
STATUTORY INSTRUMENTS

2018 No. 1106

MERCHANT SHIPPING

The Merchant Shipping (Work in Fishing Convention) Regulations 2018

Made - - - - 24th October 2018
Laid before Parliament 29th October 2018
Coming into force in accordance with regulation 1(2)

The Secretary of State is a Minister designated ^{M1} for the purposes of section 2(2) of the European Communities Act 1972 ^{M2} in relation to measures relating to the safety of ships and the health and safety of persons on them.

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 85(1)(a) and (b), (3), (5), (7) and 86(1) of the Merchant Shipping Act 1995 ^{M3} and section 2(2) of the European Communities Act 1972.

In accordance with section 86(4) of the Merchant Shipping Act 1995 the Secretary of State has consulted the persons referred to in that section.

Marginal Citations

- M1** S.I. 1993/595.
- M2** 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the [Legislative and Regulatory Reform Act 2006 \(c. 51\)](#) and by section 3(3) of, and Part 1 of the Schedule to, the [European Union \(Amendment\) Act 2008 \(c. 7\)](#). The Work in Fishing Convention is regarded as one of the EU Treaties within the meaning of section 1(2) of the European Communities Act 1972 by virtue of the European Communities (Definition of Treaties) (Work in Fishing Convention) Order 2018 (S.I. 2018/520).
- M3** 1995 c.21. Sections 85 and 86 were amended by section 8 of the [Merchant Shipping and Maritime Security Act 1997 \(c.28\)](#), and are applied to hovercraft by article 4 of the [Hovercraft \(Application of Enactments\) Order 1989 \(S.I. 1989/1350\)](#) (sections 85 and 86 re-enact sections 21 and 22 of the [Merchant Shipping Act 1979 \(c. 39\)](#) which are referred to in that article). There are other amendments to section 85 not relevant to these Regulations.

PART 1

General Matters

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Work in Fishing Convention) Regulations 2018.

(2) These Regulations, other than regulation 26, come into force on 31st December 2018; regulation 26 comes into force on 30th November 2019.

Interpretation

2. In these Regulations—

“the Act” means the Merchant Shipping Act 1995;

“Convention” or “Work in Fishing Convention” means the convention adopted at Geneva on 14th June 2007 by the International Labour Organisation ^{M4};

“fisherman” means a person, including the skipper, employed, engaged or working in any capacity on board any fishing vessel, but does not include a person solely engaged as a pilot for the vessel;

“fisherman's work agreement” means a written agreement between a fisherman and another person in respect of the fisherman's work on board a fishing vessel;

“fishing vessel owner” means the owner of a fishing vessel or any other person such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Convention, regardless of whether any other organisation or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner;

“Merchant Shipping Notice” means a notice described as such and issued by the Secretary of State, and any reference to a particular Merchant Shipping Notice includes a reference to a Merchant Shipping Notice amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time;

“skipper” means the person having command of a fishing vessel;

“United Kingdom fishing vessel” means a fishing vessel which is—

- (a) a United Kingdom ship within the meaning of section 85(2) of the Act; or
- (b) a hovercraft registered under the Hovercraft Act 1968 ^{M5}.

Marginal Citations

M4 Cm 7375.

M5 1968 c.59.

Application

3. These Regulations apply to—

- (a) a United Kingdom fishing vessel wherever it may be; and
- (b) a fishing vessel which is not a United Kingdom fishing vessel while that ship is in United Kingdom waters.

Obligation to comply with orders

4.—(1) A fisherman must comply with the lawful orders of the skipper regarding health and safety.

(2) A fisherman who fails to comply with paragraph (1) commits an offence.

Competent authority

5. The Secretary of State is the competent authority for the purposes of the Convention.

PART 2

Minimum age

Minimum age for fishermen

6.—(1) Subject to paragraphs (2) and (3), a person under 16 years of age must not be employed or engaged to work on board a fishing vessel.

(2) Paragraph (1) does not apply where—

- (a) the person is 15 years of age or older;
- (b) the employment or engagement is limited to light work during school holidays;
- (c) the purpose of the employment or engagement is to facilitate work experience and shadowing; and
- (d) the person is able to demonstrate that they have completed a course of training regarding basic survival at sea which satisfied the requirements specified in Merchant Shipping Notice 1882 (F).

(3) A person under 18 years of age must not be employed or engaged to work on board a fishing vessel where the nature of the activities, or the circumstances in which they are carried out, are likely to jeopardize that person's health, safety or morals.

(4) A breach of paragraph (1) or (3) is an offence by the fishing vessel owner, the skipper and the employer of the person.

Young persons on night duty

7.—(1) Subject to paragraph (2) a person under the age of 18 years must not be employed or engaged to work on a fishing vessel at night.

