
STATUTORY INSTRUMENTS

2017 No.

MERCHANT SHIPPING

The Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2017

<i>Made</i>	- - - -	*** 2017
<i>Laid before Parliament</i>		*** 2017
<i>Coming into force</i>	- -	*** 2017

The Secretary of State is a Minister designated for the purpose of section 2(2) of the European Communities Act 1972(a), in relation to measures relating to the safety of ships and the health and safety of persons on them and measures relating to marine transport.

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

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) (Medical Certification) Regulations 2017.

(2) These Regulations come into force on [date] 2017.

Interpretation

2.—(1) In these Regulations

“the Act” means the Merchant Shipping Act 1995;

“approval” means an approval given by the Secretary of State in writing and which specifies the date on which it takes effect, its duration and the conditions (if any) on which it is given, and “approved” has a corresponding meaning;

“Convention State” means a state other than the United Kingdom which is a Party to the Work in Fishing Convention;

(a) 1972 c.68.
(b) 1995 c.21.

“Convention” or “Work in Fishing Convention” means the convention adopted a Geneva on 14 June 2007 by the International Labour Organisation;

“fishing vessel” means a vessel for the time being used for or in connection with fishing for sea fish other than a vessel used for fishing otherwise than for profit; and for the purposes of this definition “sea fish” includes shellfish, salmon and migratory trout (as defined by section 44 of the Fisheries Act 1981(a));

“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 Convention, regardless of whether any other organisation or person fulfils certain of the duties or responsibilities on behalf of the fishing vessel owner

“length” means registered length as defined by the Fishing Vessels (Safety of 15-24 Metre Vessels) Regulations 2002(b);

“medical fitness certificate” means a certificate attesting to a person’s fitness to perform the duties which that person will carry out [at sea] and which is issued under regulation 6 or 11 (whether or not subject to restriction or conditions);

“medical practitioner” means a medical practitioner approved by the Secretary of State to issue medical fitness certificates who is—

- (a) in the case of a practitioner ordinarily resident in the United Kingdom a fully registered person who,
 - (i) holds a licence to practise; or
 - (ii) meets the criteria specified in Merchant Shipping Notice 1839(M), being criteria which the Secretary of State considers appropriate having regard to the evidence of continuing professional development which such a practitioner must demonstrate in order to obtain a licence to practise; or
- (b) in the case of a practitioner not ordinarily resident in the United Kingdom, a person who meets the criteria specified in Merchant Shipping Notice 1839(M), being criteria which the Secretary of State considers appropriate having regard to the qualifications and other credentials which must be demonstrated by a person falling within paragraph (a);

“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;

“proper officer” has the meaning given in section 313 of the Act ;

“relevant inspector” means any of the persons mentioned in section 258(1) of the Act;

“skipper” means the person having command of the vessel;

“United Kingdom fishing vessel means” means a vessel which is

- (a) a ship within the meaning of Section 85(2) of the Act; or
- (b) a hovercraft registered under the Hovercraft Act 1968(c);

“Work in Fishing Convention Certificate” means ...;

(a) 1981
(b) S.I.2002/2201.
(c) 1968

(2) In the application of these Regulations to a hovercraft a reference to the skipper includes a reference to the captain of the hovercraft.

Meaning of fisherman

3. In these Regulations “fisherman” every person including the skipper employed or engaged in any capacity on board any fishing vessel, but does not include a person solely engaged as a pilot for the vessel.

Application

4.—(1) Subject to paragraph (2)—

- (a) these Regulations apply to United Kingdom fishing vessels wherever they may be; and
- (b) regulation 15 applies to fishing vessels which are not united Kingdom fishing vessels while they are in a United Kingdom port or United Kingdom waters.

