

House of Commons
Committee of Public Accounts

**DEALING WITH
POLLUTION FROM
SHIPS**

Second Report of Session 2002–03

*Report, together with
Proceedings of the Committee, Minutes of
Evidence and an Appendix*

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Committee of Public Accounts

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by ‘Q’ or ‘Qq’ followed by the question number; references to the written evidence are indicated by the page number as in ‘Ev’.

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SECOND REPORT

The Committee of Public Accounts has agreed to the following Report:

DEALING WITH POLLUTION FROM SHIPS

INTRODUCTION AND LIST OF CONCLUSIONS AND RECOMMENDATIONS

1. The UK is at particular risk from pollution caused by ships. The UK economy relies on shipping for 95% of its visible trade, and a large volume of UK and foreign shipping passes close to the UK coastline and uses UK ports. The Maritime and Coastguard Agency (the Agency), an executive agency of the Department for Transport (the Department), is responsible for minimising the risk of pollution from ships, and where pollution occurs, minimising its impact on UK waters, coastline and economic interests. The Agency is also responsible for enforcing the UK's obligations under two key international conventions relating to marine pollution.¹

2. On the basis of a Report by the Comptroller and Auditor General,² we took evidence from the Agency and the Department about the preparedness of the Agency and others to deal with pollution from ships, and enforcement of the principle that the "polluter pays". Five main conclusions and recommendations emerge:

- The UK's marine pollution record has improved considerably in recent years, with no major oil or chemical spill occurring in UK waters since 1996. The Agency and the Department have acted to improve preparedness. A major pollution incident could happen at any time, however, and the Agency will need to check periodically that ports and harbours comply with the key requirements of their oil spill contingency plans, while knowing the limits of their ability to handle a major incident; to encourage the development of contingency plans for hazardous and noxious substances such as chemicals; and decide whether to promote legislation requiring coastal local authorities to have up to date oil spill contingency plans in line with the National Contingency Plan.
- The response requirements for a major terrorist incident at sea involving oil, chemicals or other hazardous or noxious substances may differ significantly from those following an accidental spillage. Through the Department's participation in international initiatives to prevent terrorist incidents at sea, and the Cabinet Office's current review of civil contingency arrangements, the Department and the Agency should put in place appropriate prevention and response plans to deal with terrorist threats involving vessels carrying potential pollutants.
- "Pay to be paid" insurance policies leave the Agency to bring a successful claim against the vessel's owners before the insurers will reimburse the owners. A "one ship company" means that, if the vessel is wrecked or scrapped following a pollution incident, there may be no other assets from which the Agency can secure payment of its claim. The Department and the Agency should take early action to limit polluters' avoidance of liabilities through such devices.
- The Agency should exploit new technology to detect pollution offences, and to identify and trace offenders. Developments include satellite surveillance, better oil spill sampling and analysis, and tracking of ship movements. Whilst

¹ The 1973 International Convention for the Prevention of Pollution from Ships, adopted by the International Conference on Marine Pollution (the MARPOL Convention) aims to control pollution at sea from harmful discharges released during a ship's operations or when a ship is damaged. The 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation (the OPRC Convention) requires signatories to inspect ships, maintain a national contingency plan for responding to oil pollution incidents and provide technical assistance to other signatories in the event of such incidents.

² C&AG's Report, *Dealing with pollution from ships* (HC 879, Session 2001-02)

implementation is partly dependent on international action, the Agency should seek practical and cost-effective improvements to its capacity to identify and pursue polluters.

- The Department should bring forward legislation to enable pollution offences to be prosecuted on the same terms irrespective of where those offences occur within the UK Pollution Control Zone. Existing legislation limits the Agency's ability to prosecute pollution offences in the Thames, the Solent, the Bristol Channel and other major estuaries around the UK, and provides statutory defences against prosecution even where an incident arises through negligence. There should be a consistent approach to dealing with pollution offences wherever they occur in UK waters.

