EXPLANATORY MEMORANDUM

TO

THE SULPHUR CONTENT OF LIQUID FUELS (ENGLAND AND WALES) (AMENDMENT) REGULATIONS 2014

2014 No. 1975

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

1.1. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1. This instrument amends the Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007 (S.I. 2007/79) in order to transpose the land-based provisions of the sulphur content of liquid fuels Directive (1999/32/EC) as amended by the marine fuels Directive[1] (2012/33/EU).

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

3.1. The deadline for all Member States to have legislation in place for transposing the Directive was 18 June 2014.

4. Legislative Context

4.1. The use of fuels in land-based activities and marine activities are controlled under Directive 1999/32/EC. The land-based provisions of this Directive are transposed by the Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007 (the SCLF Regulations). The marine provisions are transposed by the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 (S.I. 2008/2924).

4.2. This statutory instrument transposes the land-based provisions of Directive 2012/33/EU which are minor amendments and are limited in scope.

4.3. The UK is a party to the Prevention of Air Pollution from Ships of the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 (MARPOL). Annex VI of MARPOL contains provisions on the sulphur content of liquid fuels and a revised version of this annex was adopted in 2008 setting stricter limits than those found in the existing European regime. The provisions of the sulphur

[1] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0033&from=EN

content of marine fuels Directive (2012/33/EU) were adopted in 2012 to align with the revised MARPOL Annex VI in order to ensure coherence with international law.

4.4. Policy responsibility for the marine aspects falls with the Department for Transport and the Maritime and Coastguard Agency are responsible for implementing the MARPOL Annex VI requirements. The Department for Environment Food and Rural Affairs is responsible for transposing the land-based provisions of the Directive.

4.5. The Scrutiny History for the Directive is attached at Annex A and a transposition note is attached at Annex B.

5. Territorial Extent and Application

5.1. This instrument applies to England and Wales.

5.2. The administrations in Scotland, Northern Ireland and Gibraltar are bringing forward separate secondary legislation to transpose the Directive. None have been able to complete transposition before 18 June.

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. Air pollutant emissions from maritime transport can be transported over long distances and thus increasingly contribute to air quality problems in the EU[2]. The EU's Thematic Strategy on air pollution from 2005 concluded that sulphur emissions from shipping were forecast to exceed those from all land-based sources in the EU by 2020[3].

7.2. Directive 1999/32/EC regulates sulphur emissions from ships by limiting the maximum sulphur content of marine fuel. This Directive was amended by Directive 2005/33/EC that designated the Baltic Sea, the North Sea and the English Channel as sulphur emission control areas (SECAs) and limited the maximum sulphur content of the fuels used by ships operating in these sea areas to 1.5%. This fuel standard applies also to passenger ships operating on regular service outside SECAs. However, at the time of adoption, the SECA fuel standard was widely recognised as being insufficient to address observed environmental impacts from shipping.

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[2] Source: European Commission (http://ec.europa.eu/environment/air/transport/ships.htm)
[3] Clean Air for Europe impact assessment, p31, 2005
(http://ec.europa.eu/environment/archives/cafe/pdf/ia_report_en050921_final.pdf)

7.3. Due to the international dimension of the shipping industry, environmental, security and safety standards are developed by the International Maritime Organization (IMO), a United Nation's specialized agency. Directive 1999/32/EC as amended transposes provisions of Annex VI of IMO's Marine Pollution Convention, MARPOL 73/78. The European Commission called for action at the International Maritime Organization (IMO) to further reduce emissions, and in October 2008, an amended Annex VI was adopted that further reduces the maximum sulphur content of marine fuels inside and outside of SECAs.

7.4. EU sulphur content of marine fuels Directive (2012/33/EU) was adopted to reduce the maximum permitted sulphur content of heavy fuel oil, gas oil, marine gas oil and marine diesel oil used in the European Union, thus offering a high level of protection for the environment.

7.5. The key changes resulting from the Directive are:

- Changes to the definition of heavy fuel oil and gas oil.

