



Governing Body

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Institutional Section

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SECOND ITEM ON THE AGENDA

Agenda of the International Labour Conference

Addendum

Proposals for the abrogation of Conventions Nos 4, 15, 28, 41, 60 and 67

1. 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 Governing Body may wish to initiate at the earliest suitable opportunity the process for the abrogation of certain obsolete Conventions which are still in force. Accordingly, in accordance with article 5.4.2 of the Standing Orders of the Governing Body, the Governing Body may wish to place on the agenda of the 106th Session (2017) of the International Labour Conference an item relating to the abrogation of Conventions Nos 4, 15, 28, 41, 60 and 67.
2. It is recalled that at its 85th Session (June 1997), the International Labour Conference adopted an amendment to the Constitution of the International Labour Organisation and to the Standing Orders of the Conference so as to enable the Conference, by a two-thirds majority and upon the recommendation of the Governing Body, to abrogate obsolete international labour Conventions. The conditions for its entry into force having now been met with ratification or acceptance by two-thirds of member States (124/186), including at least five Members of chief industrial importance, the constitutional amendment took effect on 8 October 2015.
3. Based on the recommendations of the Working Party on Policy regarding the Revision of Standards,¹ the Governing Body has already identified seven Conventions as candidates for abrogation, namely: 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),

¹ GB.283/LILS/WP/PRS/1/2, para. 38.

1937 (No. 60); the Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67); and the Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91).²

4. The above-listed instruments were found no longer to serve a useful purpose either because they had in substance been replaced by more modern instruments or because they no longer reflected current practices and conceptions. It is noted that abrogation only relates to Conventions in force whereas Conventions that are not in force as well as Recommendations may be withdrawn by the Conference. Five Conventions and 36 Recommendations have been withdrawn so far.³
5. With specific reference to Convention No. 91, it is noted that several other international maritime labour Conventions were identified as outdated by the Working Party on Policy regarding the Revision of Standards but their detailed examination was deferred – probably because of the concomitant launching of the major consolidation exercise of all maritime instruments that led to the adoption of the MLC, 2006 – and as a result no Governing Body decision has thus far been taken with respect to those Conventions. Accordingly, the Governing Body may wish to consider Convention No. 91 together with all other maritime Conventions concerned in a future review exercise.
6. Under article 5.4.1 of the Standing Orders of the Governing Body, the Office is required to place before the Governing Body a report containing all relevant information regarding the abrogation of the instruments concerned. While the Working Party on Policy regarding the Revision of Standards has already conducted an examination of the Conventions concerned,⁴ the Appendix to the present document provides up-to-date information on their status.
7. Under the terms of article 5.4.2 of the Standing Orders of the Governing Body, the decision to place on the agenda of the Conference an item on the abrogation of Conventions should be reached as far as possible by consensus. If such a consensus cannot be reached in two successive sessions of the Governing Body, it must obtain a four-fifths majority of the members of the Governing Body with a right to vote during the second of these sessions.
8. In accordance with article 45bis of the Standing Orders of the Conference, if the Governing Body decides to place the question of the abrogation of these instruments on the agenda of the 106th Session (2017) of the Conference, the Office is required to communicate to all governments, so that it reaches them at least 18 months before the session of the Conference, i.e. by January 2016, a short report and questionnaire inviting their views on the issue.
9. It is recalled that contrary to the earlier practice of “shelving” outdated Conventions, the effect of the abrogation within the meaning of the new paragraph 9 of article 19 of the ILO Constitution will be to eliminate definitively all legal effects arising out of an obsolete Convention in force between the Organization and its Members parties to that Convention.

² With specific reference to Convention No. 91, the Working Party on Policy regarding the Revision of Standards recommended that its status should be re-examined in due course, when the level of ratifications of Convention No. 91 had substantially decreased as a consequence of ratification of the revising Seafarers’ Annual Leave with Pay Convention, 1976 (No. 146).