3. Our other important conclusions and recommendations are:

The UK's marine pollution record

- (i) The Agency and the Department should review and update the UK's counter-pollution practices to take account of lessons learnt after each major pollution incident, whilst keeping the Agency's planning and response arrangements proportionate to the risk of marine pollution incidents occurring in UK waters.

Preparedness

- (ii) The Agency should review the location of its counter-pollution resources, including private contractor resources, in the light of the Department's planned report on environmentally sensitive areas around the UK coastline most at risk from oil and chemical pollution, due to be published by the end of 2002.
- (iii) The *Prestige* incident demonstrates the particular risks associated with single-hulled oil tankers, and the Agency should pay special attention to these vessels in targeting its inspections of vessels using UK ports.
- (iv) The Agency should review, with other parts of government responsible for off-shore oil installations, the relative risks of transporting oil by pipeline and ship, and provide advice to installation operators on how to minimise the risk of pollution.
- (v) The Agency should build on the significant cost savings achieved by letting a new contract for aerial surveillance and spraying in partnership with the Department of Trade and Industry, by exploring the scope for further joint procurement and provision of counter-pollution resources through co-operation with other public bodies such as fisheries protection agencies, and with private sector companies such as those in the oil industry.
- (vi) The Agency believes it has sufficient capacity to handle more than one major pollution incident at a time but has not assessed systematically the limits of its capacity. The Agency should carry out such an assessment to determine the limits of its capabilities, and make provision for alternative sources of external assistance which could be drawn on if required.

Making the polluter pay

- (vii) The Agency should target its surveillance on areas of greatest risk and make more use of night time surveillance flying.

- (viii) International conventions on compensation for spills of chemicals and bunker oil were agreed in 1996 and 2001 but have yet to be brought into force in the UK. The Department should take action to bring these conventions into force to improve the Agency's ability to recover costs.

THE UK'S MARINE POLLUTION RECORD

4. The UK's marine pollution record has improved considerably over recent years, with no major chemical or oil spills occurring in UK waters since 1996. Efforts have been made nationally and internationally to prevent pollution incidents, through improved navigation of vessels, higher standards of ship construction, equipment and operation, and domestic and international survey and inspection regimes.³

5. The UK is still at risk of marine pollution, however, as the size of vessels increases in order to carry more fuel oil for their own use, and through increasing numbers of large tankers and cruise vessels visiting UK ports or sailing through UK waters. Three of the world's 20 largest oil spills have occurred in UK waters, and oil is still the most likely pollutant. Research carried out for the Department to estimate the probability of different sizes of oil spills suggested that a spill of 100,000 tonnes or more was probable in UK waters once every 17 years, with a spill of at least 4,000 tonnes likely to occur every other year. A major spill could therefore happen at any time.⁴

6. Research carried out for the Agency suggested that whilst there is less risk of a large chemical spill due to the existence of few large chemical tankers, some form of chemical spill was likely every other year. Internationally agreed standards for transportation of chemicals afford some protection, but the nature of individual chemicals, and the risk of their coming into contact and reacting with other chemicals, could result in a serious incident. In the case of volatile, flammable carcinogens, toxic gases or other hazardous substances, the potential impact of a chemical spill on human health, the environment and the economy might be great.⁵

7. The sinking of the *Torrey Canyon* in 1967 was the first major oil spill in UK waters and had a devastating effect on the marine environment. The Agency acknowledged that the UK's response to the incident had been unplanned but said that the lessons learnt had improved the UK's preparedness for future incidents. The UK now had contingency plans in place to deal with similar incidents, particularly since the grounding of the *Sea Empress* in 1996, which resulted in the spilling of 72,000 tonnes of oil. The threat of oil or chemical pollution, however, remained real; recent improvements in the UK's preparedness for dealing with oil and chemical spills needed to be sustained and progressed further.⁶

PREPAREDNESS

8. Whilst the Agency is responsible for co-ordinating the UK response to pollution incidents, small and medium sized incidents are usually dealt with by coastal local authorities⁷ or by port and harbour authorities. The Agency becomes directly involved through the use of its own resources in more serious incidents or incidents which are beyond the capacity of local resources.⁸

³ C&AG's Report, paras 1.8–1.9, Figure 4; Q 42

⁴ C&AG's Report, para 2.1, Figure 6; Qq 18, 76

⁵ Qq 37–38; Ev 21–22

⁶ Qq 75, 77

⁷ There are 170 coastal local authorities covering England, Scotland and Wales. Of these, 78 are district authorities, 20 county administrations and 72 are unitary authorities.

