can be applied and/or such a person can be imprisoned for up to 12 months.

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<sup>14</sup> See section 5 for details on the electronic reporting system developed by the IOPC Funds.



## Responses to initial consultation exercise

As explained at Section 1, the volume of responses received following the initial public consultation makes it impractical to include them in full although all stakeholders who responded either to the initial consultation or questionnaire are listed below. Key comments in response to the main issues are contained below (except where stakeholders have requested that their responses be treated as confidential):

### List of stakeholders that responded to the initial consultation document and/or provided information relating to HNS receipts.

ADI Treatments Ltd	Hammill Brick Ltd	Shell (STASCO)
Air Products plc	Humber LPG Terminals	Shell UK Oil Products
Anglian Water Services Ltd	Hunstman	Simon Riverside Ltd
	Hydrocarbon Resources Limited	Spectrum Chemicals Limited
ARC UK Ltd	Ibstock Building Products Limited	
Avecia Ltd	Immingham Storage Company Ltd	ST Services Ltd
BASF Plc	Ineos Chlor Limited	Swallow Stevedores Ltd
BP Shipping Ltd	International Marine Transportation Limited	Swire Oilfield Services
British Agrochemicals Assn Ltd		Talisman Energy (UK) Ltd
British Coatings Federation Ltd	ITOPF	Tank Storage Association
British Gas Hydrocarbon Resources Ltd	J Revis & Sons	Teesside Gas Processing Plant
British Maritime Law Association	Joint Nature Conservation Committee	Tennants Distribution
		Tessenden Fine Chemicals Ltd
British Ports Association	John Swire & Sons Ltd	
	LG Philips Displays	Texaco Ltd
Calor Gas Limited	Netherlands BV	The Chamber of Shipping
CBI	Lyalvale Ltd	The Edrington Group
Centrica Storage Limited	Messer UK Ltd	UK Cleaning Products Industry Association
Chemical and Oils Storage Management Ltd	MOD	
Chemical Industries Association	National Grid Transco plc	UK Major Ports Group
Ciba Speciality Chemicals (UK) Limited	North Killingholme Storage Ltd	UK Maritime and Coastguard Agency
		UK Petroleum Industry Association Ltd
ConocoPhillips Ltd	Petrochem Carless Ltd	Velva Liquids (North Shields) Ltd
Cumbrian Storage Ltd	Pilkington Special Glass Ltd	William Blythe Ltd
Crop Protection Association	Port of Tilbury London Ltd	
Deltech Europe Ltd	Port Sutton Bridge Ltd	
Denholme Specialist Handling Limited	Power Europe (Doncaster) Ltd	
Dewco-Lloyd Ltd	Powergen UK plc	
Dow Corning Ltd	Revice Transport LTD	
Eastham Refinery Limited	Seal Sands Storage Ltd	
Essex International Limited	Shell Gas Ltd	
Esso Petroleum Company Ltd		
Felixstowe Tank Developments		
Guardian Industries UK Ltd		

**Summary of responses to Question 1 of the initial public consultation:**

**Do stakeholders agree that UK ratification of the Convention in mid 2004 provides an appropriate time period between implementation of a UK reporting system and the earliest likely entry into force date of the HNS Convention, as contained in the EU Council Decision? If not, we would welcome thoughts on a suggested date for UK ratification of the convention.**

<b>Comment</b>	<b>Author</b>
NGT would be concerned that the proposed time-scale for implementation does not allow an adequate period to address the issue of liability transfer and insurance. Many of our contracts are negotiated on a long-term basis (5 – 10 years) and we would therefore be unable to incorporate any amendments in advance of the implementation of the Convention. NGT recognises that a later introduction whilst preferable, may not be appropriate. This issue could alternatively be addressed by a greater clarity of definitions of the parties as explained below.	National Grid Transco
The timetable of ratification in mid-2004 seems appropriate.	UK Cleaning Products Industry Association
Although Huntsman Petrochemicals (UK) Ltd support the implementation of the HNS Convention, it should be noted that the UK may be disadvantaged relative to the remainder of the EU due to its insular nature necessitating material movement by ship HNS pipeline networks in CWE. As a consequence of this, Huntsman petrochemicals (UK) Ltd would propose that the ratification and implementation of the HNS Convention be timed to insure compliance with the proposed deadline of 30th June 2006. Therefore, we propose that ratification and implementation should be time-tabled for the second half of 2005. However, UK National regulations should be implemented at an appropriate date during 2004 to ensure that receivers of HNS report quantities for 2004 and 2005.	Huntsman Petrochemicals (UK) Ltd
EU Council Regulation 44/2001 requires EU member States to ratify or accede to the HNS Convention if possible, before 30 June 2006. Furthermore the HNS Convention will only enter into force eighteen months after at least 12 States have expressed their consent to be bound and persons in such States have received during the previous calendar year at least 40 million tonnes of contributing cargo. In the light of these facts TSA strongly disagrees that the UK should ratify the Convention in mid 2004. Premature ratification by the UK would impose additional costs and an excessively burdensome regulation on our industry; this will compromise the European competitiveness of the sector and therefore inhibit the development of the UK bulk liquid storage sector. We therefore see no justification in the UK ratifying this Convention in advance of other EU States.	Tank Storage Association and the following members of that association: Cumbrian Storage Ltd Port Sutton Bridge Ltd Seal Sands Storage Ltd Simon Riverside Ltd Immingham Storage Co Ltd Velva Liquids (North Shields) Ltd Immingham Storage Ltd Chemicals and Oils Storage Management Ltd Simon Management Ltd Lewis Tankers Ltd.
Yes, however, the gathering of data will be complex and hence new systems may have to be developed to report in the detail proposed, which could cause delay in producing the initial reports related to contributing cargo received.	International Marine Transportation Ltd
This is not an issue for the company, as long as the administration of the scheme is properly in place	Messer UK Limited

<p>The import tax / charges should be delayed as late as is permitted. The legislation and guides should be introduced a reasonable time before this. However too early introduction could result in the need for amendments, which would not be good. The legislation should not be implemented before the guidelines are also in place.</p>	Ineoschlor
<p>We believe that the UK should work to the EU time-scale to ensure equal application of the Convention across all Member States. A more cohesive European approach would also provide opportunity to examine other approaches to gathering information on principals, such as through amendments to the electronic customs code, using information from CHIEF or merging with reporting requirements of the Vessel Traffic Management Directive.</p>	British Ports Association
<p>Shell has supported the development of the HNS Convention. Undue delay in the ratification of Conventions in general can undermine the credibility of the IMO. We agree therefore that the UK should ratify as soon as practicable, provided that the Department for Transport is confident, from the answers received to its Questionnaire to companies, that it will be able to put in place an administration system, with proper governance, covering all, or nearly all, the contributing cargoes.</p>	Shell (STASCO)
<p>The proposal to ratify the convention mid-2004 appears hasty. From my own contacts within our industry it is apparent that these proposals are not widely known outside of the trade associations and limited number of companies who have received the consultation. I believe that this is in part due to the decrease in manpower resources within both Trade Associations and our industry. I would therefore suggest that ratification is delayed until 2005 and that in the intervening period the main players are encouraged to communicate the proposals more widely. I do not believe that this would have any adverse effect on industry coming to grips with the reporting requirements as we already have a number of requirements to track traded volumes, both commercial and regulatory, and I believe that the main players in our industry have this information available.</p>	BASF plc
<p>Prior to ratification, CIA feels that the following should be considered in more details and this should address, amongst other things:</p> <ul style="list-style-type: none"> <li>• Chemicals list</li> <li>• Data gathering</li> <li>• Share of the contributing costs among countries</li> <li>• Company protection</li> <li>• Insurance verification</li> </ul> <p>Until the list [of chemicals] is available and some time is given for the industry to consider its impact, CIA is reluctant to support the immediate ratification of the legislation.</p> <p>A phase-in period may be more appropriate with a voluntary reporting commitment from industry to be given consideration prior to ratification. CIA questions whether there are useful lessons to be learned from the implementation of the Rotterdam Convention, which helped determine the impact of the legislation in the EU.</p> <p>Running the Convention on a trial basis would allow for practical changes that ensure that the system is actually workable and fair.</p> <p>CIA members would prefer for the ratification - while carrying on with the implementation work - to be delayed until at least early 2005.</p>	Chemical Industries Association
<p>We would like to stress the importance of making compensation available at the earliest possible point. This should be factored into the implementation process.</p>	Joint Nature Conservation Committee

**Summary of responses to question 2 of initial public consultation:**

**The Government is minded to legislate on the definition of receiver under Article 1(4)(a) of the Convention. This is aimed at achieving a harmonised approach to the definition of receiver across all potential States Parties, and ensuring that different industry sectors are not placed at a competitive disadvantage from other sectors.**

**Do stakeholders agree with this intended approach to implementation on the definition of receiver? If not, we would welcome comments.**

Comment	Author
<p>TSA does not agree that the UK should adopt the definition of receiver under article 1(4)(a). TSA does not accept that independent storage companies should have primary liability for payment of the levy and strongly disagrees with the reasoning for ignoring the possibility of providing an alternative national definition of receiver. TSA propose that the UK defines the receiver under article 1(4)(b) in such a way that 'the polluter pays', this could be achieved by adopting a definition equivalent to the Convention's definition of LNG receiver.</p> <p>There are a number of practical difficulties which appear to have been overlooked when considering the use of the definition of receiver under article 1(4)(a), if the principal is outside the jurisdiction of the Convention. Under the existing proposals there would be many instances where independent storage companies could not pass on liability, as their principal would not be subject to the jurisdiction of the Convention. The burden of the levy would therefore fall on the independent storage company, despite the fact that it has no economic interest in the cargo. An independent storage company could try and deal with this liability by way of an indemnity in the contract but would have to be confident that the principal would honour the indemnity, which may need to be called as a result of a levy which arises after the storage agreement has terminated. Further, such an indemnity could only be obtained with the agreement of the principal. Companies (and their relevant national authorities) may be reticent about agreeing to the imposition upon them of a liability in connection with a convention to which their state of origin is neither a party nor a benefactor. This situation would be seriously exacerbated by the fact that principals will be able simply to avoid any liability to contribute by contracting for storage through the use of a group company or agent which is not registered in a state party to the convention. This could easily be achieved overnight by assigning their storage contract to such a company. Ownership of the products is not relevant, since all that is required under the current proposals is the disclosure of the principal. It is commonplace for storage contracts to be with a party that is not the owner of the products.</p> <p><b>(Proposal 1) To address this issue TSA proposes</b> that as the intention of the legislation is 'the polluter pays' the receiver should be defined as the owner at the time the goods cross the ship's rail. The physical receiver would then be under an obligation to disclose tonnages received and the name of its principal. That principal would then be under a primary obligation to pay, unless they disclose the name of the owner. If either the principal or the owner were not subject to the jurisdiction of the fund then the fund would not be able to force them to co-operate and there would be a deficit. This would be made up by levying a higher amount against those companies that are liable to contribute rather than leaving such liability with storage companies. The fact that the convention cannot be effectively enforced against persons outside its scope, is a defect of the convention not having being ratified by enough states and is not something which should be put at the door of the storage industry, which is not in any way responsible for the escape of products as a result of shipping disasters.</p>	<p>Tank Storage Association and the following members of that association: Cumbrian Storage Ltd Port Sutton Bridge Ltd Seal Sands Storage Ltd Simon Riverside Ltd Immingham Storage Co Ltd Velva Liquids (North Shields) Ltd Immingham Storage Ltd Chemicals and Oils Storage Management Ltd Simon Management Ltd Lewis Tankers Ltd.</p>
<p>It is a relatively simple process for the receivers of such materials to be identified via existing HM Customs &amp; Excise systems eg CHIEF (electronic</p>	<p>Huntsman Petrochemicals</p>



import declaration) and Intrastat declarations.	UK Ltd
The use of the definition 1(4)(a) is appropriate.	UK Cleaning Products Industry Association
Whilst NGT support the principles outlined, it is our opinion that the definition in Article 1(4)(a) does not provide a sufficiently clear definition to deal with the present relationships within our industry. As a Gas Transporter, NGT should be classified as an <i>Agent</i> working on behalf of the Principal (Shippers). The liability should rest with the Principal in this case. However, clause 4.24 states that in the case of LNG/LPG cargoes liability cannot pass to the 'person with the main financial interest' (the Principal). This exclusion would particularly prejudice gas transporters such as us. NGT would therefore wish to be reassured on this point and request that the definitions are amended or a caveat added to recognize that the specific role of gas transporters in the case of LNG/LPG.	National Grid Transco
We support the use of the definition contained in [Article] 1(4)(a). The proviso element contained in proposal (b) i.e. that the only receiver is liable, provided that the total contributing cargo reported as received is substantially the same as would be reported under (a), may result in confusion and mis-reporting.	International Marine Transportation Ltd
The Association notes that at the Ottawa meeting in June last year there was general agreement that the definition contained in Article 1(4)(a) should be adopted. The Association has considered the reasons set out in the Consultation Document why the definition in Article 1(4)(b) would not be satisfactory. It accepts this line of reasoning and therefore would be happy to see HMG adopt the definition of "receiver" set out in Article 1(4)(a).	British Maritime Law Association
Either definition would be applicable to Messer UK Limited, our preference is for the former, as the definition is clearer for our types of cargo and will presumably be easier to administer.	Messer UK Ltd
It is essential that receiver is clearly defined and legislated as one particular body within the supply chain. The responsibility should rest with the body most able to supply the returns.	Ineos Chlor
We agree that Article 1(4) would allow a more harmonised application of the Directive [Convention] unfortunately it has not been possible for BPA to identify the extent of reporting requirements for ports or terminals under this article of the Convention. [And see BPA comments in response to question 3].	British Ports Association
We agree that a harmonised approach is important.	Shell (STASCO)
Agree	BASF plc
Agree in principle. Definition A offers the simplest approach to the implementation of the Convention. However, the definition should take into account common commercial practices. In real terms, the principal should really be the owner of the material while at sea. We encourage the principle of responsibility enshrined within Incoterms to be the determining factor. In case of transport by sea, the ownership of the material will vary based on the contractual obligations under which the product was sold. In some cases, the product becomes the property of the "receiver" only once it is offloaded in the port (e.g. CIF: Cost, Insurance and Freight) whereas in others, the material belongs to the receiver as soon as it is collected (e.g. FOB: Free on Board). Under the first conditions, the levy should really be charged to the vendor/sender as he determines which shipping company is to be used for the transport and remains the owner of the material until it reaches its destination. In case of an incident, the future owner in the country of arrival should not be held liable when an unsuitable carrier is used, as he has no control over its vendor's choice.	Chemical Industries Association

### Summary of responses to question 3 of initial public consultation

Comments are invited from stakeholders on the application of the agent/principal relationship, to be included in the Reporting Regulations.

Comments	Author
<p>TSA are concerned that if independent storage companies are classed as Agents under the Convention the Reporting Regulations will prove to be administratively burdensome and expensive. The administrative fees are estimated to be similar to those incurred by the IOPC Fund. However, since the independent storage Companies do not own the product, such fees would be excessively burdensome. Contrary to paragraph 8.4 of the Competition Assessment, TSA do not agree that the bulk of administrative costs can be passed back to the principal receiver.</p> <p><b>(Proposal 2) To address this issue TSA propose</b> that obligations should be defined so that the independent storage companies have no role in the HNS reporting requirements.</p> <p>In the event that proposal 2 is not adopted and independent storage companies nevertheless have some reporting obligations with regard to its principals' imports of HNS, TSA does not accept that these should be as extensive as those proposed in the consultation document and should as a matter of principle not exceed information within the knowledge and reasonable control of the independent storage company. This would in practice represent the tonnages received and the name of the principal as is reasonably ascertained by the independent storage company.</p> <p>There are a number of practical difficulties which appear to have been overlooked when considering the use of the definition of receiver under article 1(4)(a), if the principal is within the jurisdiction of the Convention and with regard to the operation of the principal and agent relationship. It will be difficult and expensive for an independent storage company to verify that its principal is subject to the jurisdiction of a state party to the convention.</p> <p>In particular the rules about what constitutes being subject to the jurisdiction of a state party to the convention may vary from one state to another. How could an independent storage company be expected to know who would be subject to the jurisdiction of Spain or Angola? For example, a US company with operations in the UK can either (i) register a subsidiary in the UK, (ii) register a branch, (iii) register a place of business or (iv) merely conduct its operations through an agent (who may be undisclosed to the independent storage company). Furthermore, what is to stop an independent storage company from entering into a 5 year contract with a company/business which is registered in Spain at the outset but whilst payment continues during the 5 year term, the Spanish company/business has been wound up (or the branch closed) and the business continues to be operated though a US parent company. The independent storage company would not know that the principal had ceased to be registered in Spain. Further, the proposal for an electronic registering system (paragraph 4.47 of the consultation document) requires the input of contact details of the principal.</p> <p>However, the independent storage company should not be liable for the accuracy of information that is input, since they can only pass on what they are told by the principals. For example an independent storage company does not actually check the existence of the principal's office in Spain or any information on associated persons, since who may be associated with whom is entirely outside the knowledge or competence of the independent storage company and such disclosure must be the principal's responsibility.</p>	<p>Tank Storage Association and the following members of that association: Cumbrian Storage Ltd Port Sutton Bridge Ltd Seal Sands Storage Ltd Simon Riverside Ltd Immingham Storage Co Ltd Velva Liquids (North Shields) Ltd Immingham Storage Ltd Chemicals and Oils Storage Management Ltd Simon Management Ltd Lewis Tankers Ltd.</p>

