



Maritime &
Coastguard
Agency

Consultation Document:

IMPLEMENTATION OF MLC 2018
AMENDMENTS – PROTECTION OF
SEAFARERS HELD CAPTIVE AS A RESULT
OF PIRACY OR ARMED ROBBERY

ENFORCEMENT PROVISIONS FOR
LEGISLATION IMPLEMENTING ILO WORK
IN FISHING CONVENTION

June 2020

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Section 1: Overview of this consultation

Aim

- 1.1. This consultation seeks your views on UK proposals for implementation of amendments to the Maritime Labour Convention, 2006 (MLC) adopted in 2018. The amendments ensure that while seafarers are held captive as a result of piracy or armed robbery, their seafarer employment agreement (SEA) remains in force and they must continue to be paid.
- 1.2. The proposed Regulations also include corrections to legislation implementing the Work in Fishing Convention, 2007. Those corrections are explained, and comments invited, in a separate consultation document.

Views sought

- 1.3. Your views are sought on whether the proposed Merchant Shipping (Maritime Labour Convention and Work in Fishing Convention) (Amendment) Regulations, attached at Annex A, adequately implement the MLC 2018 amendments.
- 1.3. A full list of consultation questions is contained in Section 5 of this consultation.

Deadline for responses

- 1.4. Responses are welcomed from 22 June 2020 until 3 August 2020.

Section 2: Areas for consideration – MLC Amendments

2.1 Background

The International Labour Organization's Maritime Labour Convention, 2006 (MLC)¹ updated and replaced a total of over 60 instruments relating to the living and working conditions of seafarers. It consists of Articles and a Code, Part A (mandatory standards) and Part B (Guidance).

The aims of the MLC are to ensure comprehensive worldwide protection of the rights of seafarers (the Convention is sometimes called the seafarers' Bill of Rights), and to establish a level playing field for countries and shipowners committed to providing decent working and living conditions for seafarers, protecting them from unfair competition from sub-standard ships. The UK ratified the MLC on 7 August 2013

¹ <https://www.ilo.org/global/standards/maritime-labour-convention/text/lang--en/index.htm>

The MLC entitles all seafarers to written terms and conditions of employment (a seafarer employment agreement (SEA)), decent accommodation and food, medical care, regulated working time/rest hours, annual leave, repatriation, social protection and health and safety on board. It also provides minimum standards relating to recruitment and placement, requires all seafarers to have a certificate of medical fitness to work and relevant training and qualifications. Ratifying countries must have in place welfare facilities for seafarers calling in their ports and provide a social security to seafarers ordinarily resident in territory which is equivalent that provided to other resident workers.

The MLC was innovative for the ILO as it provides simplified provisions for the Code to be amended, intending to ensure that the MLC remains up to date. The 2018 amendments are the third set of amendments to the MLC. The UK implemented the first set of amendments relating to abandonment and seafarer compensation in the case of sickness, injury and death at work (known as the 2014 amendments) in July 2018, and the second set, providing additional time for the issue of the Maritime Labour Certificate to ships which have had a satisfactory renewal survey (flexibility which is in line with other international maritime conventions) in March 2019.

In 2017 a Working Group of the ILO's Special Tripartite Committee on the MLC examined whether the Convention needed to be amended to ensure that seafarers held captive as a result of piracy or armed robbery continued to receive their wages.

In 2018, the Special Tripartite Committee met and agreed the amendments which were adopted by the ILO Governing Body in June of that year. The amendments are scheduled to come into force on 26 December 2020.

Definitions:

“armed robbery against a ship” means any illegal act of violence or detention or any act or threat of depredation, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea, or any act of inciting or of intentionally facilitating such an illegal act;

“piracy” consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

(Article 101 of the United Nations Convention on the Law of the Sea)

2.2 Proposed Changes

MLC 2018 amendments:

The proposed Merchant Shipping (Maritime Labour Convention and Work in Fishing Convention) Regulations (“the proposed Regulations”) amend the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers) Regulations 2014 (“the 2014 Regulations”).