(2) Paragraph (1) does not apply where —

- (a) the effective training of the person, in accordance with established programmes and schedules, would be impaired by its application; or
- (b) the specific nature of the duty or a recognized training programme requires that the fisherman performs duties at night and the training and the nature of the duties conform to the requirements set out in Merchant Shipping Notice 1882 (F) as not being of detrimental impact to the person's health or well-being.

(3) In this regulation “night” means a period—

- (a) the duration of which is at least 9 consecutive hours; and
- (b) which starts no later than midnight and ends no earlier than 5 a.m. (local time).

(4) A breach of paragraph (1) is an offence by the fishing vessel owner, the skipper and the employer of the person under the age of 18.

PART 3

Fishermen's work agreements

Duty to enter into a fisherman's work agreement

8.—(1) Subject to paragraph (2), a fisherman must have a fisherman's work agreement which complies with paragraphs (1) and (2) of regulation 9.

(2) Paragraph (1) does not apply to a fishing vessel owner who is single-handedly operating a vessel.

(3) A breach of paragraph (1) is an offence by the fishing vessel owner.

Content of fisherman's work agreement

9.—(1) Subject to paragraph (2), a fisherman's work agreement must—

(a) be comprehensible to the fisherman and consistent with the provisions of the Convention; and

(b) include provision about the matters in the Schedule.

(2) Such provision may be achieved by way of reference to another document which includes provision about those matters.

(3) Prior to entering into a fisherman's work agreement, the fishing vessel owner must take reasonable steps to satisfy itself with regard to the following requirements—

(a) the fisherman must have had sufficient opportunity to review and take advice on the terms of and conditions of the agreement;

(b) the fisherman must have received an explanation of the rights and responsibilities of the fisherman under the agreement; and

(c) the fisherman must be entering into the agreement freely.

(4) Where a fishing vessel owner fails to take such reasonable steps the fishing vessel owner commits an offence.

Documents

10.—(1) As soon as is practicable after entering into a fisherman's work agreement, the fishing vessel owner must provide to the fisherman an original of the agreement signed by each party and a copy of any document referred to in that agreement.

(2) A breach of paragraph (1) is an offence by the fishing vessel owner.

(3) The fishing vessel owner must—

(a) ensure that—

(i) a copy of the fisherman's work agreement;

(ii) a copy of any document referred to in that agreement; and

(iii) any translation of such document required by regulation 11,

for each fisherman on the fishing vessel is held on board; and

(b) allow each fisherman to see the copy of the fisherman's work agreement to which the fisherman is a party (and any document referred to in paragraph (a)) on request.

(4) A breach of paragraph (3) is an offence by the fishing vessel owner.

Foreign language fisherman's work agreement

11.—(1) This regulation applies where a fisherman has a fisherman's work agreement which is not in the English language.

(2) The fishing vessel owner must ensure that an English translation of the provisions of the fisherman's work agreement (including any provisions that are contained in another document) is made and made available to the fisherman.

Payments under a fisherman's work agreement

12.—(1) Subject to paragraph (2), where a fisherman's work agreement provides that—

- (a) the fisherman is entitled to receive wages, the wages must be paid monthly, or at other regular intervals as are set out in the fisherman's work agreement;
- (b) the fisherman is entitled to receive any other remuneration, such payment of the remuneration must be made within a reasonable time or as otherwise set out in the fisherman's work agreement.

(2) Paragraph (1) does not apply to the extent that the failure to make such payment at the required time was due to—

- (a) a mistake;
- (b) a reasonable dispute as to liability;
- (c) the act or default of the fisherman; or
- (d) any other cause not being the wrongful act or default of the person liable to make the payment or of that person's servants or agents.

Account of payments

13.—(1) The fishing vessel owner must ensure that an account of the fisherman's wages or other remuneration under a fisherman's work agreement is prepared and delivered to the fisherman—

- (a) periodically during the term of the fisherman's work agreement, at intervals not exceeding one month; and
- (b) within one month of the date on which the agreement terminated.

(2) Where the fisherman is not an employee, such account must include the following information—

- (a) payments due;
- (b) payments made (including any not falling within sub-paragraph (a)); and
- (c) any rates of exchange and any commissions paid which are relevant to those payments.

(3) A breach of paragraph (1) is an offence by the fishing vessel owner.

