

PUBLIC CONSULTATION DRAFT

**MODEL FORMAT FOR A FISHERMAN'S WORK AGREEMENT – NON-EMPLOYED
FISHERMEN, e.g. SHARE FISHERMEN**

This Agreement is between:-

(1).....

(insert fisherman's full name) hereinafter called the fisherman

..... *(insert date of birth or age (see Note 1)*

.....*(insert place of birth – town and country)*

AND

(2)

.....
.....
.....

(insert name of vessel owner, hereinafter called the "vessel owner"

OF.....

.....
.....

...

(insert full address of vessel owner) (see Note 2)

Place where this Agreement is entered into*(see Note 3)*

Date when this Agreement is entered into

Place of Work

You will be engaged on [vessel name and registration number*] [any vessel owned, managed or chartered by the vessel owner*. (see Note 4)] * Delete whichever is not applicable

Voyage or voyages to be undertaken (if this can be determined at the time of making the agreement)

.....

Capacity in which fisherman is to be engaged

The capacity in which you are initially engaged is
(insert capacity)(see Note 5)

Place and date fisherman is to report onboard for service (if possible)

.....

.....

Provisions to be provided to the fisherman (if applicable) (see Note 6)

.....
.....

Payment of share of the catch (See Note 7)

You will receive a share of the catch based on % of the gross earnings for the trip, after deductions for:

- a) fuel, calculated on the basis of; and
- b) food, as at cost of per day
- c)

When payment is due, you will receive a copy of the accounts [drawn up under Reg 5(1) of the Merchant Shipping (Seaman's wages and accounts) Regulations 1972] or the relevant extract from it, showing how the amounts due in respect of your share are calculated.

Notice of Termination of Engagement (*Delete whichever is not applicable*) (See Note 8)

(a) Definite Period Agreement

Your engagement is for a period commencing on[*insert date*] and ending on [*insert date*] unless it is terminated for justified reasons in advance of this point or the ship is at sea at that time in which event it will continue until its arrival in port at which point it will terminate.

OR

(b) Voyage Agreement

Your engagement is for the length of the voyage of [*ship*] commencing on[*insert date*] from the port of.....[*insert name of port*] until[*insert date*] or [her arrival in the port of[*insert name of port*]] at which point it will terminate, unless it is terminated for justified reasons in advance of this point.

OR

(c) Indefinite Agreement

The length of notice which you are obliged to give to terminate your engagement is

The length of notice which you are entitled to receive from the vessel owner to terminate your engagement is

Protection for fishermen in the event of sickness, injury or death in connection with service (see Note 9)

If you become sick or injured while on a voyage, you will be paid your normal share until the end of the voyage, or until you have been repatriated in accordance with the repatriation provisions set out below.

If you require medical care while you are on-board this will be provided free of charge, including access to necessary medicines, medical equipment and facilities for diagnosis and treatment and medical information and expertise. Where practicable and appropriate, you will be given leave to visit a qualified medical doctor or dentists in ports of call for the purpose of obtaining necessary treatment.

In the event of sickness or incapacity, you will be provided with medical care, including medical treatment and the supply of necessary medicines and therapeutic devices and board and lodging away from home until your recovery or until you have been repatriated, whichever is later. In addition the vessel owner will return your property left on board to you or your next of kin.

Health and Social Security Protection Benefits (see Note 10)

Repatriation (see Note 11)

You will be entitled to repatriation, at the expense of the vessel owner, if you are in a foreign port when this agreement is terminated:-

- by the vessel owner or by you for justified reasons;
- by you in the event of illness or injury or other medical condition requiring your repatriation,
- in circumstances where you are no longer able to carry out your duties under this agreement or cannot be expected to do so e.g. shipwreck, the sale of your ship or a change in your ship's registration.

The entitlement to repatriation entails transport by(*insert means of transport*) to.....(*insert place name or country*).:

NOTE - You may not be entitled to repatriation at the expense of the vessel owner in circumstances where you have been dismissed for serious misconduct. In such circumstances the vessel owner will still be liable to repatriate you but is entitled to recover from any sums due to you the cost of doing so.

