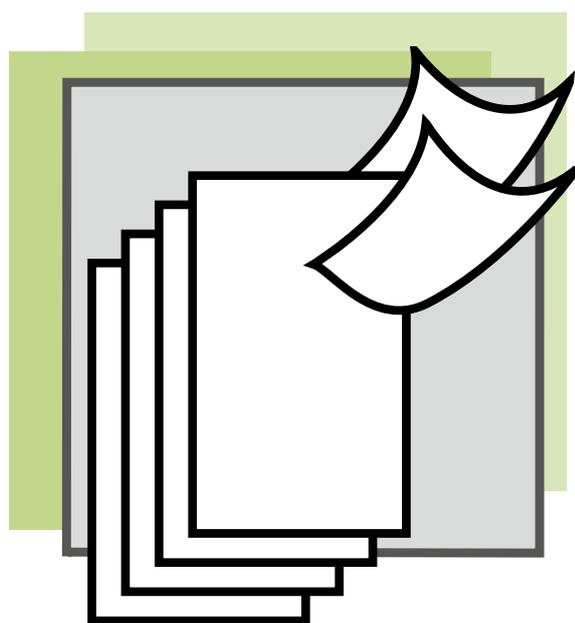




International  
Labour  
Office  
Geneva

**Report VII (1)**

# Abrogation of four and withdrawal of two international labour Conventions



**International  
Labour  
Conference**

**106th Session, 2017**

## **ATTENTION**

This report contains a questionnaire which, in accordance with Article 45bis(2) of the Standing Orders of the International Labour Conference, calls for a reply from Governments, after consultation with the most representative organizations of employers and workers.

**The replies to this questionnaire must reach the Office no later than 30 November 2016.** They will form the basis of the background report for the ILC discussion.

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International Labour Conference, 106th Session, 2017

Report VII(1)

# **Abrogation of four and withdrawal of two international labour Conventions**

Seventh item on the agenda

International Labour Office, Geneva

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# Introduction

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At its 325th Session (November 2015) the Governing Body of the International Labour Office decided to place on the agenda of the 106th Session (2017) of the International Labour Conference the question of abrogation of the following six Conventions: the Night Work (Women) Convention, 1919 (No. 4); the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15); the Protection against Accidents (Dockers) Convention, 1929 (No. 28); the Night Work (Women) Convention (Revised), 1934 (No. 41); the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60); and the Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67).<sup>1</sup>

Following the entry into force on 8 October 2015 of the 1997 Instrument for the Amendment of the Constitution of the International Labour Organisation, the Conference is now empowered, by two-thirds majority and upon recommendation by the Governing Body, to abrogate a Convention in force if it appears that it has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization. This important institutional milestone on the eve of the ILO's centenary is a critical element of the process aimed at ensuring that the Organization has a body of clear and relevant labour standards. Together with the launching of a standards review mechanism, the entry into force of this constitutional amendment reinforces the ILO's efforts to ensure that it has a robust and up-to-date body of labour standards serving as a global reference.

Contrary to withdrawal, which relates to Conventions which have not entered into force or are no longer in force due to denunciations, the effect of the abrogation within the meaning of new paragraph 9 of article 19 of the ILO Constitution is to eliminate definitively all legal effects arising out of a Convention in force between the Organization and its Members. Should the Conference decide to abrogate the above-referenced Conventions, these Conventions would be removed from the ILO's body of standards and, as a result, Members having ratified them will no longer be obliged to submit reports under article 22 of the Constitution, and may no longer be subject to representations (article 24) or complaints (article 26) for non-observance. For their part, the ILO supervisory bodies will not be required to examine the implementation of these Conventions while the Office will cease all relevant activities, including the publication of the text of the Conventions and the official information regarding their ratification status. It should be noted, however, that the procedural guarantees are identical in the case of abrogation as in the case of withdrawal.

In accordance with article 45bis(2) of the Standing Orders of the International Labour Conference, when an item on abrogation is placed on the agenda of the Conference, the Office must communicate to the governments of all member States not later than 18 months before the opening of the session of the Conference at which the

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<sup>1</sup> Dec-GB.325/INS/2(Add.1), para. 3(b) and GB.325/INS/2(Add.), para. 4.

item is to be discussed, a short report and questionnaire requesting them to indicate within a period of 12 months their position on the subject of the said abrogation. In this respect, the governments are requested to consult the most representative organizations of employers and workers before finalizing their replies. On the basis of the replies received, the Office shall draw up a report containing a final proposal which shall be distributed to governments four months before the opening of the 106th Session (2017) of the Conference. Accordingly, after having duly consulted the most representative organizations of employers and workers, governments are requested to send their replies to the questionnaire below so that these replies reach the Office *no later than 30 November 2016*.

