



Maritime &  
Coastguard  
Agency

Consultation Document:

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

March 2021

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## Section 1: Overview of this consultation

### Aim

- 1.1. This consultation seeks your views 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.

### Views Sought

- 1.2. Consultees are invited to comment on any aspect of this consultation. However, you are specifically invited to respond to the following questions:
  - Whether the Impact Assessment represents a true reflection of the impact of the proposals.
  - Whether the draft Regulations would implement the requirements of the BWM Convention accurately and appropriately.
  - Whether the offences and penalties are appropriate.
  - Whether the proposed guidance to accompany the draft Regulations is adequate.
- 1.3. A full list of consultation questions is contained in Section 5 of this consultation.

### Deadline for responses

- 1.4. Responses are welcomed from **24th March 2021 (0900) until 16th June 2021 (1800)**. For an overview of the timetable please refer to section 4 of this document.

## Section 2: Areas for consideration

### Introduction

- 2.1. The BWM Convention was adopted by the International Maritime Organisation (IMO) in 2004 and entered into force on 8 September 2017. The BWM Convention aims to control and monitor the discharge of ballast water and sediments from ships in such a way as to prevent the spread of harmful aquatic organisms and pathogens.
- 2.2. The BWM Convention does this by introducing two discharge standards. The first requires the management of ballast water through ballast water exchange methods. The second requires management through the treatment of ballast water in order to meet a more stringent standard. The BWM Convention introduces this via a phased approach with vessels expected to meet the exchange standard until such time as they need to meet the treatment standard. The phased introduction of treatment runs from September 2019 - September 2024. In order to meet the treatment standard, many vessels will be required to install ballast water management systems that have been approved as being able to meet the standard. The Convention allows for other methods of compliance such as applying for an exemption, taking on and discharging ballast water at the same location and discharging to a reception facility.
- 2.3. The UK does not presently have legislation in place that enables the discharge of ballast water from ships to be controlled. The introduction of the draft Regulations will enable the UK to ensure that UK ships, wherever they may be, are compliant with the requirements of the BWM Convention and that ships entering UK waters, regardless of Flag, provide the same level of protection from the threat of harmful aquatic organisms and pathogens.

### Proposed Changes

- 2.4. The implementation of the BWM Convention requires the introduction of new Regulations, including new offences and penalties, as there is no existing legislation in place. The draft Regulations require ships to which they apply (see paragraph 2.13 below) to manage their ballast water and sediments in accordance with a ship-specific ballast water management plan. Ships can manage their ballast water through exchange or treatment. Exchange is the replacement of water in a ship's ballast water tank and, where possible, should be done in the open ocean. The treatment of ballast water is a more stringent standard and requires that discharged ballast water and sediments must contain less than a specified number of viable organisms and indicator microbes. Certain ships, for example new ships, will be required to manage their ballast water through treatment and not be permitted to manage through exchange. By September 2024 all ships must manage through treatment.
- 2.5. In order to meet the treatment standard, many ships will be required to install ballast water management systems. The draft Regulations require that such systems be type approved.
- 2.6. Ships are exempt from the requirement to manage their ballast water where they discharge to a reception facility or uptake and discharge on the high seas or at the

same location (within one nautical mile). Certain other exceptions apply, for example in an emergency.

- 2.7. The Convention requires ships of 400 gross tonnes and above, to which it applies, to be subject to survey and certification to ensure that the provisions of the Convention are applied with. It also requires States to establish appropriate measures for ships not covered by these provisions. To achieve this the survey and certification requirements will apply to all vessels to which the draft Regulations apply. For more information, please see Part 6 of the draft Regulations and the associated guidance detailed in paragraph 2.21 below. Ships which comply with the Regulations will be issued with an International Ballast Water Management Certificate (IBWM Certificate) and will be required to carry this, as well as a ballast water record book and ship specific management plan.
- 2.8. Harbour authorities and terminal operators will be required to provide sediment reception facilities in harbours/terminals where the cleaning or repair of ballast water tanks (of ships to which the draft Regulations apply) occurs.
- 2.9. To enforce these obligations, the draft Regulations allow for the inspection of ships, together with the power to prohibit the discharge of ballast water or detain a ship where it does not comply with the Regulations. They also introduce offences and penalties to facilitate compliance with their requirements.
- 2.10. The introduction of these requirements may have a financial impact on the shipping industry as there is a cost associated with fitting and operating the equipment that has been developed to meet the treatment standard. There is also likely to be an additional training and administrative burden for crew involved in ballast water operations. Although the potential impact is recognised it is expected to be limited as vessels which are operating internationally will already need to be in compliance with the requirements of the BWM Convention if they are operating in the waters of a State that has ratified the BWM Convention. The introduction of the draft Regulations will bring the UK in line with the 86 States<sup>1</sup> that have already ratified and introduced legislation to implement the BWM Convention.
- 2.11. The costs and benefits associated with the preferred option to introduce the draft Regulations are identified in the Impact Assessment which forms a part of this consultation.
- 2.12. Given that the BWM Convention was adopted in 2004 and has been in force since September 2017, Convention requirements have been in the public domain for 16 years. We have engaged with industry during the Convention negotiations at IMO and have published guidance on GOV.UK to assist stakeholders. Many ships will already be compliant with the requirements of the Convention, particularly where they are trading internationally in the waters of States which have already ratified the Convention. Therefore, the draft Regulations do not contain transitional arrangements and they will be enforceable from the date they come into force.
- 2.13. At the IMO's Marine Environmental Protection Committee (MEPC) 75, amendments to regulation E-1 of the BWM Convention were adopted. These amendments introduce