(2) These Regulations do not apply to (or in the case of regulation 5 do not apply as respects) any person whose work is not part of the routine business of the vessel and whose principal place of work is ashore

Fisherman to have a valid medical fitness certificate

5.—(1) Subject to paragraphs (3) and (4), no person may work as a fisherman on a fishing vessel to which these Regulations apply unless that person has been issued with a medical fitness certificate which is still valid and not suspended.

(2) A fisherman who has been issued with a medical fitness certificate must carry that certificate on board at all times when on board a fishing vessel to which these Regulations apply.

(3) A fisherman whose medical fitness certificate has expired during the course of a voyage may continue to work until—

- (a) The first port of call at which it is possible for the fisherman to make an application for a medical fitness certificate and be examined by a medical practitioner; or
- (b) The expiry of three months starting on the date of the expiry of the certificate, whichever is the sooner.

(4) In urgent cases, with the Secretary of States approval, if a person —

- (a) does not hold a valid medical fitness certificate, but
- (b) has held a medical fitness certificate for a period of not less than 24 months (or in the case of a person under 18 years of age at the date of the issue of the certificate, 12 months) and that certificate has expired no earlier than one month before the date on which that person [joined] a fishing vessel to which these regulations apply,

that person may work as a fisherman on that ship until the first port of call at which it is possible for an application for a medical certificate as respects that person to be made and for that person to be examined by a medical practitioner, but in any case not for a period exceeding three months.

(5) No person may work as a fisherman on a vessel to which these Regulations apply [in a capacity of sea service], or in a geographical area precluded by any restriction in that person’s medical fitness certificate.

(6) No person may work as a fisherman on a fishing vessel to which these Regulations apply in breach of a condition of that person’s medical fitness certificate.

Application for and issue of a medical fitness certificates

6.—(1) If

- (a) an application for a medical certificate is made to a medical practitioner;
- (b) any fee prescribed in Regulations made under section 302 of the Act has been paid;

- (c) the medical practitioner has examined the person to whom the application relates; and
- (d) having had regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice 1839(M), the medical practitioner considers that the person to whom the application relates is fit to perform the duties which that person will carry out [at sea],

the medical practitioner must issue that person with a medical fitness certificate in the form specified in Merchant Shipping Notice 1839(M).

- (2) A medical fitness certificate may, as the medical practitioner considers appropriate
 - (a) be restricted to such capacity of sea service or geographical areas as that practitioner records on the certificate;
 - (b) be subject to such conditions as that practitioner records in accordance with the requirements of Merchant Shipping Notice 1839(M).

(3) If a person is employed [or engaged] as a fisherman, or has been offered employment [or an engagement] as a fisherman, at the time an application is made for a medical fitness certificate under paragraph (1) the person's employer, [or the person offering the engagement] must ensure that the application is made and processed at no cost to the person to whom it relates.

Period of validity of medical fitness certificate

7. A medical fitness certificate is valid only from the date of the medical examination, or date of consideration by a medical referee, as appropriate and for the following maximum periods

- (a) In respect of a person under the age of 18 years of age, one year,
 - (b) In respect of a person over 18 years of age, two years
- or, in either case, such shorter period as is specified on the certificate.

Fitness certificates: non-United Kingdom certificates

8.—(1) A certificate of fitness to work as a fisherman which has been issued to a person by an authority empowered to issue such certificates by the laws of any country or territory outside the United Kingdom specified by the Secretary of State in Merchant Shipping Notice [1815(M)] is for the purposes of regulations 6, 7 and [12], and for the purposes of regulation 10 other than regulation 10(1)(d), equivalent to a medical fitness certificate, but only until the expiry date specified on the certificate.

(2) A certificate to which paragraph (1) applies is not equivalent to a medical fitness certificate unless it is issued in English, or in English and some other language.

Reporting of medical conditions

9.—(1) A person who is a fisherman who holds a medical fitness certificate and who—

- (a) is, or is likely to be, absent from work for a period of thirty days or more due to a medical condition, or
- (b) develops a significant medical condition,

must report that medical condition as soon as practicable.