PART 4

Repatriation

Duty to repatriate fishermen

14.—(1) Subject to regulation 16, a fishing vessel owner must make such provision in accordance with this Part as is necessary for the repatriation of a fisherman as soon as is reasonably practicable in any of the following cases—

- (a) where the fisherman's work agreement expires;
 - (b) where the fisherman's work agreement has been terminated by the fishing vessel owner for justifiable reasons;
 - (c) where the fisherman's work agreement has been terminated by the fisherman for justifiable reasons;
 - (d) where the fisherman is no longer able to carry out the fisherman's duties under the fisherman's work agreement or cannot be expected to carry them out in the following circumstances—
 - (i) the fisherman has an illness, injury or medical condition which requires their repatriation when found medically fit to travel;
 - (ii) shipwreck;
 - (iii) the fishing vessel owner is not able to fulfil its legal or contractual obligations to the fisherman following insolvency, the sale of the fishing vessel or a change in the fishing vessel's registration; or
 - (iv) the fishing vessel is bound for a war zone to which the fisherman does not consent to go;
 - (e) where the fisherman has completed the maximum period of service on board following which the fisherman is entitled to repatriation in accordance with the fisherman's work agreement, and, in any event, 12 months after the fisherman joined the fishing vessel; and
 - (f) where the fisherman's work agreement is terminated pursuant to an order of a court or tribunal.
- (2) A breach of paragraph (1) is an offence by the fishing vessel owner.

Place for return

15.—(1) Where there is a duty on a fishing vessel owner to provide for the repatriation of a fisherman under regulation 14, the fisherman is entitled to repatriation to the destination provided for in the fisherman's work agreement, or such other place as may subsequently be agreed between the fisherman and the fishing vessel owner.

(2) If the fisherman's work agreement does not identify a destination, and there has been no agreement between the fisherman and the fishing vessel owner as to the destination, the fisherman is entitled to repatriation to the fisherman's choice of the following destinations—

- (a) the place at which the fisherman entered into the fisherman's work agreement; or
- (b) the fisherman's country of residence.

Scope of duty to repatriate

16. Where there is a duty on a fishing vessel owner to provide for the repatriation of a fisherman under regulation 14, that duty ends when—

- (a) the fisherman is repatriated in accordance with regulation 14;
- (b) the fishing vessel owner makes reasonable arrangements for repatriation which are unsuccessful because of the fisherman's unreasonable conduct;
- (c) the fishing vessel owner has used reasonable endeavours to contact the fisherman for a period of three months or more, but has been unable to make such contact;
- (d) the fisherman confirms in writing to the fishing vessel owner that repatriation is not required; or
- (e) the fisherman is dead.

Duty pending repatriation

17.—(1) A fishing vessel owner to which the duty in regulation 14 applies must make such provision as is necessary for the fisherman's relief and maintenance pending repatriation.

(2) The fishing vessel owner must have regard to the fisherman's personal circumstances and requirements when determining what provision is required under paragraph (1).

(3) Without prejudice to the generality of paragraph (1) the provision for relief and maintenance must include—

- (a) food;
- (b) potable water;
- (c) clothing;
- (d) accommodation;
- (e) toiletries and other personal necessities;
- (f) surgical, medical, dental or optical treatment (including the repair or replacement of any appliance) for any condition requiring immediate care;
- (g) in cases where legal aid is unavailable or insufficient, reasonable costs for the defence of the fisherman in any criminal proceeding in respect of any act or omission within the scope of the fisherman's work agreement, being proceedings where neither the fishing vessel owner nor an agent of the fishing vessel owner is the complainant; and
- (h) sufficient money to meet any minor ancillary expenses necessarily incurred or likely to be so incurred by the fisherman for his relief and maintenance.

(4) The provision to be made by a fishing vessel owner in accordance with paragraph (1) must include—

- (a) the repayment of expenses incurred in bringing a fisherman ashore and maintaining him until he is brought ashore; and
- (b) the payment of the expenses of the burial or cremation of a fisherman who dies before he can be repatriated.

(5) The duty in paragraph (1) ends when the duty in regulation 14 ends.

(6) A breach of paragraph (1) is an offence by the fishing vessel owner.

Prohibition on recovering costs from a fisherman

18.—(1) Subject to paragraph (2), a fisherman's work agreement is void to the extent that it provides that a fisherman must make a payment to the fishing vessel owner in respect of either repatriation costs or relief or maintenance costs.

(2) A fisherman's work agreement may provide that the fisherman must reimburse repatriation costs where the agreement is terminated because of the fisherman's serious misconduct.

(3) If a fisherman's work agreement contains provision described in paragraph (2) and that obligation arises, a deduction equivalent to those costs may be made from the wages or other payments due to the fisherman under that agreement.

(4) If a fisherman's work agreement does not contain provision described in paragraph (2), the fishing vessel owner may recover the costs mentioned in paragraph (1) (or damages in respect of such costs) where the agreement is terminated because of the fisherman's serious misconduct.