Part 4 of the 2014 Regulations sets out requirements to ensure that every seafarer, regardless of their employment status, has a written seafarer employment agreement (SEA) with the shipowner which is clear and enforceable and provides at least the minimum standards for terms and conditions laid down in the Convention.

Regulation 11 in part 4 sets out provisions relating to the termination of a SEA. The conditions under which a SEA is terminated must be clear from the SEA.

The proposed Regulations insert a new regulation 11A which applies while a seafarer is held captive as a result of piracy or armed robbery. Regulation 11A ensures that, for as long as the seafarer is held captive, their SEA cannot expire or be terminated. This applies until the seafarer has been repatriated or has died.

During that time, their wages must be paid in accordance with the SEA, and any clause in a SEA which purports to reduce or stop payment of wages is void.

There is no penalty or offence attached to this provision, as any SEA failing to comply with the requirements of regulation 11A would be illegal and therefore would not be valid.

ILO 188 legislation – corrections

These are discussed further in a separate consultation document.

2.3 Summary of Options and Recommendation

The UK supported the 2018 amendments when they were adopted. The MLC provides for a ratifying country for which the MLC is in force to notify the ILO that they will delay the coming into force of an amendment to the Convention for that country. However, this can only delay the coming into force for a maximum of a year.

Do Nothing is not therefore a viable option for the UK and is not considered further in this document.

The preferred option is to do the minimum required to implement the MLC 2018 amendments, so fulfilling the UK’s international obligations as a ratifying country. The proposed Regulations implement the preferred option.

2.4 Supporting information – piracy

Piracy continues to pose a significant risk to seafarers in certain parts of the world. According to reports published by the International Maritime Organisation² 53 seafarers were taken captive between December 2019 and February 2020 in

2

<http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Reports/Pages/Default.aspx>

incidents off West Africa and in the South China Sea. Internationally, there have unfortunately been cases where shipowners have not continued to pay seafarers during their period of captivity, causing significant hardship to their families and stress to the seafarers.

2.5 Supporting Information – impact

The proposed Regulations do not require any amendment to any existing SEA. Initial discussions with stakeholders in the UK suggest that it is expected that UK shipowners would continue to pay seafarers in a piracy or armed robbery situation with or without the proposed Regulations. The proposed Regulations are not therefore expected to have any financial or resource impact on UK shipowners, other than the cost of familiarisation with the proposed Regulations. The MCA will issue a Marine Guidance Note to support the Regulations which will assist this process.

The total cost to business of the proposal is therefore estimated to be £0.01m (best estimate).

Between 50 and 70 UK ships operate in the High Risk Area for piracy and armed robbery every month. There is therefore a risk that seafarers on UK ships could be taken captive. Seafarers on UK ships may therefore benefit from the reassurance that is provided by the proposed Regulations that their wages would be paid and their families supported in the event of a piracy or armed robbery incident. However, no quantifiable benefits have been identified.

In light of the above, no impact assessment has been produced in support of the proposed Regulations. Your views are invited on whether you agree with the above assessment.

2.6 Supporting information – timing

The proposed Regulations are made using powers under section 2(2)(b) of the European Communities Act 1972 (as saved by section 1A of the European Union (Withdrawal) Act 2018) which allow legislation to be made relating to EU treaties. The MLC was specified as a Community treaty by the European Communities (Definition of Treaties) (Maritime Labour Convention) Order 2009.

Those powers will no longer be available after 31 December 2020, when the transition period for EU Exit ends.

Section 3: Areas for consideration: Corrections to UK legislation implementing the ILO Work in Fishing Convention, 2007

3.1 The opportunity has also been taken to make corrections to the UK legislation implementing the ILO Work in Fishing Convention, 2007 (ILO 188). The changes are at regulations 3 and 4 of the draft Regulations at Annex A to this document.

3.2 These amendments fall into two categories:

Firstly, they address drafting concerns raised by the Joint Committee on Statutory Instruments relating to the application of the regulations and the requirement for survey.