³ GB.271/4/2; GB.277/2/2 and GB.283/2/2.

⁴ GB.265/LILS/WP/PRS/1 and GB.265/LILS/5, paras 33–35, 42, 49; GB. 267/LILS/WP/PRS/2 and GB.267/LILS/4/2(Rev.), paras 44–48; GB.273/LILS/WP/PRS/4 and GB.273/LILS/4(Rev.1), paras 54–61; GB.274/LILS/WP/PRS/2, and GB.274/LILS/4(Rev. 1), paras 59–63.

An abrogated Convention will be removed from the ILO's body of standards. As a result, Members having ratified the Convention will no longer be obliged to submit reports under article 22 of the Constitution, and may no longer be subject to representations (article 24) and complaints (article 26) for non-observance of such a Convention. For their part, the ILO supervisory bodies will not be required to examine the implementation of the abrogated Convention while the Office will cease all relevant activities, including the publication of the text of the Convention and the official information regarding its ratification status.

10. Should the Governing Body wish to proceed with the abrogation process at the earliest possible occasion, this Addendum provides a revised version of the draft decision in paragraph 34 of document GB.325/INS/2.

Revised draft decision concerning the agenda of the International Labour Conference

11. *The Governing Body decides:*

- (a) *to complete the agenda of the 2017 session of the Conference by selecting one of the following items for inclusion:*
 - (i) *“Violence against women and men in the world of work”, either as standard setting (double discussion) or as a general discussion; or*
 - (ii) *labour migration (general discussion).*
- (b) *to provisionally place an item on the approval of the proposed amendments to the Code of the Maritime Labour Convention, 2006, on the agenda of the 105th Session (June 2016) of the Conference, subject to the submission of any amendments adopted by the Special Tripartite Committee in February 2016, along with the adoption of amendments to the annexes to the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), as proposed by the Ad Hoc Tripartite Maritime Committee in February 2016;*
- (c) *to place on the agenda of the 106th Session (June 2017) of the Conference an item on the abrogation of Conventions Nos 4, 15, 28, 41, 60 and 67;*
- (d) *to provide guidance on:*
 - (i) *the implementation of the strategic and coherent approach to the setting of the agenda for the 106th (2017), 107th (2018) and 108th (2019) Sessions of the Conference, including consideration of a possible Centenary Declaration;*
 - (ii) *the action to be taken with regard to the item on “Effective ILO development cooperation in support of the Sustainable Development Goals” (general discussion);*
 - (iii) *the action to be taken with regard to the item not retained for selection on the agenda of the 2017 session.*

Appendix

Night Work (Women) Convention, 1919 (No. 4); Night Work (Women) Convention (Revised), 1934 (No. 41)

Related instruments: The Night Work (Women) Convention (Revised), 1948 (No. 89), revised Conventions Nos 4 and 41. In 1990, the International Labour Conference adopted a Protocol partially revising Convention No. 89 (five ratifications and two denunciations) as well as the Night Work Convention, 1990 (No. 171) (13 ratifications), which applies to all sectors and regulates work for men and women alike.

Ratifications: Convention No. 4 has received 58 ratifications and has been denounced by 33 member States. Convention No. 4 was last ratified by the Government of Malta on 9 June 1988 and was subsequently denounced on 11 February 1991. Convention No. 41 has received 38 ratifications and has been denounced by 23 member States. Convention No. 41 was last ratified by Suriname on 15 June 1976.

Remarks: In 1996, the document submitted to the Working Party on Policy regarding the Revision of Standards noted that States parties now have more up-to-date instruments on the subject of night work (Convention No. 89 and its Protocol and Convention No. 171). In 2001, the ILO Committee of Experts 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” (paragraph 193), while with respect to Convention No. 41, the Committee concluded that “not only it was 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” (paragraph 194).