<p><b>(Proposal 3) In the event that Proposal 2 is not adopted, to address this issue TSA propose</b> that the fund set up an online register of principals who admit contractual relationships with storage companies in respect of the receipt of specific HNS products. For the purposes of confidentiality, principals would only be able to enter information and review information that they enter and storage companies would only be able to review information about their terminals. Providing that the independent storage company can identify a registered entry for the principal admitting having a contractual relationship with the independent storage company in respect of a product on the date that it is received, the independent storage company would report that receipt against that principal and subject to such principal being subject to the jurisdiction, cease (or subject to adoption of proposal 1, cease altogether) to be liable to the fund in respect of the receipt of that import; primary liability having passed to the principal. It would be for the principal to verify that they are (or are not) subject to the jurisdiction of a state party to the convention, their contact address and associated companies and to keep such information up to date on the register. The independent storage company would not accept an import until it could find the relevant registration. The consultation proposes that independent storage companies provide evidence of the contractual relationship with the principal. In many instances signed contracts do not exist at the time that the independent storage company receives the product. Furthermore principals regularly assign their contract to another company (often another group company), without informing the independent storage company.</p> <p><b>(Proposal 4) In the event that Proposal 1 is not adopted, to address this issue TSA propose</b> that if the independent storage company can produce a form which appears to have been signed (including faxed signatures) by the principal accepting its position as principal in respect of a particular import of HNS, then the independent storage company should not have the administrative burden of supplying evidence of the contractual relationship or any further liability regarding the disclosure of the name of its principal. No consideration appears to have been given in the consultation document to the scenario in which the independent storage company provides the name of the principal which is within the jurisdiction of the convention but then for some reason such principal does not pay the levy.</p> <p><b>(Proposal 5) In the event that neither Proposal 1 nor 2 is adopted, to address this issue TSA propose</b> that, if after the name of the principal is disclosed for some reason they fail to pay a levy, the liability should not revert to the independent storage company but should be shared between those who are liable to contribute. Notwithstanding the response to Question 2, TSA believe it to be unfair if an independent storage company receives say 15,000 tonnes of HNS in a year from a company outside the jurisdiction of the convention and then 15,000 tonnes of HNS from an un-associated company which is also outside the jurisdiction of the convention in the same year, that these should be amalgamated to give the independent storage company a liability from having received 30,000 tonnes. Neither of the two principals would have any responsibility to contribute if they had been registered in a state party to the convention.</p> <p><b>(Proposal 6) In the event that Proposal 1 is not adopted, to address this issue TSA propose</b> that when independent storage companies are treated as the receiver there should be no liability to contribute in respect of receipts for which the principal would not have been liable to contribute had they been subject to the jurisdiction of a state party to the convention.</p>	
<p>Agrees with the application of the agent/principal relationship as defined in Paragraph 4.25 of the consultation document. However, there is a significant administration role for the agent where associated principals change frequently and may exist in differing countries. In this latter case, agents will need to regularly scrutinise listings of States party to the HNS convention. Once the agent/principal relationship has been implemented</p>	<p>Huntsman Petrochemicals (UK) Ltd</p>

and specifically for UK principals, Huntsman Petrochemicals (UK) Ltd would suggest that, for all materials received by an agent, all CHIEF declarations should be in the name of the principal and that such intra-EU materials should be included within the principals' Intrastat declaration. Agents should be responsible for issuing annual summaries of materials received to each principal for cross-checking and audit purposes.	
We are happy with the approach taken relating to the relationship between agent and principal, provided that the definition of the principal deals with the issue of subsidiaries outlined in the main body of this letter.	UK Cleaning Products Industry Association
As a Gas Transporter, NGT should be classified as an Agent working on behalf of the Principal (Shippers). The liability should rest with the Principal in this case. However, clause 4.24 states that in the case of LNG/LPG cargoes liability cannot pass to the 'person with the main financial interest' (the Principal). This exclusion would particularly prejudice gas transporters such as us. NGT would therefore wish to be reassured on this point and request that the definitions are amended or a caveat added to recognize that the specific role of gas transporters in the case of LNG/LPG.	National Grid Transco
We support the proposals in section 4.33 in the Department of Transport paper.	International Marine Transportation Ltd
As regards the issue raised in relation to Article 1(4) and the agent/principal relationship, the Association agrees that the person obliged to pay cargo's share of any damage resulting from an HNS incident should be "the person with the main financial interest in the HNS concerned".  Where an importer is simply acting as an agent (operator of storage facilities etc) and is not the ultimate receiver of the cargo, it is appropriate that the agent should pass on the obligation to contribute to the HNS Fund to the actual receiver.  The Association accepts that if an agent wishes to pass on this obligation, the onus should be on the agent to identify the principal and prove the nature of the contractual relationship between them. The Association understands that the Regulations to be issued by HMG in relation to the HNS Convention will set out the steps which an agent will need to take in order to divest himself of liability to contribute.	British Maritime Law Association
There are some 6000 chemicals included under the reporting requirements and this would place an excessive administrative burden on ports and terminals attempting to identify the principal receivers of these cargoes, especially as ports and terminals do not have this information first hand. Ports transfer cargo from ships to land based modes of transport and their commercial agreements are with the shipping lines, who in turn hold all cargo information in the ships manifest. We would encourage further exploration with shipping agents and operators on the possibility of recovering information on the principal receiver from them directly.  We strongly oppose suggestions that ports and terminals should pay the levy where it is not possible to identify the principal receiver or to recoup the levy from them. Ports operate on a commercial basis and set their charges accordingly. The proposed fund would invoice a levy retrospectively based on cargo levels and the liabilities arising for the fund. In certain cases, it may not be possible for the port or terminal to recoup this cost from its HNS customers as there is no guarantee that any customer or particular trade will continue to use a specific port the following year. Also, under the proposed system, ports could be liable to pay a levy to fund a compensation scheme for accidents and damage arising from the shipping sector – an area where ports and terminals have no control over the risk undertaken.	British Ports Association
Our main concern with the operation of any compensation fund of this type	UK Petroleum

is to ensure competitors do not gain an advantage in the market by avoiding liability for contributions to the fund. In the oil refining and marketing business we are therefore concerned that all importers of oil products should be equally liable. For example, we would not want oil product importers (ie principals) to be able to avoid liability by hiding behind agents. As far as we can judge, the Government's intended approach outlined on page 26 [agent/principal proposal] should achieve this aim, and we therefore support it.	Industry Association Limited
The provisions of UK National Regulations, as described in Section 4.33, appear to cover the agent/principal relationship well.	Shell (STASCO)
In principle agree with the suggestions proposed. However the following scenario is common in our industry: Manufacturer with sales office in the UK exports from mainland Europe/USA direct to customer and also invoices customer directly from sales office based in country of manufacture. In this case, does the customer pick up the reporting obligation or the sales office located in the delivery country, even though the sales office has no commercial interest in the transaction ?	BASF plc
Reporting responsibilities have to be clearly defined. It is essential to establish who has to report the quantities received. In theory, reporting seems to be simple and clear, but it overlooks the possibility of purchase and transfer of title through an intermediary distributor. For example: Company X may use 30,000 tonnes of imported acetone each year, buying some directly, with the remainder from Company Y, which has imported acetone into the UK for onward sale. Record keeping and avoidance of double counting becomes a challenge.  It would be simpler for the user of the material to provide a yearly declaration. Providing that data remains strictly confidential, perhaps sources of the materials should be acknowledged on the reporting form to permit cross checking in case of disputes. This would help to reduce the chances of the agent and principal to declare the received quantity twice thus avoiding in the principal being overcharged.	Chemical Industries Association
A number of ports operate tank storage facilities for chemicals, but this is done as a warehousing operation and at no point are the ports the owners of the material. We assume therefore that ports will qualify as "agents" and we see no great problems in passing on details of the receiver of such material.	The UK Major Ports Group Limited

#### Summary of response question 4 of the initial consultation

**The Government proposes to establish lower thresholds for non persistent oil, LPG and bulks solids and other HNS, than those contained in the Convention for the purposes of monitoring potential contributing cargo only.**

**What would be an appropriate level for such thresholds?**

**Should the thresholds be the same for each separate account?**

**Are there significant fluctuations in the quantities of HNS received in the UK following carriage by sea, from year to year, by individual importers?**

Comments	Author
TSA believes that the thresholds set out in the Convention for products other than persistent oil are too low and should be increased to the level proposed for persistent oil. TSA therefore does not support the proposal that the UK Government establishes lower thresholds than those set out in the Convention for the purposes of monitoring potential contributing cargo. Such a decision would be inappropriate as it would add to the administrative burden and costs of reporting for storage companies and further erode their competitiveness as against non-UK storage companies.	Tank Storage Association and the following members of that association: Cumbrian Storage Ltd Port Sutton Bridge Ltd Seal Sands Storage Ltd Simon Riverside Ltd

	<p>Immingham Storage Co Ltd  Velva Liquids (North Shields) Ltd  Immingham Storage Ltd  Chemicals and Oils Storage Management Ltd  Simon Management Ltd  Lewis Tankers Ltd.</p>
<p>Would propose establishing lower reporting thresholds of 85 -90% of the Convention thresholds and would propose that this level be applied to all accounts.</p>	<p>Huntsman Petrochemicals (UK) Ltd</p>
<p>We see no justification for legally fixing a reporting requirement much below the 20,000 tonnes level, as is being suggested in 4.36 and on. It will inflict a large amount of bureaucracy on companies to total up figures that will never be used, even if “uninsured” accidents and spillages were to occur every year, which is extremely unlikely. A minus 10% approach would appear to us to be about right – i.e. companies only have a duty to report <b>for information only</b> totals of more than about 18,000 Tonnes. Fiscal penalties should only apply to failure to report totals above the minus 2½% level i.e. above 19,500 Tonnes.</p> <p>The reporting level for information only should be no lower than 18,000 tonnes and for formal reporting no lower than 19,500 tonnes for “IMDG Code” goods. We cannot comment on other sectors. These reporting levels should apply to individual business sectors where subsidiaries of large companies are involved. There will be inevitable fluctuations in levels of imports as the economy waxes and wanes and as decisions are made about the locations of manufacture. However, these are unlikely to exceed the 10% tolerance suggested above.</p>	<p>UK Cleaning Products Industry Association</p>
<p>It should be noted that in comparison with other HNS cargoes such as Oil, LNG/LPG presents a significantly lower environmental hazard. During the liquefaction process, oxygen, carbon dioxide, sulphur compounds and other hazardous substances are removed and the gas is held in liquid form at approximately –165 degrees C. When LNG comes into contact with warmer air or water, as in a leakage, it would evaporate quickly leaving no residues. There would be no clean up costs associated with LNG spills on water.</p> <p>NGT believes that any thresholds set, either financial or tonnage should reflect this significantly reduced risk. Indeed for LNG any imposition other than for safe transportation would seem onerous given its physical properties.</p> <p>The environmental risk posed by LPG is of a similar level and in this case NGT believes that a cut off of below 5000 tonnes per annum would be appropriate.</p>	<p>National Grid Transco</p>
<p>We would support this proposal, but suggest the approach taken should be a simple one e.g. the threshold level should be set 10% below the level defined in the regulations.</p>	<p>International Marine Transportation Limited</p>
<p>The convention's objective should relate to the potential damage of a cargo to the environment in the event of an accident. The effects for example of oil spills are well known and in fact the potential to cause (lasting) damage is determined by three factors quantity, environmental toxicity and persistence. The incidents referred to in the</p>	<p>Messer UK Limited</p>

<p>consultation paper all relate to large quantities of HNS, many of which were persistent in terms of disposal. Within our own field of Gases UN Class 2, they have 3 unique features as cargoes. Firstly the quantities carried are usually small. Gases by their nature have to be transported in high integrity containers, which rarely exceed 20 tonne of product capacity. Secondly, in terms of mass, the amount of sea transport of gases is tiny in comparison with substances like oil and bulk minerals. In fact the relatively high cost of transport compared to the value of gases mitigates against their transport over large distances. The only significant trade in HNS within Class 2 are LPG and LNG plus those gases used in the semiconductor and lighting industry, all of which are high value items but used in very small quantities.</p> <p>Thirdly gases, by their very nature, tend to disperse rapidly in the event of sudden release e.g. fire or catastrophic container failure. Effects can be severe but are always going to be very short in terms of environmental damage. Our position is that we believe items in Class 2 should generally be excluded from the HNS Convention as only two types of Class 2 products really fall within its scope.</p> <p>LPG and LNG carried by ship in bulk above a threshold level of 1000 tonne. LPG and LNG are carried by ship as indivisible large cargoes i.e. not stored in individual receptacles.</p> <p>Items in Class 2 defined as marine pollutants with the following limits:- Chlorine 100 tonne; Arsine 1 tonne.</p> <p>These Class 2 materials are classed as marine pollutants. Clearly moderate quantities of discharge could cause local environmental damage and there may be justification for setting HNS limits for them, however it must be pointed out that such materials are always transported in sealed receptacles (ISO containers in the case of chlorine, cylinders in the case of arsine) so the risk of discharge is extremely small.</p> <p>Messer UK Limited believes that for the effective working of the HNS Convention, the limits for reporting HNS should be set at reasonable levels recognising the potential for environmental damage, yet not set too low as to create unnecessary bureaucracy.</p>	
<p>The thresholds used should be those agreed internationally, UK manufacturing should not be penalised by differential thresholds or charging. Yes there can be significant changes in tonnage from year to year</p>	Ineos Chlor
<p>It is not stated in the consultation paper why the government believes it would be beneficial for the competent authority to identify potential contributing cargo. Lower UK thresholds would be an additional administrative burden and in the absence of a valid reason for these we cannot support such a proposal.</p>	British Ports Association
<p>We fully support this. It is important that the Department's database includes all contributors and also those non-contributing parties whose imports may, in the next few years, increase above the HNS threshold. It may also help identify a party that attempts to avoid contribution by splitting its cargo receipts between different associate companies.</p> <p>We suggest that the reporting threshold should be 25% of the HNS threshold.</p>	Shell (STASCO)
<p>Disagree with this proposal. As a multinational company we would want to implement common accounting systems across all of our operating countries in line with our current sales and logistics systems. Any deviation from the common proposals would lead to increased IT</p>	BASF plc

<p>and other resource costs for the UK. We have already experienced difficulties as a company due to the differing reporting requirements implemented in each EU member state to comply with the Packaging Waste Directive.</p>	
<p>We would suggest that DfT need to consider whether there is potential for gross environmental damage from relatively minor volumes of substances qualifying under the convention. We consider that the level of environmental damage is dependent on:</p> <ul style="list-style-type: none"> <li>• the substance involved and hence, at the very least, if thresholds are determined, they should relate to some category of threat (e.g. 500 tonnes of substance A could cause less environmental damage than 500 tonnes of substance B)</li> <li>• the environmental sensitivity of the location of spill event (e.g. &lt;1km away from a mussel beds could be a much more sensitive location than in deep water 50nm from the coast).</li> </ul> <p>These issues therefore need to be taken into consideration if the DfT set thresholds.</p>	<p>Joint Nature Conservation Committee - a joint response in conjunction with English Nature (EN), the Countryside Council for Wales (CCW) and Scottish Natural Heritage (SNH).</p>
<p>Many of our larger multinational companies have expressed concerns regarding the uniformity of the reporting requirements across the world. Introducing lower thresholds for non-persistent HNS should be agreed at IMO level. Past legislation – e.g. Packaging Waste Directive – has demonstrated the difficulties that can be encountered with varying reporting requirements. Trying to simplify and make consistent a complex reporting process is essential.</p> <p>Further work should be carried out prior to the ratification of the Convention. It is impractical to establish a level without an appropriate business impact study.</p> <p><b>Should the thresholds be the same for each separate account?</b> No. Although the different HNS categories could all potentially cause some damage in the case of an incident, the rates of shipment of the products are different. The proposed levels should allow for those variations.</p> <p><b>Are there significant fluctuations in the quantities of HNS received in the UK following carriage by sea, from year to year, by individual importers?</b> Fluctuations are to be expected due to changes in market demands, production transfer to other territories and loss or gain of supply and manufacturing contracts. The latter however would not necessarily affect the total volume of HNS to be introduced in the country on a yearly basis.</p>	<p>Chemical Industries Association</p>

**Summary of responses to question 5 of the initial consultation:**

**Comments are invited on the establishment of these provisions as part of the implementing Reporting Regulation, covering statutory fines, legal rights to recover unpaid levies and a compliance and verification system to monitor and manage the reporting system for contributing cargo.**

<b>Comments</b>	<b>Author</b>
<p>Agrees that UK national regulations should be implemented to define the reporting responsibilities of receivers/principals/agents. However it is suggested that the use of the electronic system (paragraphs 4.44 - 4.50 of the consultation document) should not be made mandatory. Rather, the information required and its format should be defined such that individual companies can extract the</p>	<p>Huntsman Petrochemicals (UK) Ltd</p>



<p>information from their current business systems and avoid duplication of effort required to re-input the information into a separate system. Although recovery of unpaid levies to the HNS fund could be achieved through the operation of a 'guarantee bond' system, it should be noted that such systems can curtail the fund-raising abilities of a company and may effectively restrict the company's degrees of freedom. It is assumed that such levies will be instalment based to smooth the effect on companies and that paragraph 3.18 of the consultation document does not provide an open-ended annual call for costs associated with a particular incident.</p> <p>Compliance and verification systems are required to monitor, manage and ensure the accuracy of the reporting system. Huntsman Petrochemicals (UK) Ltd would propose that a similar system to that of HMC&amp;E tax warehouse compliance and verification be adopted. In summary, an employee of the company is designated to 'self-police' the reporting system and that a central government department (HMC&amp;E?) audit the processes implemented to ensure correct reporting. To incentivise the 'self-policing' employee, (s)he should be made, in law, jointly and severally liable with the company for all HNS levies of role of Excise Tax Warehouse keeper, without indemnity. The central government department should audit the companies reporting of contributing cargoes against the company's CHIEF and/or Intrastat declarations and investigate any discrepancies that are found.</p>	
<p>Failure to report should only become an offence above 19,500 tonnes.</p>	<p>UK Cleaning Products Industry Association</p>
<p>NGT would support the implementation of a compliance and verification system reflective of the risks associated with each type of cargo. Any such process should obviously be developed following appropriate consultation with, and involvement of, affected parties.</p>	<p>National Grid Transco</p>
<p>We support the principles outlined in para 4.43, but have no suggestions as to the size of statutory fines for failure to report, other than that they must act as a deterrent, Spell out the Crown court option but not be set at a level out of proportion to the offence. Does the current practice under the IOPC convention offer a working model?</p>	<p>International Marine Transportation Ltd</p>
<p>In respect of [this question] we would not wish to see receipts reported below minimum defined threshold. If all receipts of HNS in Class 2 had to be notified, we would envisage virtually all records being of tiny quantities leading to unnecessary bureaucracy.</p> <p>With the exception of LPG and LNG, gases are traded on a simple basis, i.e. a consignor delivers a known (indivisible) quantity of material to a consignee in specified containers/cylinders/receptacles. The supply chain and cargo are clearly defined.</p>	<p>Messers UK Limited</p>
<p>Legislation and fines, etc should be used to ensure a level playing-field within UK industry - otherwise the compliant companies would subsidise less responsible ones. Latitude should nevertheless be allowed for those making reports that are as accurate as reasonably practicable and made with best endeavors.</p>	<p>Ineos Chlor</p>
<p>It is vital that State Parties world-wide fulfil their responsibility to ensure that any obligation arising under the Convention is fulfilled. It occurs to us that there may be a synergy in this respect with the work of HM Customs and Excise.</p>	<p>Shell (STASCO)</p>

