

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (HOURS OF
WORK) (AMENDMENT) REGULATIONS 2014**

2014 No. 308

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 amends the Merchant Shipping (Hours of Work) Regulations 2002 (SI 2002/2125) (“the 2002 Regulations”) to bring its provisions regarding seafarers’ working time and enforcement into line with those of the MLC. The main changes are to increase the minimum entitlement to annual leave and to introduce a new entitlement to shore leave. The instrument also provides access to an employment tribunal (in Northern Ireland an industrial tribunal) to enforce paid leave entitlements.

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 (Cmd. 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 that UK domestic legislation meets 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 Certification) Regulations 2010 (SI 2010/737) and the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 (SI 2013/1785). It is intended that further instruments will be made shortly to complete the implementation.

4.2 The MLC consolidates and updates various ILO Conventions, many of which the UK has ratified and are already binding on the UK. The ILO Convention relating to hours of work which preceded the MLC was the Seafarers’ Hours of Work and Manning of Ships Convention, 1996 (No. 180) and the UK has ratified that Convention and implemented it by the 2002 Regulations. The ILO Convention relating to annual leave which preceded the MLC was the Seafarers’ Annual Leave with Pay Convention (No. 54)

of 1976 and the UK has not ratified that Convention. Ratification of the MLC requires that its provisions on annual leave must be implemented in the UK.

4.3 This instrument implements EU obligations as well as MLC obligations. The 2002 Regulations transposed the provisions on hours of work and annual leave contained in Council Directive 1999/63/EC. That Directive implemented the Agreement of European Social Partners on the organisation of working time of seafarers and included an entitlement to 4 weeks' paid leave a year.

4.4 The MLC gives seafarers who are employed seafarers as defined (see paragraph 7.4) an entitlement to 2.5 days' paid leave per month worked and all seafarers a new entitlement to shore leave. It also changes the definition of seafarers to include any person who works in any capacity on board a ship and whose normal place of work is on a ship.

4.5 EC Council Decision 2007/431 authorised Member States to ratify the MLC in respect of the provisions falling within EU competence. Further, aspects of the Convention which fall within EU competence have been included in a European Social Partners Agreement which is implemented by Council Directive 2009/13/EC. Directive 2009/13/EC also amends Directive 1999/63/EC to bring it into line with the MLC. The aspects of Directive 2009/13/EC which are being transposed by this instrument are principally those relating to annual leave and shore leave. A transposition note is attached as an Annex to this Explanatory Memorandum.

4.6 The proposal that resulted in Directive 2009/13 was the subject of Explanatory Memorandum (EM) 11588/08 submitted by the Department for Transport on 23 July 2008. The House of Commons European Scrutiny Committee considered the EM on 10 September 2008. The Committee recommended that the document was not legally or politically important and cleared it (Report 32, Session 2007-2008). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee G at the 1332nd sif on 29 August 2008. The Chairman wrote to the Minister on 16 October 2008, clearing the document from scrutiny but requesting further information. The Minister responded to the Chairman on 24 February 2009.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. It contains some modifications of the 2002 Regulations in their application to Northern Ireland and some amendment of Northern Ireland legislation.

5.2 This instrument applies to seafarers working on sea-going United Kingdom ships, wherever they are (with some specific exclusions, including pleasure vessels and fishing vessels). It also applies to certain non-United Kingdom ships when they are in a United Kingdom port or United Kingdom waters.

6. European Convention on Human Rights

This instrument makes consequential amendments to primary legislation. Stephen Hammond, Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

In my view the provisions of the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The instrument is designed to ensure that UK law on seafarers' working time, particularly on annual leave and shore leave, is in line with the MLC (with a view to discharging the obligation mentioned in paragraph 4.1 above) and with Directive 2009/13/EC, and that seafarers who are entitled to paid leave under the instrument can enforce their entitlements in an employment tribunal (or, in Northern Ireland, an industrial tribunal).

7.2 The instrument provides for :

- 7.2.1 seafarers who are employed seafarers (see paragraph 7.4) to have 2.5 days of paid annual leave in each leave year per month of employment in that year;
- 7.2.2 seafarers who are employed seafarers to have 8 days of additional paid leave in each leave year which recognises that it is appropriate to give leave in respect of public holidays;
- 7.2.3 a duty on shipowners to ensure that seafarers are granted shore leave to benefit their health and well-being where consistent with the operational requirements of their positions;
- 7.2.4 a right for seafarers who are employed seafarers to take a case to an employment tribunal (or, in Northern Ireland, an industrial tribunal) to enforce their entitlements to paid leave;
- 7.2.5 protections for seafarers exercising rights under the 2002 Regulations against unfair dismissal or detrimental treatment, in line with the protections afforded to workers in other transport sectors, including those working on inland waterway vessels and sea-fishing vessels; and
- 7.2.6 powers for UK inspectors to inspect UK ships wherever they are, and non-UK ships in UK waters, for compliance with the 2002 Regulations and powers for the Secretary of State to enforce compliance.

7.3 The definition of seafarer in the 2002 Regulations is changed by this instrument to mean any person who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on a ship. It is considered that this will extend the scope of the term seafarer to include self-employed individuals who work on their own account, not as contractors, for example someone who is a research scientist and is not working under any contract.

