



ILO WORK IN FISHING CONVENTION, 2007 Repatriation

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

This notice should be read in conjunction with Part 4 of the Merchant Shipping (Work in Fishing Convention) Regulations 2018

Summary

- This Note provides information on the circumstances in which fishing vessel owners are required to repatriate fishermen under the Merchant Shipping (Work in Fishing Convention) Regulations 2018 (“the Work in Fishing Convention Regulations”), and the provision that must be made, including the fishermen’s relief and maintenance whilst awaiting and during repatriation.
- The Work in Fishing Convention Regulations implement the provisions of the International Labour Organization Work in Fishing Convention, 2007 governing the repatriation of fishermen.
- For the vessels to which the Work in Fishing Convention Regulations apply, these provisions supersede those in the Merchant Shipping (Repatriation) Regulations 1979¹ which have been amended by the Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018.
- Ships and other vessels not subject to the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers, etc.) Regulations 2014² or the Work in Fishing Convention Regulations will remain subject to the provisions of the Merchant Shipping (Repatriation) Regulations 1979.

1. Introduction

1.1 The Merchant Shipping (Work in Fishing Convention) Regulations 2018 (“the Work in Fishing Convention Regulations”) implement Article 21 of the ILO Work in Fishing Convention, 2007 on the repatriation of fishermen.

¹ S.I. 1979/97 as amended by S.I. 2014/1614

² S.I. 2014/1613



1.2 The Work in Fishing Convention Regulations supersede the Merchant Shipping (Repatriation) Regulations 1979 for all fishing vessels. They require fishing vessel owners to ensure that any fisherman working on a UK registered fishing vessel is repatriated at no cost to themselves in the circumstances and under the conditions set out in Part 4 of the Work in Fishing Convention Regulations and explained in this Marine Guidance Note (“MGN”).

2. Application

2.1 The Work in Fishing Convention Regulations apply to all fishermen on UK registered fishing vessels. In this context, “fisherman” means every person (except pilots) employed, engaged or working in any capacity on board any fishing vessel.

2.2 They also apply to non-UK fishing vessels when in UK waters.

3. Duty to repatriate fishermen

3.1 The Work in Fishing Convention Regulations place a duty on fishing vessel owner to make provision for the repatriation of a fisherman (whether they are an employee or not) as soon as is practicable and at no cost to the fisherman in the following circumstances:

- 3.1.1 where the fisherman’s work agreement (FWA) expires;
- 3.1.2 where the FWA has been terminated by the fishing vessel owner for justified reasons;
- 3.1.3 where the FWA had been terminated by the fisherman for justified reasons;
- 3.1.4 where the fisherman is no longer able to carry out the fisherman’s duties under the FWA or cannot be expected to carry them out in the specific circumstances;
- 3.1.5 where the fisherman has completed the maximum period of service on board following which the fisherman is entitled to repatriation in accordance with the fisherman’s work agreement; and
- 3.1.6 where the fisherman’s employment agreement is terminated pursuant to an order of a court or tribunal.

3.2 The specific circumstances referred to in paragraph 3.1.4 include the following:

- 3.2.1 the fisherman has an illness, injury or medical condition which requires their repatriation when found medically fit to travel;
- 3.2.2 shipwreck;
- 3.2.3 the fishing vessel owner is not able to fulfil its legal or contractual obligations to the fisherman following insolvency, the sale of the fishing vessel or a change in the fishing vessel’s registration; or
- 3.2.4 the fishing vessel is bound for a war zone to which the fisherman does not consent to go.

3.3 The Work in Fishing Convention Regulations provide that entitlement to repatriation in accordance with the fisherman’s work agreement shall arise where the fisherman has completed his maximum period of service on board and, in any event, 12 months after the fisherman joined the fishing vessel. The maximum service period is a matter for agreement between the fishing vessel owner and the fisherman, but may not exceed 365 days (minus, for employed fishermen) the 5.6 weeks of statutory paid leave (see Merchant Shipping Notice MSN 1884(M)).



- 3.4 Time spent awaiting repatriation, and repatriation travel time, should not be deducted from paid leave accrued by an employed fisherman, except where any delay in repatriation, or breaks in travel, are at the request of the fisherman.
- 3.5 This does not preclude the fishing vessel owner agreeing to repatriate a fisherman without penalty where a fisherman gives a notice period less than that specified in their FWA for justified reasons (such as extenuating personal circumstances). In such circumstances the fishing vessel owner may agree to release the fisherman, without penalty for breach of their obligations under their FWA and may also agree to repatriate them at no cost to the fisherman. What might be considered justified could usefully be made clear in the FWA.

4. Place for return

- 4.1 Where there is a duty on a fishing vessel owner to repatriate a fisherman under the Work in Fishing Convention Regulations, a fisherman is entitled to repatriation to the destination provided for in or under their FWA, or such other place as may subsequently be agreed with the fishing vessel owner.
- 4.2 If the FWA does not identify a destination, and there has been no agreement between the fisherman and the fishing vessel owner as to the destination, the fisherman is entitled to repatriation to the fisherman's choice of the following destinations—
- the place at which the fisherman entered into the FWA; or
 - the fisherman's country of residence.

