EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (HEALTH AND SAFETY) (AMENDMENT) REGULATIONS 2014

2014 No. 1616

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 shipping.

2.2 This instrument extends health and safety duties to self-employed seafarers, introduces new duties to report occupational diseases to the Secretary of State and to take account of published statistics on health and safety when conducting a risk assessment, and makes a minor change to the criteria for setting up a safety committee on UK ships.

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

3.1 None.

4. Legislative Context

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.

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. Other instruments implementing the MLC are: -

- 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 (SI 2014/308),
- the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (SI 2014/1613),

- the Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014 (S.I. 2014/1614), and
- the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 (S.I. 2014/1615).

4.3 This instrument implements EU obligations as well as MLC obligations. EC Council Decision 2007/431 authorised Member States to ratify the MLC in respect of the provisions falling within EU competence. Further, those aspects of the Convention which fall within EU competence have been included in a European Social Partners Agreement 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. A transposition note has been produced and is published alongside this Explanatory Memorandum.

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.

4.5 Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, known as “the Framework Directive”, and many of its daughter directives apply to workers on all ships, including fishing vessels which are not subject to the MLC.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 This instrument amends the 1997 Regulations which apply to United Kingdom ships, wherever they are. The 1997 Regulations as amended also apply to certain non-United Kingdom ships when they are in United Kingdom waters.

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 fully in line with the MLC, with a view to discharging obligations mentioned in para 4.1 above. The changes will not have a significant practical impact on shipowners or seafarers, since they largely reflect current best practice, and do not apply to fishing vessels, none of which are covered by the MLC. The instrument is therefore drafted to maintain the existing position in relation to fishing vessels. However, this instrument will amend the 1997 Regulations so as to:

7.1.1 Extend the general duties of the Company, employers and the shipowner to ensure health and safety protection of self-employed seafarers as well as employed seafarers working on board;

7.1.2 Where health and safety duties are owed by employers to workers under specified health and safety regulations (for example relating to work equipment, personal protective equipment, noise and vibration, and exposure to substances hazardous to health) provide that shipowners owe that duty also to self-employed seafarers;

7.1.3 Require employers to report any occurrence of an occupational disease of which they have been notified by a medical practitioner to the Secretary of State;

7.1.4 Amend the minimum criteria for appointment of a safety committee from more than 5 workers on a ship to 5 or more seafarers; and remove the condition that safety representatives must have been elected;

7.1.5 Require the shipowner to take into account published health and safety statistics and associated advice when carrying out risk assessments for work activities on board the ship.

- Consolidation

7.2 The existing health and safety legislation must remain in place to apply the EU directive provisions to fishing vessels, to which the MLC does not apply, which makes a thorough consolidation difficult at this stage. There are also benefits in ensuring that the shipping health and safety legislation continues to mirror the structure of the onshore health and safety legislation for the benefit of those working or employing workers at the margins. Consolidation at this stage is therefore not considered appropriate. If the equivalent to the MLC as regards fishing vessels (ILO Convention 188) is ratified by the United Kingdom and comes into force internationally, further changes will be needed to this instrument. At that time, consolidation may be appropriate.

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 national tripartite working group, which was set up in 2007. This group was consulted on many aspects of the implementation of the Convention, both prior to and following formal public consultation.

8.2 Early drafts of the provisions were consulted upon from 20 June and 18 July 2013. One hundred and seventy-six 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.

8.3 There was widespread support for implementation and ratification of the Convention, and most consultation comments related to the interpretation and practical implementation of Convention requirements. These comments have been taken into account in finalising both the legal provisions and supporting guidance. On this instrument, five written responses were received, from significant players in the industry. Some consultees confirmed MCA's view that in general the proposals reflect current good practice.

9. Guidance

9.1 Some requirements in the instrument are imposed by reference to a specific Merchant Shipping Notice. For example, the MCA has published Merchant Shipping Notice MSN 1850(M) which provides the table listing the occupational diseases which must be reported, specifies the form to be used for submitting reports and gives details of the ILO Code on protection of personal data when investigating and reporting incidents. New regulation 11A(2)(a) (which is inserted into the 1997 Regulations by regulation 2(7) of this instrument) requires an employer to have regards to the guidance specified in MSN 1850(M). The Notice also explains the requirements and process for reporting occupational diseases. Marine Guidance Note MGN 484(M) further supports the new requirement for shipowners to take into account relevant statistics in carrying out their health and safety risk assessments.

10. Impact

10.1 The impact on business, charities or voluntary bodies is outlined in the Impact Assessment, but stakeholders have advised that the proposals largely reflect existing best practice and are considered unlikely to result in significant additional costs for shipowners.

