EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (COMPULSORY FINANCIAL SECURITY) (AMENDMENT) REGULATIONS 2018

2018 No. 667

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.

2. Purpose of the instrument

2.1 This instrument makes amendments to the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers, etc.) Regulations 2014 (S.I. 2014/1613) to implement the 2014 amendments to the International Labour Organisation's Maritime Labour Convention, 2006, ("the MLC") regarding protection for seafarers abandoned by the shipowner, and financial security for compensation of seafarers in cases of long term disability or death arising from occupational injury, illness, or hazard.

2.2 It also updates the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 to reflect changes to legislation implementing the Maritime Labour Convention.

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 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).

4.4 The MLC was designed to be readily updateable and the first set of amendments, which provide protection to seafarers who are abandoned by the shipowner by requiring shipowners to have compulsory financial security for such an eventuality, was adopted in June 2014 and came into force in January 2017.

4.5 The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers, etc.) Regulations 2014 contain provisions on financial security for repatriation of seafarers and for compensation of seafarers for occupational illness, injury or death.

5. Extent and Territorial Application

5.1 The extent of this instrument is the whole of 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 implement the 2014 amendments to the Maritime Labour Convention, 2006 in UK legislation, in order to provide protection to seafarers who are abandoned by the shipowner.

7.2 The changes made by this instrument to the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (SI 2014/1613) are as follows:

- introduce a requirement that shipowners must have sufficient financial security to cover the costs of maintaining and repatriating abandoned seafarers on board MLC compliant vessels, including payment of wages ("abandonment security");

- lay down standards for the financial security provided, including the seafarer's entitlement to make a claim;
- introduce standards for financial security for compensation for seafarers in case of occupational illness, injury or death in line with the standards for abandonment security (there is an existing requirement to have such financial security in place); and
- make it a flag state responsibility to ensure by inspection that financial security systems are in place for ships flying its flag to meet these requirements.

7.3 The instrument also amends the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 to update the definition of "the United Kingdom Maritime Labour Convention standards" (which are the requirements that shipowners must meet in order to obtain a Maritime Labour Certificate or otherwise comply with UK MLC requirements) to refer to current legislation.

7.4 It was not possible to make the Regulations sooner. Public consultation on full implementation in October to December 2016 gave rise to substantive points which the Maritime and Coastguard Agency (MCA) needed to consider with stakeholders. In April 2017, the UK therefore implemented the requirement for shipowners of UK ships to have the financial security required by the 2014 amendments through the MLC survey and inspection regime. This provided protection to seafarers on UK ships, but did not fully implement the 2014 amendments to the MLC, particularly in respect of seafarers on non-UK ships in UK waters. There were also issues relating to technical aspects of the Regulations that took time to resolve.

7.5 The Government is not aware of any seafarers who have been disadvantaged by the delayed implementation of the 2014 amendments. In one case of a non-UK ship abandoned in the UK where seafarers wished to make use of the new financial security, the financial security provider agreed to meet the seafarers' claims although they did not accept liability because neither the flag State nor the UK as port State had the relevant legislation in force.

Consolidation

7.6 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 2, 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.

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 The 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 those instruments came into force and at five yearly intervals thereafter.

13. Contact

13.1 Louise Unsworth at the Maritime and Coastguard Agency can answer any questions regarding this instrument.

13.2 Address: Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG

13.3 Telephone: 020 3817 2505 Email: Louise.Unsworth@mcga.gov.uk.