- Changes to the requirement on Member States to ensure that heavy fuel oils are not used within their territory if their sulphur content exceeds 1 per cent by mass, so that large combustion plants that are already subject to the provisions of the industrial emissions Directive (2010/75/EU) and the large combustion plants Directive (2001/80/EC) are exempt.

- Member States are required to take necessary measures to check by sampling that the sulphur content of fuels used complied with the Directive. The amended Directive introduced new sampling provisions in two ways: (1) by replacing "sufficient frequency" with "periodically" and (2) by updating the reference method adopted for determining the sulphur content of sampled fuels.

7.6. Although minor, these changes required amendments to the SCLF Regulations to ensure they remain compliant with the amended Directive. These amendments will be made using the negative procedure. Defra is conscious of the need to keep the possibility of consolidating the Regulations under review, and is currently developing a work plan with the aim of producing a consolidated version as soon as practicable.

8. Consultation outcome

8.1. Defra and the Welsh Government conducted a joint, limited consultation exercise over four weeks with key stakeholders in industrial pollution control most likely to be affected by, and interested in, the proposed amendments. The consultation sought the views of operators of combustion plants, members of the broader industrial pollution control stakeholder forum and local authority regulators.

8.2. Only two short responses were received (one each from a local authority regulator and the petroleum industry trade association) and the comments provided showed agreement with the draft amendments. The petroleum trade body also suggested a change to the format of the one of the sampling standards. This suggestion has been taken on board.

9. Guidance

9.1. "Air Quality" notes were published in 2007 in relation to the current instrument to advise local authority regulators in taking practical steps in regulating the use of heavy fuel oil and gas oil. There are currently no plans to issue further guidance.

10. Impact

10.1. Due to the very limited scope of the amendments, and that no new burdens were being placed on industry, an impact assessment was not required. Charities and voluntary bodies do not operate industrial installations subject to this instrument.

10.2. The impact on the public sector lies in the duties of the Environment Agency and local authorities in implementing the instrument. Since the instrument amends provisions with which those bodies are already very familiar, the impact is the same as in the current Regulations and based on existing UK practice. The costs incurred by those bodies in their regulatory duties are recovered through charges to permit holders set in periodic charging schemes approved by the Secretary of State.

11. Regulating small business

11.1. The legislation applies to all industrial processes using heavy fuel oil and gas oil. Industrial activities using such fuels are expected to ensure the sulphur contents do not exceed the limits stated in the Regulations. As these sulphur limit requirements are unchanged from the 2007 Regulations, small business do not have any new burdens to comply with.

12. Monitoring & review

12.1. The Directive requires the European Commission to report on its implementation to the European Parliament and to the Council using information from national implementation reports from Member States. That report may be accompanied a legislative proposal if the result of the European Commission's evaluation requires it.

12.2. The instrument contains a requirement on the Secretary of State to carry out a review of the Regulations and to publish a report before 29 August 2019. The review will consider whether:

- The compliance measures reported in the national implementation reports have been effective in meeting the Directive's objectives.
- Overall, the instrument delivers a proportionate level of regulation taking into account the views of industry and regulators.

13. Contact

13.1. Nicholas Obe at the Department for Environment, Food and Rural Affairs, Tel: 020 7238 5304 or email: Nicholas.obe@defra.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

Scrutiny history

1. The proposal that resulted in Directive 2012/33/EU was the subject of EM 12806/11 and 13016/11. The House of Commons European Scrutiny Committee considered the EM on 12 October 2011. The Committee recommended that the documents were politically important and did not clear them pending further information (Report 42, Session 2010/2012, 33034, 33028).

2. The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B at the 1438th sift on 6 September 2011. The Chairman wrote to the Minister on 18 October 2011 holding the documents under scrutiny pending further information. A Ministerial letter was sent to the Chairman on 23 November 2011 and a reply received on 7 December 2011.

