

2018 No. 1107

MERCHANT SHIPPING

The Merchant Shipping (Work in Fishing Convention) (Survey and Certification) 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 (a) for the purpose of section 2(2) of the European Communities Act 1972(b), 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 section 85(1)(a) and (b), (3) and (5) to (7) and section 86(1) of the Merchant Shipping Act 1995(c) 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.

Citation and commencement

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

(2) These Regulations, other than regulations 7 and 9 to 14, come into force on 30th November 2018; regulations 7 and 9 to 14 come into force on 30th November 2019.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Merchant Shipping Act 1995;

“certifying authority” means—

(a) the Secretary of State; or

(a) S.I.1993/595.

(b) 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).

(c) 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.

- (b) an organisation which has an agreement with the Secretary of State pursuant to Article 5(2) of Directive 2009/15/EC^(a) of the European Parliament and of the Council of 23rd April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations which authorises it to undertake surveys of ships under these Regulations;

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

“Convention State” means a State, other than the United Kingdom, which is a party to the Convention;

“fishing vessel owner” means the owner of the fishing vessel or any other organisation or 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;

“length” means registered length as defined by the Fishing Vessels (Codes of Practice) Regulations 2017^(b);

“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;

“relevant inspector” means any of the persons mentioned in section 258(1) of the Act;

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

“United Kingdom fishing vessel means” 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^(c);

“Work in Fishing Convention Certificate” means, a certificate of that name issued by the Secretary of State or a document issued by the competent authority of a Convention State in accordance with article 41.1 of the Work in Fishing Convention; and

“Work in Fishing Convention standards” means the standards set out in the Convention that are applicable to the particular fishing vessel and specified in Merchant Shipping Notice 1885 (F).

(2) In the application of these Regulations to a hovercraft a reference to the skipper includes a reference to the captain of the hovercraft.

Application

3.—(1) Subject to paragraph (3), these Regulations apply to United Kingdom fishing vessels wherever they may be.

(2) Regulations 12 to 14 apply to fishing vessels which are not United Kingdom fishing vessels while the vessel is in United Kingdom waters.

(3) Regulation 5 does not apply to fishing vessels which are less than 24 metres in length, unless such vessels normally navigate—

- (a) at a distance exceeding 200 nautical miles from the United Kingdom coastline; or
- (b) to the outer edge of the United Kingdom continental shelf,

whichever distance is the greater.

(a) OJ No. L131, 28.05.2009, p.47.

(b) S.I. 2017/943.

(c) 1968 c.59.

Survey of fishing vessels

- 4.—(1) A fishing vessel is subject to the following surveys—
- (a) before a Work in Fishing Convention Certificate is first issued, an initial survey by a certifying authority, as set out in Merchant Shipping Notice 1885 (F);
 - (b) thereafter, at specified in intervals, a renewal survey by a certifying authority, as set out in Merchant Shipping Notice 1885 (F).
- (2) A renewal survey must be completed—
- (a) if the length of the fishing vessel is 24 metres or more, within four years of the initial survey;
 - (b) if the length of the fishing vessel is less than 24 metres, within five years of the initial survey.
- (3) A fishing vessel which does not fall within paragraph (2) is subject to a survey by a certifying authority as set out in Merchant Shipping Notice 1885 (F).

Issue of Work in Fishing Convention Certificates

5.—(1) Where the certifying authority is satisfied after the completion of an initial or renewal survey carried out in accordance with the provisions of regulation 4(1) or (2) that the Work in Fishing Convention standards are being complied with, that authority must issue a Work in Fishing Convention Certificate in respect of that fishing vessel.

(2) A certifying authority may have regard to the results of a survey conducted before the date on which these Regulations come into force when deciding whether it is satisfied that the Work in Fishing Convention Standards are being complied with.

(3) A Work in Fishing Convention Certificate must be drawn up in a form corresponding to the model given in Merchant Shipping Notice 1885 (F) and have the content specified in that Merchant Shipping Notice.