7.4 The entitlement to paid leave is given only to “employed seafarers” which is a term with a broad definition, comprising seafarers who are employed under a contract of employment and also seafarers who are engaged under a contract for personal performance of work or services, other than a contract between a seafarer carrying on a profession or business and a client or customer.

- Consolidation

7.5 This instrument further amends the 2002 Regulations. Previous amendments have mainly been minor and the key provisions imposing obligations on shipowners, employers and masters have only previously been amended once. The majority of the key obligations concern hours of rest and these are not amended (or are not materially amended) by this instrument.

7.6 Consideration was given to revoking and replacing the 2002 Regulations rather than further amending them. It has however been concluded that consolidation should be undertaken in the future rather than now. This is because it is envisaged that new EU Directives on enforcement of the MLC (Directive 2013/38/EU amending Directive 2009/16/EC on port State control and Directive 2013/54/EU concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006) will require further changes to the 2002 Regulations. Further consideration will be given to consolidation when those Directives are transposed.

7.7 In the meantime, MCA will make available an informal consolidated version of the 2002 Regulations on request by e-mail from mlc@mcga.gov.uk. Additionally, relevant parts of the supporting Merchant Shipping Notice (MSN 1767(M)) have been updated and republished as MSN 1842(M) to pull together guidance on all the requirements of the Regulations into a single document for ease of reference for industry.

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 of social partners, both prior to and following formal public consultation.

8.2 Early drafts of provisions concerning annual leave and application to Northern Ireland were consulted upon from February to May 2009 and two hundred and thirty-five 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 British Marine Federation and the International Marine Contractors Association.

8.3 There was widespread support for implementation and ratification of the MLC, and some consultation comments related to the interpretation and practical implementation of MLC requirements. These comments have been taken into account in finalising both the legal provisions and supporting guidance. There was considerable disagreement between consultees on the proposals for additional leave in respect of public holidays, and for seafarers' access to an employment tribunal, with employer organisations mainly being opposed to these proposals and seafarer representative organisations being in favour. Since the consultation period closed, discussions have continued with the MLC Tripartite Working Group. The social partners reached bilateral agreement on how the public holiday entitlement would be implemented in practice, and enforcement of rights by complaint to an employment tribunal (or industrial tribunal in Northern Ireland) has been limited to paid leave rights rather than extending to all rights under the 2002 Regulations. As a result the areas of disagreement at consultation stage have largely been resolved or mitigated in the final instrument.

8.4 Subsequently, public consultation was carried out on the right to shore leave. Consultees supported the proposal, but asked for clarification in guidance on MCA's interpretation of the circumstances in which the duty to provide shore leave would apply. This is provided in MSN 1842(M).

8.5 In addition, consultation was carried out with the MCA's official ILO social partners (the Chamber of Shipping and seafarer unions), on changes made by the instrument to the definitions, application, inspection and enforcement provisions in the 2002 Regulations to make them consistent with other legislation implementing the MLC. The consultation was limited to these social partners because the changes were in the main consequential upon discussions held with industry during the previous consultation, or were standard provisions that had already been consulted upon in the context of other MLC implementing Regulations.

8.6 Further consultation limited to the same stakeholders was undertaken on including consequential changes to employment legislation to protect seafarers when they exercise their rights under the 2002 Regulations which are equivalent to protections applicable to workers in other transport sectors.

9. Guidance

9.1 The MCA has published an accompanying Merchant Shipping Notice to explain the impact of the new Regulations (MSN 1842(M)).

10. Impact

10.1 The impact on business, charities or voluntary bodies of the annual leave and additional leave entitlements is uncertain mainly because of difficulties in obtaining evidence about current leave arrangements. However it is thought that most affected UK seafarers receive paid leave in excess of the new entitlements and therefore the impact of the increase in paid leave will be limited. The instrument provides certainty about the

treatment of leave for public holidays by specifying 8 additional days' leave. This ensures consistent treatment of public holidays despite the different number and dates of public holidays in different parts of the UK and is believed to be the most cost-effective approach.

10.2 The right for seafarers who are employed seafarers to enforce paid leave entitlements by way of a complaint to an employment tribunal (or, in Northern Ireland, industrial tribunal) will have a cost impact for employers. The impact assessment indicates that the estimated number of employment tribunal claims that will be brought is low, and that other measures taken by the Government, such as the provision of early conciliation and the introduction of fees, will reduce the cost impact.

10.3 The duty to provide shore leave reflects existing practice and is not expected to have any significant impact.

10.4 The impact on the public sector is that there will be tribunal costs associated with the new right of seafarers who are employed seafarers to enforce paid leave entitlements by way of complaint to an employment tribunal (or, in Northern Ireland, industrial tribunal). This will be mitigated by recent changes to the processes for employment tribunal claims intended to discourage vexatious claims, including the introduction of fees for the submission of claims.