Maximum duration of service periods after which you are entitled to repatriation

The maximum period of service following which you will be entitled to repatriation at no cost to you isweeks (*insert number of weeks*) (See Note 12)

Grievance Procedures

If you have a grievance regarding your engagement, you should follow the vessel owner's grievance procedure a copy of which will be provided to you when you join the vessel.

ADDITIONAL PROVISIONS INCLUDED BY VESSEL OWNER

(See Note 13)

.....

CERTIFICATION BY VESSEL OWNER AND FISHERMAN *(see Note 14)*

By signing this Agreement the undersigned fisherman, and the undersigned vessel owner, each confirm that the fisherman has:-

1. been given the opportunity to review and seek advice on their FWA;
2. received an explanation of their rights and responsibilities under the agreement before signing it, and
3. has entered into the agreement freely
4. [has been offered a translation into his or her own language.]

Signature of fisherman

Signature of vessel owner or vessel owner's representative

.....

(State position held)

NOTES

Note 1 - “insert date of birth or age” - Normally the date of birth should be inserted in full. Only in exceptional circumstances should the fisherman’s “age” be inserted where there is no means of establishing the fisherman’s actual date of birth. This should be the fisherman’s age at the time the FWA was signed.

Note 2 - “Name and Address of vessel owner” - insert the name and address of the owner of the fishing vessel.

Note 3 – “The Place where Agreement is entered into” should state the name of village, town or city and country, or the name of the ship, where the Agreement is signed by the parties to it

Note 4 – “Place of Work” may state either the name of the vessel on which the fisherman is to be engaged where this is known or, where the fisherman may work on more than one vessel, should state *“Place of Work may be on any vessel owned, managed or chartered by [the vessel owner]”*.

Note 5 - “Capacity in which fisherman is to be engaged” - This will be the capacity in which the fisherman is to be engaged at the time the FWA is signed by the parties to it. Given that an FWA may run for a considerable length of time if the fisherman remains with the same vessel owner, it is possible that the capacity in which the fisherman is engaged could change over time. The vessel owner may wish to consider whether a new FWA will be issued at such time or alternatively include a provision indicating how any changes to capacity will be dealt with e.g. by means of a letter setting out the new capacity and the relevant wage scale.

Note 6 – Provisions to be supplied

Note 7 – Payment of share of catch – this section must set out how the fisherman will be remunerated, including how the share of the catch is calculated, and identify any deductions, and how they will be calculated.

N.B. The Merchant Shipping (Seamen’s Wages and Accounts) (Fishing Vessels) Regulations 1972 lay down requirements for accounts when payment is due.

Note 8 - Notice of Termination of Engagement – The period of notice required to be given to the fisherman by the vessel owner must not be less than that required to be given to the vessel owner by the fisherman and must be not less than seven days. “Justified reasons” for early termination of employment should be specified.

Note 9 - Protection in the event of sickness, injury or death in connection with service

- These include payment by the vessel owner of any costs of medical care in respect of any sickness or injury occurring between the date on which they commenced duty on board a ship and the date on which they are deemed to have been duly repatriated. On a UK registered vessel the provision of medical care includes any surgical or medical treatment or such dental or optical treatment (including the repair or replacement of any appliance) which is necessary during engagement on board.

- This also covers any provision for remuneration during incapacity. If the seafarer is entitled to Statutory Sick Pay or Social Security Sickness Benefit this should be stated. The owner may offset any payments they make by the amount of any such benefits received.

Note 10 – Health and Social Security Protection Benefits -. This covers provision for compensation in case of death or long-term disability of the fisherman due to an occupational injury or sickness occurring while the fisherman is serving under a fisherman's employment agreement or arising from their employment under such agreement.

Note 11 - Repatriation - – Circumstances in which the fisherman may no longer be able to carry out their duties may include -

- shipwreck
- the sale of the vessel or a change in the vessel's registration
- illness or injury or other medical condition, diagnosed by a Doctor as requiring repatriation,
- ship is proceeding to a [Warlike Operations Area;]

The destination for repatriation must be one of the following:

- the place where the fisherman signed their employment agreement;
- their country of residence;
- the place specified in any applicable collective agreement; or,
- subject to the agreement of the vessel owner, another place of the fisherman's choosing.

