



INTERNATIONAL LABOUR ORGANIZATION WORK IN FISHING CONVENTION (No. 188): COMPLAINTS.

Notice to all fishing vessel owners, operators and managers; employers of fishermen; skippers, officers and fishermen on fishing vessels

This notice should be read with the Merchant Shipping (Work in Fishing Convention) Regulations 2018.

Summary

This note provides guidance to owners, operators and fishermen on the UK provisions on the MCA's handling of complaints made to the MCA relating to the Work in Fishing Convention 2007 (ILO 188)

Key points

- ILO 188 makes provision for fishermen or other interested parties to make a complaint alleging a breach of the requirements of the Convention
- Complaints may be raised by fishermen on UK fishing vessels, where MCA is the certifying authority, or by fishermen on non-UK fishing vessels when in UK ports.
- Any complaints will be investigated by the MCA and may lead to an inspection, which will be limited to the scope of the complaint.
- However, if there is evidence which indicates that the fishing vessel may not be compliant with ILO 188 the MCA may widen the scope of the inspection.
- Fishing vessel owners are encouraged to develop non-mandatory on-board complaints procedures to try to resolve complaints at the lowest possible level.

1. Background

1.1 ILO 188 allows for a fisherman or a professional body, an association, a trade union or any person with an interest in the safety of a particular fishing vessel, including an interest in safety or health hazards to fishermen, to make a complaint to the maritime authority. For full details see articles 26, 40 and 43 of ILO 188.



1.2 The Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018 (“the Survey & Certification Regulations”) implement in UK law the provisions relating to complaints. Regulation 8 deals with complaints relating to UK fishing vessels and regulation 13 ensures the same protection for fishermen on non-UK fishing vessels in UK waters.

1.3 Every country that ratifies ILO 188 is required to adopt robust procedures to receive and respond to complaints from, or on behalf of, fishermen on fishing vessels calling at ports in their territory alleging breaches of the requirements of ILO 188.

2. Complaints in UK ports

2.1 A complaint in a UK port should be made to the MCA. It may relate to a UK or foreign fishing vessel. Complaints may be made directly to an MCA surveyor, through an MCA Marine Office or by e-mail to workinfishing.convention@mcga.gov.uk

2.2 Where any complaint is received by the MCA regardless of the source, appropriate steps will be taken to safeguard the confidentiality of complaints made by or on behalf of fishermen.

3. Investigation of complaints

3.1 When a complaint is received, MCA will record the date and time that it was received, the details of the fishing vessel in question and the nature of the complaint.

3.2 Unless the complaint is manifestly unfounded, the MCA will then check to ensure that the complaint relates to the requirements of ILO 188 (complaints may relate to a breach of any requirement of ILO 188). If so, an initial investigation will be carried out by an MCA surveyor, which may be from their Marine Office.

3.3 Depending upon the circumstances, the surveyor may decide to carry out a more detailed inspection on board particularly if the living and working conditions alleged to be defective could constitute a clear hazard to the safety, health or security of fishermen.

3.4 Any inspection associated with a complaint will generally be limited to matters within the scope of the complaint. However, any information gained either from the complaint itself or during the ensuing inspection which may indicate that the fishing vessel does not comply with ILO 188 could lead to a more detailed inspection. The more detailed inspection will be to ascertain whether there are breaches of ILO requirements.

3.5 When the MCA decides after initial investigation that the complaint does not require more detailed inspection of the fishing vessel, the MCA will seek to promote a resolution of the complaint at ship-board level.

3.6 During the investigation the skipper, the fishing vessel owner, the fishermen and any other person involved in the complaint will be given a proper opportunity to express their views, whether in person or otherwise.

3.7 If necessary, the fishing vessel owner will be required to provide a corrective plan of action which is acceptable to the MCA.

4. Investigation of complaints – foreign fishing vessels

4.1 If a complaint is received from or on behalf of a fisherman on a non-UK fishing vessel in a UK port, MCA will advise the fishing vessel’s flag State who will be requested, within a prescribed deadline, to give advice and provide a corrective plan of action.



- 4.2 In the event that the relevant authority of the fishing vessel's flag State demonstrates that it will handle the matter and that it has effective procedures and has submitted an acceptable plan of action, the MCA may refrain from any further involvement in the complaint.
- 4.3 However, if the complaint is not resolved by the flag State, then the surveyor's inspection report must be transmitted to the Director General of the ILO, and the MCA may take the measures necessary to rectify any conditions on board which are clearly hazardous to safety or health. The MCA will report statistical information on complaints to the Work in Fishing Convention Working Group, a tripartite group which advises the MCA on implementation of ILO 188.

5 Provision for detention of a fishing vessel

- 5.1 If, after investigating a complaint and taking measures to rectify any conditions on board which are clearly hazardous to safety or health, the surveyor has clear grounds for believing that –
- (a) a fishing vessel in respect of which a complaint has been received is not in compliance with ILO 188; and
 - (b) (i) the conditions on board are clearly hazardous to the safety, health or security of fishermen, or
 - (ii) the non-compliance represents a serious breach or the latest in a series of repeated breaches of UK regulations implementing ILO 188 or the requirements of ILO 188,
- the surveyor may detain the fishing vessel in line with regulation 12 (UK fishing vessels) or regulation 15 (non-UK fishing vessels) of the Survey & Certification Regulations.

6 Non Mandatory On-Board Complaints Procedure

- 6.1 There is no requirement under the ILO 188 Convention for fishing vessel owners to have an on-board complaints procedure. The MCA considers that it is good practice for companies to develop an on-board complaints procedure in order to seek to resolve any complaint at the lowest level possible. The following guidance is based on ACAS guidance.
- 6.2 An on-board complaints procedure should;
- (i.) enable a fisherman to complain directly to the skipper and fishing vessel owner and appropriate external authorities;
 - (ii) include the right of a fisherman to be accompanied or represented when making a complaint;
 - (iii) ensure that a fisherman does not suffer any detriment for making a complaint.
- 6.3 An on-board complaints procedure could be set out in an applicable collective agreement, provided that the procedure does not contain any provisions that conflict with the guidance in this Marine Guidance Notice, or UK legislation safeguarding fishermen's rights in this respect.
- 6.4 When developing an on-board complaints procedure, fishing vessel owners should be guided by the section of the ACAS Code of Practice 1 entitled "Disciplinary and grievance procedures" covering grievances.



6.4 Regardless of whether there is an onboard complaints procedure, a fisherman retains the right to lodge a complaint directly with the MCA and must not suffer any detriment from making such a complaint.

6.6 If the fishing vessel has a small crew, it may be difficult for the fisherman to find someone on board who not directly involved in the matter about which they wish to raise a complaint. In such cases, the fisherman may wish to seek advice from an independent source.

More Information

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