

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (WORK IN FISHING) (MEDICAL CERTIFICATION)
REGULATIONS 2018

2018 No. 1108

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 imposes duties and requirements to ensure that fishermen are medically fit so they can work safely.

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, and all fishermen on such vessels irrespective of nationality, ethnic origin, religion, gender etc. It also applies to fishing vessels which are non-UK ships when in UK 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) (Survey and 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 10 – 12 of ILO 188 on medical examinations.
- 7.2 There is currently no UK statutory requirement for fishermen to be medically fit, although those applying for a UK certificate of competency as a deck or engineer officer on a fishing vessel must meet statutory standards for visual acuity and colour vision. ILO 188 requires all fishermen to hold a medical certificate to show that they can work safely and that their condition will not be worsened by their work. Certain medical conditions and poor physical fitness at sea can put the individual and others working on the vessel at risk, and in addition those providing search and rescue services may be put at risk if medical evacuation is required.
- 7.3 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 to 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 any modifications required to the current medical examination system for seafarers to ensure it is fit for purpose for fishermen's medical examinations (for example the location of approved doctors in fishing areas; possible revised wording of restrictions and grandfather rights) as well as the phasing in of medical examinations, both prior to and following formal public consultation.
- 10.2 Formal public consultation on the draft proposals for medical examination was carried out as part of the consultation on ILO 188 between November 2017 and January 2018. The consultation documents were posted to the 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 the application of medical fitness standards to fishermen was the issue which generated the most comments, including concerns about trying to introduce this too quickly.
- 10.5 This and other concerns have been taken into account in finalising both the legal provisions and supporting guidance.
- 10.6 In particular, account has been taken of the industry's views requesting greater progressive implementation where it is allowed by ILO 188. Provision has also been made for "Grandfather Rights" for existing fishermen with certain medical conditions to enable them to continue in work where it is safe for them to do so. The MCA will publish guidance on progressive implementation and grandfather rights. A summary of consultation responses and the actions taken to response is available on 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.
- 10.7 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 5 offences in the Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018.
- 10.8 The devolved administrations were notified of the public consultation but none provided a response.

11. Guidance

- 11.1 The MCA has published guidance for fishermen in Merchant Shipping Notices supporting this instrument. The medical fitness standards are imposed by reference to a specific Merchant Shipping Notice, MSN 1886(M+F). In addition, some provisions relating to the phasing in of the requirement for medical fitness examinations and guidance on the conduct of examinations are contained in MSN 1885(F) available 5 November 2018 on www.gov.uk at <https://www.gov.uk/government/collections/merchant-shipping-notices-msns>
- 11.2 In addition, guidance has been provided to medical practitioners authorised to conduct seafarer medical examinations (“approved doctors”) on the work that fishermen are required to do on board fishing vessels, their working environment and particular medical fitness issues affecting fishermen. This was delivered through the annual Medical Health Seminar, a training event for approved doctors, and through amendments to the Approved Doctor’s Manual.

12. Impact

- 12.1 There is no significant impact on businesses, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the costs arising from this instrument together with the other instruments implementing ILO 188 are expected to fall below £5 million net in any one year.

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. However, all those working on fishing vessels should be entitled to the same level of safety on board, regardless of the size of the business for which they work.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is through continued consultation with industry through the tripartite working group, auditing and statistical returns from approved doctors 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 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.