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

Related instruments: The Convention has been revised by the Minimum Age Convention, 1973 (No. 138). Article 10(3) of Convention No. 138 provides, however, 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”.

Ratifications: The Convention has been ratified by 69 member States. The Convention has been denounced by 61 member States following the ratification of Convention No. 138. The Convention was last ratified by Guatemala in 1989 and was subsequently denounced in 1991 following the ratification of Convention No. 138.

Remarks: Convention No. 15 fixed at 18 years the minimum age for trimmers and stokers employed on board a vessel. However, as a result of technical developments, and according to all available information, trimmers and stokers no longer work on ships. In 1998, the Governing Body took note of the recommendations of the Working Party on Policy regarding the Revision of Standards which noted that “the activities covered by Convention No. 15 no longer exist” and that the Convention should “be considered, in due course, for abrogation by the Conference when the constitutional amendment enabling abrogations enters into force”.¹

¹ GB.273/LILS/4(Rev.1), paras 54–61.

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

Related instruments: The Convention was adopted in 1929 together with two accompanying Recommendations, namely the Protection against Accidents (Dockers) Reciprocity Recommendation, 1929 (No. 33), and the Protection against Accidents (Dockers) Consultation of Organisations Recommendation, 1929 (No. 34). The two Recommendations have been withdrawn by decision of the International Labour Conference at its 92nd Session on the proposal of the Governing Body.² 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.

Ratifications: The Convention has received four ratifications and three denunciations. The Convention has last been ratified by Nicaragua on 12 April 1934. The instrument is now closed to any further ratification.

Remarks: In 1996, the Working Party on Policy regarding the Revision of Standards recommended that the Governing Body should re-examine the status of Convention No. 28 in due course with a view to its possible abrogation and to invite the State party to the Convention to contemplate ratifying the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), if appropriate, and denouncing Convention No. 28 at the same time.³ In 2002, the ILO Committee of Experts in its General Survey on Dock Work echoed this recommendation (paragraph 86).

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

Related instruments: The Convention has been revised by the Minimum Age Convention, 1973 (No. 138), which has received 168 ratifications and ranks among the most widely ratified ILO fundamental Conventions.

Ratifications: The Convention has been ratified by 11 member States. All States parties to the Convention subsequently denounced it following the ratification of Convention No. 138. Since the adoption of Convention No. 138 in 1973, there have been no ratifications of Convention No. 60.

Remarks: In 1996, the Working Party on Policy regarding the Revision of Standards concluded that Convention No. 60 no longer served any interim purpose and recommended that the Governing Body should re-examine the status of Convention No. 60 in due course with a view to its possible abrogation.⁴

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

Related instruments: The Convention has been adopted in 1939 together with an accompanying Recommendation, namely the Methods of Regulating Hours (Road Transport) Recommendation, 1939 (No. 65), which has been withdrawn by decision of the

² International Labour Conference, 92nd Session, 2004, *Record of Proceedings*, p. 26/7; GB.283/2/2.

³ GB.265/LILS/5, paras 42 and 72.

⁴ GB.265/LILS/5, paras 33–35 and 72.

International Labour Conference.⁵ The Convention has been revised by the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153), which has been ratified by nine member States and which is itself classified as an instrument in need of revision.

Ratifications: The Convention has received four ratifications and one denunciation. The Convention was last ratified by the Central African Republic on 9 June 1964. The Convention is now closed to ratification.

Remarks: In 1996, the Working Party on Policy regarding the Revision of Standards concluded that the Convention could be considered obsolete and recommended that the Governing Body should re-examine the status of Convention No. 67 in due course with a view to its possible abrogation and invite the three States parties to the Convention to contemplate ratifying the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153), if appropriate, and denouncing Convention No. 67 at the same time.⁶

⁵ International Labour Conference, 90th Session, 2002, *Record of Proceedings*, pp. 26 and 29; GB.277/2/2.

⁶ GB.265/LILS/5, paras 49 and 72.