

UK IMPLEMENTATION OF THE INTERNATIONAL LABOUR ORGANISATION'S WORK IN FISHING CONVENTION (ILO 188)

Summary of responses to public consultation – Initial feedback

Introduction:

This document summarises the issues raised by those responding to the public consultation exercise on UK implementation of ILO 188, which ran from 13 November 2017 to 12 January 2018.

The MCA notified more than fifty organisations and companies that the public consultation was underway. Many of the organisations represent many fishermen/fishing vessel owners and sent the information to their membership.

The MCA received twenty-five written responses, mostly from organisations and companies. In addition, we attended meetings organised by the National Federation of Fishing Organisations, Seafish and Cornish Fish Producers Organisation Ltd (CFPO).

Issues raised:

The issue which generated the most comments was the application of medical fitness standards to fishermen (see below). Other key concerns were

- use of exemptions especially for smaller vessels,
- the status of share fishermen,
- hours of rest,
- fishermen's work agreements,
- the need for "safety tonnage" allowances (relating to the increased minimum size for crew accommodation),
- issues relating to insurance.

There were also a number of responses which asked the MCA to consider greater use of the Convention's provisions for progressive implementation.

As MCA develops its proposals on each of these areas and on other points raised, taking public consultation comments into consideration, this document will be updated.

Medical fitness standards for fishermen

MCA's response on issues raised is as follows.

- Progressive implementation: The Convention permits progressive implementation of medical certificates other than for those working on vessels of 24m and over, or on vessels which
 - remain at sea for more than seven days; or
 - normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater; or
 - are subject to inspection by a port State (i.e. operating into ports outside the UK.)

MCA has drawn up proposals for a phased implementation of medical fitness standards, starting with the vessels covered in the list above, who will be required to obtain a medical certificate first; and then extending the requirement progressively over the next couple of years by size of vessel.

	VESSEL	OPERATING PATTERN	DATE MEDICAL CERTIFICATE REQUIRED	NOTES
1.	FV of any length	Subject to inspection in a foreign port	31 May 2019	ENG 1
2.	FV 24m in length or over	At sea for more than 7 days	31 May 2019	ENG 1
3	FV 24m in length or over to which 1. does not apply		30 November 2019	ENG 1
4	FV under 24m in length ²	At sea for more than 72 hours	30 November 2019	ENG 1
5	FV under 24m in length	Operating more than 200 miles from the coastline of the UK or beyond the Continental shelf	30 November 2019	ENG 1
6.	FV under 24m in length to which 1., 4. and 5. do not apply		30 November 2023	ENG 1/ML5 ^{1, 2}

- Concerns that fishermen will not meet statutory medical fitness standards and will be unable to work.

There is some flexibility built into the statutory medical fitness standards which will permit fishermen with medical conditions which pose no immediate

¹ Any holder of a CoC for a vessel of 16.5m or more requires an ENG 1.

risk to safety to continue to work, particularly if they work on vessels which remain relatively close to shore or are at sea for short periods at a time. This may involve a restriction by geographical area or role on their medical certificate.

In addition, the MCA, in consultation with the tripartite Working Group on the Work in Fishing Convention, and with MCA's approved doctors and medical referees (who consider appeal cases), is developing proposals for the application of "grandfather rights" for individuals who have been working with a medical condition which might otherwise preclude them continuing to work in their current vessel/role. See the **Text Box 1** below for a summary of the proposals.

It has also been agreed that where non-EU fishermen held a medical fitness certificate not currently accepted by the UK, they will be permitted to continue to work with that certificate until it expires, when they will be required to obtain a certificate accepted by the MCA as equivalent to the UK ENG1.

Grandfather rights

Grandfather rights will be considered where someone who can show that they have been working safely in the industry before the requirement for a medical certificate was introduced (referred to as "existing fisherman") has a medical condition which would normally mean they would be found temporarily or permanently unfit.

The purpose of applying grandfather rights is to try to ensure that, where they can do so without significant risk to their own or others' health and safety, fishermen are able to continue to carry out an occupation they have been engaged in safely prior to the introduction of the requirement for a medical fitness certificate.

Where grandfather rights are applied, the Approved Doctor (AD) will need to consider the safety of the fisherman, colleagues on the vessel, the safety of the vessel and the physical capability of the fisherman to undertake their role. However, in doing so, they will take into account evidence that the fisherman has been working satisfactorily while suffering from the medical condition.

Grandfather rights cannot be applied if a medical condition exists that would seriously conflict with maritime or navigational safety, or if the safety of others can be reasonably foreseen to be at risk. The individual may also be restricted to their current working area, role or type of operation, where they have demonstrated their ability to work with the condition.

Text Box 1

For more detail on medical examinations for fishermen, see separate documents:
"Provisional guidance Medical Certification"
"Provisional guidance Medical Certification Grandfather rights"

Use of Convention provisions for “progressive implementation”

The MCA will provide time between the making of the Regulations and the requirement to comply with some provisions.

See the document “Provisional Guidance on progressive implementation”

Status of share fishermen

Concerns were expressed that implementation of the Convention would undermine the status of self-employed share fishermen.

There is no intention to affect the self-employed status of share fishermen. The regulations governing fishermen’s work agreements (FWA) make a distinction between the contents required in a FWA for an employed fisherman, and the contents required in a FWA for a share fisherman – for example, only employed fishermen are entitled to paid annual leave.

Other provisions also make a distinction (for example, although all fishermen are covered by the requirements for minimum hours of rest, the requirements relating to maximum hours of work only apply to “workers” (i.e. employed fishermen)).