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STATUTORY INSTRUMENTS

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**2017 No. 943**

**The Fishing Vessels (Codes of Practice) Regulations 2017**

**PART 1**

**General matters**

**Citation and commencement**

1. These Regulations may be cited as the Fishing Vessels (Codes of Practice) Regulations 2017 and come into force on 23rd October 2017.

**Interpretation**

2.—(1) In these Regulations—

“the Act” means the Merchant Shipping Act 1995;

“certificate of compliance” means a certificate issued in accordance with regulation 4;

“fixed permanent structure” —

(a) includes any part of the hull of a vessel which is capable of being detached but which is fixed in place during the normal operation of the vessel; but

(b) does not include functional arrangements such as boarding platforms, bowsprits, diving platforms, outboard motors, outdrives, propulsion machinery, pulpits, rubbing strips and fenders, rudders, safety rails, steering gear and sternhead fittings;

“flag State”, in relation to a non-United Kingdom fishing vessel, means the State whose flag the vessel is entitled to fly;

“large fishing vessel” means a fishing vessel of at least 24 metres overall registered length;

“length overall” means the distance between the foreside of the foremost fixed permanent structure and the after side of the aftermost fixed permanent structure;

“Maritime and Coastguard Agency” means the Maritime and Coastguard Agency, an executive agency of the Department for Transport;

“medium fishing vessel” means a fishing vessel of at least 15 metres length overall, but less than 24 metres registered length;

“Merchant Shipping Notice” means a Notice described as such and issued by the Maritime and Coastguard Agency, and any reference to any 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<sup>(1)</sup>;

“non-United Kingdom fishing vessel” means a fishing vessel which is not registered in the United Kingdom;

“owner” means the registered owner of a vessel, unless that vessel—

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(1) Merchant Shipping Notices can be accessed at <https://www.gov.uk/government/collections/merchant-shipping-notice-msns>.

- (a) has been chartered by demise, or
- (b) is managed, either wholly or in part, by a person other than the registered owner under the terms of a management agreement,

in which case the owner means the demise charterer or other person managing the vessel as the case may be;

“registered length” means the measurement which—

- (a) is recorded as the registered length in the vessel’s certificate of registry issued under the Merchant Shipping (Registration of Ships) Regulations 1993<sup>(2)</sup>, in the case of a United Kingdom fishing vessel;
- (b) is recorded as the registered length in any equivalent certificate issued in the case of a vessel registered outside the United Kingdom; or
- (c) would be recorded as the registered length if the vessel were a United Kingdom fishing vessel, in the case of an unregistered vessel;

“relevant Merchant Shipping Notice”, in relation to a fishing vessel, means the Merchant Shipping Notice containing the applicable Code of Practice for that vessel;

“small fishing vessel” means a fishing vessel which is not a medium or large fishing vessel;

“Torremolinos Protocol” means the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels 1977<sup>(3)</sup>; and

“United Kingdom fishing vessel” means a fishing vessel which is registered in the United Kingdom.

- (2) For the purposes of these Regulations the “applicable Code of Practice” —
  - (a) in the case of small fishing vessels is the “Code of Practice for the Safety of Fishing Vessels of less than 15m Length Overall”, incorporated in Merchant Shipping Notice MSN 1871(F);
  - (b) in the case of medium fishing vessels is the “Code of Practice for the Construction and Use of Fishing Vessels of 15m Length Overall to less than 24m Registered Length”, incorporated in Merchant Shipping Notice MSN 1872(F); and
  - (c) in the case of large fishing vessels is the “Code of Practice for the Construction and Use of Fishing Vessels of 24m Registered Length and Over”, incorporated in Merchant Shipping Notice MSN 1873(F).

## Application

3.—(1) These Regulations (except regulations 13 (certification of non-United Kingdom fishing vessels) and 14 (inspection of non-United Kingdom fishing vessels)) apply to United Kingdom fishing vessels.

(2) Regulations 13 and 14 apply to non-United Kingdom fishing vessels, with the exception of small fishing vessels, while in United Kingdom waters.

(2) S.I. 1993/3138, to which there are amendments not relevant to these Regulations.

(3) The Torremolinos Protocol and the Convention may be obtained from the International Maritime Organization at [www.imo.org/en](http://www.imo.org/en).

