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REVIEW

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- Risk management under REACH
- Key priorities of NGOs on REACH
- Definitions of waste, recycling and recovery
- The UK Government's Ship Recycling Strategy
- Legislating e-waste management
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The UK Government's Ship Recycling Strategy*

Roy Watkinson and Susan Wingfield

1 Introduction

The UK published a draft Ship Recycling Strategy¹ for consultation in March this year (2006). Believed to be the first of its kind, the consultation paper has provoked significant comment from the European Commission, the shipping industry, NGOs and expert commentators. It is not unreasonable to ask why the UK set out on this particular path, especially when there is a concerted global effort to develop a new international instrument on the Safe and Environmentally Sound Recycling of Ships to deal with the well-publicised issues of conditions and standards at recycling facilities. This article explains the reasons behind the UK's approach.

2 The basis for Government concern

Ship recycling in its current form is estimated to have a total market turnover of approximately \$1.5 billion per annum and is one of the largest recycling activities globally. Some might say this is a conservative figure or undervalued as no definitive analysis of the economics of ship recycling has been provided. Recycling ships in itself is an inherently sustainable activity as 95% of a ship's material, such as scrap steel or equipment, can be recycled or reused. However, practices within the industry have received a great deal of attention from diverse constituencies including Governments, international organisations and public interest groups such as environmental NGOs. There is widespread concern about the adequacy of the health, safety and environmental standards being met by those participating in the industry, particularly in developing countries and the lack of a global regulatory framework to ensure end-of-life vessels are recycled in accordance with acceptable environmental, health and safety standards.

In the UK, increased attention to ship recycling issues arose primarily from proposals by Able UK Ltd (Able) in 2003 to import thirteen decommissioned US vessels. The US Department of Transportation Maritime Administration (MARAD) signed a contract with Able in July 2003 for the recycling of the redundant vessels from the US

National Defence Reserve Fleet. When four of these vessels arrived at the Able facility, it transpired that not all the approvals necessary for their dismantling to be carried out were in place. A number of high profile events took place, some including court challenges on the processes that led up to the decisions to allow the vessels to be sent. As a result two reviews were undertaken: one by the environmental regulator, the Environment Agency² for England and Wales, and one by Defra³ (the "Ballard Report") to identify lessons learned from the incident. Then, following an inquiry, the House of Commons Environment, Food and Rural Affairs (EFRA) Committee (a Select Committee of Members of Parliament) published a report on 'Dismantling Defunct Ships in the UK'⁴.

The EFRA Committee report detailed a wide-ranging set of recommendations to Government, in particular highlighting the need:

- to ensure Government-owned end-of-life vessels are recycled in a way that does not harm the environment or human health;
- to provide clear guidance on the relevant regulatory considerations to those wishing to recycle ships in the UK; and
- to work towards a global regulatory framework to ensure commercially owned end-of-life vessels are recycled in accordance with acceptable environmental, health and safety standards.

The Government's response to the EFRA Committee report⁵ came in January 2005, when it accepted the recommendations and committed itself, through its Department of Environment Food and Rural Affairs (Defra), to develop a UK Ship Recycling Strategy.

3 The UK Ship Recycling Strategy's contents

The draft Strategy comprises two main documents. The first is the Strategy itself and its associated consultation document. This describes the background on ship recycling, its main impacts and

* This article originally appeared in BIMCO Bulletin No. 4/2006 and is reprinted with kind permission.

¹ The draft Strategy is available at: <http://www.defra.gov.uk/corporate/consult/shiprecycling-strategy/index.htm>.

² The Environment Agency – US Naval Vessels, Lessons Learned, April 2004.

³ US Naval Ships, Review of Regulatory Structure, Ballard, April 2004.

⁴ Dismantling Defunct Ships in the UK, House of Commons Environment, Food and Rural Affairs Committee, Eighteenth Report of Session 2003-2004.

⁵ Dismantling Defunct Ships in the UK: Government Reply to the Environment, Food and Rural Affairs Committee's Report, January 2005.

work currently being undertaken at the international level. It sets policy for the recycling of UK Government-owned vessels and provides recommendations for ship owners and recycling facilities. The second document is an 'Overview of the Ship Recycling Process in the UK'. This sets out the technical and regulatory requirements for operating sustainable ship recycling facilities in the UK. In addition, a non-exhaustive list of potential sources of assistance, including funding, for those wishing to engage in the industry is provided.

