



STATUTORY INSTRUMENTS.

S.I. No. 259 of 2020



EUROPEAN UNION (INTERNATIONAL LABOUR ORGANISATION
WORK IN FISHING CONVENTION) (HEALTH PROTECTION AND
MEDICAL CARE ON BOARD FISHING VESSELS) REGULATIONS 2020

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WORK IN FISHING CONVENTION) (HEALTH PROTECTION AND
MEDICAL CARE ON BOARD FISHING VESSELS) REGULATIONS 2020

CONTENTS

1. Citation and Commencement
2. Interpretation
3. Operation of Regulations of 1997
4. Competent Authority
5. Medicines on board vessels
6. Language and format of medical guide
7. Availability of cabin for sick fishermen
8. Separate sick bay
9. On board dispute resolution procedure
10. Authorised Officers
11. Directions
12. Notice of detention
13. Appeal
14. Service of documents
15. Offences and penalties

I, Eamon Ryan, Minister for Transport, Tourism and Sport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving effect to Articles 25 (in so far as it relates to paragraphs 61 and 62 of Annex II to the Annex), 27(a) and 28(a) and (c) of the Annex to Council Directive (EU) 2017/159 of 19 December 2016¹, and Article 3 of that Directive in so far as it relates to those provisions, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the European Union (International Labour Organisation Work in Fishing Convention) (Health Protection and Medical Care on Board Fishing Vessels) Regulations 2020.

(2) These Regulations shall come into operation on 2nd August 2020.

Interpretation

2. (1) In these Regulations –

“authorised officer” shall be construed in accordance with Regulation 10(1);

“competent authority” means the body designated as the competent authority under Regulation 4;

“decked fishing vessel” means a fishing vessel –

(a) having a fixed structural deck covering the entire hull above the deepest operating waterline, and

(b) which if fitted with any open well or cockpit in the deck referred to in paragraph (a), that open well or cockpit, if flooded, does not endanger the fishing vessel;

“direction” has the meaning assigned to it by Regulation 11;

“Directive” means Council Directive (EU) 2017/159 of 19 December 2016¹ implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche);

“fisherman” means a person who works in any capacity under a contract of employment or in an employment relationship on board a fishing vessel, including any other person engaged in activities related to fishing who is present on the same vessel in order to protect the overall health and safety of the persons on board, but does not include

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¹ OJ No. L 25, 31.1.17, p.12.

- (a) a person who is a pilot within the meaning of the Harbours Act 1996 (No. 11 of 1996), or
- (b) a shore person carrying out work on board a fishing vessel at the quay side;

“fishing vessel” means any ship or boat registered in the State, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing;

“master” means the fisherman having command of the fishing vessel;

“Minister” means the Minister for Transport, Tourism and Sport;

“new fishing vessel” means a decked fishing vessel for which -

- (a) the building or a major conversion contract has been placed on or after 16 November 2017,
- (b) the building or a major conversion contract has been placed before 16 November 2017 and which is delivered three years or more after that date, or
- (c) in the absence of a building contract, on or after 16 November 2017 -
 - (i) the keel is laid,
 - (ii) construction identifiable with a specific vessel begins, or
 - (iii) assembly has commenced comprising at least fifty tonnes or one percent of the estimated mass of all structural material, whichever is less;

“notice of detention” has the meaning assigned to it by Regulation 12(2);

“owner of a fishing vessel” means the owner of a fishing vessel or any other organisation or person, such as the manager, agent or charterer, who has assumed responsibility for the operation of the fishing vessel from the owner;

“Regulations of 1997” means the European Communities (Minimum Safety and Health Requirements For Improved Medical Treatment on Board Vessels) Regulations, 1997 (S.I. No. 506 of 1997).

(2) A word or expression that is used in these Regulations and is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

Operation of Regulations of 1997

3. These Regulations are without prejudice to the Regulations of 1997.

Competent Authority

4. That part of the Department of Transport, Tourism and Sport which is known as the Marine Survey Office is designated as the competent authority in the State for the purposes of Article 3 of the Directive, in so far as that Article relates to Articles 25 (in so far as that Article relates to paragraphs 61 and 62 of Annex II to the Annex), 27(a) and 28(a) and (c) of the Annex to the Directive.

Medicines on board vessels

5. The owner of a fishing vessel shall, when making provision for medicines, medical equipment and antidotes in accordance with the Regulations of 1997, have regard to the area of operation of the fishing vessel in addition to the matters set out in paragraphs (a) to (e) of Regulation 6(2) of those Regulations.

Language and format of medical guide

6. The owner of a fishing vessel shall ensure that the guide referred to in Regulation 5(1) of the Regulations of 1997 is in a language and format understood by a person who is required to attend an approved medical training course in accordance with Regulation 8A(1) of the Regulations of 1997.

Availability of cabin for sick fishermen

7. The master of a new fishing vessel shall, whenever necessary, make a cabin available for a fisherman who suffers from illness or injury.