<p>A fair and well-designed system is essential so that not only <b>all</b> parties involved are subjected to the legislation, but also sharing the cost is done fairly. Responsible companies should not be forced to pay levies in a way likely to jeopardize their future.</p> <p>Introducing a fining system is reasonable, as responsible companies should not be penalised for complying with the legislation by subsidising negligent ones. The UK government should ensure however that the new legislation is well advertised with an introductory period to allow for companies to become familiar with the scheme. Any fining system should also include an appeal process.</p> <p>In the same way as the government/fund is entitled to recover non payment, companies should be entitled to recover over payment with associated interests.</p> <p>Compliance has to be thoroughly verified to ensure for a fair system. When a claim is made against the Fund, financial details should be in the public domain and companies should be entitled to dispute any unjustifiable costs. The Fund should be accountable and responsible for taking any dispute on board before any cost repayment is agreed.</p>	<p>Chemical Industries Association</p>
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**Summary of responses to question 6 of the initial public consultation:**

**In order to ensure compliance with the requirement to maintain insurance cover, the Government is minded to apply the sanctions contained in Section 163 of the 1995 Merchant Shipping Act and the penalties contained in regulation 36 of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1998 (SI 1996/2154), as amended by SI 1997/1910, with suitable increases.**

**Do you agree that the fines proposed in paragraphs 5.6 and 5.7 are appropriate?**

Comments	Author
<p>Although [we] believe the proposals regarding shipowner's insurance are best commented on by both shipowners and insurers, it is generally in agreement with the proposals regarding fines (paragraphs 5.6 &amp; 5.7) and the adoption of IMO guidelines detailing the benchmark for issuing insurance certificates.</p>	<p>Huntsman Petrochemicals (UK) Ltd</p>
<p>This approach seems reasonable provided that a level playing field applies to UK shipping.</p>	<p>UK Cleaning Products Industry Association</p>
<p>In para 5.1 there is mention of checking of insurance certificates by the port state control inspection programme. This is manageable (we already check CLC) but para 5.6 only mentions that we can detain if the ship attempts to leave the port without insurance.</p> <p>In practice we would detain as soon as we discovered there was no valid certificate (as we would with any other statutory certificates). In the Survey and Certification Regulations we have the power to detain if the ship does not comply with the regulations. That allows us to detain as described above. Could we ask that legal confirms that the detaining powers in the implementing legislation would have the same effect.</p>	<p>UK Maritime and Coastguard Agency</p>
<p>We support the proposal.</p>	<p>International Marine Transportation Ltd</p>
<p>The Association is advised that Club boards have not yet been asked to consider issuing certificates of financial responsibility in respect of liabilities under the HNS Convention. However, given the precedent of CLC it seems probable that boards will agree.</p>	<p>British Maritime Law Association</p>

<p>The Association notes that HMG plans to treat the IMO Assembly Resolution A898(21) and the IMO Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims as the bench mark by which it will test compliance with Article 12 of the HNS Convention. The Association agrees with this and is informed that this proposal is supported by the Clubs.</p> <p>In paragraph 5.14 of the Consultation Document there is a reference to the need to inform shipowners applying to the United Kingdom for certificates of insurance that the Guidelines will be the bench mark test. It is not clear to the Association how this information will be communicated and to whom owners of non-flag state ships will apply for a certificate. Will this be contained in the Regulations? What will be the position if a shipowner presents a certificate issued by a State Party which does not comply with the Guidelines?</p>	
<p>It is unlikely that our company would be affected by any insurance provisions. Shipments are generally insured for loss/damage to the material/container by the consignor.</p>	Messers UK Limited
<p>Unable to comment on the levels of fines, however uninsured companies should remain liable for the damage they have caused (up to the mandatory insurance level) despite not having insurance to pay for the damage on their behalf.</p>	Ineos Chlor
<p>The level of penalties is clearly for Government to determine. We have no comment.</p>	Shell (STASCO)
<p>It is essential for the ship owner to be subjected to a fine when not complying with the HNS requirement. Controls by the government should also be systematic so that the chance of being caught without appropriate insurance is very high. Any monies recovered should be fed back into the Fund.</p> <p><b>Non-compliant governments</b> Provisions should be made against non-compliant governments. If a government does not comply with its verification responsibilities in terms of ship insurances, its ability to make claims against the Fund should be void.</p>	Chemical Industries Association
<p>There were no objections to the proposed use of sanctions reflecting existing legislation under the CLC regime for failure to comply with the certification requirements.</p>	The Chamber of Shipping Limited
<p>We would like to see the importer or importer's agent, jointly responsible for fines applied when such insurance is absent.</p>	Dowcorning

### Summary of responses to question 7 of the initial public consultation

The Government is minded to use the appropriate internationally agreed guidance on marine insurance when issuing certificates of financial security. Currently these are the IMO Guidelines on Shipowners Responsibilities in Respect of Maritime Claims, as contained in MGN 135 (M).

Do you agree that the UK should use the IMO guidelines to provide the benchmark for issuing insurance certificates attesting that insurance or other financial security is in place? If not, we would welcome comments.

Comments	Author
<p>Although [we] believe the proposals regarding shipowner's insurance are best commented on by both shipowners and insurers, it is generally in agreement with the proposals regarding fines (paragraphs 5.6 &amp; 5.7) and the adoption of IMO guidelines detailing the benchmark for issuing insurance certificates.</p>	Huntsman Petrochemicals (UK) Ltd
<p>An approach that ensures that foreign flagged vessels carry the same</p>	UK Cleaning

levels of insurance as UK ships must be supported.	Products Industry Association
We support the use of the existing IMO guidelines.	International Marine Transportation Ltd
The Association is advised that Club boards have not yet been asked to consider issuing certificates of financial responsibility in respect of liabilities under the HNS Convention. However, given the precedent of CLC it seems probable that boards will agree.  The Association notes that HMG plans to treat the IMO Assembly Resolution A898(21) and the IMO Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims as the bench mark by which it will test compliance with Article 12 of the HNS Convention. The Association agrees with this and is informed that this proposal is supported by the Clubs.  In paragraph 5.14 of the Consultation Document there is a reference to the need to inform shipowners applying to the United Kingdom for certificates of insurance that the Guidelines will be the bench mark test. It is not clear to the Association how this information will be communicated and to whom owners of non-flag state ships will apply for a certificate. Will this be contained in the Regulations? What will be the position if a shipowner presents a certificate issued by a State Party which does not comply with the Guidelines?	British Maritime Law Association
This appears to be a reasonable approach.	Shell
Agree	BASF plc
No objections were put forward to the use of the IMO Guidelines set out in MGN 135(M) as the benchmark standard for the issue of certificates.	The Chamber of Shipping Limited

**Summary of responses to question 8 of the initial public consultation:**

**The Government considers that all domestic voyages in the UK should be governed by the Convention, in order to provide full financial protection for UK coastal communities, industries and other interests.**

**Should the UK apply the Convention to domestic voyages involving the carriage of HNS?**

**We would welcome information on the frequency of such domestic voyages, on an annual basis.**

<b>Comments</b>	<b>Author</b>
There were no objections to the proposal that the UK should not invoke the reservation covering the exclusion of certain domestic voyages from the provisions of the Convention.	The Chamber of Shipping Limited
Huntsman believes that the Convention should be applied to all domestic voyages involving the carriage of HNS.	Huntsman Petrochemicals UK Ltd
We do <u>not</u> support the "voluntary" extension of the Convention to domestic voyages for the reasons set out in the main body of this letter. As a maritime nation with many offshore islands, more of the business of our member companies involves shipments by sea <u>within</u> the nation state, than applies to their competitors on the continent. The convention deals with international traffic and we see no justification in adding to the burdens on UK industry by imposing international rules on domestic sea transport. There is also every likelihood of some double counting as a result. The UK should do no more than implement the basic components of the HNS Convention and should not enter into "gold plating" this just adds costs without a proper justification.	UK Cleaning Products Industry Association

NGT consider that the movements of small quantities of LPG on domestic voyages should be excluded and an annual threshold of 5000 tonnes be adopted for inclusion within the liability fund for bulk LPG cargoes. This would also recognise the limited risk of significant pollution from an LPG release.	National Grid Transco
Yes; we do not believe that it is tenable to exclude the availability of compensation to the victims of an incident involving an HNS cargo on the basis that the ship carrying the cargo was less than 200 gross tons, engaged in a domestic voyage and only carrying HNS in a packaged form. The principle that those who suffer damage should have access to compensation is paramount.	International Marine Transportation Ltd
The Consultation Document makes it plain that HMG has no intention of excluding small vessels on voyages between UK ports from the full rigours of the Convention. The Association has no problem with this proposition. It is recognised that owners and insurers may have reservations in this respect.	British Maritime Law Association
We frequently ship materials in Class 2 by domestic vessel, however these rarely include HNS and where such instances occur the quantities are tiny. All movements of HNS are in packaged (cylinder) form. We would be unlikely to fall within the scope of the HNS convention in these circumstances.	Messers UK Limited
Agree that all ships should be potentially liable, however where very small quantities (ie in non-commercial distribution quantities) are carried, collection and monitoring could outweigh the benefit. Therefore it is sensible to have a minimum combined quantity nominated for a particular HNS.	Ineos Chlor
Domestic vessels should be included should it be possible to identify the principal receiver without disproportional administrative effort.	British Ports Association
It would not be logical to include voyages from the near Continent but to exclude domestic voyages. We agree that the Convention should apply to all domestic voyages.	Shell (STASCO)
Agree. In practice, there is little domestic movement of chemical cargoes by sea, any that do occur tend to be via large ferries which would exceed the 200 tonne threshold.	BASF plc
CIA members' opinions differ on this issue.  Most of the carriage of large quantities of chemical goods from one UK port to another tends to be done internally, i.e. from one company's production site to another one. As such, the carriage of goods tends to be strictly controlled by the relevant company. Some of the companies involved in this "internal" shipment would prefer for the 'polluter pays principle' to apply.  Due to the low frequency of those transfers, other companies are open to see domestic carriage included.  No data is available with respect to the frequency of domestic sea transport at CIA. It is however expected for the procedure to be relatively uncommon - with the exception maybe of transfers from Great Britain to Northern Ireland - as most internal chemical transport tends to be traditionally done by road.	Chemical Industries Association

**Summary of responses to question 9 of the initial public consultation:**

**In order to establish a harmonised approach for the reporting of all contributing HNS cargo in the UK following carriage by sea, and the payment of contributions to the HNS Fund, the Government is minded to instruct the HNS Fund to invoice individual receivers for the amount payable.**

**Do you agree with this intended approach to implementation? If not, we would welcome comments.**

<b>Comments</b>	<b>Author</b>
Huntsman Petrochemicals (UK) Ltd is also in agreement that the HNS fund should invoice individual receivers direct.	Huntsman Petrochemicals (UK) Ltd
This appears to be satisfactory.	UK Cleaning Products Industry Association
NGT would not support this approach (as they wish domestic carriage of HNS to be excluded).	National Grid Transec
We support the proposal. This approach is in line with the arrangements for the IOPC convention and hence is established and understood by many of the companies that may make contributions to the HNS funds.	International Maritime Transportation Ltd
It would be more appropriate to invoice the ship owners (it is the ships that will release the HNS to the environment), however the practicalities of this are recognised.	Ineos Chlor
The HNS fund should invoice receivers directly.	British Ports Association
This appears to be a reasonable approach.	Shell (STASCO)
Agree.	BASF plc
Agree. Reporting is going to be a complex process for both industry and authorities. Separating domestic and international carriage reports is not practical.	Chemical Industries Association

## Shipowner's liability

- 1.1 This Annex covers the first level (tier one) of liability and compensation and in particular:
- The strict liability of the shipowner, including limits and defences
  - The requirement to maintain insurance
  - Costs to the shipowner

### Strict liability

- 1.2 Under tier one of the HNS Convention, the shipowner is held strictly liable for damage caused, unless the circumstances fall within one of the stated exceptions set out in the defences available to the shipowner (see paragraph 1.9). Strict liability means that the liability is not dependent on the fault of the owner or any other person; the fact that damage has occurred is sufficient to establish the shipowner's liability.

### Limit of liability

- 1.3 The shipowner is entitled to limit his/her liability under the Convention according to the units of tonnage of the ship, as follows:
- (a) 10 million SDR for a ship not exceeding 2, 000 units of tonnage;
  - (b) For a ship in excess of 2,000 units of tonnage the shipowner is entitled to limit his liability to the following amount on top of that mentioned in (a) above:  
for each unit of tonnage from 2,001 to 50,000 units of tonnage, 1,500 SDR;  
for each unit of tonnage in excess of 50, 000 units of tonnage, 360 SDR.

The total limit of the shipowners' liability however, shall not exceed 100 million SDR.

- 1.4 In order to limit liability the shipowner must establish a limitation fund, in accordance with the determined limit, with a competent court. Once a limitation fund has been established no other assets of the owner may be seized, i.e. legally arrested. Any assets that had been seized before the limitation fund was established must be released. Any other person also providing financial security also has the right to institute a limitation fund i.e. the shipowner's insurer.
- 1.5 When the limitation fund is distributed the court will set aside a sufficient sum in order to prevent the shipowner from paying more than the applicable limit of liability. This could happen when the limitation fund is distributed amongst claimants, as the shipowner may still be liable for compensation payments in a non-State Party. This defence is also available to other persons who may be compelled to pay

compensation. If a shipowner successfully invokes one of the defences available to him/her, compensation would still be available from the HNS Fund in many cases.

- 1.6 Liability is channelled to the shipowner and shall not be attached to other persons connected with the operation of the ship, unless the damage resulted from their own fault. The aim is to prevent unnecessary litigation.
- 1.7 Subsequently, since the shipowner is strictly liable for damage and is required to maintain insurance or other financial security, the interests of claimants are protected.

### **Denial of shipowner's right to limit liability**

- 1.8 The shipowner may be denied the right to limitation of liability if it is proved the damage was committed either with intent, or recklessly, and with knowledge that damage would probably result, as a result of the owner's personal act or omission. This is only the case in the event of an act or omission by the shipowner, not the master or crew of the ship.

### **Shipowner defences**

- 1.9 The HNS Convention provides defences for the shipowner to be exempted from liability if he can prove that:
  - (a) the damage resulted from an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
  - (b) the damage was wholly caused by an act or omission done with the intent to cause damage by a third party; or
  - (c) the damage was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function; or
  - (d) the failure of the shipper or any other person to furnish information concerning the hazardous and noxious nature of the substances shipped either:
    - (i) has caused the damage, wholly or partly; or
    - (ii) has led the owner not to obtain insurance in accordance with article 12;

provided that neither the owner, nor its servants or agents knew or ought reasonably to have known of the hazardous and noxious nature of the substances shipped.

- 1.10 Subparagraph (d) applies only if someone had failed to give the shipowner the relevant information, or if the shipowner had not obtained the necessary insurance cover as a consequence of this failure to provide information. If the shipowner invokes one of these defences and is not held liable, compensation may still be available from the HNS Fund.



## **Compulsory Insurance of the Shipowner**

1.11 Any owner of a ship that carries HNS will have to take out insurance, or some other acceptable form of financial security. Depending on the ship's tonnage, the shipowner and the shipowner's insurer will be liable to pay up to between 10 and 100 million SDR per incident.

### **Direct Action**

1.12 Actions for compensation can be brought directly against the insurer or other guarantor (see Article 12(8)).

1.13 The relevant guarantee, or funding, for the establishment in court of a limitation fund following an incident will normally be provided by the insurer. Subsequently the insurer is liable to direct legal action by the claimants or the HNS Fund up to the shipowner's limit of liability. Where claims have been paid by the HNS Fund to claimants without court proceedings, the HNS Fund would acquire a right of subrogation against the shipowner or his/her insurer to recover its costs up to the limit of the first tier.

1.14 The insurer has the same defences against liability as the shipowner, as well as an added defence if the damage resulted from the wilful misconduct of the shipowner. This would not affect the claimant's rights to recover compensation from the Fund, and therefore all of the costs of the incident would fall on the HNS Fund.

### **Certificate of Insurance**

1.15 The HNS Convention requires shipowners to provide evidence of insurance cover upon entry into port of any State that is party to the Convention. This is regardless of whether the Flag State of the ship is party to the Convention.

1.16 Shipowners have to demonstrate the existence of insurance cover by possession of a certificate attesting that appropriate cover is in force, such a certificate must be carried on board any ship carrying HNS and entering or leaving a port or terminal in a State Party.

1.17 The responsibility for issuing insurance certificates will fall upon flag States that a party to the Convention. Initially, many ships may be registered in States that are not party to the HNS Convention and the responsibility of issuing the certificates to such vessels will fall to those States that are parties. In the UK the Maritime and Coastguard Agency will issue the certificate see paragraph 1.22 below.

1.18 This is the same arrangement that is followed in the International Convention on Civil Liability for Oil Pollution Damage (CLC) and the International Oil Pollution Compensation Fund (IOPC Fund) regimes. Ships flagged in non-party States will be able to seek certificates from States that are party to the Convention as long as they can satisfy the insurance requirements.

## **Enforcement**

- 1.19 The sanctions contained in Sections 163 and 164 of the 1995 Merchant Shipping Act will be applied to shipowners of non compliant vessels carrying HNS. If any ship carrying HNS attempts to enter or leave a UK port or terminal without a valid certificate of insurance the master or owner will be liable for a fine of up to £50,000 in a Magistrate's Court, or if tried in a Crown Court, there is no statutory limit to the fine which can be applied.
- 1.20 In addition, the vessel may be detained and so is unable to trade.

## **Cost to shipowner**

- 1.21 It is unlikely that shipowner premiums will increase as a result of an increase in the shipowner's liability limits alone. However, much will depend on the state of the marine insurance market at the time. Underwriters take claims record into account and, therefore, an increase in the costs and number of claims is likely to result in an increase in premiums, but only in the event of a serious HNS incident.
- 1.22 In addition it is likely that a small fee will be charged to cover the administrative costs of issuing state certificates. It is expected that this charge will be the same as that which applies to certificates issues for the CLC regime, currently £30. These costs will not apply until the Convention has entered into force internationally.
- 1.23 The certification charge is kept under review by the Department's Maritime and Coastguard Agency and may be increased from time to time.

## Overview of the HNS Convention

- 1.1 This section contains a brief overview of the general principles of the Convention, readers requiring more detail should refer to the subsequent Annexes.
- 1.2 The HNS Convention governs *liability* and *compensation* relating to the carriage of *HNS* by sea.

### What is HNS?

- 1.3 The definition of "hazardous and noxious" covers those substances which have been identified as posing a risk to maritime safety if accidentally released into the marine environment.
- 1.4 This has been largely based on lists of individual substances that have previously been identified in a number of Codes designed to ensure maritime safety and prevention of pollution. The Codes are amended from time to time to reflect changes in classification of substances; the HNS Convention has been drafted to make provision for such amendments as needed.
- 1.5 HNS substances fall within the following categories and are identified through the various internationally agreed codes that govern the carriage by sea of substances falling within those categories:

#### **Bulk liquids & gases:**

The following categories of substances are classified as HNS when carried in bulk if they appear in the relevant parts of the codes as listed below:

Oils	Annex I Appendix I of the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978, as amended (MARPOL 73/78 as amended)
Liquids	Annex II Appendix II of MARPOL 73/78 as amended
Liquids	Chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Goods in Bulk, 1983, as amended
Liquefied gases	Chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Gases in Bulk, 1983, as amended

#### **Substances carried in packaged form:**

Substances carried in packaged form are classified as HNS if they appear in the International Maritime Dangerous Goods (IMDG) Code as amended.