Application

- a. The application provisions for non-UK fishing vessels, while intended to achieve the same outcome, were drafted differently in the Merchant Shipping (Work in Fishing Convention) Regulations 2018 and Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018 compared to the Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018.
- b. The first two statutory instruments referred to non-UK fishing vessels “in UK waters”, whereas the Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations referred to non-UK fishing vessels “in UK ports and UK waters”. The amending Regulations remove the words “UK ports and” in the Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations (See draft regulations 5(2))
- c. As this amendment is simply ensuring that the Regulation achieve their original purpose, there are no costs or other impacts arising.

Requirement for survey

- a. In the Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018, there is an incorrect reference in the requirement for regular survey for vessels which do not require a certificate of compliance. Such vessels require a five yearly survey as set out in MSN 1885(F). In the Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018, regulation 4(3) as made referred to fishing vessels not falling under regulation 4(2) (renewal surveys). This has been corrected to refer to regulation 5 (issue of Work in Fishing Vessel Certificate). (See draft regulation 4(2)(a).)

Secondly, they amend enforcement provisions in light of experience to ensure that the UK can fulfil its obligations under Article 40 of the Convention which requires effective enforcement of the Convention on fishing vessels under the jurisdiction of the ratifying state.

The legislation as made only allows the detention of a fishing vessel for non-compliance with the requirement, under the Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018, for a certificate of compliance with ILO 188 to be in force. Not all fishing vessels are required to have such a certificate.

The mandatory standards on living and working conditions (to which the certificate of compliance, where required, attests) may be enforced through prosecution under the Merchant Shipping (Work in Fishing Convention) Regulations 2018 or, in less serious cases through improvement or prohibition notices. However, there is no power to detain a fishing vessel to which the requirement to have a certificate of compliance does not apply. A recent case has demonstrated the weakness in this approach, where serious failure to comply with the standards was evident, but because the fishing vessel was not required by ILO 188 to have a certificate of compliance, it could not be detained for ILO 188 breaches.

A prosecution is being pursued, but there was no immediate sanction that could be applied to ensure compliance, resulting in extreme hardship to a fisherman. The same

case also revealed that the Merchant Shipping (Work in Fishing Convention) Regulations 2018 do not have an offence for failure to comply with a requirement to provide medical care to fishermen.

It is therefore proposed to add provisions to the Merchant Shipping (Work in Fishing Convention) Regulations 2018 such that the fishing vessel may be detained if -

- (i) the conditions on board are clearly hazardous to the safety, health or security of fishermen; or
- (ii) the non-compliance represents a serious breach or the latest in a series of repeated breaches of these Regulations or the requirements of the Work in Fishing Convention.

and to insert the missing offence.

In addition, two offences are inserted which were omitted in error: -

- (i) breach of the duty to provide medical care; and
- (ii) failure to present a fishing vessel for survey where the vessel does not require a certificate of compliance.

The penalty for (i) is proposed to be, on summary conviction, a fine (the statutory maximum on Scotland and Northern Ireland).

The penalty for (ii), in line with that for operating without a certificate of compliance where required, is proposed to be,

- on summary conviction, a fine (the statutory maximum on Scotland and Northern Ireland); or
- on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

3.3 Supporting information - impact

Since the impacts of these new provisions are only realised when a fishing vessel owner breaches the Convention, there are no costs to industry for compliance with the requirements. Detention is considered a more effective deterrent than prosecution and is a standard enforcement procedure for the MCA and so there are no costs to government.

Section 4: Responding to this consultation

4.1. Your views invited on

- (1) whether the proposed Regulations adequately implement the MLC 2018 amendments; and
- (2) whether you agree with the MCA's assessment of the impact of the proposed Regulations as set out in section 2.1 above. Please provide support evidence for your view if possible.

A proforma is provided section 5 of this document for you to use to respond to this consultation document.

Consultees

- 4.2. Anyone may respond to this consultation and consideration will be given to all responses.

Duration

- 4.3. This consultation is open for 6 weeks 22 June 2020. The deadline for responses is 3 August 2020.

Submitting your response

- 4.4. Consultation responses should be emailed to mlc@mcga.gov.uk. Any questions should be sent to this email address.
- 4.5. When responding, representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions.