Note 12 - Maximum duration of service periods after which you are entitled to repatriation

The maximum period of service following which a fisherman will be entitled to repatriation is to be not more than [**52 weeks – for consideration**]. Vessel owners may not require a fisherman to continue to serve on board once the maximum period of service has expired except in an emergency or similar extenuating circumstances, but must repatriate them.

Note 13 – “Inclusion of Additional Provisions by Vessel owner” – – Optional. Any additional items must be compliant with UK law, and cannot override the provisions set out above.

In the context of non compliance, some provisions have previously been found in crew agreements which, if included in FWAs, could result in enforcement action. Examples of these, which would apply also to FWAs, include:-

- (a) **requiring that all fishermen belong to a union or forbidding membership of a union**
- (b) **requiring that fishermen join a specified union**

- Under ILO Convention 87 on Freedom of Association, which has been ratified by the UK, workers are free to form and join appropriate organisations of their own choosing, but equally under UK law they cannot be required to do so. It is not acceptable for vessel owners or anyone else to discriminate against, or take action against those who either choose to join a union or who choose not to join a union. It is however acceptable to promote membership of a trade union that has signed a collective agreement with the vessel owner albeit without an obligation on the fisherman to join that union

- (c) **requiring that by signing the agreement fishermen automatically agree to medical information about themselves being passed to the vessel owner or another party acting on behalf of the vessel owner.** - *This is not acceptable and may only be done with the specific prior authority of the fisherman on each occasion the vessel owner requests that such information be made available.*
- (d) **requiring that by signing the agreement fishermen automatically agree to sensitive personal data (as defined in the Data Protection Act) about them being passed to other individuals or organizations as determined appropriate by the vessel owner or another party acting on behalf of the vessel owner.** - *This also is*

not acceptable as such individuals/organisations may potentially be located in countries that do not have data protection legislation or have legislation that does not provide similar protection to that of the UK. Such transfer of “sensitive personal information” may only be undertaken with the specific prior authority of the fisherman on each occasion the vessel owner proposes that such information be passed to another individual or organisation.

- (e) **requiring that a fisherman bear the cost of his repatriation, and the cost of providing his replacement, should he terminate his employment prior to completing the specified period of employment even though he gave the period of notice to terminate his employment that was required by the agreement.** - *Under UK legislation a fisherman can only be charged the cost of his repatriation if he has breached his obligations under the agreement or has been dismissed on disciplinary grounds. The giving of the period of notice specified in the agreement would not constitute breach of the fisherman's obligations even if it terminated his employment before the date envisaged in the agreement.*
- (f) **requiring payment (other than in the cost of a share agreement) for items which the UK legislation requires to be provided free of charge, for example, accommodation, food and catering, provision of personal protective equipment, medical care** - *The Wages Regulations applicable to fishermen only permit certain specified deductions to be automatically made from the wages due to a fisherman.*
- (g) **the levying of fines on a fisherman by a vessel owner in respect of a breaches of that fisherman's obligations under his FWA or for breaches of discipline.** - *No provision exists under UK Merchant Shipping law for fines to be levied on fishermen by vessel owners in respect of disciplinary offences .*

This list is illustrative only and should not be taken as listing all provisions that would be considered unacceptable.

Note 17 – “Certification by Vessel owner and fisherman”

Fishermen signing an FWA must be given an opportunity to examine and seek advice on the terms and conditions of that agreement before signing it, and have any other facilities they need to ensure that they have freely entered into the FWA with a sufficient understanding of their rights and responsibilities.

Each FWA must include a statement signed by the vessel owner or their representative and the fisherman confirming that the fisherman

- has been given the opportunity to review and seek advice on their FWA;
- has received an explanation of their rights and responsibilities under the agreement before signing it, and
- that they have entered into the agreement freely.

Should we explicitly include here that the agreement must be available in a language that the fisherman understands?