10.5 Two Impact Assessments (one for the paid leave entitlements and one for the duty to provide shore leave) are 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 There is no exemption as regards small business in this instrument. Such an exemption is not permitted under the MLC or the Directive being transposed. To minimise the impact of the requirements on firms employing up to 20 people, there has been extensive consultation with representatives of small vessel operators to discuss the implications of the MLC for them, and to explore pragmatic solutions to their concerns. Guidance relating to small vessels which is tailored to small businesses (e.g. checklists) has been published and is available in MGN 490(M) and MGN 491(M). However, there is very limited scope for flexibility regarding the provisions contained in this instrument.

12. Monitoring & review

12.1 These Regulations ensure that (a) UK law complies with the requirements of the MLC and Directive 2009/13/EC relating to annual leave and shore leave and (b) the paid leave entitlement of seafarers who are employed seafarers is increased and can be enforced in employment tribunals (or, in Northern Ireland, industrial tribunals), and seafarers have a new right to shore leave.

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 the 2002 Regulations no more than 5 years from the date that this instrument comes into force and at intervals no greater than 5 years thereafter.

13. Contact

Julie Carlton at the Maritime and Coastguard Agency. Tel: 023 8032 9216 or email: Julie.Carlton@mca.gov.uk can answer any queries regarding the instrument.

TRANSPOSITION NOTE

This note sets out the way in which the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014 ('the 2014 Regulations') amend the Merchant Shipping (Hours of Work) Regulations 2002 (S.I. 2002/2125) ('the 2002 Regulations') so as to transpose the provisions in Council Directive 2009/13/EC (O.J. No. L124, 20.05.2009, p.30) concerning hours of work, annual leave and shore leave for seafarers.

The 2002 Regulations implement provisions concerning hours of work and annual leave contained in Council Directive 1999/63/EC (O.J No. L167, 02.07.1999, p.33) which annexes and gives effect to the European Agreement on the Organisation of Working Time of Seafarers. The provisions of the European Agreement on the Organisation of Working Time of Seafarers on hours of work and annual leave have been amended by Council Directive 2009/13/EC which annexes and gives effect to the Agreement concluded by the ECSA (European Community Shipowners' Associations) and the ETF (European Transport Workers' Federation) on the Maritime Labour Convention 2006; these amendments are implemented by the 2014 Regulations. In addition the 2014 Regulations implement a new provision concerning shore leave contained in the Agreement annexed to Council Directive 2009/13/EC.

The 2002 Regulations also transpose Council Directive 1999/95/EC concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports (O.J. No. L14, 20.01.2000, p.29).

The 2014 Regulations are made under the Merchant Shipping Act 1995 and the European Communities Act 1972 and apply in United Kingdom waters and to sea-going United Kingdom ships wherever they may be.

The responsibility for implementation of Council Directive 2009/13/EC rests with the Secretary of State for Transport.

Maritime and Coastguard Agency
Department for Transport

February 2014

**TABLE RELATING TO IMPLEMENTATION OF DIRECTIVE COUNCIL DIRECTIVE
2009/13/EC (PROVISIONS RELATING TO HOURS OF WORK AND ENTITLEMENT TO
LEAVE)**

Provision of Directive	Purpose of Provision of Directive	Implemented in the UK in relation to hours of work and entitlement to leave by amendments made to the Merchant Shipping (Hours of Work) Regulations 2002 by the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014 as follows
Article 2.2 amends Clause 2(c) and (d) of the Annex to Directive 1999/63/EC	Amends the definitions of seafarer and shipowner	Regulation 2(1) of the 2002 Regulations (amended by regulations 2(2)(j) and (l) and 2(4) of the 2014 Regulations)
Article 2.5 substitutes new Clause 16 into the Annex to Directive 1999/63/EC	Gives an entitlement to paid annual leave calculated on the basis of a minimum of 2.5 days per month of employment and pro rata for incomplete months	Regulation 12(1) of the 2002 Regulations (inserted by regulation 2(11) of the 2014 Regulations)
Article 2.5 substitutes new Clause 16 into the Annex to Directive 1999/63/EC	The minimum period of paid annual leave may not be replaced by an allowance in lieu, except where the employment relationship is terminated	Regulation 12(3)(b) of the 2002 Regulations (inserted by regulation 2(11) of the 2014 Regulations)
Annex to Directive 2009/13/EC Regulation 2.3 and Annex A paragraphs 2 and 3	Seafarers' hours of work and rest are regulated by Directive 1999/63/EC as amended by Directive 2009/13/EC, including amendments of the definitions of seafarer and shipowner	Regulation 2(1) of the 2002 Regulations (amended by regulations 2(2)(j) and (l) and 2(4) of the 2014 Regulations); other requirements of Directive 1999/63/EC were transposed by the 2002 Regulations

Annex to Directive 2009/13/EC Regulation 2.4.1 and Annex A paragraph 6	Member States must implement the entitlement to annual leave in accordance with Directive 1999/63/EC as amended by Directive 2009/13/EC	Regulation 12(1) and (3)(b) of the 2002 Regulations (inserted by regulation 2(11) of the 2014 Regulations)
Annex to Directive 2009/13/EC Regulation 2.4.2	Gives an entitlement to shore leave	Regulation 12A of the 2002 Regulations (inserted by regulation 2(12) of the 2014 Regulations)