EXPLANATORY MEMORANDUM TO

THE EUROPEAN UNION (DEFINITION OF TREATIES) (WORK IN FISHING CONVENTION) ORDER 2018

2018 No. [XXXX]

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 This Order specifies the Work in Fishing Convention, adopted by the International Labour Organisation at Geneva on 14th June 2007 ("ILO 188"), as an EU Treaty within the meaning of section 1(2) of the European Communities Act 1972 ("the 1972 Act"). This is in order that the powers in section 2 of the European Communities Act 1972 may be exercised to make secondary legislation to implement the Convention as national law in the UK.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

Other matters of interest to the House of Commons

3.2 The territorial application of this instrument includes Scotland and Northern Ireland and it is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

4.1 ILO 188 was adopted on 14 June 2007 in Geneva following over 6 years of development and discussion. International Labour Organization Treaties are unique in international legislation because they are tripartite in nature.

4.2 ILO 188 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.

4.3 The UK Government firmly supported the development of ILO 188 and is committed to working towards ratifying it at the earliest practical date. ILO 188 was originally laid before Parliament on 20 May 2008 (Cm 7375) with an indication of Government support for the aim of the Convention and willingness to start consultation with the fishing industry. Subsequent Governments have continued to support the policy.

4.4 Section 1(3) of the 1972 Act provides that treaties entered into by the United Kingdom after 22 January 1972 shall not be regarded as Community Treaties defined by the 1972 Act unless they are specified as such in an Order in Council. Section 1 (3) of the 1972 Act also provides that no Treaty shall be so specified unless a draft of the

Order in Council has been approved by Resolution of each House of Parliament. We propose that this Order be made under Section 1(3) of the European Communities Act 1972 in order to use the powers in section 2(2) of the Act to facilitate implementation of ILO 188 into UK Law.

4.5 The EU is not a member of the International Labour Organisation, and therefore has not been able to be a party to ILO 188. However, much of ILO 188 comes within the exclusive and shared competence of the EU. There is shared competence for example in relation to minimum age, working time and medical treatment on board vessels. The area of exclusive competence relates to the coordination at the European level of social security. On 7 June 2010, the Council adopted a decision authorizing member states to ratify ILO 188 for those parts falling within EU competence and exhorting member states to ratify the whole convention, preferably before 31 December 2012.

4.6 Article 145 of the Treaty on the Functioning of the European Union exhorts Member States and the Union to "work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change". Article 145 specifically refers to the general provisions of Article 3 with a view to achieving the objectives defined in Article 3 of the Treaty on European Union which include the creation of "a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection". We consider that the measures within the ILO 188, which don't fall within the exclusive or shared competence of the EU, support and are properly to be considered as ancillary to these aims.

4.7 The Government made Order in Council 2009/1757 to use the powers at section 2(2) of the 1972 Act to implement the Maritime Labour Convention into UK law. It is appropriate that the same method be used to provide powers to implement ILO 188.

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 the United Kingdom.

6. European Convention on Human Rights

6.1 Nusrat Ghani MP, Parliamentary Under Secretary of State for the Department for Transport has made the following statement regarding Human Rights:

"In my view the provisions of the European Union (Definition of Treaties) (Work in Fishing Convention) Order 2018 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 A specification order will provide the primary powers to implement ILO 188 to improve the living and working conditions on board UK fishing vessels. The UK fishing industry has expressed support for implementation of ILO 188 both to improve safety and working conditions and for commercial reasons particularly those working on board vessels that fish and unload catch outside of UK waters.

7.2 ILO 188 must be ratified in its entirety. Some aspects of ILO 188 can be implemented using powers from the Merchant Shipping Act 1995, but the provisions promoting social protection and raising the standard of living and employment of

fishermen do not fall within scope of this Act. Given that ILO 188 is ancillary to the transport and employment provisions of the EU treaties in so far as they promote social protection and enhanced living and working conditions, it is appropriate to specify ILO 188 as ancillary to the Treaty.

7.3 European Directive 2017/159 Implementing European Social Partners Agreement on the International Labour Organization Convention on Working in Fishing (No. 188) obtained political agreement at the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on 13 October 2016. The Directive comes into force on 16 November 2019, two years after ILO 199 came into force internationally. The Government supported the Directive because of the intention to improve safety in the fishing industry and then Minister of State John Hayes wrote to the Reducing Regulation Sub-Committee on 28 February 2017 setting out the Government's intention to implement ILO 188 as closely as possible to its coming into force date, rather than wait for the Directive transposition date.

Consolidation

7.4 The purpose of this instrument is to use the powers contained in the European Communities Act 1972 to make secondary legislation to give effect to the requirements set out in ILO 188. Similar or related legislation is not in place and there is accordingly no scope for consolidation.

8. Consultation outcome

8.1 General consultation has not been undertaken. This technical instrument is an important step in making the legislative changes required to transpose ILO 188 into UK Law, it has no impact on the public in general.

8.2 The MCA has consulted on a package of measures designed to implement ILO 188 itself and is currently working with stakeholders to develop a final proposal.

9. Guidance

9.1 Apart from this Explanatory Memorandum no guidance is necessary for this instrument as it performs a purely technical function.

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 does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 As the purpose of this instrument is purely technical, to facilitate the use of powers contained in the 1972 Act to amend secondary legislation to give effect to the requirements of ILO 188, monitoring and review is not considered necessary.

13. Contact

13.1 Louise Unsworth at the Maritime and Coastguard Agency Tel: 0203 817 2505 or email: louise.unsworth@mcga.gov.uk can answer any queries regarding the instrument.