

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION)
(MISCELLANEOUS AMENDMENTS) REGULATIONS 2018

2018 No. 242

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes amendments to
 - the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations (SI 1998/2771);
 - the Merchant Shipping (Maritime Labour Convention) (Medical Certification Regulations 2010 (SI 2010/737);
 - the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 (SI 2013/1785);
 - the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (SI 2014/1613); and
 - the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 (SI 2018/58),all of which implement the Maritime Labour Convention 2006 (the MLC) (see paragraph 4.2 below for a description of the MLC).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 In their letter dated 13 April 2015 the Committee brought a number of points to the Department's attention. The Department has carefully considered the Committee's points and has amended definitions of 'pleasure vessel' as referred to in the fifth subparagraph of paragraph 7.2 below.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and is not expected to be prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The MLC was presented to Parliament in a White Paper (Cm 7049). The MLC came into force internationally on 20 August 2013. The UK ratified the MLC on 7 August 2013 and legislation meeting the requirements of the Convention was in force by 7 August 2014.

- 4.2 The MLC as a whole consolidates and updates around 60 International Labour Organization instruments and sets out minimum standards for living and working conditions for seafarers. The MLC has been ratified by 84 countries representing 91% of the world's gross tonnage of ships.
- 4.3 It was implemented in the UK by a combination of existing legislation (some of which was amended to fully implement the MLC) and new regulations. The instruments made to fully implement the MLC were:
- the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010 (SI 2010/737),
 - the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 (SI 2013/1785),
 - the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014 (S.I. 2014/308),
 - the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers, etc.) Regulations 2014 (S.I. 2014/1613),
 - the Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014 (S.I. 2014/1614),
 - the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 (S.I. 2014/1615), and
 - the Merchant Shipping (Maritime Labour Convention) (Health and Safety) (Amendment) Regulations 2014 (S.I. 2014/1616).

5. Extent and Territorial Application

- 5.1 This instrument extends to the United Kingdom.
- 5.2 This instrument applies to all sea-going United Kingdom ships wherever they are, excluding pleasure vessels, fishing vessels, ships of traditional build, naval auxiliaries, warships and vessels which are not ordinarily engaged in commercial activities. The instrument also applies to sea-going non-United Kingdom ships when they are in United Kingdom waters.

6. European Convention on Human Rights

- 6.1 As the 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 objective of the instrument is to correct some anomalies in the original implementing legislation.
- 7.2 The changes made by this instrument are as follows:
- amend the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010 (SI 2010/737) to clarify the duty on seafarers to provide complete and correct information to medical practitioners approved to conduct statutory seafarer medical examinations;
 - amend the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (SI 2014/1613) to limit

shipowners' liability for sick pay in certain circumstances. The changes have the effect of providing that seafarers must be paid sick pay for 16 weeks, until they are fit for work or until their contract expires or is terminated, whichever comes soonest. There is a specific prohibition on persons terminating seafarer's contracts solely or mainly for the purpose of avoiding liability for sick pay. Seafarers and shipowners can enter into collective bargaining agreements limiting or excluding the shipowner's liability to pay sick pay, provided the agreement meets certain conditions.

- in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations (SI 1998/2771), exempt small commercial vessels operating under the MCA Codes of Practice for small commercial vessels (SCVs) only from the crew accommodation standards set by regulation 29(2) and regulation 30 of S.I. 2014/1613 and MSN 1844(M), provided that they comply with the substantially equivalent provisions set out currently in MGN 490(M) Amendment 1 or MGN 491(M) Amendment 1 as appropriate, and not (as erroneously provided in SI 1998/2771) from all the standards set by SI 2014/1613;
- in the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010 (SI 2010/737), restore erroneously omitted words in the definition of "medical practitioner" to clarify that a 'medical practitioner' (as defined) is a person approved by the Secretary of State to issue medical fitness certificates;
- in the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 (SI 2013/1785), the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers, etc.) Regulations 2014 (SI 2014/1613) and the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 (SI 2014/1615) amend the drafting of the definition of pleasure vessel in response to comments from the Joint Committee on Statutory Instruments;
- amend the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (SI 2014/1613) to insert and correct provisions carried forward from the Merchant Shipping (Crew Accommodation) Regulations 1997 to ensure that crew accommodation on pre-July 1979 and pre-July 1997 ships must comply with the standards in force at the time of construction of the ship; and
- amend the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 (SI 2018/58) to correct a typographical error in the definition of "pleasure vessel".

Consolidation

7.3 There are no plans at this time to consolidate the amendments made by this SI.

8. Consultation outcome

8.1 All the provisions have been discussed during development with the MCA's Tripartite Working Group on the MLC. Formal public consultation ran from 10 October to 5 December 2016 <https://www.gov.uk/government/consultations/proposed-changes-to-legislation-to-implement-the-2014-amendments-to-the-maritime-labour-convention-2006-into-uk-law-and-some-additional-amendments>

8.2 There were four substantive written responses to the consultation, from the UK Chamber of Shipping, Nautilus International (the officers' union), the National Union of Rail, Maritime and Transport Workers (the seafarers' union) and the Royal Yachting Association. The comments made have been taken into account in finalising the regulations and the supporting guidance. A table of consultation replies and MCA's responses are published on <https://www.gov.uk/government/consultations/proposed-changes-to-legislation-to-implement-the-2014-amendments-to-the-maritime-labour-convention-2006-into-uk-law-and-some-additional-amendments> and are available in hard copy from the Maritime and Coastguard Agency at the address below.

9. Guidance

9.1 In line with usual practice, Marine Guidance Note 480 (M) Amendment 1, produced by the Maritime and Coastguard Agency, has been issued to industry updating guidance on requirements on shipowner liability, including liability for wages. It is available in hard copy at the address below.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies from the corrections and all but one of the amendments. The only amendment with a cost implication is the change to shipowner liability for wages for incapacitated seafarers. This reflects existing practice, and so has no costs for either seafarers or employers; it would reduce liability for wages in cases of incapacity due to sickness or injury; it does not affect the shipowner's liability for compensation in cases of occupational illness or injury.

10.2 There is no impact on the public sector.

10.3 A regulatory triage assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. Copies are also available from the Maritime and Coastguard Agency at the address below.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 There is little scope for specific measures to reduce the impact of the requirements on firms employing up to 50 people because the MLC does not allow concessions for small businesses; living and working conditions should be protected for all workers irrespective of the size of the company employing them.

12. Monitoring & review

12.1 The Maritime and Coastguard Agency will evaluate how the Regulations have impacted through consultation with industry using the representative organisations referred to in paragraph 8.

12.2 This instrument inserts a review clause into the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010, with the result that the Secretary of State must review the regulations within five years of the coming into force of this instrument and at intervals not exceeding five years thereafter. When that

review occurs it will cover the amendments made to those regulations by this instrument.

- 12.3 The other instruments affected by the amendments already contain a statutory review clause requiring the Secretary of State to review the operation of the Regulations five years after they come into force and at five yearly intervals thereafter.

13. Contact

- 13.1 Julie Carlton at the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, Telephone: 020 3817 2498 or email: Julie.Carlton@mcga.gov.uk can answer any queries regarding the instrument.