10.2 The impact on the public sector is considered likely to be minimal, given the small number of reports of occupational diseases which are expected (based on the experience of the Health and Safety Executive's existing reporting requirements for shore-based industry), and the low cost of publishing information on health and safety statistics. This instrument mirrors the recent changes introduced by HSE, which have considerably reduced the number of occupational diseases which must be reported.

10.3 Inspecting relevant ships for the purposes of enforcing the 1997 Regulations (as amended) will be carried out as part of MCA's inspection of the ship for compliance with the Maritime Labour Convention, 2006. The costs of this regime have been considered in the context of the regulations implementing the survey and certification provisions of the Convention (S.I. 2013/1785).

10.4 An Impact Assessment has been produced and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk. The measures do the minimum necessary to implement the MLC.

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 or the relevant Directives. However, there has been extensive consultation with representatives of small vessel operators to discuss the practical 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 Marine Guidance Notes, MGN 490 (M) and MGN 491 (M).

12. Monitoring & review

12.1 The purpose of these Regulations is (a) that UK law complies with the requirements of the Convention and Directive 2009/13/EC relating to health and safety and (b) to ensure that the health and safety of all seafarers is adequately protected, regardless of their employment status. The latter will be measured by continuing to monitor accident rates and trends, and any representations received from shipowners or seafarers or their representative organisations regarding the fitness for purpose of the Regulations.

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

12.3 At the European level, the Commission is required to inform the European Parliament and the Council of progress in the implementation of Directive 2009/13/EC in the Member States on a biennial basis.

12.4 At the UK level, the instrument inserts into the 1997 Regulations a review clause which obliges the Secretary of State to review the 1997 Regulations (as amended) no more than 5 years from the date that this instrument comes into force, and at intervals no greater than 5 years thereafter.

13. Contact

Julie Carlton at the Maritime and Coastguard Agency Tel: 02380 329 216 or email: Julie.Carlton@mcga.gov.uk can answer any queries regarding the instrument.

Transposition Note

This note sets out the way in which the Merchant Shipping (Maritime Labour Convention) (Health and Safety) (Amendment) Regulations 2014 (S.I. 2014/1616) ('the 2014 Regulations') amend the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (S.I. 1997/2962) ('the 1997 Regulations'), so as to transpose the provisions in Council Directive 2009/13/EC (O.J. No. L124, 20.05.2009, p.30) ("the 2009 Directive") concerning health and safety for seafarers.

The 1997 Regulations, as amended by the 2014 Regulations, complete implementation of the relevant provisions of the Agreement annexed to the 2009 Directive.

The responsibility for implementation of Council Directive 2009/13/EC rests with the Secretary of State for Transport.

Maritime and Coastguard Agency
Department for Transport

[Date]

Provision of Directive	**Purpose of Provision of Directive**	**Implemented by the Merchant Shipping (Maritime Labour Convention) (Health and Safety) (Amendment) Regulations 2014 ('the 2014 Regulations') and other Merchant Shipping Regulations as indicated**
Reg 4.3.1 of the Annex to Directive 2009/13/EC	Each Member State shall ensure that seafarers on ships that fly its flag are provided with occupational health protection and live, work and train on board ship in a safe and hygienic environment.	Implemented generally by Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 ("the 1997 regulations") that give effect to the EC "Framework Directive" 89/391/EC and legislation implementing its subsequent "Daughter" Directives and related guidance.
Reg 4.3.2 of the Annex to the Directiive 2009/13/EC	Each Member State shall develop and promulgate national guidelines for the management of occupational safety and health on board ships that fly its flag, after consultation with representative shipowners' and seafarers' organisations and taking into account applicable codes, guidelines and standards recommended by international organisations, national administrations and maritime industry organisations.	Implemented generally by the 1997 Regulations, subsequent legislation implementing the "Daughter" Directives and related guidance.
Reg 4.3.3 of the Annex to the Directive 2009/13/EC	Each Member State shall adopt laws and regulations and other measures addressing the matters specified in this Agreement taking into account relevant international instruments, and set standards for occupational safety and health protection and accident	Implemented generally by the 1997 Regulations, subsequent legislation implementing the "Daughter" Directives and related guidance.