⁸ C&AG's Report, para 1.9

Planning, prevention and response

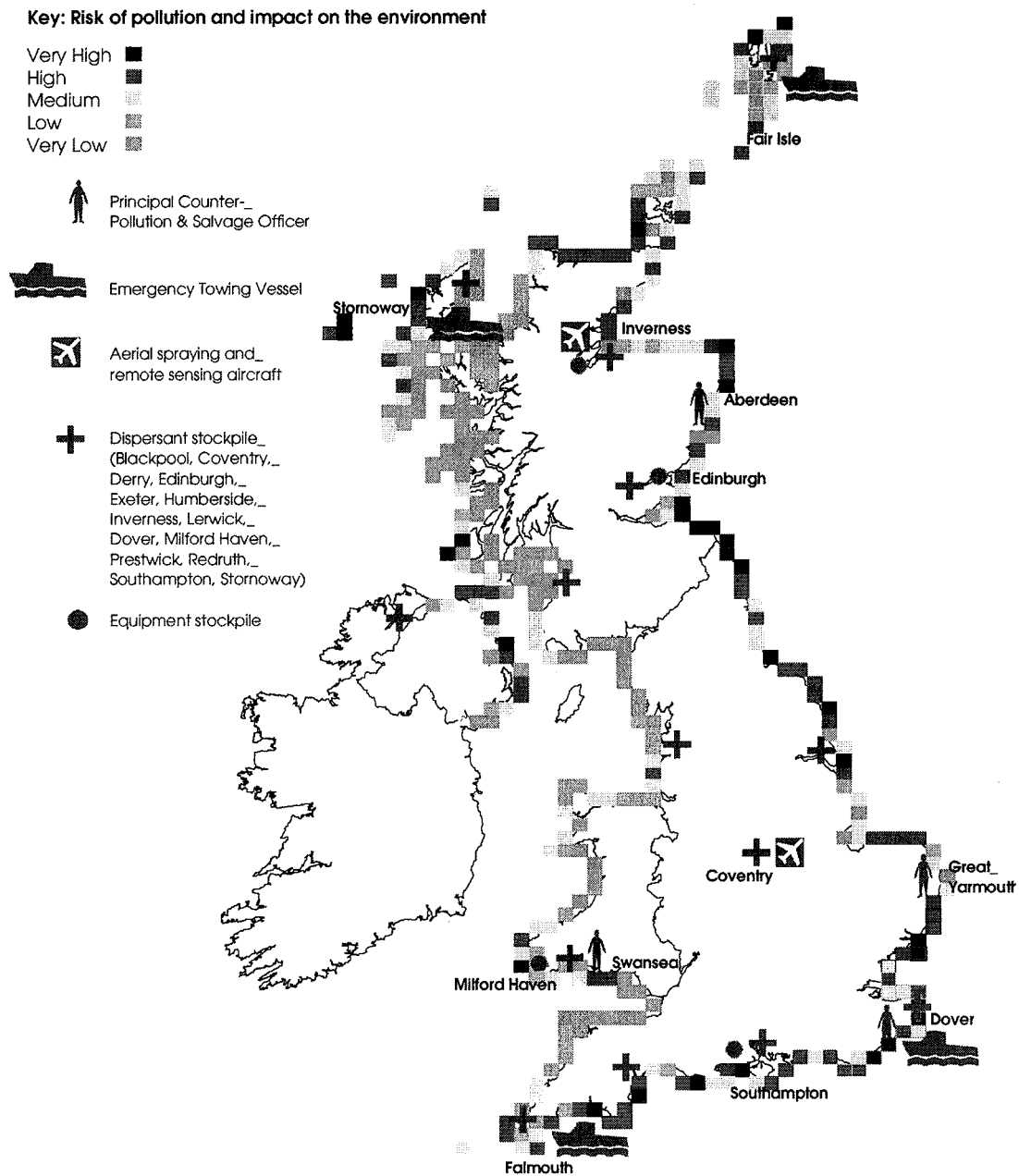
9. The Agency has responsibility for maintaining and implementing the UK's National Contingency Plan for marine pollution. The Plan explains when and how the Agency will deploy national resources where port, harbour or local authorities or operators of offshore installations face pollution incidents beyond their capabilities. In February 2000, the Agency had put in place a new National Contingency Plan for dealing with incidents involving oil or chemicals in response to Lord Donaldson's report on the *Sea Empress* incident, and the Plan had since been tested in exercises with satisfactory results.⁹

