



Maritime &  
Coastguard  
Agency

Consultation Report:  
Consultation on the draft Merchant Shipping  
(Control and Management of Ships' Ballast  
Water and Sediments) Regulations 2021

October 2021

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## Section 1: Introduction

The Maritime and Coastguard Agency (MCA), an executive Agency of the Department for Transport (DfT), carried out a public consultation from 24<sup>th</sup> March to 16<sup>th</sup> June 2021 on the draft Merchant Shipping (Control and Management of Ships' Ballast Water and Sediments) Regulations 2021 ("the draft Regulations"). The draft Regulations have been produced in order to implement into UK law the requirements of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 ("the BWM Convention"). The draft Regulations form part of the package to allow the UK to accede to the BWM Convention.

The consultation was published on [www.gov.uk](https://www.gov.uk)<sup>1</sup> and notifications of the consultation were sent to more than 80 organisations including shipping and marine industry companies, government departments and agencies, and other interested parties.

The consultation consisted of the proposed draft legislation, a Marine Guidance Note (MGN), a Merchant Shipping Notice (MSN) and an Impact Assessment (IA).

Consultees were invited to comment on any aspect of the consultation; but more specifically to respond to the consultation questions as outlined in Annex 1 of this report.

A total of 11 responses were received, not all respondents answered all the questions posed and several submitted additional comments. These have been fully considered. A list of respondents can be found in Section 5 below. The MCA thanks all those individuals and organisations who submitted responses to this consultation.

## Section 2: Key Findings

The consultation highlighted several key areas which have led to further investigation and changes where appropriate. The key points raised are detailed below.

### Ports, harbours and statutory harbour authorities:

Several responses were received from the ports sector highlighting the potential impact of invasive non-native species on their operations, seeking clarity on their responsibilities in the future and raising the potential issues associated with the regulations relating to sediment reception facilities. This has resulted in amended guidance to add clarity, providing reassurance that no additional responsibilities, particularly, in terms of compliance monitoring are being placed on the sector and further work has been undertaken to clarify the application of the regulations relating to sediment reception facilities.

### Impact on specific sectors of the shipping industry:

Several responses highlighted the potential difficulties and practical limitations of the proposed definition of the same location exception which may have unintended consequences in terms of impact on certain sectors of the shipping industry. This has led to further investigations into the proposed definition which has been amended to ensure the definition is practical whilst also providing the necessary environmental protections.

It was also highlighted that there were no references to BWM.2/Circular.32 which relates specifically to hopper dredgers. This was an oversight and thanks to respondents has been rectified.

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<sup>1</sup> <https://www.gov.uk/government/consultations/consultation-on-draft-regulations-for-the-control-and-management-of-ships-ballast-water-and-sediments>

## Section 3: Summary of Responses

Questions that were posed in the consultation, together with the consultee comments, and the government responses are shown in detail at Annex A. However, the main points are summarised below.

### 1. Ballast Water Exchange (BWE):

Several respondents were concerned that the draft regulations relating to BWE gave ships too much flexibility and did not provide sufficient environmental protection.

Government Response: BWE was designed as an interim measure to allow ships sufficient notice to implement the more stringent D-2 discharge standard whilst providing an acceptable level of protection for the marine environment. From 2024 no ships, to which the Regulations apply, will be able to use ballast water exchange as a method of compliance with the Convention, which, following the consultation, has been made clearer in the MGN text.

### 2. Compliance monitoring:

Responses from the ports sector sought clarification of whether there were any expectations on ports to monitor compliance and how this would work in practice.

Government Response: I would like to reassure the sector that there are no additional expectations on ports, harbours or statutory harbour authorities in terms of compliance monitoring. Several of the regulations which seemed to cause concern are standard legal drafting for merchant shipping regulations that prevent pollution and are not designed to place additional requirements on industry. I have amended the text in the MGN to ensure that this is clear.

### 3. Testing:

Several responses thought that an ongoing testing regime is needed to monitor compliance with the discharge standard and that to this end commissioning testing of ballast water management systems should be implemented sooner than the international entry into force date.

Government Response: Government policy is to implement international requirements as negotiated and not to go beyond the minimum standards unless there is robust evidence to do so, this ensures there is no undue burden on industry and ensures a level playing field. Therefore, we will not be able to implement the commission testing requirements prior to their internationally agreed entry into force date. This being 1 June 2022 with the amendments to Regulation E-1 of the Convention. Most respondents were content with this approach.

