

This Statutory Instrument has been made, in part, to correct errors in the Merchant Shipping (Work in Fishing Convention) Regulations 2018 (S.I. 2018/1106), the Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018 (S.I. 2018/1107) and the Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018 (S.I. 2018/1108). It is being issued free of charge to all known recipients of those Statutory Instruments.

STATUTORY INSTRUMENTS

2020 No. 1166

MERCHANT SHIPPING

The Merchant Shipping (Maritime Labour Convention and Work in Fishing Convention) (Amendment) Regulations 2020

<i>Made</i>	- - - -	<i>22nd October 2020</i>
<i>Laid before Parliament</i>		<i>27th October 2020</i>
<i>Coming into force</i>	- -	<i>26th December 2020</i>

The Secretary of State is a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to maritime transport.

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 85(1), (3), (5) and (7) and 86(1) of the Merchant Shipping Act 1995^(c) makes the following Regulations.

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.

(a) S.I. 1994/757.

(b) 1972 c. 68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c. 1)). 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). Other amendments have been made that are not relevant to these Regulations. The Maritime Labour Convention adopted on 23rd February 2006 by the General Conference of the International Labour Organisation (Cmnd 7049) 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) (Maritime Labour Convention) Order 2009 (S.I. 2009/1757, amended by S.I. 2011/1043). The Work in Fishing Convention adopted at Geneva on 14th June 2007 by the International Labour Organisation (Cmnd 7375) 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.

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Maritime Labour Convention and Work in Fishing Convention) (Amendment) Regulations 2020 and come into force on 26th December 2020.

Amendment of the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014

2.—(1) The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014(a) are amended as follows.

(2) In regulation 2(1) (interpretation)—

(a) after the definition of “the Act” insert—

““archipelagic waters” has the same meaning as in the MLC;

“armed robbery against a ship” means any illegal act of violence or detention or any act or threat of depredation, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters or territorial sea, or any act of inciting or of intentionally facilitating such an act;”;

(b) after the definition of “fishing vessel” insert—

““internal waters” has the same meaning as in the MLC;”;

(c) after the definition of “personal representative” insert—

““piracy” has the same meaning as in Article 101 of the United Nations Convention on the Law of the Sea 1982(b);”;

(d) after the definition of “shipowner” insert—

““territorial sea” has the same meaning as in the MLC;”.

(3) After regulation 11 insert—

“Seafarer employment agreements: captive seafarers

11A.—(1) Paragraph (2) applies to a seafarer’s seafarer employment agreement which would, but for the operation of that paragraph, terminate while the seafarer is held captive as a result of piracy or armed robbery against a ship.

(2) Where this paragraph applies, the seafarer employment agreement continues to have effect until the date on which the shipowner’s duty under regulation 19 to repatriate the seafarer ends in accordance with regulation 21.

(3) The reference in paragraph (1) to the termination of a seafarer employment agreement includes—

(a) the operation of any provision of the seafarer employment agreement which would, but for this regulation, cause the seafarer employment agreement to cease to have effect; and

(b) the expiry of notice to terminate the seafarer employment agreement given for any reason, regardless of when such notice was given.

(4) For any period during which a seafarer is held captive as a result of piracy or armed robbery against a ship—

(a) the seafarer’s wages, remuneration and other entitlements, whether arising under the seafarer’s seafarer employment agreement, a collective bargaining agreement or any enactment, must continue to be paid;

(a) S.I. 2014/1613; to which there are amendments not relevant to these Regulations.

(b) Cmnd. 48941.

- (b) any part of the seafarer’s wages allotted to a person by an allotment note issued in accordance with regulations^(a) under section 36 of the Act must continue to be paid to that person; and
- (c) a term of any agreement is void to the extent that it purports to reduce, vary or stop any such payments.”.

(4) In regulation 21(c) (end of duty to repatriate where reasonable endeavours used to contact seafarer), at the beginning insert “except where the seafarer is held captive as a result of piracy or armed robbery against a ship.”.

Amendment of the Merchant Shipping (Work in Fishing Convention) Regulations 2018

3.—(1) The Merchant Shipping (Work in Fishing Convention) Regulations 2018^(b) are amended as follows.

(2) In regulation 26 (fishing vessel owner’s duty to make provision for medical treatment), after paragraph (3) insert—

“(4) A breach of paragraph (2) is an offence by the fishing vessel owner.”.