Duration and validity of Work in Fishing Convention Certificates

- 6.—(1) Subject to paragraph (2), a Work in Fishing Convention Certificate must be issued—
- (a) on the date of the completion of the relevant survey; and
 - (b) with a period of validity starting on the date of issue and not exceeding five years.
- (2) Where a renewal survey as required by regulation 4(2) has been completed within a period of three months before the expiry of a Work in Fishing Convention Certificate, the new certificate must be issued as being valid from the date of expiry of the existing certificate.
- (3) A Work in Fishing Convention Certificate ceases to be valid—
- (a) upon the transfer of the fishing vessel to the flag of another State;
 - (b) if the person who is named on the certificate as the fishing vessel owner ceases to have responsibility for the operation of the vessel;
 - (c) if substantial changes are made to the fishing vessel's accommodation or its food or catering facilities; or
 - (d) if the fishing vessel's accommodation or the fishing vessel's food or catering facilities have sustained damage or otherwise become deficient and that damage or deficiency has not been rectified.

Certificate to be carried on board the fishing vessel and made available

7.—(1) The fishing vessel owner and the skipper of a fishing vessel in respect of which a Work in Fishing Convention certificate has been issued and has not expired must ensure that the certificate is carried on board the fishing vessel and posted in a conspicuous place on board where it is available to fishermen.

(2) The fishing vessel owner and the skipper of a vessel must make the Work in Fishing Convention Certificate available, upon request, to the persons specified in Merchant Shipping Notice 1886.

Arbitration

8.—(1) If a fishing vessel owner is dissatisfied for any reason with the outcome of a survey carried out in respect of a United Kingdom fishing vessel, that person may serve a written notice on the responsible person within 21 days of receiving notification of that outcome—

- (a) stating that there is a dispute in relation to the survey; and
- (b) requesting that the dispute be referred to a single arbitrator.

(2) Subject to paragraphs (3), (4) and (6) an arbitrator referred to in paragraph (1) must be appointed by agreement between the parties.

(3) In default of agreement between the parties, the arbitrator is such person as may be appointed by the President or Vice President of the Chartered Institute of Arbitrators following a request made by—

- (a) a party, after giving written notice to the other party; or
- (b) the parties jointly,

but this paragraph does not apply in relation to Scotland.

(4) No person is to be an arbitrator under this regulation unless that person is—

- (a) a person who holds a certificate to act as—
 - (i) a master or chief mate on a seagoing ship of 3,000 gross tonnage or more, in accordance with Regulation II/2 of Chapter 2 of the Annex to the STCW Convention; or
 - (ii) a chief engineer officer or second engineer officer on a seagoing ship powered by main propulsion machinery of 3,000kW propulsion power or more, in accordance with Regulation III/2 of Chapter 3 of the Annex to the STCW Convention;
- (b) a person who holds a certificate of competency equivalent to a certificate referred to in sub-paragraph (a);
- (c) a naval architect;
- (d) a qualified person;
- (e) a person with experience of shipping matters or of activities carried on in ports; or
- (f) a member of the Chartered Institute of Arbitrators.

(5) An arbitrator appointed under this regulation has the powers of an inspector conferred by section 259 of the Act.

(6) In the application of this regulation to Scotland—

- (a) any reference to an arbitrator is to be construed as a reference to an arbiter; and
- (b) the reference in paragraph (2) to a single arbitrator appointed by agreement between the parties is to be construed as a reference to a single arbiter so appointed or, in default of agreement, appointed by a sheriff.

(7) The rules for arbitration set out in Merchant Shipping Notice 1613 apply unless alternative procedures are agreed between the applicant and the Secretary of State before the commencement of arbitration proceedings.

