

EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (DEFINITION OF TREATIES)
(MARITIME LABOUR CONVENTION) ORDER 2009

2009 No. 1757

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 Order would declare that the Maritime Labour Convention 2006 is to be regarded as a Community Treaty as defined in section 1(2) of the European Communities Act 1972.
 - 2.2 The provisions of section 2 of the European Communities Act 1972 (which provides for the general implementation of Community Treaties) would then apply in relation to the Maritime Labour Convention 2006; they could be used for the implementation of the provisions of the Maritime Labour Convention 2006 by permitting the necessary changes to primary and secondary legislation to be made.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 At its 94th (Maritime) Session in February 2006 the International Labour Conference adopted the Maritime Labour Convention 2006 (MLC). The new Convention consolidates and updates over 60 maritime labour instruments adopted by the International Labour Organization since 1920. The UK Government firmly supported the development of the new Convention and is committed to ratifying it at the earliest practical date.
 - 4.2 The nature of the MLC is such that it cannot be ratified piecemeal, but must be ratified as a whole. A review of all the provisions of the Convention indicates that in some cases, the UK is already fully compliant. In other cases, while existing UK legislation is not exactly in line, there are powers in the Merchant Shipping Act 1995 which provide the necessary vires to make the necessary amending legislation. Finally, in relation to a third category of provisions, existing legislation does not implement the Convention requirements and the Merchant Shipping Act 1995 does not include the vires to introduce the necessary legislation.

- 4.3 The Convention could be implemented by way of primary legislation. However, given that a Council Decision was passed authorising ratification for those parts falling within community competence and exhorting ratification for the remainder of the Convention, and given that the Convention is ancillary to the transport provisions of the Treaty, and also, importantly, to the social protection provisions of Article 2, it is appropriate to specify the Convention as ancillary to the Treaty.
- 4.4 Section 1(3) of the European Communities Act 1972 provides that Treaties entered into by the United Kingdom after 22 January 1972 shall not be regarded as Community Treaties as defined in the Act unless they are specified as such in an Order in Council. Section 1(3) of the Act, further provides that no Treaty shall be so specified unless a draft of the Order in Council has been approved by Resolution of each House of Parliament. It is proposed therefore that this Order be made under Section 1(3) of the European Communities Act 1972 in order to use the vires in section 2(2) of the ECA to facilitate implementation of the third category of provisions.

5. Territorial Extent and Application

- 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State for Transport has made the following statement regarding Human Rights:

“In my view the provisions of the European Communities (Definition of Treaties) (Maritime Labour Convention) Order 2009 are compatible with the Convention rights.”

7. Policy Background

• What is being done and why

- 7.1 The MLC comprises Articles, which set out the broad principles and obligations; Regulations, which set the main mandatory requirements, and a Code, which comprises both more detailed mandatory standards (Code A) and non-mandatory Guidelines (Code B).
- 7.2 The Regulations and Code are arranged in five Titles as follows:
- Title 1: Minimum requirements for seafarers to work on a ship, covering minimum age, medical certification, training and recruitment

Title 2: Conditions of employment, covering employment agreements, wages, hours of work, annual leave, repatriation, employer liability, manning, career development

Title 3: Accommodation, recreational facilities, food and catering

Title 4: Health protection, medical care, welfare and social security protection

Title 5: Compliance and enforcement, including flag state and port state responsibilities.

7.3 The Convention applies to all "seafarers", meaning any persons who are employed or engaged or work in any capacity on board ships covered by the Convention. This includes all ships ordinarily engaged in commercial activities, other than ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply. The Convention excludes ships engaged in fishing or similar pursuits; ships of traditional build (such as dhows and junks), and warships and naval auxiliaries.

7.4 New compliance and enforcement arrangements are introduced, including a requirement for a maritime labour certificate, based on a declaration of maritime labour compliance, for all ships over 500GT trading internationally.

7.5 The Convention also introduces a simplified amendment procedure, with the aim that it can be more easily updated than traditional ILO Conventions. The UK's social partners played a leading role in the development of the Convention. They are strongly in support of its earliest possible ratification in the UK and implementation worldwide. The Government fully supports the aim of the Convention, which is to provide a comprehensive set of global maritime labour standards for all seafarers, and is committed to ratification as soon as domestic law and practice are fully in line with the Convention requirements. Reflecting the broad range of subjects covered, a significant number of UK legislative changes will be required to implement the Convention.

7.6 The European Community is not a member of the International Labour Organisation, and therefore has not been able to be a party to the Convention itself. However, it is estimated that about 30% of the MLC comes within the exclusive and shared competence of the Community. There is shared competence for example in relation to minimum age, working time and medical treatment on board vessels. The area of exclusive community competence relates to the co-ordination at the European level of social security. As there is an

important element of Community competence this is a mixed agreement.

- 7.7 The European Community was very supportive of the development of the MLC and on 7 June 2007, the Council adopted a decision authorizing member states to ratify the MLC for those parts falling within Community competence and exhorting member states to ratify the whole Convention by no later than the end of 2010.
- 7.8 Apart from those areas of shared and exclusive Community competence, it is also relevant that transport is specifically referred to in Article 70 of the Treaty, although Article 80 restricts this to road, rail and inland waterways. However, provision is made for the Community to decide, by qualified majority vote, whether, to what extent and what procedure will apply to travel by sea and air.
- 7.9 Community action has been taken many times in the field of sea transport, primarily in order to secure the implementation of international obligations. Significantly, Article 80(2) has been used in relation to directives relating to the training of seafarers (Directive 94/58 of 22 November 1994) and equipment (Directive 96/98 of 20 December 1998). Both matters are similar to those covered by the MLC.
- 7.10 Much of the MLC also covers employment, and conditions of employment. Article 125 of the Treaty exhorts Member States and the Community to “work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change”. Article 125 specifically refers to the general provisions of Article 2 of the Treaty, including the promotion of “a high level of employment and social protection”. We consider that the measures within the MLC support and are properly to be considered as ancillary to these aims.

- **Consolidation**

- 7.11 The purpose of this instrument is to facilitate the use of powers contained in the European Communities Act 1972 to amend or make primary or secondary legislation to give effect to the requirements set out in the MLC. Similar or related legislation is not already in place and there is accordingly no scope for consolidation.

8. Consultation outcome

- 8.1 Consultation has been undertaken with the Ministry of Justice, Department for Business, Enterprise and Regulatory Reform, Department for Work and Pensions, Cabinet Office and the Foreign and Commonwealth Office who are content.

8.2 General consultation has however not been undertaken. Whilst this instrument is an important step in making the legislative changes required to implement the MLC into UK law, it has no impact on the public in general. Measures which implement the MLC pursuant to this Order in Council will however be consulted on fully.

9. Guidance

9.1 Apart from this Explanatory Memorandum, no guidance is considered necessary for this instrument as it has no impact on business, charities or voluntary bodies.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 No impact on the public sector is foreseen.

10.3 Impact Assessments will however be prepared for the Regulations which give effect to the specific provisions of the MLC.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 As the purpose of this instrument is to facilitate the use of powers contained in the European Communities Act 1972 to amend or make primary or secondary legislation to give effect to the requirements set out in the MLC, monitoring and review is not considered necessary.

13. Contact

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