Freedom of Information

- 4.6. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.
- 4.7. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 4.8. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department/MCA.
- 4.9. The MCA will process your personal data in accordance with the data protection framework and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Data Protection

- 4.10. The MCA is carrying out this consultation to gather evidence to inform the development and implementation of policy and legislation. This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain information that allows you to be identified, under data protection law, the MCA, as an Executive Agency of the Department for Transport, will be the Controller for this information.
- 4.11. The MCA will use your contact details to send you information about the consultation, for example if we need to ask follow-up questions. You do not have to give us this personal information but if you do choose to provide it, it will not be used for any other purpose without your permission.

4.12. Details about how the MCA looks after personal data, your rights, how to complain, and how to contact our Data Protection Manager can be found on gov.uk at:

<https://www.gov.uk/government/organisations/maritime-and-coastguard-agency/about/personal-information-charter>

4.13. Your information will be kept securely on the MCA's IT system and any written responses will be held in a secure file and cabinet and kept for up to five years, until a post-implementation review has been completed.

4.14. If you do not wish to remain on this list, please let us know at mlc@mcga.gov.uk

Section 5: Outline of plans beyond this consultation

5.1. Once this consultation closes we will review all responses. In considering the responses we will apply appropriate weight to those from organisations and individuals with specialist knowledge of the subject area.

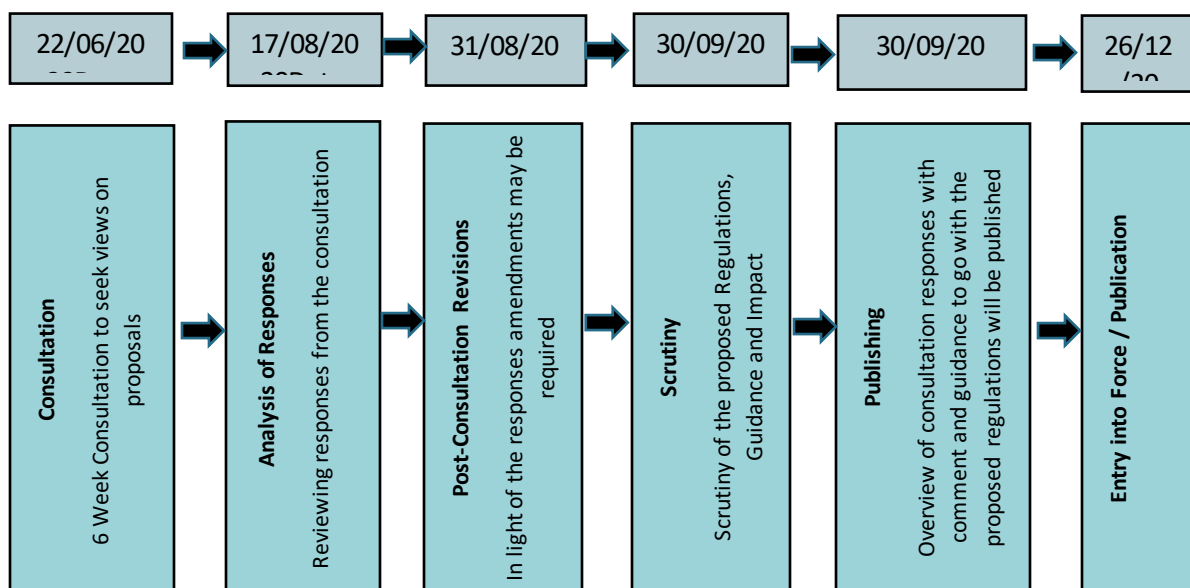
5.2. We will be analysing the responses during the first two weeks of July. Our aim is to publish an overview of the responses and the MCA's comments by the end of July, which will be available from: www.gov.uk/government/publications

5.3. Where appropriate the draft Regulations will be revised, and supporting guidance prepared, to take into consideration the consultation responses.