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<sup>1</sup><http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/StatusOfTreaties.pdf>

requirements for Commissioning Testing during Initial and Additional surveys. Amendments to E-1 were adopted by resolution MEPC325(75), which is to be accepted on 1<sup>st</sup> December 2021 (unless there are objections), with entry into force on 1<sup>st</sup> June 2022. Depending on the timing of the making of the UK's Regulations, the Maritime and Coastguard Agency ("MCA") may incorporate the E-1 amendments into the final Regulations.

## Application

2.14. The application of the draft Regulations is specified in regulation 4. Subject to what follows they apply to:

- All UK ships, wherever they may be; and
- All other ships within UK waters or controlled waters.

Note that for the purposes of the BWM Convention and the draft Regulations 'ship' means a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, floating storage units (FSU's) and floating production storage and offloading units (FPSO's).

Although the application provision above appears very wide, in accordance with the Convention the draft Regulations do not apply to certain types of ships as detailed below.

They do not apply to:

- A ship which is not designed or constructed to carry ballast water;
- A ship which only operates in waters under the jurisdiction of a single Contracting State (i.e. a State that is contracted to the BWM Convention);<sup>2</sup>
- A ship which only operates in waters under the jurisdiction of a single Contracting State and on the high seas;
- Warships;
- Naval auxiliaries; or
- Other ships owned or operated by a State and used only in government, non-commercial service;
- A ship which carries permanent ballast water in sealed tanks, which is not subject to discharge.

Part 4 of the draft Regulations applies to any harbour or terminal within a harbour in the United Kingdom in which the cleaning or repair of ballast water tanks occurs and the ballast water tanks in question are those of ships to which these Regulations apply.

Consultees are invited to review the application of the draft Regulations to assess whether the MCA has successfully determined the application of the BWM Convention requirements.

## Penalties and Offences

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<sup>2</sup> In the case of the United Kingdom, this means United Kingdom waters or controlled waters.

- 2.15. The MCA, as the UK's maritime regulatory and enforcement authority, has responsibility for both delivering and enforcing the Government's maritime policy relating to ships, seafarers and the seas around the UK. The MCA's approach to breaches of maritime legislation relies on a range of civil and criminal remedies in which, like many other regulatory regimes in the UK, civil and criminal sanctions sit alongside each other to enable the MCA to take the most proportionate action in relation to a particular breach. The decision on what is the most proportionate approach is determined by matters such as the importance of the requirement being breached, the gravity of the contravention, the effect of the contravention on third parties etc.
- 2.16. MCA surveyors have enforcement and sanction powers which can be applied locally to ships calling at UK ports. The MCA's powers to use civil sanctions are primarily contained in the Merchant Shipping Act 1995 ("MSA"). These powers, including improvement and prohibition orders, are limited in scope and available only for specific purposes. Other than the power to detain a ship, it is not possible to replicate all the civil sanctions in the MSA in secondary legislation implementing international obligations or other policy objectives as there is no power to do so in the MSA. Because these civil sanctions are contained in primary legislation (the MSA), if they are needed, the sanctions will be enforced directly under the MSA. The general policy approach, in line with the MCA's published enforcement policy, is to use these civil sanctions whenever possible before using criminal offences. The MCA is aware that other legislation provides a means of introducing new civil sanctions, and this is currently the subject of a formal review.
- 2.17. In drafting the proposed UK Ballast Water regulations, we have used civil penalties where it is possible to do so. These include the ability to detain ships for a number of reasons including; an invalid International Ballast Water Management Certificate or invalid documentation, when the condition of the equipment does not correspond to the approved standards, if the master or crew fail to demonstrate that they are familiar with shipboard procedures relating to the prevention of pollution of ballast water, or where an offence under the regulations is being committed in respect of the ship. Additionally, a ship may have its International Ballast Water Management Certificate suspended or withdrawn (which means the ship cannot proceed to sea). Finally, Prohibition Notices maybe issued to ships prohibiting them from discharging ballast water.
- 2.18. Maritime regulatory requirements govern both safety and pollution prevention. As such, their purpose includes the prevention of loss of life or injury to persons and the protection of the marine environment and adjoining coastlines. These very compelling objectives necessitate the availability of criminal sanctions in the more serious cases, and also provide a vital deterrent.
- 2.19. The BWM Convention requires legal sanctions to be established by Parties to the Convention to deal with any violation of its requirements. Appropriate offences and penalties which do not currently exist are enacted in the draft Regulations. The offences in the draft Regulations are as shown in the Table below.

