

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION)
RECRUITMENT AND PLACEMENT) REGULATIONS 2014

2014 No. 1615

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 ships.

2.2 This instrument imposes obligations on Recruitment and Placement Services (RPS) which recruit and place seafarers on ships which fall under the Maritime Labour Convention, 2006 (MLC) to comply with the requirements of Title 1.4 of the MLC on Recruitment and Placement which are not already requirements of existing UK law.

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

3.1 None.

4. Legislative Context

4.1 The MLC was presented to Parliament in a White Paper (Cm 7049). The Convention came into force internationally on 20 August 2013. The UK ratified the MLC on 7 August 2013 and there is accordingly a legal obligation to ensure our laws meet the requirements of the Convention by 7 August 2014. This instrument contributes towards achieving this objective. Other instruments implementing the MLC are –

- the Merchant Shipping (Maritime Labour Convention) (Medical Certifications) Regulations 2010,
- the Merchant Shipping (Maritime Labour Convention) (Survey and Certifications) Regulations 2013,
- the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014,

which have already been made, and

- the Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014, and
- the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014,

which were made and will come into force at the same time as this instrument, and

- the Merchant Shipping (Maritime Labour Convention) (Health and Safety) (Amendment) Regulations 2014, which are expected to be made soon.

4.2 The MLC consolidates amendments of various ILO Conventions, many of which the UK has ratified and by which the UK is already bound. The existing ILO Convention relevant to this instrument is the Recruitment and Placement of Seafarers Convention 1996, No. 179, which the UK has not ratified, although some of its standards are already in place in UK legislation.

4.3 Council Decision 2007/431/EC authorised Member States to ratify the MLC in respect of the provisions falling within EU competence. The Order in Council (The European Communities (Definition of Treaties) (Maritime Labour Convention)) Order 2009 (SI 2009/1757) designates the MLC as a Community Treaty within the meaning of section 1(2) of the European Communities Act 1972. Title 1.4 on Recruitment and Placement was not covered in the European Social Partners' Agreement (SPA) on the MLC which Member States are required to give effect to under Directive 2009/13/EC, but the subject matter is within EU competence and a European Commission proposal for a Directive on Recruitment and Placement is anticipated.

4.4 The majority of MLC Recruitment and Placement provisions are already contained in existing UK legislation, covered by a combination of the following instruments:

- Employment Agencies Act 1973 (1973 Ch 35) and the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (SI 1981/839 (NI. 20)), relating to the prohibition of fees, etc.;
- Conduct of Employment Agencies and Employment Businesses Regulations 2003 (SI 2003/3319) (as amended) and the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (SI 2005/395) (as amended), relating to fees, record keeping, information provision by Employment Businesses, checks by Employment Businesses, return travel from employment abroad;
- Employment Relations Act 1999 (Blacklists) Regulations 2010 (SI 2010/493) and the Employment Relations (Northern Ireland) Order 1999 (Blacklists) Regulations (Northern Ireland) 2014 (SI 2014/88), about prohibition relating to Blacklisting.

4.5 However, this Statutory Instrument supplements the existing legislation to cover:

- MLC Standard A1.4.5(c)(ii) on the provision of information to seafarers in relation to employment offered, which is currently broadly regulated in relation to Employment Businesses, but needs also to be extended to include Employment Agencies;
- MLC Standard A1.4.5(c)(iii) on the obligations to carry out certain checks on seafarer work-seekers upon which Employment Businesses are currently substantially regulated (including that the work-seeker is qualified, has appropriate

experience and holds necessary documents, etc..) but which needs to also to be extended to include Employment Agencies; and

- MLC Standard A41.4.5(c)(vi) on the requirement for Recruitment and Placement Services to have in place a System of Protection to underpin monies owed to the seafarer, which needs to be transposed for both Employment Agencies and Employment Businesses.

4.6 The Merchant Shipping (Maritime Labour Convention) (Minimum requirements etc.) Regulations 2014, being made separately, imposes an obligation on shipowners to ensure, as far as reasonably possible, that the Recruitment and Placement Services they are using are MLC compliant.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 This instrument applies to certain Recruitment and Placement Services which carry on business in the United Kingdom in connection with the employment of seafarers on sea-going ships.

6. European Convention on Human Rights

As this 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 in line with the MLC, with a view to discharging obligations mentioned in paragraph 4.1 above.

7.2 The Regulations bring UK legislation into line with the Convention by extending RPS obligations to achieve full compliance with Regulations and Standards under Title 1.4 of the MLC.

