

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (WORK IN FISHING CONVENTION)
(CONSEQUENTIAL PROVISIONS) REGULATIONS 2018

2018 No. 1109

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 contains the amendments to primary legislation and to existing statutory instruments consequential on the implementation of provisions of ILO 188 in the Merchant Shipping (Work in Fishing Convention) Regulations 2018.

2.3 In addition, the instrument brings the annual leave entitlement of employed fishermen into line with that for other workers in the UK, with 1.6 weeks of leave in respect of public holidays in addition to the four weeks they are currently entitled to. This affects a small proportion of fishermen.

2.4 This instrument makes amendments to –

the Merchant Shipping Act 1995(c. 21);

the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972(S.I.919);

the Merchant Shipping (Seamen’s Allotments) Regulations 1972(S.I. 1972/1698);

the Merchant Shipping (Seaman’s Wages and Accounts) (Fishing Vessels) Regulations 1972(S.I.1972/1701) ;

the Merchant Shipping (Repatriation) Regulations 1979(S.I.1979/97);

the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997(S.I. 2004/2962);

the Merchant Shipping (Working Time: Sea Fishermen) Regulations 2004(S.I. 2004/1713) and

the Merchant Shipping (Fees) Regulations 2018 (S.I. 2018/1104).

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 territorial 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 not United Kingdom fishing vessels when they are in United Kingdom waters.

5. European Convention on Human Rights

- 5.1 The Parliamentary Under Secretary of State for the Department for Transport, Nusrat Ghani has made the following statement regarding Human Rights:
- “In my view the provisions of the Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018 are compatible with the Convention rights.”.

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 20 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; and
 - The Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018.

7. Policy background

What is being done and why?

7.1 The instrument –

amends existing legislation so that it applies only to vessels to which ILO 188 does not apply, where new legislation implementing ILO 188 provisions is being introduced by the Merchant Shipping (Work in Fishing Convention) Regulations 2018 (for example, the Merchant Shipping (Repatriation) Regulations 1979);

inserts or amends definitions to ensure compatibility or consistency with the new legislation;

amends the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972 –

to extend the requirement to deposit a list of crew ashore, and to deliver such a list to a superintendent on demand, to all fishing vessels to which the Regulations apply;
and

to require the list of crew also to be carried on board the fishing vessel;

amends the Merchant Shipping (Health and Safety at Work) Regulations 1997 and related legislation to extend health and safety duties to fishing vessel owners and the protection they afford to all fishermen regardless of their employment status;

amends the Merchant Shipping (Fees) Regulations 2018.

7.2 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 There are no plans for consolidation.

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 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 with some concerns about the practical implementation of the Convention. None of the provisions of this instrument generated much comment.
- 10.5 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 no new offences being created by this instrument.
- 10.6 The devolved administrations were notified of the public consultation but none provided a response.

11. Guidance

- 11.1 The MCA has published guidance in Merchant Shipping Notices and Marine Guidance Notes supporting the instruments implementing ILO 188. Where appropriate, this instrument references those notices.

12. Impact

- 12.1 There is no significant impact on business, 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 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. In addition, ILO 188 sets high level requirements for small vessels, allowing some flexibility as regards how to comply, and generally restricts prescriptive requirements to vessels over 24m. However, all those working on fishing vessels should have the same level of protection for their living and working conditions, 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, and through regular MCA inspection of fishing vessels.

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.