

To all members of the HNS
Correspondence Group

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Dear colleagues

HNS Implementing Legislation

In my letter of 11 June on the launch of the HNS Correspondence Group web-site I agreed to circulate further correspondence on comparisons on States implementing legislation. At LEG 84 the Committee also welcomed the offer by the delegations of Ireland and the Russian Federation to make available their legislation (para. 122 of the report of LEG 84). The UK, Irish and Russian legislation is now available on the web-site. This will be particularly helpful for Member States seeking to implement the Convention into their national legislation.

Following initial suggestions by Dr Cowley (Vanuatu) and Jonathan Pace (Malta) I enclose a comparison between the UK and Irish legislation. I have made reference to the UK and Irish legislation only, for ease of reference and feasibility. I have made specific reference to two key issues that may be of particular benefit to States when seeking to implement the necessary legislation:

- the provisions which will give the legislation the force of law in the UK and Ireland, and
- the statutory provisions referring to the reporting requirements for contributing cargo to fulfil obligations under the Convention.

I have not included a detailed analysis of each specific provision contained in the relevant enabling powers because the actual texts of the legislation are already contained on the web-site. States may wish to take into account that the processes undertaken by the UK and Ireland (and the Russian Federation) may bear no relevance to their own needs or process in terms of implementing legislation. However, I hope that this initial broad comparison is useful for those States seeking guidance in respect of implementing legislation.



Before addressing this item however, I would like to re-iterate a statement made in my letter of 11 June and encourage those States, and industry representatives, that are members of the Correspondence Group to circulate the address of the web-site (<http://folk.uio.no/erikro/WWW/HNS/hns.html>) to their national industry organisations, and other NGO's, who have an interest in the HNS Convention.

The work of the Correspondence Group and the information contained on the web-site will greatly facilitate understanding of the Convention; help towards implementation of the Convention and answer some of the 'perceived' difficulties and complexities regarding the provisions in, and requirements of, the regime itself. The UK has already circulated the address to a number of industry representatives for information.

Implementing Legislation

During the 12-month period that the Convention was open for signature, eight states signed the Convention with the intention of becoming party to the regime.

Whilst only two States have since become a party to the Convention, the UK has passed legislation to implement the Convention, and Ireland is in the process of doing the same. In 1996 the UK Government introduced a Bill to revise existing Merchant Shipping legislation. The Act provided an ideal opportunity to seek Parliamentary approval, in principle, for the UK to ratify the Convention. The Merchant Shipping and Maritime Security Act was passed in 1997 and contains such powers.

The Irish Parliament (Dail) commenced its examination of the Sea Pollution (Hazardous and Noxious Substances) (Civil Liability and Compensation) Bill, 2000 in 2001. The Bill contains the powers to give effect to the HNS Convention, and the text of the Convention itself. This examination process is still on going.

Specifically, the enabling powers giving the force of law to the Convention in the UK and Ireland are as follows:

Enabling Powers

United Kingdom – the text of the Convention and the enabling powers giving effect to the provisions of the Convention are contained in the Merchant Shipping and Maritime Security Act 1997. The actual text of the Convention is set out in Schedule 3 to the 1997 Act while the enabling powers, including the power to enable ratification, are contained in section 14 which added two new sections to the preceding Merchant Shipping Act 1995 (sections 182A - 182C). The Act also contains a number of other substantial legislative measures, including measures relating to maritime incidents, safety and compensation matters.

The UK has not, of course, ratified the Convention and, therefore, this legislation does not yet have the force of law in the UK. Before ratifying the Convention the UK must first seek

positive approval to do so from both Houses of Parliament through further subordinate legislation. However, Parliament has agreed in principle that the UK should ratify, the only remaining issue is the timing. The enabling powers and the text of the Convention have been enacted but this legislative text can be described as '*dormant*' until Parliament finally approves ratification.

Ireland – the Sea Pollution (Hazardous and Noxious Substances) (Civil Liability and Compensation) Bill 2000 gives effect to the HNS Convention. The enabling powers are contained in the text of the Bill while the actual text of the Convention is set out in Schedule 1 thereto. The Bill also gives effect to the 1996 LLMC Protocol the text of which is set out in Schedule 2 thereto.

Ireland is also not a party to the Convention. As with the UK, the Convention shall have the force of law in the State only when an Order is placed before both Houses of Legislature (Oireachtas) seeking accession to the Convention. Essentially the legislation is awaiting approval from Parliament. When this approval is given the legislative status of the implementing legislation in respect of the Convention will be the same as is currently the case in the UK.

Reporting Requirements under the Regime

When becoming a State party to the HNS Convention and annually thereafter until the Convention enters into force for a given State, States Parties are obliged to submit information to IMO on contributing cargo's received. This will enable the Secretary General of the IMO to determine the date of the entry into force of the Convention. When the Convention enters into force States Parties will be required to inform the HNS Fund, when established, of the name and address of receivers of quantities of contributing cargo exceeding the thresholds during the preceding year together with the quantities of cargo received by each of them.

