



HOUSE OF LORDS

International Agreements Committee

12th Report of Session 2021–22

**Scrutiny of
international
agreements: Ballast
Water Management
Convention**

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International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider matters relating to the negotiation, conclusion and implementation of international agreements, and to report on treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.

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The Members of the International Agreements Committee are:

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[Lord Morris of Aberavon](#)

[Lord Gold](#)

[Lord Oates](#)

[Baroness Hayter of Kentish Town](#) (Chair)

[Lord Razzall](#)

[Lord Kerr of Kinlochard](#)

[Lord Robathan](#)

[Lord Lansley](#)

[Lord Sandwich](#)

[Baroness Liddell of Coatdyke](#)

[Lord Watts](#)

Declaration of interests

See Appendix 1.

A full list of Members' interests can be found in the Register of Lords' Interests:

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Committee staff

The current staff of the Committee are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst) and Robert Cocks (Committee Operations Officer).

Contact details

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SUMMARY

This report addresses the following Agreement, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010 (CRAG), and considered at the meeting of the Committee on 1 December 2021, which we report for information:

- International Convention, done at London on 13 February 2004, for the Control and Management of Ships' Ballast Water and Sediments, 2004 (as amended) (CP 557, 2021)

Scrutiny of international agreements: Ballast Water Management Convention

AGREEMENT REPORTED FOR INFORMATION

The International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (as amended) (CP 557, 2021)¹

1. The International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (as amended) (the Convention) was laid on 8 November 2021, and the scrutiny period is scheduled to end on 13 December 2021. It was considered by the Committee on 1 December 2021.
2. The Convention was adopted on 13 February 2004 at a conference convened by the International Maritime Organization (IMO). Its purpose is to prevent, minimise and ultimately eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments.
3. The IMO has warned:

“Invasive aquatic species present a major threat to the marine ecosystems, and shipping has been identified as a major pathway for introducing species to new environments. The problem increased as trade and traffic volume expanded over the last few decades, and in particular with the introduction of steel hulls, allowing vessels to use water instead of solid materials as ballast.”²
4. The Convention will require all ships operating under the flag of a contracting Party (or operating under their authority) to implement a Ballast Water and Sediments Management Plan. All ships will have to carry a Ballast Water Record Book and be required to carry out ballast water management procedures to a given standard.³
5. The Convention entered into force on 8 September 2017 without the UK having acceded to it. On 25 October 2019, the House of Commons' Environmental Audit Committee (EAC) published a report highlighting that the Government had failed to meet a recommendation from 2014 to ratify the

1 International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (as amended), CP 557, November 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1031335/MS_6.2021_Convention_Ships_Ballast_Water_Sediment_2004.pdf [accessed 2 December 2021]

2 International Maritime Organization, 'International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM)': [https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships%27-Ballast-Water-and-Sediments-\(BWM\).aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships%27-Ballast-Water-and-Sediments-(BWM).aspx) [accessed 2 December 2021]

3 For more information on the specific obligations, see: Maritime and Coastguard Agency, *Ballast Water Management FAQ*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003522/BW_-_FAQ_-_GOV.UK.pdf [accessed 2 December 2021]

Convention to tackle the threat of invasive species.⁴ The EAC recommended that the Government “urgently accede to the Ballast Water Management Convention at the earliest possible opportunity”, noting that this would “be a simple measure to limit the arrival of new [invasive] species”.⁵

6. The Government’s Explanatory Memorandum (EM) states that the UK played “a key role in negotiations on the Convention” and indicates that accession will “bring the UK in line with the 86 States that have already ratified and introduced legislation to implement the Convention”.⁶
7. **An FAQs document published by the Government explains that accession had been scheduled for 2020, but was delayed because of the COVID-19 pandemic.⁷ We believe that the EM should have included this information. The EM also fails to explain why the UK has delayed ratification of the Convention for so many years. We call on the Government to set this out, including whether there were problems of implementation related to costs.**

Governance and amendments

8. Article 15 of the Convention contains a dispute resolution clause:

“Parties shall settle any dispute between them concerning the interpretation or application of this Convention by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements or other peaceful means of their own choice.”
9. Article 19 provides the procedure for amendments—these can be made either after consideration within the IMO or by a Conference of Parties convened specifically to consider amendments to the Convention.
10. **We regret that the Government has failed to spell out in its EM the circumstances in which amendments would be subject to Parliamentary scrutiny. We call on the Government to review its quality assurance processes to ensure that all EMs address whether amendments will be subject to scrutiny under CRAG, in line with existing Government guidance.⁸**

