

2018 No. 1109

MERCHANT SHIPPING

**The Merchant Shipping (Work in Fishing Convention)
(Consequential Provisions) Regulations 2018**

Made - - - - - *24th October 2018*

Laid before Parliament *29th October 2018*

Coming into force in accordance with regulation 1(2)

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 the safety of ships and the health and safety of persons on them.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 85(1)(a) and (b), (3), (5), (7), 86(1) and (2) and 302 of the Merchant Shipping Act 1995(c).

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.

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018.

(2) These Regulations, other than regulation 3, come into force on 31st December 2018; regulation 3 comes into force on 30th November 2019.

Amendment of the Merchant Shipping Act 1995

2.—(1) The Merchant Shipping Act 1995 is amended as follows.

(2) In section 24 (application of this part), omit subsection (2A)(a)(d).

(a) S.I. 1993/595.

(b) 1972 c.68. 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). The Work in Fishing Convention 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.

(d) Subsection (2A) was inserted by paragraph (2) of regulation 2 of SI 2014/1614.

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

3.—(1) The Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing Vessels) Regulations 1972(a) are amended as follows.

(2) In regulation 2 (exemptions from the requirement of section 1)—

(a) omit paragraph (a); and

(b) at the end add—

“(c) a fishing vessel to which the Merchant Shipping (Work in Fishing Convention) Regulations 2018(b) apply;”.

(3) In regulation 10 (interpretation) after “Regulations—” add—

““fishing vessel” includes a fishing vessel registered in a country other than the United Kingdom.”.

(4) In regulation 11 (exemption of certain fishing vessels from the requirements of section 69 of the Act) at the end add “other than a fishing vessel to which the Merchant Shipping (Work in Fishing Convention) Regulations 2018 apply”.

(5) For regulation 14 (delivery of copies of crew lists relating to fishing vessels) substitute—

“**14.**—(1) The master of a fishing vessel must ensure that a copy of the crew list is—

(a) delivered to the nominated person prior to the departure of the vessel; or

(b) where the crew list is in electronic form, communicated to the nominated person immediately after the departure of the fishing vessel.

(2) In this regulation “nominated person” means a person, online management system or place described in paragraph 3.3 of Merchant Shipping Notice 1891(F)” and “Merchant Shipping Notice” means a notice described as such and issued by the Secretary of State, and any reference to a particular Merchant Shipping Notice includes a reference to a Merchant Shipping Notice amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time.”.

(6) In regulation 15 (copies of list of crew relating to fishing vessels), in paragraph (1) after “United Kingdom” insert “and carried aboard the fishing vessel”.

(7) In regulation 17 (copies of list of crew relating to fishing vessels) omit “of a length of less than 55 feet”.

Amendment of the Merchant Shipping (Seamen’s Allotments) Regulations 1972

4.—(1) The Merchant Shipping (Seamen’s Allotments) Regulations 1972(c) are amended as follows.

(2) In regulation 2 (circumstances in which a seaman may make an allotment)—

(a) in paragraph (1), after sub-paragraph (c) insert—

“(d) is employed or engaged on a ship to which the Merchant Shipping (Work in Fishing Convention) Regulations 2018 apply.”,

(b) in paragraph (2) after “paragraph (1)(c)” insert “or (1)(d)”.

(3) In regulation 3 (limitation on issue of allotment notes)—

(a) in paragraph (1), after “paragraph (3)” insert “and (4)”,

(b) after paragraph (3) insert—

(a) S.I.1972/919, amended by S.I. 1977/45, S.I.1979/1519.

(b) S.I.2018/1106.

(c) S.I.1972/1698, amended by S.I.2014/1614.

“(4) Paragraph (1) does not apply to a seaman employed or engaged on a ship to which the Merchant Shipping (Work in Fishing Convention) Regulations 2018(a) apply.”.

Amendment of the Merchant Shipping (Seamen’s Wages and Accounts) (Fishing Vessels) Regulations 1972

5.—(1) The Merchant Shipping (Seamen’s Wages and Accounts) (Fishing Vessels) Regulations 1972(b) are amended as follows.

(2) In regulation 1(2)—

(a) in the definition of “seaman”, omit the words from “a” to “vessel” and substitute “every person employed, engaged or working in any capacity on board any fishing vessel, but does not include a person solely engaged as a pilot for the vessel”;

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

““fisherman’s work agreement” means an agreement required by regulation 8 of the Merchant Shipping (Work in Fishing Convention) Regulation 2018(c), and a reference to a fisherman’s work agreement in relation to a seafarer who works on a ship means the agreement of that description to which that seafarer is a party in relation to that work;”.

(c) omit regulation 2;

(d) in regulation 3, for “crew agreement” substitute “fisherman’s work agreement”;

(e) omit regulations 4 and 5;

(3) In regulations 6, 7, 8 and 10 for “crew agreement” in each place where it occurs substitute “fisherman’s work agreement”.

