Dear Secondary Legislation Scrutiny Committee

I wish to draw your particular attention to the following two statutory instruments which were laid before Parliament on 15 February 2018:


I have no specialist expertise in merchant shipping, but the Explanatory Memoranda and Impact Assessments accompanying the above Regulations are, I suggest, quite alarming in how they reveal the UK's current inability to enforce the current law and failure to implement amendments to international legal obligations in a timely manner.

The above documents are produced by the Department for Transport in conjunction with the Maritime and Coastguard Agency and endorsed by Ministers, so their contents should presumably taken seriously. In the absence of effective regulation, merchant shipping is a potentially high risk sector for environmental pollution, personal safety and employment exploitation. Moreover, the United Kingdom has historically prided itself on its maritime strength and its fostering of world-class regulatory standards.

I note the following points:

1. SI 2018/68 will implement the revised Annex II to the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL). The revision was adopted in 2004 and entered force in international law on 1 January 2007. This seems an extraordinary delay.

2. SI 2018/155 belatedly implements international amendments to the International Load Line Convention of 1966. The Convention's implementation seems not to have been amended in UK law since the 1988 Protocol to the Convention (which came into force in 2000) was implemented in UK amending regulations in 1998. The 2018 SI implements International Maritime Organization (IMO) resolutions MSC.143(77), MSC.172(79), MSC.223(82), MSC.270(85), MSC.329(90), MSC.345(91), MSC.356(92) and MSC.375(93). The earliest of these amending resolutions was adopted by the IMO on 5 June 2003 with effect from 1 January 2005. This seems an extraordinary accumulation of unimplemented international commitments over many years in such an important regulatory field.

3. The Impact Assessment for SI 2018/155 states in paragraph 2.4: "The UK currently has a backlog of some 40 separate items of maritime regulation. Without changes to current resourcing or practice, this backlog is unlikely ever to be eliminated and, indeed, can be expected to grow." While this is mitigated by the SI's novel use of ambulatory references to IMO obligations (automatically importing any future amendments to the Convention, made possible by the Deregulation Act 2015), it is
unclear to what extent this backlog will continue to exist in respect of other maritime regulations even after the above SIs come into force.

4. Paragraph 2.5 of the above Impact Assessment states: "While the ILLC/ILLP is not transposed into UK law the UK does not have the legal authority to certify its own ships to the relevant standards. Failure to do so makes it much more likely that a UK ship will be detained in a non-UK port for non-compliance, leading to expensive delays and inconvenience for UK flagged ships trading internationally, and to global criticism and the UK's loss of status as a leading maritime nation." So there are serious external as well as internal implications of DfT's failure to keep pace with international maritime regulation. And DfT reveals that the UK is currently unable even to certify its own ships to relevant standards (and will remain unable to do so until the SI comes into force on 9 March), putting UK-flagged ships at risk of detention abroad.

5. More generally, in relation to both SIs, your Committee might consider that the House of Lords would be interested to compare the Government's Brexit policy with the Secretary of State for Transport's decision to use ambulatory references to delegate UK law-making powers to a supranational body (namely a two-thirds majority of the Maritime Safety Committee of the IMO which is empowered to further amend the above Conventions). Does Her Majesty's Government consider this to be a surrender of sovereignty or a pragmatic regulatory alignment?

I am copying this email to the House of Commons Transport Committee, as there may be some shared interest in the broader issues.

Regards

Richard Greenhill