The Strategy applies to all ships that are being sent for recycling, in effect being 'discarded' as waste, which brings the EU rules for managing waste into play. The Strategy deals with the cases that it can clearly identify where the policy should apply. These are Government-owned vessels and UK-flagged ships leaving a UK port. The UK Government's view is that existing legislation on waste does cover ship recycling. The Strategy requires any ship sent for recycling from the UK to be recycled at a yard that operates according to standards of environmentally sound management. (The Basel Convention has issued Technical Guidelines on the Environmentally Sound Management of the full and Partial Dismantling of Ships⁶.) This is regardless of whether the ship sails under its own power or has to be towed. Admittedly there are some difficulties in applying the waste legislation to commercial UK-flagged ships that are not starting their 'final voyage' (to a ship recycling yard) from a UK port. However, the Strategy makes it clear Government considers that vessels being sent for recycling from a UK port must be in compliance with both relevant waste and maritime legislation.

The Strategy also defines the limitations affecting the current recycling yards' eligibility to receive for recycling those ships to which the Strategy applies. Principally, the restriction is to use only environmentally sound facilities within the OECD area for the following reason. The UNEP Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is implemented in Europe through the EC Waste Shipments Regulation⁷ (the WSR). This Regulation covers the supervision and control of shipments of waste within, into and out of the EU. A Decision of the Parties to the Convention⁸, in force across the EU, prevents hazardous wastes from being sent to coun-

tries outside the OECD. Therefore ships containing hazardous wastes, which most currently do, may not be sent to destination facilities in developing countries.

4 Enforcement of the policy on recycling UK Government-owned vessels

When vessels are sold for further use, either to foreign Governments or commercial entities, Government will negotiate for inclusion of the following provisions relating to the new owner's responsibilities when the vessel reaches its end-of-life:

The new owner has the responsibility:

- To ensure that the vessel's Green Passport is updated throughout the remainder of its service and passed to the recycling facility;
- Not to dispose of the vessel without prior consent in writing of the UK Government;
- To demonstrate that the vessel will be recycled in accordance with all applicable legislation, and with reference to the IMO Guidelines on Ship Recycling and the Basel Convention Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships;
- To take appropriate steps to ensure the facility where the recycling is to take place abides by acceptable environmental, health and safety standards.

Where the new owner breaches these contractual obligations, Government will review the options it has available on a case-by-case basis. When a Government-owned vessel is to be recycled, recycling will only be allowed in a facility in an OECD country, in accordance with acceptable environmental, health and safety standards. Clear specifications of standards are to be provided in tender documentation and in the criteria for evaluating tender bids. All Government-owned vessels exported outside the UK for recycling will be subject to the Basel Convention principles of prior-informed consent and environmentally sound management through the WSR. This Regulation is applied in the UK by the Transfrontier Shipment of Waste Regulations 1994⁹ along with the UK Management Plan for Exports and Imports of Waste¹⁰ (the UK Plan). Vessels will generally have to be notified to, and approved by, the relevant competent authority of dispatch and destination. In the UK, the competent authorities are the Environment Agency in England and Wales, the

⁶ Basel Convention 'Technical Guidelines for the Environmentally Sound Management of the Full and Partial Dismantling of Ships', 2002, available at: <http://basel.int/ships/techguid.html>.

⁷ Council Regulation 259/93/EEC.

⁸ Decision III/1 of the Third Meeting of the Conference of the Parties to the Basel Convention 22/09/95.

⁹ SI 1994 No. 1137.

¹⁰ United Kingdom Management Plan for Exports and Imports of Waste, 1996, available from the Office of Public Sector Information, www.opsi.gov.uk.

Scottish Environment Protection Agency in Scotland and the Environment and Heritage Service in Northern Ireland.

An Evaluation Committee will be established to assist in the assessment of bids for each recycling contract. For example, for ex-Ministry of Defence vessels, this would comprise expertise from the relevant Integrated Project Team (e.g. major warships, frigate, etc), the Disposal Services Agency, the Disposal and Reserve Ships Organisation, Defra and the Health and Safety Executive (HSE). Such an assessment would remain independent from the notification process required under the WSR.

5 Promoting the development of UK ship recycling facilities

There is a global shortage of facilities undertaking ship recycling in a way that does not harm the environment or human health. The industry is predominantly based in Asia, particularly South Asia, where there is concern that adequate health, safety and environmental standards are not being met. Recycling activities in these countries, protection of the health and safety of workers and environmental control of downstream waste management practices are subject to local legislation which may not meet the equivalent of standards in the UK or be effectively enforced.

