

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (HEALTH AND
SAFETY) REGULATIONS 20**

[Year] No. [XXXX]

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 is one of a series of instruments designed to bring UK law into line with the Maritime Labour Convention 2006 (“MLC”), an International Labour Organization (“ILO”) treaty concerning seafarer employment on merchant shipping. The UK intends to ratify the Convention.

2.2 This instrument extends health and safety duties to self-employed seafarers, introduces new duties to report occupational diseases to the Secretary of State and to take account of published statistics on health and safety when conducting a risk assessment, and makes a minor change to the criteria for setting up a safety committee on UK ships.

3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**

3.1 None.

4. **Legislative Context**

4.1 If the UK ratifies the MLC, it will be subject to a legal obligation to ensure its laws meet the requirements of the Convention. This instrument contributes towards achieving this objective. Further, as a matter of European Law, Directive 2009/13/EC gives legal force to a Social Partners Agreement concerning the Convention. This instrument further contributes towards discharging the UK’s obligations under that Directive.

4.2 The MLC is a consolidation with amendments of various ILO Conventions, many of which the UK has ratified and is already bound by. In this context, the UK ratified the earlier Merchant Shipping (Minimum Standards) Convention (C147 of 1976), which required parties to implement the substantive provisions of the Prevention of Accidents (Seafarers) Convention (C134 of 1970)

4.3 Within the EU, Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, known as “the Framework Directive”, and many of its daughter directives apply to workers on all ships, including fishing vessels which are not subject to the MLC. These Directives have been implemented in the UK using a combination of powers from the Merchant Shipping Act 1995 section 85 and the European Communities Act section 2(2) to apply to UK ships wherever they are in the world.

4.4 The instrument is made under sections 85(1)(a) and (b), (3), (5) and (7) and 86(1) of the Merchant Shipping Act 1995, and section 2(2) of the European Communities Act 1972. Further to the European Communities (Definition of Treaties) (Maritime Labour Convention) Order 2009 (S.I. 2009/1757), the Convention is regarded as one of the Community Treaties within the meaning of section 1(2) of that Act.

4.5 The MLC was presented to Parliament in a White Paper (Cmd. 7049). [At present the Convention is not in force internationally, but the necessary criteria have been met and it will come into force on 20 August 2013. The Government does not intend to bring the instrument into force until the Convention is in force internationally].

4.6 A transposition note is attached.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 This instrument applies to relevant United Kingdom ships, wherever they are. It also applies to certain relevant non-United Kingdom ships when they are in a United Kingdom port or United Kingdom waters.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 The instrument is designed to ensure that UK law is fully in line with the MLC, with a view to discharging obligations mentioned in para 4.1 above. The changes will not have a significant practical impact on shipowners or seafarers, since they largely reflect best practice, and do not apply to fishing vessels which are not covered by the MLC. However, this instrument will:

- 7.1.1 Extend the general duties of the Company, employers and the shipowner to ensure health and safety protection of self-employed seafarers as well as employed seafarers working on board;
- 7.1.2 Extend specific health and safety duties (for example relating to work equipment, personal protective equipment, noise and vibration, and exposure to substances hazardous to health) in existing H&S Regulations to self-employed seafarers when they are working alongside employed seafarers;
- 7.1.3 Require shipowners to report any occurrence of an occupational diseases of which they have been notified by a medical practitioner to the Secretary of State;
- 7.1.4 Amend the minimum criteria for appointment of a safety committee from more than 5 workers on a ship to 5 or more seafarers; and remove the condition that safety representatives must have been elected;
- 7.1.5 Require the shipowner to take into account health and safety statistics when carrying out risk assessments for work activities on board the ship.

- Consolidation

7.2 As regards the ILO, the MLC consolidated over 60 ILO instruments into a single Convention. As regards UK law, the existing health and safety legislation must remain in place to apply the EC directive provisions to fishing vessels, to which the MLC does not apply, which makes a thorough consolidation difficult at this stage. There are also benefits in ensuring that the shipping health and safety legislation continues to mirror the structure of the onshore health and safety legislation for the benefit of those working or employing workers at the margins. Consolidation at this stage is therefore not considered appropriate.

8. Consultation outcome

8.1 [Formal public consultation on the Regulations has yet to be undertaken. However, the MLC, like all ILO instruments, was developed on a tripartite basis, and the Maritime and Coastguard Agency ("MCA") is working closely with seafarer and shipowner representatives on its implementation for the UK. The proposals have been subject to preliminary discussion with stakeholders ahead of public consultation and have their broad support in principle.]

9. Guidance

9.1 [The MCA will publish a Marine Guidance Note to explain the impact of the new regulations. This will form part of the consultation package.]

10. Impact

10.1 The impact on business, charities or voluntary bodies is outlined in the Impact Assessment, but stakeholders have advised that the proposals largely reflect existing best practice and are considered unlikely to result in significant additional costs for shipowners.

10.2 The impact on the public sector is considered likely to be minimal, given the small number of reports of occupational diseases which are expected (based on the experience of the Health and Safety Executive's existing reporting requirements for shore-based industry), and the low cost of publishing information on health and safety statistics.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The purpose of the Convention is to implement an adequate minimum living and working conditions, for all seafarers. To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to exclude vessels operating within 60 miles of a safe haven in the United Kingdom on domestic voyages from the administrative burdens of regular inspection and certification under the Maritime Labour Convention, 2006. This is expected to exclude the smallest businesses which will generally operate close to shore.

12. Monitoring & review

12.1 The intended outcome of these Regulations is that (a) UK law complies with the requirements of the Convention and Directive 2009/13 and (b) the health and safety of all seafarers is adequately protected, regardless of their employment status. The latter will be measured by continuing to monitor accident rates and trends, or any representations received from shipowners or seafarers or their representative organisations regarding the unsuitability for purpose of the Regulations. .

12.2 At the ILO level, the ILO will conduct a review of the MLC after five years, taking into account the views of stakeholders.

12.3 At the European level, the Commission is required to inform the European Parliament and the Council of progress in the implementation of Directive 2009/13 in the Member States on a biennial basis.

[12.4 At the UK level, the instrument contains a review clause which obliges the Secretary of State to review the instrument no more than 5 years from the date it comes into force, and at intervals no greater than 5 years thereafter.]

13. Contact

Julie Carlton at the Maritime and Coastguard Agency Tel: 02380 329 216 or email: Julie.Carlton@mcga.gov.uk can answer any queries regarding the instrument.