



STATUTORY INSTRUMENTS.

S.I. No. 332 of 2020



EUROPEAN UNION (INTERNATIONAL LABOUR ORGANISATION
WORK IN FISHING CONVENTION) (FISHING VESSEL OWNER
LIABILITY AND REPATRIATION) 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 19, 26, 27 (other than Article 27(a)), 29, 30, 31 and 32 of the Annex to Council Directive (EU) 2017/159 of 19 December 2016¹ and to 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) (Fishing Vessel Owner Liability and Repatriation) Regulations 2020.

Interpretation

2. (1) In these Regulations –

“authorised officer” shall be construed in accordance with Regulation 13(1);

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

“direction” has the meaning assigned to it by Regulation 14(1);

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

“enactment” means –

- (a) an Act of the Oireachtas,
- (b) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or
- (c) an instrument made under –
 - (i) an Act of the Oireachtas, or

¹ OJ No. L 25, 31.1.2017, p.12.

(ii) a statute referred to in paragraph (b);

“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 –

- (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;

“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;

“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 a fishing vessel;

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

“notice of detention” has the meaning assigned to it by Regulation 15(2);

“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.

(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) Regulations 5, 6, 7 and 12 apply to all fishing vessels engaged in sea-fishing, wherever they may be.

(2) Regulations 8, 9, 10 and 11 apply to all fishing vessels engaged in sea-fishing, while in a port in a state other than the State.

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 these Regulations.

Right to health protection and medical care

5. (1) An owner of a fishing vessel shall be responsible for the provision of health protection and medical care to a fisherman from the fishing vessel, while the fisherman is –

- (a) on board the fishing vessel, or
- (b) landed in a port outside the country responsible for the fisherman's social security protection.

(2) An owner of a fishing vessel shall ensure that a fisherman from the fishing vessel shall, in the event of work-related illness or injury, further have access to appropriate medical care.

(3) A master of a fishing vessel shall ensure that a fisherman from the fishing vessel shall, in the event of serious injury or illness, be taken ashore in a timely manner for care and receive medical care ashore.

(4) For the purposes of paragraph (1)(a), health protection and medical care shall be provided under Regulations 3, 5 and 6 of the European Union (International Labour Organisation Work in Fishing Convention) (Health Protection and Medical Care on Board Fishing Vessels) Regulations 2020 (S.I. No. 259 of 2020) and the European Communities (Minimum Safety and Health Requirements for Improved Medical Treatment on Board Vessels) Regulations 1997 (S.I. No. 506 of 1997).

(5) For the purposes of paragraph (1)(b), health protection and medical care shall include medical treatment and related material assistance and support during medical treatment.

Duty of owner to make provision for fisherman's medical care

6. (1) The owner shall defray any expenses of medical care referred to in Regulation 5.

(2) The duty of an owner referred to in paragraph (1) shall, in respect of the medical care referred to in Regulation 5(1), continue until the fisherman has been repatriated.

(3) Any expenses incurred by a fisherman to which the duty of the owner under paragraph (1) applies may be recovered by the fisherman from the owner as a simple contract debt in any court of competent jurisdiction.

(4) The duty of an owner under paragraph (1) shall not apply in respect of a fisherman where –

- (a) the fisherman experiences an injury which occurs otherwise than in the service of the fishing vessel,

- (b) the sickness or infirmity existed on the date on which the fisherman entered into his or her fisherman's work agreement, and the fisherman concealed the sickness or infirmity from the owner, or
 - (c) the owner proves that the injury or sickness was due to gross misconduct of the fisherman.
- (5) For the purposes of paragraph (4)(a), an injury occurs in the service of the fishing vessel if it –
- (a) first occurs to a fisherman during the period beginning on the date the fisherman first reports for service on board the fishing vessel and ending on the date on which the owner's duty to repatriate that fisherman ends under Regulation 11, or
 - (b) first occurs after the period referred to in subparagraph (a) but is caused by circumstances or events arising during that period.
- (6) Where medical care referred to in Regulation 5 is provided outside the State to a fisherman, the duty of the owner under paragraph (1) shall be limited to such expenses as the country responsible for the fisherman's social security protection does not provide for under its social security system.
- (7) Where medical care referred to in Regulation 5 is provided in the State to a fisherman, the duty of the owner under paragraph (1) shall be limited to such amount that the fisherman is required to pay having regard to –
- (a) the medical care provided, and
 - (b) the relevant enactments.
- (8) In this Regulation, "relevant enactments" means –
- (a) Regulation 883/2004 of the European Parliament and of the Council, of 29 April 2004 on the coordination of social security systems²,
 - (b) the Health Acts 1947 to 2020, or
 - (c) any other enactment relating to the provision of medical care.

