



STATUTORY INSTRUMENTS.

S.I. No. 333 of 2020

EUROPEAN UNION (INTERNATIONAL LABOUR ORGANISATION
WORK IN FISHING CONVENTION) (CREW LIST AND FISHERMAN'S
WORK AGREEMENT) REGULATIONS 2020

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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 purposes of giving effect to Articles 12, 13, 14, 15, 16, 17 and 18 and Annex I 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

1. These Regulations may be cited as the European Union (International Labour Organisation Work in Fishing Convention) (Crew List and Fisherman's Work Agreement) Regulations 2020.

Interpretation

2. (1) In these Regulations –

“Act of 1894” means the Merchant Shipping Act 1894 (c. 60);

“Act of 1994” means the Terms of Employment (Information) Act 1994 (No. 5 of 1994);

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

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

“direction” has the meaning assigned to it by Regulation 12(1);

“Directive” means Council Directive (EU) 2017/159 of 19 December 2016¹;

“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

¹ OJ No. L25, 31.1.2017, p.12.

on the same vessel in order to protect the overall health and safety of the persons on board, but does not include –

- (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;

“fisherman’s work agreement” means a contract of employment or other similar arrangement, or any other contract governing a fisherman’s living and working conditions on board a fishing vessel;

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

“notice of detention” has the meaning assigned to it by Regulation 11(2);

“official number” means the official number referred to in section 26(1)(b) of the Mercantile Marine Act 1955 (No. 29 of 1955);

“owner” 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;

“port of registry” means the port referred to in section 32(3) of the Mercantile Marine Act 1955;

“registration number” means the official number, or where there is no such official number, the port code and number allocated under Regulation 8(7)(a) of the Merchant Shipping (Registry, Lettering and Numbering of Fishing Boats) Regulations 2005 (S.I. No. 261 of 2005);

“Regulations of 2019” means the European Union (International Labour Organisation Work in Fishing Convention) (Working Hours) Regulations 2019 (S.I. No. 672 of 2019).

(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.

Application

3. (1) These Regulations apply to fishing vessels engaged in sea fishing.

(2) Notwithstanding anything contained in the Act of 1994 relating to a matter provided for by these Regulations, the provision in these Regulations shall operate in relation to that matter where it provides greater protection to a fisherman than the Act of 1994.

(3) These Regulations shall not apply to an owner who single-handedly operates a fishing vessel.

(4) Paragraphs (2) and (3) shall not apply in respect of Regulations 5 and 16(3).

Designation of 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 12 of the Annex to the Directive and these Regulations.

Crew List

5. (1) A master shall ensure that a crew list containing the following minimum particulars shall be carried on board a fishing vessel:

- (a) the name of the fishing vessel, its port of registry and registration number;
- (b) the name of the owner;
- (c) the address of the owner or, where the owner is a company formed and registered under the Companies Act 2014 or is an existing company within the meaning of that Act, the address of the owner's registered office or, where the owner is any other body corporate or unincorporated body of persons, the address of the owner's principal office or place of business;
- (d) the name of every fisherman on board;
- (e) the position held by every fisherman on board;
- (f) the nationality of every fisherman on board;
- (g) the name, address and telephone number of the next of kin of every fisherman on board, identified by each fisherman to the owner.

(2) Prior to or immediately after the departure of a fishing vessel, the master shall ensure that a copy of the crew list is communicated ashore –

- (a) where the master is not the owner, to the owner and, where the owner is a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act, to the owner's registered office or, where the owner is any other

body corporate or unincorporated body of persons, to the owner's principal office or place of business, or

(b) where the master is the owner, to a family member of the owner.

(3) The person to whom the crew list has been communicated under paragraph (2) shall make it available immediately upon request to the Irish Coast Guard or An Garda Síochána, as the case may be, for search and rescue purposes.

Duties of an owner and master with regard to fisherman's work agreement

6. (1) An owner who permits a fisherman on board a fishing vessel shall ensure that –

- (a) subject to Regulation 16(2), a fisherman's work agreement, which provides the fisherman with decent work and living conditions on board the fishing vessel in accordance with the provisions of the Annex to the Directive, is entered into with the fisherman,
- (b) the fisherman's work agreement is entered into in writing, signed by all parties to it and is comprehensible to the fisherman,
- (c) before the fisherman's work agreement is concluded, the fisherman is given an opportunity to review and seek advice on its terms, and
- (d) a signed original of the fisherman's work agreement is retained by the owner and the fisherman is given a signed original and a copy of it.

(2) The master shall ensure that the fisherman's work agreement for each fisherman on board, and any collective bargaining agreement which forms all or part of that fisherman's work agreement, are carried on board the fishing vessel and are made available to the fisherman or the competent authority on request.

Minimum contents of fisherman's work agreement

7. An owner shall ensure that a fisherman's work agreement shall contain the following minimum particulars:

- (a) the fisherman's family name and other names, date of birth or age, and birthplace;
- (b) the place at which and date on which the fisherman's work agreement was concluded;
- (c) the name of the fishing vessel and the registration number of the fishing vessel on board which the fisherman undertakes to work;
- (d) the name of the employer, or owner, or other party to the fisherman's work agreement;
- (e) the voyage or voyages to be undertaken, if this can be determined at the time of making the fisherman's work agreement;
- (f) the capacity in which the fisherman is to be employed or engaged;