This report and the questionnaire are available on the ILO website at: <http://www.ilo.org/ilc/ILCSessions/106/reports/reports-to-the-conference/lang--en/index.htm> and <http://www.ilo.org/public/english/bureau/leg/abrog.htm>. Respondents are encouraged, where possible, to complete the questionnaire in electronic format and to submit their replies electronically to the following email address: [jur@ilo.org](mailto:jur@ilo.org).

Further information on the significance, effects and procedure of abrogation can be found in document GB.325/LILS/INF/1, available at:

[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_415188.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_415188.pdf) .

## Status of Conventions Nos 4, 15, 28, 41, 60, 67

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1. Conventions Nos 4, 15, 28, 41, 60 and 67 were all adopted before the 1940s. Following the examination by the Working Party on Policy regarding the Revision of Standards between 1995 and 2002, these Conventions were identified by the Governing Body as candidates for abrogation and were found to no longer serve a useful purpose either because they had in substance been replaced by more modern instruments or because they no longer reflected current practices and conceptions.<sup>2</sup> Up-to-date information on the status of the Conventions is given below.

### Night Work (Women) Convention, 1919 (No. 4)

2. This Convention was adopted on 28 November 1919. It has received 58 ratifications and has been denounced by 33 member States. Convention No. 4 was last ratified by Malta in 1988 and was subsequently denounced by the same country in 1991. Convention No. 4 was revised by the Night Work (Women) Convention (Revised), 1934 (No. 41), and the latter was further revised by the Night Work (Women) Convention (Revised), 1948 (No. 89). In 1990, the International Labour Conference adopted a Protocol partially revising Convention No. 89, as well as the Night Work Convention, 1990 (No. 171), which applies to all sectors and regulates night work for men and women alike. In 2001, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) in its General Survey on night work of women in industry concluded that Convention No. 4 was “manifestly of historical importance only [since it was] a rigid instrument, ill-suited to present-day realities”.<sup>3</sup> In 2014, in its general observation on working time, the Committee of Experts regretted that many countries were still bound by Conventions Nos 4 and 41 which had been declared obsolete by the ILO Governing Body and called for an information and sensitization campaign to ensure that before 2020 all member States parties to Conventions Nos 4, 41 and 89 bring their national laws and practice up to date and align them with the standards prescribed by Convention No. 171.<sup>4</sup> Convention No. 41 is still open to ratification and is in force for 25 member States.<sup>5</sup>

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<sup>2</sup> GB.283/LILS/WP/PRS/1/2, para. 38.

<sup>3</sup> ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Report III (Part 1B), General Survey of the reports concerning the Night Work (Women) Convention, 1919 (No. 4), the Night Work (Women) Convention (Revised), 1934 (No. 41), the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, International Labour Conference, 89th Session, 2001, para. 193.

<sup>4</sup> ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 103rd Session, 2014, p. 470.

<sup>5</sup> Afghanistan, Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Colombia, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Gabon, Guinea-Bissau, India, Madagascar, Mali, Morocco, Niger, Pakistan, Rwanda, Senegal, Spain and Togo.

## **Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)**

3. This Convention was adopted on 11 November 1921. It has received 69 ratifications. The Convention has been denounced by 61 member States following the ratification of the Minimum Age Convention, 1973 (No. 138), which revised it. The Convention was last ratified by Guatemala in 1989 and was subsequently denounced by the same country in 1991 following the ratification of Convention No. 138. Article 10(3) of Convention No. 138 provides that Convention No. 15 shall be closed to further ratifications “when all the parties thereto have consented to such closing by ratification of [Convention No. 138] or by a declaration communicated to the Director-General of the International Labour Office”. Convention No. 15 is still open to ratification and is in force for eight member States.<sup>6</sup>

## **Protection against Accidents (Dockers) Convention, 1929 (No. 28)**

4. This Convention was adopted on 21 June 1929. It has received four ratifications and three denunciations and is thus no longer in force. The Convention was last ratified by Nicaragua in 1934 and is now closed to any further ratification. Convention No. 28 has been revised by the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32), which has been ratified by 46 member States, and by the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), which has been ratified by 26 member States.