10. The Department had identified the most environmentally sensitive areas of the UK coastline at greatest risk of oil and chemical pollution from ships (**Figure 1**). The Agency had responded by putting protective measures in place for the safe navigation of vessels around key areas of the country, including routing and navigation measures directing ships to travel further out from the coast, harbour control measures and a traffic separation scheme in the Dover Straits. The Department planned to publish a report by the end of 2002 on the highest risk areas, describing why these areas were considered sensitive and detailing the further action needed to prevent or restrict pollution in the vicinity of these locations.¹⁰

⁹ C&AG's Report, paras 2.5–2.6, 2.11–2.14; Figure 8

¹⁰ C&AG's Report, Figures 7, 12; Qq 51, 72, 74

Figure 1: Counter-pollution resources in relation to environmentally sensitive areas of the UK coastline most at risk from pollution from ships



Source: National Audit Office, using data from the Department for Transport and the Maritime and Coastguard Agency

11. A new or increased threat comes from terrorist attacks on vessels. Currently no UK or international requirement for preparedness against this risk existed, although the Department was taking part in an international initiative to examine the threat and formulate appropriate responses. International provisions were due to be finalised in December 2002, coming into force 18 months later. In the absence of international arrangements, the Department was working towards arrangements for the UK. Experience and preparedness for such incidents is limited; the recent incident involving the vessel

Nisha was dealt with under an ad hoc arrangement in consultation with the Secretary of State's Representative for Salvage Command and Control.¹¹

The Agency's counter-pollution resources

12. The ever-present risk of pollution has been demonstrated recently by the incident involving the oil tanker *Prestige* off the coast of north west Spain. In this incident, some 70,000 tonnes of heavy fuel oil were at risk of polluting large stretches of coastline and areas of considerable environmental importance; some serious damage has already been done to marine and coastal wildlife and environments, and the long-term effects could be even more significant. The vessel was single-hulled, a type of vessel to be phased out by 2015 under an International Maritime Organisation agreement. In the meantime, much of the world's tanker fleet is single-hulled, with far less resilience against damage and the attendant risk of pollution than more modern double-hulled tankers. We have previously recommended that the Agency focus more of its attention on the riskiest vessels using UK ports and consider that single-hulled tankers should figure prominently in that category.¹²

13. Some of the oil transported around Britain's coast originates from off-shore oil installations, and in some cases installation operators may have a choice between using a tanker or a pipeline to transport the oil to shore. The Agency was not aware of any research into the relative risks of each method of transport. It agreed that such work would be worthwhile, to inform the advice that might be given to operators on how best to reduce the risks of oil pollution.