## PART 2

### All Fishing Vessels

#### Certificate of compliance

4.—(1) The Secretary of State must issue a certificate of compliance in respect of a United Kingdom fishing vessel in the following circumstances—

- (a) a surveyor of ships, following a survey (in the case of a large or medium fishing vessel) or inspection (in the case of a small fishing vessel) as set out in the relevant Merchant Shipping Notice, is satisfied that the vessel complies with the applicable Code of Practice; or
- (b) an exemption granted by the Secretary of State under regulation 18 (exemptions) applies to the vessel, and a surveyor of ships, having carried out a survey or inspection as set out in the relevant Merchant Shipping Notice, is satisfied that the vessel complies with—
  - (i) the applicable Code of Practice, other than to the extent of that exemption; and
  - (ii) any conditions and limitations subject to which the exemption has been granted; and
- (c) in either case, that any fees prescribed in regulations made under section 302 of the Act (fees) have been paid<sup>(4)</sup>.

(2) A certificate of compliance must—

- (a) have a period of validity not exceeding that set out in the relevant Merchant Shipping Notice;
- (b) in the case of a large fishing vessel, be supplemented by a record of equipment; and
- (c) be in the format set out in the relevant Merchant Shipping Notice.

(3) In this regulation, “record of equipment” means a document containing the information required by Council [Directive 97/70/EC](#) of 11th December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over<sup>(5)</sup> and by the Torremolinos Protocol.

#### Prohibition on proceeding on any voyage without a certificate

5.—(1) Subject to paragraph (2), a United Kingdom fishing vessel must not proceed on a voyage unless—

- (a) the Secretary of State has issued a certificate of compliance in respect of that vessel;
- (b) that certificate of compliance is valid at the time of the voyage; and
- (c) the vessel continues to comply with the applicable Code of Practice.

(2) Where the certificate of compliance issued in respect of a fishing vessel has been suspended under regulation 8 (suspension of certificates), paragraph (1) does not prohibit that vessel from returning to port.

(3) Contravention of paragraph (1) is an offence by both the owner and skipper of the fishing vessel.

(4) A person guilty of an offence under paragraph (1) is liable—

- (a) on summary conviction—
  - (i) in England and Wales to a fine; or

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(4) See the Merchant Shipping (Fees) Regulations 2006, [S.I. 2006/2055](#). Relevant amending instruments are [S.I. 2006/3225](#), [2011/3056](#), [2015/315](#), [2015/410](#), [2015/782](#) and [2016/1025](#).

(5) OJ L034, 09.02.1998 p.0001-0029.

- (ii) in Scotland or Northern Ireland to 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 both.
- (5) It is a defence for a person charged under paragraph (3) to show that all reasonable precautions to avoid committing the offence were taken.

#### **Accidents and defects**

6.—(1) The owner and skipper of a United Kingdom fishing vessel must ensure that whenever an accident occurs to a fishing vessel or a defect is discovered, either of which affects the safety of the vessel or the efficiency or completeness of its life-saving appliances or other equipment—

- (a) it is reported at the earliest opportunity to the Secretary of State, and
- (b) if the fishing vessel is in a port outside the United Kingdom it is also reported to the appropriate authorities of the country in which the port is situated.

(2) If a report is made under paragraph (1), the Secretary of State must determine whether an inspection or survey is necessary, and if so, require one to be carried out.

(3) If the inspection or survey referred to in paragraph (2) shows that repairs are required, or if any important repairs or renewals are otherwise made to the ship or its equipment, a further inspection or survey must be carried out on the completion of those repairs or renewals.

#### **Obligation to notify of proposed changes to vessel**

7.—(1) The owner of a United Kingdom fishing vessel must notify the Secretary of State at the earliest opportunity of the details of any proposal to alter or modify the structure of that vessel, remove or reposition engines or machinery or change the mode of fishing.

(2) The Secretary of State must determine whether an inspection or survey is necessary, and if so, require one to be carried out.

(3) If the inspection or survey referred to in paragraph (2) shows that a further inspection or survey is required after the completion of the changes to the vessel, a further inspection or survey must be carried out.

#### **Suspension of certificates**

8.—(1) If the Secretary of State determines that an inspection or survey of a fishing vessel is required under regulation 6 or 7, the certificate of compliance may be suspended until that inspection or survey is carried out.