Secretary of State functions in the event of fishing vessel owner default

19.—(1) If the fishing vessel owner of a United Kingdom fishing vessel fails to make the provision required under regulation 14 or 17, the Secretary of State must make the required provision

(or secure that it is made) and may recover the costs incurred from the fishing vessel owner as a civil debt.

(2) If the fishing vessel owner of a fishing vessel which is not a United Kingdom fishing vessel fails to make the provision required under regulation 14 or 17 the Secretary of State may make the required provision (or secure that it is made) and may recover the costs incurred from the fishing vessel owner as a civil debt.

(3) Subject to paragraph (5), the costs which the Secretary of State may recover under paragraphs (1) and (2) include—

- (a) costs incurred by the Secretary of State in making the required provision (or securing that it is made); and
- (b) costs incurred by the Secretary of State in reimbursing another person (including a State) which has made the required provision (or having secured its provision), whether or not the Secretary of State has requested or required them to do so.

(4) Subject to paragraph (5), if a fishing vessel owner of a United Kingdom fishing vessel fails to make the provision required under regulation 14 or 17 and the fisherman incurs costs in making the required provision (or securing that it is made), the fisherman may recover the costs from the fishing vessel owner as a civil debt.

(5) The costs incurred by the fisherman which are referred to in paragraph (4)—

- (a) may not be recovered by the fisherman under paragraph (4) if they have been recovered by the Secretary of State under paragraph (1); and
- (b) may not be recovered by the Secretary of State under paragraph (1) if they have been recovered by the fisherman under paragraph (4).

PART 5

Crew accommodation, food and complaint procedure

Crew accommodation

20.—(1) In this Part, “crew accommodation” means accommodation, including the construction, machinery, fittings and equipment of that accommodation, intended for or used by fishermen.

(2) A fishing vessel must comply with the requirements relating to crew accommodation set out in—

- (a) Merchant Shipping Notice 1871, where the length overall of the vessel is less than 15 metres;
- (b) Merchant Shipping Notice 1872, where the length overall of the vessel is 15 metres or more; but the registered length of the vessel is less than 24 metres, or
- (c) Merchant Shipping Notice 1873, where the registered length of the vessel is 24 metres or more.

(3) A breach of paragraph (2) is an offence by the fishing vessel owner.

(4) The skipper, or a crew member appointed by the skipper for that purpose, must, at intervals not exceeding 7 days, and accompanied by at least one member of the crew, inspect the crew accommodation to ensure that it is clean, decently habitable and safe and maintained in a good state of repair.

(5) The skipper of the fishing vessel, or the crew member appointed by the skipper for that purpose, must record the findings of the inspection undertaken pursuant to paragraph (4) in the official log book of the vessel specifying—

- (a) the time and date of the inspection;
 - (b) the name and rank of each person making the inspection; and
 - (c) the particulars of any respect in which the crew accommodation was found by the person making the inspection not to comply with these Regulations.
- (6) In this regulation, “length overall” and “registered length” have meaning given in the Fishing Vessels (Codes of Practice) Regulations 2017 ^{M6}.

Marginal Citations

M6 [S.I. 2017/943](#).

Exemptions

21.—(1) The Secretary of State may exempt a fishing vessel from some or all of the requirements of paragraph (2) of regulation 20, provided that it does not result in overall conditions less favourable than those which would result from the application of the requirements of Annex 3 to the Convention.

(2) Before granting an exemption the Secretary of State must take into account the interests of fishermen having differing and distinctive religious and social practices.

(3) An exemption granted under this regulation must—

- (a) be in writing;
- (b) specify the date on which it takes effect; and
- (c) specify the terms (if any) on which it is given.

(4) A breach of the terms of an exemption granted under paragraph (1) is an offence by the fishing vessel owner.

Provision of food and drinking water

22.—(1) The fishing vessel owner and the skipper of a fishing vessel must ensure that the food and drinking water that are provided on board the vessel—

- (a) are suitable in respect of quality, quantity and nutritional value taking account of—
 - (i) the number of fishermen on board and the character, nature and duration of the voyage;
 - (ii) the different religious requirements and cultural practices in relation to food of the fishermen on board;
- (b) do not contain anything which is likely to cause sickness or injury to health or which renders any food or drinking water unpalatable; and
- (c) are otherwise fit for consumption.

(2) The fishing vessel owner and the skipper must ensure that the food and drinking water which are provided in accordance with paragraph (1) are provided free of charge to all fishermen while they are on board.

(3) A breach of paragraph (1) or (2) is an offence by the fishing vessel owner and the skipper.

