



Maritime & Coastguard Agency

Dear Consultee,

STATUTORY CONSULTATION - THE UK TRANSPOSITION AND IMPLEMENTATION OF THE ILO WORK IN FISHING CONVENTION, 2007 (C188)

This is a public consultation on the proposed new regulations to implement the International Labour Convention (ILO) Work in Fishing Convention¹ (ILO 188) into UK Law. ILO 188 introduces international minimum standards regulating living and working conditions on board fishing vessels and will affect all commercial fishermen. Our intention is to improve the living and working conditions for fishermen working onboard UK fishing vessels through the implementation of ILO 188.

ILO 188 applies to all fishermen and all commercial fishing vessels although there are some areas of the Convention where different requirements apply to fishing vessels of over 24m or that go out on voyages lasting 3 days or more; and to fishermen who work on larger vessels. We welcome comments on all parts of the consultation package.

The underlying principles for MCA's implementation of ILO 188 are:

- As far as practicable, equal treatment between different maritime sectors and between ship-based and shore-based personnel under general UK law;
- Effective protection for all fishermen, regardless of employment status;
- Fulfilling the UK's international obligations as a high quality flag state.

Background

ILO 188 was adopted by the ILO on 14 June 2007 and comes into force internationally on 16 November 2017. ILO 188 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. ILO 188 is expected to come into force internationally on 16 November 2017

The UK already has legislation in place covering many aspects of work onboard fishing vessels, but much of this needs to be amended or updated in order to comply fully with

¹http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188

ILO 188 standards. The package makes the minimum legislative changes necessary to implement the Convention effectively.

One of the main features of ILO 188 is that it regulates non-employed (share) fishermen as well as employed ones. The MCA has been seeking to extend health and safety provisions to share fishermen for some time, in line with Marine Accident Investigation Branch (MAIB) recommendations – this provides a suitable vehicle.

ILO 188 also includes a new requirement to have a medical examination and to be medically fit to work on board a fishing vessel. There is no existing medical fitness requirement for fishermen working in the UK.

Tripartite Working Group

We formed a tripartite working group in 2014 in to advise the MCA on implementation of ILO 188 in the UK, in accordance with ILO practice. The working group is made up of representatives of government and Social Partners (industry and fishermen). Individual fishermen are represented on the Group by Nautilus International the seafaring officers union and the Fishermen's Mission. Industry is represented by the fishing federations (National Federation of Fishermen's Organisations (NFFO), Northern Ireland Fish Producers' Organisation Ltd (NIFPO), Scottish Fishermen's Federation (SFF), Welsh Fishermen's Association (WFA), and the government by representatives from the MCA and Department for Transport. The group has met 13 times and discussed all aspects of the Convention.

Costs and Benefits

The costs and benefits of the changes are identified in the Impact Assessment which forms part of this Consultation.

Offences and Penalties

We are implementing a new international convention and as such need to include offences and penalties to enable enforcement of the regulations. There are 27 penalties included in the proposed statutory instruments. The current draft regulations follow the pattern of criminal and civil sanctions in regulations implementing equivalent provisions of the MLC.

Government policy is to reduce the use of criminal sanctions where civil sanctions would be equally effective and to avoid the creation of unnecessary new criminal offences. Civil sanctions that are available to the MCA to use include inspection and follow up, prohibition notice, improvement notice, detention, notifications of concern, simple caution. In addition to these the Regulatory Enforcement and Sanctions (RES) Act 2008 includes fixed penalty notices and discretionary requirements.

Examples of the sort of requirements which might be considered less directly relevant to safety and living and working conditions on board are listed below with the current level of penalties.

The Merchant Shipping (Work in Fishing Convention) Regulations 2017(Reg 13.3) Account of payments, Punishable on summary conviction of a fine at level 2 on the standards scale.

The Merchant Shipping (Work in Fishing Convention) Regulations 2017 (Reg 21 (5))
Inspection of crew accommodation by the Skipper Punishable on summary Conviction
by a fine at level 3 on the standard scale.

The Merchant Shipping (Work in Fishing Convention) Regulations 2017 (Reg 21 (7))
Skipper recording accommodation inspection details in the official logbook Punishable
on summary conviction by a fine at level 2 on the standards scale

The Merchant Shipping (Work in Fishing Convention) Regulations 2017 (Reg 25 (4))
Recording food and catering inspections in the official log book (Punishable on
summary Conviction by a fine at level 3 on the standard scale.

The Merchant Shipping (Work in Fishing Convention) (Medical Certification)
Regulations 2017(Reg 10.3) Failure to surrender a medical fitness certificate to a GP
on request (Fishermen Level 2 fine on the standard scale)

Questions

Do you consider the criminal penalties as they are drafted are proportionate?

*Do you wish to make suggestions for alternative civil sanctions (from the list above)
that could be used instead?*

We will consider all comments and suggestions before finalising proposed regulations
post consultation.

