

Offshore Energy Law

New Emissions Regulations – What is in store for LNG Owners?

All ship owners are considering what needs to be done to comply with new regulations coming into force concerning vessel emissions. On the horizon is the introduction of the EEXI Rules, which will require vessels to meet an efficiency index at their first scheduled survey after 1 January 2023. There is also the threatened introduction by the European Union of carbon trading regulations which would affect vessel operations — at present, it seems the intention is for the ship owner to take responsibility for complying with the new regulations.

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How do these changes affect LNG shipping — in particular, vessels under long-term charter? If modifications to the vessel are required in order to comply with the new regulations, is the owner entitled under the terms of the long-term charter to pass the additional cost to the charterer?

"How do these changes affect LNG shipping?"

This question was decided by the English Court of Appeal in the case of *Elli v Frixos*. The Court found that the owner's requirement to maintain vessel certification, in particular to show compliance with The International Convention for the Prevention of Pollution from Ships (Marpol), placed on the owners the burden of the cost of modifications required. However, the Court did not decide whether this also placed on owners the burden of all commercial consequences of the change in regulations. For example, if compliance with the regulations would require the vessel to proceed at a speed lower than the contractual service speed, would the ship owner be in breach of its charter obligations?

The added difficulty faced by ship owners operating under typical long term LNG charter terms would be that, independent of the question of whether slow steaming would be a breach, the charterer is entitled to make deductions from hire if the guaranteed

speed is not achieved. Would the charterer be entitled to order the vessel to proceed at the guaranteed speed, knowing that the owners are prohibited from achieving that speed, allowing the charterers to make substantial deductions at the end of the performance period? Or would the charterer be obliged to order the vessel to proceed at no greater speed than required to comply with the regulations?

A further complication arises in relation to the EU regulations — if the owners have the burden of compliance, how may such compliance be reflected in the performance of orders for a particular voyage? The EU Rules are based on annual records. This may neatly fit with a performance review period under a long term charter, but that review is based on an aggregate of performance under each voyage.

Answers to these questions will be clearer when more details of compliance with the EEXI Rules emerge, and when the detail of the EU Directive is published. We therefore anticipate returning to these issues in more detail in our next publication.



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