

## **EXPLANATORY MEMORANDUM TO**

### **THE MERCHANT SHIPPING (WORK IN FISHING) (SURVEY AND CERTIFICATION) REGULATIONS 2018**

**2018 No. 1107**

#### **1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Maritime and Coastguard Agency and is laid before Parliament by Command of Her Majesty.

#### **2. Purpose of the instrument**

- 2.1 This is one of four instruments designed to bring UK law into line with the Work in Fishing Convention, 2007 (“ILO 188”), an International Labour Organisation (“ILO”) treaty concerning living and working conditions for those working on fishing vessels.
- 2.2 This instrument requires the survey and inspection fishing vessels for compliance with the requirements of ILO 188 to ensure the protection of fishermen on fishing vessels.

#### **3. Matters of special interest to Parliament**

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### **4. Extent and Territorial Application**

- 4.1 The extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is all United Kingdom fishing vessels whether in the United Kingdom or anywhere else in the world. Certain provisions also apply to fishing vessels which are not United Kingdom ships when in United Kingdom waters.

#### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **6. Legislative Context**

- 6.1 ILO 188 was adopted on 14th June 2007 in Geneva following over 6 years of development and discussion. International Labour Organization Treaties are unique in international legislation because they are drawn up through in negotiations between representatives of governments, employers and workers.

- 6.2 ILO 188 came into force internationally on 16th November 2017. This was triggered by ratification by 10 states of which at least 8 are coastal states. It entitles all fishermen to written terms and conditions of employment (a fisherman's work agreement), decent accommodation and food, medical care, regulated working time, repatriation, social protection and health and safety on board. It also provides minimum standards relating to recruitment and placement.
- 6.3 The UK Government firmly supported the development of ILO 188 and is committed to working towards ratifying it at the earliest practical date. ILO 188 was originally laid before Parliament on 20th May 2008 (Cm 7375) with an indication of Government support for the aim of the Convention and willingness to start consultation with the fishing industry. Subsequent Governments have continued to support the policy.
- 6.4 Other instruments implementing ILO 188 are –
- The Merchant Shipping (Work in Fishing Convention) Regulations 2018
  - The Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018
  - The Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018

## **7. Policy background**

### *What is being done and why?*

- 7.1 The instrument implements the requirements in Articles 41 to 43 of ILO 188:
- 7.2 There is currently no statutory requirement for the regular inspection of fishing vessels in respect of living and working conditions, although vessels are surveyed for safety.
- 7.3 This instrument requires every UK fishing vessel to be subject to survey at every five years (four years for vessels over 24m in length). For vessels of 24 or more metres in length or operating more than 200 nautical miles from the United Kingdom coastline or to the outer edge of the United Kingdom continental shelf, a certificate will be issued to demonstrate compliance. Enforcement measures are provided to ensure rectification of non-compliance.
- 7.4 The instrument also makes provision for MCA surveyors to take action to ensure that non-compliance with the Convention on non-UK fishing vessels in UK ports is rectified if they receive a complaint or otherwise have evidence of non-compliance. Where such non-compliance is clearly hazardous to the safety, health or security of those working on board or is the latest of a series of repeated non-compliance, the fishing vessel may be detained.
- 7.5 Implementing ILO 188 makes it necessary that the Government impose certain obligations on fishing vessel owners and operators to ensure that fishermen have the full protection of ILO 188 and that the Government has appropriate methods of enforcing these obligations in the event they are not complied with. Aside from it resulting in the government's inability to enforce compliance with these obligations, a failure to have in place an appropriate enforcement regime would mean that the UK is not compliant with ILO 188. This is similar to the approach that used for the implementation of the Maritime Labour Convention 2006. Where possible we have used civil sanctions that are available to the MCA to use such as inspection and

follow up, prohibition notice, improvement notice, detention, notifications of concern, simple caution.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

9.1 Not applicable.

## **10. Consultation outcome**

10.1 Like all Conventions of the ILO, ILO 188 was drawn up on a tripartite basis in negotiations between fishing vessel owner organisations, fishermen's organisations and governments. The Government has continued to work closely with the UK industry on the implementation of the Convention, in particular through a national tripartite working group, which was set up in 2013. This group was consulted on many aspects of the implementation of the Convention, both prior to and following formal public consultation.

10.2 Formal public consultation on the draft proposals was carried out as part of the consultation on implementation of ILO 188 between November 2017 and January 2018. The consultation documents were posted to the [www.gov.uk](http://www.gov.uk) web site. In addition, the MCA notified more than fifty organisations and companies that the public consultation was underway. Several of the organisations notified were fishing federations representing many fishermen/fishing vessel owners and sent the information to their membership.

10.3 Twenty-five written responses were received, mostly from federations and companies. During the consultation period MCA and Department for Transport also attended meetings organised by the National Federation of Fishing Organisations, Seafish and Cornish Fish Producers Organisation Ltd (CFPO) to answer questions from the industry.

10.4 There was widespread support for the introduction of ILO 188 but with some concerns about the practical implementation of the Convention. The issue relating to this instrument which generated the most comments was the need to make greater use of ILO 188's provisions for progressive implementation.

10.5 This and other concerns have been taken into account in finalising both the legal provisions and supporting guidance. In particular, the instrument provides for progressive implementation where it is allowed by ILO 188, so time is allowed after the legislation comes into force to allow fishing vessel owners to comply with certain provisions, and some requirements are phased in so that they apply for larger vessels and those which operate for longer periods first, and then are introduced over a longer period for smaller vessels. The MCA will publish guidance on progressive implementation. A summary of consultation responses and the actions taken to response is available on [www.gov.uk](http://www.gov.uk) at <https://www.gov.uk/government/consultations/implementation-of-the-ilo-work-in-fishing-convention-2007-ilo-188-into-uk-law> Printed copies of the summary of consultation responses may be inspected the offices of the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG.

- 10.6 As part of the post consultation revision of the legal provisions we have reduced the total number of offences from 27 to 21. There are three offences in the Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018.
- 10.7 The devolved administrations were notified of the public consultation but none provided a response.

## **11. Guidance**

- 11.1 The MCA has published guidance in a Merchant Shipping Notices and Marine Guidance Note supporting these Regulations. Some detailed provisions relating to survey and certification are imposed by reference to a specific Merchant Shipping Notice. A Marine Guidance Note provides information and guidance regarding making a complaint about non-compliance with ILO 188. These notices will be available on 5 November 2018 on [www.gov.uk](http://www.gov.uk) at <https://www.gov.uk/government/collections/marine-guidance-notices-mgns>

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies is expected to be under £0.5m per year, arising from the cost to fishing vessel owners of having their vessels surveyed.
- 12.2 A full impact assessment has not been prepared for this instrument. However, a de minimis assessment has been carried out and has concluded that the impact on businesses or the public sector is £0.5m.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to make use of progressive implementation providing small businesses longer to prepare for compliance.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is through continued consultation with industry through the tripartite working group, and through regular MCA inspection of fishing vessels.
- 14.2 A statutory review clause is included in the Regulation.

## **15. Contact**

- 15.1 Louise Unsworth at the Maritime and Coastguard Agency Telephone: 020 3817 2505 or email: [Louise.Unsworth@mca.gov.uk](mailto:Louise.Unsworth@mca.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 David F.Jones at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Nusrat Ghani, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.