As a result of the International Maritime Organization's decision to phase out single-hulled tankers by 2015, an increased number of ships will require recycling in the coming years. It is estimated that between now and 2010, nearly 400 EU flagged single-hulled tankers will require recycling, although it is likely that some of these will change flag to operate through to 2015 in line with the international phase out dates. Government also wishes to ensure that its own vessels are recycled in acceptable conditions for both workers and the environment. One way of achieving this would be if facilities were to be established in the UK itself.

The advantages of establishing ship recycling facilities in the UK include:

- the possibility of investment in safer, more efficient mechanisation of many of the processes undertaken manually in developing countries;
- removal of hazardous materials by staff with appropriate expertise, using safe and environmentally sound techniques and equipment. The UK has access to such staff and equipment;
- a highly developed domestic and EU legal and regulatory infrastructure and effective enforcement of standards; and,
- a tradition of market-led innovation and development providing good opportunities for Brit-

ish industry to benefit from the worldwide demands for environmentally sound ship recycling facilities.

Both the Strategy and 'Overview of the Ship Recycling Process in the UK' are designed to provide guidance that would assist those planning to be involved in such an enterprise. However, the establishment of recycling facilities is a commercial decision. It is recognised that any operator wishing to undertake such activities in the UK would, of course, have to take account of the business risks in investing in an activity subject to intense competition from established sites in developing countries, in a market where a supply of vessels to be recycled to UK standard and at UK costs is not assured.

There has been interest in taking up such opportunities in the commercial sector, which is encouraging. At the time of issue of the consultation document in March, no UK yards had all the permissions necessary to undertake large scale ship recycling, yet several had signalled their commitment to establishing such facilities. Since then one facility, Swan Hunter in the Northeast of England, has obtained the permissions to do so and it is known that three other UK yards are in the process of obtaining the relevant consents and permissions. It is likely that at least one more of these yards will also be fully authorised during 2006. Of those facilities interested in diversifying into ship recycling, there is a general awareness that this business in itself is unlikely to be self-sustaining and that additional operations (e.g. decommissioning oil rigs) would have to be undertaken.

6 Why should UK shipowners follow the recommendations set out in the Strategy?

A function of the Strategy is to provide a positive example to the shipping community through Government's own example and to provide clarification on where the rules apply.

There are three key provisions relevant to shipowners outlined in the Strategy. Firstly, any UK-flagged vessel being exported for recycling from a UK port will have to be notified according to the requirements set out in the WSR as described above. Secondly, all imports of vessels into the UK for recycling will also be subject to the provisions of the WSR (or existing international rules). Finally, UK shipowners are encouraged to refer to the IMO Guidelines on Ship Recycling¹¹ at all stages when a

¹¹ International Maritime Organization (IMO) Guidelines on Ship Recycling, 2003, available at: http://www.imo.org/includes/blastDataOnly.asp/data_id%3D11404/ResSHiprecycling962.pdf. Also see MGN 230 – International Maritime Organization Guidelines on Ship Recycling available at:

ship is sold for recycling. The first two provisions are principles of legislation that have relevance to the movements of end-of-life vessels classified as waste. While the difficulties in applying transfrontier shipment of waste legislation to end-of-life vessels are recognised, in particular that a vessel can 're-flag' to another State to circumvent the controls, in the absence of any recognised mandatory regime for end-of-life vessels, Government expects that they will apply. While the final provision is a recommendation, it would make sense for shipowners to follow the IMO Guidelines (and this is happening) as the new and ultimately legally binding instrument being negotiated within the IMO is likely to encompass many of the principles enshrined in the Guidelines.

7 Risks of alternate disposal

Basic responsible environmental protection measures do have a cost. Some have suggested that if it becomes more expensive to recycle than ships might be scuttled instead. However deep sea disposal is now not permitted anywhere in North East Atlantic waters. Where deep sea disposal is permitted, a vessel cannot be simply dumped; it must have all hazardous materials removed (pre-cleaned) before it is sunk. Reefing, or sinking vessels to enhance the natural marine environment and protect the coastline, requires high standards of pre-cleaning. An example of this is the former UK navy vessel, HMS Scylla, that was decontaminated prior to being sunk off Whitsand Bay near Plymouth to become an artificial reef for marine life to colonise and divers to explore. Where vessels are to be deposited on the seabed, the London Convention¹² 'Specific Guidelines for Assessment of Vessels'¹³ will apply. Where vessels are to be deposited on the seabed to form an artificial reef then the OSPAR¹⁴ 'Guidelines on Artificial Reefs in relation to living Marine Resources'¹⁵ will apply.