(2) If a surveyor of ships is satisfied, following a survey of the fishing vessel (or, in the case of a small fishing vessel, an inspection) as set out in the relevant Merchant Shipping Notice, that the vessel complies with the applicable Code of Practice, the Secretary of State must lift the suspension.

#### **Cancellation of certificates of compliance etc.**

9.—(1) The Secretary of State may, by giving notice in writing to the owner of a fishing vessel, cancel a certificate of compliance issued in respect of the vessel where it has reason to believe that that certificate—

- (a) was issued on the basis of false or erroneous information,
- (b) has been intentionally altered (other than by or on the instructions of the Secretary of State), or

(c) has been used by, loaned to, or allowed to be used by a person to whom the certificate was not issued.

(2) The Secretary of State may by notice in writing require that a certificate of compliance which—

(a) has expired,

(b) has ceased to be valid because the vessel no longer complies with the applicable Code of Practice, or

(c) has been cancelled,

be surrendered as directed in the notice.

(3) If the owner or skipper of a fishing vessel fails without reasonable cause to surrender a certificate of compliance pursuant to a notice issued under paragraph (2), that owner or skipper is guilty of an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Production of certificate**

**10.**—(1) The skipper of any medium or large fishing vessel must on demand produce to an officer of Her Majesty’s Revenue and Customs, relevant inspector or sea-fishery officer the certificate of compliance issued in respect of that vessel.

(2) Where a demand is made under paragraph (1) the fishing vessel is liable to be detained until the certificate of compliance is produced.

(3) In paragraph (1)—

“relevant inspector” means a person mentioned in paragraph (a), (b) or (c) of section 258(1) of the Act (powers to inspect ships and their equipment, etc.)(6); and

“sea-fishery officer” means a person mentioned in section 7(1) of the Sea Fisheries Act 1968 (sea-fishery officers)(7).

## **PART 3**

### **Small Fishing Vessels**

#### **Power to request that small fishing vessels report for inspection**

**11.**—(1) The Secretary of State may, by giving to the owner of a fishing vessel not less than 28 days’ written notice of a date, time and place, require that owner to present that vessel on that date and at that time and place for the purpose of an inspection to ascertain whether the vessel complies with the applicable Code of Practice.

(2) The owner of a fishing vessel who fails without reasonable excuse to present that vessel for inspection on the date and at the time and place specified in a notice given under paragraph (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

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(6) Section 258(1) was amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), Schedule 1 paragraph 4(1) and (2) and Schedule 7, Part 1.

(7) 1968 c. 77: section 7(1) was amended by the Fisheries Act 1981 (c. 29), section 26(1) and Schedule 5, Part II, by the Marine and Coastal Access Act 2009 (c. 23), section 239(1) and (2) and Schedule 22, Part 6, and by S.I. 1999/1820, Schedule 1, Part 1, paragraph 48(1) and (3)(a).

## PART 4

### Inspection and Detention

#### **Detention of a United Kingdom fishing vessel**

**12.**—(1) Where a surveyor of ships is satisfied that there is or has been a failure by an owner or skipper to comply in relation to any United Kingdom fishing vessel with the preceding requirements of these Regulations, that vessel is liable to be detained until a surveyor of ships is satisfied that those requirements are complied with.

(2) A surveyor of ships may permit a fishing vessel which is liable to be detained under paragraph (1) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard.

(3) A fishing vessel must not be delayed or detained unreasonably under this regulation.

(4) Where a United Kingdom fishing vessel is detained because in relation to it there has been a failure to comply with the preceding requirements of these Regulations, and that failure has ceased, a surveyor of ships must, at the request of the owner or skipper, immediately release the vessel—

(a) if no proceedings for an offence arising from the failure in question are instituted within the period of seven days beginning with the day on which the vessel is detained;

(b) if proceedings for an offence arising from the failure in question, having been instituted within that period, are concluded without the 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 owner or skipper;

(d) where the owner or skipper is convicted of an offence arising from the failure in question, if any costs or expenses ordered to be paid by the owner or skipper, and any fine imposed on the owner or skipper, 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(8), and any bond or other financial security ordered by such court or tribunal is posted.

(5) The Secretary of State must repay any sum paid in pursuance of paragraph (4)(c) or release any security so given—

(a) if no proceedings for an offence arising from the failure in question are instituted within the period of seven days beginning with the day on which the sum is paid; or

(b) if proceedings for an offence arising from the failure in question, having been instituted within that period, are concluded without the owner or skipper being convicted.