7.3 This instrument seeks to close the three gaps between existing UK law and MLC requirements, which were identified in a Gap Analysis as broadly being:

7.3.1 a requirement for Employment Agencies to ensure seafarer informed of rights and duties under employment agreement prior to or in the process of engagement (MLC Standard A1.4.5(c)(ii));

7.3.2 a requirement for Employment Agencies to check seafarer is qualified, holds necessary documents, etc., (MLC Standard A1.4.5(c)(iii)); and

7.3.3 a requirement for a Recruitment and Placement Service (RPS) to establish a system of protection/ insurance for RPS/shipowner liabilities (MLC Standard A1.4.5(c)(vi)).

7.4 Whilst this instrument implements the requirements of the Maritime Labour Convention to Recruitment and Placement Services to the extent they recruit and place seafarers, it does not require those services to be certificated to this effect. However, given that a number of seafarer Recruitment and Placement Services have expressed an interest in having some form of certification to evidence their compliance, to enhance their business opportunities leading up to and following the MLC coming into force internationally, a non-statutory, non-mandatory certification scheme is being provided by the Maritime and Coastguard Agency (MCA) to supplement this legislation for the Recruitment and Placement Services which wish to avail themselves of it. Further Guidance can be found in Marine Guidance Note (MGN) 475(M).

- Consolidation

7.5 Not applicable.

8. Consultation outcome

8.1 Like all Conventions of the ILO, the MLC was drawn up on a tripartite basis in negotiations between shipowner organisations, seafarer organisations and governments, and the UK took a leading role in all three delegations. The Government has continued to work closely with industry on the implementation of the Convention, through a tripartite working group, both prior to and following formal public consultation.

8.2 Early drafts of these provisions were consulted upon from 20 March 2013 and 3 May 2013 and one hundred and seventy-six organisations and companies were directly notified of the consultation exercise, including the UK Chamber of Shipping which represents a broad cross section of UK shipping companies in all sectors, and other trade associations such as the Recruitment and Employment Confederation (REC), the British Marine Federation and International Marine Contractors Association. Eight written responses were received, from significant players in the industry. As a result of the responses, which were generally supportive of the proposals, the final draft of the Regulations has made clearer the obligations relating to seafarer recruitment and placement services putting in place systems of protection. Stakeholder consultation with social partners on the System of Protection affirmed an approach which included cover for both contractual and statutory liabilities.

8.3 There was widespread support for implementation and ratification of the Convention, and most consultation comments related to the interpretation and practical

implementation of Convention requirements. These comments have been taken into account in finalising both the legal provisions and supporting guidance.

9. Guidance

9.1 Further guidance on the UK transposition and implementation of MLC Title 1.4, and on the non-mandatory scheme which is available to affected Recruitment and Placement Services, can be found in Marine Guidance Note (MGN) 475(M).

10. Impact

10.1 The impact on business, charities or voluntary bodies is outlined in the Impact Assessment, but the additional burden imposed is considered insignificant in comparison with the implications of non-implementation or incomplete implementation of the MLC, which is expected would have a serious impact on the competitiveness of UK based seafarer Recruitment and Placement Services (RPS). By virtue of the amount of MLC Title 1.4 requirements which are already contained in UK law, it is believed that UK based RPSs will have less changes to make to achieve full MLC compliance than many of their non-UK based competitors. The UK Chamber of Shipping has advised that, whilst they recognise that there are costs arising from these measures, they believe that the benefits to UK industry from effective international enforcement of the MLC's global standards will significantly outweigh any costs to UK industry.

10.2 The impact of the enforcement duty on the public sector is negligible, as the number of private Recruitment and Placement Services which have involvement with seafarers is very small.

10.3 An impact assessment has been produced and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

10.4 The measures on Recruitment and Placement do the minimum necessary to implement the MLC.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 There is no exemption as regards small business in this instrument. Such an approach would be problematic given the need to ensure that the regulations properly implement the Convention and are consistent with existing domestic legislation. However, the size of the obligations in these Regulations are of a nature which is driven by the size of the operation and the amount of business they conduct. They will therefore be proportionately smaller for small businesses compared with larger businesses.

12. Monitoring & review

12.1 The intended outcome of these Regulations is that UK law complies with the requirements of the Convention relating to Recruitment and Placement. This will be measured, at least in part, by the level of compliance with the regulations and the number of complaints from seafarers that they have not received their entitlements.

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 UK level, the instrument contains a review clause which obliges the Secretary of State to review its provisions no more than 5 years from the date that the instrument comes into force and at intervals no greater than 5 years thereafter.

13. Contact

Matt Giacomini at the Maritime and Coastguard Agency, tel: 023 8032 9538 or email: matt.giacomini@mca.gov.uk, can answer any queries regarding this instrument.