EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (PREVENTION OF POLLUTION BY SEWAGE AND GARBAGE) ORDER 2006

2006 No. 2950

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Order in Council will enable the Secretary of State to make regulations to give effect to two annexes to an international convention on marine pollution. The Order therefore provides the enabling framework, and the substance of the requirements will be dealt with in the regulations. The Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Regulations (which cover both annexes) are currently in draft and being consulted upon.

2.2 These Regulations will apply a series of internationally agreed controls on the discharge of sewage into the sea from ships with the aim of reducing the impact of sewage pollution on the marine and coastal environment.

2.2 The Regulations will also replace the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1998 bringing the UK legislation in line with international amendments adopted since 1998. They will include a prohibition on the disposal into the sea of incinerator ashes from plastic products as they may contain toxic or heavy metal residues. They will also include changes to the form of the Garbage Record Book.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Section 128(1)(a) of the Merchant Shipping Act 1995 provides that an Order in Council may be made for the purpose of implementing the International Convention for the Prevention of Pollution from Ships 1973 (generally known as "MARPOL"). Amongst the things the Order can do is to authorise the Secretary of State to make Regulations to give effect to the Convention. This Order makes provision in relation to just two of the Annexes to the Convention - Annex IV (relating to the prevention of pollution by sewage) and Annex V (relating to the prevention of pollution by garbage).

4.2 This Order will enable the Secretary of State to make provision in the Regulations about the survey, inspection and certification of ships, about criminal offences and fines, and about the detention of ships. It will also enable the Secretary of State to make provision about the application of the Regulations outside territorial waters, the service of court documents on the master of a ship where an offence is alleged to have been committed, and about a harbour master being able to detain a

ship which has caused pollution in a harbour. Where a person is convicted for causing pollution, the Order will enable the Secretary of State to make provision about applying any fine towards defraying the costs of clearing up the pollution.

4.3 Finally, the Order provides for the maximum fine in the event of a summary conviction for causing pollution to be £25,000. In the event of conviction on indictment the fine is unlimited.

4.4 Previous Orders in Council which have been made or have effect under section 128(1)(a) of the 1995 Act include the Merchant Shipping (Prevention and Control of Pollution) Order 1987 (S.I. 1987/470) which relates to Annex II to MARPOL (the control of pollution by noxious liquid substances in bulk), and the Merchant Shipping (Prevention and Control of Pollution) Order 1990 (S.I. 1990/2595) which relates to Annex III (the prevention of pollution by harmful substances carried by sea in packaged form). They also include the Merchant Shipping (Prevention of Pollution by Garbage) Order 1988 (S.I. 1988/2252) which relates to Annex V, and which is revoked and replaced by the current Order.

5. Extent

5.1 This instrument extends to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The International Maritime Organization (IMO) adopted Annex IV of MARPOL in 1973, with the aim of reducing negative impacts of the discharge of raw sewage in shallow water upon the marine environment and public health. The UK ratified Annex IV in 1995 but by March 2000 an insufficient amount of nations (according to percentage of world tonnage) had ratified the annex for it to come into force internationally. This delay was due to countries having experienced difficulties with the requirement to provide port reception facilities for sewage. Annex IV was then revised to take into account these concerns and problems, and was accepted and formally adopted at 51st Session of the Marine Environmental Protection Committee of the IMO in April 2004.

7.2 Annex V of MARPOL was ratified in the UK in 1988 and was implemented in through the Merchant Shipping (Prevention of Pollution by Garbage) Regulations 1998. This Annex seeks to reduce the impact of garbage from shipping upon the marine environment and the problems garbage can cause for small boat users and the fishing industry. Annex V was amended however, to provide additional clarification on some issues and to prohibit the disposal of incinerator ash that may contain heavy metals. The revised Annex V came into force internationally in 2002.

7.3 As a signatory to MARPOL it is imperative that the United Kingdom is seen to implement the revised Annexes IV & V into UK legislation.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this Order as it has no impact on business, charities or the voluntary or public sector.

9. Contact

9.1 B Elliott of the Maritime and Coastguard Agency : Telephone 02380 329481 or e-mail: brian.elliott@mcga.gov.uk can answer queries regarding the instrument.