## OFFENCES AND PENALTIES

Summary	Offence	Applies to	Reference in Reg's	Offence by				
				Owner of ship	Manager	Demise Charterer	Master	Other
Requirement to conduct ballast water management	Subject to regulations 6 (exceptions), 7 (exemptions) and 22 (prototype ballast water management systems) ballast water and sediments taken on board a ship must not be discharged from that ship into the sea unless they are subject to ballast water management which meets the requirements of paragraph (2).	All UK ships wherever they might be  All other ships within UK waters or controlled waters  Reg.47: All other ships where: (a) a foreign State, the flag State of the ship or a foreign State polluted or threatened with pollution as a result of the offence requests that proceedings be taken; or (b) the offence has caused or is likely to cause pollution in United Kingdom waters or controlled waters.	Reg.5(1)	✓	✓	✓	✓	
Approved ballast water management plan	Every ship must carry on board a ballast water management plan specific to that ship which has been— (a) in the case of a United Kingdom ship, approved by a Certifying Authority; or (b) in the case of any other ship, approved by the ship's flag State.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.9(1)	✓	✓	✓	✓	
Master to ensure crew familiar with the plan and that it is implemented	The master of a ship must ensure that— (a) the officers and crew of the ship are— (i) familiar with their duties under the ballast water management plan; and (ii) familiar with the ballast water management plan where this is appropriate to their duties; and (b) the ballast water management plan relating to the ship is implemented.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.9(3)				✓	



Content requirements for ballast water management plan	The ballast water management plan must include— (a) safety procedures for the ship and the crew for the operation of ballast water management; (b) a detailed description of the actions to be taken to implement the requirements of these Regulations or the Convention; (c) the procedures for the disposal of sediments at sea and to the shore; (d) the procedures for coordinating ballast water management which involves discharge of ballast water and sediments into the sea with the authorities of the State into whose waters the discharge is to take place; (e) details of the officer on board in charge of ensuring that the ballast water management plan is properly implemented; and (f) the reporting requirements for ships under these Regulations or the Convention.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.9(4)	✓	✓	✓	✓	
Language of the ballast water management plan	The ballast water management plan must be— (a) written in the working language of the ship's personnel; and (b) if the working language is not English, French or Spanish, translated into one of these languages.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.9(5)	✓	✓	✓	✓	
Ballast water record book	Every ship must have on board a ballast water record book which contains the information specified in Merchant Shipping Notice MSN No [XXXX].	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.10(1)(a)	✓	✓	✓	✓	
Each operation to be recorded in the record book	Each operation referred to in paragraph [X] of Merchant Shipping Notice MSN No [XXXX] must be fully recorded without delay in the ballast water record book.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.10(2)	✓	✓	✓	✓	

Discharges covered by exceptions, exemptions and to a reception facility to be recorded	In the event of— (a) a discharge of ballast water made under regulation 6 (exceptions); (b) a discharge of ballast water by a ship which has been granted an exemption under regulation 7 (exemptions); (c) a discharge of ballast water in accordance with regulation 11(5) (location of ballast water exchange); or (d) an accidental or exceptional discharge of ballast water not permitted under these Regulations,  an entry must be made in the ballast water record book describing the circumstances of, and the reason for the discharge.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.10(3)	✓	✓	✓	✓	
Officer in charge to sign record book	Each entry in the ballast water record book must be signed by the officer in charge of the relevant operation.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.10(4)	✓	✓	✓	✓	✓ 3
Completed pages to be signed by Master	Each completed page of the ballast water record book must be signed by the master of the ship.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.10(5)				✓	
Language of the record book	The ballast water record book must be— (a) written in the working language of the ship's personnel; and (b) if the working language is not English, French or Spanish, translated into one of those languages.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.10(6)	✓	✓	✓	✓	
Readily available for inspection	Subject to paragraph (9), the ballast water record book must— (a) be kept on board the ship to which it relates; (b) be retained on board the ship to which it relates for a period of two years after the last entry has been made; and (c) be readily available for inspection at all reasonable times.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.10(8)	✓	✓	✓	✓	
Retention of the record book	The ballast water record book must be retained by the owner of the ship for a period of three years after the period in paragraph (8)(b) has elapsed.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.10(10)	✓				