Separate sick bay

8. (1) The owner of a fishing vessel shall, where the vessel is a new fishing vessel, provide the vessel with a separate sick bay in which medical treatment can be administered where that vessel—

- (a) is over 500 gross tonnes, has a crew of 15 or more members and is engaged on a voyage of more than 3 days, or
- (b) is 45 metres or more in length.

(2) The master of a fishing vessel referred to in paragraph (1) shall ensure that the sick bay referred to in that paragraph is properly equipped and maintained in a hygienic state.

(3) Regulation 3(3) of the Regulations of 1997 shall not apply in respect of a fishing vessel to which paragraphs (1) and (2) apply.

On board dispute resolution procedure

9. (1) The owner of a fishing vessel shall ensure that there is available to a fisherman on that vessel a procedure for submitting a complaint in connection

with the provision of health protection and medical care on board the vessel in accordance with these Regulations and for resolving the complaint fairly, effectively and expeditiously.

(2) The procedure referred to in paragraph (1) shall—

- (a) seek to have the matter resolved on board the fishing vessel,
- (b) enable the fisherman to make a complaint directly to the owner of a fishing vessel, the master of the vessel or to the competent authority, and
- (c) include the right of a fisherman to be accompanied or represented during the course of the procedure.

(3) The owner of a fishing vessel shall ensure that a fisherman joining the fishing vessel has been provided with—

- (a) a copy of the procedure referred to in paragraph (1), and
- (b) the contact information for the competent authority.

(4) A fisherman may make a complaint to the competent authority alleging a breach of an obligation under these Regulations and the competent authority shall treat the source of the information provided in the complaint as confidential.

(5) On receipt of a complaint under paragraph (4) the competent authority may nominate an authorised officer to investigate the complaint.

(6) An authorised officer nominated by the competent authority under paragraph (5) may, without prejudice to his or her powers under Regulation 10(2), while the fishing vessel concerned is in the State—

- (a) board the fishing vessel for the purposes of investigating the complaint made under paragraph (4), and
- (b) facilitate negotiations between the fisherman and the owner of the fishing vessel or the master of that vessel, as appropriate, for the purposes of resolving the complaint.

(7) Nothing in this Regulation shall affect any right of complaint or redress that a fisherman has other than under this Regulation.

Authorised Officers

10. (1) A person appointed as a surveyor of ships under section 724 of the Merchant Shipping Act 1894 (c. 60) shall be an authorised officer for the purposes of these Regulations.

(2) For the purposes of ensuring compliance with these Regulations, an authorised officer may do any of the following:

- (a) at all reasonable times board any fishing vessel while the vessel is in the State;
- (b) search and inspect the fishing vessel and any documents or records found on board;
- (c) require any person on board the fishing vessel to give him or her such assistance and information and to produce to the authorised officer any report, document or record (including, in the case of information in a non-legible form, a copy of the information, or of extracts from it, in permanent legible form) as he or she may reasonably require for the purposes of his or her functions under these Regulations;
- (d) inspect, examine and take copies, or extracts from, or take away, if necessary, for the purposes of inspection or examination, any report, document or record (including in the case of information in a non-legible form, a copy of the information, or of extracts from it, in permanent legible form) that the authorised officer finds in the course of his or her inspection and require the person by whom such report, document or record is kept or who produced the report, document or record to certify the copy as a true copy;
- (e) detain a fishing vessel in accordance with Regulation 12.

(3) Where he or she considers it necessary, an authorised officer may be accompanied by a member of the Garda Síochána when exercising any powers conferred on him or her by these Regulations.

Directions

11. (1) Where the competent authority considers that the owner of a fishing vessel or the master of the vessel is failing to comply with these Regulations, the competent authority may serve a direction (in these Regulations referred to as a “direction”) on that person.

(2) A person on whom a direction is served under paragraph (1) may, within 14 days of the service of the direction, make representations in writing to the competent authority in relation to the direction.

(3) Any representations made under paragraph (2) shall be considered by the competent authority in deciding to confirm, modify or withdraw the direction.

(4) The competent authority may, where it considers it appropriate to do so, by notice in writing to the person on whom a direction was served, confirm, modify or withdraw the direction.

(5) A direction shall-

- (a) state the grounds upon which the direction is made,
- (b) identify the provision of these Regulations that has not been or is not being complied with by the person,

- (c) specify the action to be taken by the person on whom the direction is served and where appropriate, the period within which that action shall be taken,
- (d) inform the person of the requirement to confirm compliance with the direction under paragraph (7),
- (e) inform the person of the right to appeal the direction in accordance with Regulation 13,
- (f) state that a failure to comply with the direction is an offence under Regulation 15, and
- (g) be signed and dated by the competent authority.

(6) A direction shall be complied with within such period as may be specified in the direction.

(7) A person on whom a direction has been served, who is of the opinion that the direction has been complied with, shall confirm such compliance in writing to the competent authority as soon as practicable after so complying.

(8) Where a person confirms compliance under paragraph (7), the competent authority shall, on being satisfied that the person has so complied, give notice to the person confirming that compliance.

(9) A person on whom a direction has been served may appeal the direction in accordance with Regulation 13.