	prevention on ships that fly its flag.	
Standard A4.3.1	Health and safety protection and accident prevention The laws and regulations and other measures to be adopted in accordance with Regulation 4.3, paragraph 3, shall include the following subjects: (a) the adoption and effective implementation and promotion of occupational safety and health policies and programmes on ships that fly the Member State's flag, including risk evaluation as well as training and instruction of seafarers; (b) on-board programmes for the prevention of occupational accidents, injuries and diseases and for continuous improvement in occupational safety and health protection, involving seafarers' representatives and all other persons concerned in their implementation, taking account of preventive measures, including engineering and design control, substitution of processes and procedures for collective and individual tasks, and the use of personal protective equipment; and (c) requirements for inspecting, reporting and correcting unsafe conditions and for investigating and reporting on-board occupational accidents.	Implemented generally by the 1997 Regulations, subsequent legislation implementing the "Daughter" Directives and related guidance The MCA already has an occupational health and safety awareness culture. It takes account of Marine Accident Investigation Branch (MAIB) recommendations and considers the Approved Doctor Annual statistics regarding the seafarer Medical examination findings to assist in determining the issues which require promotion within the UK Maritime Industry. This promotion is done through a series of leaflets and posters. The UK has three series, these are "Your Health at Sea", "Safety Management" and "Your Safety at Sea". Existing MS Health and Safety regulations already require ships to have a health and safety policy and to apply health and safety regulations, including consultation with workers, information and training. The general principles of health and safety are set out in regulation 5 of the 1997 Regulations Regulation 15 and 19(2) of the 1997 Regulations. The Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 as amended are also relevant both as regards the reporting and investigation of certain on-board occupational accidents.
Standard A4.3.2	The provisions referred to in paragraph 1 of this Standard shall: (a) take account of relevant international instruments dealing	Implemented by the 1997 Regulations.

	with occupational safety and health protection in general and with specific risks, and address all matters relevant to the prevention of occupational accidents, injuries and diseases that may be applicable to the work of seafarers and particularly those which are specific to maritime employment; (b) specify the duties of the master or a person designated by the master, or both, to take specific responsibility for the implementation of and compliance with the ship's occupational safety and health policy and programme; and (c) specify the authority of the ship's seafarers appointed or elected as safety representatives to participate in meetings of the ship's safety committee such a committee shall be established on board a ship on which there are five or more seafarers.	
Standard A4.3.3	The laws and regulations and other measures referred to in Regulation 4.3, paragraph 3, shall be regularly reviewed in consultation with the representatives of the shipowners' and seafarers' organisations and, if necessary, revised to take account of changes in technology and research in order to facilitate continuous improvement in occupational safety and health policies and programmes and to provide a safe occupational environment for seafarers on ships that fly the Member State's flag.	Implemented generally by the 1997 Regulations that give effect to the EC "Framework Directive", legislation implementing subsequent "Daughter" Directives and related guidance. MCA consults regularly with social partners on health and safety issues, including through the National Maritime Occupational Health and Safety Committee. This existing compliance will be bolstered by the inclusion of a review clause in regulation 2(21) of the 2014 Regulations which will require a periodic review of the 1997 Regulations as amended.
Standard A4.3.4	Compliance with the requirements of applicable international instruments on the acceptable levels of exposure to workplace hazards on board ships and on the development and implementation of ships' occupational safety and health policies and programmes shall be considered as meeting the	Implemented generally by the 1997 regulations that give effect to the EC "Framework Directive" 89/391/EC and legislation implementing its subsequent "Daughter" Directives and related guidance. EC occupational exposure limits are implemented through specific MS Health and Safety Regulations on the following:

	requirements of this Agreement.	Carcinogens and Mutagens Biological Agents Chemical agents Noise Vibration Asbestos Artificial optical radiation
Standard A4.3.5	The competent authority shall ensure that: (a) occupational accidents, injuries and diseases are adequately reported; (b) comprehensive statistics of such accidents and diseases are kept, analysed and published and, where appropriate, followed up by research into general trends and into the hazards identified; and (c) occupational accidents are investigated.	The Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 (as amended) and by regulation 11A of the 1997 regulations as inserted by 2014 Regulations.
Standard A4.3.6	Reporting and investigation of occupational safety and health matters shall be designed to ensure the protection of seafarers' personal data.	Regulation 11A(2)(a) of the 1997 Regulations as inserted by the 2014 Regulations
Standard A4.3.7	The competent authority shall cooperate with shipowners' and seafarers' organisations to take measures to bring to the attention of all seafarers information concerning particular hazards on board ships, for instance, by posting official notices containing relevant instructions	Transposition not required
Standard A4.3.8	The competent authority shall require that shipowners conducting risk evaluation in relation to management of occupational safety and health refer to appropriate statistical information from their ships and from general statistics provided by the competent authority.	Regulation 7(4A) of the 1997 Regulations, as inserted by the 2014 Regulations.