(2) A report made in accordance with paragraph (1) must be made—

- (a) in the case of a person who has been issued with a certificate of medical fitness, to the authority which issued that certificate,
- (b) in any other case, to a medical practitioner.

(3) If a fisherman must make the report required by paragraph (1), the validity of that fisherman's medical fitness certificate or certificate of medical fitness is suspended from the date on which it first becomes practicable for that fisherman to make the report until the date (if any) on which a medical practitioner or the authority (as appropriate) has assessed, if necessary by

conducting a medical examination of the fisherman, that the fisherman is fit having regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice 1839(M).

(4) In this regulation “medical condition” includes both injury and illness, and a significant medical condition is one which adversely affects or is reasonably likely adversely to affect the fisherman’s ability to carry out their duties, including the fisherman’s ability to undertake emergency duties.

Suspension and cancellation of medical fitness certificate

10.—(1) This regulation applies if a medical practitioner has reasonable grounds for believing that

- (a) there has been a significant change in the medical fitness of a person during the period of validity of that person’s medical fitness certificate
- (b) a person is not complying with the terms of a condition to which that person’s medical fitness certificate is subject,
- (c) when a medical fitness certificate was issued to a person, had a medical practitioner been in possession of full details of that person’s condition, the medical practitioner could not reasonably have considered that the person was fit, having regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice 1839(M), or
- (d) a medical fitness certificate was issued to a person otherwise than in accordance with these regulations.

(2) If this regulation applies, the medical practitioner may

- (a) Suspend the validity of that medical fitness certificate until the person to whom the certificate was issued has undergone further medical examination,
- (b) Suspend the validity of the medical fitness certificate for such period as the medical practitioner considers the person to whom the certificate was issued will remain unfit to perform the duties that person will carry out at sea, or
- (c) Cancel the certificate if the medical practitioner considers that the person to whom the certificate was issued is likely to remain permanently unfit to perform the duties that person will carry out at sea.

and must notify the person concerned accordingly.

(3) The medical practitioner may require that a person surrenders a medical fitness certificate which has been issued to that person and which has been suspended or cancelled pursuant to paragraph (2), as that practitioner directs.

(4) In this regulation, a significant change in the medical fitness of a person is a condition which affects or would be reasonably likely to affect that person’s ability to carry out their duties, including their ability to undertake emergency duties.

Review of medical practitioner’s decision

11.—(1) A person who is aggrieved by—

- (a) the refusal of a medical practitioner to issue a medical fitness certificate in accordance with regulation 6,
- (b) any restriction imposed on such a certificate, or
- (c) the suspension for a period of more than three months or cancellation of such a certificate by a medical practitioner pursuant to regulation 10

may apply to the Secretary of State for the matter to be reviewed by a single medical referee appointed by the Secretary of State.

(2) The Secretary of State must have the matter reviewed if the application

- (a) was lodged with the Secretary of State within one month of the date on which the applicant was given notice of refusal, imposition of a restriction, suspension or cancellation,
- (b) includes a consent for the medical practitioner responsible for the refusal, imposition of a restriction, suspension or cancellation to provide a report to the medical referee, and
- (c) specifies the name and address of that practitioner.

(3) If an application is made after the time prescribed in paragraph (2)(a), the Secretary of State, upon consideration of any reasons for the lateness of the application, may decide that the matter is nonetheless to be reviewed.

(4) If requested by the applicant, the medical practitioner must send to the applicant a copy of the report of the medical practitioner and any other evidence provided by the medical practitioner to the medical referee.

(5) In a case within paragraph (1)(a) or (c), if in the light of the medical evidence, and having regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice 1839(M), the medical referee considers that the applicant is fit to perform the duties that person will carry out at sea, the medical referee must issue to the applicant a medical fitness certificate in the form specified in Merchant Shipping Notice 1839(M), or terminate the suspension of the applicant's medical fitness certificate, as the case may be.