5. Scope of duty to repatriate

- 5.1 The duty of a fishing vessel owner to repatriate a fisherman at the fishing vessel owner's expense ceases to apply once the fisherman has been repatriated to the place specified in the fisherman's FWA or to such other place as may have been agreed between the fishing vessel owner and the fisherman. In addition the duty to repatriate ceases in the following circumstances:-
- 5.1.1 where the fisherman fails without reasonable cause to comply with any reasonable arrangements made by the fishing vessel owner for their repatriation;
- 5.1.2 where, despite reasonable efforts made by the fishing vessel owner to contact them, the whereabouts of a fisherman remain unknown;
- 5.1.3 where a fisherman informs the fishing vessel owner in writing that they do not wish to be repatriated by the fishing vessel owner;
- 5.1.4 where the fisherman has died.

6. Duty pending repatriation

- 6.1 In addition to the cost of repatriation, the fishing vessel owner must also make such provision as is necessary for the fisherman's relief and maintenance both during and whilst awaiting repatriation.
- 6.2 The items of expense to be borne by the fishing vessel owner include:-
- 6.2.1 the provision of food, water and accommodation;
- 6.2.2 the provision of clothing;
- 6.2.3 the provision of toiletries and other personal necessities;



6.2.4 surgical, medical, dental or optical treatment (including the repair or replacement of any appliance) for any condition requiring immediate care;

6.2.5 in cases where the fisherman is not entitled to legal aid or legal aid is insufficient, reasonable costs for the defence of the fisherman in any criminal proceedings in respect of any act or omission within the scope of his FWA, being proceedings where neither the fishing vessel owner nor an agent of the fishing vessel owner is the complainant; and

6.2.6 sufficient money to meet any minor ancillary expenses necessarily incurred or likely to be incurred by the fisherman for his relief and maintenance.

6.3 If the fisherman dies before they can be repatriated, the fishing vessel owner must meet any expenses reasonably incurred in connection with the fisherman's burial or cremation.

6.4 The fishing vessel owner may alternatively agree with the next of kin to return the fisherman's body to them for burial/cremation, where circumstances (including local legislation/practices) permit. Payment of any costs incurred in such return shall however be a matter for agreement between the fishing vessel owner and the next of kin.

Transportation of personal luggage

6.5 Whilst not specified in the Work in Fishing Convention Regulations, MCA would recommend that fishing vessel owners consider bearing the cost of transporting a minimum of 30kg of the fisherman's personal luggage to the repatriation destination where this is not automatically provided for by the carrier transporting the fisherman.

7. Prohibition on recovering costs from fisherman

7.1 The fishing vessel owner is not permitted to require any fisherman employed on a UK ship to make an advance payment towards the cost of repatriation at the beginning of their employment. Any clause in a FWA which makes such provision is void.

7.2 A FWA may specify that the fisherman must reimburse the cost of repatriation where the FWA is terminated for serious misconduct. In the absence of such a provision, the fishing vessel owner may recover costs as a deduction from wages or other payment.

8. Recovery of cost of repatriation from a third party

8.1 Nothing in Part 4 of the Work in Fishing Convention Regulations is intended to prejudice any right of the fishing vessel owner to recover the cost of repatriation from any other party, other than the fisherman, under third party contractual arrangements.

9. Fishermen's property

9.1 Where a fishing vessel owner is under a duty to repatriate a fisherman on a UK fishing vessel, and property belonging to that fisherman has been left behind on that ship, the skipper should take charge of that property and enter a description of each item in the official log book and the skipper and the fishing vessel owner should ensure that reasonable care is taken of the property pending its delivery to the fisherman, or their next of kin (where the fisherman has died).

9.2 The skipper may at any time sell any part of the property which is of a perishable or deteriorating nature or destroy or otherwise dispose of any part of the property considered a potential risk to the health or safety of any person. Where any property is sold, the proceeds of any sale are the property of the fisherman and the skipper should ensure



details of the sale are entered into the official log. The skipper must also ensure that details of the destruction or disposal of any property is also entered into the official log book.

9.3 The fishing vessel owner should subsequently arrange for any property left behind by a fisherman, together with a record of the information referred to in paragraphs 9.1 and 9.2 above, to be delivered to the fisherman or to the fisherman's next of kin as appropriate.

10. **Secretary of State functions in the event of fishing vessel owner default**

10.1 Should the fishing vessel owner of a UK fishing vessel fail to comply with the duty to repatriate a fisherman and/or to make provision for the fisherman's relief and maintenance (including food and lodging) whilst awaiting or during repatriation, the Secretary of State will make the necessary arrangements and recover the cost from the fishing vessel owner.

10.2 Where the fishing vessel owner of a non-UK fishing vessel fails to repatriate a fisherman and/or make provision for the fisherman's relief and maintenance (including food and lodging) whilst awaiting or during repatriation, responsibility will pass to the Flag State of the vessel. Should the Flag State in turn fail to repatriate a fisherman or provide for their relief and maintenance, either the State of which they are a national or the UK Secretary of State (where the vessel is in the UK) may make the necessary arrangements. Where it is the UK Secretary of State who makes the arrangements in such circumstances all costs incurred will be recovered from the Flag State who in turn will recover them from the fishing vessel owner.

More Information

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