

EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION AND WORK IN FISHING CONVENTION) (AMENDMENT) REGULATIONS 2020

2020 No. 1166

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 implements amendments made to the International Labour Organisation's ("ILO") Maritime Labour Convention ("MLC") in 2018 regarding the employment rights of seafarers held captive as a result of piracy or armed robbery. Further it makes amendments, including corrections, to legislation implementing the ILO's Work in Fishing Convention 2007.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument addresses points made by Joint Committee on Statutory Instruments in two memoranda to the Department for Transport dated 21 November 2018.
- 3.2 The points raised by the Committee were –
 - inconsistency in the drafting of the application provisions of the Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018 (S.I. 2018/1108) with those in the Merchant Shipping (Work in Fishing Convention) Regulations 2018 (S.I. 2018/1106) and the Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018 (S.I. 2018/1107). The application provisions in S.I. 2018/1106 and S.I. 2018/1107 have been amended so that all three instruments now apply to a non-United Kingdom fishing vessel when "in a United Kingdom port" as well as when the vessel is in United Kingdom waters;
 - defective drafting of regulation 4(2) of S.I. 2018/1107 which referred to renewal surveys being required for fishing vessels only after an "initial" survey, when surveys are required at four-year intervals. The instrument corrects this by replacing "initial" with "previous";
 - an incorrect reference in the drafting of regulation 4 of S.I. 2018/1107 (survey of fishing vessels). Regulation 4(3) is intended to specify the requirements for inspection of fishing vessels which are not required to have a Work in Fishing Convention certificate, and has therefore been amended to refer to vessels to which regulation 5 (issue of Work in Fishing Convention Certificate) does not apply. An offence is created of failing to comply with this duty.

- further, as set out in paragraph 7.6 below, this instrument corrects an omission in S.I. 2018/1106 to make it an offence for a shipowner to fail to ensure that medical care is provided to a fisherman either on board or ashore, or that the fisherman is taken ashore promptly for treatment.

3.3 In light of the corrections made by this instrument, the Department is adopting the free issue procedure. The Department confirms that it has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice to consult the SI Registrar on the use of the free issue procedure in relation to this instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.4 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom and United Kingdom ships and United Kingdom fishing vessels whether in the United Kingdom or anywhere else in the world, and all seafarers and fishermen on such ships or fishing vessels irrespective of nationality, ethnic origin, religion, gender etc. Certain provisions also apply to fishing vessels which are not United Kingdom ships when in a United Kingdom port or United Kingdom waters.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

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

6.2 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 96 countries representing 91% of the world's gross tonnage of ships.

6.3 It was implemented in the United Kingdom by a combination of existing legislation (some of which was amended to fully implement the MLC) and new regulations. The instruments which implement the MLC are:

- 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) Regulations 2018 (S.I. 2018/58),

- 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)
- the Merchant Shipping (Maritime Labour Convention) (Compulsory Financial Security) (Amendment) Regulations 2018 (S.I. 2018/667)
- the Merchant Shipping (Maritime Labour Convention) (Extension of Maritime Labour Certificate) Regulations 2019 (S.I. 2019/716).