(6) In a case within paragraph (1)(a), (b) or (c), and having regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice 1839(M), if in the light of the medical evidence the medical referee considers that restrictions as to capacity of sea service or geographical areas should be imposed on a certificate issued to the applicant, or that any restriction so imposed by a medical practitioner should be deleted or varied, the medical referee must issue to the applicant a medical fitness certificate in the form specified in Merchant Shipping Notice 1839(M) which records any restrictions as so imposed or varied, and the former certificate shall cease to have effect.

(7) If in the light of the medical evidence, and having regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice 1839(M), the medical referee considers that the applicant is unfit to perform the duties that person will carry out at sea, the medical referee must notify the applicant of the period during which the medical referee considers that the applicant will remain unfit to go to sea.

(8) If the applicant fails to attend an appointment with the medical referee without giving adequate notice, then the Secretary of State may recover from the applicant as a civil debt the cost incurred by the Secretary of State by that appointment.

Medical examinations and reviews: records and returns

12. A medical practitioner or medical referee who conducts a medical examination or a review in accordance with these Regulations must—

- (a) make and retain for ten years a record of each such examination or review which that medical practitioner or medical referee carries out pursuant to these Regulations, and
- (b) send to the Secretary of State on the Secretary of State's written request a return of all such examinations or reviews.

(2) In keeping the record and making any return required under paragraph (1), the medical practitioner or medical referee must use the relevant form or forms specified by the Secretary of State in Merchant Shipping Notice 1839(M).

Replacement certificates

13.—(1) Unless a medical fitness certificate has been surrendered under regulation 10(3), if a person who was issued with a medical fitness certificate which is still valid is no longer in possession of that certificate, then upon—

- (a) application being made by that person or that person's employer to the medical practitioner or referee who issued the certificate, and
- (b) payment of the medical practitioner's or referee's administrative costs of issuing the replacement

the medical practitioner or referee who issued that certificate may issue to that person a replacement medical fitness certificate.

(2) A replacement medical fitness certificate issued under this regulation expires on the expiration date of the original medical fitness certificate which it replaces.

Exemptions

14.—(1) The Secretary of State may, grant exemptions from the requirements of regulation 5.

(2) Before granting an exemption the Secretary of State must

- (a) consult such persons as representing persons engaged in the fishing industry as appear appropriate]; and
- (b) take into account the safety and health of fishermen, the size of the vessel, the availability of medical assistance and evacuation, the duration of the voyage, the area of operation, and type of fishing operation

(3) The power to grant exemptions in paragraph (1) does not apply in respect of fishermen employed or engaged for work –

- (a) on fishing vessels of 24 metres or more in length; or
- (b) on fishing vessels which normally remain at sea for more than three days.

(4) An exemption granted under this regulation must

- (a) be in writing;
- (b) specify the date on which it takes effect; and
- (c) specify the terms (if any) on which it is given.

(5) In urgent cases, the Secretary of State may permit a fisherman to work for a period of a limited and specified duration until a medical certificate can be obtained, provided that the fisher is in possession of an expired medical certificate of a recent date.

Offences and penalties

15.—(1) Any person who contravenes regulation 4 is guilty of an offence and is liable on summary conviction

- (a) in England and Wales to a fine, or
- (b) in Scotland and Northern Ireland to a fine of an amount not exceeding level 5 on the standard scale.

(2) A fishing vessel owner who fails to comply with regulation 5(3) is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 2 on the standard scale.

(3) A fisherman who fails without reasonable excuse to comply with a requirement made under regulation 10(3) is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 2 on the standard scale.

(4) Any person who

- (a) obstructs a relevant inspector in the exercise of his powers under regulation 16, or
- (b) fails without reasonable excuse to comply with a requirement made under regulation 16; is guilty of an offence and is liable on summary conviction
 - (i) in England and Wales to a fine; or
 - (ii) in Scotland and Northern Ireland to a fine not exceeding level 5 on the standard scale.