Some concern has also been raised about the possibility of ships being abandoned in ports or elsewhere. The Basel Convention's Seventh Conference of the Parties discussed this concern and issued a Decision to enable further information to be ob-

tained and considered by its Open Ended Working Group. The data collected to date was also discussed at the second Joint Working Group of the Basel Convention, the International Labour Organisation and the IMO, a body set up to provide for better co-ordination on ship recycling issues between the three organisations. The Eighth Conference of the Parties to the Basel Convention will be held in November this year. Ship recycling will be on its agenda, including abandonment, and it is expected that all the available data on the issue will have been collated and a Decision will be made as to how to proceed.

8 Future progress

Beyond this, Government also believes it is important that good progress is made within the IMO in developing the new, globally enforceable instrument as any long term, sustainable solution ultimately has to be at the global level. The Strategy can therefore be seen as an interim but necessary environmental protection measure that may be reviewed on the successful completion of negotiations on the proposed Convention on the Safe and Environmentally Sound Recycling of Ships. Once adopted and brought into force, the Ship Recycling Convention would enable new market conditions to be developed that would deliver the objectives that the UK Strategy is seeking to support.

In the meantime Government will work to develop suitable projects to promote responsible ship recycling, especially through the implementation of the IMO, ILO and Basel Convention Guidelines on ship recycling. This takes the form for example of a technical cooperation project that Defra is participating in on behalf of the UK in conjunction with the Secretariat of the Basel Convention. Based on the Basel Convention Guidelines it will assist in the upgrade of standards at facilities in developing countries and help to expand ESM compliant ship recycling capacity. Government has already committed \$100,000 to this project.

<http://www.mcga.gov.uk/c4mca/mcga-mld-page.htm?textobjid=1F1F737B8F79AC75>.

¹² Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter 1972 (London Convention).

¹³ Available at: <http://www.londonconvention.org/documents/guidelines/4%20-%20Vessels.pdf>

¹⁴ Convention for the Protection of the Marine Environment of the North-East Atlantic 1992 (OSPAR).

¹⁵ Available at: <http://www.ospar.org/eng/html/welcome.html> (Annex 6 - Artificial Reefs paper discussed at meeting on 21-24 June 1999 in Kingston Upon Hull) (Covering the NE Atlantic).

The Öko-Institut (Institut für angewandte Ökologie - Institute for Applied Ecology, a registered non-profit-association) was founded in 1977. Its founding was closely connected to the conflict over the building of the nuclear power plant in Wyhl (on the Rhine near the city of Freiburg, the seat of the Institute). The objective of the Institute was and is environmental research independent of government and industry, for the benefit of society. The results of our research are made available of the public.

The institute's mission is to analyse and evaluate current and future environmental problems, to point out risks, and to develop and implement problem-solving strategies and measures. In doing so, the Öko-Institut follows the guiding principle of sustainable development.

The institute's activities are organized in Divisions - Chemistry, Energy & Climate Protection, Genetic Engineering, Sustainable Products & Material Flows, Nuclear Engineering & Plant Safety, and Environmental Law.

The Environmental Law Division of the Öko-Institut:

The Environmental Law Division covers a broad spectrum of environmental law elaborating scientific studies for public and private clients, consulting governments and public authorities, participating in law drafting processes and mediating stakeholder dialogues. Lawyers of the Division work on international, EU and national environmental law, concentrating on waste management, emission control, energy and climate protection, nuclear, aviation and planning law.

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The University of Applied Sciences in Bingen was founded in 1897. It is a practiceorientated academic institution and runs courses in electrical engineering, computer science for engineering, mechanical engineering, business management for engineering, process engineering, biotechnology, agriculture, international agricultural trade and in environmental engineering.

The *Institute for Environmental Studies and Applied Research* (I.E.S.A.R.) was founded in 2003 as an integrated institution of the University of Applied Sciences of Bingen. I.E.S.A.R. carries out applied research projects and advisory services mainly in the areas of environmental law and economy, environmental management and international cooperation for development at the University of Applied Sciences and presents itself as an interdisciplinary institution.