<sup>3</sup> Officer in charge.

Sediment reception facilities	Every harbour authority and terminal operator must ensure that sediment reception facilities, which meet the requirements of paragraph (2), are provided at each harbour or, as the case may be, terminal, for which the authority or operator is responsible, where ballast water tanks of ships to which these Regulations apply are cleaned or repaired	Any harbour or terminal within a harbour in the United Kingdom in which— (a) the cleaning or repair of ballast water tanks occurs; and (b) the ballast water tanks in question are those of ships to which these Regulations apply.	Reg.14 (1)						✓ 4
Approval of ballast water management systems	A ballast water management system installed on a ship must— (a) in the case of a United Kingdom ship, have a valid BWMS Type Approval Certificate issued under regulation 18; and (b) in the case of a ship which is not a United Kingdom ship, have a valid BWMS Type Approval Certificate issued by the ship's flag State.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.16(1)(a) Reg.16(1)(b)	✓					
Retention of Type Approval Certificate	A copy of the BWMS Type Approval Certificate must be kept on board the ship to which it relates.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.16(2)	✓	✓	✓	✓	✓	
Language of Type Approval Certificate	In the case of a ship which is not a United Kingdom ship, the BWMS Type Approval Certificate must be written in or translated into English, French or Spanish.	All other ships within UK waters or controlled waters	Reg.16(3)	✓	✓	✓	✓	✓	
Requirements for ballast water management systems on ships	A ballast water management system on a ship must be safe in relation to the ship, its equipment, and its crew.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.20	✓					

<sup>4</sup> Harbour authority or terminal operator.

Ballast water management systems which use active substances	<p>The Secretary of State may prohibit the use of—</p> <p>(a) any ballast water management system which uses active substances; or</p> <p>(b) any active substances used in ballast water management systems, on ships.</p> <p>(4) Ships must comply with a prohibition issued in accordance with this regulation.</p>	<p>All UK ships wherever they might be</p> <p>All other ships within UK waters or controlled waters</p>	Reg.21(4)	✓			✓		
Prohibition on United Kingdom ships proceeding to sea without a IBWM Certificate	<p>Subject to regulation 41(2) (general provisions on detention) a United Kingdom ship to which this regulation applies must not—</p> <p>(a) proceed to sea; or</p> <p>(b) (if it is already to sea) remain at sea, unless the requirements of paragraph (2) are met.</p> <p>(2) The requirements are that—</p> <p>(i) a IBWM Certificate has been issued in respect of the ship which is still valid; and</p> <p>(ii) the IBWM Certificate has been endorsed following any intermediate or annual survey.</p>	All UK ships wherever they might be	Reg.24(1)	✓			✓		
Prohibition on non-UK ships proceeding to sea without an IBWM Certificate or appropriate documentation	<p>A ship other than a United Kingdom ship must not proceed to sea from a port in the United Kingdom unless—</p> <p>(a) a Contracting State has issued, and where appropriate endorsed, a IBWM certificate in respect of that ship and that certificate and, where appropriate, that endorsement is still valid;</p> <p>(b) the Government of a State which is not a Contracting State has issued, and where appropriate endorsed, a Certificate in respect of that ship which is deemed by the Certifying Authority to have the same force as an IBWM Certificate issued in accordance with the requirements of the Convention and that Certificate (and, where appropriate, that endorsement) is still valid;</p> <p>(c) a surveyor of ships—</p> <p>(i) has carried out an initial survey of the ship and</p> <p>(ii) is satisfied that the ship can proceed to sea without presenting a threat of harm to the environment, human health, property or resources;</p>	All other ships within UK waters or controlled waters	Reg.25	✓			✓		