(3) After regulation 28 insert—

“Detention of fishing vessels

28A.—(1) Where a relevant inspector has reasonable grounds for believing that—

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

that fishing vessel is liable to be detained.

(2) Where—

- (a) a fishing vessel owner has failed to make provision in connection with which the Secretary of State has incurred costs under regulation 19; and
- (b) the Secretary of State has requested reimbursement of those costs but has not been reimbursed,

every fishing vessel which is owned by the fishing vessel owner is liable to be detained.

(3) Where a fishing vessel is detained under this regulation and all of the grounds for detention have ceased to apply, a person having power to detain the fishing vessel must, at the request of the fishing vessel owner or the skipper of the fishing vessel, 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 the skipper of the fishing vessel being convicted;
- (c) if either—
 - (i) the sum of £30,000 is paid to the Secretary of State by way of security; or

(a) See S.I. 1972/1698.

(b) S.I. 2018/1106; to which there are amendments not relevant to these Regulations.

- (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 the skipper of the fishing vessel;
 - (d) where the fishing vessel owner or the skipper of the fishing vessel 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 1982, and any bond or other financial security ordered by such court or tribunal is posted.
- (4) The Secretary of State must repay any sum paid in pursuance of paragraph (3)(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 the skipper of the fishing vessel being convicted.
- (5) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (3)(c) and the fishing vessel owner or the skipper of the fishing vessel 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 the skipper of the fishing vessel; and
 - (b) next in payment of any fine imposed by the court,
- and any balance must be repaid to the person who paid the sum or, as the case may be, gave the security.
- (6) Section 145 of the Act (interpretation of references in section 144 to the institution of proceedings or their conclusion without conviction) applies for the purposes of paragraphs (3) and (4) as if—
- (a) references to the owner of a ship were to the fishing vessel owner under these Regulations; and
 - (b) references to an offence under section 131 were references to an offence under these Regulations.
- (7) In this regulation, “relevant inspector” has the same meaning as in regulation 28(6).

Supplementary provisions as respects detention of fishing vessels

28B.—(1) The power under regulation 28A to detain a fishing vessel may be exercised as regards a United Kingdom fishing vessel wherever it may be, but as regards a fishing vessel which is not a United Kingdom 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.

(2) A person having powers to detain a fishing vessel may permit a fishing vessel which is liable to be detained under regulation 28A to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(3) Section 284 of the Act (enforcing detention of a ship) applies where a fishing vessel is liable to be detained under regulation 28A as if—

- (a) references to the owner of a ship were to the fishing vessel owner under these Regulations;

- (b) references to detention of a ship under the Act were references to detention of the fishing vessel under these Regulations; and
 - (c) subsection (7) were omitted.
- (4) Where a fishing vessel is liable to be detained under regulation 28A, the person detaining the fishing vessel must serve on the skipper of the fishing vessel a detention notice which—
- (a) states the grounds of 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.
- (5) Where a fishing vessel other than a United Kingdom fishing vessel is detained under regulation 28A, the Secretary of State must as soon as reasonably practicable inform in writing, including a copy of the detention notice, 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.”.

Amendment of the Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018

4.—(1) The Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018(a) are amended as follows.

- (2) In regulation 2(1) (interpretation), after the definition of “Convention State”, insert—
 - ““exempt fishing vessel” means a fishing vessel to which regulation 5 does not apply (see regulation 3(3) (application));”.
- (3) In regulation 4 (survey of fishing vessels)—
 - (a) after paragraph (1), insert—
 - “(1A) Paragraph (1) does not apply to an exempt fishing vessel.”;
 - (b) in paragraph (2)—
 - (i) after “renewal survey” insert “under paragraph (1)(b)”; and
 - (ii) for “initial”, in both places it appears, substitute “previous”; and
 - (c) in paragraph (3)—
 - (i) for “A fishing vessel which does not fall within paragraph (2)” substitute “An exempt fishing vessel”; and
 - (ii) after “survey” insert “, other than a survey described in paragraph (1),”.
- (4) In regulation 9 (offences and penalties)—
 - (a) in paragraph (1), after “vessel” insert “, which is not an exempt fishing vessel,”;
 - (b) after paragraph (3) insert—
 - “(3A) If a United Kingdom fishing vessel which is an exempt fishing vessel is not made available for a survey in accordance with Merchant Shipping Notice 1885 (F), the fishing vessel owner and the skipper of the fishing vessel are guilty of an offence and are liable—
 - (a) on summary conviction—
 - (i) in England and Wales, to a fine;
 - (ii) in Scotland and Northern Ireland, to a fine not exceeding level 5 on the standard scale; or
 - (b) on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or both.”.