14. The Agency has a range of counter-pollution resources to call on in the event of a serious incident (**Figure 1**), which have been enhanced over recent years. It had saved £1.7 million a year by letting and sharing a new aerial surveillance and spraying contract with the Department of Trade and Industry, but had not examined the scope for similar arrangements with other bodies such as UK fisheries' agencies.¹³ The Agency had a contract with a commercial firm to provide a specialist team of eight staff to help the Agency deal with incidents involving hazardous substances. From October 2001, the Agency had increased from three to four the number of Emergency Towing Vessels, which tow drifting vessels away from the shoreline and now operated such vessels all year round.¹⁴

15. Scope for further enhancement exists. The Agency had appointed 10 surveyors as Marine Casualty Officers to board vessels and oversee counter-pollution response, but the staff would not be fully trained and equipped until April 2003. The aircraft provided under the Agency's new aerial spraying and surveillance contract could fly faster than their predecessors and were equipped with enhanced scanning equipment, but there had been significant delays in bringing both aircraft into service.¹⁵

16. The Agency could do more to share counter-pollution equipment with other UK agencies, private companies or international counterparts. The Agency already had some agreements with other national maritime authorities, and could draw on private sector companies to supplement its own resources. For example, the Agency had been discussing for some time an agreement with a group of major oil companies, under which the oil companies would offer assistance in the form of personnel, chemicals and equipment if requested in the event of a major incident. The range of major oil companies covered by

¹¹ Qq 29–31. The *MV Nisha*, a cargo ship carrying 26,000 tonnes of raw cane sugar from Mauritius and bound for East London, was intercepted in the English Channel in December 2001 on suspicion of carrying terrorist material. In the event that suspicion proved unfounded and after a five-day search it was allowed to complete its journey.

¹² 19th Report from the Committee of Public Accounts, *Ship Surveys and Inspections* (HC 608, Session 2001–02)

¹³ C&AG's Report, para 2.29; Qq 10, 22

¹⁴ C&AG's Report, paras 2.22, 2.24

¹⁵ C&AG's Report, paras 2.28, 2.31; Qq 84–87

the agreement meant that, in practice, the Agency ought to have access to the necessary resources as and when needed.¹⁶ This initiative could avoid the need for the Agency to renew its own equipment, leading to cost savings.

17. The Agency believed it had enough resources to handle more than one major incident at a time. The Agency had not yet, however, undertaken a strategic review of its counter-pollution resources, and assessed the limits of its capabilities beyond which external assistance would be required.¹⁷

Ports and harbours

18. Port and harbour authorities are responsible for ensuring that their ports operate in a manner that avoids marine pollution and for responding to incidents within their waters. In 1998, the government had introduced a requirement for ports and harbours to put in place oil spill contingency plans to deal with incidents in their waters. The Agency had concentrated on approved plans being put in place specifying requirements about the resources of ports and harbours for dealing with a medium sized oil spill, developing the counter-pollution skills of personnel through training, and carrying out practice exercises to test communications, mobilisation and deployment of equipment. There was currently no check, however, that all ports and harbours were complying with key requirements and were properly prepared.¹⁸

19. The Agency does not have a statutory duty to ensure that ports and harbours test their contingency plans on a regular basis, but each year it visited 40 of the 166 ports to observe their training exercises.¹⁹ The Agency had recently issued new guidance, and introduced a requirement for ports and harbours to submit an annual return to the Agency detailing the work done to improve and test their counter-pollution capacity. The current guidance did not, however, require ports and harbours to identify the largest spill or number of incidents each could handle at one time.

20. Ports and harbours are not currently required to have plans in place for dealing with the threat of incidents involving hazardous and noxious substances although dangerous chemicals are transported regularly in UK waters. An international protocol was expected to address this gap but might not be in force internationally until 2005. The Department was considering whether to bring the protocol into UK law, but did not expect to do so before the end of 2004.²⁰

Local authorities

21. Marine pollution incidents close to the UK coastline may have a major impact on local authority shorelines but local authorities have no statutory duty to prepare contingency plans. Many coastal local authorities' oil spill contingency plans were out of date and a few local authorities did not have plans. The Agency provided local authorities with guidance and free counter-pollution training courses, although take-up to date had been limited. The absence of complete, up-to-date plans and properly trained local authority personnel might hinder an effective local response, and the Agency might have to become involved in an incident sooner than would otherwise be necessary. The Cabinet Office had carried out a consultation exercise in early 2001 with relevant departments, agencies and local government as part of a review of emergency planning, including pollution preparedness. It was currently considering what action needed to be taken to