- 6.4 The MLC was designed to be kept under review and updated in response to developments in the industry. An international committee of representatives of seafarers, shipowners and governments, the International Labour Organization's Special Tripartite Committee on the MLC, has adopted three sets of amendments to the MLC since it came into force in 2013. The first set of amendments adopted in 2014 put in place arrangements to protect seafarers who are abandoned by shipowners. The second set of amendments, adopted in 2016, made provision for the extension of the Maritime Labour Certificate, once a ship has undergone a satisfactory renewal survey, to allow time for the new Certificate to reach the ship. The 2018 amendments are the third set of amendments.
- 6.5 The European Communities (Designation of Treaties) (Maritime Labour Convention) Order 2009 (S.I. 2009/1757) specifies the MLC as a Community Treaty within the meaning of section 1(2) of the European Communities Act 1972.
- 6.6 The Work in Fishing Convention 2007 was adopted on 14 June 2007 in Geneva and came into force internationally on 16 November 2017. It entitles all fishermen to written terms and conditions of employment (a fisherman's work agreement), decent accommodation and food, medical care, regulated working time, repatriation, social protection and health and safety on board. It also provides minimum standards relating to recruitment and placement.
- 6.7 The United Kingdom Government strongly supported the development of the Work in Fishing Convention and ratified it in January 2019. The Work in Fishing Convention has been ratified by 18 countries.
- 6.8 The instruments implementing the Work in Fishing Convention are –
- The Merchant Shipping (Work in Fishing Convention) Regulations 2018 (S.I. 2018/1106)
 - The Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018 (S.I. 2018/1107)
 - The Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018 (S.I. 2018/1108)
 - The Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018 (S.I. 2018/1109)

- 6.9 The European Union (Designation of Treaties) (Work in Fishing Convention) Order 2018 (S.I. 2018/520) specified the Work in Fishing Convention as a Community Treaty within the meaning of section 1(2) of the European Communities Act 1972.

7. Policy background

What is being done and why?

- 7.1 This instrument ensures that the United Kingdom continues to meet its international obligations, as a ratifying state, under the International Labour Organization's Maritime Labour Convention, 2006 (which the United Kingdom ratified in August 2013) and the Work in Fishing Convention, 2007 (which the United Kingdom ratified in 2019):
1. it implements the 2018 amendments to the MLC, which are designed to protect the employment rights of seafarers who are held captive as a result of piracy or armed robbery, in accordance with the United Kingdom's obligations under that Convention to implement by 26 December 2020;
 2. it makes changes, including corrections, to the United Kingdom legislation implementing the Work in Fishing Convention 2007: the Merchant Shipping (Work in Fishing Convention) Regulations 2018 (S.I. 2018/1106) and the Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018 (S.I. 2018/1107).
- 7.2 Piracy continues to pose a significant risk to seafarers in certain parts of the world. According to reports published by the International Maritime Organisation¹ 53 seafarers were taken captive between December 2019 and February 2020 in 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
- 7.3 The 2018 amendments to the MLC make provision to ensure that, for as long as a seafarer is held captive as a result of piracy or armed robbery, their seafarer employment agreement remains in force and they must continue to be paid in accordance with that agreement. It will therefore provide reassurance to seafarers on UK ships operating in the High Risk Area for piracy that their employment rights will be protected if they are taken captive as a result of piracy or armed robbery
- 7.4 The changes made by this instrument to the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers) Regulations 2014 to implement the 2018 amendments to the MLC are as follows:
1. a new provision such that, while a seafarer is held captive as a result of piracy or armed robbery against a ship, a seafarer employment agreement which would otherwise terminate during the period of captivity continues in force until the seafarer has been repatriated or until the seafarer's death;
 2. a new provision that, while a seafarer is held captive as a result of piracy or armed robbery against a ship,
 3. the seafarer's wages, remuneration and other entitlements must continue to be paid, as do any part of the seafarer's wages allotted to another person by the seafarer; and

¹ <http://www.imo.org/en/OurWork/Security/PiracyArmedRobbery/Reports/Pages/Default.aspx>