Notice of detention

12. (1) An authorised officer may detain a fishing vessel in a port in the State where he or she is of the opinion that-

- (a) there has been a failure to comply with the requirements of these Regulations, and
- (b) the detention of the vessel is necessary for the protection of the health and safety of the fishermen on board the vessel.

(2) Where a fishing vessel has been detained under paragraph (1), the competent authority shall serve a notice (in these Regulations referred to as a “notice of detention”) on the master of the fishing vessel concerned.

(3) A notice of detention shall-

- (a) state the grounds upon which the fishing vessel is detained,
- (b) identify the provision of these Regulations that has not been or is not being complied with by the person,
- (c) specify the action to be taken before the notice will be withdrawn, and where appropriate, the period within which that action shall be taken,
- (d) inform the person of the requirement to confirm compliance with the notice under paragraph (4),

- (e) inform the person of the right to appeal the notice in accordance with Regulation 13,
- (f) state that a failure to comply with the notice is an offence under Regulation 15, and
- (g) be signed and dated by the competent authority.

(4) A person on whom a notice of detention has been served who is of the opinion that the notice of detention has been complied with shall confirm such compliance in writing to the competent authority.

(5) Where a person confirms compliance under paragraph (4), the competent authority shall, on being satisfied that the person has so complied, by notice in writing to the person, withdraw the notice of detention.

(6) The competent authority may, where it considers it appropriate to do so, by notice in writing to the person on whom a notice of detention was served, withdraw the notice.

(7) A person on whom a notice of detention has been served may appeal the notice in accordance with Regulation 13.

Appeal

13. (1) A person aggrieved by a direction or a notice of detention may appeal against-

- (a) the direction, to a judge of the District Court in whose district the person ordinarily resides or carries on business, or
- (b) the notice of detention, to a judge of the District Court in whose district the fishing vessel has been detained.

(2) An appeal may be made not later than 21 days from the date—

- (a) the notice of detention was served under Regulation 12(2), or
- (b) the direction—
 - (i) was served under Regulation 11(1), or
 - (ii) was confirmed or modified under Regulation 11(4).

(3) A copy of the notice of appeal shall be given by the person making an appeal to the competent authority not less than 48 hours before the hearing of the appeal and the competent authority shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal and at the hearing of an application referred to in paragraph (4).

(4) The bringing of an appeal shall not have the effect of suspending the operation of the notice of detention or the direction as the case may be, but the District Court may, on application to it by the appellant, suspend its operation until the appeal is determined or withdrawn.

(5) On the hearing of an appeal under this Regulation, the District Court may confirm, vary or revoke the notice of detention or the direction as the case may be.

Service of documents

14. (1) A direction or notice of detention or other document that is required to be served on or given to a person by these Regulations shall be addressed to the person concerned by name and may be so served on or given to the person in one of the following ways-

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or carries on business or, in a case in which an address for service has been given, at that address,
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or carries on business or, in a case in which an address for service has been given, to that address, or
- (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the direction, notice or document concerned of his or her consent to the direction, notice or document (or documents of a class to which the direction, notice or document belongs) being served on, or given to, him or her in that manner.

(2) For the purpose of these Regulations, a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

(3) Where an opinion, finding, statement or decision of the competent authority is contained in a document which-

- (a) is purported to have been made by or at the direction of the competent authority, and
- (b) is produced in evidence by an authorised officer in any proceedings,

the document shall be evidence of such opinion, finding, statement or decision in such proceedings without further proof.

Offences and penalties

15. (1) The owner of a fishing vessel who fails to comply with Regulation 9(3) shall be guilty of an offence.

(2) A person who fails to comply with a direction served on him or her shall be guilty of an offence.

(3) The master of a fishing vessel who fails to comply with a notice of detention served on him or her shall be guilty of an offence.

- (4) A person shall be guilty of an offence where he or she—
- (a) prevents, obstructs, impedes or delays an authorised officer in the performance of his or her functions under these Regulations,
 - (b) fails to comply with a requirement or request of an authorised officer under Regulation 10, or
 - (c) gives to an authorised officer any information which is false or misleading in any material respect, knowing it to be false or misleading.

(5) A person guilty of an offence under paragraph (1), (2), (3) or (4) shall be liable on summary conviction to a Class A fine.

(6) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary, or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(7) Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Minister.



GIVEN under my Official Seal,

22 July, 2020.

EAMON RYAN,
Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations implement the medical care on board vessels provisions of Council Directive (EU) 2017/159 of 19 December 2016, implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organization, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union. In particular the Regulations provide that:

- consideration be given to the length of voyage and area of operation when making provision for medical supplies and equipment;
- the medical guide for the maintenance and use of medical supplies on board is in a format and language suitable for the person on board responsible medical care;
- the master of certain new fishing vessels, as defined in the Regulations, must whenever necessary make a cabin available for an injured or ill fisherman;
- the owner of certain new fishing vessels, as defined in the Regulations, must provide the vessel with a separate sick bay;
- dispute resolution procedures must be put in place and details powers of enforcement for the Marine Survey Office.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2,
D02 DR67.

Teil: 076 110 6834
r-post: publications@opw.ie

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D02 DR67.

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