### **Solid bulk materials:**

Solid bulk materials are covered if they possess chemical hazards (Appendix B of the Code of Safe Practice for Solid Bulk Cargoes) and are *also* subject to the IMDG Code when carried in packaged form. So, for example, solid materials carried in bulk that aren't classified as HNS include iron-ore and grain (no chemical hazard), and coal and woodchips (not covered by IMDG).

### **Other liquids:**

Liquids other than those listed above are classified as HNS if they have a flashpoint not exceeding 60°C.

## **What happens when the codes change?**

- 1.6 The references to the various codes are "as amended". This is to take into account the fact that the codes are amended from time to time and substances may be added or removed from the list. The HNS Convention will apply to the most current version of the code, taking account of any transitional periods.

## **Assistance in identifying HNS**

- 1.7 An electronic system has been developed to assist in the reporting of HNS cargoes. The system contains a database of all substances qualifying as HNS. Users can check a particular substance by searching for it by name or UN number. The system will also be updated to reflect any changes to the codes. Section 5 looks at this system in greater detail.

## **Liability**

- 1.8 If an incident occurs involving the carriage of HNS by sea the shipowner will usually be liable for damage arising. Under the HNS Convention the Shipowner may limit his liability to a set amount, based on the tonnage of the vessel concerned. Liability limits are defined in Special Drawing Rights (SDRs)<sup>1</sup>. The shipowner's liability ranges from 10 million SDR to 100 million SDR (approximately £8 - 80 million) and the shipowner must have insurance or other financial security to cover that liability. Annex IV explains shipowner's liability and related issues in greater detail.

## **Compensation**

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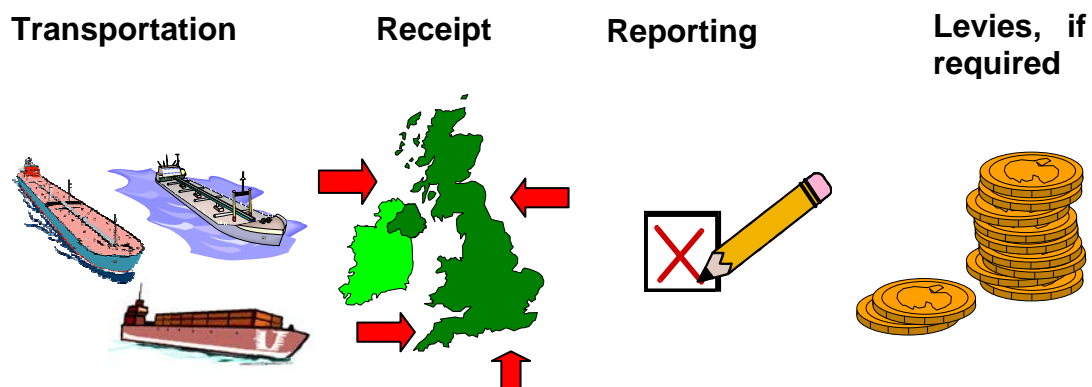
<sup>1</sup> The SDR is the International Monetary Fund's Special Drawing Right. On September 1 2004: £1 = 1.22 SDR

- 1.9 In the first instance, any compensation payments will be met by the shipowner (or insurer). If the claims exceed the shipowner's limit of liability then additional compensation is available through the HNS Fund. Annex III explains the compensation arrangements available under the HNS Convention.

## The HNS Fund

- 1.10 When the HNS Convention enters into force internationally, the HNS Fund will be established. The HNS Fund will provide additional compensation when the cost of claims exceeds the shipowner's limit of liability. The compensation provided by the HNS Fund is limited to 250 million SDR per incident (approximately £204 million), including any amount paid by the shipowner.
- 1.11 The compensation provided by the HNS Fund will be financed by the receivers of HNS in annual quantities exceeding the thresholds set out in the Convention in all States that are party to the HNS Convention. Levies will be raised in the event of an incident that engages the Fund, although there will be administrative costs to cover the running of the Fund. When necessary, receivers will be levied, on a per tonne basis, by the HNS Fund Secretariat after an incident to meet the costs of any agreed compensation.

## The general principles of the HNS Fund are:



**Transportation** - HNS substances carried by sea will fall within the scope of the HNS Convention if the port or terminal at the final destination<sup>2</sup> is based in the UK.

**Receipt** - Those persons who receive HNS arriving in any UK port or terminal will be liable to contribute to the HNS Convention if those receipts exceed the *Convention thresholds* and

**Reporting** - Those persons who receive HNS arriving in any UK port or terminal will be required to report in excess of the *reporting threshold*; or if acting as an

<sup>2</sup> See section 5 for information on storage and transshipment.

agent, they will need to provide details of the receiver on whose behalf they are acting.

**Levies, if required** - The receiver will be required to contribute to the HNS Fund if an incident occurs in the year after the one in which the report was made and compensation payments cannot be met in full by the shipowner. Payments will be in the form of a levy per tonne of HNS received.

## **Requirement to contribute to the HNS Fund**

- 1.12 Cargoes of HNS received in the UK only lead to liability under the HNS Convention for the receiver if the total annual receipts exceed certain quantities, in which case the HNS is considered to be "contributing cargo".
- 1.13 The requirement to contribute to the HNS Fund applies to any person who, in the preceding calendar year:
- received over 150,000 tonnes of crude or fuel oil
  - held title to any LNG cargo immediately prior to its discharge in the UK
  - was the receiver of over 20,000 tonnes of LPG
  - was the receiver of over 20,000 tonnes of oils other than crude/fuel
  - was the receiver of over 20,000 tonnes bulk solid materials
  - was the receiver of over 20,000 tonnes of other HNS substances

In the cases of oils (ther than crude/fuel oil), bulk solid materials and other HNS substances, the thresholds represent the total amount of HNS falling within each category. If a persons receives 5,000 tonnes each of 5 different types of bulk solid materials, those receipts must be aggregated so that, in this example, that person would be the receiver of 25,000 tonnes of bulk solid materials and therefore liable to contribute to the HNS Fund.

## **Requirement to report receipts of HNS - a State obligation**

- 1.14 In order to determine the amount of contributions required from each receiver Article 21 of the Convention requires each State Party to report, on an annual basis, details of all persons in that State liable to contribute to the HNS Fund.
- 1.15 It is necessary, therefore, for all State Parties to implement a reporting system to identify all such persons, and the quantities of HNS received, and to forward this information to the HNS Fund Secretariat on an annual basis. The Convention also requires that States have to submit details of contributing cargo received in the previous calendar year to the Secretary General of the IMO upon ratification of the Convention. Thereafter annual reports must be provided to the Secretary General until the Convention enters into force, whereupon the annual reports will then have to be submitted directly to the HNS Fund Secretariat.

- 1.16 The UK Government will submit such a report based on the questionnaires that were completed as part of the initial consultation along with any further information arising from this consultation. The reporting regulations will enter into force upon UK ratification of the Convention, so future reports to the Secretary General (and, in due course, to the HNS Fund) will be made on the basis of information gathered under the regulations. See Section 6 for the text of the draft regulations.





## Partial Regulatory Impact Assessment

### 1. Title of proposed measure

**Improving UK Legislation governing the compensation and liability for damages arising from the carriage of hazardous and noxious substances by sea**

### 2. The purpose and intended effect of the measure

2.1 To ensure that, in the UK, the victims of damage arising from the carriage of hazardous and noxious substances (HNS) by sea receive adequate, prompt and effective compensation.

2.2 Compensation through limitation of shipowners liability for damage arising from the carriage of cargoes of HNS by sea is presently governed in the UK by the Limitation of Liability for Maritime Claims Convention, 1976 (LLMC Convention). In the event of a major shipping incident involving the carriage of HNS by sea in UK coastal waters the levels of compensation available under the LLMC Convention would not necessarily cover all the costs incurred for damages. Further, whilst most UK shipowners maintain adequate insurance, there is no requirement under the LLMC regime for a shipowner to maintain cover to meet their liabilities.

2.3 The UK has one of the longest coastlines in the EU and a number of incidents involving the carriage of HNS by sea have occurred in UK waters in recent years, and have highlighted the need for improved UK legislation governing liability and compensation for damage arising from such incidents.

2.4 To address this concern on an international basis, in 1996 the International Maritime Organization (IMO) adopted the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the HNS Convention).

2.5 Entry into force of the HNS Convention will improve the situation for all victims in the event of a shipping incident involving HNS by establishing a guaranteed level of compensation well beyond the sums currently available. It will also make it considerably easier for governments, local authorities and individual claimants to recover the costs of responding to, and damage arising from, HNS incidents through strict liability of the shipowner (i.e. liability on the part of the shipowner even in the absence of fault on his part) up to a limit of 100million SDR<sup>1</sup>, depending on the tonnage of the ship; a requirement of the shipowner to maintain insurance cover, and a right of direct action against the insurer (i.e. the right of the claimant to claim directly against the insurer rather than the carrier up to his limit). In the event that compensation claims exceed 100 million SDR, an HNS Fund will provide further compensation up to a total of 250 million SDR (including the shipowner's liability).

2.6 Therefore, UK ratification, and subsequent international entry into force of the Convention will place a burden on UK shipowners through the requirement for compulsory insurance to meet their liabilities under the Convention. Further, the HNS Fund will be financed by levies on receivers of HNS in State Parties (ports, terminals, tanks storage facilities and businesses trading in HNS received into the UK by sea), where these receipts exceed prescribed thresholds. However, the initial 'receivers' of HNS may pass on this financial liability to principal receiver e.g. the chemical industry and other industry users of HNS based in the UK.

2.7 At present four States are party to the HNS Convention; Angola, the Russian Federation, Tonga and Morocco. However, Canada, Denmark, Finland, Germany, the Netherlands, Norway, Sweden and the United Kingdom signed the HNS Convention within the 12 months the Convention was open for signature as a sign of political intent to proceed towards ratifying the Convention. The EU Member States who signed the Convention did so independently. The United States have not

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<sup>1</sup> The Special Drawing Rights is a monetary unit established by the International Monetary Fund (IMF); as at 10 February 2003, 1 SDR = £ 0.840140

i.e. £100 million = 119 million SDR  
£250 million = 298 million SDR

expressed any interest in ratifying the Convention, although we understand that Canada (as a signatory State) and Ireland are in the consultative stages of implementation. We also understand that the Scandinavian countries are proceeding to drafting implementing legislation shortly.

2.8 The UK is currently co-ordinating a Working Group at the IMO to assist States in implementing the Convention, although the 'core' work of this Group was completed at a special consultative meeting in Ottawa in June, 2003. UK ratification of the Convention is unlikely to put UK industry at a competitive disadvantage. The financial requirements of the Convention, in terms of contributing to the HNS Fund, will only enter into force in the UK when the Convention enters into force internationally. It is likely that this will only happen following ratification by those EU Member States who will provide significant financial contributions to the HNS Fund.

2.9 The HNS Convention will only enter into force eighteen months after the date on which:

- at least 12 States, including 4 States each with not less than 2 million units of gross tonnage, (i.e. four States each with registered fleets totalling 2 million tonnes or more ), have expressed their consent to be bound by it; and
- the Secretary-General of the IMO has received information on contributing cargo<sup>2</sup> that those persons in such States who would be liable to contribute have received during the preceding calendar year a total quantity of at least 40 million tonnes of cargo contributing to the general account of the HNS Fund (see paragraph 5.24).

2.10 The European Council adopted a Council Decision on 21 October 2002 authorising all EU Member States to take the necessary steps to ratify, or accede to, the HNS Convention before 30 June 2006. All EU Member States are expected to work towards implementation of the Convention by this deadline.

2.11 The Council adopted the Decision to ensure that EU legislation governing the recognition and enforcement of judgements (contained in Council Regulation 44/2001) applies when EU Member States ratify the HNS Convention, because of the inconsistency with the corresponding rules in the Convention itself. The Decision therefore requires MS to make a declaration, when ratifying the Convention, that Council Regulation 44/2001 rules will continue to apply on the recognition and enforcement of judgements.

2.8 At its meeting on 5-6 December 2002 the European Transport Council also adopted a set of Council Conclusions, one of which calls on Member States to implement the HNS Convention 'as soon as possible.' These Transport Council Conclusions have been endorsed by the Environment Council on 9 December 2002, and at the Copenhagen summit of EU leaders on 12 and 13 December 2002. The Copenhagen summit called for these Transport Council Conclusions to be implemented in all their aspects 'without delay'. The Conclusions were adopted following the *Prestige* oil spill incident off the Spanish coast in November 2002.

2.9 The Merchant Shipping and Maritime Security Act 1997 already contains the implementation legislation for the HNS Convention and gives the UK enabling powers to ratify the HNS Convention. Parliamentary approval has already been sought, therefore, in principle, for the UK to ratify the Convention. An affirmative Order is required before Parliament prior to UK ratification. This legislation applies to the devolved administrations, as shipping is a reserved matter.

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<sup>2</sup> Compensation payments made by the HNS Fund will be financed by contributions levied on persons which have received, in the preceding calendar year, contributing cargoes after sea transport in a Convention Member State ( in quantities above the thresholds laid down in the Convention).

### 3. Risk assessment

3.1 The risks if an HNS incident were to occur in UK waters whilst the current legislation governs liability and compensation, include:

- individuals, businesses, local authorities and government may be unable to obtain adequate compensation for pollution damage incurred;
- claimants have to go through complex legal processes to obtain any amount of compensation;
- the Government (and therefore taxpayers) would be called upon to fund the costs of dealing with the incident (including clean-up costs and damages) which could not be met under the existing regime.

3.2 Incidents involving HNS cargoes in UK waters: A number of incidents involving HNS carried on a ship in UK waters have occurred in recent years.

Date	Vessel	Incident	Location	HNS cargo
23/08/99	<i>Ever Decent</i>	Collision with passenger ship led to fire on board. Noxious fumes emitted, risk of explosion. Some containers lost overboard, risk of contamination.	Off SE England.	Various including cyanide
19/03/99	<i>Multitank Ascania</i>	Vessel lost power and drifted off coast following engine room fire. Risk of explosion from cargo – local residents evacuated.	Pentland Firth, Scotland.	1700t vinyl acetate, diesel and fuel oils.
25/11/97	<i>Nordfarer</i>	Collision with vessel. Extensive damage, holed in several places and fire broke out posing risk of explosion.	The English Channel.	28 000t jet fuel.
14/12/01	<i>Rosebank.</i>	Fire broke out in the paint store. Crew was airlifted to safety while vessel continued to blaze and drift	off the Farne Islands, UK.	1326 t of fertilizer, marine diesel and lubricating oil.
16/12/01	<i>The Dina</i>	Vessel sank with loss of cargo	Southwest coast of Wales.	2430t of fluorspar, 35t marine gas oil.
01/10/01	<i>AB Bilbao</i>	Explosion in hold of ship. Potentially very hazardous as if cargo exposed to moisture it could release flammable and toxic gases.	Off Margate, English Channel.	3300t ferrosilicone
09/10/01	<i>Dutch Aquamarine</i>	Sustained damaged bow following collision with general cargo carrier <i>The Ash</i> .	English Channel.	4400t acetic acid
21/01/01	<i>Happy Lady</i>	Ran aground.	Shoeburyness, UK.	Butane
21/01/01	<i>Kilgas Centurion</i>	Grounded on a sandy beach.	Yarmouth, UK.	1000t propane

Whilst some of these incidents have only resulted in minor damages, others have highlighted the potential of a serious catastrophic incident occurring without the availability of adequate compensation in place to cover damages arising from such an incident.

3.3 For example, when the *Ever Decent* collided with a cruise ship (*the Norwegian Dream*) in 1999 off the east coast of England, the incident resulted in substantial physical damage to both vessels, including a fire on board the *Ever Decent* whose cargo included a number of hazardous and noxious substances in containers. Whilst the incident did not result in fatalities, or serious injuries, it did highlight the potential for a serious incident to occur.

3.4 The *Ievoli Sun* incident off the Channel Islands in 2000 was also a major HNS incident, for which claims for compensation would have been governed by the Convention, if in force. The cargo presented a pollution threat and was carcinogenic. The *Ievoli Sun* sunk and the cargo and bunker fuel on board had to be removed. This led to a long and costly salvage operation. The government's claim for response costs arising from the incident have still not been settled.

3.5 The Maritime and Coastguard Agency commissioned a chemical spill risk assessment in 2000. The assessment looked at the number of vessels carrying HNS both worldwide and in UK waters, and number of incidents which had occurred and from this predicted the likelihood of an incident occurring both worldwide and in UK waters. The report was restricted to incidents involving chemical tankers or gas ships. Packaged chemicals (which are also covered under the HNS Convention) are carried in much smaller quantities on a wide variety of vessels and it is therefore much harder to obtain accurate data relating to those substances. The MCA are currently reviewing whether to commission a risk assessment on packaged goods.

3.6 The assessment considered the data available for the years 1989-1998. During this period a total of 220 casualties involving chemical tankers occurred worldwide, of these, 38 occurred in UK waters. For the same period there was a total of 105 casualties involving gas carriers with 13 of these occurring in UK waters.