	<p>or</p> <p>(d) a person having power to detain the ship—</p> <p>(i) is satisfied that the ship can proceed to sea for the purpose of—</p> <p>(aa) discharging ballast water; or</p> <p>(bb) proceeding to the nearest appropriate repair yard or reception facility available, without presenting a threat of harm to the environment, human health, property or resources; and</p> <p>(ii) has permitted the ship to so proceed.</p>							
Extension of periods of validity of IBWM Certificates	Where the period of validity of a IBWM Certificate has been extended under paragraph (2), the ship in question must not leave the port of survey until a new IBWM Certificate has been issued in respect of that ship.	All UK ships wherever they might be	Reg.30(3)	✓	✓	✓	✓	
Responsibilities of the owner and master: ship maintained to remain fit to proceed to sea	<p>The owner and master of a ship must ensure the condition of the ship and its equipment, systems and processes are maintained to conform—</p> <p>(a) in the case of a United Kingdom ship, or any ship surveyed in accordance with these Regulations, with the provisions of these Regulations; or</p> <p>(b) in the case of any other ship, with the requirements of the Convention,</p> <p>so as to ensure that the ship, in all respects, remains fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources.</p>	<p>All UK ships wherever they might be</p> <p>All other ships within UK waters or controlled waters</p>	Reg.32(1)	✓			✓	
Responsibilities of the owner and master: no change after survey expect by direct replacement	<p>The owner and master of a ship must ensure that, after any survey of the ship required by these Regulations has been completed, no change, except by way of direct replacement, is made to the structure, equipment, fittings, arrangements or materials associated with the ship's ballast water management plan and covered by the survey, without the approval of—</p> <p>(a) the Certifying Authority who appointed the surveyor to carry out the survey;</p>	<p>All UK ships wherever they might be</p> <p>All other ships within UK waters or controlled waters</p>	Reg.32(2)	✓			✓	

	<p>(b) the Secretary of State, where the relevant survey was carried out and the relevant IBWM Certificate was issued by a Contracting State other than the United Kingdom following a request made by the Secretary of State pursuant to regulation 34 (issue or endorsement of IBWM Certificates by another Contracting State); or</p> <p>(c) the administration of the ship's flag State, where the ship is not a United Kingdom ship.</p>							
Responsibilities of the owner and master: accident or defect	<p>Whenever—</p> <p>(a) an accident occurs to a ship; or</p> <p>(b) a defect is discovered in a ship, which substantially affects the ability of the ship to conduct ballast water management in accordance with Part 2 (discharge of ballast water and sediments) and Part 3 (ballast water management), the owner, demise charterer or the master of the ship must comply with the requirements of paragraph (4).</p>	<p>All UK ships wherever they might be</p> <p>All other ships within UK waters or controlled waters</p>	Reg.32(3)	✓		✓	✓	
Additional surveys of United Kingdom ships	<p>A ship to which this regulation applies must not—</p> <p>(a) proceed to sea; or</p> <p>(b) if it is already at sea, remain at sea unless the requirements set out in paragraph (3) are met.</p>	<p>All UK ships wherever they might be</p> <p>All other ships within UK waters or controlled waters</p>	Reg.33(2)	✓			✓	
Procedure to be adopted when a ship is deficient	<p>Where the owner of the ship is given notice of the suspension, that owner must notify the master of the ship of the suspension.</p>	<p>All UK ships wherever they might be</p> <p>All other ships within UK waters or controlled waters</p>	Reg.36(5)	✓				
Miscellaneous provisions relating to IBWM Certificates	<p>No person may—</p> <p>(a) intentionally alter a IBWM Certificate, unless permitted to do so under these Regulations;</p> <p>(b) intentionally make a false IBWM Certificate;</p> <p>(c) in connection with any survey required by these Regulations, knowingly or recklessly furnish false information;</p> <p>(d) with intent to deceive use, lend or allow to be used by another, an IBWM Certificate;</p> <p>(e) fail to surrender a IBWM</p>	Any person	Reg.38(4)					✓ 5

<sup>5</sup> The person in question.

	Certificate when required under paragraph (2); (f) in Scotland, forge a IBWM Certificate.							
Miscellaneous provisions relating to IBWM certificates: IBWM Certificate to be readily available on board	The owner and master of a ship, in respect of which a IBWM Certificate has been issued, must ensure that the IBWM Certificate is readily available on board the ship for examination at all times, except where it has been surrendered pursuant to paragraph (2).	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.38(5)	✓			✓	
Failure to certify a true copy	A master is required to certify that a copy of an entry from the ballast water record book is a true copy of the original.	All UK ships wherever they might be  All other ships within UK waters or controlled waters	Reg.39(6) (b)				✓	
Prohibition on discharge following sampling	(4) A notice served under paragraph (1) [prohibiting discharge following sampling] must be complied with.	All UK ships wherever they might be  All other ships within UK waters or controlled waters  Reg.47. All other ships where: (a) A foreign State, the flag State of the ship or a foreign State polluted or threatened with pollution as a result of the offence requests that proceeding be taken; or (b) the offence has caused or is likely to cause pollution in United Kingdom waters or controlled waters.	Reg.40(4)	✓	✓	✓	✓	

