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Dear Kevin,

Debate on the draft Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021

I am grateful to you and the other honourable members, for the contributions to last Wednesday's debate on the Merchant Shipping (Prevention of Air Pollution from Ships) (Amendment) Regulations 2021. Although I think my closing speech covered most of the issues raised during the debate, I undertook to write about the UK's enforcement of breaches by maritime companies in relation to the above instrument.

Firstly, I would like to clarify that the powers to use criminal sanctions contained in the draft regulations are an extension and adjustment to the existing powers to use criminal sanctions under the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 ("the 2008 Regulations"). These are not wholly new powers for ship inspectors, because the criminal justice system can be used to enforce pollutant limits for ships which are referred to in the 2008 Regulations. What the inspectors cannot do until the new regulations come into force, is use the criminal justice system to enforce the latest international requirements and pollutant limits. That is why the extension of these powers is needed.

During the debate, I mentioned that criminal prosecutions for emissions offences by ships are rare, and that it is difficult to judge how likely these powers would be used for draft regulations which have yet to come into force. I can confirm however, that the Maritime and Coastguard Agency (MCA) has indicated that since 2011, there have been 102 examples of non-compliances on foreign flagged ships in relation to requirements under MARPOL Annex VI. The type of non-compliances included invalid certificates, missing log entries and bunker delivery notes (the document from the supplier indicating the amount of sulphur the fuel contains), deficiencies in terms of fuel changeover when entering or leaving an emission control area (ECA) as well as the sulphur content of the fuel used.

Of these, 11 ships were detained over deficiencies related to breaches in MARPOL Annex VI requirements, but no ships have been prosecuted using the criminal justice system and fined.

It is only in recent years where the introduction of tighter air quality legislation for shipping has justified the need to increase resources for enforcement. Extra measures and resources were introduced following the introduction of the 0.1% sulphur limit in 2015 for ships operating in the North Sea and English Channel. At the time, we considered extra measures were necessary because of the significant price differential between high sulphur fuel oil - which could be used outside an ECA at that time - and for 0.1% marine gasoil used by ships operating inside an ECA. Consequently, the MCA committed to inspect at least 10% of all ships arriving at UK ports for breaches of the sulphur limits. The inspections included reviewing all relevant documentation needed for compliance. In addition, at least 30% of ships which undergo an inspection also have a sample of fuel removed from their fuel tanks, so it can be checked for compliance by a laboratory. This process is time consuming, and without criminal sanctions it would be difficult to take enforcement action against a non-compliant ship which had already departed from UK waters.

The ban on the use and carriage of fuel which exceeds 0.5% sulphur and the stricter NOx Tier III limit which applies to new ships operating in the North Sea ECA are relatively new requirements, with a lower risk. For example, although still significant, the price differential between 0.5% and 0.1% sulphur fuel is less substantial than it was when ships could use high sulphur fuel outside an ECA. Moreover, the IMO's decision to ban the carriage of fuel which exceeds 0.5%, should also make it easier for inspectors to demonstrate non-compliance and take enforcement action where necessary. Consequently, we do not expect additional resources will be needed to enforce the new requirements at this stage. However, we will keep the matter under review, mindful that more vessels operating in the North Sea ECA will become subject to the NOx Tier III ECA requirements as older vessels are replaced.

The MCA publishes an annual report on the prosecutions it brings under the criminal justice system, which can be found at www.gov.uk.

A copy of this letter is being sent to the Chair and other Committee Members for information. Copies are also being placed in the libraries of both Houses.

Yours sincerely,



ROBERT COURTS MP
MINISTER FOR AVIATION, MARITIME AND SECURITY