(a) S.I. 2018/1107.

Amendment of the Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018

5. In the Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018(a)—

- (a) in regulation 3(1)(b) (application of regulation 16), omit “a United Kingdom port or”; and
- (b) in regulation 16(1) (inspection of non-UK fishing vessels), omit “a United Kingdom port or”.

Signed by the authority of the Secretary of State for Transport

22nd October 2020

Robert Courts
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (S.I. 2014/1613, “the Minimum Requirements Regulations”) to implement the amendments of 2018 to the Maritime Labour Convention 2006. The amendments of 2018 were approved by the 107th session of the International Labour Conference on 5th June 2018.

These Regulations further amend the Merchant Shipping (Work in Fishing Convention) Regulations 2018 (S.I. 2018/1106), the Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018 (S.I. 2018/1107) and the Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018 (S.I. 2018/1108), as set out below.

Regulation 2 inserts regulation 11A into the Minimum Requirements Regulations. Regulation 11A(2) provides that where a seafarer’s seafarer employment agreement would otherwise terminate during a period where the seafarer is held captive as a result of armed robbery or piracy against a ship, that agreement continues in force until the date on which the seafarer is repatriated or, if earlier, the date of the seafarer’s death.

Further, the inserted regulation 11A(4) provides that the seafarer’s wages and other remuneration as well as any wages allotted to another person must continue to be paid while the seafarer is held captive and any term of any agreement is void to the extent that it purports to reduce, vary or stop any such payment.

Additionally, regulation 21(c) of the Minimum Requirements is amended to provide that while a seafarer is held captive as a result of piracy or armed robbery against a ship, the shipowner’s duty to repatriate the seafarer cannot end on the basis of the shipowner being unable to contact the seafarer for three months or more.

Regulation 3 amends the Merchant Shipping (Work in Fishing Convention) Regulations 2018.

Regulation 3(2) makes it a criminal offence for a fishing vessel owner to fail to comply with their duty to make provision for medical treatment.

Regulation 3(3) makes provision in that instrument to allow fishing vessels which do not comply with the Regulations and where conditions on board are hazardous to the safety, health or security of fishermen to be detained. In addition, fishing vessels may be detained to allow the Secretary of State to recover costs associated with repatriating fishermen where the fishing vessel owner fails to do so.

(a) S.I. 2018/1108.

Regulation 4 amends the Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018.

Regulation 4(2) corrects regulation 4(3) of those Regulations to provide that fishing vessels not subject to surveys leading to Work in Fishing Convention Certificates are subject to surveys as set out in Merchant Shipping Notice 1885 (F). Further, it clarifies the language in regulation 4(2) of those Regulations.

Regulation 4(3) creates a criminal offence in relation to fishing vessels not required to hold a Work in Fishing Certificate. The failure of such a vessel to present itself for a survey in accordance with Merchant Shipping Notice 1885(F) is an offence for the owner of the vessel and the skipper of the vessel.

Regulation 5 amends the Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018.

The amendments of 2018 may be downloaded from the website of the International Labour Organisation using the following internet address: https://ilo.org/dyn/normlex/en/f?p=1000:51::NO:51:P51_CONTENT_REPOSITORY_ID:3952969 and copies of the Maritime Labour Convention may be obtained as a priced publication from www.tsoshop.co.uk, by post via 18 Central Avenue, St Andrew's Business Park, Norwich, NR7 0HR, tel: 0333 202 5070 or inspected free of charge at the following address Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG.

A hard copy of the United Nations Convention on the Law of the Sea is available free of charge but by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW (catalogue number HL/PO/JO/10/11/3186/287). An electronic copy can be found at <https://treaties.fco.gov.uk/awweb/pdfopener?md=1&did=69421>.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen. An Explanatory Memorandum is published alongside this instrument at www.legislation.gov.uk.

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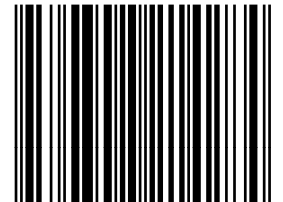
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