## Penalties

2.20. All of the offences are triable either way (as either a summary offence or an indictable offence). The maximum penalties are:

- on summary conviction, a fine of a maximum up to the statutory maximum, which in England and Wales is unlimited, and in Scotland or Northern Ireland level 5 on the standard scale; and

- on indictment, an unlimited fine.

2.21. The enforcement arrangements are set out in Part 7 of the draft Regulations.

## Guidance for the Merchant Shipping (Control and Management of Ships' Ballast Water and Sediments) Regulations 2021

2.22. A Marine Guidance Note "MGN" (Annex B) has been drafted to supplement the draft Regulations and is included in this consultation package. The purpose of the MGN is to:

- a) explain the function and application of the draft Regulations;
- b) provide clarification/amplification to the international text of the BWM Convention, where this is considered helpful;
- c) provide procedural guidance on the draft Regulations (for example how to notify the Secretary of State where this is required under the Regulations).

2.23. Where, under the BWM Convention, the UK has some discretion, the MGN also provides guidance on how the UK has exercised that. These areas are listed below and information on how we intend to implement them are held within the relevant section of the MGN. There is the opportunity to provide feedback on these areas in the consultation response form below.

- Definition of 'same location' – Section 10
- Equivalent compliance – Section 11
- Floating platforms, FSU's and FPSO Units – Section 14
- Survey and Certification application – Section 16
- Designation of Ballast Water Exchange Areas – Section 20
- Exemptions – Section 25

2.24. A Merchant Shipping Notice "MSN" (Annex C) has also been drafted to supplement the Regulations; The MSN provides details of mandatory technical requirements in the draft Regulations.

2.25. The MSN set out technical requirements for:

- The meaning of International Oil Pollution Prevention (IOPP) renewal survey"
- Ballast water reception facilities to which discharges can be made
- The ballast water management plan and record book
- Ballast water exchange
- Sediment reception facilities
- International Ballast Water Management Certificates
- The installation of ballast water management systems on ships
- The requirements for Ballast Water Management System Type Approvals.

2.26. MGNs and MSNs can be updated much more quickly than a statutory instrument. Use of an MSN and MGN allows for the UK government to be more responsive in issuing technical requirements to industry, and this approach will also not preclude the flexibility required to accommodate innovative solutions where appropriate.



## Section 3: Responding to this consultation

- 3.1. There are specific questions highlighted in section 5 of this document and information on how to respond to this consultation document.

### Audience

- 3.2. Anyone may respond to this consultation and consideration will be given to all responses. We will be particularly interested to hear from ship owners, shipping companies, protection and indemnity clubs, port and terminal operators and other parties with an interest in shipping and the marine environment.

### Duration

- 3.3. This consultation is open for **12 weeks** from 24th March 2021 (09:00). The deadline for responses is 16<sup>th</sup> June 2021 (18:00).

### Submitting your response

- 3.4. The response form is available at Section 5 of this document. Consultation responses should be emailed to [environment@mcga.gov.uk](mailto:environment@mcga.gov.uk) or you can telephone Naomi Hyland at the MCA on 0203 817 2511. Any questions should be received prior to the end date of the consultation as mentioned above. It may not be possible to consider comments received after the closing date.
- 3.5. When responding, representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions.

### Freedom of Information

- 3.6. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.
- 3.7. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 3.8. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department/MCA.

### Data Protection

- 3.9. The MCA is carrying out this consultation to gather evidence to inform the development and implementation of policy and legislation under the enabling provisions of the

Merchant Shipping Act 1995 Part IV Section 128. If your answers contain information that allows you to be identified, under data protection law, the MCA, as an Executive Agency of the Department for Transport, will be the Controller for this information.