3.7 From this, the average frequency of incidents per year was calculated :

	<b>UK</b>	<b>Worldwide</b>	<b>Total</b>
<b>Chemical Tankers</b>	3.8	18.2	22
<b>Gas Carriers</b>	1.3	9.2	10.5
<b>Total</b>	5.1	27.4	32.5

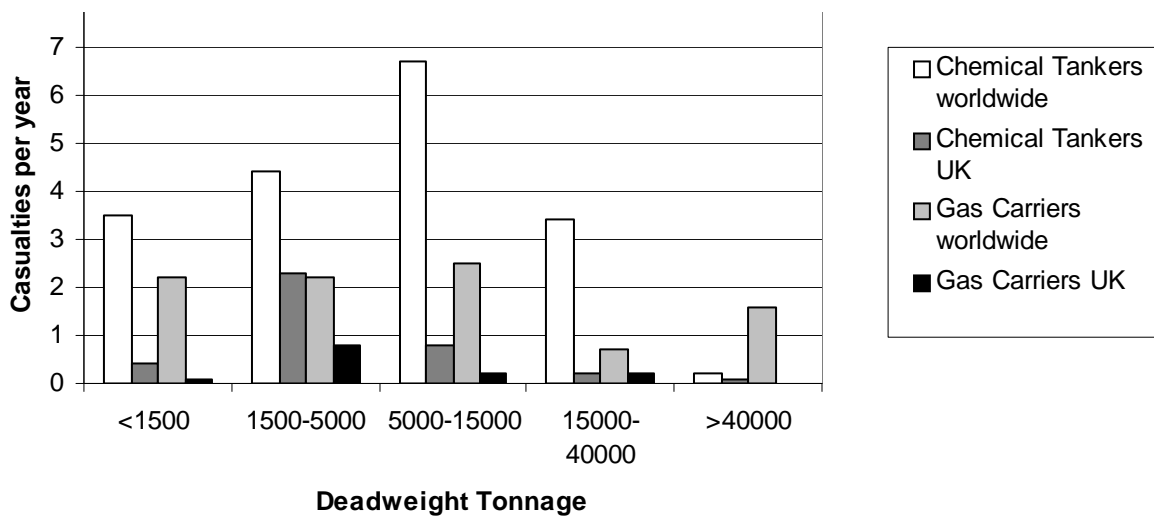
3.8 These figures are relevant to this RIA in two ways. Firstly, they can be used to predict the frequency of such incidents occurring in UK waters and therefore the potential value of the protection offered by the HNS Convention. Further, the worldwide figures can be used to predict the likely number of incidents which may occur in waters of States likely to become party to the HNS Convention and therefore the frequency of levies on receivers under the HNS Convention.

3.9 The report then looked at the number of spills arising from these incidents.( Gas ships don't tend to 'spill' as any product released is very rapidly vaporised. Most risk from gas ships is that of explosion and fire). A total of 24 spills occurred, which means that approximately 11% of incidents resulted in a cargo spill.

3.10 Whilst the majority of incidents do not result in a chemical spill, the HNS Convention also applies to preventive measures taken so a response, only, to a casualty involving a vessel with HNS cargo could result in a claim to the HNS Fund. Any such claim however is likely to be considerably smaller than that which would have ensued if a spill had occurred.

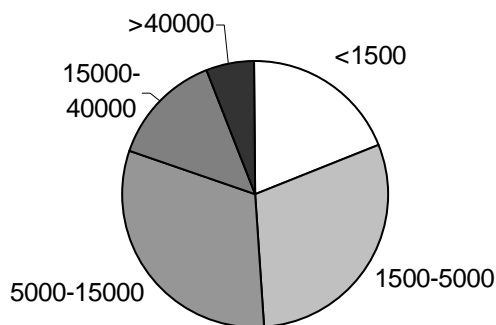
3.11 The HNS Fund will contribute towards the cost of incidents only when the shipowner's limit of liability, which in turn depends on the tonnage of the ship, is exceeded. It is important therefore to consider the distribution of casualties by their deadweight tonnage (DWT) of the vessel involved.

### **3.12 Distribution of casualties by vessel tonnage**



3.13 The graph above shows how the number of incidents per year involving chemical tankers and gas ships is distributed by vessel DWT for both the UK and worldwide incidents. The chart below summarises this so we can see the overall percentage of incident distribution by vessel DWT.

3.14 **Percentage distribution of incidents by vessel tonnage:**

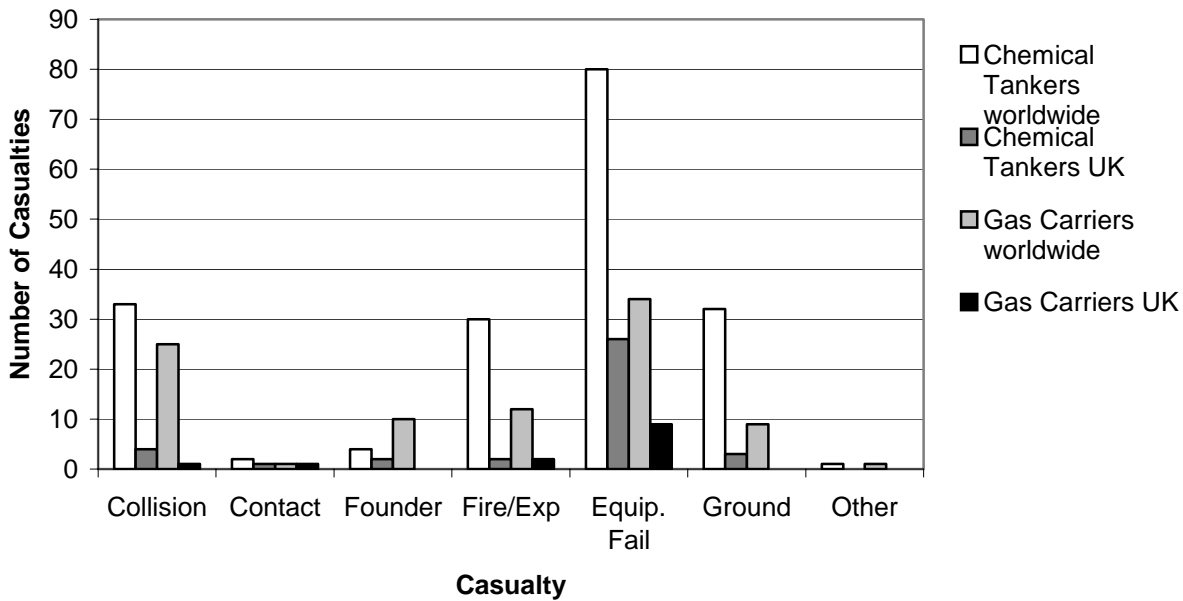


The clear majority of casualties occurred in vessels ranging from 5000 – 15000 DWT. From this we can see the level of damages that an incident would need to generate in order to require contributions from the HNS Fund.

Within this range, the shipowner's liability varies from 14.5m SDR to 29.5m SDR, or approximately £11.6m to £25.1m. The total cost of claims would therefore have to exceed these amounts before receivers of HNS have any liability to contribute to the Fund.

It is important to also consider the different types of casualties as the potential for damage varies greatly. Firstly, not all vessels involved in incidents were laden and secondly, of those incidents involving laden vessels, not all resulted in chemical spills.

## Distribution of incidents by casualty type



It is clear from this chart that the majority of incidents involving either chemical tankers or gas carriers occur as a result of equipment failure. Incidents of this nature are usually much less serious than the other types of casualty and unlikely to result in a chemical spill, they therefore tend to generate a lower level of claim.

The risk of a high cost incident occurring either in UK waters or worldwide is relatively low. Low risk but high impact risks such as this are typically managed by putting in place insurance and mechanisms for dealing with the adverse event once it occurs. The HNS Convention is designed to do just this.

## 4. Options

4.1 Two options have been identified regarding UK legislation governing liability and compensation for damages arising from the carriage of HNS by sea, including different options for implementing the HNS Convention:

### *Option 1 - Do nothing;*

As noted in section 2 (Issue and Policy Objectives), compensation and limitation of liability governing the carriage of HNS by sea is presently governed by the LLMC Convention, as enacted in the 1995 Merchant Shipping Act. This option would provide that the LLMC Convention, as amended by the 1996 LLMC Protocol (although ratified by the UK, yet to enter into force), will continue to govern compensation for incidents involved the carriage of HNS by sea in UK waters.

### Option 2 – Full implementation of the HNS Convention as soon as possible

This will provide for UK ratification of the international HNS Convention. In order to meet the treaty requirements it is necessary for a Contracting State to implement a reporting system, in order to ensure that reports of the type, and amounts of, HNS are made by the receivers of HNS following carriage by sea (i.e. ports, terminals, tank storage facilities, chemical industry) to the Member State. The Member State is then required to forward this information to a Secretariat established to administer the HNS Fund (see 2.4). Prior to entry into force of the Convention and the establishment

of the Secretariat and the HNS Fund, the Member State is required to submit this information to the IMO.

Option 3 - Full implementation of the HNS Convention within the EU timescale

This will have the same affect as above but won't ratification would not occur until 2005/06.

**Option 1 - Do nothing**

*Advantages:*

- There would be no extra burden, either administrative or financial, placed on UK shipowners or receivers of HNS following carriage by sea.

*Disadvantages:*

- The current levels of compensation available may mean that the victims of pollution damage arising from incidents involving carriage of HNS by sea do not receive full compensation;
- it will remain administratively and legally difficult to actually **obtain** recompense for costs incurred as a result of an HNS incident in UK waters, despite existing (albeit lower) liability limits, because of the difficulty of legally pursuing the shipowner who may be based outside the jurisdiction of the UK (without the requirement to maintain insurance cover, or other financial security, or the right of direct action against the insurer); and
- The costs of responding to any incident occurring in, or affecting UK waters will fall solely on the UK Government and ultimately therefore, UK taxpayers.
- failure to comply with:
  - (a) the European Council Decision adopted on 21 October 2002 authorising all EU Member States to take the necessary steps to ratify, or accede to, the HNS before 30 June 2006, and
  - (b) the Transport Council Conclusions of 5-6 December 2002 calling on EU Member States to ratify the HNS Convention as soon as possible (as endorsed by the Environment Council on 9 December 2002, and at the Copenhagen summit of EU leaders on 12 and 13 December 2002).
- likely to result in severe criticism for failing to give effect to the UK's implementing legislation contained in the 1997 Act;
- likelihood of calls for an alternative regime in the event of incident occurring in UK waters giving rise to serious political and public concerns;
- If the HNS Convention does not attract sufficient numbers of State Parties to be brought into force, this may lead to the implementation of a regional HNS regime through an EU Directive or Regulation. Such a regime would probably be based on the international Convention adopted by the IMO in 1996. Whilst implementation of a European regime could be undertaken and applied across Europe in a uniform manner through a Directive or Regulation, relatively quickly compared to the implementation of the international system by Member States on an individual basis, this scenario would present the following disadvantages:
  - it could lead to increased costs to UK industry in comparison to those that could be expected under an international regime;
  - it may require shipowners to have a higher limit of liability than that required under the HNS Convention, and
  - it could damage the reputation of the IMO, and EU Member States in the IMO, for failing to implement the international regime adopted at the IMO in 1996.

**Option 2 – Full implementation of the HNS Convention as soon as possible**

*Advantages:*

- once in force the HNS Convention will ensure that the victims of damage arising from an HNS incident in UK waters receive prompt, adequate and effective compensation;
- once in force the HNS Convention will remove the legal obstacles that individual claimants experience in having to prove fault for damages against a shipowner through the application of strict liability of the shipowner, a requirement to maintain financial security, and the right of direct action against the insurer;
- once in force the HNS Convention will significantly increase the shipowner's liability for HNS damages and simplify compensation arrangements;
- ensure that the UK is complying with the European Council Decision and Transport, Environment and Copenhagen Conclusions.
- give effect to the enabling primary legislation the UK has already taken in the 1997 Act;
- the cost to receivers of HNS in financing the HNS Fund when in force will be spread **globally** through all the States Parties;
- the industries that profit from the transport and use of HNS will also contribute towards any damages that may occur during its transportation; the 'Polluter Pays' principle.
- will allow industries appropriate time to familiarise themselves with the requirements to report receipts of HNS, to the appropriate competent authority

*Disadvantages:*

- Once the Convention enters into force, UK shipowners will be subject to increased financial liabilities and a requirement to maintain insurance cover to meet their liabilities under the Convention;
- Once the Convention enters into force, UK industry receivers will be subject to levies for financial contributions to the HNS Fund (when operational);
- UK industry receivers face an increased administrative burden to report receipts of HNS

**Option 3 Full implementation of the HNS Convention within the EU timescale (2005/06)**

Advantages

- Same as the first seven points for Option 2;
- full implementation of the HNS Convention in 2005/2006 to meet the EU Council Decision deadline.

Disadvantages

- Same as those for Option 2;
- unlikely to provide industries with appropriate time to familiarise themselves with the requirements to report receipts of HNS to the appropriate competent authority;
- potentially politically embarrassing, as the UK co-ordinates an international Working Group advising States on implementation.

**5. Compliance costs for business, charities and voluntary organisations**

**Business sectors affected and Costs**

5.1 Regulating to improve UK legislation governing liability and compensation for damages arising from the carriage of HNS by sea would not involve any compliance costs for charities and voluntary organisations. However, it will affect the UK chemical and petrochemical industry, tank storage industry and the UK shipping industry.



5.2 Initial consultation has been undertaken, and is on-going, with industry representatives to consider the impact of improving UK legislation on this issue. This has included a number of meetings and correspondence with representatives of the Chemical Industry Association, Tank Storage Association, UK Petroleum Industry Association and various other industry associations included in Annex A. All industry associations consulted have, informally, welcomed the need to ensure that improved UK legislation is in place to govern liability and compensation arising from the carriage of HNS by sea.

*Option 1 (no change):*

5.3 No change will place no additional costs on business in terms of the affects of maintaining the status quo. However, there are potential costs for those businesses that would be affected by damage arising from an HNS incident in UK waters, and, the possibility that they may not receive full compensation for damages incurred e.g. the fishing and tourism industries. This also applies to charities and voluntary organisations. For example, in March 1997 the container ship MV *CITA* ran aground on the Isles of Scilly. Clean up costs were incurred by the UK Government, the Council of the Isles of Scilly and the local Environment Trust who organised funding of about £40, 000 to remove plastic film from the seabed that threatened to harm the marine life.

5.4 Whilst this was not an incident involving the carriage of HNS by sea, the claim for cost recovery has been pursued through the current legislation that governs the shipowners right to limit liability for such incidents. These costs incurred by the local Environment Trust have, at present, not been recovered because of the complexities of pursuing claims for such costs through the current legislation. This demonstrates the difficulties that victims of HNS pollution will face in trying to claim under the current legislation.

5.5 It should also be noted here that even if no change is made to existing legislation, shipowners' liability limits will increase if LLMC 96, which the UK is a party to, comes into force (see Figure 1, page 9). LLMC 96 has been ratified by 8 States and will come into force 90 days after 2 further States have ratified it.

Potential costs if legislation is unchanged

5.6 Whilst at present, there are no proposals in place to implement a European regime to govern liability and compensation for the carriage of HNS by sea, the European Parliament has previously requested the European Commission to include such compensation and liability in a supplementary regional oil pollution compensation regime<sup>3</sup>. If Member States do not comply with the European Council Conclusions, and Council Decision, previously referred to it is possible that the European Commission will present such a proposal governing the carriage of HNS only.

5.7 The costs on UK shipowners under a regional regime are likely to be similar to those incurred under option 2, although it is possible that a European regime would seek to apply higher limits of liability and, therefore, higher compulsory insurance levels. Implementation of a European regime would probably be based on the international regime and, therefore, the reporting requirements are likely to be replicated.

5.8 Experience has shown with the European Commission's attempts to replicate the equivalent international oil pollution compensation regime with a regional regime, that the overall levels of compensation may be higher. In such a scenario, the cost to receivers of HNS of contributions to a European HNS Fund is likely to be higher than those which would arise under an international regime. This is because compensation costs for a serious incident in EU waters, (which could be a passing ship flagged in a non EU Member State), would only be met by EU HNS receivers, rather than HNS receivers in States on a global basis as with the case with the international regime. Therefore, the

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<sup>3</sup> Prior to the development of the international Supplementary Fund Protocol (adopted at the IMO in May 2003) the European Commission proposed to establish a regional supplementary fund (COPE Fund), which would provide top-up compensation further to the existing IOPC Fund regime for claimants in European waters subject to a ceiling of €1 billion. European oil receivers would finance the COPE Fund.

financial contributions to a regional HNS Fund would be higher for all receivers, including the UK, than an international HNS Fund.

**Option 2 and 3 (UK ratification of the HNS Convention):**

5.9 The Convention will establish strict liability on the shipowner (i.e. liability on the part of the shipowner even in the absence of fault on his part) for death, personal injury, damage and pollution arising from the carriage of HNS cargoes by sea. HNS is defined according to a number of international IMO Codes. The Convention will also establish a compensation fund to meet any claims that exceed the shipowners liability. The fund will be financed by levies on receivers of HNS.

Potential costs to UK shipowners

5.10 UK shipowners (and also shipowners in general carrying HNS in UK waters) will be required to maintain insurance cover to meet their liabilities under the Convention. Whilst a minority of UK shipowners operate ships without adequate insurance cover, the majority of UK registered shipowners do have effective insurance cover to meet their **current** liabilities.

We understand, from the insurance industry, that shipowners insurance premiums would only increase if the number of claims and, therefore, the level of payments in respect of HNS were to increase. An increase in the level of shipowner liability alone does not automatically result in increased premiums. In calculating premiums, insurers consider the quality and record of the vessel in question. Well-maintained vessels with a good safety record can expect to be less affected by any increases to insurance premiums.

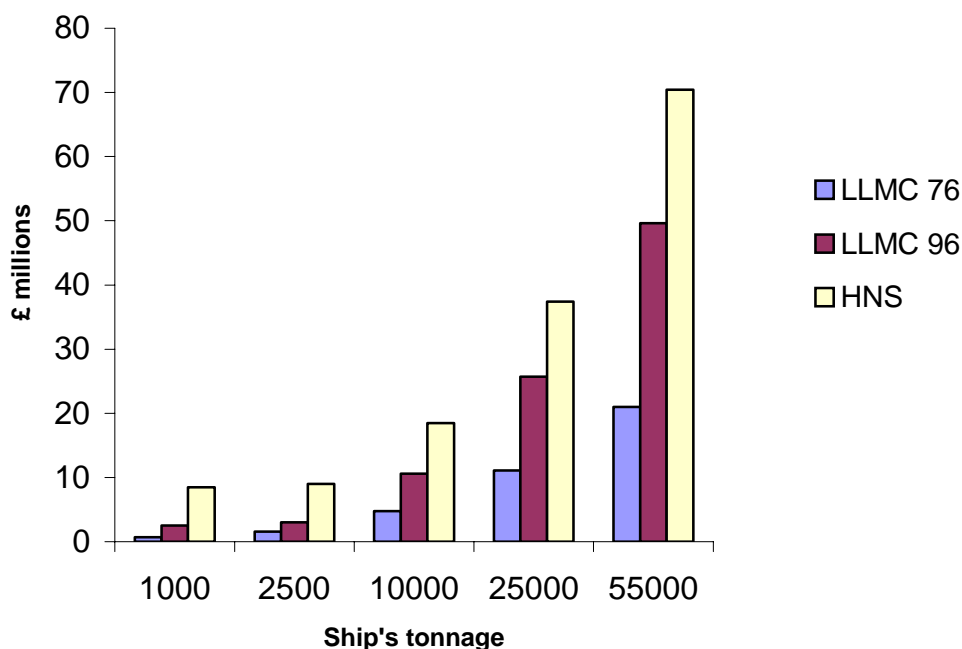
5.11 However, the liability of the shipowner under this option will be much higher than is presently the case under the current UK regime governing the shipowners liability in respect of incidents involving the carriage of HNS by sea. However, as explained in paragraph 5.5, shipowners may face increased liability even if the UK does not ratify the HNS Convention. In practice, implementation of the Convention would lead to increased compensation payments following incidents where the current limit of liability is exceeded following a serious HNS incident.