Social Security Protection

7. (1) Where the State is not responsible for a fisherman's social security protection, the owner of the fishing vessel upon which the fisherman works shall be responsible for the provision of protection to that fisherman.

(2) The protection for which the owner is responsible under paragraph (1) shall be equivalent to that provided by the State to a fisherman for whom the State is the country responsible as regards social security protection.

(3) The owner shall ensure that the protection referred to in paragraph (1) is set out in the fisherman's work agreement of the fisherman.

² OJ No. L.166, 30.04.2004, p. 1.

(4) In this Regulation, “protection” means:

- (a) social security protection for work-related sickness, injury or death;
- (b) compensation in the event of injury due to occupational accident or disease.

Duty to repatriate fishermen

8. (1) An owner shall make such provision as is necessary for the repatriation of a fisherman from a fishing vessel which enters a port outside the State or, where the fisherman is transferred from a fishing vessel to a port outside the State, from that port, as soon as is practicable.

(2) Paragraph (1) applies to a fisherman in each of the following cases:

- (a) where his or her fisherman’s work agreement has expired;
- (b) where, for justified reasons, his or her fisherman’s work agreement has been terminated by one or more of the parties to that agreement;
- (c) where the fisherman is no longer able to carry out his or her duties under his or her fisherman’s work agreement or cannot be expected to carry out those duties in the specific circumstances;
- (d) where the fisherman has completed a maximum period of three month’s service on board the fishing vessel, irrespective of the number of voyages undertaken by the fisherman during that three month period.

(3) The circumstances referred to in paragraph (2)(c) include the following:

- (a) where the fisherman has an illness, injury or other medical condition which requires that he or she be repatriated when found medically fit to travel;
- (b) where the fishing vessel has been shipwrecked;
- (c) where the owner is unable to fulfill his or her legal or contractual obligations to the fisherman following insolvency, sale of the fishing vessel or a change in the registration particulars of the fishing vessel such that it is no longer registered in the State.

The costs of repatriation

9. (1) The costs of repatriation of a fisherman shall be borne by the owner, save where the fisherman has acted in material breach of his or her obligations under his or her fisherman’s work agreement.

(2) The owner may, where the fisherman has acted in material breach of his or her obligations under his or her fisherman’s work agreement, recover the costs of repatriation from the fisherman as a simple contract debt in any court of competent jurisdiction.

(3) Where the owner fails to make provision for the repatriation of a fisherman under these Regulations, the Minister shall make arrangements, or have arrangements made on his or her behalf, for the repatriation of the fisherman under these Regulations and shall be entitled to recover the cost of repatriation from the owner as a simple contract debt in any court of competent jurisdiction.

(4) The costs which the Minister may recover under paragraph (3) include –

- (a) costs incurred by the Minister, or by a person on the Minister's behalf, for the repatriation of a fisherman, and
- (b) costs incurred by the Minister in reimbursing another person or a state other than the State, who or which has assisted with the repatriation of the fisherman.

(5) Where the owner fails to make provision for the repatriation of a fisherman under these Regulations and the Minister has not made arrangements for the repatriation of the fisherman under paragraph (3), the fisherman may make arrangements for his or her own repatriation and recover the costs incurred by him or her from the owner as a simple contract debt in any court of competent jurisdiction.

(6) The costs incurred by the fisherman referred to in paragraph (5) may not be recovered –

- (a) by the fisherman under paragraph (5) if they have been recovered by the Minister under paragraph (3), or
- (b) by the Minister under paragraph (3) if they have been recovered by the fisherman under paragraph (5).