Consultation Package

This consultation package details the proposal to implement these changes into UK
Law through four new statutory instruments. The consultation package is available on-
line (www.gov.uk > Departments and Policy > Consultations) and consists of:

1. **Explanatory Table** showing how ILO 188 might affect you and what you need
to know to comply with the regulations
2. **Transposition Table** explaining where the provisions of the Convention are
implemented in the statutory instruments

Draft Statutory instruments

3. The Merchant Shipping (Work in Fishing Convention) Regulations 2017
4. The Merchant Shipping (work in Fishing Convention) (Medical Certification)
Regulations 2017
5. The Merchant Shipping (Work in Fishing Convention) (Consequential
Provisions) Regulations 2017
6. The Merchant Shipping (Work in Fishing Convention)(Survey and Certification)
Regulations 2017

Impact Assessment (IA)

7. a) No DfT00332 ILO Work in Fishing Convention (C188)
b) Summary of Questions from IA DfT00332

Draft Merchant Shipping Notices (MSN)

8. Medical Examination and certification for fishermen: Application of the Merchant Shipping (Work in Fishing) (Medical Certification) Regulation 20yy
9. a) Medical Examination System: Appointment of approved Doctors and Medical and Eyesight standards.
b) ANNEX A Medical and Eyesight Standards for Seafarers.
10. Application of the Fishing Vessels (Working Time: Sea fishermen) Regulations 2004 as amended.

Draft Marine Guidance Notices (MGN)

11. Health and safety: responsibilities of fishing vessel owners, managers, skippers and fishermen.
12. Compulsory provision and wearing of personal flotation devices on fishing vessels
13. Proposed changes to small fishing vessel code resulting from ILO 188

Proposed Revisions to the Fishing Vessel Codes.

14. a) Proposed Revision to chapter 6 of the 15-24m Code, implementing ILO 188 (Health and Safety)
b) Proposed revision of chapter 10 of the 15-24m Code implementing ILO 188 Chapter 10 (Crew Accommodation)
15. a) Proposed revision to chapter 6 of 24m and over code implementing ILO 188 Chapter 6 protection of the crew.
b) Proposed revision to Chapter 10 of 24m and over code implementing ILO 188 Chapter 10 (Crew Accommodation)

Fisherman's Work Agreement.

16. a) Model Format for a Fisherman's Work Agreement- Employed Fishermen
b) Model Format for a Fisherman's Work Agreement – non-employed fishermen, e.g. share fishermen.

Further guidance on other aspects of the Convention will be developed in consultation with industry representatives during the year.

You are invited to comment on any aspect of the proposals but in particular:

- Do you think the package adequately implements the ILO 188 obligations?
- Do you have any comments on the draft legislation or guidance? Is the guidance helpful? Are there are other areas where guidance is needed?

The impact assessment includes some questions for consideration.

This Consultation will run until Friday 12 January 2018. Comments should be sent to:

Louise Unsworth

- a) by e-mail, to workinfishingconvention@mcga.gov.uk ; or
- b) by post, to:

Seafarer Safety & Health Branch,
Maritime and Coastguard Agency,
Bay 2/17, Spring Place,
105 Commercial Road,
Southampton SO15 1EG

Next Steps

The draft statutory instruments, and impact assessment will be reviewed in the light of any comments received. The intention is for the UK to be ready to implement and ratify the Convention as soon as possible after 16 November 2017 when ILO 188 comes into force internationally. This is currently expected to be in May 2018

Comments on this consultation, together with the MCA responses, will be made available on-line (www.gov.uk > Departments and Policy > Consultations) within three months of the closing date of this Consultation.

Freedom of Information Act

Please be aware Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances; this will mean that your personal data will not be disclosed to third parties.

Consultation Criteria

This consultation will be conducted in accordance with the Cabinet Office Consultation Principles Guidance, which is available from: www.gov.uk/government/publications/consultation-principles-guidance

Conduct of the Consultation

If you have any comments regarding the conduct of this consultation please contact the Consultation Co-ordinator at consultation.coordinator@mcga.gov.uk. We are continually trying to improve the way in which we conduct consultations and appreciate your views, so we would also be grateful if you could complete and return the attached feedback form (at Annex 1). These should be submitted to the Consultation Co-ordinator and are not affected by the deadline for this consultation.

Yours sincerely

Louise Unsworth

Policy Adviser

Seafarer Safety and Health Branch

ANNEX 1

MCA CONSULTATION FEEDBACK FORM

1. Please indicate on which Consultation you are providing feedback:

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2a. Please indicate whether you are responding on behalf of:

Please cross one box

Yourself as an Individual		A Trade Association		A Company		A Government Organisation	
A Trade Union		Other (please specify)					

2b. Please indicate whether you accessed this consultation package through:

Please cross one box

Post		Email		Website	
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3. Please rate the quality of this consultation regarding accuracy, good English and spelling:

Please cross one box

Very good	Good	Average	Poor	Very Poor

4. Please rate the format of the consultation presentation (layout, Annexes etc):

Please cross one box

Very good	Good	Average	Poor	Very Poor

5. Please rate the consultation in terms of how clear and concise you felt it was:

Please cross one box

Very good	Good	Average	Poor	Very Poor

6. Did you feel that the consultation was conducted over a sufficient period of time?

YES

NO

7. Were any representative groups, organisations or companies not consulted who you felt should have been?

YES

NO

If YES,
who?

8. Please let us have any suggestions for improvement or other comments you wish to make about this consultation below:

Thank you for your time. Please return this form to:

Consultation Co-ordinator,

Maritime and Coastguard Agency,
Spring Place, Bay 3/26,
105 Commercial Road
Southampton
SO15 1EG

Or e-mail it to: consultation.coordinator@mcga.gov.uk

If you are happy to supply your name in case we need to contact you to discuss your views further, please enter it below (this is optional and your feedback will still be taken into account if you wish to remain anonymous):

Name:

Tel No:

Please note that the deadline for responses to the Consultation itself does not apply to the return of this form.