5.12

5.19 Therefore, increased liabilities providing for increased compensation payments are likely to have an effect on insurance premiums for shipowners, even though the majority of UK shipowners have effective insurance cover, **but only in the event of a major incident involving the carriage of HNS by sea.**

5.19 Figure 1 below highlights the difference in the shipowner's limits of liability, according to certain tonnage levels, under the current UK limitation regime (LLMC Convention), the limit that will apply when the LLMC 96 enters into force, and that under the HNS Convention.

**Figure 1: Shipowner's limit of liability under the different instruments**



5.15 It is intended that the penalty for shipowners entering a UK port that do not have adequate insurance cover in place, under the terms of the Convention, will be considered in line with the equivalent legislation relating to the 1992 CLC regime (as contained in the Merchant Shipping Act 1995). This consideration will include an offence for a ship entering or leaving a UK port or terminal, carrying HNS, without an insurance certificate issued by a State Party to the HNS Convention: Consultation is being undertaken on the penalty ranging from

- conviction on indictment to a fine, or on summary conviction to a fine not exceeding [£50,000], of the master or shipowner if a ship enters or leaves, or attempts to leave or enter, a port or terminal in the UK and the ship does not have an insurance certificate issued by a State Party;
- if a ship fails to carry, or the master of a ship fails to produce, a certificate as required, the master shall be liable on summary conviction to a fine [not exceeding level 4 on the standard scale], and
- if a ship attempts to leave a port in the UK in contravention of the requirements to maintain insurance cover and a certificate issued by a State Party the ship may be detained.

5.16 Further, if in addition to not having an insurance certificate, damage is caused under the HNS Convention, consultation is being undertaken on the application of the penalties contained in regulation 36 of the Merchant Shipping (Prevention of Oil Pollution) Regulations 1998 (SI 1996/2154), as amended by SI 1997/1910, for ship sourced oil pollution.

These provide for the owner and master each to be liable:

- on summary conviction to a fine not exceeding [£250,000], and
- on conviction on indictment to an unlimited fine.

#### Costs to UK industry

5.19 In order to meet the treaty obligations, the receivers of HNS in the UK (e.g. ports, terminals or tank storage facilities) will be required to make an annual report of all contributing cargo received over a certain threshold to the designated competent authority, although the actual physical receiver may forward the details of the principal in order to pass on the financial liability under the regime (if the physical receiver is acting as an agent on their behalf).

5.19 The receiver will be required to pay small levies, per tonne of HNS 'received', to cover the administrative costs of the HNS Fund. Although the Fund has not yet been established, it is expected that the administrative costs will be similar to those incurred by the IOPC Fund (currently around £2.5m per year), however, it is also envisaged that the two funds will co-operate closely resulting in savings through shared resources. These costs will be divided between receivers of all HNS in all States Parties to the Convention. Whilst it isn't possible to calculate this figure without knowing which States will become party and what quantities of HNS they receive, it should be a very small sum, even for the larger contributors.

*Administrative costs of the HNS Fund*

5.20 Under the HNS Convention, the minimum quantity of HNS which will trigger entry into force of the Convention is 40 million tonnes. Based on the IOPC Fund's annual administrative costs of £2.5m, this would equate to a levy of 6p per tonne of contributing cargo received. Given the anticipated savings to be made by the close administration of the two funds (for example the possibility of shared premises) , and that the total contributing cargo from all States Parties will exceed 40m (and can certainly be expected increase over time as membership of the Fund increases), the annual administrative levy can be expected to be significantly lower than 6p per tonne.

*Financial costs of Contributions to the HNS Fund through Levies*

5.21 In the event of a major incident involving HNS where the shipowner's level of liability is exceeded (up to 100 million SDR depending on the tonnage of the ship) a levy will then be imposed on the receivers of HNS based in the UK for financial contributions to the HNS Fund. The contributions to finance the HNS Fund's compensation payments will only be made post-event; i.e. levies will only be due after an incident involving the HNS Fund occurs.

5.22 Levies may be spread over several years in the case of a major incident, as not all claims will be apparent immediately. Under the HNS Convention, claims are time-barred, which means that a claimant must bring action within three years from the date when they knew, or ought reasonably to have known of the damage and of the identity of the owner. However, no cases may be brought later than ten years from the date of the incident which caused the damage. This means that even in the worst case scenario, if the HNS Fund were required to pay up to the limit of 250m SDR for a single incident, States would not have to make contributions to meet this amount in a single year, instead the HNS Fund would levy payments over several years, rather than risk paying out up to the limit before all claims have been made. In the event that the total value of claims exceed (or is expected to exceed) 250m SDR claims would be pro-rated, so that all claimants receive equal treatment.

Where a receiver has failed to report a HNS receipt they could be liable for a statutory fine. The HNS Fund would be able to recover the unpaid levies and or interest.

5.23 Under the IOPC Fund, the largest levy made in a single year was 42m SDR in 2001. This was for claims related to the *Nahodka* and the *Erika* incidents (two large oil spills) as well as payments to the general account as shown below.

Account	Total amount due (£)	Oil Year	Levy per tonne (£)
General fund	5 000 000	2000	0.0039182
Nahodka	11 000 000	1996	0.0165271
Erika (1 <sup>st</sup> levy)	25 000 000	1998	0.0223985

The "oil year" is significant in that States are only liable if they were party to the Convention in the year the incident took place. This means that whilst payments for a particular incident pay be spread over several years, only States party to the Convention at the time of the incident will be levied for contributions. States that may have subsequently joined the Convention are not required to make contributions for incidents that occurred prior to their becoming parties, even though levies may continue to be imposed.

Initial consultations and research

5.24 Initial consultations have taken place with industry to consider an appropriate and practical reporting system. These focused on the reporting regimes currently in place in the UK, and whether the physical receiver of the HNS following discharge in a port or terminal actually maintains the details of the HNS received, and subsequently of the principal receiver. Whilst these initial consultations indicated that tank storage facilities are aware of the principal receiver of the HNS, the ports representative bodies have indicated that the port authorities do not possess such information.

5.25 Preliminary research has shown that approximately 55 tank storage facilities are potential physical receivers of HNS following carriage by sea in the UK and, therefore, will be affected by an improved legislative regime under option 2. Members of the UK Tank Storage Association (TSA) operate 35 terminals throughout the UK with a total throughput of trade of 12 million metric tonnes, although this covers all their trade and not just of HNS. 5 % of products stored by TSA members is destined for States that are unlikely to become party to the HNS Convention (i.e. USA) and, therefore, the financial liability for such cannot be forwarded because the principal will not be subject to the jurisdiction of the Convention.

5.26 It will, however, be possible for TSA members to forward the liability for the financial contributions to the HNS Fund for 95% of the products stored, if they are aware of the details of the principal owner of the product. The levying system will then be applied, when the Convention enters into force, to the principal owners of the product (e.g. the chemical industry, solvents industry etc) if certain criteria under the reporting system have been met. Associations covering potential principal owners were also involved in the initial consultations e.g. the Chemical Industry Association, Solvents Industry Assoc., the Fertiliser Manufacturers Association (see Annex A).

5.27 Table 1 shows the minimum number of receivers of imports of different types of HNS identified, so far, in the UK and the total receipts of HNS (under each separate account to be established by the HNS Fund when in force):

**Table 1.**

<b>Account</b>	<b>Number of receivers identified</b>	<b>Quantity received per year (tonnes)</b>
General	17	4 900 000
Oil	29	85 100 000
LNG	0	0
LPG	5	266 000

5.28 However, it is likely that these figures are an under estimate of the actual number of receivers and quantity of imports.

5.29 Those industry associations involved in the initial consultations have been asked to provide estimates of receipts of HNS destined for delivery within the UK, following carriage by sea by their members who are potentially liable for contributions to the HNS Fund under a basic reporting system. This information was requested to update the information contained in Table 1 above. Responses have been received from CIA, BCF, UKCPI and informally from UKMPG. UKMPG have, at present, been unable to provide this information.

5.30 Both UKCPI & BCF have indicated that their members do not, themselves, receive HNS following carriage by sea that will exceed the thresholds contained in the Convention. However, their members may be subsidiaries of large chemical companies whose other general chemical imports may be significant, and far greater than those by their own operations.

5.31 CIA have suggested that a formal definitive 'official' questionnaire is included in a public consultation document that can be circulated to their members. The receipt of this information will provide a clearer, and more accurate, picture of the actual number of receivers and quantities of HNS in the UK, and, therefore, the impact of UK ratification of the Convention on UK industry.

5.32 An administrative burden will also be imposed on the physical receiver of HNS through reporting receipts to the competent authority, even if they are able to forward the details of the principal owners.

5.33 However, an electronic database of HNS substances governed by the Convention that allows receivers to determine HNS products and to report receipts to the competent authority is currently being developed by the International Oil Pollution Compensation Fund (IOPC Fund). This will make it substantially easier for receivers to identify HNS products; determine whether their receipts of HNS exceed the thresholds and to accurately report receipts to the DTI (see Policy and Implementation Costs).

5.34 A fully working electronic database is due to be completed this year. A non-functioning prototype has already been demonstrated by the IOPC Fund to interested UK industry associations.

5.35 Invoicing of levies, on an annual basis, will only be undertaken once the Convention enters into force. Prior to entry into force States will be required to submit reports of receipts to the International Maritime Organization (IMO), without any financial requirements. At present it is very difficult to determine the actual costs of individual levies on receivers of HNS following implementation of the Convention in the UK. There are a number of factors that will determine the cost of levies, as follows:

- a) the number of States party to the regime.
- b) The total contributing cargo in each State Party;
- c) The frequency of incidents exceeding the shipowner's limit of liability (and involving the HNS Fund), and
- d) The total costs of each incident exceeding the shipowner's limit of liability (and involving the HNS Fund).

#### Policy and implementation costs

##### *Reports of receipts of HNS – competent authority*

5.37 Staff costs will fall to the competent authority who will receive HNS reports from receivers on an annual basis, and forward an annual report of total receipts in the UK to the HNS Fund Secretariat when the Convention is in force, or the IMO prior to its entry into force. This should not place a significant administrative burden on the officials in the competent authority. The Government already receives oil reports under the IOPC Fund from oil receivers in the UK, and forwards an annual report of receipts to the IOPC Fund Secretariat. The electronic database will also facilitate the administrative task of providing an annual report of HNS receipts.

##### *Possible additional implementation costs*

5.38 At the first assembly meeting of the HNS Fund it will be decided where the Fund will have its headquarters. The IOPC Fund is based in London, and, as is customary when a Government hosts an international body, that Government contributes to the accommodation costs. If it is decided that the HNS Fund should be located in London along with the IOPC Fund, then the UK Government would be expected to contribute towards the costs of accommodating the HNS Fund. However, if this is the case, it is expected that the IOPC Fund and HNS Fund would be administered very closely and with the possibility of shared premises. Potential additional costs to the UK Government would therefore be minimal.

5.39 There will also be a cost to the Maritime Coastguard Agency (MCA) of checking certificates of financial security. This type of procedure for the issuing and already applies in the UK for the equivalent international oil pollution compensation regime and the carriage of non-persistent oil as cargo by sea. Whilst the number and type of vessels involved in the carriage of HNS by sea is greater, the task of issuing, and checking, certificates on any vessel should not provide a significant increased administrative burden.

## 6. Benefits

6.1 *Option 1 (do nothing)* – status quo in the costs for liable UK shipowners for damages arising from an HNS incident;

- no increase in the administrative or financial burdens on receivers of HNS;
- no financial burden on the competent authority to issue insurance certificates.

6.2 *Options 2 and 3, (implementation of the international HNS Convention or a regional regime)* - ensure that increased levels of compensation are available to victims incurring damage in the event of an incident involving the carriage of HNS in UK waters through:

- the application of higher limits of liability of the shipowner with a requirement to maintain insurance or other financial security;
- the establishment of an HNS Fund (either regional or international) providing additional compensation above the shipowners liability;
- compensation above the shipowners liability limit;
- improved access to the available compensation through the application of strict liability of the shipowner the right of direct action against the insurer.
- potentially, a reduction in the frequency of incidents. In the equivalent international oil pollution regime, increases in the limits of liability of the carrier and the have coincided with a drop in the rate of oil spill incidents from tankers governed by those regimes. Whilst this is, undoubtedly, also consistent with the implementation of tighter safety regulations, the drop in the rate of incidents and the increases in the amount of compensation available is noticeable.

6.3 *Option 2 and 3* will also ensure that damages for environmental clean up response, and reinstatement measures, are met. At present, there is no liability and compensation regime governing environmental reinstatement measures following damage incurred by an HNS incident at sea. It is difficult to ascertain exactly the scope of, and the policy of the Assembly of the HNS Fund (to be established when the Convention enters into force) on, the definition of 'environmental damage' in a regional regime.

6.4 It is fully expected that the international HNS Convention, when it enters into force, will largely reflect the policies and practices laid down in the existing oil pollution compensation and liability system, as the membership in the two regimes is expected to be largely the same. The oil pollution compensation system recently clarified and extended the coverage of 'environmental damage', and restoration of polluted areas, under the regime to include post spill environmental studies and reasonable measures of environmental reinstatement either at the site of damage or in the general vicinity, subject to certain criteria. However, for example, it does not include claims for 'environmental damage' based on abstract quantification calculated in accordance with theoretical models. It is likely that the policy of the IOPC Fund in determining the admissibility for compensation claims (including the scope of what is deemed to be 'environmental damage') will also be adopted by an international HNS regime, due to the synergy that exists between the two regimes.

## 7. Impact on Small Business

7.1 A list of the representative organisations/firms with whom initial consultation has been undertaken is included in Annex A to this document. We have consulted the main associations and organisations who represent the majority of members of the chemical, storage and shipping industries to ensure that small businesses have had the opportunity to become involved in the process from the start of consultations.

7.2 We do not expect the implementation of option 2 to have a disproportionate effect on small businesses. The reporting requirements outlined in this document fall within what could reasonably be regarded as normal business records. The Convention will only impose levies on those companies who export over a certain threshold of HNS, smaller importers should not be affected.

7.3 However, we shall conduct further, targeted consultation involving both the Federation of Small Businesses and the Small Business Service during the consultation period and before drafting the order. A questionnaire is attached to the HNS Consultation Document and invites all small businesses to participate in the consultation process through specific questions.

#### *Advantages to small businesses*

7.4 Small businesses receiving quantities of HNS below the thresholds will not have to contribute to the system but will enjoy the protection offered by the HNS Convention.

7.5 All small businesses in coastal locations stand to benefit, in terms of access to available compensation for damages incurred, from the implementation of the HNS Convention. In particular, the tourism and fishing industries, which tend to comprise a significant proportion of small businesses, will be financially protected in the event of damage arising from an incident involving the carriage on HNS by sea.

7.6 State Parties are required to inform the Director of the HNS Fund of the name and address of receivers of quantities of contributing cargo only when they exceed the thresholds during the preceding year, as laid down in the Convention (together with the quantities of cargo received by each of them).

7.7 Receivers of HNS might have to contribute to one or more of the accounts, depending on the types of cargoes they receive. The levies applying to individual receivers will be calculated according to the quantities of contributing cargo received and, in the case of the general account, according to the Regulations contained in the Convention. Liability to contribute to the HNS Fund will arise for a given receiver only when his annual receipts of HNS exceed the following thresholds:

<b>Oil</b>	persistent oil	150 000 tonnes
<b>Oil</b>	non-persistent oil	20 000 tonnes
<b>LNG</b>		no minimum quantity
<b>LPG</b>		20 000 tonnes
<b>Bulk solids and other HNS</b>		20 000 tonnes

7.8 However, it may be beneficial to set the thresholds for reporting receipts of HNS, on a national basis, lower than those laid down in the HNS Convention in order to identify those receivers whose annual receipts do not exceed the thresholds, but in the future may fluctuate enough to exceed the potential differences in thresholds. It may even be necessary in order to identify associated persons who individually receive quantities lower than the threshold.

7.9 The actual thresholds for UK contributors to report receipts of HNS carried by sea has been discussed initially with industry representatives. They have recognised the benefits of applying lower thresholds for reporting receipts of HNS without the financial liability for contributions to the HNS Fund for receipts of HNS below the thresholds established in the Convention.

## **8. Competition Assessment**

8.1 Implementation of option 2 would have some cost impact on participants in the affected UK markets (in the shipping industry, the chemical tank storage industry, and the chemical industry).

We have applied the competition filter test in accordance with the Office of Fair Trading's guidelines for competition assessment. In doing so we have considered the effect of all options on these markets.

We consider that the implementation of any of the options will not affect competition in these markets. The EU Council Decision and Conclusions should ensure that the HNS Convention is implemented throughout the EU.



Further, whilst TSA have indicated that an “*increasing minority of business is with companies based in States that will not be party to the HNS Convention*” they have estimated that around 5% of products stored by their members is destined for States outside the likely jurisdiction of the Convention. This will mean that TSA members who store this 5% will be responsible for the proposed levies under options 2 or 3 for these stored HNS products. However, they will be able to forward the financial liability for the remaining 95% of stored HNS products to the ‘principal’ receivers based within the likely jurisdiction.

8.2 Shipping: UK-registered shipowners that carry HNS will face significantly increased liabilities, even in the absence of fault, for shipping incidents involving HNS, for which they will be obliged to maintain insurance or other financial security. There is currently no requirement for UK shipowners to have insurance in place, however, most do maintain adequate insurance to meet the limits of liability prescribed under LLMC 1976.

8.3 Although this is likely to result in increased premium levels, it has not been possible to assess the extent of the likely increase (as this is, in practice, dependent more on the levels of actual insurance payouts than on the level of the liability covered). However, *provided* that insurance does not become completely unavailable, or available only at a prohibitive cost, as a result of particularly high-cost incidents occurring in the future, we consider that any increase in insurance premiums is unlikely to be sufficient in relation to the turnover of the affected businesses to alter the current structure of competition.

8.4 Receivers of HNS (i.e. proprietors of tank storage facilities and/or the chemical industry): Implementation of option 2 would result in increased administrative costs for proprietors of tank storage facilities and ports. It is anticipated that the bulk of such costs falling on receivers of HNS are likely to be passed on to the principal receiver (i.e. they are likely to be passed on to the chemical industry). The level of costs would be dependent on the type of reporting system in place. However, whilst we have been unable, at this stage, to quantify the likely costs involved, we anticipate that they are unlikely to be sufficient in relation to the turnover of the affected businesses to alter the current structure of competition. Costs are likely to be proportionate to the tonnage of HNS handled/received.

