EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (WORK IN FISHING CONVENTION) REGULATIONS 2018

2018 No. 1106

1. Introduction

1.1 This explanatory memorandum has been prepared by the Maritime and Coastguard Agency ("MCA") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This is one of four instruments designed to bring UK law into line with the Work in Fishing Convention, 2007 ("ILO 188"), an International Labour Organisation ("ILO") treaty concerning living and working conditions for those working on fishing vessels.

2.2 This instrument imposes duties and requirements for the protection of fishermen on fishing vessels in relation to :

- the minimum age for working on such a vessel and night work;
- fishermen's work agreements
- payment
- rights to repatriation
- crew accommodation
- food and catering
- medical care
- fishing vessel owner's liability towards fishermen

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is all United Kingdom fishing vessels whether in the United Kingdom or anywhere else in the world, and all fishermen on such vessels irrespective of nationality, ethnic origin, religion, gender etc. It also applies to fishing vessels which are not United Kingdom ships when in United Kingdom waters.

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 ILO 188 was adopted on 14 June 2007 in Geneva following over 6 years of development and discussion. International Labour Organization Treaties are unique in international legislation because they are drawn up through in negotiations between representatives of governments, employers and workers.

6.2 ILO 188 came into force internationally on 16 November 2017. This was triggered by ratification by 10 states of which at least 8 are coastal states. It entitles all fishermen to written terms and conditions of employment (a fisherman's work agreement), decent accommodation and food, medical care, regulated working time, repatriation, social protection and health and safety on board. It also provides minimum standards relating to recruitment and placement.

6.3 The UK Government firmly supported the development of ILO 188 and is committed to working towards ratifying it at the earliest practical date. ILO 188 was originally laid before Parliament on 20th May 2008 (Cm 7375) with an indication of Government support for the aim of the Convention and willingness to start consultation with the fishing industry. Subsequent Governments have continued to support the policy.

6.4 Other instruments implementing ILO 188 are –

- The Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018
- The Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018
- The Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018

6.5 Annex A to this Explanatory Memorandum provides a high level summary of how each of the Articles referred to in paragraph 7.1 below is implemented by this instrument and how the new provisions work alongside existing legislative provision.

6.6 A scrutiny history of related documents is attached at Annex B.

7. Policy background

What is being done and why?

7.1 The instrument implements the requirements in the following articles of ILO 188:

- Article 8.3: Responsibilities of fishermen to comply with the lawful orders of the skipper and applicable safety and health measures;
- Article 9: Minimum age
- Article 16 – 20: Fishermen's Work Agreement
- Article 21: Repatriation
- Article 23: Payment of fishermen
- Article 25 – 28: Accommodation and food

- Article 29 – 30: Medical care
- Article 38 – 39: Protection in case of work-related sickness, injury or death

7.2 Some requirements of ILO 188 are already in place in existing UK legislation, but in a number of cases the application of that legislation does not correspond fully to that required by the Convention – for example certain duties only apply in respect of employed fishermen, whereas ILO 188 applies in respect of all fishermen regardless of their employment status. In addition, the instrument reflects the principle underlying ILO 188 that the fishing vessel owner has a duty to provide decent living and working conditions for all fishermen on board, whereas previous UK legislation places certain duties on individual employers.

7.3 Implementing ILO 188 makes it necessary that the Government impose certain obligations on fishing vessel owners and operators to ensure that fishermen have the full protection of ILO 188 and that the Government has appropriate methods of enforcing these obligations in the event they are not complied with. Aside from it resulting in the government's inability to enforce compliance with these obligations, a failure to have in place an appropriate enforcement regime would mean that the UK is not compliant with ILO 188. This is similar to the approach to that used for the implementation of the Maritime Labour Convention. Where possible we have used civil sanctions that are available to the MCA to use such as inspection and follow up, prohibition notices, improvement notices, detention, notifications of concern and simple cautions.

7.4 Further details of the changes introduced by this instrument are in the Annex A.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 Like all Conventions of the ILO, ILO 188 was drawn up on a tripartite basis in negotiations between fishing vessel owner organisations, fishermen's organisations and governments. The Government has continued to work closely with the UK industry on the implementation of the Convention, in particular through a national tripartite working group, which was set up in 2013. This group was consulted on many aspects of the implementation of the Convention, both prior to and following formal public consultation.

10.2 Formal public consultation on the draft proposals was carried out between November 2017 and January 2018. The consultation documents were posted to the www.gov.uk web site. In addition, the MCA notified more than fifty organisations and companies that the public consultation was underway. Several of the organisations notified were fishing federations representing many fishermen/fishing vessel owners and sent the information to their membership.

10.3 Twenty-five written responses were received, mostly from federations and companies. During the consultation period MCA and the Department for Transport also attended

meetings organised by the National Federation of Fishing Organisations, Seafish and Cornish Fish Producers Organisation Ltd to answer questions from the industry.