(7) Nothing in this Regulation affects any right of an owner to recover the cost of repatriation under third party contractual arrangements.

Destination of repatriation

10. (1) A fisherman entitled to repatriation under Regulation 8 shall be repatriated to the destination provided for in his or her fisherman's work agreement or such other place as may subsequently be agreed with the owner.

(2) If the fisherman's work agreement, or any subsequent agreement with the owner referred to in paragraph (1), does not identify the destination to which the fisherman is entitled to be repatriated, the fisherman shall be repatriated to his or her choice of the following destinations:

- (a) the place at which the fisherman entered into the fisherman's work agreement;
- (b) the place agreed with the owner at the time of repatriation;
- (c) the fisherman's country of residence.

Limitations on and exceptions to duty to repatriate

11. The duty of the owner to repatriate a fisherman referred to in Regulation 8(1) shall be fulfilled where –

- (a) the owner makes reasonable arrangements for repatriation which are unsuccessful because of the fisherman's conduct,
- (b) notwithstanding reasonable endeavours, the owner is unable to contact the fisherman for a period of three months or more, or
- (c) the fisherman confirms in writing to the owner that repatriation is not required.

Insurance or financial security

12. (1) An owner shall ensure that before a fishing vessel proceeds to sea or, if already at sea, while it remains at sea and at any relevant time thereafter, a contract of insurance is maintained which provides sufficient financial assurance to enable the owner to meet any liabilities or financial responsibilities the owner may have in respect of any fisherman from the fishing vessel under Regulations 5, 6 and 7.

(2) A master shall ensure that proof of the contract of insurance referred to in paragraph (1) is carried and displayed in a prominent position on board the fishing vessel.

Authorised officers

13. (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 non-legible form, a copy of the information or of extracts from it in permanent legible form) that he or she 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 15.

(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

14. (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 16,
- (f) state that a failure to comply with the direction is an offence under Regulation 18, 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) Upon receiving confirmation under paragraph (7), and when satisfied that the person has so complied, the competent authority shall give notice to the person concerned confirming that compliance.

(9) A person on whom a direction has been served may appeal the direction under Regulation 16.

Notice of detention

15. (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 has been a failure to comply with Regulation 12(2), and
- (b) the detention of the fishing vessel is necessary for the protection of the health and safety of the fishermen on board.

(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 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 16,
- (f) state that a failure to comply with the notice is an offence under Regulation 18, 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 16.

Appeal

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

- (a) the direction, to the judge of the District Court in whose district the person ordinarily resides or carries on business, or

(b) the notice of detention, to the 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 upon which the direction was served under Regulation 14(1), or confirmed or modified under Regulation 14(4), or the notice of detention was served under Regulation 15(2), 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 direction or the notice of detention 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 direction or the notice of detention as the case may be.

Service

17. (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 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 16(1)(a), 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

18. (1) An owner who fails to comply with Regulation 5(1), 5(2), 6(1), 7(1), 7(3), 8(1), 9(1) or 12(1) shall be guilty of an offence.

(2) A master who fails to comply with Regulation 5(3), 12(2) or a notice of detention shall be guilty of an offence.

(3) An owner or a master shall be guilty of an offence where he or she fails to comply with 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 Regulation 13,
- (b) fails to comply with a requirement or request of an authorised officer under Regulation 13, 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.



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 19, 26, 27 (other than Article 27 (a)), 29, 30, 31 and 32 of the Annex to Directive 2017/159 implementing the Agreement concerning the Work in Fishing Convention, 2007 of the International Labour Organisation. They require the fishing vessel owner to ensure that a fisher receives appropriate medical attention and is taken ashore in a timely manner in order to receive appropriate treatment. In addition, the vessel owner is required to provide medical care and health protection when landed in a port outside the State and cover the costs of such care and any other material assistance. They also place an onus on the vessel owner to make provision as necessary under certain circumstances for the repatriation of a fisherman from a port outside the State. The costs of repatriation are to be borne by the vessel owner.

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