(4) In the Schedule—

(a) in paragraph 1 of Part 1—

(i) omit paragraph (a);

(ii) in paragraph (c), before the word “his” insert “if relevant”;

(b) omit Part 3.

Amendment of the Merchant Shipping (Repatriation) Regulations 1979

6.—(1) The Merchant Shipping (Repatriation) Regulations 1979(d) are amended as follows.

(2) In regulation 2 (application)—

(a) in paragraph (1), after “(1A)” insert “,(1B)”,

(b) after paragraph (1A) insert—

“(1B) These Regulations do not apply to fishermen to whom the Merchant Shipping (Work in Fishing Convention) Regulations 2018(e) apply.”.

Amendments to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997

7.—(1) The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997(f) are amended as follows.

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

(a) S.I. 2018/1106.

(b) S.I.1972/1701.

(c) S.I.2018/1106.

(d) S.I.1979/97, amended by S.I.2014/1614.

(e) S.I.2018/1106.

(f) S.I.1997/2962, amended by S.I.2014/1616, there are other amending instruments but none is relevant.

- (a) after the definition of “employer” insert—

“fishing vessel owner” means the owner of the fishing vessel or any other organisation or person such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on fishing vessel owners in accordance with the Work in Fishing Convention, regardless of whether any other organisation or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner;”;
- (b) in the definition of “seafarer” omit the words “which is not a fishing vessel”;
- (c) in the definition of “shipowner”, after the word “ship” where it first occurs in sub-paragraph (b) insert “other than a fishing vessel”;
- (d) after the definition of “worker” insert—

““Work in Fishing Convention” means the convention adopted at Geneva on 14th June 2007 by the International Labour Organisation(a)”.
- (3) In regulation 3 (application)—
 - (a) after paragraph (1A) insert—

“(1B) As regards Group D and Group E ships—

 - (a) the following provisions insofar as they apply to workers, also apply to seafarers who are not workers and insofar as they apply to employers, also apply to fishing vessel owners—
 - (i) regulation 4(1)(a),
 - (ii) regulation 5(1),
 - (iii) regulation 7,
 - (iv) regulation 12(1) and 12(2), and
 - (v) regulation 20.
 - (b) in relation to seafarers who are not workers, any obligations imposed by the provisions mentioned in paragraph (a), to the extent that they would, by virtue of that paragraph, apply to employers and fishing vessel owners, apply to fishing vessel owners only.”;
 - (b) in paragraph (2)(a) omit the words “with the exception of regulations 7(4A), 11A and 12A”;
 - (c) in paragraph (2A) omit sub-paragraph (a),
 - (d) in paragraph (3)(b) omit “only” and at the end insert “and Group D ships”.

Amendment of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004

8.—(1) The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004(b) are amended as follows.

- (2) In regulation 2(1) (interpretation), after the definition of “employment” insert—

““fisherman” means every person employed, engaged or working in any capacity on board any fishing vessel, but does not include a person solely engaged as a pilot for the vessel;

“fishing vessel owner” means the owner of the fishing vessel or any other organisation or person such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner;”.
- (3) In regulation 7 (rest), at end add—

(a) Cm 7375.
 (b) S.I.2004/1713.

“(5) Paragraphs (1) to (3) also apply to fishermen.”.

(4) In regulation 10 (records), after “employer” insert “or fishing vessel owner” and after “worker” insert “or fisherman”.

(5) After regulation 11 (entitlement to annual leave and payment for leave), insert—

“**11A.**—(1) Subject to paragraph (4), a worker is entitled in each leave year to a period of leave in addition to the entitlement under regulation 11 (“additional leave”) determined in accordance with paragraph (2) and to be paid for any such leave at the rate of a week’s pay in respect of each week of leave.

(2) The period of additional leave to which a worker is entitled under paragraph (1) is—

(a) in any leave year beginning on or after the coming into force of the Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018(a), 1.6 weeks in each leave year;

(b) in any leave year beginning before the coming into force of the Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018, a proportion of 1.6 weeks equivalent to the proportion of the year beginning on the date those regulations come into force which would have elapsed at the end of that leave year.

(3) In respect of a period of employment of less than one year, a worker is entitled to additional annual leave of a proportion of 1.6 weeks equal to the proportion the period of employment in question bears to one year; the proportion to be determined in days and any fraction of a day to be treated as a whole day.

(4) The aggregate entitlement provided for in paragraph (2) and regulation 11(1) is subject to a maximum of 28 days.

(5) A worker’s leave year begins for the purposes of this regulation on the same date as a worker’s leave year begins for the purposes of regulation 11.