10.4 There was widespread support for the introduction of ILO 188 but with some concerns about the practical implementation of the Convention. The issue which generated the most comments was the need to make greater use of ILO 188's provisions for progressive implementation.

10.5 This and other concerns have been taken into account in finalising both the legal provisions and supporting guidance. In particular, the instrument provides for progressive implementation where it is allowed by ILO 188, so time is allowed after the legislation comes into force to allow fishing vessel owners to comply with certain provisions, and some requirements are phased in so that they apply for larger vessels and those which operate for longer periods first, and then are introduced over a longer period for smaller vessels. The MCA will publish guidance on progressive implementation and grandfather rights. A summary of consultation responses and the actions taken to response is available on www.gov.uk at https://www.gov.uk/government/consultations/implementation-of-the-ilo-work-in-fishing-convention-2007-ilo-188-into-uk-law. Printed copies of the summary of consultation responses may be inspected the offices of the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG.

10.6 As part of the post consultation revision of the legal provisions we have reduced the total number of offences from 27 to 21 There are 13 offences in the Merchant Shipping (Work in Fishing Convention) Regulations 2018.

10.7 The devolved administrations were notified of the public consultation but none provided a response.

11. Guidance

11.1 The MCA has published guidance in Merchant Shipping Notices and Marine Guidance Notes supporting these Regulations. Some requirements are imposed by reference to a specific Merchant Shipping Notice. For example, the standards of crew accommodation for new ships required under Part 7 of the instrument are set out in Merchant Shipping Notices MSN 1871 (F), MSN 1872 (F) and 1873(F), which are referred to in the Regulations, and which contain related guidance. Otherwise, each Part is supported by a Marine Guidance Note, which will be available 5 November 2018 on www.gov.uk at https://www.gov.uk/government/collections/marine-guidance-notices-mgns and https://www.gov.uk/government/collections/merchant-shipping-notices-msns

12. Impact

12.1 A full impact assessment has not been prepared for this instrument. However, a de minimis assessment has been carried out and has concluded that the impact on businesses or the public sector is under £1m per year.

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 make use of progressive implementation providing small businesses longer to prepare for compliance. In addition, ILO 188 sets high

level requirements for small vessels, allowing some flexibility as regards how to comply, and generally restricts prescriptive requirements to vessels over 24m. However, all those working on fishing vessels should have the same level of protection for their living and working conditions, regardless of the size of the business for which they work.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is through continued consultation with industry through the tripartite working group, and through regular MCA inspection of fishing vessels.

14.2 A statutory review clause is included in the Regulations.

15. Contact

15.1 Louise Unsworth at the Maritime and Coastguard Agency Telephone: 020 3817 2505 or email: Louise.Unsworth@mcga.gov.uk can be contacted with any queries regarding the instrument.

15.2 David F. Jones at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.

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

What is done by this instrument?

References to "associated amendments", unless otherwise specified, mean amendments made by the Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018.

Part 1 General matters

Regulation 4 implements Article 8.3 on responsibilities of fishermen to comply with the lawful orders of the skipper and applicable safety and health measures.

Existing legislation

- The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (S.I. 1997/2962) place duties on ship owners and employers to ensure the health and safety of workers.
- Regulation 21 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (S.I. 1997/2962) require workers to comply with training and instructions given by the ship owner, employer or master in accordance with the Regulations.

Associated amendments

- The duties of ship owners and employers under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 are extended to fishing vessel owners.
- Regulation 21 is extended to apply also to all fishermen in relation to training and instruction given by the fishing vessel owner.

Part 2 Minimum age

Introduces provisions to implement Article 9 of ILO 188 –

- to prohibit the employment, engagement or work of persons below 16 years of age except in specified circumstances;
- to limit work likely to jeopardise the health, safety or morals of young persons to those aged at least 18 years, except in specified circumstances; and
- to prohibit night work for those under 18 years of age except where it is essential to training or to the specific nature of the duty.

These provisions apply regardless of employment status.

Existing UK provisions:

- The Merchant Shipping Act 1995 ("the MSA") section 55(1) prohibits the employment of persons under school leaving age on any ship, and section 55(1A) prohibits the employment of those under the age of 16 on sea-going ships.

- The Merchant Shipping and Fishing Vessels (Health and Safety) (Employment of Young Persons) Regulations 1998 require employers to take measures to ensure the health and safety of young persons employed on ships.

Associated amendments
Section 55 of the MSA is dis-applied in respect of ships to which this instrument applies.

