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## Command and control: Government's interim response to the recommendations

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## The adequacy of the powers of intervention

### Intervention

#### Rec. 1

#### **Response: ACCEPTED.**

The Government accepts the need to amend section 137 of the Merchant Shipping Act to add riparian owners and managers of facilities such as berths, wharfs and jetties to the list of potential recipients of directions issued by the Secretary of State. If a situation arises in which pollution can be best avoided by mooring a stricken ship and off-loading potential pollutants then the Secretary of State should hold the power of direction should the use of moorings, berths, wharfs or jetties be refused when such use was urgently required. Appropriate arrangements regarding payment, or compensation, if the powers are used will have to be considered. These powers will be sought when a suitable Parliamentary opportunity arises.

## **Enforcement**

### **Rec. 2**

#### **Response: TO BE CONSIDERED FURTHER.**

The Government agrees that directions issued by the Secretary of State's representative must be enforceable. Further consideration will be given to the use Ministry of Defence assets or personnel to aid the enforcement of directions given by the Secretary of State's Representative to those operating offshore. This will require further consultation with the MoD, the Home Office, the Scottish Office and the Northern Ireland Office so that enforcement action could be taken quickly if required to enforce a direction issued by the Maritime and Coastguard Agency under the intervention powers.

## **The problem**

### **Implementation of intervention powers**

#### **Rec. 3**

#### **Response: ACCEPTED.**

The National Contingency Plan will be amended to make it clear that the Secretary of State's Representative (SOSREP) has the decisive voice in the decision-making process in a marine salvage operation involving the threat of significant pollution. The amended Plan will also make clear that by not issuing directions the SOSREP is adopting and approving the proposed course of action proposed by those dealing with the incident. Future exercises of the procedures under the National Contingency Plan will adopt this approach.

### **Compensation and liability**

#### **Rec. 4 and 5**

#### **Response: ACCEPTED.**

The Government accepts that shipowners and salvors should have no right to claim compensation from the Secretary of State other than in accordance with section 138 of the Merchant Shipping Act 1995. Section 138 implements the United Kingdom's duty under Article VI of the 1969 Intervention Convention to pay compensation for damage caused by excessive or disproportionate measures taken on behalf of an intervening State.

#### **Rec. 6**

#### **Response: ACCEPTED.**

The Government accepts that, in certain circumstances, it may be appropriate for the Secretary of State to pay compensation to those who may become involved in salvage operations other than as volunteer salvors or through performance of a statutory duty. In doing so, the Secretary of State may acquire, by subrogation, any right they may have to claim against the shipowner and the International Oil Pollution Compensation Funds in respect of damage caused by oil or as a consequence of preventive measures. The

Government will examine whether it is possible to implement this recommendation through administrative procedures, without the need for legislation.

## **Prosecution**

### **Rec. 7 and 8**

**Response: TO BE FURTHER CONSIDERED.**

The Government accepts that the threat of prosecution and subsequent criminal sanctions can play an effective role in deterring deliberate or negligent environmental damage. The Government also notes Lord Donaldson's concerns on the threat, notably to salvors, of being prosecuted. These are difficult and wide ranging issues. With this in mind the Government will undertake a review of the relevant legislation including what offences are relevant, how they should be prosecuted and the role of statutory defences in this area. Any changes in legislation which are deemed to be necessary must be careful not to affect the basis of the law more generally (particularly for freshwaters). The review will also take account of the outcome from the appeal following the prosecution of the Milford Haven Port Authority over the Sea Empress incident.

## **A new approach**

### **Command and control**

#### **Rec. 9**

**Response: ACCEPTED.**

The Government agrees that ultimate control of any salvage operation where there is a threat of significant marine pollution affecting United Kingdom interests to be exercised by the SOSREP acting in the over-riding public interest. The formal delegation of the intervention powers will be set out in a revision of Annex A to the Maritime and Coastguard Agency's Framework Document. The National Contingency Plan will be revised accordingly.

### **The Secretary of State's Representative**

#### **Rec. 10**

**Response: ACCEPTED.**

The Government agrees that the Maritime and Coastguard Agency should immediately seek to recruit an appropriate person to fill the post of the SOSREP. The Maritime and Coastguard Agency will also establish an understudy for the SOSREP in each of its four regions.

#### **Rec. 11**

**Response: ACCEPTED.**

The Government agrees that the Maritime and Coastguard Agency should exercise the revised National Contingency Plan at least once in each of its four Regions over the next two years. The Maritime and Coastguard Agency will ensure that all members of staff who might attend a casualty at sea as part of a salvage operation are volunteers who are properly trained in survival techniques.

## **The intervention trigger**

### **Rec. 12**

#### **Response: ACCEPTED.**

The Government agrees that the Maritime and Coastguard Agency must broadcast a message to the master of the vessel or to those in possession of the vessel announcing that a situation has arisen in which the powers of intervention may be exercised as soon as those powers become exercisable. The trigger for sending this message is that an accident has occurred which may cause significant pollution. The message will also offer assistance and request information on the intentions of the master, or salvor, to rectify the situation. It signals that the SOSREP is monitoring the situation and could, ultimately, take control of the salvage operation. The National Contingency Plan will be amended accordingly.

## **Major incidents**

### **Rec. 13**

#### **Response: ACCEPTED.**

The Government agrees that the SOSREP could not devote himself to the salvage operation if he was also to be responsible for clean-up operations. At the same time, it recognises that there will be a lot of interaction between all of the tasks associated with responding to marine pollution incidents. Accordingly, the National Contingency Plan will make it clear that the salvage operation, under the control of the SOSREP, is a separate managerial responsibility from the clean-up operations. The at-sea response to clean-up pollution ultimately reports, through the relevant Regional structures, to the Maritime and Coastguard Agency's Director of Maritime Operations. Shoreline clean-up operations should be under the leadership of a senior local authority officer.