8.5 Option 2 would, if implemented, result in costs to receivers of HNS in the form of financial contributions, by levy, to the HNS Fund. It is anticipated that such costs will fall on the principal receivers of HNS (i.e. chemical industry) in cases where the physical receiver (i.e. tank storage facilities and ports, or terminals) has forwarded the details of the principal to an HNS Fund (either an international or regional fund). In cases where the physical receiver is unaware of the details of the principal, or the principal is based outside the jurisdiction of the international regime, the physical receiver will be liable for the cost of financial contributions. Businesses that receive quantities of HNS that fall below certain annual thresholds will not be required to contribute to the fund.

8.6 Contributions will otherwise be proportionate to the tonnage of HNS handled/received. Although it has not been possible to quantify the precise level of the costs that will be involved in practice, as contributions will only be levied post-event and will be dependent on the scale of any incidents that may occur in the future, we anticipate that they will be in **pence per tonne rather than in pounds**. In the light of these factors we anticipate that the costs are unlikely to be sufficient to result in any change to the current structure of competition in the affected markets.

## 9. Issues of equity

9.1 The work involved in providing details of cargoes received will fall upon all receivers of HNS cargo above the threshold limits in the HNS Convention covered by option 2

9.2 The cost of levies in respect of contributing cargo will apply fairly and proportionately across those sectors of the HNS industry in which receivers are covered by option 2. However, the international HNS Fund, when fully operational, will have four accounts:

Oil

Liquefied Natural Gas (LNG)

Liquefied Petroleum Gas (LPG)

A general account with two sectors:  
Bulk solids  
Other HNS

9.3 Each account will meet the cost of compensation payments arising from damage caused by substances contributing to that account, i.e. there will be no cross-subsidisation. Therefore, contributions from receivers to one account may, indeed, pay a different levy to that account than a receiver might for another account. This is, again, dependant on the total receipts of products reported according to each account and the frequency and costs of incidents compensated by each account.

## **Cover provided by the HNS Convention - a claimant's perspective**

- 1.1 Section 2 explained the current situation in respect of damage arising from HNS carried by sea. The HNS Convention will ensure that compensation is available for victims of damage arising from an HNS incident. The total amount of compensation available in respect of any one incident is 250 million SDR, approximately £200 million.

### **Who will benefit?**

- 1.2 Any victim of damage in the UK will be able to make a claim for compensation under the HNS Convention. This includes individuals, partnerships, companies, private organisations or public bodies including local authorities as well as the Government and its agencies.

### **What is covered?**

- 1.3 The HNS Convention covers damage caused by any HNS substance (see previous Annex for details). Damage is defined under the HNS Convention as meaning:
- (a) loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances;
  - (b) loss of or damage to property outside the ship carrying the hazardous and noxious substances caused by those substances;
  - (c) loss or damage by contamination of the environment caused by the hazardous and noxious substances, provided that compensation for impairment of the environment other than loss of profit from such impairment shall be limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken; and
  - (d) the costs of preventive measures and further loss or damage caused by preventive measures.
- 1.4 The Convention also states that where it is not reasonably possible to separate damage caused by the hazardous and noxious substances from that caused by other factors, all such damage shall be deemed to be caused by the hazardous and noxious substances except if, and to the extent that, the damage caused by other factors is damage of a type referred to in article 4, paragraph 3.

- 1.5 This is intended to cover the situation where an incident may involve HNS and another substance, for example a ship's bunker fuel, if the damage can't be attributed to one particular substance then the HNS Convention will prevail.

### **How are claims made?**

- 1.6 Claimants will need to submit a claim documenting and fully substantiating the damages to either the shipowner, (or directly against the shipowner's insurer - see Annex IV) or the HNS Fund depending on the expected overall costs of the incident.
- 1.7 Past experiences under the oil pollution compensation regime have shown that this is a relatively straightforward process when the amount claimed can be substantiated and the claim clearly falls within the scope of the regime. Local press as well as the Government will provide details of how to submit claims. In the event of a major incident, a local office is likely to be established to assist in the claims processing, often run jointly by the relevant insurer as well as the Fund Secretariat. We anticipate that claims under the HNS Convention will be managed in a similar way.
- 1.8 There are strong indications that States likely to become party to the HNS Convention will wish the Secretariat of the oil Fund to also manage the HNS Fund. The majority of insurers under both regimes can be expected to belong to the International Group of P&I Clubs so there will be many similarities].

### **Direct action**

- 1.9 Under the HNS Convention, claims for compensation can be brought directly against the insurer (or other person who is providing financial security), rather than only bringing a claim against the shipowner, which would be necessary if the HNS Convention did not contain the direct action provision. It also reduces the need for lengthy court cases because, without direct action, insurers will only meet the shipowner's liability after a successful court action has established a legal obligation to pay the claim. This means that under the HNS Convention claims will be settled more quickly and the claimant will not be disadvantaged if the shipowner is insolvent or legally inaccessible from the UK, or otherwise unable to make payments.

### **Time-bar**

- 1.10 Any claims made under the HNS Convention are subject to a legal time-bar, i.e. claims must be lodged within a specific period of time.
- 1.11 Claims must be brought within 3 years of the date when the claimant knew or ought reasonably to have known of the damage and of the identity of the owner. This applies whether claims are brought before the shipowner's insurer or the HNS Fund. However, no case may be brought later than 10 years from the date of the incident which caused the damage.

- 1.12 In most cases claimants will be aware of the damage very soon after the incident took place, however there may be situations where the claimant does not know of the damage, or the full extent of the damage, or the identity of the shipowner, for some time. For this reason there is the absolute time bar of 10 years.
- 1.13 The time-bar provides insurers and the HNS Fund with a degree of certainty and allows them to predict payments needed without the risk of new claims arising indefinitely. This is particularly important for the HNS Fund, because under the terms of the Convention, payment must not exceed the overall limit of the Fund and all claimants must be treated fairly. If the Fund cannot be certain that there will be enough money to meet all claims, then payments may be limited to a set percentage of the total claim until the overall number and cost of claims can be established. The time-bars are therefore crucial in enabling these calculations to be made and can be seen as beneficial to most claimants in ensuring that final payments are not unduly delayed.
- 1.14 Although most claims will usually be settled out of court, if the claimant and the HNS Fund are unable to agree on amicable settlements of the claim then the claimant will have to bring court action against the HNS Fund and the time bar set out in the Convention will apply. Claimants would need to seek legal advice on the formal requirements of court actions to avoid their claims being time-barred.

### **How are claims assessed?**

- 1.15 Claims made under the HNS Convention will only be admissible if they fall within the definitions of pollution damage and preventive measures as set out in the Convention. The precise policy for the admissibility of claims under the HNS Fund will be for the Governments of the Member States of the HNS Fund to determine.
- 1.16 Under the equivalent oil pollution compensation regime a claims manual has been developed (text available at <http://www.iopcfund.org/npdf/92claim.pdf>) It can be expected that the policy of the HNS Fund will be modelled on that of the oil regime.
- 1.17 Shipowners and insurers are also obliged to admit claims if they fall within the Convention definitions.

### **What if the claim is disputed?**

1.18 Where disputed claims cannot be resolved through negotiation between the claimant and the shipowner's insurer or the HNS Fund then the only solution will be to try to settle the disagreement through court action brought by the claimant.



## The HNS Fund

- 1.1 Entry into force of the Convention will establish the HNS Fund. The HNS Fund will provide the second tier of compensation under the HNS Convention. This section explains how the Fund will work in greater detail including:
- how the Fund is to be financed;
  - who will be liable to contribute to the fund (including the definition of receiver and associated persons); and
  - domestic traffic;
  - issues arising from the initial consultation.

### **Under what circumstances does the HNS Fund provide compensation?**

- 1.2 The HNS Fund will pay compensation for damage arising from the carriage of HNS by sea in the waters of a State party to the HNS Convention where:
- the shipowner's limit of liability has been exceeded,
  - the shipowner is financially incapable of meeting the obligations under the Convention,
  - the shipowner is not liable, (e.g. damage was caused by act of war)
  - the damage is non attributable (e.g. chemical spill from unidentified vessel)
- 1.3 The maximum amount of compensation available under the Convention, when in force, is approximately £ 199.6 million (250 million SDR) per incident.

### **Financing of the HNS Fund**

- 1.4 The compensation provided by the HNS Fund will be financed by the receivers of HNS (following carriage by sea) in all States that are party to the HNS Convention. When necessary, those receivers will be levied, on a per tonne basis, by the HNS Fund Secretariat. Levies will be raised in the event of an incident that engages the Fund, although there will be administrative costs to cover the running of the Fund<sup>1</sup>.
- 1.5 The compensation arising from an incident to be paid by the Fund will vary in each incident depending on the contribution payable by the shipowner (determined by the tonnage of the vessel). See paragraphs 4.46 onwards for the cost to industry.

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<sup>1</sup> See paragraph 5.17 of the partial RIA at annex VII

## Fund sectors

1.6 The HNS Fund will consist of four separate accounts:

General account (Bulk solids & other HNS)	Oil ersistent & non- persistent)	Liquid atural Gas (LNG)	Liquid Petroleum Gas (LPG)
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- 1.7 Each account will meet the cost of compensation payments arising from damage caused by substances falling within that account, i.e. there is no cross-subsidisation between the main groups of substances so, for example, receivers of LPG will not have to pay for damage resulting from a spill from a general chemical tanker.
- 1.8 There is a provision in the Convention to postpone the separate accounts until certain quantities of HNS are received by the States that are party to the HNS Convention. In which case there would just be a general account with additional sectors for oil, LNG and LPG. The purpose of this is to spread the cost of providing compensation in the early stages when there may not be many States party to the Convention.
- 1.9 This will not make any difference to the reporting requirements but it will affect the way compensation payments are calculated. If separate sectors are in operation, when contributions are required, each sector will contribute, regardless of the type of HNS involved, but the contribution paid by each sector will vary depending on the total volume of cargo for that sector and the frequency of claims falling in that sector. So although there would be some cross-subsidisation between the sectors, this would be weighted so that those sectors with a greater claims/volume of cargo ratio would pay a greater proportion than other sectors.
- 1.10 However, early indications (taking into account the requirement for EU Member States to ratify the Convention by June 2006) are that there will be sufficient quantities of HNS cargo reported when the Convention enters into force to allow the immediate formation of separate accounts.
- 1.11 When the Fund is operating normally, i.e. separate accounts will operate for oil, LPG & LNG, if payments are required by the general account, contributions payable by the **bulk solids** and **other HNS** sectors will still be calculated by the method referred to in paragraph.

## Liability to contribute to the HNS Fund

1.12 The requirement to contribute to the HNS Fund applies to any person who, in the preceding calendar year:



- Held title to any LNG cargo immediately prior to discharge in the UK
- Received more than 150,000 tonnes of persistent oils
- Was "the receiver" of more than:

,000 tonnes of non-persistent oils  
 ,000 tonnes of LPG  
 ,000 tonnes of bulk solids  
 ,000 tonnes of other HNS

## **Definition of receiver**

- 1.13 The Convention sets out what is meant by "the receiver", which applies to LPG, non-persistent oil, bulk solids and other HNS, at article 1(4) and provides two options.
- 1.14 Article 1(4) subparagraph (a) defines the receiver as the person who physically receives an HNS cargo discharged in a UK port or terminal. The definition also contains a provision to allow the physical receiver of the cargo to pass on liability, if they are acting as an agent on behalf of another person.
- 1.15 Article 1(4) subparagraph (b) allows States to implement their own definition of a receiver, provided that it would not lead to different quantities of cargo being reported than would have been reported if the definition provided in the Convention had been used.
- 1.16 As set out in Section 3 the Government intends to apply the definition of receiver contained in the Convention at Article 1(4)(a).

## **Associated persons**

- 1.18 Article 16(5) of the HNS Convention requires that where the aggregate quantity of HNS received by associated persons exceeds the Convention thresholds then those persons will be liable to contribute to the HNS Fund in respect of the quantities actually received.
- 1.19 The Convention states that associated persons "means any subsidiary or commonly controlled entity. The question of whether a person comes within this definition shall be determined by the law of the State concerned" (article 16(6)).
- 1.20 The purpose of this provision is to prevent companies that would otherwise be liable to contribute to the HNS Fund (i.e. annual receipts in excess of the Convention thresholds) from avoiding liability by breaking up into smaller entities with individual annual receipts falling below the thresholds.



# Questionnaire

Your name	<input type="text"/>	
Company name	<input type="text"/>	
Address	<input type="text"/>	
Postcode		
Phone number	<input type="text"/>	
Email address	<input type="text"/>	
Does your company import substances that fall within the definition of HNS?	<input type="checkbox"/>	
If yes, which countries do you usually import from? Please list all		
<input type="text"/>		
What quantities do you import on an annual basis of the following types of HNS?		
	Last year (03/04)	Previous year (02/03)
Persistent oils	<input type="text"/>	<input type="text"/>
Non-persistent oils	<input type="text"/>	<input type="text"/>
LPG	<input type="text"/>	<input type="text"/>
Bulk solids	<input type="text"/>	<input type="text"/>
Other HNS (i.e....)	<input type="text"/>	<input type="text"/>
What happens to the HNS you receive? Is it: (please tick all that apply)		
Processed on site	<input type="checkbox"/>	
Stored on site before transportation elsewhere	<input type="checkbox"/>	
Immediately transported elsewhere	<input type="checkbox"/>	
Other; please describe	<input type="text"/>	

If you have answered stored on site before transportation elsewhere, please answer the following questions:

How long, on average, is the HNS stored for?

Where does the HNS go?

If the HNS goes outside UK, please name the final destination

If the HNS remains inside the UK, please provide details of its destination below

**LNG Cargoes**

Does your company import LNG?

If yes, who is normally the owner of the cargo at the time it crosses the ship's rail?

You  Other

If you have answered other, please provide details below, if possible. If this is not possible, please indicate in which country the owner is based.

What quantity of LNG do you import?	Last year (03/04)	<input type="text"/>
	Previous year (02/03)	<input type="text"/>

Responses to this questionnaire will be kept confidential in so far as is consistent with obligations under the Freedom of Information Act 2000, which entered into force on 1 January 2005. Where information has been provided in confidence, this would be considered for exemption, and while release is unlikely, it is dependant on the nature of the request, the nature of the information and the nature of the public interest at the time of a request.

## Summary of issues for further consultation

### Further consultation question 1

We invite comments on the proposed reporting threshold of 17,000 tonnes per annum.

### Further consultation question 2

Do you agree with the proposed guidelines? If not, we invite alternative suggestions supported up by details of industry practice concerning transshipment.

Would you like to see any other criteria taken into account when determining whether or not cargo is in transit?

We invite comments on the criteria by which the issue of transshipment will be considered by the HNS Assembly.

### Further consultation question 3

Do you agree that the UK should seek to ensure that a liable party can be identified to contribute in respect of the LNG account?

### Further consultation question 4

Do you agree with the proposal to put the liability to report and contribute on to the parent company of any group of two or more associated persons?

If stakeholders do not agree to this approach, we would welcome suggestions as to how associated persons can be identified *without further lowering the reporting threshold*.

### Further consultation point 5

Comments on the HNS CCC can be made directly to Catherine Grey at the IOPC Funds Secretariat, although DfT would also like to receive your feedback. Please copy any comments to the DfT at [hns@dft.gsi.gov.uk](mailto:hns@dft.gsi.gov.uk).

### Further consultation point 6

We invite stakeholders to complete and return the questionnaire on HNS receipts attached at Annex VI.

### Further consultation point 7

We invite comments on any aspect of the draft Order and Regulations contained at Section 6.



## Distribution List

Ahlstrom Fiber Composites Dow (Wilton) Ltd	Flexsys Rubber Chemicals Ltd Flogas Direct Ltd	Petrofac Facilities Management Ltd Petroplus Refining Teesside Ltd Petroplus Tankstorage Milford Haven Ltd
A A Butler & Co Wrexham Ltd A Cohen & Co (Great Britain) Ltd Abbey Metal Finishing Co Ltd Abbott Laboratories Ltd Acetate Products Limited ACMA Ltd t/a SYNETIX PCEO Acordis Fine Chemicals Limited Acordis UK Limited Acorn Hardas Ltd AEM Ltd Aerosol Products Ltd	Flogas UK Ltd FMC Chemicals Ltd Formica Ltd Freshney Cargo Services Ltd Fuel and Marine Marketing Limited G.Cross & Sons (Northwich) Ltd Gamebore Cartridge Company Ltd Gas & Hire Ltd Gas Link Limited GE Betz Limited GE Plastics Abs Ltd	Pfizer Ltd Philips Electronics UK Ltd Pilkington Special Glass Ltd Polimeri Europa UK Ltd PolymerLatex Ltd Port of Tilbury London Ltd Portland Port Limited Power Europe Limited Powergen CHP Ltd PPG Industries (UK) Ltd. Procter & Gamble Product Supply (UK) Ltd PW Defence Ltd px (TGPP) Ltd QinetiQ Ltd R S Logistics Ltd Radiant Metal Finishing Ltd Rase Warehousing
Aerosols International Ltd Akcros Chemicals Ltd Akzo Nobel Chemicals Ltd Albemarle Chemicals UK Ltd Albion Chemicals Ltd Aldbrough Gas Storage Company Ltd Allied Distillers Ltd	General Trading Services Ltd George Rose Gillette UK Ltd Glasson Fertilizers Ltd Glasson Grain Limited GlaxoSmithKline PLC Gleaner Oil and Gas Glen Catrine Bonded Warehouse Ltd Glen Turner Distillery Ltd Glenmorangie Plc Glenseal Adhesives Goldschmidt UK Ltd Gower Chemicals Ltd Great Lakes ( UK ) Ltd Great Lakes Manufacturing (UK) Ltd	Reabrook Limited Reckitt Colman Products Ltd Recticel Ltd Rentokil Initial UK Ltd Resource Chemical Limited Rhodia ChiRex Limited Rhodia Consumer Specialties Ltd
Allied Steel and Wire Ltd Ambersil Ltd Anglian Water Services Ltd Angus Dundee Distillers plc Anochrome Ltd ARC UK Ltd Aroma and Fine Chemicals Ltd	Grosvenor Chemicals Ltd H Burtwistle & Son H C Robinson & Sons Ltd Haltermann Ltd	Rhodia Eco Services Ltd Rhodia HPCII UK Ltd Rhodia Ltd Rhodia Organique Fine Ltd
Asbury Brodie & Co Ltd Ashland UK Ltd ASIG Ltd Associated British Ports Associated Petroleum Terminals (Immingham) Limited Aston Martin Lagonda Ltd AstraZeneca plc Atlantic Power and Gas Engineering	Griffin Marston Ltd Grillo Zincioxide (UK) Ltd	Rhodia Pharma Solutions Ltd Robert Stuart Plc Robinson Brothers Ltd. Roche Vitamins (UK) Ltd Rockwood Electronic Materials Limited Rockwool Ltd
Atofina UK Ltd Atomic Weapons Establishment Plc Atotech UK Ltd Avecia Ltd AvestaPolarit Ltd	Hammill Brick Ltd Hanson Transport Ltd Harrison Logistics (Scotland) Ltd Hawker Pacific Aerospace Ltd HCB Energy Ltd	Rohm & Haas (UK) Ltd Rohm And Haas (Scotland) Ltd Rolls Royce Plc Ross Chemical & Storage Company Ltd
Babcock Engineering Services Ltd Baerlocher UK Ltd	Heard & Sendell Ltd Heathrow Airport Fuel Company Ltd Heathrow Hydrant Operating Company Limited Henkel Ltd	Roxel (UK Rocket Motors) Limited
Baker Hughes Ltd Basell Polyolefins UK Ltd BASF Plc	Henry Diaper & Co Ltd	Royal Mint Royal Ordnance PLC Royal Ordnance Speciality Metals Limited