Part 3 Fishermen's work agreements ("FWAs")
Introduces provisions to implement Articles 16 – 20 which –

- Require every fisherman to have a FWA, setting out their terms and conditions of work;
- Specify the minimum contents of a FWA;
- Make separate provisions for the content of a FWA depending on whether the fisherman is an employee or not;
- Require that the fisherman has the opportunity to review and take advice on the agreement before signing it;
- Make certain provisions as to the availability of the agreement for inspection.
- Where a fisherman is paid wages, requires that wages are paid at regular intervals not exceeding one month (failing which, a prohibitive rate of interest will apply), and receives an account of wages;
- In other cases, requires that payment is made at reasonable intervals as specified in the fisherman's work agreement.

Existing legislation

- Section 25 of the MSA requires a crew agreement to be in force for every ship in respect of seamen employed on board.
- The Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) (Fishing vessels) Regulations 1972 (SI 1972/919 – "the 1972 regulations") exempt certain vessels and categories of person from the application of section 25.
- Sections 110 – 114 of the MSA make provision to ensure that fishermen are paid what they are due, whether wages due under a crew agreement or payment related to the catch, and are provided with an account of any payment of their wages, and have a remedy where wages are unpaid.
- The Merchant Shipping (Seaman's Allotments) Regulations 1972 (S.I. 1972/1698) and the Merchant Shipping (Seaman's Wages and Accounts) (Fishing Vessels) Regulations 1972 S.I. 1972/1701 make supplementary provisions.

Associated amendments

- Section 25 of the MSA is dis-applied in respect of ships to which this instrument applies.
- The provisions of the three 1972 regulations are amended to achieve compatibility with this instrument.

Part 4 Repatriation

Introduces provisions to implement Article 21; sets out the fishing vessel owner's duties as regards the repatriation of fishermen, and associated provision. It introduces provisions to –

- Require the details of their entitlement (e.g. place for repatriation) to be specified in the fisherman's FWA;
- Require the Secretary of State to provide relief and repatriation of a fisherman on a UK fishing vessel when the fishing vessel owner fails to do so;
- Provide for costs to be incurred by the Secretary of State to be recovered from the fishing vessel owner of a UK or a non-UK ship.

Existing legislation

Sections 73 to 75 of the MSA and the Merchant Shipping (Repatriation) Regulations 1979 (SI 1979/97 – "the Repatriation regulations") specify the duties of employers to repatriate seafarers employed under a crew agreement who are left behind.

Associated amendments

Sections 73 to 75 of the MSA and the Repatriation regulations are dis-applied in respect of fishermen to whom this instrument applies.

Part 5 Crew accommodation and Food

Introduces provisions to implement Articles 25 to 28 of ILO 188; it provides that–

- New ships and ships which are substantially altered must comply with minimum standards of crew accommodation and recreational facilities, set out in the instrument and in Merchant Shipping Notices (MSN) 1871(F), MSN 1872(F) and MSN 1873(F).
- Existing ships, or ships which were substantially altered before the instrument comes into force, must comply with the relevant standards at the time they were built or substantially altered.
- Allows for exemptions and substantial equivalents to be agreed in certain circumstances.
- Places a duty on a fishing vessel owner and the skipper to ensure that adequate food and drinking water in respect of quality, quantity and nutritional value is provided free of charge to fishermen while on board, and in particular –
    - takes into consideration any religious requirements or cultural practices;
    - does not contain anything not fit for consumption;
    - catering facilities are maintained in a hygienic condition.
- Regular inspections of crew accommodation and food supplies are carried out and recorded.

Existing legislation

- The Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1979 (SI 1979/2220 – "the 1979 regulations")
- The Fishing Vessels (Codes of Practice) Regulations 2017 S.I. 2017/943 and MSN 1871(F), MSN 1872(F) and MSN 1873(F).

- The Merchant Shipping (Provisions and Water) Regulations 1989 (SI 1989/102 as amended – "the 1989 regulations")

Associated amendments
The requirements of the 1979 regulations will continue to apply to ships built or substantially altered before 1999.

In addition, any crew accommodation standards in MSN 1871(F), MSN 1872(F) and MSN 1873(F) will continue to apply for existing vessels but are being updated in respect of new vessels to fully reflect the crew accommodation requirements of ILO 188.

- The 1989 regulations are dis-applied in respect of ships to which this instrument applies.

Part 6 Medical care
Introduces provisions implementing Articles 29 and 39 of ILO 188 which require that–

- any fisherman who suffers sickness or injury during the term of the fisherman's work agreement.is entitled to –
    - medical treatment on board the vessel and ashore;
    - be taken ashore in a timely manner;
- any cost of such medical treatment shall be the responsibility of the fishing vessel owner.

Existing legislation

- Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995 (SI 1995/1802) as amended.
- Section 45 of the MSA.

Associated amendments

- Section 45 of the MSA is dis-applied in respect of ships to which this instrument applies.

