EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS) ORDER 2022

2022 No. 629

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order will enable the Secretary of State to make regulations to give effect to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 ("the Convention"). The Convention aims 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. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is England and Wales, Scotland and Northern Ireland.

5. European Convention on Human Rights

5.1 Robert Courts MP, The Parliamentary Under Secretary of State for the Department for Transport, has made the following statement regarding Human Rights:

"In my view the provisions of the Merchant Shipping (Control and Management of Ships' Ballast Water and Sediments) Order 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 128(1)(e) of the Merchant Shipping Act 1995 ("the 1995 Act") provides that Her Majesty may by Order in Council make such provision as She considers appropriate for the purpose of implementing any international agreement not mentioned in paragraphs (a) to (da) of that section which has been ratified by the United Kingdom and which relates to the prevention, reduction or control of pollution of the sea or other waters by matter from ships.

6.2 This Order authorises the making of regulations by the Secretary of State to give effect to the Convention. The Convention was adopted on the 13th February 2004 at a diplomatic conference convened by the International Maritime Organization and entered into force internationally on 8th September 2017, one year after at least 30

states representing 35% of the world's merchant shipping tonnage had ratified or acceded to it.

6.3 The United Kingdom will not have ratified the Convention at the time that Parliament considers the draft Order. This is because of the timetable within which the Convention must be ratified, and the Order and Regulations made. To ensure that the United Kingdom is able to fulfil its international obligations, the Regulations implementing the Convention must come into force within 3 months of ratification. This is because pursuant to Article 18(3) of the Convention any instrument of ratification deposited after the date on which the Convention enters into force will take effect 3 months after the date of deposit. To ensure that the United Kingdom's domestic law implements its international obligations, the Government intends that the United Kingdom will ratify the Convention in the weeks before the draft Order is submitted to the Privy Council. This will ensure that the Regulations can be made within the requisite 3 months.

7. Policy background

What is being done and why?

7.1 The Order provides the Secretary of State with the power to make regulations to implement the Convention. The purpose of the Convention 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. It does this by prohibiting the discharge of unmanaged ballast water and sediments in order the prevent the spread of invasive non-native species.

7.2 The United Kingdom played a key role in negotiating the Convention and is fully supportive of it. As such, ratification of the Convention is the appropriate and consistent action to take. Implementing the Convention will protect United Kingdom waters and controlled waters from harmful aquatic species and pathogens that may be present within the ballast water and sediments of ships visiting the United Kingdom. Implementation will help prevent the introduction of species not yet present in the United Kingdom and make sure that colonies of those organisms that may already be present are not further supported by new introductions.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 The purpose of this instrument is to provide the Secretary of State with the power to make regulations to implement the Convention. Similar or related legislation is not in place and there is accordingly no scope for consolidation.

10. Consultation outcome

10.1 Consultation has not been undertaken for this instrument. Whilst this technical instrument is an important step in making the legislative changes required to transpose the Convention into UK law, it itself has no impact on the public in general.

10.2 Relevant Government departments were consulted with during the negotiation of the Convention. The Maritime and Coastguard Agency consulted on the draft

Regulations, Merchant Shipping Notice and Marine Guidance Notice designed to implement the Convention in Spring 2021.

11. Guidance

11.1 Apart from this Explanatory Memorandum no guidance is necessary for this instrument as it performs a purely technical function.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it has no impact on the cost to business, charities or voluntary bodies. An impact assessment has been prepared for the Regulations implementing the Convention.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that this Order performs a purely technical function and therefore has no impact on small businesses.

14. Monitoring & review

14.1 As the purpose of this instrument is purely technical to facilitate the use of powers contained in the 1995 Act to provide powers in secondary legislation to give effect to the requirements of the Convention, monitoring and review is not considered necessary.

15. Contact

15.1 Megan Cousins at the Maritime and Coastguard Agency Telephone: 07769 284548 or email: megan.cousins@mcga.gov.uk can be contacted with any queries regarding the instrument.

15.2 Katy Ware, Director for United Kingdom Maritime Services, at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Courts MP, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.