### 4. Sediment Reception Facilities:

Responses from ports, harbours or statutory harbour authorities highlighted the potential issues relating from the proposed drafting of regulation 14 (requirement to provide sediment reception facilities).

Government Response: As a result of the responses, work to clarify the application of this regulation is ongoing.

#### 5. Same Location:

Several respondents queried the proposed definition of same location. Most felt that the proposed definition was practically challenging and too restrictive.

Government Response: We thank respondents for their thoughts on this issue. Whilst the definition of same location needs to be sufficiently robust in order to provide certain environmental protections, we have investigated the proposed definition and made amendments to bring it in line with guidance issued by the IIMO.

## Section 4: MCA Response

The MCA would like to thank the respondents for taking the time to read and respond to the consultation.

The consultation has provided useful feedback from a variety of sectors which has helped to amend and refine both the statutory instrument and the associated guidance documents.

The Government will finalise the Regulations with a view to bringing them into force in Summer 2022.

## Section 5: Who Responded

Responses were received from the following organisations:

- Class NK
- NatureScot
- Chartered Institute of Ecology and Environmental Management (CIEEM)
- Ballast Water Equipment Manufacturers Association (BEMA)
- SGS
- Orkney Islands Council Harbour Authority
- Peel Ports
- UK Chamber of Shipping
- Port of London Authority (PLA)
- Associated British Ports (ABP)
- Robert Wynn and Sons

## Annex A: Consultation questions and answers

The Response form was Section 5 of the Consultation Document. This annex contains a full list of consultation questions, a summary of responses to those questions and the government response.

The format below is as follows:

### **Consultation question**

Summary of consultee answers

Government response

#### **5.1: Do you agree that the Impact Assessment represents a true reflection of the impact of the proposals?**

The general view was that the Impact Assessment needed additional information to reflect the impact on ports, harbours and statutory harbour authorities as well as certain ship types. Several respondents submitted costings to assist in this area.

The Government welcomes the additional information provided and has fully considered the comments and revised the Impact Assessment accordingly.

#### **5.2: Do you think that the Regulations will implement the requirements of the BWM Convention accurately and appropriately?**

The answers to this question were mixed. Largely respondents felt the draft Regulations would implement the Convention accurately, but many wanted the regulations to go further than the Convention requirements; for example, by introducing regular testing and monitoring. Some specific issues were raised which included concerns with some Convention requirements and the need for clarification around the applicability to certain ships.

Once the UK Government accedes to the BWM Convention it is required to implement the requirements of the Convention. It is current Government policy to implement international requirements as negotiated and not to go beyond the minimum, reducing burden on industry and ensuring a level playing field. This is why certain regulations appear as they do in the Convention.

Guidance documents have been revised to add clarity, for example, around application to certain ships by referencing IMO Circular BWM.2/Circ.32.

#### **5.3: Do you consider that you have received sufficient notification of the requirements to which you will have to comply?**

Overall respondents felt like they had received sufficient notification of the requirements to which they will have to comply. The exception being responses from statutory harbour authorities who did not feel they had received sufficient notification of requirements specific to the sector.

The Government noted the responses and will use this to inform future consultations.

**5.4 a): Do you agree that the Penalties and Offences as set out in the draft Regulations are necessary, fair and proportionate?**

Most responses were positive or did not comment. One response raised the issue of sediment reception facilities and the practical implications of the current drafting as well as questions around the expectations of ports, harbours, or statutory harbour authorities.

The responses have been noted and the drafting has been revised to add clarity.

**b): Is there a way that the penalties can be further streamlined?**

Respondents either put no or did not comment.

The Government has noted that it is unlikely penalties can be further streamlined.

**c): Do you feel that the proposed penalties will act as an effective deterrent for non-compliance with the requirements of the Regulations?**

Most responses agreed that the proposed penalties would act as an effective deterrent however one response wanted more testing to assist in the deterrent and one response wanted no maximum penalty.

The Government has noted the comments and that the proposed penalties are likely to act as an effective deterrent. The penalties are in line with the existing legal framework.

**5.5 a): Do the proposed MSNs (technical requirements) and MGN (guidance) meet your needs in terms of (i) format; and (ii) content?**

Largely respondents agreed that the MSN and MGN were suitable in terms of format and content. A few issues were raised regarding the following:

- Role and guidance relating to ports, harbours and statutory harbour authorities,
- Definition of same location and exemption procedure,
- Clarification of key terms for example Ballast Water Management Systems (BWWS),
- Consistency with the IMO Convention,
- Type Approval process,
- Recording sediment management,
- The type of organisations recognised for the testing of BWMS,
- Procedures to allow BWMS upgrades.