(6) Regulation 11(3) to (7) shall apply as if the references to paragraph (1) of that regulation were to paragraph (1) of this regulation.”.

(6) In regulation 13(1) (exceptions)—

(a) in paragraph (a), after “employers” insert, “fishing vessel owners, fishermen”;

(b) in paragraph (b), after “workers” insert “and fishermen”.

(7) In regulation 14(1) (emergencies), after “worker” insert “or fisherman”.

Merchant Shipping (Fees) Regulations 2018

9.—(1) Schedule 1 to the Merchant Shipping (Fees) Regulations 2018(b) is amended as follows.

(2) In Part 1, in the table of statutory instruments imposing statutory requirements—

(a) in Section B Crew Accommodation, after the entry relating to the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 insert an entry comprising—

(i) in the first column, “The Merchant Shipping (Work in Fishing Convention) Regulations 2018”;

(ii) in the second column, “2018/1106”;

(iii) in the third column, “None”;

(b) in Section L Survey and Certification, after the entry relating to the Merchant Shipping (Survey and Certification) Regulations 2014 insert an entry comprising—

(a) S.I. 2018/1109.

(b) S.I. 2018/1104.

- (i) in the first column, “The Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018”;
- (ii) in the second column, “2018/1107”;
- (iii) in the third column, “None”.

(3) In Part 4, in paragraph 4, after “2010” insert “or the Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018(a)”.

Signed by authority of the Secretary of State for Transport

Nusrat Ghani
Parliamentary Under Secretary of State
Department for Transport

24th October 2018

We consent to the making of these Regulations

David Rutley
Paul Maynard

24th October 2018

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential amendments to primary and secondary legislation arising out of the implementation of the Work in Fishing Convention, 2007 (“the Convention”)(Cm. 7375).

Regulation 2 amends the Merchant Shipping Act 1995 so as to provide that certain provisions will in future apply to a more limited class of vessels. The fishing vessels to which those provisions will thereby cease to be apply are subject to provisions on the same subject matter in the Merchant Shipping (Work in Fishing Convention) Regulations 2018 (2018 (“the 2018 Regulations”) which are compatible with the Convention.

Regulation 3 amends the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen)(Fishing Vessels) Regulations 1972 so as to dis-apply those regulations for fishing vessels to which the 2018 Regulations apply (as the 2018 Regulations contain different provision on the same subject matter.

Regulation 4 extends the application of the Merchant Shipping (Seamen’s Allotments) Regulations 1972 to all fishermen working on fishing vessel registered in the United Kingdom.

Regulation 5 amends the Merchant Shipping (Seamen’s Wages and Accounts) Regulations 1972 so as to (a) remove certain provisions which are superseded by provisions in the 2018 Regulations, and (b) to make consequential amendments arising from the provision made in the 2018 Regulations.

Regulation 6 amends the Merchant Shipping (Repatriation) Regulations 1979 so as to dis-apply those regulations for fishing vessels to which the 2018 Regulations apply (as the 2018 Regulations contain different provision on the same subject matter).

Regulation 7 amends the Merchant Shipping and Fishing Vessels (Health and Safety at Work Regulations 1997 in order to apply certain provisions of those regulations to fishermen who would not otherwise be regarded as workers under those regulations.

(a) S.I. 2018/1108.

Regulation 8 amends the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 and inserts new regulation 11A into those regulations which entitles workers to an additional 1.6 weeks of annual leave as well as the four weeks they are entitled to under regulation 11 of those regulations.

Regulation 9 amends the Merchant Shipping (Fees) Regulations 2018 to permit fees to be charged in connection with applications for medical certificates and for surveys of ships required by the Convention.

Merchant Shipping Notices are published by the Maritime and Coastguard Agency (“the MCA”) (an executive agency of the Department for Transport). Copies may be obtained from M-Notices Subscriptions, PO Box 362, Europa Park, Grays, Essex RM17 9AY, email: mnotices@ecgroup.co.uk. They may also be accessed via the MCA’s website: www.gov.uk/government/organisations/maritime-and-coastguard-agency, which also has details of any amendments or replacements.

The Maritime Labour Convention may be downloaded from the website of the International Labour Organisation at <https://www.ilo.org>. Hard copies can be obtained by writing to the Seafarer Safety and Health Manager, The Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton, SO15 1EG.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sectors is foreseen.

© Crown copyright 2018

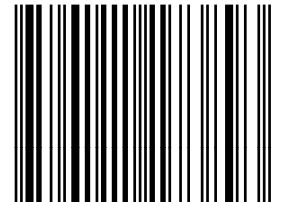
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty’s Stationery Office and Queen’s Printer of Acts of Parliament.

£6.90

UK201810251010 11/2018 19585

<http://www.legislation.gov.uk/id/uksi/2018/1109>

ISBN 978-0-11-117389-3



9 780111 173893