4. any term in the agreement which purports to reduce, vary or stop any such payments is void.
- 7.5 The instrument also makes amendments, including corrections, to the United Kingdom legislation implementing the Work in Fishing Convention .
- 7.6 In the Merchant Shipping (Work in Fishing Convention) Regulations 2018 (S.I. 2018/1106), an offence is created, correcting an omission in the instrument as made, for the fishing vessel owner’s failure to ensure that medical care is provided to a fisherman either on board or ashore, or that the fisherman is taken ashore promptly for treatment. The offence is punishable on summary conviction by a fine (in Scotland or Northern Ireland, by a fine not exceeding level 5 on the standard scale).
- 7.7 Also in S.I. 2018/1106, new provisions are made to allow the detention of a fishing vessel where:
 1. the conditions on board are clearly hazardous to the safety, health or security of fishermen; or
 2. the non-compliance represents a serious breach or the latest in a series of repeated breaches of S.I. 2018/1106 or the requirements of the Work in Fishing Convention; or
 3. the fishing vessel owner has not reimbursed the Secretary of State for costs incurred relating to the repatriation of fishermen, where the fishing owner has not made the required provision for repatriation.
- 7.8 This provisions are necessary so as to enable the effective enforcement of the Work in Fishing Convention, in accordance with Article 40 of the Work in Fishing Convention, and will ensure effective enforcement of the Work in Fishing Convention standards on UK fishing vessels in the event of breaches.
- 7.9 In the Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018 an offence is created, correcting an omission in the instrument as made, for the fishing vessel owner and skipper for the failure to present a fishing vessel for a survey in accordance with Merchant Shipping Notice 1885(F). Without this offence, it would not be possible to enforce the Regulations in respect of a fishing vessel for which no Work in Fishing Certificate is required.
- 7.10 The changes made in response to drafting concerns raised by the JCSI are described in paragraphs 3.1 and 3.2 above.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 The Department for Transport does not intend to produce consolidated versions of the instruments amended.

10. Consultation outcome

- 10.1 The Maritime and Coastguard Agency is in regular consultation with representative organisations in the UK of shipowners, fishing vessel owners, seafarers and fishermen, in particular the UK Chamber of Shipping, the National Union of Rail, Maritime and Transport Workers, Nautilus International, the national Fishing

Federations and the Fishermen's Mission on matters relating to the MLC and the Work in Fishing Convention, and discusses all aspects of implementation of the Conventions with them. This is primarily through a tripartite working group (comprising shipowners, seafarers and government) for each Convention.

- 10.2 Public consultation was conducted from June – 3 August 2020, including publishing the proposed instrument on www.gov.uk. Members of the two tripartite working groups were notified of the consultation with a view to them notifying the members of their own organisations. Only three responses were received. One was neutral, one was supportive and the third provided some specific comments on drafting of the legislation which have been considered in finalising the instrument.
- 10.3 The lack of responses may be explained by the non-controversial nature of the proposals (which were agreed internationally on a tripartite basis) and the minimal impact expected from the instrument – see section 12 below.

11. Guidance

- 11.1 The Government will publish guidance to raise awareness of this measure in December 2020.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is not significant.
- 12.2 There is no impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact is expected.
- 12.4 In respect of the protection for seafarers held captive as a result of piracy or armed robbery, the number of United Kingdom ships operating in High Risk Areas for piracy and armed robbery is a small proportion of the United Kingdom fleet. Furthermore, following informal discussions with United Kingdom stakeholders, it is not expected that shipowners of United Kingdom ships would stop paying the wages or seafarers on their ships if held captive. The only costs for business identified from this measure are therefore the costs of familiarisation with the new provisions, which are very low.
- 12.5 In respect of the amendments made to the legislation implementing the Work in Fishing Convention, there are no impacts as the substantive changes only affect those who breach the legislation.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses.
- 13.3 We do not expect a disproportionate impact on small businesses based on the available evidence.

14. Monitoring & review

- 14.1 The Maritime and Coastguard Agency will evaluate how the instruments have impacted through consultation with industry using the representative organisations referred to in paragraph 10.

14.2 The instruments affected by the amendment contain a statutory review clause requiring the Secretary of State to review the operation of the instruments five years after those instruments came into force and at five yearly intervals thereafter.

15. Contact

15.1 Julie Carlton at the Department for Transport Telephone: 020 3817 2498 or email: julie.carlton@mcga.gov.uk can be contacted with any queries regarding the instrument.

15.2 Claire Stretch, Change Director UK Maritime Services at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Courts MP, Minister for Shipping at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.