- 3.10. The MCA will use your contact details to send you information about the consultation, for example if we need to ask follow-up questions. You do not have to give us this personal information but if you do choose to provide it, it will not be used for any other purpose without your permission.
- 3.11. Details about how the MCA looks after personal data, your rights, and how to contact our Data Protection Manager can be found on [gov.uk](https://www.gov.uk)<sup>[1]</sup>.
- 3.12. Your information will be kept securely on the MCA's IT system and any written responses will be held in a secure file and cabinet and kept for up to five years, until a post-implementation review has been completed.
- 3.13. If you do not wish to remain on this list, please reply and let us know at [environment@mcga.gov.uk](mailto:environment@mcga.gov.uk)

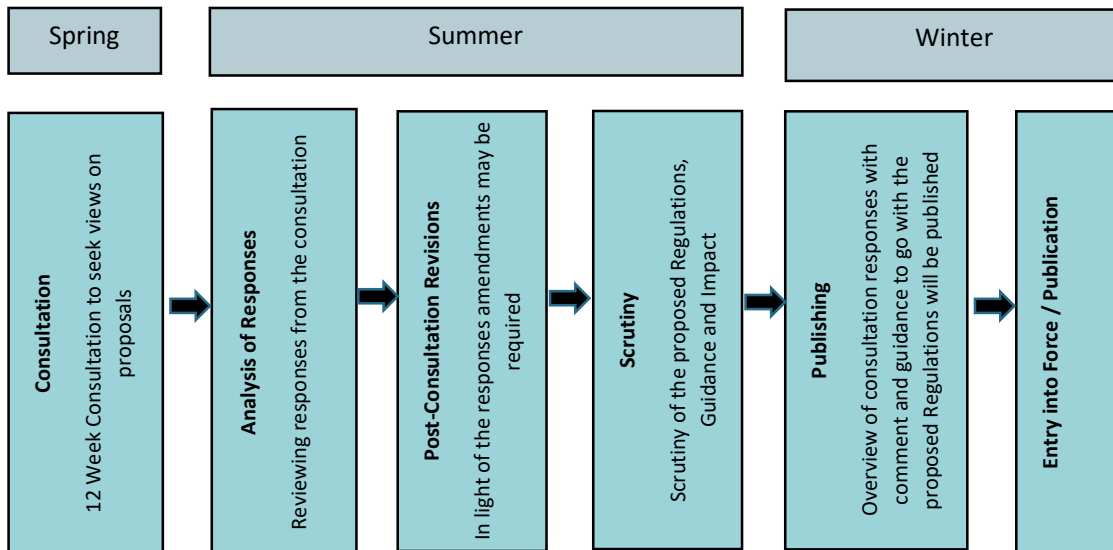
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<sup>[6]</sup> <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency/about/personal-information-charter>

## Section 4: Outline of plans beyond this consultation

- 4.1. Once this consultation closes, we will review all responses. In considering the responses we will apply appropriate weight to those from organisations and individuals with specialist knowledge of the subject area.
- 4.2. We will be analysing the responses during Summer 2021. Our aim is to publish an overview of the responses and the MCA's comments by Autumn 2021, which will be available from: [www.gov.uk/government/publications](http://www.gov.uk/government/publications)
- 4.3. Where appropriate the draft Regulations/Guidance, accompanying guidance and impact assessment will be revised to take into consideration the consultation responses.
- 4.4. Our aim is for the Merchant Shipping (Control and Management of Ships' Ballast Water and Sediments) Regulations 2021 to come into force in Winter 2021. The Regulations will be published on [www.legislation.gov.uk](http://www.legislation.gov.uk)
- 4.5. Every effort will be made to publish the revised accompanying guidance on GOV.UK in advance of Winter 2021.
- 4.6. An overview of the timetable is below for reference:

Overview of timetable -



## Section 5: Response form

What is your name? \_\_\_\_\_

What is your email address? \_\_\_\_\_

What is your job title? \_\_\_\_\_

**When responding please state whether you are responding as an individual or representing the views of an organisation:**

- I am responding as an individual
- I am responding on behalf of an organisation

(name of organisation) \_\_\_\_\_

**Please check the box that best describes you as a respondent and the size of your organisation:**

### Respondent Type

- Classification Society
- Government Agency/Department
- Individual
- Legal representative
- Protection & Indemnity
- Seafarer
- Ship Operator
- Ship Owner
- Trade Union
- Other

(please describe) \_\_\_\_\_

### Size of Organisation

- Large business (over 250 staff)
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)

## Section 5.1 Consultation Questions

- a) Do you agree that the Impact Assessment represents a true reflection of the impact of the proposals?

- Yes, I agree  
 No, I don't agree

If no, please add further details in the comment box below. If yes, you are welcome to add further details in the comment box below.

## Section 5.2

- a) Do you think that the draft Regulations will implement the requirements of the BWM Convention accurately and appropriately?

- Yes, I agree  
 No, I don't agree

If no, please add further details in the comment box below.