3. Ministerial letters were sent to both Committees on 12 July 2012. The House of Commons European Scrutiny Committee considered the letter on 5 September 2012. The Committee maintained their recommendation that the documents were politically important and also recommended that they should be debated in European Committee (Report. 11, Session 2012/2013). The debate took place on 15 October 2012.

4. Sub-Committee B of the House of Lords Select Committee on the European Union considered the letter on 23 July 2012 and cleared the documents from scrutiny.

Annex B

Transposition note

Directive 2012/33/EU of the European Parliament and of the Council amending Council Directive 1999/32/EC as regards the sulphur content of liquid fuels

1. This note describes the partial implementation in England and Wales of Directive 2012/33/EU of the European Parliament and of the Council amending Council Directive 1999/32/EC as regards the sulphur content of liquid fuels.

2. Council Directive 1999/32/EC deals with the sulphur content of certain land-based liquid fuels and marine fuels. As regards land-based liquid fuels, it requires Member States to prohibit, subject to certain exceptions, the use of heavy fuel oils with a sulphur content exceeding 1% by mass and the use of gas oils with a sulphur content exceeding 0.10% by mass. The Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007 (S.I. 2007/79) implements, in England and Wales, the requirements of Council Directive 1999/32/EC in relation to land-based liquid fuels.

3. The Directive amends the requirements of Council Directive 1999/32/EC in relation to both land-based liquid fuels and marine fuels. As regards land-based liquid fuels the changes include new definitions of 'heavy fuel oil' and 'gas oil', changes to the exceptions and new provisions on sampling and analysis.

3. This instrument implements, in England and Wales, the requirements in the Directive that relate to land-based liquid fuels by amending Sulphur Content of Liquid Fuels (England and Wales) Regulations 2007 (S.I. 2007/79). Scotland and Northern Ireland will carry out their own implementation of these requirements. The requirements in the Directive concerning marine fuels will be implemented separately.

4. National laws, regulations and administrative provisions implementing the Directive must enter into force by 18 June 2014.

5. All relevant derogations permitted by Directive in relation to land-based fuels have been transposed.

6. The instrument uses "copy out" to transpose the Directive where appropriate. S.I. 2007/79 (which this instrument amends) contains penal provisions therefore in some cases alternative language has been used to ensure legal certainty. Minor textual changes have been made to improve readability. None of these changes go beyond what the Directive requires. The Directive requires Member States to carry out sampling and analysis to ensure that the sulphur content of certain fuels used complies with Articles 3 and 4 of Council Directive 1999/32/EC. One of the reference methods in the Directive for determining the sulphur content of sampled fuels is PrEN ISO 14596 (2007), which is a draft version of the now published method. Using the draft method

would cause technical difficulties therefore this instrument adopts the published method as one of the reference methods.

8. In the absence of any reason for earlier implementation, the amending regulations are intended, subject to the will of Parliament, as to come into force from the transposition deadline of 18 June 2014[4].

9. Regulation 7 of this instrument will insert a new review clause into the 2007 regulations imposing a statutory duty on the Secretary of State to review, in relation to England, regulations 2 to 7 of those regulations every five years. The review clause will not apply to the Welsh Ministers.

10. The table below describes the main substantive provisions of the legislation implementing the Directive. Except where indicated the references are to provisions of this instrument.

Article	Objective	Implementation
1.1	Amends Article 1(2) of Council Directive 1999/32/EC on scope	Implementation to be carried out separately.
1.2(a)	Amends Article 2 of Council Directive 1999/32/EC. New definitions of 'heavy fuel oil' and 'gas oil' are substituted.	Regulation 3 substitutes a new regulation 2 into S.I. 2007/79 containing new definitions of 'heavy fuel oil' and 'gas oil'.
1.2(b)	Amends Article 2 of the Council Directive 1999/32/EC. New definitions of 'marine diesel oil' and 'marine gas oil' are substituted.	Implementation to be carried out separately.
1.2(c)	Amends Article 2 of Council Directive 1999/32/EC. A definition of "emission abatement method" is added.	Implementation to be carried out separately.
1.3	Amends Article 3 of Council Directive 1999/32/EC. Member States remain obliged to prohibit the use of heavy fuel oils with a sulphur content exceeding 1% by mass subject to exceptions for certain combustion plants but the exceptions have been revised.	Regulation 4 substitutes a new regulation 4 in S.I. 2007/79. The new regulation 4 prohibits the use of heavy fuel oils with a sulphur content exceeding 1% by mass subject to exceptions for combustion plants falling within the derogations in article 1.3.

