

PUBLIC CONSULTATION DRAFT

MODEL FORMAT FOR A FISHERMAN'S WORK AGREEMENT – EMPLOYED 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 or employer* as appropriate - see Note 2) hereinafter called the vessel owner* / employer**

OF.....

.....

.....

...

(insert full address of vessel owner or employer* as appropriate)*

***ADDITIONALLY, WHERE THE FISHERMAN IS EMPLOYED AND THE VESSEL OWNER IS NOT THE EMPLOYER OF THE FISHERMAN, THE FOLLOWING IS TO BE COMPLETED BY THE VESSEL OWNER (Note this should be deleted where the vessel owner is the employer)**

***3. I / We**

(insert vessel owner's name)

OF

.....

.....

.

(insert vessel owner's full address)*

* Delete if not applicable

hereby guarantee that in the event of the employer named at (2) above failing, for whatever reason, to meet its obligations to the Fisherman named at (1) above under the terms of this Fisherman's Work Agreement I / We* as vessel owner(s) undertake to meet those obligations to that fisherman [and at no cost to that fisherman].

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

Date when this Agreement is entered into

Place of Work

You will be employed 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 employed

The capacity in which you are initially employed 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).....

.....

Wages (see Note 7)

Your wages will be (insert amount and currency) per week*/month*/year* (delete as appropriate) (or insert formula for determining wages)

Means of payment of Wages

Your wages will be payable by..... [insert method of payment] at weekly*/monthly* (delete as appropriate) intervals on the[insert number] day of each week*/month* (delete as appropriate)

[Overtime hours i.e. hours worked outside of normal **hours of work** will be paid at a rate of(insert overtime rate)] (Delete this sentence if not applicable)

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

(a) Definite Period Agreement

Your employment 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 employment 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 employment is [insert notice period which is to be not less than seven days].

The length of notice which you are entitled to receive from the vessel owner to terminate your employment is [insert notice period which is to be not less than seven days].

Protection for fishermen in the event of sickness, injury or death in connection with service

(see Notes 9 and 10)

If you become sick or injured while on a voyage, you will be paid your normal basic wages until you have been repatriated in accordance with the repatriation provisions set out below. After you have been repatriated you will be paid your normal basic wages excluding bonuses up to a maximum ofweeks. [insert number].

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, any costs of your medical care not met by the host country will be met by the vessel owner; you will be provided with medical care, including medical treatment and the supply of necessary medicines and therapeutic devices and, if necessary, board and lodging away from home until your recovery subject to a maximum period of.....weeks [insert number], or until you can be repatriated, whichever is later. In addition the vessel owner will return your property left on board to you or your next of kin.

In the event of your death occurring on board or ashore during a voyage, the vessel owner will meet the cost of burial expenses, or cremation where appropriate or required by local

legislation [or repatriate the body where appropriate], and will return your property left on board to your next of kin. **[This final provision is required by s45 of the Merchant Shipping Act 1995 for employed fishermanmen.]**

Repatriation of a body is not a mandatory requirement but it is expected this would normally be the preference of the family.

Paid Leave (see Note 11)

You are entitled to take(insert number) weeks as paid leave in each year of employment. [You will be paid your normal wages during such leave.]

If your employment commenced or terminates part way through the holiday year, your entitlement to paid annual leave will be assessed on a pro rata basis. Deductions from final salary due to you on termination of employment will be made in respect of any paid annual leave taken in excess of your entitlement.

You will be entitled to payment in lieu of paid leave accrued but not taken at the date of termination of employment.

Repatriation (see Note 12)

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, for justified reasons
- by you, for justified reasons.
- in circumstances where you are no longer able to carry out your duties under this agreement or cannot be expected to do so.

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 wages 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 13)

You have a fundamental entitlement to reasonable access to the full range of available welfare services, including national human rights provisions and protections.

ADDITIONAL PARTICULARS REQUIRED TO BE INCLUDED BY UNITED KINGDOM LAW

Hours of Work (see Note 14)

Your normal hours of work are [Insert normal weekly hours or pattern of work, and any differences in rate of pay for hours worked in excess of this, as applicable],

Grievance and Disciplinary Procedures

(a) Grievances

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

(b) Disciplinary Rules and Procedure

The disciplinary rules applicable to you are set out in the

- the vessel owner’s Code of Conduct .

[Are there other appropriate options? E.g. ACAS publishes guidance on grievance and disciplinary procedures.]