¹⁶ C&AG's Report, para 2.23; Qq 45–47, 70–71

¹⁷ C&AG's Report, paras 2.39–2.41; Q 19

¹⁸ Q 147; C&AG's Report, paras 2.7–2.8, 2.53–2.54, Figure 9

¹⁹ C&AG's Report, para 2.14; Q 2

²⁰ C&AG's Report, para 2.10

improve contingency planning at national and local level, particularly in the light of the comments of our colleagues on the Defence Select Committee in their recent Report.²¹

MAKING THE POLLUTER PAY

22. The UK Pollution Control Zone extends 200 nautical miles out from the UK coastline. When an incident has occurred in the Zone, and a polluter has been identified, it is the Agency's responsibility to make the polluter bear the costs, in accordance with the "polluter pays" principle.²²

Identifying polluters

23. Successful prosecutions against offenders had been difficult, as they depended on the Agency or other UK bodies identifying vessels as they polluted. The Agency and the Department had taken steps to improve evidence gathering techniques, experimenting with the use of satellite pictures to identify oil slicks, and launching aircraft to photograph the oil and identify shipping in the vicinity. Much of this work should allow the tracing of offenders after incidents had taken place, increasing the chances of successful prosecutions.²³

24. The Agency and the Department have, however, further scope to improve evidence gathering, for example through better targeting of surveillance activity and more night flying by surveillance aircraft. The Agency's ability to prosecute could also be improved by using remote satellite sensing and vessel transponders, which may be required for passenger ships and larger cargo vessels from 2004, and for other vessels by 2008. This equipment would identify which ships were in the vicinity at the time an incident occurred. Developing the capability to analyse the spill's chemical "finger print" would allow the Agency to trace the spill to a particular vessel. Taken together (**Figure 2**), these steps would improve the chances of polluters being identified and thus increase deterrence.²⁴