## Section 5.3

- a) Do you consider that you have received sufficient notification of the requirements to which you will have to comply?

- Yes, I agree  
 No, I don't agree

If no, please add further details in the comment box below.

## Section 5.4

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

- Yes, I agree  
 No, I don't agree

If no, please add further details in the comment box below.

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

- Yes  
 No

If so, please add further details in the comment box below.

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

- Yes  
 No

If no, please add further details in the comment box below.

## Section 5.5

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

- Yes  
 No

If no, please add further details in the comment box below.

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

- Yes
- No

If yes, please add further details in the comment box below.

## Section 5.6

a) 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.

- Yes, I can provide cost estimates.
- No, I can't provide cost estimates.

If yes, please add further details in the comment box below.

## Section 5.7

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

- Yes
- No

If no, please add further details in the comment box below.

### Section 5.8

- a) 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?

- Yes
- No

If yes, please add further details in the comment box below.

### Section 5.9

- a) 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 1<sup>st</sup> December 2021 and enter into force on the 1<sup>st</sup> 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?

- Yes
- No

If No, please add further details in the comment box below.



## Section 5.10

- a) 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?

- Yes  
 No

Please add further details in the comment box below.

## Section 5.11

Do you have any additional comments to add to the response?

**Please return completed response forms to [environment@mcga.gov.uk](mailto:environment@mcga.gov.uk)**

Alternatively, responses may be posted to:

Clean Ship Operations Team  
Maritime & Coastguard Agency  
Bay 2/23, Spring Place,  
105 Commercial Road,  
Southampton,  
SO15 1EG

## Section 6: Conduct of this consultation

- 6.1. This consultation has been conducted in accordance with the Cabinet Office Consultation Principles.

### Consultation principles

- 6.2. The Cabinet Office Consultation Principles can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/492132/20160111\\_Consultation\\_principles\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf)

### Feedback on conduct of consultation

- 6.3. If you have any comments regarding the conduct of this consultation, please contact the Consultation Co-ordinator at [consultation.coordinator@mcga.gov.uk](mailto:consultation.coordinator@mcga.gov.uk).
- 6.4. We are continually trying to improve the way in which we conduct consultations and appreciate your views. We would be grateful if you could complete and return the attached feedback form. These should be submitted to the Consultation Co-ordinator and are not affected by the deadline for this consultation.
- 6.5. If you require this consultation in an alternative format, please contact either the Consultation Co-ordinator or the named official conducting this consultation.

## MCA CONSULTATION FEEDBACK FORM

1. Please indicate on which Consultation you are providing feedback:

.....

2a. Please indicate whether you are responding on behalf of:

- Yourself as an Individual
- A Trade Association
- A Company
- A Government Organisation
- A Trade Union
- Other  
(please specify) \_\_\_\_\_

2b. If you are representing a company, please indicate the size of your company:

- Micro (1-9 employees)
- Small (10-49 employees)
- Medium (50-249 employees)
- Large (250+ employees)

2c. Please indicate whether you accessed this consultation package through:

- Post
- email
- Website

3. Please rate the quality of this consultation regarding accuracy, good English and spelling:

- Very good
- Good
- Average
- Poor
- Very Poor

4. Please rate the format of the consultation presentation (layout, Annexes etc.):

- Very good
- Good
- Average
- Poor
- Very Poor

5. Please rate the consultation in terms of how clear and concise you felt it was:

- Very good
- Good
- Average
- Poor
- Very Poor

6. Did you feel that the consultation was conducted over a sufficient period of time?

- Yes
- No

7. Were any representative groups, organisations or companies not consulted who you felt should have been?

- Yes
- No

If yes, who? \_\_\_\_\_

8. Please let us have any suggestions for improvement or other comments you wish to make about this consultation below:

Thank you for your time. Please return this form to:

Consultation Co-ordinator,  
Maritime and Coastguard Agency,  
Spring Place, Bay 3/26, 105 Commercial Road  
Southampton SO15 1EG  
Or e-mail it to: [consultation.coordinator@mcga.gov.uk](mailto:consultation.coordinator@mcga.gov.uk)

If you are happy to supply your name, in case we need to contact you to discuss your views further, please enter it below (this is optional, and your feedback will still be taken into account if you wish to remain anonymous):

Name \_\_\_\_\_

Tel. No. \_\_\_\_\_

**Please note that the deadline for responses to the Consultation itself does not apply to the return of this form.**

- Annex A: Draft Statutory Instrument**
- Annex B: Draft Guidance (MGN)**
- Annex C: Draft Merchant Shipping Notice (MSN)**
- Annex D: Impact Assessment**