[4] The instrument will now come into force on 29 August 2014.

1.4	Inserts new Article 3a to Council Directive 1999/32/EC on the maximum sulphur content of marine fuel.	Implementation to be carried out separately.
1.5	Amends Article 4 of Council Directive 1999/32/EC on maximum sulphur content of gas oil. Member States remain obliged to prohibit the use of gas oils with a sulphur content exceeding 0.10% by mass. Redundant language providing for a maximum sulphur content of gas oils used up to 1 January 2008 has been removed.	Regulation 5 substitutes a new regulation 5 in S.I. 2007/79. Redundant language specifying a maximum sulphur content for gas oils used up to 1 January 2008 is removed.
1.6	Amends Article 4a on the maximum sulphur content of marine fuels used in territorial seas, exclusive economic zones and pollution control zones of Member States, including SOx Emission Control Areas and by passenger ships operating on regular services to or from Union ports	Implementation to be carried out separately.
1.7	Replaces Articles 4b and 4c. These articles deal with the maximum sulphur content of marine fuels used by ships at berth in Union ports and emission abatement methods	Implementation to be carried out separately.
1.8	Inserts Articles 4d, 4e and 4f. These articles deal with approval of emission abatement methods for use on board ships flying the flag of a Member State, trials of new emission abatement methods and financial measures	Implementation to be carried out separately.
1.9	Replaces article 6 of Council Directive 1999/32/EC. Member States are obliged to	Regulation 6 substitutes a new regulation 6 in S.I. 2007/79 on sampling and

	carry out sampling and analysis to ensure that the sulphur content of fuels used complies with Articles 3 and 4. The reference method adopted for determining the sulphur content of sampled fuels shall be ISO method 8754 (2003) or PrEN ISO 14596 (2007).	analysis. The reference method for determining the sulphur content of sampled fuels is ISO method 8754 (2003) or EN ISO 14596 (2007).
1.10	Amends article 7 of Council Directive 1999/32/EC on reporting and review	No implementation required in national legislation
1.11	Deletes article 8 of Council Directive 1999/32/EC	No implementation required in national legislation
1.12	Replaces article 9 of Council Directive 1999/32/EC on committee procedure	No implementation required in national legislation
1.13	Inserts article 9a on exercise of delegation by Commission	No implementation required in national legislation
1.14	Replaces article 11 of Council Directive 1999/32/EC on penalties. Member States are obliged to effective, proportionate and dissuasive penalties for enforcement.	Already implemented by regulation 7 of S.I. 2007/79. This provision makes it an offence punishable on summary conviction by fine not exceeding level 2 on the standard scale for a person to contravene regulations 4(1) or 5 of S.I. 2007/79 or to cause or permit another person to do.
1.15	Replaces the annex to the Council Directive 1999/32/EC with the annex to the Directive. This annex contains two new annexes which deal with equivalent emission values for emission abatement methods and criteria for the use of emission abatement methods	Implementation to be carried out separately.
2.1	Laws, regulations and administrative provisions implementing the Directive to enter into force by 18 June	Regulation 1(1) provides that this instrument shall enter into force on 18th June 2014. The requirement to notify the

	2014 and notify the Commission forthwith. Implementing legislation to refer to, or be accompanied by a reference to the Directive when published.	Commission and for implementing legislation to refer to, or be accompanied by a reference to, the Directive when published does not requirement implementation in national legislation.
2.2	Member States to communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by the Directive.	No implementation required in national legislation
3	Directive enters into force 20 days after publication	No implementation required in national legislation
4	Directive addressed to Member States	No implementation required in national legislation.