- (g) if possible, the place at which and date on which the fisherman is required to report on board for service;
- (h) the provisions to be supplied to the fisherman;
- (i) the amount of wages, or the amount of the share and the method of calculating such share if remuneration is to be on a share basis, or the amount of the wage and share and the method of calculating the latter if remuneration is to be on a combined basis, and any agreed minimum wage in accordance with the National Minimum Wage Act 2000 (No. 5 of 2000);
- (j) the termination of the fisherman's work agreement and the conditions thereof, namely:
 - (i) if the fisherman's work agreement has been made for a definite period, the date fixed for its expiry;
 - (ii) if the fisherman's work agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the fisherman shall be discharged;
 - (iii) if the fisherman's work agreement has been made for an indefinite period, the conditions which shall entitle either party to terminate it, as well as the required period of notice of termination, provided that such period shall not be less for the employer, or owner or other party to the fisherman's work agreement;
- (k) the amount of paid annual leave or the formula used for calculating leave, where applicable;
- (l) the health and social security coverage and benefits to be provided to the fisherman by the employer, owner, or other party or parties to the fisherman's work agreement, as applicable;
- (m) the fisherman's entitlement to repatriation;
- (n) a reference to any collective bargaining agreement, where applicable;
- (o) the minimum periods of rest, in accordance with the Regulations of 2019.

Records of work

8. (1) An owner shall maintain a record of each fisherman's work under his or her fisherman's work agreement for the duration of that agreement, and for a period of 1 year thereafter, and shall provide each fisherman with a copy of that record upon request.

(2) The duties of an owner referred to in paragraph (1) are without prejudice to the duties of the master, or a person authorised by the master, referred to in Regulation 10 of the Regulations of 2019.

Dispute resolution procedure

9. (1) An owner shall ensure that there is available to a fisherman on a fishing vessel a procedure (in this Regulation referred to as a “dispute resolution procedure”) for submitting a complaint in connection with his or her fisherman’s work agreement and for resolving fairly, effectively and expeditiously any disputes arising from the complaint.

(2) A dispute resolution procedure shall –

- (a) set out a procedure for the resolution on board the fishing vessel of disputes,
- (b) enable the fisherman to complain directly to the owner, master or the competent authority, and
- (c) include the right of a fisherman to be accompanied or represented during the course of the procedure.

(3) An owner shall ensure that a fisherman joining a fishing vessel has been provided with –

- (a) a copy of the dispute resolution procedure, and
- (b) contact information for the competent authority.

(4) A fisherman may make a complaint to the competent authority alleging a breach of his or her fisherman’s work agreement 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 is in the State –

- (a) board the fishing vessel for the purposes of investigating a complaint made under paragraph (4), and
- (b) facilitate negotiations between the fisherman and the owner or the master, 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 Act of 1894 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 the authorised officer 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 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 under Regulation 11.

(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.

Notice of detention

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

- (a) that there is or has been a failure to comply with Regulation 5(1), 5(2), 6 or 7, 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 this Regulation referred to as a “notice of detention”) on the owner or the master.

(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 under 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 under Regulation 13.

Directions

12. (1) Where the competent authority considers that an owner or master is failing or has failed to comply with these Regulations, the competent authority may serve a direction on that person (in this Regulation referred to as a “direction”).

(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 under 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 under Regulation 13.

Appeal

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

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

(2) An appeal may be made not later than 21 days from the date the notice of detention was served under Regulation 11(2), the direction was served under Regulation 12(1) or the direction was confirmed or modified under Regulation 12(4), as the case may be.

(3) A copy of the notice by which a person makes an appeal under this Regulation shall be given by him or her 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 any 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 the District Court may confirm, vary or revoke the notice of detention or the direction as the case may be.

Service

14. (1) A direction, notice 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 furnished, 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 furnished, to that address;
- (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 this Regulation and Regulation 13(1)(b), a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act shall be 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) purports 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,

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

Offences

15. (1) An owner shall be guilty of an offence where he or she fails to comply with Regulation 6(1), 7, 8(1) or 9(3).

(2) A master shall be guilty of an offence where he or she fails to comply with Regulation 5(1), 5(2) or 6(2).

(3) An owner or a master shall be guilty of an offence where he or she fails to comply with a notice of detention or a direction.

(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 so 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.

Act of 1894

16. (1) The duty of a skipper to enter into an agreement under section 399 of the Act of 1894 shall not apply in respect of a fisherman to whom the owner owes a duty under Regulation 6(1)(a).

(2) The duty of an owner to ensure that a fisherman's work agreement is entered into under Regulation 6(1)(a) shall come into force on the making of these Regulations or, where there is a valid agreement in place under section 399 of the Act of 1894 at the time of the making of these Regulations, on the expiry of that agreement.

(3) The duty of an owner to send a report under section 405 of the Act of 1894 and the duty of a skipper to send a statement of every change which has taken place in his crew under section 406 of that Act shall not apply in respect of an owner or master to whom Regulation 5 applies.



GIVEN under my Official Seal,
1 September, 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 provisions of Article 3 of EU Directive 2017/159 and Articles 12 to 18 of the Annex and Annex 1 to EU Directive 2017/159 implementing the Agreement concerning the implementation of the International Labour Organisation Work in Fishing Convention 2007. Under these regulations there is an onus placed on the master, as appropriate, to carry on board a crew list. The Regulations set out the minimum requirements of the information to be included in the crew list and that a copy of the crew list must be carried on board and be available for inspection by an Authorised Officer of the Marine Survey Office. There is a further requirement for the crew list to be communicated ashore, either prior to departure or immediately after departure, to an appropriate person such as the owner, company or family member who must make it available upon request to the Irish Coast Guard or An Garda Síochána for the purposes of search and rescue. There is also a requirement placed on the owner to ensure that every fisherman employed aboard the fishing vessel is provided with a Fisherman's Work Agreement, which is a contract to ensure decent working and living conditions aboard. The Regulations set out the minimum requirements for inclusion in such an Agreement and provide that a fisherman must be given time to review it before signing.

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