(6) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (4)(c) and the owner or skipper is convicted of an offence arising from the failure in question, 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 owner or skipper; and

(b) next in payment of any fine imposed by the court,

and any balance must be repaid to the first-mentioned person.

(7) Section 145 of the Act (interpretation of section 144) applies for the purposes of paragraphs (4) to (6) as if references to an offence under section 131 were references to an offence arising from the failure in question.

### **Certification of non-United Kingdom fishing vessels**

**13.**—(1) A non-United Kingdom fishing vessel must not enter United Kingdom waters unless—

- (a) if its registered length is 24 metres or over, it has been certified by its flag State as complying with the requirements of the Torremolinos Protocol, or
- (b) if its registered length is less than 24 metres, it has been certified by its flag State as complying with the requirements of that State applying to vessels of that length,

and must continue to so comply while in United Kingdom waters.

(2) In paragraph (1)(a) and (b), “certified” includes any form of documentation issued by the flag State recording that the vessel has been surveyed or inspected and found to be in compliance with the State’s safety requirements applicable to vessels of its length and which is valid throughout the time the vessel is in United Kingdom waters.

### **Inspection of non-United Kingdom fishing vessels**

**14.**—(1) When a non-United Kingdom fishing vessel is in United Kingdom waters, a surveyor of ships may inspect that vessel to ascertain whether the standards required in relation to United Kingdom fishing vessels by these Regulations are met in relation to that vessel.

(2) Where a surveyor of ships is satisfied that the standards required in relation to United Kingdom fishing vessels by these Regulations are not met in relation to a non-United Kingdom fishing vessel in United Kingdom waters, that surveyor of ships may—

- (a) send a report to the government of its flag State and a copy of that report to the Director General of the International Labour Office<sup>(9)</sup>; and
- (b) where conditions on board are clearly hazardous to health or safety, take such measures as are necessary to ensure those conditions are rectified.

(3) A fishing vessel to which paragraph (2)(b) applies is liable to be detained until a surveyor of ships is satisfied that those conditions are rectified.

(4) A surveyor of ships may permit a fishing vessel which is liable to be detained under paragraph (3) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard.

(5) If any of the measures specified in paragraph (2)(b) or (3) are taken, the surveyor of ships must immediately notify the nearest maritime, consular or diplomatic representative of the vessel’s flag State.

(6) A fishing vessel must not, in the exercise of the power under this regulation, be delayed or detained unreasonably.

### **Enforcement of detention**

**15.**—(1) Section 284 of the Act (enforcing detention of ship)<sup>(10)</sup> applies where a fishing vessel is liable to be detained under these Regulations as if—

- (a) references to detention of a ship under the Act were references to detention of the fishing vessel in question under these Regulations; and

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<sup>(9)</sup> The International Labour Office is the permanent secretariat of the International Labour Organisation: see <http://www.ilo.org/global/about-the-ilo/who-we-are/international-labour-office/lang--en/index.htm>.

<sup>(10)</sup> Section 284(1)(b) was substituted by the Merchant Shipping and Maritime Security Act 1997, Schedule 1, paragraph 5(2).

(b) subsection (7) were omitted.

(2) Where a fishing vessel is liable to be detained by virtue of these Regulations, a surveyor of ships must serve on the skipper a detention notice which —

- (a) states that, in the opinion of the surveyor of ships, the vessel does not comply with the requirements of these Regulations;
- (b) specifies the requirements which, in the opinion of the surveyor of ships, are not met in relation to that vessel; and
- (c) requires the terms of the notice to be complied with before the vessel is released by any person mentioned in section 284(1) of the Act.

### **Right of appeal and compensation**

16. Regulations 14, 15 and 16 (right of appeal and compensation, arbitration and compensation for unjustified detention) of the Merchant Shipping (Port State Control) Regulations 2011<sup>(11)</sup> apply to a detention notice served under these Regulations as they apply to a detention order under those Regulations.

## **PART 5**

### **Supplementary provisions**

#### **Equivalent provisions**

17.—(1) Where the applicable Code of Practice requires that a particular fitting, material, appliance or apparatus or type must be fitted or carried in a vessel, or that particular provisions must be made as respects a vessel, the Secretary of State may permit any other fitting, material, appliance or apparatus or type to be fitted or carried in the vessel or any other provision to be made as respects the vessel, if the Secretary of State is satisfied that such other fitting, material, appliance or apparatus, type or provision is at least as effective for the purpose for which the requirements in the applicable Code of Practice are set.

