EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (CONSEQUENTIAL AND MINOR AMENDMENTS) REGULATIONS 2014

S.I. 2014 No. 1614

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 Organisation ("ILO") treaty concerning seafarer employment on merchant ships.

2.2 This instrument contains the amendments to primary legislation and to existing statutory instruments consequential on the implementation of provisions of the Maritime Labour Convention, 2006 (MLC) in the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014[(1)] ("the main MLC Regulations").

2.3 This instrument makes amendments to

- the Merchant Shipping Act 1995[(2)]
- the Employment Rights Act 1996[(3)]
- the Merchant Shipping (Seaman's Allotments) Regulations 1972[(4)]
- the Merchant Shipping (Seaman's Wages and Accounts) Regulations 1972[(5)]
- the Merchant Shipping (Repatriation) Regulations 1979[(6)]
- the Merchant Shipping (Provisions and Water) Regulations 1989[(7)]
- the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991[(8)]
- the Industrial Tribunals (Northern Ireland) Order 1996[(9)]
- the Merchant Shipping (Crew Accommodation) Regulations 1997[(10)]

(**1**) S.I. 2014/1613.
(**2**) 1995 c.21.
(**3**) 1996 c.18.
(**4**) S.I. 1972/1698.
(**5**) S.I. 1972/1700.
(**6**) S.I. 1979/97.
(**7**) S.I. 1989/102.
(**8**) S.I. 1991/2144.
(**9**) S.I. 1996/1921. (N.I. 18).
(**10**) S.I. 1997/1508.

- the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998[11]
- the Merchant Shipping (Hours of Work) Regulations 2002[12]
- the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010[13]
- the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013[14]

2.4 The instrument also revokes the Merchant Shipping (Certification of Ships' Cooks) Regulations 1981[15] and the Merchant Shipping (Ships' Doctors) Regulations 1995 [16].

2.5 The instrument further contains a saving provision in respect of the Merchant Shipping and Fishing Vessels (Health and Safety) (Employment of Young Persons) Regulations 1998[17].

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

3.1 None.

4. Legislative Background

4.1 The MLC was presented to Parliament in a White Paper (Cm 7049). The Convention came into force internationally on 20 August 2013. The UK ratified the MLC on 7 August 2013 and there is accordingly a legal obligation to ensure that our laws meet the requirements of the Convention by 7 August 2014.

4.2 The MLC as a whole consolidates amendments of various ILO Conventions, many of which the UK has ratified and is already bound by. All the MLC implementing instruments are therefore part of a wider consolidation exercise. This instrument contributes towards achieving this objective.

4.3 Council Decision 2007/431/EC authorised Member States to ratify the MLC in respect of the provisions falling within EU competence. The Order in Council (The European Communities (Definition of Treaties) (Maritime Labour Convention)) Order 2009 (SI 2009/1757) designates the MLC as a Community Treaty within the meaning of section 1(2) of the European Communities Act 1972. Further, those aspects of the

(**11**) S.I.1998/2771.
(**12**) S.I. 2002/2125
(**13**) S.I. 2010/737.
(**14**) S.I. 2013/1785.
(**15**) S.I. 1981/1076.
(**16**) S.I. 1995/1803.
(**17**) S.I. 1998/2411.

Convention which fall within EU competence have been included in a European Social Partners Agreement (SPA) which is implemented by Council Directive 2009/13/EC, which also amends Council Directive 1999/63/EC in respect of matters now covered by the MLC. (This instrument does not implement any of the substantive provisions of Directive 2009/13/EC or the SPA, and therefore no transposition note has been prepared specifically in respect of it. However, the transposition note which has been prepared in respect of the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 is relevant insofar as this instrument makes consequential changes to legislation arising from the manner in which those Regulations implement the MLC).

4.4 The proposal that resulted in Directive 2009/13/EC was the subject of Explanatory Memorandum (EM) 11588/08 submitted by the Department for Transport on 23 July 2008. The House of Commons European Scrutiny Committee considered the EM on 10 September 2008. The Committee recommended that the document was not legally or politically important and cleared it (Report 32, Session 2007-2008). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee G at the 1332nd sift on 29 August 2008. The Chairman wrote to the Minister on 16 October 2008, clearing the document from scrutiny but requesting further information. The Minister responded to the Chairman on 24 February 2009.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.1.1 The legislation amended by this instrument generally applies only to vessels to which existing legislation applies, but the MLC does not apply. This includes fishing vessels, ships of traditional build, and vessels not ordinarily engaged in commercial operations, although the exact application of each instrument may vary.

