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Legal Issues and International Labour Standards Section

LILS

FOR INFORMATION

Update on the status of ratification of the 1986 and 1997 Instruments for the Amendment of the Constitution of the International Labour Organisation

Summary: This document provides up-to-date information on the status of ratification of the 1986 and 1997 Instruments for the Amendment of the ILO Constitution. The 1997 Constitutional amendment, which provides for the abrogation of obsolete Conventions, has now been ratified by two-thirds of ILO member States, including five States of chief industrial importance, and has entered into force on 8 October 2015.

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Related documents: GB.283/LILS/WP/PRS/1/2; GB.292/PV; GB.297/LILS/2; GB.309/PV; GB.312/LILS/1; GB.320/LILS/INF/1 and 2; GB/323/LILS/2; GB.325/LILS/3.

1. This document presents up-to-date information on the status of ratification of the 1997 Instrument for the Amendment of the Constitution of the International Labour Organisation and discusses the implications of the entry into force of the 1997 amendment.
2. No ratification or acceptance of the 1986 Instrument for the Amendment of the Constitution has been registered since the last report to the Governing Body in March 2015.¹

Entry into force of the 1997 Instrument of Amendment

3. According to article 36 of the ILO Constitution, to enter into force, an amendment to the Constitution must be ratified or accepted by two-thirds of ILO member States, including at least five of the ten member States of chief industrial importance. As there are currently 186 member States, an amendment needs to be ratified by 124 Members.
4. At its 323rd Session (March 2015), the Governing Body noted that 123 ratifications had been registered, including seven from Members of chief industrial importance, and therefore, one more ratification was required for the 1997 constitutional amendment to enter into force.² The Governing Body had accordingly urged ILO Members which had not yet done so to ratify the 1997 Instrument for the Amendment of the Constitution.
5. On 8 October 2015, the Director-General registered the instrument of acceptance of the 1997 constitutional amendment by the Cook Islands. The conditions for its entry into force having been met, the 1997 Instrument for the Amendment of the Constitution of the ILO has taken effect as of that date.

Significance and effects of abrogation

6. It is recalled that the 1997 amendment enables the Organization to abrogate obsolete Conventions, and in so doing, reinforce the relevance, impact and coherence of international labour standards. The amendment consists in adding a new paragraph 9 to article 19 of the Constitution to read: “Acting on a proposal of the Governing Body, the Conference may, by a majority of two-thirds of the votes cast by the delegates present, abrogate any Convention adopted in accordance with the provisions of this article if it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organisation.”
7. It is considered that maintaining obsolete Conventions in force would be damaging to the clarity and legibility of the ILO’s body of standards as a global reference. It is essential for the credibility of the Organization to ensure that its standards are up to date, thus enabling the Organization to concentrate its standard-setting action on the Conventions which currently contribute to the achievement of its objectives. Abrogation is the termination of the legal effects of Conventions in respect of the Organization and ratifying member States. The possibility to abrogate outdated Conventions is thus an important element of any process aimed at ensuring that the Organization has a body of clear and relevant labour standards. The entry into force of the 1997 constitutional amendment is very timely as it coincides with the recently launched Standards Review Mechanism (SRM) process, and

¹ GB.323/LILS/2.

² See GB.323/LILS/2, para. 4.

the establishment of the SRM Tripartite Working Group, which will be responsible for reviewing the existing body of standards and making recommendations to the Governing Body on their status.³

8. 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 the Convention between the Organization and its Members. 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.
9. While an abrogated Convention thus ceases to be an ILO Convention, nothing prevents member States which have ratified it (and which might oppose its abrogation) from considering that they remain bound, inter se, by its provisions. But they may no longer call on the ILO, on the one hand, to supervise application and maintain procedural obligations in respect of Conventions which no longer serve its objectives or, on the other hand, to assume the resulting costs.

The abrogation procedure

10. Following the entry into force of the 1997 Instrument of Amendment, the Governing Body may place an item on the agenda of the Conference concerning the abrogation of a Convention in force, subject to the procedural conditions set out in article 5.4 of the Standing Orders of the Governing Body.⁴ To ensure that no Convention is abrogated without broad tripartite support, the decision to place an item on the agenda of the Conference concerning the abrogation of a Convention must, as far as possible, be reached by consensus or, where it is not possible to reach such a consensus in two successive sessions of the Governing Body, by a four-fifths majority of members of the Governing Body with a right to vote during the second of these sessions.
11. Pursuant to article 45bis of its Standing Orders of the International Labour Conference, when such an item is placed on the agenda of the Conference, the Office must communicate to all governments at least 18 months before the session of the Conference, a brief report, as well as a questionnaire, requesting governments to indicate their position regarding the envisaged abrogation, after consultation with the most representative employers’ and workers’ organizations. Based on the replies, a report must then be drawn up containing the final proposal submitted to the Conference.
12. After discussing the proposed abrogation, the Conference decides, by consensus, or, where this is not possible, by a preliminary vote requiring a two-thirds majority, to submit the proposal to a final vote. As for the adoption of a Convention, a proposed abrogation requires a two-thirds majority of votes from delegates present to pass.

³ See GB.312/PV, para. 577; GB.323/PV, para. 84; GB.325/LILS/3.

⁴ It is recalled that abrogation only concerns Conventions in force; in contrast, Conventions which are not in force, as well as Recommendations, may be withdrawn by the Conference in accordance with the procedure set out in article 45bis of its Standing Orders. To date, the International Labour Conference has withdrawn five Conventions and 36 Recommendations.

- 13.** As regards the number of international labour Conventions which could be concerned by the abrogation process, based on the recommendations of the Working Party on Policy regarding the Revision of Standards (1995–2002),⁵ 31 Conventions have already been classified by the Governing Body as “outdated”, 25 Conventions have been “shelved” and seven have been retained as candidates for possible abrogation.⁶

⁵ GB.283/LILS/WP/PRS/1/2.

⁶ These conventions are the Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67); Night Work (Women) Convention, 1919 (No. 4); Night Work (Women) Convention (Revised), 1934 (No. 41); Protection against Accidents (Dockers) Convention, 1929 (No. 28); Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15); Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60); and Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91).