

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (SURVEY AND
CERTIFICATION) REGULATIONS 2013**

2013 No. 1785

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. The UK intends to ratify the Convention.

2.2 This instrument provides for the survey and certification of UK ships in compliance with the UK’s MLC standards (as set out in an associated Merchant Shipping Notice), and the inspection of non-UK ships calling at UK ports for compliance with the MLC. It also requires shipowners to have a procedure for the investigation and resolution of complaints from seafarers as regards their entitlements under the MLC.

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

3.1 None.

4. Legislative Context

4.1 If the UK ratifies the MLC, it will be subject to a legal obligation to ensure its laws meet the requirements of the Convention. This instrument contributes towards achieving this objective. Other instruments implementing the MLC will follow in the coming months.

4.2 The MLC is a consolidation with amendments of various ILO Conventions, many of which the UK has ratified and is already bound by. The existing ILO Convention relevant to this instrument is Convention 178 concerning Labour Inspection (Seafarers) of 1996 which the UK has ratified. This is limited to the inspection by flag states of living and working conditions on the ships flying their flag (ILO 178). The MLC introduces an effective enforcement regime including certification by flag states and inspection by port states.

4.3 Currently, the inspection of living and working conditions on UK ships (and non-UK ships while they are in UK waters) is carried out under powers conferred by section 258 of the Merchant Shipping Act 1995. Sections 33 and 44 of the Merchant Shipping

Act 1995 also provide limited means for seafarer welfare complaints to be raised and investigated.

4.4 The Merchant Shipping (Survey and Certification) Regulations 1995 (S.I. 1995/1210) govern survey and certification of ships under a number of international Conventions and UK regulations governing construction and equipment of ships.

4.5 This instrument is made in part under section 2(2) of the European Communities Act 1972. Further to the European Communities (Definition of Treaties) (Maritime Labour Convention) Order 2009 (S.I. 2009/1757, as amended), the Convention is regarded as one of the EU Treaties within the meaning of section 1(2) of that Act.

4.6 The MLC was presented to Parliament in a White Paper (Cmd. 7049). The Convention received its 30th ratification in August 2012 and will come into force internationally on 20th August 2013.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 This instrument applies to United Kingdom ships, wherever they are, subject to the exceptions specified in regulation 4. It also applies to certain non-United Kingdom ships (again, subject to the exceptions in regulation 4) when they are in a United Kingdom port or United Kingdom waters, except insofar as they are exercising rights of innocent passage or transit passage.

6. European Convention on Human Rights

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 instrument is designed to ensure that UK law is in line with the MLC, so that the UK complies with its obligations when it ratifies the Convention.

7.2 This instrument provides for :

- 7.2.1 initial and periodical survey every 5 years, and intermediate survey of any UK ship of 500 gross tonnage or over engaged on an international voyage or operating from a port or between ports in a country other than the United Kingdom, and other vessels on request;
- 7.2.2 the issue and endorsement of a Maritime Labour Certificate where the ship complies with the MLC;

- 7.2.3 the survey of a UK ship by the Government of another Convention State at the request of the Secretary of State;
- 7.2.4 the issue of interim certification in circumstances permitted by the Convention to United Kingdom ships;
- 7.2.5 the survey of a non-UK ship by a certifying authority at the request of another Convention State;
- 7.2.6 the conditions under which a Maritime Labour Certificate would cease to be valid;
- 7.2.7 the preparation of a Declaration of Maritime Labour Compliance Part 2 by the shipowner and its certification by a certifying authority;
- 7.2.8 the preparation of a Declaration of Maritime Labour Compliance Part 1 by a certifying authority;
- 7.2.9 the carriage of documents on board the ship;
- 7.2.10 on-board and on-shore complaints procedures;
- 7.2.11 inspection of non-UK ships in UK ports.

7.3 As regards non-UK ships, the MLC requires at Article V.7 that ratifying States ensure that ships which fly the flag of a State which has not ratified the MLC do not receive more favourable treatment than the ships flying the flag of a ratifying State. Accordingly these Regulations contain provisions which apply to comparable non-UK ships, irrespective of whether they are flying the flag of a ratifying State.

7.3 The Secretary of State's functions will be carried out by the Maritime and Coastguard Agency (MCA).

- Consolidation

7.4 As regards the ILO, the MLC consolidated over 60 ILO instruments into a single Convention. As regards UK law, the existing legislation on survey and certification does not apply to all of the ships to which the MLC applies, but also applies to some ships to which the Convention does not apply. It is accordingly difficult to provide for a single instrument governing survey and certification of ships against the full range of legislative requirements. The desirability of a single instrument on the subject needs to be weighed against the interests of those for whom the applicable regulatory requirements will not change as a result of the Convention. In addition, the subject matter of the various regulations are very distinct – the 1995 Regulations govern a ship's structure, machinery and equipment; the International Safety Management (ISM) Code governs its safety management arrangements; and these MLC Regulations govern their seafarer employment standards. There may be greater scope for consolidation when Directive 2009/16/EC governing Port State Control is updated to include the MLC.

7.5 In practice, while the MLC survey and certification work will be governed by a separate set of regulations, the work will usually be done at the same time as other survey and certification work which is relevant to the ship.

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.

8.2 One hundred and eighty-three 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. Five written responses were received from significant players in the industry, and there were no objections to the Regulations which are a key part of the UK's implementation of the MLC. The comments received primarily related to supporting guidance, which will be amended for greater clarity.

9. Guidance

9.1 The MCA has published Merchant Shipping Notices 1848(M) and 1849(M) and will publish Marine Guidance Notes to explain the impact of the new regulations, and to provide detail on the process of survey and certification and the documentation issued.

10. Impact

10.1 The impact on business, charities or voluntary bodies and the public sector is expected to be moderate, as surveys will be arranged as far as practicable in conjunction with existing regimes to minimise the costs for business. The Chamber of Shipping and the seafarer Unions have stated that they believe the costs of implementing the MLC will be outweighed by the benefits of UK ratification.

10.2 An Impact Assessment is 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 The purpose of the Convention is to implement adequate minimum living and working conditions for all seafarers. To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to exclude vessels operating within 60 miles of a safe haven in the United Kingdom on domestic voyages from the administrative burdens of regular inspection and certification under the Maritime Labour Convention, 2006. This is expected to exclude the smallest businesses which will generally operate close to shore.

12. Monitoring & review

12.1 The intended outcome of these Regulations is that (a) UK law complies with the requirements of the Convention and (b) to ensure that UK ships are provided with the necessary documentation under the MLC to operate without undue delay in the ports of other ratifying countries.

12.2 The latter will be measured by monitoring reports of non-compliance by UK ships through the Port State Control Regions internationally. We seek to ensure that the detention rate for UK vessels is better than, or comparable to, other Ship Registers of similar size and quality to the UK Ship Register, to minimise the possibility of UK ships being detained overseas, and to reduce the level of deficiencies.

12.3 At the ILO level, the ILO will conduct a review of the MLC after five years, taking into account the views of stakeholders.

12.4 At the UK level, the instrument contains a review clause which obliges the Secretary of State to review the instrument no more than 5 years from the date it 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@mcga.gov.uk can answer any queries regarding the instrument.