### **Rec. 14**

#### **Response: ACCEPTED.**

The National Contingency Plan will provide that in a major salvage operation, the SOSREP will be supported by the Salvage Control Unit, which will interact with the Salvage Team On Board. In the interest of speedy decision-making, the Salvage Control Unit will be as small as possible. The Salvage Control Unit should, in normal circumstances, include the SOSREP, the salvage manager, a single representative of the owners and their physical property and liability insurers, a representative of the Maritime and Coastguard Agency with expertise in at-sea response, an environmental liaison officer and a salvage advisor to the SOSREP, if one has been appointed. Also, if the incident occurs in or near a harbour, or if a harbour is likely to be used as a place of safety to which the casualty may be brought, or if other harbour assets may be needed, the harbour master will be a member.

**Rec. 15**

**Response: ACCEPTED.**

The Government agrees that the number of people on board a casualty in addition to the Salvage Master, his team and members of the ship's crew should be strictly limited. In most circumstances the only additional persons allowed on board should be the SOSREP's representative and a single representative of the owners/insurer.

**Rec. 16**

**Response: ACCEPTED.**

The Government agrees that the Maritime and Coastguard Agency should maintain a database of the specialist salvage skills of its staff, including fluency in foreign languages, so that the SOSREP can draw upon the expertise available within the Agency.

**Rec. 17**

**Response: ACCEPTED.**

The Government agrees that the National Contingency Plan should specify that local contingency plans should identify a single liaison officer to provide the SOSREP with advice on the environmental impact of the options that are open to the Salvage Control Unit. The Government recognises that in a major incident many governmental and non-governmental organisations will be able to offer advice on environmental matters. Lord Donaldson refers to this large multi-disciplinary body of organisations as the Environment Group. The process of integrating environmental information relevant to the options for salvage and transforming it to advice for the SOSREP needs to be done by specialists from within the Environment Group with relevant experience and local knowledge. A liaison officer will be responsible for reconciling conflicting views and achieving consensus on what advice will be passed on to the SOSREP from the Environment Group. The liaison officer will also keep the Environment Group informed as to how the salvage operations are developing.

**Rec. 18**

**Response: ACCEPTED.**

The Department of the Environment, Transport and the Regions will seek sponsors for the development of a comprehensive database of environmental information relevant to marine pollution incidents that takes advantage of Geographical Information System. Sponsors have funded similar work in the past for producing directories of the coast and preparing the Oil Pollution Risk Atlas.

**Accommodation and communications**

**Rec. 19**

**Response: ACCEPTED.**

The Government agrees that the National Contingency Plan should specify that local contingency plans should establish a suitable location for the Salvage Control Unit. Local plans should also identify living accommodation that can be booked as soon as a major incident occurs.

## **Rec. 20**

### **Response: ACCEPTED.**

The Government agrees that a Duty Press Officer should be appointed from the outset of the response to a major incident. This officer will arrange press conferences and issue regular news bulletins on the salvage operation as necessary. The National Contingency Plan will be revised accordingly.

## **Rec. 21**

### **Response: ACCEPTED.**

The Government agrees that all communications from ship to shore (see Recommendation 15) and in particular those between the SOSREP and the SOSREP's on board representative and those between the Salvage Master and his salvage manager in the Salvage Control Unit should be by means sufficiently secure to prevent interception by third parties. The Maritime and Coastguard Agency will investigate the availability of suitable equipment.

## **Offshore installations**

## **Rec. 22**

### **Response: ACCEPTED.**

The Government agrees that the Secretary of State for Trade and Industry should be given powers and responsibilities in relation to offshore installations which are similar to those provided under the Merchant Shipping Act 1995, as amended. This would give the Secretary of State for Trade and Industry the power to issue directions to the owners of an offshore installation for the purposes of preventing or reducing pollution in the event of an accident. The Government will look for an early opportunity to implement this recommendation as part of, and consistent with, the application of other pollution control requirements for offshore installations. We hope to be able to use the powers in the Pollution Prevention and Control Bill to implement this recommendation. The implementation of Lord Donaldson's recommendations to offshore installations will be subject to consultation alongside the wider proposals for controlling pollution from offshore installations.

## **Rec. 23**

### **Response: ACCEPTED.**

The Government agrees that upon such powers being conferred, the Secretary of State for Trade and Industry should delegate these powers to the same individuals who exercise those powers in respect of ships under delegation from the Secretary of State for the Environment, Transport and the Regions. This will be reflected in the revised National Contingency Plan.

## **Rec. 24**

### **Response: ACCEPTED.**

The Government will ensure that the development of legislation required to give effect to recommendation 22 will include consultation on drafting the equivalent of section 138 of the Merchant Shipping Act 1995 such that the Government may be liable to pay compensation to the owner of the installation if any action

taken was not reasonably necessary or the action was disproportional to the results actually achieved and additional costs or losses were incurred.

**Rec. 25**

**Response: ACCEPTED.**

The Government agrees that the National Contingency Plan should provide that the Operational Group that supports the SOSREP in emergencies involving offshore installations should include the emergency operations manager for the offshore installation, a representative of the owners and liability underwriters; a representative of the Maritime and Coastguard Agency with expertise in at-sea response; an environmental liaison officer; a representative of the Department of Trade and Industry; and a personal advisor to the SOSREP.

**Rec. 26**

**Response: ACCEPTED.**

The Government agrees that an appropriate location for the Operational Group should be identified in the emergency plan prepared by each offshore installation.

**15 March 1999**