

DRAFT EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION)
(MINIMUM AGE) REGULATIONS 20XX

S.I. 201X 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”) and International Labour Organisation (“ILO”) treaty concerning seafarer employment on merchant shipping. The UK intends to ratify the Convention.

2.2 This instrument updates the statutory provisions regarding the employment of young persons

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

3.1 None.

4. Legislative Background

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.

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. The existing ILO Convention relevant to this instrument is Minimum Age (Sea) Convention 1973 (No.138)

4.3 Section 55 of the Merchant Shipping Act 1995 prohibited the employment of any person under school leaving age on a ship. This was amended by the Merchant Shipping (Hours of Work) Regulations 2002 (S.I. no. 2002/2125) to prohibit the employment of any person under the age of 16 on a seagoing vessel, implementing a provision of EC Directive 1999/63/EC. In addition, EC Directive 94/33/EC on the protection of young people at work was implemented, as respects the UK maritime and fishing sectors by the Merchant Shipping (Health and Safety at Work) (Employment of Young Persons) Regulations 1998, (as amended by the Merchant Shipping (Hours of Work) Regulations 2002) which also

implemented, in part, the International Labour Organisation Merchant Shipping (Minimum Standards) Convention 1976.

4.4 In 2006 the International Labour Organization adopted the Maritime Labour Convention, 2006 which consolidates and updates over 60 earlier maritime labour instruments, and includes provisions on the minimum age of seafarers and precautions for the health and safety of seafarers under the age of 18. Council Decision 2007/431/EC encourages Member States to ratify the Maritime Labour Convention by the end of 2010.

4.5 The instrument is made under section 2(2) of the European Communities Act 1972 and section 85 of the MSA 1995. 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.

4.6 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 before the date the Convention comes into force internationally.

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

6.1 **[MINISTER] has made the following statement regarding Human Rights:**

In my view the provisions of the Merchant Shipping (Maritime Labour Convention) (Minimum Age) Regulations 201* are compatible with the Convention rights.

7. Policy background

- **What is being done and why**

7.1 Many of the requirements of the MLC regarding minimum age are already in place in the legislation referred to in paragraph 4.3 above. This instrument is designed to ensure that UK law is fully in line with the MLC, with a view to discharging obligations mentioned in paragraph 4.1 above.

7.2 This instrument amends section 55 of the Merchant Shipping Act 1995 so that it will cease to apply to United Kingdom ships to which this instrument applies, because it contains a new provision which will prohibit the employment, engagement or work of persons below 16 years of age.

7.3 It will also prohibit night work for those below 18 years of age, except where this is essential to the training of the seafarer or to the specific nature of the duty. [Draft MSN 1838(M)] lists the types of training which to which this exception applies.

7.4 The Merchant Shipping and Fishing Vessels (Health and Safety at Work)(Employment of Young Persons) Regulations 1998 already implement other aspects of the MLC provisions for the protection of those under the age of 18 years (“young persons”):

7.4.1 those employing young persons must identify types of work which are likely to jeopardise their health and safety, and must take addition protective measures if they are to be allowed to undertake such work. The types of work which are considered to fall in this category are specified in [draft MSN 1838(M)];

7.4.2 young persons must have increased rest periods, compared to other seafarers.

- **Consolidation**

7.5 As regards the ILO, the MLC consolidated over 60 instruments into a single Convention. As regards UK law the instrument will consolidate the requirements relating to minimum age for the merchant navy into one instrument.

8. Consultation

8.1 [This paragraph will be completed after formal public consultation on the Regulations has been 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 Merchant Shipping Notice as above to explain the proposed requirements and the impact of the new regulations. This will form part of the consultation package.

10. Impact

10.1 The impact on business is considered likely to be low. The current legislation is in practical terms largely compliant with the Maritime Labour Convention, 2006. This instrument brings the legislation fully into line.

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 and 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) no person under the minimum age shall be employed or engaged on a ship.

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

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