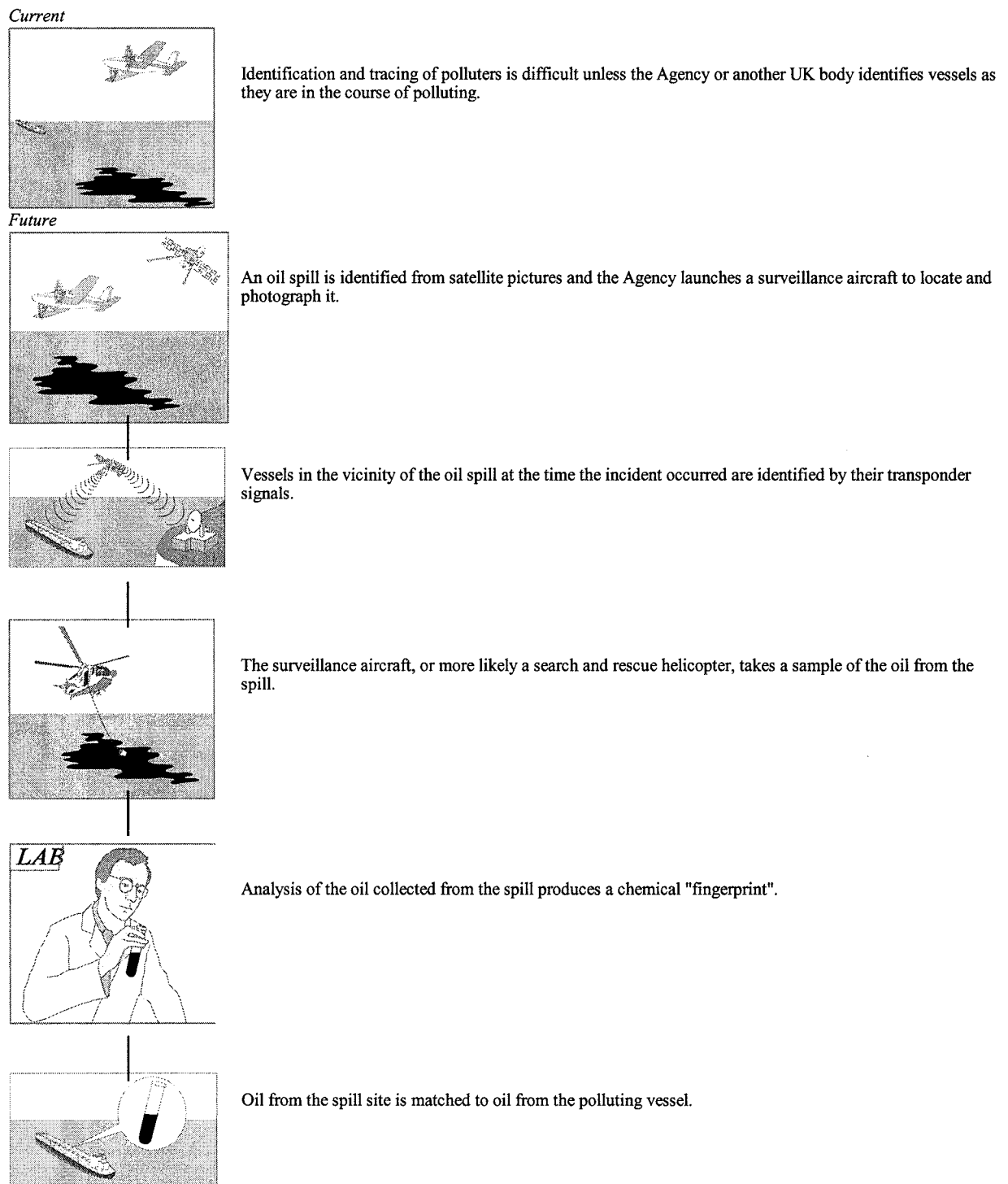
²¹ Qq 197–199; Ev 21; 6th Report from the Select Committee on Defence, *Defence and Security in the UK* (HC 518-I, Session 2001–02), which recommends that the Cabinet Office should publish its proposals for civil contingencies legislation, with the explicit aim of introducing that legislation in the 2002–03 Parliamentary Session.

²² C&AG's Report, para 3.8

²³ Qq 13, 17, 114

²⁴ Qq 15, 110–113

Figure 2: Key technological developments to identify and trace polluters



Source: *National Audit Office*

Pursuing polluters

25. Although the Agency has a good record in pursuing claims and recovering costs, its ability to secure compensation is hindered by incomplete international compensation arrangements, "pay to be paid" insurance policies and "one ship companies". "Pay to be paid" insurance policies and "one ship companies" are mechanisms which allow some

operators to limit liability and to avoid payment. They posed significant problems for the Agency.²⁵

26. Where a vessel was covered by a "pay to be paid" insurance policy, the Agency could not claim directly against the insurers but had to claim against the owners of the vessel. The insurers then reimbursed the owners. However, the owners might dispute the Agency's claim, requiring the Agency to take them to court to seek redress. The problems caused by such policies were compounded where the owners operated the vessel as a "one ship company," with no assets other than the vessel for the Agency to use or arrest to secure payment of its claim. If the vessel was wrecked and scrapped, the Agency was powerless to pursue its claim, as it had no legal right to seize the cargo as security.²⁶

27. The Agency was working with the International Maritime Organisation in an attempt to address these problems internationally, and hoped to reach agreement on an international convention which would allow direct action against the insurer on "pay to be paid" cases. These conventions would take some time to put into place. There were other measures the Agency could use, however, where practicable, and provided they did not impinge upon the UK's wider economic interests. Such measures might include extending the requirement for Letters of Undertaking to all vessels that use UK ports, whereby the insurers irrevocably undertake to agree to pay the Agency's claims by an agreed date, provided those claims are supported by the necessary documentation. Another option might be to require vessels to lodge valid and appropriate documentation, including insurance policies, at designated offices as a condition for entry into port.²⁷