The Government has noted the comments and thanks respondents for bringing potential issues to light. The MSN and MGN have been amended, where appropriate, to add clarity and provide further information regarding the above topics.

**b): Do you feel there is a better way of providing guidance for the Regulation requirements? Please provide reasoning for your answer.**

Overall answers indicated that there was not a better way of providing guidance.

The Government has noted the responses.

**5.6: Are you able to provide possible estimates of the costs of complying with the Regulations? Primarily evidence is required in areas such as;**

- **costs to fishing vessels;**
- **costs of survey and certification to ships below 400GT and fixed and floating platforms to which the Regulations apply;**
- **costs to harbours and terminals regarding facilities for the reception of sediments;**
- **ballast water management systems, commissioning and installing costs;**
- **costs to transfer and treat ballast water to reception facilities;**
- **costs of any training of personnel required;**
- **costs associated with the changing of maintenance plans and operation books;**
- **any other costs associated with this legislation; and**
- **any cost savings and or benefits associated with the Regulations.**

Several respondents provided costings.

The Government thanks those who provided further costings and these have been used to revise the Impact Assessment.

**5.7: Do you agree that areas in which the UK has some discretion under the BWM Convention have been implemented appropriately?**

Responses were mixed with several respondents agreeing that areas in which the UK has some discretions were implemented appropriately. Several other respondents raised areas of concern for example:

- The requirements around ballast water exchange where location requirements are not possible,
- Lack of reference to existing port regulations and policies, for instance pre-arrival notifications,
- Possibility on an ongoing testing and monitoring regime,
- Queries over the definition of same location.

The Government has noted the responses, several of which, go further than the requirements of the BWM Convention. It is Government policy to only implement international requirements as negotiated and not to go beyond the minimum unless there is



robust evidence to support this. Responses informed amendments to the guidance around ballast water exchange to add clarity.

**5.8: Can you provide any additional evidence relating to the benefits of this Convention? There are significant evidence gaps pertaining to the future cost avoidance benefits this Convention might bring to the UK economy. Furthermore, can you provide any evidence relating to direct benefits of this Convention and what value that may have for the UK economy?**

Several respondents provided reference material relating to the potential costs of invasive non-native species.

The Government thank respondents for the relevant information.

**5.9: At MEPC75, amendments to regulation E-1 of the BWM Convention were adopted. These amendments introduce requirements for Commissioning Testing during Initial and Additional surveys. These amendments are to be accepted on the 1st December 2021 and enter into force on the 1st June 2022. Depending on the timing of the making of the UK's Regulations, the MCA may incorporate the E-1 amendments into the final Regulations. Are you content with this approach?**

The majority of respondents were in favour of incorporating these amendments with several indicating they should be brought in sooner than the IMO entry into force date.

The Government notes these responses and is working to incorporate these amendments into the proposed regulations.

**5.10: Are you content that Type Approval for Ballast Water Management Systems is dealt with as a stand-alone procedure (separate from the Marine Equipment Regulations 2016 (S.I. 2016/1025) within the Ballast Water legislative package?**

Most respondents were content with this approach with one issue being raised about the terminology used.

The Government notes the responses and has made amendments to the guidance to reflect the use of Ballast Water Treatment Systems (BWTS) instead of Ballast Water Management Systems (BWMS) within the industry. BWMS is the terminology used by the internationally agreed BWM Convention which is why it is used in the UK regulations.

**5.11: Do you have any additional comments to add to the response?**

Most respondents were supportive of the aims of the Convention and its adoption into UK law. Several respondents submitted additional comments which covered issues such as:

- Application of the requirements,
- Application of certain regulations,
- Desire for ongoing testing and monitoring,
- Potential issues for specific sectors of the shipping industry,

- Clarification of specific regulations including the process of approval for systems using active substances.

The Government thanks respondents for bringing these issues to light and has worked hard to add clarity to the draft Regulations and guidance where necessary. Several of the issues raised were due to misunderstandings over the necessary legal language or existing legal frameworks. It is Government policy to only implement international requirements as negotiated and not to go beyond the minimum unless there is robust evidence to support this which is why the application remains as it is seen within the Convention and why additional testing and monitoring regimes have not been introduced.