Bates & Hunt Petroleum (Texaco Ltd t/a)	Hepworth Building Products Limited	S T Eastham Ltd
Baxenden Chemical Co Ltd	Hercules Ltd	Sandtoft Roof Tiles Ltd
Bayer CropScience Limited	Hertfordshire Oil Storage Ltd	Sandvik Hard Materials Ltd
Bayford & Co Ltd	Hickson & Welch Ltd	SBS Logistics Ltd
Ben Nevis Distillery (Fort William) Ltd	Highland Distillers	Schenectady Europe Limited
Bernard Matthews Foods Ltd	Highland Fuels Ltd	Schlegel Ltd
Biffa Waste Services Ltd	Home Heat Gas Co Ltd	SCJ EurAFNE Limited
Biodeg Chemical Company Ltd	Houghton Vaughan Ltd	Scott Bader UK Ltd
BioLab UK Ltd	Hoyer Uk Ltd	Scottish and Southern Energy plc
BIP Limited	Hull Cartridge Co Ltd	Scottish Water
Bird Port Ltd	Humber LPG Terminal Ltd	Seal Sands Chemicals Ltd
Black Cat Fireworks Ltd	Humber Sea Terminal Limited	Seal Sands Storage Ltd
Blagden Specialty Chemicals Ltd	Huntingdon Life Sciences Ltd	Serco Gulf Engineering Limited
BOC Gases Ltd	Huntsman Corporation UK Ltd	Severn Trent Plc
BOC Limited	Huntsman Petrochemicals (UK) Ltd	Shanks Chemical Services ( Scotland) Ltd
Boots Company Plc	Huntsman Polyurethanes (UK) Ltd	Shanks Chemical Services Limited
Borden Chemical UK Ltd	Huntsman Surface Sciences (UK) Limited	Shanks Waste Services Ltd
BP Shipping Ltd	Hyder Utilities (Operations) Limited	Sharpness Dock Ltd
Brenntag (UK) Ltd	Hydro Agri (UK) Ltd	Shell Chemicals UK Ltd
Brent Europe Ltd	Hydro Polymers Ltd	Shell Direct (UK) Ltd
Bright Star Fireworks UK Ltd	Hydrocarbon Resources Limited	Shell Gas Limited
Bristol Oil Storage Ltd	Hyndburn Borough Council	Shell (STASCO)
Bristol Water plc	IAWS Fertilisers UK Ltd	Shell UK Exploration & Production
British Gas Trading Ltd	IBC Vehicles Ltd	Shell UK Ltd
British Hydrocarbon Resources Ltd	ICI Chemicals & Polymers Ltd	Shell UK Oil Products
British Nuclear Fuels Plc	ICI Performance Specialities Limited	Shepherd Widnes Ltd
British Pipeline Agency Limited	Immingham Railfreight Terminals Ltd	Shin-etsu Handotai Europe Ltd
British Sugar Plc	Immingham Storage Company Ltd	Shiplely Europe Ltd
Brotherton Speciality Products Ltd	INCO Europe Ltd	Sidney Banks PLC
Bruichladdich Distillery Ltd	Ineos Chlor Limited	Sigma-Aldrich Company Ltd
Budget Gas Limited	Ineos Fluor Ltd	Simon Management Ltd
Bush Boake Allen Limited	Innogy plc	Simon Riverside Ltd
C & J Atlas Energy Ltd	Interconnector (UK) Ltd	Simon Storage Ltd
Caird Group Ltd	International Coatings Ltd	Soil Fertility Dunns Limited
Caligen Foam Ltd	International Flavours & Fragrances	Solutia UK Ltd
Calor Gas Limited	International Marine Transportation Ltd	Solvay Interox Ltd
Cambrian Gas Ltd	Inverhouse Distillers Limited	Solvent Resource Management Limited
Campact Ltd	Invista (UK) Ltd	Solvitol Limited
Cardiff Gas	IQE (Europe) Ltd	South East Water Co. Plc
Carlisle Warehousing Ltd	Isothane Ltd	South Staffordshire Water Plc
Carmarthen Warehousing Ltd	J & B Scotland Ltd	Southern Water plc
Carpenter Ltd	J & G Grant	Space4 Limited
Carrs Agriculture Ltd	J & H Bunn Limited	Special Metals Wiggin Ltd
Carrs Fertilisers Limited	J Revis & Sons	Spectrum Chemicals Limited
Carver (Wolverhampton) Ltd	James Briggs Ltd	Speyside Distillery Company Ltd
Castle Gas	James Brown	Spring Distribution (Scotland) Ltd
Castle Waste Services Limited	James Lister & Sons Ltd	SSE Hornsea Limited
CCL Industries Limited	James Robinson Limited	ST Services Ltd
Celsa Manufacturing (UK) Limited	John Dewar & Sons Ltd	Stainless Plating Limited



Central Storage Perth	John G Russell (Transport) Limited	Stansted Fuelling Company Ltd
Centrica Storage Limited	John Parsons Marketing Ltd	Stepan UK Ltd
Chemetall Plc	John Swire & Sons Ltd	Strath Services Ltd
Chemical and Oils Storage Management Ltd	Johnson and Son	Sunderland Oil Storage Ltd
Chemical Innovations Limited	Johnson Controls Automotive (UK) Ltd	Surenough Ltd
Chemical Recoveries Ltd	Johnson Matthey Plc	Surface Specialities PLC
Chemson Ltd	Johnston Oils Ltd	Surfachem Ltd
Chivas Brothers Limited	K & S Fumigation Services Ltd	Swallow Stevedores Ltd
Ciba Speciality Chemicals (UK) Limited	K Foster & Son Ltd	Syngenta Crop Protection UK Ltd
Civil and Marine Slag Cement Ltd	Kay Metzeler Ltd	Syngenta Limited
Clariant Life Science Molecules (UK) Ltd.	Kemira Agro UK Ltd	Synthite Ltd
Clariant UK Ltd	Kemira Chemicals ( UK ) Limited - Kemwater	Synthomer Limited
Cleanaway Limited	Kodak Ltd	Talisman Energy (UK)Ltd
Cleanright Industrial Services Ltd	Koppers UK Limited	TDG (UK) Limited
Cle-Pol Manufacturing Co Ltd	Kronospan Ltd	Tecca Ltd
Coal Products Ltd	Kuwait Petroleum (GB) Ltd	Teesside Gas Processing Plant
Coales Distribution Limited	Lambson Fine Chemicals Ltd	Tennants Distribution Ltd
Coalite Ltd	Lancaster Synthesis Ltd	Terra Nitrogen (UK) Ltd
Coleman UK Plc	Land Rover	Tessengerlo Fine Chemicals Limited
Colgate Palmolive Ltd	Lansdowne Chemicals Plc	Tessengerlo UK Limited
Collier Industrial Waste Ltd	Lanstar Ltd	Tetrosyl Ltd
ConocoPhillips Ltd	Lanstar(Scotland) Ltd	Texaco Ltd
ConocoPhillips Petroleum Company UK Limited	Laporte Plc	Thames Power Services Ltd
Contract Chemicals Ltd	Laporte Industries Limited	Thames Water Utilities Ltd
Contract Fertiliser & Storage Limited	Leafield Engineering Ltd	The Associated Octel Company Ltd
Contract Ferts & Storage Ltd	Lever Faberge Ltd	The Brick Business Ltd
Corus Engineering Steels Ltd	Linde Gas UK Ltd	The Heys Group Ltd
Corus Packaging Plus	Liquefied Petroleum National Gas Ltd	The Major Storage Company
Corus UK Ltd	Loch Lomond Distillery Co Ltd	The North British Distillery Company Ltd
Cosmic Fireworks Ltd	Lowe & Fletcher Metal Finishing Ltd	The Potter Group Ltd
Countrywide Farmers plc	Lucite International UK Limited	The Scotts Company (UK) Ltd
CPS Fuels Ltd	Lundbeck Pharmaceuticals Ltd	The Tomatin Distillery Co Ltd
Cray Valley Ltd	M & J Polymers Ltd	Thomas Swan & Co Ltd
Croda Chemicals Europe Ltd	MacDermid plc	Thor Chemicals International
Croda Colloids Limited	MacFarlan Smith Limited	Thor Specialities (UK) Ltd
CSI Wood Protection Limited	MacGas Limited	Three Valleys Water Plc
Cube Fireworks Ltd	Mallinckrodt Chemical Limited.	Tibbett & Britten Ltd
Cytec Industries	Manor Bakeries Ltd	Timet UK Ltd
Dalgety Arable Ltd	Marlin Lighting Ltd	Tioxide Europe Ltd
Daltrade Ltd	MBDA (UK) Limited	Total E & P UK Plc
David Saunders Storage	McIntyre UK Ltd	TR Oil Services Ltd
Degussa Knottingley Limited	Men Shun Fireworks Company Ltd	Transco PLC
Degussa Limited	Merck Limited	Troon Investments Ltd
Dewco-Lloyd Ltd	Messer UK Ltd	Truxplus Ltd
Diageo Great Britain Ltd	Messier Services (UK) Ltd	Union Camp Chemicals (UK) Ltd
Diageo Scotland Ltd	Messier-Dowty Ltd	Unipen Ltd
Diosynth Ltd	Metapic Ltd	United Phosphorus Limited
Discount Roofing & Building Supplies	Midland Chromium Plating Co Ltd	United Storage
		United Utilities Water PLC

Dow Chemical Company Ltd	Millennium Inorganic Chemicals Ltd	Univar Ltd
Dow Corning Ltd	Millennium Pyrotechnics Ltd	UOP Limited
DSF Refractories and Minerals Ltd	Mobil North Sea Ltd	Usborne Fertiliser Ltd
Du Pont (UK) Limited	MOD	Vantico Ltd
DuPont Sabanci Polyester (UK) Ltd	Morrison Bowmore Distillery Ltd	Velva Liquids (North Shields) Ltd
DuPont Teijin Films UK Ltd	Motorola Ltd	Vesuvius UK Ltd
Dwr Cymru / Welsh Water	Mousley Transp & Distrib Ltd	Victrex Manufacturing Ltd
Dynea Aycliffe Ltd	Murco Petroleum Ltd	Vinamul Ltd
Dynea UK Ltd	Nalco/Exxon Energy Chemicals Ltd	Vitafoam Ltd
Easi - Gas (UK) Ltd	National Grid Transco plc	Vopak Terminal Barry Ltd
Eastham Refinery Ltd	National Starch & Chemical Ltd	Vopak Terminal Ipswich Ltd
Eastman Chemical (UK) Ltd	NEC Semiconductors (UK) Ltd.	Vopak Terminal London BV Ltd
EDF Trading Limited	Neill and Brown Group	Vopak Terminal Teesside Limited
Elementis Plc	New Holland Bulk Services Ltd	Vopak Terminal Windmill Ltd
Elementis Plc	Nippon Gohsei UK Ltd	VWR International Ltd
Elida Faberge Ltd	North Killingholme Storage Ltd	W & J Leigh & Co
Employment and Social Security Department	Northcot Brick Ltd	W F Fertilisers Ltd
Energas Ltd	Northumbrian Water Ltd	Warwick International Ltd.
Engineering & Welding Supplies Ltd	Norvic Gas Limited	Warwickshire Oil Storage Ltd
Epichem Ltd	Nova Chemicals Europe Ltd	Watson Norie Ltd
Esso Petroleum Company Ltd	Novagas Ltd	WBB Minerals Ltd
European Colour (Pigments) Ltd	Novartis Grimsby Limited	Welson Salop Ltd
European Vinyls Corporation (UK) Ltd	NT Frost	West Wales Gas Limited
Exchem Explosives Limited	Nufarm UK Ltd	Whyte and MacKay Ltd
Exchem Plc	Oikos Storage Ltd	Wigan Metropolitan Borough Council
Exel Plc	Oil and Pipelines Agency	William Blythe Ltd
ExxonMobil Chemical Limited	Omex Agriculture Ltd	William Grant & Sons
ExxonMobil Chemical Olefins Inc	OMYA UK Ltd	William Tracey Ltd
F2 Chemicals Limited	ONDEO Nalco Energy Services Ltd	Wincanton Trans European Ltd
Fehrer Great Britain Ltd	ONDEO Nalco Limited	Witton Chemical Co Ltd
Felixstowe Tank Developments	Onyx TWM	Wolfie Returns: The Revenge of Wolfie
Fertiliser Solutions Ltd	Orica UK Ltd	Woodbridge Foam (UK) Ltd
Filtronic Comtek (UK) plc	Pains Wessex Ltd	Workfield Ltd T/A Cheshire Bottled Gas
Firmin Coates & Sons Ltd	Payne Bros (East Anglia) Ltd	York Waterworks Plc
Fisher Scientific UK Ltd	Petrochem Carless Ltd	Yorkshire Chemicals Plc
		Zeon Chemicals Europe Ltd
<b>Associations and other groups</b>		
Association of British Oil Industries	British Pest Control Association	ITOPF
Association of the British Pharmaceutical Industry	British Ports Association	Joint Nature Conservation Committee
British Agrochemicals Association Ltd	British Rubber Manufacturers Association Ltd	LP Gas Association
British Coatings Federation Ltd	British Wood Preserving & Damp-Proofing Association	Maize Growers Association
British Marine Industries Federation	British Plastics Federation	Margarine & Spreads Association
British Maritime Law Association	British Polyolefin Textiles Association	Northern Offshore federation
Brewing, Food & Beverage Industry Supplies Association	Cosmetic, Toiletry & Perfumery Association Ltd CPTA	OCIMF
	Cement Admixtures Association	Paper Federation of Great Britain Society of Maritme

British Adhesives and Sealants Association  
British Aerosol Manufacturers' Association  
British Association for Chemical Specialities  
British Cement Association  
British Ceramic Confederation  
British Chemical Distributors and Traders Association  
British Insurance Brokers' Association  
British International Freight Association  
British Lubricants Federation

Chemical Industries Association  
Crop Protection Association UK Limited  
European Phenolic Foam Association  
Fertiliser Manufacturers Association  
Federation of resin Flooring Formulators and Applicators  
Fibre Cement Manufacturers  
Freight Transport Association  
Gas Forum  
International Group of P&I Clubs

Specialised Organic Chemicals Sectors Association  
Tank Storage Association  
Textile Finishers Association  
The Chamber of Shipping  
UK Cleaning Products Industry Association  
UK Major Ports Group  
UK Maritime and Coastguard Agency  
UK Petroleum Industry Association

**To all stakeholders**

(as listed in Annex 9 of the Department's related final public consultation document)

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04 April 2005

Dear Colleague,

**National implementation of the HNS Convention**

I am writing to invite your comments on the public consultation document published today regarding the Department's proposals on implementation the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (the HNS Convention).

The document forms the final part of a two-stage written consultation process which began in December 2004. The initial consultation was open for 12 weeks. During this phase comments were invited on a number of issues, including: the target date for UK ratification of the Convention; the obligations to report receipts of HNS cargoes following carriage by sea; shipowners' insurance under the Convention; and the option to exclude some types of domestic vessels.

This second stage of consultation will last 10 weeks, as part of the overall formal consultation period of 22 weeks between December 2003 and June 2005. The document invites stakeholders to note the key contributions from those who replied to the initial consultation. Where it has been possible to do so, we have provided a detailed Government response to the substantive points raised. It also introduces the draft legislation, which will allow us to ratify and implement the HNS Convention. The document invites comments on the way in which the Government proposes to implement the Convention.

The document includes a further questionnaire seeking information on recent receipts of HNS which would qualify as contributing cargo were the Convention in force now. This information will assist in the preparation of a report of potential contributing cargo at the time the UK ratifies the Convention. We are grateful to those who have already provided initial information. Some have already been identified as falling well below the tonnage thresholds which will be applied either nationally or under the Convention. However, information was not received from a number of companies. Until we can determine otherwise these will be regarded as potential contributors and will be subject to the proposed regulations once they are in force.

Following the first phase, a number of stakeholders responded on matters of substance or the drafting of the Convention itself. I should like to take this opportunity to remind all stakeholders that the Convention text cannot be amended in any way and it would, therefore, be appreciated if responses to this consultation were confined to matters of implementation and reporting, and other such matters arising from this phase.

Further copies of both the first and second stage consultation documents can be found on the department's web site: [www.dft.gov.uk](http://www.dft.gov.uk) under the headings Consultation Documents, current and closed.

Your attention is drawn to the details in on the Government's Code of Practice public consultations as set out in the Annex to this letter.

**You should note that the final date for responses to this document is 13 June 2005.**

Yours sincerely,

*John Wren*

**John Wren**

## Code of Practice on Consultation

The code of practice applies to all UK public consultations by Government departments and agencies, including consultations on EU directives.

Though the code does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), it should otherwise generally be regarded as binding unless Ministers conclude that exceptional circumstances require a departure.

The code contains the following six criteria:

### Consultation criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time-scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

A full version of the code of practice is available on the Cabinet Office web-site at:  
<http://www.cabinet-office.gov.uk/regulation/consultation/code.asp>

This public consultation document is part of a formal consultation period of 22 weeks in all between December 2003 and June 2005.

If you consider that this consultation does not comply with the criteria or have comments about the **consultation process** please contact:

Andrew D Price  
Consultation Co-ordinator  
Department for Transport  
Zone 9/9 Southside  
105 Victoria Street  
London, SW1E 6DT  
email: [andrewD.price@dft.gsi.gov.uk](mailto:andrewD.price@dft.gsi.gov.uk)

Please note that responses **to the consultation itself** must be sent to:

Clare Boam  
Shipping Policy 1a  
Department for Transport  
Zone 2/28 Great Minster House  
76 Marsham Street  
London  
SW1P 4DR  
email: [hns@dft.gsi.gov.uk](mailto:hns@dft.gsi.gov.uk)