EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (SEAMEN'S DOCUMENTS) (AMENDMENT) REGULATIONS 2023

2023 No. 365

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of the instrument is to extend eligibility for a British Seaman's Card, recognised under the International Labour Organization's Convention on Seafarers' Identity Documents (ILO 108)[1], to those employed in fishing vessels.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Merchant Shipping (Seamen's Documents) Regulations 1987 (S.I. 1987/408) ("the 1987 Regulations") lay down qualifying criteria for the issue of a British Seaman's Card which allows the holder to travel to and from ships more easily and to disembark in ports for shore leave. These qualifying criteria include nationality qualifications and service in a ship. Service in a fishing vessel is not considered as qualifying service under these Regulations.

6.2 Under the International Labour Organisation ("ILO") Seafarers' Documents' Convention, 1958 ("ILO 108"), which is implemented by the 1987 Regulations, the competent authority may issue Seafarer Identity Documents to those working in fishing vessels and it is not clear now why the Government in 1987 did not do so. Pursuant to ILO 108, this instrument amends the qualifying criteria so that service in a

[1] https://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C108

fishing vessel is qualifying service for the purposes of the issue of a British Seaman's Card.

6.3 ILO 108 has been amended and the updated ILO Convention, the Seafarers' Identity Documents Convention (Revised), 2003 ("ILO 185")[2], has improved security standards for the issue of Seafarer Identity Documents, and also deems service in a fishing vessel as qualifying service. The Government is working towards implementation and ratification of ILO 185, subject to technical provision and interdepartmental agreement. This measure is therefore an interim solution pending completion of work to implement ILO 185.

7. Policy background

What is being done and why?

7.1 Seafarers and fishers regularly transit countries to join and leave ships in the course of their work. Their right to do so, and to have temporary leave ashore, is protected under the International Maritime Organization's Convention on Facilitation of International Maritime Traffic. Seafarers also have the right to go ashore for medical treatment and for shore leave under the International Labour Organization's Maritime Labour Convention, 2006[3]. Fishers have the right to go ashore for medical treatment under the International Labour Organization's Work in Fishing Convention, 2007[4].

7.2 During the COVID-19 pandemic, many governments imposed strict travel restrictions but as key workers, seafarers were often exempt from those restrictions. UK fishers were not able to prove they were seafarers and therefore key workers as they did not have a British Seaman's Card, and this caused problems in some ports including in Norway and Denmark.

7.3 By making service in a fishing vessel qualifying service for the purposes of obtaining a British Seaman's Card, this instrument will help to facilitate the free movement of fishers, in the same way that seafarers currently enjoy.

7.4 British Seaman's Cards are issued by the Registry of Shipping and Seamen at the Maritime and Coastguard Agency. A fee of £55 is chargeable. Applications generally take around 10 days to process once all the required information has been provided.

Explanations

What did any law do before the changes to be made by this instrument?

7.5 The 1987 Regulations sets out the qualifying criteria for issue of a British Seaman's Card, including service in a ship. Service in a fishing vessel is not currently considered eligible service.

7.6 There is no requirement for any seafarer to apply for or hold a British Seaman's Card – it is voluntary.

Why is it being changed?

7.7 UK fishers have been hindered from joining and leaving ships, landing catches and obtaining ships' stores when calling in foreign ports. They, and British Consular staff

[2] https://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C185

[3] https://www.ilo.org/global/standards/maritime-labour-convention/text/WCMS_763684/lang--en/index.htm

[4] https://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188

investigating on their behalf, have been told that this would not have been the case if they held British Seaman's Cards. All those expressing a view in response to a public consultation on this issue supported extending eligibility to fishers.

What will it now do?

7.8 This instrument will make service in a fishing vessel eligible in support of an application for a British Seaman's Card. Holding a British Seaman's Card will remain voluntary for all seafarers and fishers.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument amends the Merchant Shipping (Seamen's Documents) Regulations 1987. It is not intended to consolidate the instrument.

10. Consultation outcome

10.1 A public consultation exercise ran from 10th October to 28th November 2022. Around fifty organisations were directly notified of the consultation by email and the documents were posted on www.gov.uk[5]. This instrument is reserved to the UK parliament, but the devolved administrations were notified of the consultation exercise. The Department received 10 responses, including from four national fishing organisations who supported the proposal. Responses highlighted the considerable time and effort that fishing vessel owners and employers had expended in securing transit for their crews in order to carry out their business in the countries affected but this was not quantified. In addition, fishers would benefit from being able to evidence their status as professional seafarers and from the reduced stress and improved wellbeing as a result of straightforward border control procedures. There was no opposition to the proposal and no adverse impacts were identified.

11. Guidance

11.1 A Marine Guidance Notice will be published at the time this instrument is laid highlighting the changes in the 1987 Regulations and advising fishers how they can apply for a British Seaman's Card.

12. Impact

12.1 The impact on business, charities or voluntary bodies is largely indirect since there is no legal requirement for fishers to apply for a British Seaman's Card. Direct costs would come from the need for both individual fishers and fishing companies to become familiar with the change in the rules and how to apply for a British Seaman's Card. The net cost to business per year (EANDCB in 2019 prices) is estimated at £1,308.

12.2 There is no, or no significant, impact on the public sector.

[5] https://www.gov.uk/government/consultations/consultation-on-the-eligibility-of-fishermen-for-a-british-seamens-card

12.3 A full Impact Assessment has not been prepared for this instrument because the costs fall well below the £5m threshold, with a low level of impact per business and not many businesses affected.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to keep the British Seaman's Card as a non-mandatory document for fishers. It is therefore expected that only where it brings proportionate benefits will fishers apply for a British Seaman's Card.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to keep under review the take-up of the opportunity for fishers to apply for British Seaman's Cards, and to maintain dialogue with the industry on the impact of the change in policy.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 (c. 26), Baroness Vere has made the following statement:

"As this instrument imposes no new duties on business or individuals, no statutory review clause is deemed necessary".

15. Contact

15.1 Julie Carlton, Head of Seafarer Safety and Health at the Maritime and Coastguard Agency Telephone: 07772 352273 or email: Julie.Carlton@mcga.gov.uk can be contacted with any queries regarding the instrument.

15.2 Gwilym Stone, Assistant Director for Regulation and Standards, UK Maritime Services, at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Vere, Parliamentary Under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.