Protection in the case of work-related sickness, injury or death
Introduces provisions implementing Article 38 to require that there is financial security for fishermen in the event of work-related sickness injury or death.

Existing legislation

- Section 38(1) of the MSA relating to compensation of seamen employed under a crew agreement for loss and unemployment in the case of the wreck or loss of a ship.

Associated amendments

- Section 38(1) of the MSA is dis-applied in respect of ships to which this instrument applies.

Annex B

SCRUTINY HISTORY

1. The Communication from the European Commission - Reassessing the regulatory social framework for more and better seafaring jobs in the EU was the subject of EM 14000/07. The House of Commons European Scrutiny Committee considered the EM on 12th December 2007. The Committee recommended that the document was politically important and cleared it (Report 6, Session 2007-2008, 29005). The House of Lords Select Committee on the European Union cleared the EM at the 1303rd sift on 20th November 2007.

2. The proposal that resulted in Council Decision 2010/321/EU authorising Member States to ratify, in the interests of the European Community, the Work in Fishing Convention, 2007, of the International Labour Organisation (Convention 188) was the subject of EM 10176/08. The House of Commons European Scrutiny Committee considered the EM on 16th July 2008. The Committee recommended that the document was legally and politically important and did not clear it (Report 30, Session 2007-08, 29724). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee G on 8th July 2008 (1329th sift). The Chairman wrote to the Minister on 17th July 2008 holding the document under scrutiny pending further information.

3. Ministerial letters were sent to the Committees on 14th May 2009. The House of Commons European Scrutiny Committee considered the letter on 10th June 2009. The Committee recommended that the document was legally and politically important and did not clear it (Report 21, Session 2008-09). The House of Lords Select Committee on the European Union cleared the document by letter to the Minister on 21th May 2009. Further Ministerial letters were sent to the Committees on 16 November 2009. The House of Commons European Scrutiny Committee considered the letter on 19th November 2009 and cleared the document from scrutiny (Report 1, Session 2009-10).

4. The proposal that resulted in Directive 2009/13/EC was the subject of EM 11588/08. The House of Commons European Scrutiny Committee considered the EM on 10th September 2008. The Committee recommended that the document was not legally or politically important and cleared it (Report 32, Session 2007-2008, 29822). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee G at the 1332nd sift on 29th August 2008. The Chairman wrote to the Minister on 16th October 2008, clearing the document from scrutiny but requesting further information. A Ministerial letter was sent to the Chairman on 24th February 2009.

5. The proposal that resulted in Council Decision 2015/799/EU was the subject of EM 13350/13. The House of Commons European Scrutiny Committee considered the EM on 23th October 2013. The Committee recommended that the document was of legal and political importance and did not clear it pending further information (20th Report, Session 2013/2014, 35295). The House of Lords Select Committee on the European Union referred

the EM to Sub-Committee B at the 1518th sift on 8th October 2013. The Chairman wrote to the Minister on 23th October 2013 requesting further information and maintaining the scrutiny reserve.

6. Ministerial letters were sent to both Committees on 20th August 2014. The House of Commons Select Committee on the European Union considered the letter on 10th September 2014. The Committee maintained its recommendation that the document was of legal and political importance, and gave a conditional scrutiny waiver (12th Report, Session 2014-2015). The House of Lords Committee Chairman wrote to the Minister on 11 September 2014 clearing the document from scrutiny. Further Ministerial letters were sent on 20th November 2014. The House of Commons European Scrutiny Committee considered the letter on 26 November 2014, and cleared the document from scrutiny (Report 22, Session 2014-2015. The House of Lords Committee Chairman wrote to the Minister on 9th December 2014 thanking the Minister for his letter.

7. The proposal that resulted in Directive 2017/159/EU was the subject of Explanatory Memorandum 8535/16. The House of Commons European Scrutiny Committee considered the EM on 25th May 2016. The Committee recommended that the document was of legal and political importance and did not clear it pending further information (3rd Report, Session 2016/2017, 37731). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B at the 1621st sift on 25th May 2016.

8. Ministerial letters were sent to both Committees on 26th August 2016. The House of Commons European Scrutiny Committee considered the letter on 7th September 2016. The Committee maintained its recommendation that the document was of legal and political importance and cleared it (8th Report, Session 2016/2017). The Chairman of the House of Lords Select Committee on the European Union wrote to the Minister on 15th September 2017 clearing the document from scrutiny.

9. The European Union (Definition of Treaties) (Work in Fishing Convention) Order 2018 (S.I. 2018/520) and supporting Explanatory Memorandum were laid in Parliament on 22th February 2018. They were agreed by the Grand Committee of the House of Lords on 27th March (Hansard Volume 790) and by the Fifth Delegated Legislation Committee in the House of Commons on 28th March and the Order was made at the Court at Windsor Castle in the presence of Her Majesty in Council on 24th April 2018.