Organisation of catering facilities

23.—(1) The fishing vessel owner and the skipper of a fishing vessel must ensure that—

- (a) the galley and food storage facilities are maintained in a hygienic condition; and

- (b) waste is kept in closed, well sealed containers and removed from food handling areas whenever necessary.
- (2) A breach of paragraph (1) is an offence by the fishing vessel owner and the skipper.

Inspection of food and catering facilities

24.—(1) The skipper of a fishing vessel, or a crew member appointed to do so by the skipper, must, at intervals not exceeding 7 days, and accompanied by at least one member of the crew, inspect—

- (a) the supplies of food and drinking water on board to check compliance with regulation 22; and
- (b) the catering facilities to check compliance with regulation 23.
- (2) A breach of paragraph (1) is an offence by the fishing vessel owner and the skipper.
- (3) The skipper of the fishing vessel, or the crew member appointed by the skipper for that purpose, must record the findings of the inspection undertaken pursuant to paragraph (1) in the official log book of the vessel specifying—
 - (a) the time and date of the inspection;
 - (b) the name and rank of each person making the inspection; and
 - (c) the particulars of any respect in which the food, drinking water and catering facilities were found by the person making the inspection not to comply with these Regulations.

On-shore complaint procedure

25.—(1) A fisherman may lodge with the Secretary of State a complaint alleging a breach of the requirements of the Work in Fishing Convention, and the Secretary of State must treat the source of any such complaint as confidential.

(2) The fishing vessel owner and the skipper of a fishing vessel must ensure that a fisherman is not subjected to any detriment on the grounds that the fisherman has lodged a complaint, whether through an on-board procedure or to the Secretary of State, alleging a breach of the requirements of the Work in Fishing Convention.

PART 6

Medical care

Fishing vessel owner duty to make provision for medical treatment for fishermen

26.—(1) This regulation applies in relation to a fisherman who suffers sickness or injury during the term of the fisherman's work agreement.

- (2) The fishing vessel owner must ensure that the fisherman—
 - (a) receives medical treatment on board the vessel so far as is practicable;
 - (b) receives medical treatment ashore; and
 - (c) is taken ashore in a timely manner.

(3) The cost of such medical treatment and the transfer of the fisherman ashore is the responsibility of the fishing vessel owner.

- [^{F1}(4) A breach of paragraph (2) is an offence by the fishing vessel owner.]

F1 Reg. 26(4) inserted (26.12.2020) by The Merchant Shipping (Maritime Labour Convention and Work in Fishing Convention) (Amendment) Regulations 2020 (S.I. 2020/1166), regs. 1, 3(2)

PART 7

Insurance

Fishing vessel owners to have insurance

27.—(1) A United Kingdom fishing vessel may not enter or leave a port in the United Kingdom or elsewhere unless the fishing vessel owner has insurance in respect of that fishing vessel.

(2) A fishing vessel which is not a United Kingdom fishing vessel may not enter or leave a port in the United Kingdom unless the fishing vessel owner has insurance in respect of that fishing vessel.

(3) In paragraphs (1) and (2), a fishing vessel owner has insurance if there is in force in relation to the fishing vessel a contract of insurance (or other form of security) which provides financial assurance of an amount which the fishing vessel owner reasonably considers adequate to ensure that the fishing vessel owner will be able to meet any liabilities the fishing vessel owner may have, including liabilities under any fisherman's work agreement, to provide compensation in the event of death or long term disability to fishermen arising from occupational injury, illness or hazard.

PART 8

Inspection of fishing vessels

Inspection of fishing vessels

28.—(1) For the purpose of checking compliance with these Regulations, a relevant inspector (or, in the case of a United Kingdom fishing vessel a proper officer) may at all reasonable times go on board a fishing vessel and inspect the vessel, its equipment, any articles on it and any documentation carried on it.

(2) Section 258(1A), (3) and (5) of the Act^{M7} (powers to inspect ships and their equipment etc.) apply in relation to paragraph (1) as if references in those subsections to “subsection 1 above” and “this section” were references to paragraph (1).

(3) Sections 259(1), (2), (5), (7) and (9) to (12) and 260(1) and (2) of the Act (powers of inspectors in relation to premises and ships and supplementary provisions) apply in relation to the inspection of a fishing vessel to which this regulation applies for the purpose of checking compliance with these Regulations as if—

- (a) references in those sections to “this Act” were to these Regulations;
- (b) for section 259(1)(b) there were substituted a reference to any fishing vessel to which this regulation applies;
- (c) in section 259(2)(h)(iii) the words “or any instrument made under it” were omitted; and
- (d) in section 259(5) the reference to “subsections (2) and (4) above for the purposes of Chapter II of Part VI” were to “subsection (2) above” and the reference to “those subsections” were to “that subsection”.