Entry into force

11. The EM explains that the Convention will be implemented by an Order in Council under Section 128(1)(e) of the Merchant Shipping Act 1995. A draft of the Order was laid before Parliament on 4 November for approval by

4 Environmental Audit Committee, *Invasive species* (First Report, Session 2019, HC 88), para 28. In 2014, the Government had indicated that it did not feel that it was in a position to ratify the Convention because work was still continuing at the International Maritime Organisation to clarify how the sampling and analysis could be undertaken. It argued that “without final processes and procedures in place, we feel that the Convention cannot be effectively enforced.” Environmental Audit Committee, *Invasive non-native species* (Fourteenth Report, Session 2013–14, HC 913), para 36

5 Environmental Audit Committee, *Invasive species* (First Report, Session 2019, HC 88), para 32.

6 EM, para 3.3

7 Maritime & Coastguard Agency, *Ballast Water Managements FAQ*, June 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1003522/BW_-_FAQ_-_GOV.UK.pdf [accessed 2 December 2021]

8 Foreign, Commonwealth and Development Office, *Treaties and Memoranda of Understanding (MOUs): Guidance on Practice and Procedures*, October 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1024663/Treaties_and_MOUs_Guidance_Oct_2021.odt [accessed 1 December 2021]

resolution of both Houses, in accordance with Section 128(8)(a) of Merchant Shipping Act 1995.⁹

12. Unusually, the domestic legislation will only be in place after ratification, since the power in section 128(1)(e) of the 1995 Act can only be exercised where the Convention has been ratified. The EM explains that this should not cause any difficulties since there will be a three-month lag between ratification and the Convention coming into force for the UK.¹⁰ The Government's intention is that the implementing regulations will enter into force shortly before the Convention takes effect for the UK, and the EM argues that the risks of this timetable not being achieved are "assessed as very low".¹¹

Territorial scope and consultation

13. The Convention will apply to the United Kingdom and the EM makes clear that the Government is working with the Crown Dependencies and Overseas Territories that have expressed an interest in having the Convention extended to them in future.
14. The decision to accede to the Convention was subject to a 12-week public consultation early in 2021. This included consultation on the draft implementing Regulations, Merchant Shipping Notice and Marine Guidance Notice. The EM highlights that shipping is a fully reserved matter, but that the devolved administrations were consulted on the domestic legislation and guidance.
15. **We report the International Convention for the Control and Management of Ships' Ballast Water and Sediments to the House for information. In particular, we highlight our comments at paragraphs 7 and 10 of this report.**

9 [Draft Merchant Shipping \(Control and Management of Ships' Ballast Water and Sediments\) Order 2022](#)

10 EM, para 5.2 and Article 18(3)

11 EM, para 5.2

APPENDIX: LIST OF MEMBERS, DECLARATIONS OF INTEREST AND COMMITTEE STAFF

International Agreements Committee Members and staff

Lord Astor of Hever

No relevant interests

Lord Gold

Director, Gold Collins Associates Ltd

Principal, David Gold & Associates LLP

Baroness Hayter of Kentish Town

No relevant interests

Lord Kerr of Kinlochard

Chairman, Centre for European Reform

Deputy Chairman, Scottish Power plc

Lord Lansley

Director, LOW Associates Ltd

Chair, UK-Japan 21st Century Group

Trustee, Radix

Baroness Liddell of Coatdyke

Adviser, PricewaterhouseCoopers

Association Member, Bupa

Chair, Annington Ltd

Honorary Vice President, Britain-Australia Society Education Trust

Trustee, Northcote Educational Trust

Lord Morris of Aberavon

No relevant interests

Lord Oates

Chair, Advisory Committee, Weber Shandwick UK

Director, H&O Communications Ltd

Lord Razzall

Director, North Atlantic Mining Associates Limited

Director, ZeU Technologies Inc

Shareholdings, ZeU Technologies Inc

Shareholdings, St-Georges Eco-Mining Corporation

Shareholdings, Tintra plc

Lord Robathan

No relevant interests

Earl of Sandwich

No relevant interests

Lord Watts

No relevant interests

The Committee staff are Jennifer Martin-Kohlmorgen (Clerk), Andrea Ninomiya (Policy Analyst), and Robert Cocks (Committee Operations Officer).

Specialist Adviser

Alex Horne acted as Specialist Adviser to the Committee and declared the following interests:

Counsel, Hackett & Dabbs LLP; Visiting Professor at Durham University; and Special Adviser, United Nations Development Programme (Pacific Region).