(5) In any proceedings for an offence under this regulation, it is a defence for the person charged to prove that all reasonable steps had been taken by that person to ensure compliance with the requirements of the provision in question.

Inspection of non-United Kingdom fishing vessels

16.—(1) When a fishing vessel other than a United Kingdom fishing vessel is in a United Kingdom port or United Kingdom waters, a relevant inspector may inspect that ship, and may require any fisherman on board that ship to produce any document, in order to ascertain whether the requirements of Article 10 of the Work in Fishing are met in relation to the fishermen working on that vessel.

(2) Where a relevant inspector is satisfied that any fisherman on a vessel which is not a United Kingdom ship is unable to prove that that fisherman is working in accordance with the medical certification requirements of Article 10 Work in Fishing Convention, the relevant inspector may send—

- (a) a report to the government of the State whose flag the ship is entitled to fly, and
- (b) a copy of the report to the Director General of the International Labour Office.

(3) A vessel shall not in the exercise of the power under this regulation be delayed unreasonably.

Review

17.—(1) (1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in 3 to 15 of these regulations to, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before [enter date].

(3) Subsequent reports must be published at intervals not exceeding [5] years.

(4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015 requires that a review carried out under this regulation must, so far as is reasonable, have regard to how the obligations under the Work in Fishing Convention are implemented in other countries which are subject to the obligations.

(5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act)

Signatory text

Address

Name
Parliamentary Under Secretary of State

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Article 10 of the Work in Fishing Convention 2007 (Cmd.###)

They apply to fishermen on United Kingdom fishing vessels wherever they may be. Regulation 15 (Inspection) also applies to fishing vessels other than United Kingdom fishing vessels, while they are in a United Kingdom port or United Kingdom waters.

Regulation 5 provides that fishermen working on seagoing United Kingdom ships must possess medical fitness certificates and carry them on board a ship on which they are working, and preclude employers from employing seafarers who do not have such a certificate. In limited circumstances and for limited periods of time, a fisherman may work on a ship without a medical fitness certificate.

Regulations 6 to 8 make provision as to the issuing and validity of medical fitness certificates and for equivalent certificates to be accepted as medical fitness certificates in certain circumstances.

Regulation 9 provides that fishermen must report medical conditions to the medical practitioner or other authority who issued their medical fitness certificate. Where this obligation applies, a medical certificate will be suspended until such time as the medical practitioner or authority has assessed the fisherman's condition. Regulation 10 provides that, where there has been a significant change in a seafarer's medical fitness, or where the medical practitioner who issued a medical fitness certificate was not in possession of full details about the seafarer and, if those details were appreciated the certificate would not have been issued, or where such a certificate has not been issued in compliance with these Regulations, a medical practitioner may suspend or cancel the certificate.

Regulation 11 provides that the Secretary of State must arrange for the review by a medical referee of certain decisions by a medical practitioner. An application for review must be made within one month of the date of notification of the decision challenged, unless the Secretary of State agrees that a longer period is appropriate.

Regulation 12 provides that medical practitioners and medical referees must keep records, and must send to the Secretary of State, on request, a return of medical examinations which have been carried out.

Regulation 13 provides that, on application and payment of the medical practitioner's administrative costs, a replacement medical fitness certificate may be issued where the person to which that certificate was issued is no longer in possession of it.

Regulation 14 provides for offences and penalties for persons, including fishermen and fishing vessel owners, who fail to comply with the Regulations.

Merchant Shipping Notices are published by the Maritime and Coastguard Agency. Copies may be obtained from M-Notices Subscriptions, PO Box 362, Europa Park, Grays Essex RM17 9AY, tel 01375 484548, fax 01375 484556, email mnotices@ecgroup.co.uk. They may also be accessed via the MCA's website www.dft.gov.uk/mca, which also has details of any amendments or replacements.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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