5.4. Our aim is for the proposed Regulations to come into force on 26 December 2020. The Regulations will be published on www.legislation.gov.uk

5.5. Every effort will be made to publish the revised accompanying guidance on GOV.UK in advance of that date.

5.6. An overview timetable is below is below for reference:



Section 6: Response form

What is your name? _____

What is your email address? _____

What is your job title? _____

When responding please state whether you are responding as an individual or representing the views of an organisation:

- I am responding as an individual
- I am responding on behalf of an organisation

(name of organisation) _____

Please check the box that best describes you as a respondent and the size of your organisation:

Respondent Type

- Classification Society
- Government Agency/Department
- Individual
- Legal representative
- Protection & Indemnity
- Seafarer
- Ship Operator
- Ship Owner
- Trade Union
- Other

Size of Organisation

- Large business (over 250 staff)
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)

(please describe) _____

Section 6.1 Consultation Questions

(1) Do the proposed Regulations adequately implement the MLC 2018 amendments?

(2) Do you agree with the MCA's assessment of the impact of the proposed Regulations as set out in section 2.1 above. Please provide support evidence for your view if possible.

Section 6.2

Do you have any additional comments to add to the response?

Please return completed response forms to yourname@mcga.gov.uk

Alternatively responses may be posted to:

Seafarer Safety and Health Branch
Maritime and Coastguard Agency
Bay 2/17, Spring Place
105, Commercial Road
Southampton
SO15 1EG

Section 7: Conduct of this consultation

- 7.1. This consultation has been conducted in accordance with the Cabinet Office Consultation Principles.

Consultation principles

- 7.2. The Cabinet Office Consultation Principles can be found at:

[Consultation Principals 2018](#)

Feedback on conduct of consultation

- 7.3. If you have any comments regarding the conduct of this consultation, please contact the Consultation Co-ordinator at consultation.coordinator@mcga.gov.uk.
- 7.4. We are continually trying to improve the way in which we conduct consultations and appreciate your views. We would be grateful if you could complete and return the attached feedback form. These should be submitted to the Consultation Co-ordinator and are not affected by the deadline for this consultation.
- 7.5. If you require this consultation in an alternative format, please contact either the Consultation Co-ordinator or the named official conducting this consultation.

MCA CONSULTATION FEEDBACK FORM

1. Please indicate on which Consultation you are providing feedback:

.....

2a. Please indicate whether you are responding on behalf of:

- Yourself as an Individual
- A Trade Association
- A Company
- A Government Organisation
- A Trade Union
- Other
(please specify) _____

2b. If you are representing a company, please indicate the size of your company:

- Micro (1-9 employees)
- Small (10-49 employees)
- Medium (50-249 employees)
- Large (250+ employees)

2c. Please indicate whether you accessed this consultation package through:

- Post
- email
- Website

3. Please rate the quality of this consultation regarding accuracy, good English and spelling:

- Very good
- Good
- Average
- Poor
- Very Poor

4. Please rate the format of the consultation presentation (layout, Annexes etc.):

- Very good
- Good
- Average
- Poor
- Very Poor

5. Please rate the consultation in terms of how clear and concise you felt it was:
- Very good
 - Good
 - Average
 - Poor
 - Very Poor
6. Did you feel that the consultation was conducted over a sufficient period of time?
- Yes
 - No
7. Were any representative groups, organisations or companies not consulted who you felt should have been?
- Yes
 - No
- If yes, who? _____
8. Please let us have any suggestions for improvement or other comments you wish to make about this consultation below:

Thank you for your time. Please return this form to:

Consultation Co-ordinator,
Maritime and Coastguard Agency,
Spring Place, Bay 3/26, 105 Commercial Road
Southampton SO15 1EG
Or e-mail it to: consultation.coordinator@mcga.gov.uk

If you are happy to supply your name in case we need to contact you to discuss your views further, please enter it below (this is optional, and your feedback will still be taken into account if you wish to remain anonymous):

Name _____

Tel. No. _____

Please note that the deadline for responses to the Consultation itself does not apply to the return of this form.

Annex A: Proposed Regulations

To be added

Annex B: MLC 2018 amendments

To be added