(4) Any regulations made under section 259(8) or section 260(3) of the Act apply for the purposes of the provisions of those sections as applied by paragraphs (2) and (3) as they apply for the purposes of the Act.

(5) Sections 261 to 266 of the Act ^{M8} (improvement notices and prohibition notices) apply for the purposes of these Regulations as if the meaning of “the relevant statutory provisions” in section 261(4) was included these Regulations.

(6) In this regulation “relevant inspector” means any of the persons mentioned in section 258(1) of the Act.

Marginal Citations

- M7** Subsection 1A was inserted by the [Merchant Shipping and Maritime Security Act 1997 \(c.28\)](#), [section 9](#) and paragraph 4 of Schedule 1.
- M8** [Section 264](#) was amended by the [Courts and Legal Services Act 1990 \(c.41\)](#), [section 50](#) and paragraph 55(2) of Schedule 10.

[F2]Detention of fishing vessels

28A.—(1) Where a relevant inspector has reasonable grounds for believing that—

- (a) a fishing vessel does not comply with these Regulations; and
- (b) either—
 - (i) the conditions on board are clearly hazardous to the safety, health or security of fishermen; or
 - (ii) the non-compliance represents a serious breach or the latest in a series of repeated breaches of these Regulations or the requirements of the Work in Fishing Convention,

that fishing vessel is liable to be detained.

(2) Where—

- (a) a fishing vessel owner has failed to make provision in connection with which the Secretary of State has incurred costs under regulation 19; and
- (b) the Secretary of State has requested reimbursement of those costs but has not been reimbursed,

every fishing vessel which is owned by the fishing vessel owner is liable to be detained.

(3) Where a fishing vessel is detained under this regulation and all of the grounds for detention have ceased to apply, a person having power to detain the fishing vessel must, at the request of the fishing vessel owner or the skipper of the fishing vessel, immediately release the fishing vessel—

- (a) if no proceedings for an offence under these Regulations are instituted within the period of seven days beginning with the day on which the fishing vessel is detained;
- (b) if proceedings for an offence under these Regulations, having been instituted within that period, are concluded without the fishing vessel owner or the skipper of the fishing vessel being convicted;
- (c) if either—
 - (i) the sum of £30,000 is paid to the Secretary of State by way of security; or
 - (ii) security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £30,000 is given to the Secretary of State,
 by or on behalf of the fishing vessel owner or the skipper of the fishing vessel;
- (d) where the fishing vessel owner or the skipper of the fishing vessel is convicted of an offence under these Regulations, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or

- (e) if the release is ordered by a court or tribunal referred to in Article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such court or tribunal is posted.
- (4) The Secretary of State must repay any sum paid in pursuance of paragraph (3)(c) or release any security so given—
- (a) if no proceedings for an offence under these Regulations are instituted within the period of seven days beginning with the day on which the sum is paid or the security is given; or
- (b) if proceedings for such an offence, having been instituted within that period, are concluded without the fishing vessel owner or the skipper of the fishing vessel being convicted.
- (5) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (3)(c) and the fishing vessel owner or the skipper of the fishing vessel is convicted of an offence under these Regulations, the sum so paid or the amount made available under the security must be applied as follows—
- (a) first in payment of any costs or expenses ordered by the court to be paid by the fishing vessel owner or the skipper of the fishing vessel; and
- (b) next in payment of any fine imposed by the court,
- and any balance must be repaid to the person who paid the sum or, as the case may be, gave the security.
- (6) Section 145 of the Act (interpretation of references in section 144 to the institution of proceedings or their conclusion without conviction) applies for the purposes of paragraphs (3) and (4) as if—
- (a) references to the owner of a ship were to the fishing vessel owner under these Regulations; and
- (b) references to an offence under section 131 were references to an offence under these Regulations.
- (7) In this regulation, “relevant inspector” has the same meaning as in regulation 28(6).

F2 Regs. 28A, 28B inserted (26.12.2020) by [The Merchant Shipping \(Maritime Labour Convention and Work in Fishing Convention\) \(Amendment\) Regulations 2020 \(S.I. 2020/1166\)](#), regs. 1, 3(3)

Supplementary provisions as respects detention of fishing vessels

28B.—(1) The power under regulation 28A to detain a fishing vessel may be exercised as regards a United Kingdom fishing vessel wherever it may be, but as regards a fishing vessel which is not a United Kingdom fishing vessel may only be exercised if the fishing vessel in question is—

- (a) in a port or shipyard in the United Kingdom; or
- (b) at an offshore terminal in United Kingdom waters.