The reporting requirements themselves are not actually spelt out in the Convention. However, the Convention imposes requirements on State Parties to communicate information to the HNS Fund about those liable to pay contributions. In order to fulfil its duty the State will need to obtain information from those industry bodies. The implementation legislation itself in the UK & Ireland to provide for any such regime is as follows:

Ireland –The enabling powers in the Bill (section 26) allow regulations to be made (by the Minister) to require persons to submit periodic returns regarding the amounts and types of HNS. This will fulfil the requirements of the Convention and allow the State to develop a suitable national regime for reporting returns of HNS received. The submission of false or misleading material from any person to whom such regulations apply shall be guilty of an offence, the penalties for which, as stated in the enabling legislation, are:

- to a fine not exceeding IR £1, 500 on summary conviction, or
- to a fine not exceeding IR £10, 000.

These amounts were determined having regard to the limits prescribed in relation to the Courts prior to the replacement of the punt as the national currency by the Euro on 1

January 2002. The Bill will require to be amended by the Dáil to reflect the revised arrangements.

As drafted the legislation allows the State to implement a suitable statutory national regime for reporting requirements in advance of ratification of the Convention itself, if deemed necessary. This would facilitate national industry bodies by ensuring that any concerns, or problems, with reporting contributing cargo are overcome in advance of accession, or the entry into force of the Convention - it is, of course, intended that the work of the IOPC Fund and the contributing cargo calculator will greatly help in this respect as well.

United Kingdom – The enabling legislation requires contributions to be paid in accordance with the Convention, **but only** following ratification of the Convention itself (section 182B (3) (a)). The UK's enabling powers do not provide for the implementation of a statutory reporting regime for contributing cargo without prior ratification. The power requiring contributions to be paid in accordance with the Convention is no more than a supplementary provision to be included in the Order to give effect to the Convention.

The penalties for an offence in relation to the reporting requirements (i.e. the submission of false or misleading material) will be covered in a separate provision that provides for the application, with appropriate modifications, of legislation already referring to marine pollution. This would allow subordinate legislation implementing the Convention to apply provisions, with such necessary modifications, already contained in UK legislation relating to marine pollution i.e. legislation relating to the International Oil Pollution Compensation Fund (IOPC Fund), such as insurance certificates etc. The penalties for an offence are not separately specifically provided for as in the Irish legislation.

General

The implementation of the reporting requirements **prior** to the entry into force of the Convention should ease the difficulties States are experiencing in identifying the receivers of HNS cargo and also the difficulties contributors may experience in determining contributing cargo. This will also allow industry contributors to become accustomed to the national reporting regime, as developed. It can be assumed that this will be similar to the regime for reporting contributions under the IOPC Fund 1992. States may wish to consider whether the development of a voluntary (non-statutory) reporting system would have the same effect prior to the implementation of the necessary national legislation, or ratification of, or accession to, the Convention.

Further General Enabling Powers

There are a number of further general powers in the enabling provisions in both the UK and Irish implementing legislation that States may wish to refer, that allow the State to take certain specific measures, including:

- UK** - provision for application to the Crown. This is a standard provision in UK legislation. The HNS Convention does not apply to warships, naval auxiliary or other ships used only on Government non-commercial service (Section 182B(3)(d));

- provision for the detention of ships for contravention of the legislation implementing the Convention e.g. for failure to carry an appropriate insurance certificate (Section 182B(3)(e));

Ireland

- provision to give recognition in the State to the HNS Fund as a corporate body (Section 11 of the Bill);
 - power to enable the Minister to make an order declaring that the Bill when enacted shall not apply to ships as defined under Article 5 of the Convention (section 13);
 - provision for the owner of an Irish ship or a ship registered in a State, other than the State or another State Party, to apply to the Minister for a compulsory insurance certificate (Section 16);
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The intention of this correspondence is not to provide an exhaustive comparison between the two sets of legislation, rather to highlight specific issues in respect of the implementation of the Convention to which States may wish to refer. The UK is content to receive any queries or comments direct in respect of the implementing legislation or any concerns relating thereto. The UK has undertaken this work, and the legislation of the UK, Ireland and the Russian Federation has been posted on the website, following initial requests from States. If there are further concerns I strongly encourage members of the Correspondence Group to make reference to the web-site, or contact the UK either through the Group or direct.

It is not our intention that a paper is submitted to the IMO for consideration at LEG 85 on the legislative process. However, if States believe that such a paper will facilitate progress on this specific item I would be grateful to receive comments as to the suggested form it should take.

In my letter of 11 June I also indicated that we would circulate proposed work focusing on reasons why Governments should join the HNS regime (see para. 122 of LEG 84 Report). The UK is currently developing a paper focusing on shipping incidents on a global basis where HNS was on board. I intend to circulate such a paper for consideration by the group in the next month. In the meantime I would be grateful for any comments on any of the details covered in this correspondence.

Regards

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