

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (HOURS OF
WORK) REGULATIONS 2018

2018 No. 58

1. Introduction

1.1 This explanatory memorandum has been prepared by the Maritime and Coastguard Agency and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations consolidate the provisions of the Merchant Shipping (Hours of Work) Regulations 2002 (S.I. 2002/2125) and the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014 (S.I. 2014/308) (the 2014 amendment regulations) together with intervening amending instruments¹ so as to do what is necessary in one instrument to implement the provisions on hours of work and rest, annual leave and shore leave for seafarers of Council Directive 2009/13/EC and Directive 2008/106/EC, as amended by Directive 2012/35/EU.

2.2 The above Directives in turn implement the provisions on hours of work and rest, annual leave and shore leave of the Maritime Labour Convention, 2006 (“the MLC”), of the International Labour Organization and the International Convention on the Standards of Training, Certification and Watchkeeping 1978, as amended (“STCW”), of the International Maritime Organisation.

2.3 On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the United Kingdom remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the United Kingdom has left the EU.

2.4 The purpose of the instrument is to protect the health and safety of seafarers and the safety of ships by ensuring that seafarers are properly rested and have paid leave and access to recreation ashore.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The instrument fulfils a commitment made in the Explanatory Memorandum on the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014² to consider consolidation of this and previous instruments once Directives on flag state and port State responsibilities under the Maritime Labour Convention, 2006 had been implemented.

¹ S.I. 2003/3049, S.I. 2004/1469, S.I. 2004/1713 and S.I. 2005/2114

² S.I. 2014/308

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been 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 UK is a signatory to STCW and ratified the MLC in August 2013, and is therefore under an obligation to fully implement their provisions. Other instruments implementing other provisions of the MLC are listed in Marine Guidance Notice MGN 470(M).
- 4.2 STCW Regulation VIII/1 requires seafarers with safety, security or pollution prevention duties to be fit for duty, and Code A-VIII/1 sets out the minimum hours of rest required by a seafarer to ensure that they are fit for duty. Council Directive 2012/35/EU implements the provisions of STCW, including Code A-VIII/1, in EU law.
- 4.3 The MLC requires members to implement either minimum hours of rest or maximum hours of work for all seafarers. Council Directive 2009/13 amended Council Directive 1999/63/EC concerning the Agreement on the organisation of working time for seafarers, concluded by the European Community Shipowners' Association and the Federation of Transport Workers' Unions in the European Union (OJ L167, 2.7.99, p.33) to bring it fully into line with the MLC.
- 4.4 The instrument sets minimum hours of rest and minimum paid leave provisions for seafarers on UK ships or non-UK ships in UK waters, provides mechanisms for the enforcement of these requirements, and requires shipowners to allow seafarers shore leave where practicable in ports of call.
- 4.5 The Regulations come into force on 6 April 2018.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is all United Kingdom ships whether in the United Kingdom or anywhere else in the world, and all seafarers on such vessels irrespective of nationality, ethnic origin, religion, gender etc. It also applies to non-UK ships when in UK waters.

6. European Convention on Human Rights

- 6.1 This instrument makes consequential amendments to primary legislation. Nusrat Ghani MO, 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) Regulations 2018 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 STCW, Directive

2012/35/EU, the MLC (with a view to discharging the obligation mentioned in paragraph 4.1 above) 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 :

- seafarers to be provided with at least 10 hours of rest in any 24 hours period, and at least 77 hours rest in any seven-day period; daily rest may not be taken in more than two periods, of which one must be at least 6 hours long;
- in limited circumstances, the Maritime and Coastguard Agency to authorise exceptions to the above limits;
- 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;
- 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;
- 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;
- 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;
- protections for seafarers exercising rights under the 2018 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
- powers for UK inspectors to inspect UK ships wherever they are, and non-UK ships in UK waters, for compliance with the 2018 Regulations and powers for the Secretary of State to enforce compliance.

7.3 The meaning of seafarer in this instrument is 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 includes 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 fulfils an undertaking made in the Explanatory Memorandum to S.I. 2014/308 to give consideration to consolidation of the 2002 Regulations and subsequent amendments when 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) were transposed.

8. Consultation outcome

- 8.1 Public consultation was held in September – October 2016 for a period of 4 weeks, as the substantive changes to the provisions of the superseded instrument were limited, reflecting administrative measures which had already been put in place. There were five substantive responses from key stakeholder organisations, which have been discussed with the organisations concerned. The regulations and supporting guidance have been amended to address the issues raised as far as possible.

9. Guidance

- 9.1 The Maritime and Coastguard Agency will publish a new Merchant Shipping Notice (MSN 1877(M)) replacing MSN 1842(M) which accompanied the 2014 amendments to explain the provisions of the Regulations.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 There is no exemption as regards small business in this instrument. Such an exemption is not permitted under STCW, the MLC or the Directive being transposed. To minimise the impact of the requirements on firms employing up to 20 people, there was extensive consultation during the initial implementation of MLC provisions 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) Amendment 1 and MGN 491(M) Amendment 1. However, there is very limited scope for flexibility regarding the provisions contained in this instrument.

12. Monitoring & review

- 12.1 In line with other new legislation the proposed regulations contain a statutory review clause requiring the Secretary of State to review the operation of the Regulations by 5 April 2020 and at five yearly intervals thereafter. In advance of that review, MCA will consider alternatives to criminal sanctions in these and other regulations governing working time in the maritime sector as part of the statutory review of the Merchant Shipping (Inland Waterways) (Working Time) Regulations 2003 (as amended by S.I. 2017/1149).

13. Contact

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