If you are dissatisfied with any disciplinary decision taken in relation to you, you should refer to the disciplinary procedure set out in the Code of Conduct which can be obtained from[state from where Code of Conduct can be obtained].

Pension benefits (Delete which ever is not applicable) (see Note 15)

You will be entitled to the following pension or other benefits(insert full details including whether contributory (if so at what rate(s)) or non-contributory and when payable etc).

OR

You will be entitled to join thepension scheme (insert details)

OR

There is no pension or other benefit entitlement attached to this employment.

ADDITIONAL PROVISIONS INCLUDED BY VESSEL OWNER

(See Note 16)

.....

CERTIFICATION BY VESSEL OWNER AND FISHERMAN (see Note 17)

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)

[*Signature of Employer or Employer'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 [or employer]" - Where the fisherman is employed but the vessel owner is not the employer of the fisherman, the name and address of the employer should also be inserted at Point (2) of this model FWA and the separate provision at (3) be completed and signed by the vessel owner. Where the vessel owner is the actual employer of the fisherman the vessel owner's name and address of the vessel owner should be inserted at (2) and the entry at (3) should be deleted. If the fisherman does not have an employer, the alternative form of Work Agreement should be used for non-employed fishermen.

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 and registered number of the vessel on which the fisherman is to be employed where this is known or, where the fisherman may be employed 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 employed" - This will be the capacity in which the fisherman is to be employed 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 employed 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.

Note 6 - Provisions to be supplied - [Do all boats provide food on board? Do we need to allow for separate provision for day boats?]

Note 7 - Wages - As with "Capacity" (Note 3 above) wages payable to the fisherman are likely to change if employed by the same vessel owner over a significant period of time. When completing the "Wages" entry in the FWA, the vessel owner will therefore need to bear this in mind and include appropriate wording to cover any future wage increases e.g. by providing for the wage to increase as notified to the fisherman in writing.

[If any part of wages are based on share of the catch, the method for calculating this share must be stated.]

Note 8 - Notice of Termination of Employment - 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. It also includes provision for compensation in case of occupational injury, sickness or death.

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 employment on board.

- This also includes payment of wages during incapacity. If the fisherman 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 also includes payments that vessel owners are required to make in respect of the death or long term disability of a fisherman due to an occupational injury, illness or hazard occurring while the fisherman is serving under a fisherman's employment agreement or arising from their employment under such agreement.

In case of wreck or loss of the ship, employed crew members are entitled to wages at the rate payable under their work agreement (excluding any element based on a share of the catch) for any period of unemployment as a result of the wreck or loss, for up to two months (s38 of the MSA 1995 as modified by s 114).

Note 11 –“Paid Leave” - The period of paid leave per annum is primarily a matter between the vessel owner or employer if different and the fisherman but must be not less than the period of statutory paid leave specified in the Merchant Shipping (Working Time: Sea Fishing) Regulations 2004 [(as amended)] i.e 28 days per annum [plus 8 days in respect of public holidays per annum], or pro rata for periods of less than one year. Where it is more appropriate to do so, the formula to be used for calculating annual leave may be stated.

[All other sectors are now entitled to 5.6 weeks paid leave (including 8 days in respect of public holidays) under the Working Time regulation. We are proposing to extend this to those employed on fishing vessels.]

Note 12 - 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 13 - 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 minus the period of statutory paid annual leave - see note 11. Vessel owners/employers 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.

There is however no statutory obligation on a fisherman to take repatriation at that time if he/she chooses to serve on board for a longer period e.g. to complete a period of sea time for certification purposes..

Note 14 - Hours of Work - The hours of work for fishermen employed on UK registered vessels must comply with the requirements of the Merchant Shipping (Sea-fishing: Working Time) Regulations 2004 (as amended) and MSN [1786(F)] or any subsequent Regulations which may further amend or replace those Regulations.

Note 15 - Pension benefits - Where applicable details of any employer pension scheme must be recorded. In addition, where the employer makes deductions from the fisherman's wages towards any additional pension benefits (e.g. State Pension) to which a fisherman may be entitled, it is recommended this is noted.

Note 16 – “Inclusion of Additional Provisions by Vessel owner/Employer” – 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. However, it is not acceptable for vessel owners, employers 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 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, or deduction of wages, 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 – UK legislation only permits certain specified deductions to be automatically made from the wages due to a fisherman. For employed fishermen, these do not include costs incurred in providing accommodation, food and catering, personal protective equipment and medical care.**
- (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?