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## STATUTORY INSTRUMENTS

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# 2018 No. 1106

## The Merchant Shipping (Work in Fishing Convention) Regulations 2018

### 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 <sup>M1</sup> (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 <sup>M2</sup> (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.

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#### Marginal Citations

- M1** Subsection 1A was inserted by the [Merchant Shipping and Maritime Security Act 1997 \(c.28\)](#), [section 9](#) and paragraph 4 of Schedule 1.

**M2** Section 264 was amended by the Courts and Legal Services Act 1990 (c.41), section 50 and paragraph 55(2) of Schedule 10.

### [F1] 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).

**F1** 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

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**Changes to legislation:** There are currently no known outstanding effects for the The Merchant Shipping (Work in Fishing Convention) Regulations 2018, PART 8. (See end of Document for details)

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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.]

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