EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (TONNAGE) (AMENDMENT) REGULATIONS 2020

2020 No. 362

1. Introduction

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

1.2 This memorandum contains information for the Secondary Legislation Scrutiny Committee.

2. Purpose of the instrument

2.1 These Regulations amend the Merchant Shipping (Tonnage) Regulations 1997 (SI 1997/1510) ("the 1997 Regulations") to implement certain provisions of the International Convention on Tonnage Measurement of Ships, 1969 ("the Convention") in the United Kingdom. They also make consequential amendments.

3. Matters of special interest to Parliament

Matters of special interest to the Secondary Legislation Scrutiny Committee

3.1 The Secondary Legislation Scrutiny Committee included in its 21st Report of Session 2017-19 an exchange of correspondence between the Committee and the Department in relation to the implementation backlog of international maritime conventions. These Regulations are one of the statutory instruments which implement outstanding international obligations to which the Department referred in that correspondence.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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, and United Kingdom ships wherever they may be.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Convention governs the determination, certification and regulatory oversight by contracting states (of which the United Kingdom is one of 161 states bound by the Convention) of the tonnage of ships engaged on international voyages. The

Convention is currently implemented in the United Kingdom by virtue of the 1997 Regulations.

6.2 The 1997 Regulations, and domestic legislation which subsequently amended them, did not implement provision in the Convention in relation to force majeure (e.g. if a ship deviates from its intended voyage due to adverse weather) and the inspection of ships flying the flag of one contracting state when those ships are in the port of another contracting state (e.g. a non-United Kingdom ship in a United Kingdom port). The Convention was also amended by a Resolution adopted by the International Maritime Organization in 2013[1], although the measures it introduced imposed obligations on states and do not need to be implemented into United Kingdom law.

6.3 These Regulations amend the 1997 Regulations to (a) implement the measures described in paragraph 6.2, and (b) make a number of necessary consequential amendments. The consequential amendments include provision to update obsolete references to other secondary legislation and introduce the duty to review regulatory provisions in secondary legislation which now apply in accordance with section 28 of the Small Business, Enterprise and Employment Act 2015.

7. Policy background

What is being done and why?

7.1 These Regulations are designed to ensure that United Kingdom law is aligned with the International Convention on Tonnage Measurement of Ships, 1969 ("the Convention"), which makes provision governing the calculation of tonnage of ships engaged on international voyages. Further, as a party to the Convention, these Regulations fulfil the United Kingdom's continuing obligations under international law to implement the requirements of the Convention.

7.2 Recognising that the establishment of a universal system of tonnage measurement for ships engaged on international voyages should constitute an important contribution to maritime transport, a Conference was held in London from 27 May to 23 June 1969, upon the invitation of the Inter-Governmental Maritime Consultative Organisation (since renamed the International Maritime Organization ("IMO")) for the purposes of drawing up an International Convention of Tonnage Measurement of Ships, which was designed to simplify and consolidate into one document the various methods of tonnage calculation then in use by member states worldwide. The Convention clarifies that gross and net tonnage would suffice to determine the overall "tonnage" of the ship, the gross tonnage being a measure of the total volume of all enclosed spaces of the ship in cubic metres and the net tonnage being a measure of the volume of the ship devoted to earning revenue (for example, cargo holds or passenger accommodation).

7.3 Owing to concerns as to the effect the Convention may have had on the tonnage of existing ships, the requisite number of signatories to the Convention to trigger its entry into force was not obtained by the IMO until 18 July 1982, which is also the date of its entry into force in the United Kingdom. The Convention was initially implemented in United Kingdom law by the Merchant Shipping (Tonnage) Regulations 1982; this instrument was superseded by the Merchant Shipping (Tonnage) Regulations 1997, which came into force on 11 July 1997.

[1] See Resolution A.1084(28) adopted by the International Maritime Organization on 4 December 2013.

7.4 Since 1997 the Convention has been amended slightly, but these amendments are not required to be implemented into United Kingdom law because they impose obligations on the UK as a state (and not persons in the UK). There were, however, two Articles of the Convention (Articles 5 and 12) which were not implemented in or before 1997.

7.5 Article 5 of the Convention relates to "force majeure" whereby a ship belonging to a flag state not signatory to the Convention would not be obliged to comply with the provisions of the Convention were it forced from its intended voyage by stress of weather or other circumstances beyond the control of the master and needed to enter into UK waters or use facilities to maintain the safety of the ship and its crew. Article 12 of the Convention relates to the inspection of foreign-flag ships in UK ports for the purposes of verifying tonnage and ascertaining that no new alterations have taken place which could affect the tonnage figures. Similar powers of inspection are available under section 258 of the Merchant Shipping Act 1995 and these Regulations implement Article 12 by extending those powers in relation to foreign-flag ships in UK waters. These Regulations therefore implement both these Articles to fully align United Kingdom law with the Convention.

7.6 The amendments introduced in this instrument will not result in any changes to the tonnage of ships already certified under the Convention or to new ships which will be built in the future. If this were the case, the amendments may have had implications to business as tonnage is used in, for example, calculating harbour dues (net tonnage) and determining the applicability of other regulations (gross tonnage). Only one of the amendments, relating to the power to board ships to check the validity of the tonnage certification and the physical status of the ship, could potentially involve extra costs to business, but as described in the preceding paragraph these Regulations only extend existing powers in relation to non UK ships.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Department currently has no plans to consolidate this legislation.

10. Consultation outcome

10.1 The Convention and its amendments were negotiated in the IMO, at which both industry groups and unions have consultancy status. The Department also takes the view that these Regulations do not introduce new inspection powers (as described in paragraph 7.5).

10.2 Given that these Regulations are implementing international obligations and their minimal effect, the Department considers that no further consultation is necessary.

11. Guidance

11.1 None.

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 these Regulations relate to the updating and maintenance of existing regulatory standards.

13. Regulating small business

13.1 These Regulations do apply to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to take no further action.

13.3 The basis for the final decision on what action to take to assist small businesses is based on the Department's recognition that the owners of ships which are large enough to fall within the scope of the Convention are larger entities, leaving small businesses out of the scope. As such, no specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation reflects the obligation in section 28 of the Small Business, Enterprise and Employment Act 2015 that the instrument contains a statutory review provision requiring the Secretary of State to review the operation of these Regulations and publish a report five years after they come into force (i.e. by 20 April 2025), and every five years thereafter.

14.2 A statutory review clause is included in these Regulations.

15. Contact

15.1 Andrew Scott at the Ship Safety Department, Maritime and Coastguard Agency Telephone: 0191 253 4567 or email: andrew.scott@mcga.gov.uk can be contacted with any queries regarding the instrument.

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

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