(8) In this regulation—

- (a) “applicant” means a person who makes an application for a survey required by these Regulations;
- (b) “the parties” means the applicant and the responsible person and “party” is to be construed accordingly;
- (c) “qualified person” means—

- (i) a person who satisfies the judicial-appointment eligibility condition on a 7-year basis within the meaning of section 50 of the Tribunals, Courts and Enforcement Act 2007^(a);
- (ii) a person who is an advocate or solicitor in Scotland of at least 7 years' standing;
- (iii) a person who is a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland of at least 7 years' standing;
- (d) "responsible person" means the certifying authority responsible for the issue of the certificate in connection with which a survey required by these Regulations is carried out; and
- (e) "the STCW Convention" means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers^(b), as amended in 1995 by resolution 1 of the STCW Convention^(c), convened at the International Maritime Organisation's headquarters from 26th June to 7th July 1995.

Offences and penalties for United Kingdom fishing vessels

9.—(1) If a United Kingdom fishing vessel proceeds or attempts to proceed to sea on a voyage without a valid Work in Fishing Convention Certificate, the fishing vessel owner and the skipper of the fishing vessel are guilty of an offence and liable on summary conviction—

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

or on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or both.

(2) Any person who—

- (a) intentionally alters a Work in Fishing Convention Certificate; or
- (b) intentionally produces a false Work in Fishing Convention Certificate,

is guilty of an offence and is liable on summary conviction—

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

(3) Any contravention of regulation 7 is an offence by the fishing vessel owner and by the skipper punishable on summary conviction—

- (a) in England and Wales to a fine; or
- (b) in Scotland and Northern Ireland by a fine not exceeding the statutory maximum,

or on conviction on indictment by imprisonment for a term not exceeding two years, or a fine, or both.

(4) In any proceedings for an offence under this regulation, it is a defence for the person charged to prove that all reasonable steps had been taken by that person to ensure compliance with the requirements of the provision in question.

Inspection of United Kingdom fishing vessels

10.—(1) For the purpose of checking compliance with these Regulations other than regulations 12 to 14, a relevant inspector or a proper officer may at all reasonable times go on board a United Kingdom fishing vessel and inspect the vessel, its equipment, any articles and any document carried on it.

(a) 2007 c.15.
 (b) Cm 9266.
 (c) Cm 3772.

(2) Subsections (1A), (3) and (5) of section 258(a) of the Act (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 for the purposes of checking compliance with these Regulations as they apply in relation to the inspection of a ship for the purposes of checking compliance with the Act, 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 subsection (8) of section 259 or subsection (3) of section 260 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 (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.

Detention of United Kingdom fishing vessels

11.—(1) Where a relevant inspector or proper officer has clear grounds for believing that—

- (a) a United Kingdom fishing vessel does not comply with these Regulations; and
- (b) either—
 - (i) the conditions onboard the fishing vessel 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 Work in Fishing Convention standards,

that fishing vessel is liable to be detained.

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

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

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

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

- (a) states the grounds for the 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.

(a) Subsection 1A was inserted by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1 paragraph 4.
(b) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997, section 9 and Schedule 1.

(5) Where a fishing vessel is detained under paragraph (1) but the failure to comply referred to in that paragraph has ceased, a person having power to detain the fishing vessel must, at the request of the fishing vessel owner or master, 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 skipper 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 skipper,
- (d) where the fishing vessel owner or skipper 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^(a), and any bond or other financial security ordered by such court or tribunal is posted.

(6) The Secretary of State must repay any sum paid in pursuance of paragraph (5)(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 skipper being convicted.

(7) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (5)(c) and the fishing vessel owner or skipper 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 skipper; and
- (b) next in payment of any fine imposed by the court,

and any balance must be repaid to the person who made the payment or gave the security.

(8) Section 145 of the Act (interpretation of section 144) applies for the purposes of paragraphs (5) to (7) as if—

- (a) references to the owner of a ship were to the fishing vessel owner; and
- (b) references to an offence under section 131 were references to an offence under these Regulations.

Documentation for non-United Kingdom fishing vessels

12.—(1) A fishing vessel to which this regulation applies must ensure that a copy of the Work in Fishing Convention certificate is carried on board the fishing vessel and made available to fishermen.