(2) A person having powers to detain a fishing vessel may permit a fishing vessel which is liable to be detained under regulation 28A to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(3) Section 284 of the Act (enforcing detention of a ship) applies where a fishing vessel is liable to be detained under regulation 28A as if—

- (a) references to the owner of a ship were to the fishing vessel owner under these Regulations;
- (b) references to detention of a ship under the Act were references to detention of the fishing vessel under these Regulations; and
- (c) subsection (7) were omitted.

(4) Where a fishing vessel is liable to be detained under regulation 28A, the person detaining the fishing vessel must serve on the skipper of the fishing vessel a detention notice which—

- (a) states the grounds of detention; and
- (b) requires the terms of the notice to be complied with until the fishing vessel is released by any person mentioned in section 284(1) of the Act.

(5) Where a fishing vessel other than a United Kingdom fishing vessel is detained under regulation 28A, the Secretary of State must as soon as reasonably practicable inform in writing, including a copy of the detention notice, the consul or diplomatic representative of the State whose flag the fishing vessel is entitled to fly or the appropriate maritime authorities of that State, and invite them to send a representative to attend the fishing vessel.]

F2 Regs. 28A, 28B inserted (26.12.2020) by The Merchant Shipping (Maritime Labour Convention and Work in Fishing Convention) (Amendment) Regulations 2020 (S.I. 2020/1166), regs. 1, 3(3)

PART 9

Penalties

Penalties

29.—(1) Subject to paragraphs (2) and (3), offences under these Regulations are punishable on summary conviction—

- (a) in England and Wales by a fine; or
- (b) in Scotland or Northern Ireland by a fine not exceeding level 5 on the standard scale.

(2) An offence under regulation 10(4) is punishable on summary conviction by a fine not exceeding level 4 on the standard scale.

(3) An offence under regulation 13(3) is punishable on summary conviction by a fine not exceeding level 2 on the standard scale.

(4) An offence under regulation 21(4) is punishable—

- (a) on summary conviction—
 - (i) in England and Wales by a fine; or
 - (ii) in Scotland and Northern Ireland by a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or to both.

Defence

30. In any proceedings for an offence under these Regulations it is a defence for the person charged to show that all reasonable steps had been taken by that person to ensure compliance with the provision concerned.

PART 10

Revocation

Revocation of Regulations

31. The Merchant Shipping (Provisions and Water) Regulations 1989 ^{M9} are revoked.

Marginal Citations

M9 S.I. 1989/102, amended by S.I. 1993/1072, S.I. 2005/2114 and S.I. 2014/1614.

PART 11

Review

Review

32.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in regulations 3 to 30, and
 - (b) publish a report setting out the conclusions of the review.
- (2) The first report must be published before 25th October 2023.
- (3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015 ^{M10} requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under the Work in Fishing Convention are implemented in other countries which are subject to the obligations.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Marginal Citations

M10 2015 c. 26.

Changes to legislation: There are currently no known outstanding effects for the The Merchant Shipping (Work in Fishing Convention) Regulations 2018. (See end of Document for details)

Signed by authority of the Secretary of State for Transport

Department for Transport

Nusrat Ghani
Parliamentary Under Secretary of State

SCHEDULE

Regulation 9(1)

Fisherman's Work Agreement

1. The fisherman's family name and other names, date of birth or age and birthplace.
2. The place at which and date on which the agreement was concluded.
3. The name of the fishing vessel or vessels and the registration number of the vessel or vessels on board which the fisherman undertakes to work.
4. The name of the employer, or fishing vessel owner, or other party to the fisherman's work agreement.
5. The voyage or voyages to be undertaken, if this can be determined at the time of making the agreement.
6. The capacity in which the fisherman is to be employed or engaged.
7. If possible, the place at which and date on which the fisherman is required to report on board for service.
8. The provisions to be supplied to the fisherman.
9. The amount of wages, or the amount of the share and the method of calculating such share if remuneration is to be on a share basis, or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis, and any agreed minimum wage.
10. The termination of the agreement and the conditions thereof, namely—
 - (a) if the agreement has been made for a definite period, the date fixed for its expiry,
 - (b) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisherman is to be discharged,
 - (c) if the agreement has been made for an indefinite period, the conditions which will entitle either party to rescind it, as well as the required period of notice for rescission, provided that such period must not be less for the employer, or fishing vessel owner or other party to the agreement than for the fisherman.
11. The protection that will cover the fisherman in the event of sickness, injury or death in connection with service.
12. The amount of paid annual leave or the formula used for calculating leave, where applicable;
13. The health and social security coverage and benefits to be provided to the fisherman by the employer, fishing vessel owner, or other party or parties to the fisherman's work agreement, as applicable.
14. The fisherman's entitlement to repatriation.
15. A reference to the collective bargaining agreement, where applicable.
16. The minimum periods of rest.
17. A declaration by the fishing vessel owner and the fisherman confirming that the requirements in regulation 9(4) (a) to (c) have been met.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement parts of the Work in Fishing Convention, 2007 (Cm 7375) (the “Convention”). They apply to United Kingdom fishing vessels wherever they may be and to fishing vessels in United Kingdom waters.