## **Night Work (Women) Convention (Revised), 1934 (No. 41)**

5. This Convention was adopted on 19 June 1934. It has received 38 ratifications and has been denounced by 23 member States. Convention No. 41 was last ratified by Suriname in 1976. As is indicated in paragraph 2 above, Convention No. 41 was revised by the Night Work (Women) Convention (Revised), 1948 (No. 89), which was in turn revised, in part, in 1990 by the Protocol to Convention No. 89. In 2001, the CEACR in its General Survey on night work of women in industry concluded that Convention No. 41 was “not only ... poorly ratified and its relevance was diminishing, but also that it would be in the interest of those member States which were still parties to that Convention to ratify instead the revising Convention No. 89 and its Protocol which were more easily adaptable to changing circumstances and needs”.<sup>7</sup> In 2014, in its general observation on working time, the Committee of Experts regretted that there had been no denunciations of Convention No. 41 during the last denunciation period (2006–07) thus leaving 15 member States still bound by a Convention which had been declared obsolete by the ILO Governing Body, and called for an information and sensitization campaign to ensure that before 2020 all member States parties to Conventions Nos 4, 41 and 89 bring their national laws and practice up to date and align them with the standards prescribed

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<sup>6</sup> Bangladesh, Cameroon, Canada, India, Mauritania, Myanmar, New Zealand and Saint Lucia.

<sup>7</sup> ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Report III (Part 1B), op. cit., para. 194.

by Convention No. 171.<sup>8</sup> Convention No. 41 is closed to ratification and remains in force for 15 member States.<sup>9</sup>

### **Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60)**

6. This Convention was adopted on 22 June 1937. It has received 11 ratifications and 11 denunciations – as a result of the ratification of the revising Minimum Age Convention, 1973 (No. 138) – and is thus no longer in force. The Convention is still open to ratification.

### **Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67)**

7. This Convention was adopted on 28 June 1939. It has received four ratifications and one denunciation. Convention No. 67 was last ratified by the Central African Republic in 1964. The Convention is now closed to ratification. Convention No. 67 has been revised by the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153), and remains in force for three member States.<sup>10</sup>

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<sup>8</sup> ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), op. cit., p. 470.

<sup>9</sup> Afghanistan, Argentina, Benin, Burkina Faso, Central African Republic, Chad, Côte d'Ivoire, Estonia, Gabon, Mali, Morocco, Niger, Suriname, Togo and the Bolivarian Republic of Venezuela.

<sup>10</sup> Central African Republic, Cuba and Peru.



# Questionnaire

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In accordance with article 45bis of the Standing Orders of the International Labour Conference, governments are invited to consult the most representative organizations of employers and workers before finalizing their replies to this questionnaire. The International Labour Office would be grateful if the replies could reach the Office by *30 November 2016*. Respondents are encouraged, where possible, to complete the questionnaire in electronic format and to submit their replies electronically to the following email address: [jur@ilo.org](mailto:jur@ilo.org).

## I. Night Work (Women) Convention, 1919 (No. 4)

1. Do you consider that Convention No. 4 should be abrogated?

Yes                       No

2. If you replied “no” to question 1, please indicate the reasons why you consider that Convention No. 4 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization.

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## II. Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)

1. Do you consider that Convention No. 15 should be abrogated?

Yes                       No

2. If you replied “no” to question 1, please indicate the reasons why you consider that Convention No. 15 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization.

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**III. Protection against Accidents (Dockers) Convention, 1929 (No. 28)**

1. Do you consider that Convention No. 28 should be withdrawn?

Yes                       No

2. If you replied “no” to question 1, please indicate the reasons why you consider that Convention No. 28 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization.

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**IV. Night Work (Women) Convention (Revised), 1934 (No. 41)**

1. Do you consider that Convention No. 41 should be abrogated?

Yes                       No

2. If you replied “no” to question 1, please indicate the reasons why you consider that Convention No. 41 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization.

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**V. Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60)**

1. Do you consider that Convention No. 60 should be withdrawn?

Yes                       No

2. If you replied “no” to question 1, please indicate the reasons why you consider that Convention No. 60 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization.

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**VI. Hours of Work and Rest Periods  
(Road Transport) Convention,  
1939 (No. 67)**

1. *Do you consider that Convention No. 67 should be abrogated?*

Yes                       No

2. *If you replied “no” to question 1, please indicate the reasons why you consider that Convention No. 67 has not lost its purpose or still makes a useful contribution to attaining the objectives of the Organization.*

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