The Institute fulfils its assignments particularly by:

- Undertaking projects in developing countries
- Realization of seminars in the areas of environment and development
- Research for European Institutions
- Advisory service for companies and know-how-transfer

Main areas of research:

- **European environmental policy**
 - Research on implementation of European law
 - Effectiveness of legal and economic instruments
 - European governance
- **Environmental advice in developing countries**
 - Advice for legislation and institution development
 - Know-how-transfer
- **Companies and environment**
 - Environmental management
 - Risk management

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The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.

The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.

The sofia team is multidisciplinary: Lawyers and economists are collaborating with engineers as well as social and natural scientists. The theoretical basis is the interdisciplinary behaviour model of *homo oeconomicus institutionalis*, considering the formal (e.g. laws and contracts) and informal (e.g. rules of fairness) institutional context of individual behaviour.

The areas of research cover

- Product policy/REACH
- Land use strategies
- Role of standardization bodies
- Biodiversity and nature conservation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
- Self responsibility

sofia is working on behalf of the

- VolkswagenStiftung
- German Federal Ministry of Education and Research
- Hessian Ministry of Economics
- German Institute for Standardization (DIN)
- German Federal Environmental Agency (UBA)
- German Federal Agency for Nature Conservation (BfN)
- Federal Ministry of Consumer Protection, Food and Agriculture

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elni

In many countries lawyers are working on aspects of environmental law often with environmental initiatives and organisations or as legislators, but have limited contact with other lawyers abroad, although such contact and communication is vital for the successful and effective implementation of environmental law.

In 1990 a group of lawyers from various countries therefore decided to initiate the Environmental Law Network International (elni) to promote international communication and cooperation worldwide. Since then elni has grown to a network of about 350 individuals and organisations from throughout the world.

Since 2005 elni is a registered non-profit association under German Law.

elni coordinates a number of different activities:

Coordinating Bureau

The Coordinating Bureau was originally set up at and financed by the Öko-Institut in Darmstadt, Germany, a non-governmental, non-profit making research institute. The Bureau is currently hosted by the University of Applied Sciences in Bingen. The Bureau acts as an information centre where members can obtain information about others working in certain areas thus promoting the development of international projects and cooperation.

elni Review

The elni Coordinating Bureau produces and sends to each member the elni Review twice a year containing members' reports on projects, legal cases and developments in environmental law. elni therefore encourages its members to submit such articles to be published in the Review in order to allow the exchange and sharing of experiences with other members.

elni Conferences and Fora

elni conferences and Fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to bring together scientists, policy makers and young researchers, giving the opportunity to exchange views and information as well as developing new perspectives.

Publication Series

The elni publications series contains 12 volumes on different topics of environmental law.

- Environmental Law and Policy at the Turn to the 21st Century, Liber amicorum, Betty Gebers, Ormond/Führ/Barth (eds.) Lexxion 2006.
- Access to Justice in Environmental Matters and the Role of NGOs, de

Sadeleer/Roller/Dross, Europa Law Publishing 2005.

- Environmental Law Principles in Practice, Sheridan/Lavrysen (eds.), Bruylant 2002.
- Voluntary Agreements - The Role of Environmental Agreements, elni (ed.), Cameron May Ltd., London 1998.
- Environmental Impact Assessment - European and Comparative; Law and Practical Experience, elni (ed.), Cameron May Ltd. London 1997.
- Environmental Rights: Law, Litigation and Access to Justice, Deimann / Dyssli (eds.), Cameron May Ltd. London 1995.
- Environmental Control of Products and Substances: Legal Concepts in Europe and the United States, Gebers/Jendroska (eds.), Peter Lang, 1994.
- Dynamic International Regimes: Institutions of International Environmental Governance, Thomas Gehring; Peter Lang, 1994.
- Environmentally Sound Waste Management? Current Legal Situation and Practical Experience in Europe, Sander/ Küppers (eds.), P. Lang, 1993
- Licensing Procedures for Industrial Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wil-mowsky/Roller, P. Lang 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/ Roller (eds.), P. Lang, 1991.

elni Website: elni.org

The elni website at <http://www.elni.org> contains news about the network and an index of elni articles, gives an overview of elni activities, and informs about elni publications. Internships for young lawyers/law students at the Öko-Instituts environmental law division are also offered on the web.