Part 2 implements Article 9 of the Convention (minimum age). The Convention provides that, persons under the age of 16 must not normally work as fishermen, although an exception is provided for persons over 15 years of age who satisfy certain conditions, and, with some exceptions, fishermen under the age of 18 must not work on fishing vessels at night (regulations 6 and 7).

Part 3 implements Articles 16 to 20 of the Convention (fishers' work agreements) and Article 24 (payment of fishermen). Every fisherman is required to have a fisherman's work agreement with another person in respect of their work on a fishing vessel and the agreement must contain certain specified provisions (regulations 8 and 9 and the Schedule) and provide for the payment of wages or other remuneration at regular intervals (regulation 12). Fishermen are entitled to receive an account of the wages or other remuneration due to them, at intervals not exceeding one month (regulation 13)

Part 4 implements Article 21 of the Convention (repatriation). In the cases specified, a fishing vessel owner must make provision for the repatriation of a fisherman (regulations 14 to 16) and the fishing vessel owner is required to make provision for that fisherman's relief and maintenance pending repatriation. A fisherman must not be required to pay towards the costs of such repatriation or relief and maintenance, other than in cases of serious misconduct (regulation 18). Where a fishing vessel owner fails to make provision for the repatriation of fishermen, or for their relief and maintenance pending repatriation, the Secretary of State is required to make such provision in the case of United Kingdom ships (and may do so in relation to non-United Kingdom ships) (regulation 19).

Part 5 implements Articles 25 to 28 of the Convention (accommodation and food). Fishing vessels are required to comply with the requirements relating to crew accommodation set out in Merchant Shipping Notices 1871, 1872 or 1873 and there are related inspection requirements (regulation 20). Provision is made to allow the Secretary of State to exempt ships from certain requirements in those Notices (regulation 21). Provision is made in relation to the quantity and quality of food and drinking water provided for fishermen on board a ship and such food and water must be provided free of charge (regulation 22). Provision is made in relation to the storage and handling of food and drinking water provided for fishermen and the organisation and equipment of catering departments on board ships, with related inspection requirements (regulations 23 and 24). A fisherman may lodge a complaint with the Secretary of State alleging that the provisions of the Convention are not being complied and must not suffer any detriment for doing so (regulation 25).

Part 6 implements Articles 29 and 30 of the Convention (medical care). A fisherman who is sick or injured is entitled to medical care on board ship and ashore.

Part 7, which applies to all ships within the scope of these Regulations, requires a contract of insurance or other security, adequate to ensure that the fishing vessel owner will be able to meet its liabilities under these Regulations to provide compensation in the event of death or long term disability to fishermen arising from occupational injury, illness or hazard.

Part 8 confers powers to allow the inspection of fishing vessels.

Part 9 provides for criminal penalties to be attached to many of the requirements in the Regulations and provides a “reasonable steps” defence for all offences.

Part 10 revokes the Merchant Shipping (Provisions and Water) Regulations 1989 (S.I.1989/102) which are replaced by provision made under these Regulations.

Part 11 contains a provision requiring the Secretary of State to review the Regulations and to publish a report of that review within five years of their coming into force (and within every five years after that). Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the relevant provisions or to amend them.

The Schedule sets out the provisions that must be included in a fisherman's work agreement. These Regulations are made under sections 85(1)(a) and (b), (3) and (5) to (7) and 86(1) of the Merchant Shipping Act 1995 except in so far as (a) they relate to parts of the Work in Fishing Convention, 2007 which do not concern the health or safety of persons on ships and (b) they relate to government ships. Section 2(2) of the European Communities Act 1972 is used to ensure that all parts of the Work in Fishing Convention, 2007 are covered by these Regulations.

Merchant Shipping Notices are published by the Maritime and Coastguard Agency ("the MCA") (an executive agency of the Department for Transport). Copies may be obtained from M-Notices Subscriptions, PO Box 362, Europa Park, Grays, Essex RM17 9AY, email: mnotices@ecgroup.co.uk. They may also be accessed via the MCA's website: www.gov.uk/government/organisations/maritime-and-coastguard-agency, which also has details of any amendments or replacements.

The Maritime Labour Convention may be downloaded from the website of the International Labour Organisation at <https://www.ilo.org>. Printed copies may be inspected at The Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sectors is foreseen.

Changes to legislation:

There are currently no known outstanding effects for the The Merchant Shipping (Work in Fishing Convention) Regulations 2018.