28. Under an international system of compensation, the Agency is able to claim compensation from the insurers of vessels where the pollution has been caused by tankers' cargoes of crude, or heavy fuel, oil. There are, however, no international compensation schemes in place for spills of other types of oil, of hazardous substances or of fuel carried as bunkers (that is, oil for the ship's own use). International conventions on liability and compensation arrangements for these cargoes and for bunkers were agreed in 1996 and 2001 respectively but have yet to be implemented.²⁸

29. Major areas within the UK Pollution Control Zone, including the Thames, the Solent and the Bristol Channel, are not covered by UK oil pollution regulations, preventing the Agency from prosecuting offenders for some pollution incidents that occur in those areas. Whenever there is a spill in these areas, public authorities must rely on other statutes which provide the polluter with statutory defences against prosecution, irrespective of whether the incident occurred through negligence. The Department agreed that there would be benefit in consolidating legislation to allow the prosecution of offences wherever they occur in UK waters.²⁹

²⁵ Q 52

²⁶ C&AG's Report, para 3.14

²⁷ C&AG's Report, para 3.13; Qq 56–57, 166–167, 174–175

²⁸ C&AG's Report, para 3.14

²⁹ C&AG's Report, para 3.19, Figure 25; Qq 27, 134

MINUTES OF PROCEEDINGS OF
THE COMMITTEE OF PUBLIC ACCOUNTS

SESSION 2001-02

MONDAY 17 JUNE 2002

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon	Mr George Osborne
Mr Ian Davidson	Mr David Rendel
Mr Frank Field	Mr Gerry Steinberg
Mr Nick Gibb	Jon Trickett
Mr George Howarth	Mr Alan Williams
Mr Brian Jenkins	

Sir John Bourn KCB, Comptroller and Auditor General, was further examined.

The Committee deliberated.

Mr Brian Glicksman, Treasury Officer of Accounts, was further examined.

The Comptroller and Auditor General's Report on Dealing with pollution from ships (HC 879), was considered.

Mr Maurice Storey, Chief Executive, Maritime and Coastguard Agency; and Mr Frank Wall CMG, Head of Shipping Policy Division, Department for Transport, were examined (HC 960-i).

A division of the House being called, the Chairman suspended the meeting for ten minutes.

The Committee resumed.

The witnesses were further examined.

The witnesses withdrew.

The Committee further deliberated.

* * * * *

[Adjourned until Wednesday 19 June at Four o'clock.

* * * * *

SESSION 2002-03

MONDAY 25 NOVEMBER 2002

Members present:

Mr Edward Leigh, in the Chair

Mr Ian Davidson
Geraint Davies
Angela Eagle
Mr Frank Field

Mr Nick Gibb
Mr Brian Jenkins
Mr David Rendel
Mr Gerry Steinberg

Sir John Bourn KCB, Comptroller and Auditor General, was further examined.

The Committee deliberated.

Mr Brian Glicksman, Treasury Officer of Accounts, was further examined.

* * * * *

Draft Report (Dealing with pollution from ships), proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 and 2 read and agreed to.

Paragraph 3 read and postponed.

Paragraphs 4 to 11 read and agreed to.

A paragraph—(*The Chairman*)—brought up, read the first and second time, and inserted (now paragraph 12).

Another paragraph—(*Mr Rendel*)—brought up, read the first and second time, and inserted (now paragraph 13).

Paragraphs 14 to 29 read and agreed to.

Postponed paragraph 3 again read, amended and agreed to.

Resolved, That the Report be the Second Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Ordered, That the provisions of Standing Order No. 134 (Select Committees (Reports)) be applied to the Report.

* * * * *

[Adjourned until Wednesday 27 November at half past Four o'clock.]