(2) For the purposes of the applicable Code of Practice, the Secretary of State must accept a fitting, material, appliance, apparatus, type or provision as being at least as effective as the fitting, material, appliance, apparatus, type or provision required by the applicable Code of Practice if it is verified as such—

- (a) in accordance with the applicable Code of Practice or with a Code of Practice, specification or technical description of an EEA State other than the United Kingdom offering equivalent levels of safety, suitability and fitness for the purpose; and
- (b) by a body or laboratory of an EEA State other than the United Kingdom offering suitable and satisfactory guarantees of technical and professional competence and independence.

#### **Exemptions**

18.—(1) The Secretary of State may grant an exemption from compliance with an applicable Code of Practice or any provision of such a Code.

(2) An exemption may relate to a particular fishing vessel to which that Code of Practice is applicable, or to any class of such vessel.

(3) An exemption may be granted under paragraph (1) only if—

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(11) S.I. 2011/2601.



- (a) the Secretary of State is satisfied that compliance with the applicable Code of Practice or provision, as the case may be, is impractical or unreasonable as regards that vessel or class of vessel, and
  - (b) the exemption is subject to such conditions and limitations as will provide a level of safety which is at least equal to that provided by the applicable Code of Practice or provision in question.
- (4) An exemption granted under paragraph (1) is valid only if—
- (a) it is in writing,
  - (b) it specifies the date on which it takes effect, and
  - (c) it specifies the conditions and limitations to which it is subject.
- (5) The Secretary of State may alter or cancel any exemption granted under paragraph (1).
- (6) An alteration or cancellation under paragraph (5) is valid only if—
- (a) it is in writing,
  - (b) it specifies the date on which it takes effect, and
  - (c) there is a reasonable period between the issue of the alteration or cancellation and that date.

## **Revocation**

19. The statutory instruments listed in the Schedule are revoked.

## **Transitional provisions**

20.—(1) Notwithstanding the revocation by these Regulations of the Fishing Vessels (Safety Provisions) Rules 1975(12), a certificate issued pursuant to those Rules is to be treated as a certificate of compliance issued under these Regulations and remains valid for such period and subject to such conditions as may be specified in that certificate.

(2) Regulation 5 (prohibition on proceeding on any voyage without a certificate) does not apply to a small fishing vessel until —

- (a) the fifth anniversary of its last inspection before these Regulations come into force, or
- (b) the date of the renewal of its registration pursuant to regulation 36 of the Merchant Shipping (Registration of Ships) Regulations 1993 (registration and refusal of registration of a ship)(13),

whichever is the sooner.

## **Review**

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

- (a) carry out a review of the regulatory provision contained in these Regulations, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 23rd October 2022.

(3) Subsequent reports must be published at intervals not exceeding five years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015(14) requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the fishing safety Directives are implemented in other member States.

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(12) S.I. 1975/330.

(13) S.I. 1993/3138, to which there are amendments not relevant to these Regulations.

(14) 2015 c.26. section 30(3) was amended by the Enterprise Act 2016 (c.12), section 19.

(5) Section 30(3) of the Small Business, Enterprise and Employment Act 2015 requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under the Torremolinos Protocol are implemented in other countries which are subject to the obligations.

(6) 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.

(7) In this regulation—

“fishing safety Directives” means—

Council [Directive 93/103/EC](#) of 23rd November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16(1) of [Directive 89/391/EEC](#))(**15**);

Council [Directive 97/70/EC](#) of 11th December 1997 setting up a harmonised safety regime for fishing vessels of 24 metres in length and over(**16**); and

[Directive 2007/30/EC](#) of the European Parliament and of the Council of 20th June 2007 amending Council [Directive 89/391/EEC](#), its individual Directives and Council Directives [83/477/EEC](#), [91/383/EEC](#), [92/29/EEC](#) and [94/33/EC](#) with a view to simplifying and rationalising the reports on practical implementation(**17**); and

“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

26th September 2017

*John Hayes*  
Minister of State  
Department for Transport

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(15) OJ L307, 13.12.1993 p. 0001-0017.

(16) OJ L034, 09.02.1998 p.0001-0029.

(17) OJ L165/21, 27.6.2007.