6. European Convention on Human Rights

6.1 Stephen Hammond, Parliamentary Under-Secretary of State for Transport has made the following statement regarding Human Rights:

> In my view the provisions of the Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014 are compatible with the Convention rights.

7. Policy background

- **What is being done and why**

7.1 The instrument

7.1.1 amends existing legislation so that it applies only to vessels to which the MLC does not apply, where new legislation implementing MLC provisions is being introduced by the main MLC Regulations (for example, the Merchant Shipping (Repatriation) Regulations 1979);

7.1.2 inserts or amends definitions to ensure compatibility or consistency with the new legislation;

7.1.3 updates references to previous legislation with references to the main MLC Regulations where appropriate;

7.1.4 amends the Merchant Shipping (Seaman's Allotments) Regulations 1978 and the Merchant Shipping (Seaman's Wages and Accounts) Regulations 1972 to bring them fully into line with the MLC;

7.1.5 corrects an incorrect reference in the offences and penalties provisions of the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991;

7.1.6 corrects an amendment to the Industrial Tribunals (Northern Ireland) Order 1996 made by the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014[(18)];

7.1.7 amends the enforcement provisions of the Merchant Shipping (Hours of Work) Regulations 2002 (as amended) for non-UK ships with Maritime Labour Certificates when in UK waters, to ensure consistency with those in the main MLC Regulations, and corrects an amendment made by the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014;

7.1.8 updates the definition of "medical practitioner" in the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010 to include updated criteria for MCA approval, including the introduction of the UK's Licence to Practise;

7.1.9 corrects a typographical error in the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010 relating to the application of the Regulations to non-UK ships in UK waters.

7.1.10 inserts words inadvertently omitted from the penalties and offences provision of the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013, corrects an error in the application provisions and

(**18**) S.I. 2014/308.

makes other minor changes to ensure consistency with other legislation implementing the MLC;

7.1.11 revokes the Merchant Shipping (Certification of Ships' Cooks) Regulations 1981, and the Merchant Shipping (Ships' Doctors) Regulations 1995 which are superseded by the main MLC Regulations; and

7.1.12 contains a saving provision which ensures that the Merchant Shipping and Fishing Vessels (Health and Safety) (Employment of Young Persons) Regulations 1998 continue to apply in respect of all sea-going United Kingdom ships notwithstanding the amendment made in regulation 2(2) pursuant to which the power under which those Regulations were made no longer applies to such ships..

7.2 As described above in paragraphs 7.1.5, 7.1.6, 7.1.7, 7.1.9 and 7.1.10, the instrument contains some corrections to earlier instruments. However, as these are minor in nature and represent a small proportion of these Regulations, the Department has decided not to apply the free issue procedure on this occasion, having discussed the matter with the SI Registrar.

7.3 As regards the Merchant Shipping (Seaman's Allotments) Regulations 1972, these deliberately do not contain criminal sanctions for non-compliance. The purpose of the provisions is to confer private rights upon seafarers which can be enforced in court, enabling them to allot their remuneration if they wish.

- **Consolidation**

7.4 Not applicable.

8. Consultation outcome

8.1 Consultation was carried out on the amendments in this instrument as part of consultation on the related substantive provisions implementing the MLC, now contained in the main MLC Regulations.

8.2 One hundred and seventy six organisations were directly notified of the consultation exercises, 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.

8.3 There was widespread support for the implementation and ratification of the Convention. Most consultation comments related to the interpretation and practical implementation of Convention requirements, and had little bearing on the provisions in this instrument.

9. Guidance

9.1 Where appropriate, reference is made to this instrument in Merchant Shipping Notices and Marine Guidance Notes providing guidance on the main MLC Regulations.

10. Impact

10.1 The instrument mainly ensures that those to whom the MLC does not apply remain subject to existing legislation, and corrects and updates references. There is therefore no significant impact business, charities, voluntary bodies or the public sector. No impact assessment has been produced, although the changes as regards Seaman's Allotments are referred to in the Impact Assessment on the wages provisions of the main MLC Regulations (DfT 000174).

11. Regulating small business

11.1 The legislation applies to small business.

11.2 There is no exemption as regards small business in this instrument. Such an exemption is not permitted under the MLC.

12. Monitoring and review

12.1 Since the instrument contains only amendments, revocations and savings, a statutory review clause would not be appropriate. There is a statutory review clause in the main MLC Regulations pursuant to which the UK's implementation of the Convention will be reviewed.

13. Contact

Julie Carlton at the Maritime and Coastguard Agency Tel: 02380 329 216, Fax: 02380 329 251 or e-mail: Julie.Carlton@mcga.gov.uk can answer any queries regarding the instrument.