(2) If a fishing vessel to which this regulation applies proceeds to sea in United Kingdom waters or attempts to proceed to sea or on a voyage in United Kingdom waters without complying with the requirements referred to in paragraph (1), the fishing vessel owner and the skipper are guilty of an offence and liable on summary conviction—

- (a) in England and Wales to a fine; or

(a) Cm 8941.

(b) in Scotland and Northern Ireland to a fine not exceeding the statutory maximum, or on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or both.

(3) In any proceedings for an offence under this regulation, it is a defence for the person charged to prove that all reasonable steps had been taken by that person to ensure compliance with the requirements in question.

(4) In any proceedings for an offence under paragraph (1) where the Work in Fishing Convention is not in force for the State whose flag the fishing vessel is entitled to fly, it is a defence for the person charged to prove that documents containing substantially similar information to the document referred to in that paragraph are carried on board the ship.

Inspection of non-United Kingdom fishing vessels

13.—(1) Where the Work in Fishing Convention is in force for the State whose flag a fishing vessel is entitled to fly, a relevant inspector may inspect the fishing vessel to establish that vessel's compliance with the Convention.

(2) Where the Work in Fishing Convention is not in force for the State whose flag a fishing vessel is entitled to fly, a relevant inspector may carry out an inspection of that fishing vessel as set out in Merchant Shipping Notice 1885 (F).

Detention of non-United Kingdom fishing vessels

14.—(1) Where a relevant inspector inspects a fishing vessel under regulation 14 and has clear grounds for believing that—

- (a) the fishing vessel does not comply with the requirements of the Work in Fishing Convention; 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 the requirements of the Work in Fishing Convention,

the vessel is liable to be detained.

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

(3) The power under this regulation to detain a 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 or controlled waters.

(4) Where a fishing vessel is liable to be detained under this regulation, section 284 of the Act has effect in relation to that fishing vessel as if—

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

(5) Where a fishing vessel is detained under this regulation, the Secretary of State must immediately inform 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.

(6) Where a fishing vessel is detained under this regulation but the failure to comply referred to in paragraph (1) has ceased, a person having power to detain the ship must, at the request of the fishing vessel owner or skipper, immediately release the ship.

Review

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

- (a) carry out a review of the regulatory provision contained in 3 to 14 of these regulations; 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^(a) 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).

Signed by authority of the Secretary of State for Transport

24th October 2018

Nusrat Ghani
Parliamentary Under Secretary of State
Department for Transport

^(a) 2015 c.26.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Articles 41 to 43 of the Work in Fishing Convention, 2006 (Cm 7375). They apply to United Kingdom fishing vessels wherever they may be and to other fishing vessels in United Kingdom waters.

Regulation 4 requires United Kingdom fishing vessels to be surveyed for the purposes of issuing a Work in Fishing Convention Certificate, and regulations 5 and 6 make further provision regarding surveys and the issuing of certificates.

Regulation 7 requires the Work in Fishing Convention Certificate to be carried on board a United Kingdom fishing vessels and to be made available, Regulations 8 to 11 make provision for arbitration on the outcome of surveys and the inspection and detention of United Kingdom fishing vessels.

Regulation 12 requires fishing vessels which are not United Kingdom fishing vessels to comply with requirements of the Work in Fishing Convention relating to the documents to be carried on board the fishing vessel. Regulations 13 and 14 make provision for the enforcement of these requirements.

Regulation 15 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come 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 amended. A further instrument would be needed to revoke the Regulations or to amend them.

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. 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.

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The Maritime Labour Convention may be downloaded from the website of the International Labour Organisation at <https://www.ilo.org>. Hard copies can be obtained by writing to the Seafarer Safety and Health Manager, 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.

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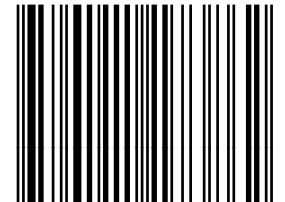
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