



Maritime &  
Coastguard  
Agency

MERCHANT SHIPPING NOTICE

**MSN 1884 (F)**

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## INTERNATIONAL LABOUR ORGANIZATION WORK IN FISHING CONVENTION (No. 188): WORKING TIME

### Application of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 as amended

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

*This notice should be read in conjunction with the Fishing Vessels (Working Time : Sea-fishermen) Regulations 2004 as amended. It replaces MSN 1786(F)*

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#### Summary

This Merchant Shipping Notice contains the detailed mandatory requirements specified by the Secretary of State under the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 as amended which come into force on 1 January 2019. It gives guidance on the application of the Regulations.

#### Key points

This notice explains the requirements of the Regulations which apply to United Kingdom fishing vessels wherever they may be.

For all fishermen, whether they are employed or self-employed share fishermen (sections 1 to 3)

- entitle a fisherman to adequate rest, and the total hours of rest are to be not less than 10 hours in any 24 hour period and 77 hours for each seven days;
- permit exceptions to the limits on hours of rest for objective and technical reasons or reasons concerning the organisation of work; and
- permit a skipper to require a fisherman to work any hours of work in an emergency.

Section 3.3 explains how to comply with the requirement to keep adequate records to demonstrate that fishermen are getting adequate rest.



For workers (employed fishermen), but not for self-employed share fishermen (sections 4, 5 and 6 of this notice)

- specify that a fisherman's working time shall not exceed 48 hours per seven day period averaged over 52 weeks;
- require a fisherman to be given reasonable rest breaks if the pattern of work puts a fisherman's health at risk, particularly if the work is monotonous;
- entitle a worker to paid annual leave of at least four weeks;
- entitle a worker to a free, confidential health assessment before becoming a night worker and require an employer to move a night worker to other duties, where possible, if night working is causing problems with the worker's health;

Section 7 sets out the way in which duties will be enforced and the remedies available to workers where they do not receive their entitlements.

The Fishing Industry Code of Practice on Working Time Standards at Annex 1 to this MSN constitutes an approved exception to the strict requirements of these Regulations.

Provided the conditions in the Code are met, an individual application for an exception need not be made. Individual exceptions in circumstances falling outside those in the Code may also be permitted, subject to authorisation by MCA.

## **1. Introduction**

1.1 The Fishing Vessels (Working Time: Sea-Fishermen) Regulations 2004 (referred to in this notice as "the Regulations"), have been amended to bring them fully into line with the International Labour Organisation's Work in Fishing Convention 2007 No. 188 ("ILO 188"). This extends the requirements for minimum rest to all fishermen, regardless of their employment status. The Regulations also implement Directive 2003/88/EC (the Working Time Directive) in so far as it applies to fishermen.

## **2. Application and definitions**

2.1 Regulations apply to United Kingdom fishing vessels wherever they are. The Regulations relating to detention of vessels apply also to non-UK fishing vessels while those vessels are in UK waters.

2.2 They place duties on fishing vessel owners and employers on fishing vessels, and provide certain entitlements to fishermen who are workers (employed fishermen).

2.3 "working time", means:

- (a) any period during which the worker is working, at his employer's disposal and carrying out his activities or duties,
- (b) any time during which he is receiving relevant training.

2.4 "rest period" means any time that is not working time, other than rest breaks.

2.5 "fishermen" means every person employed, engaged or working in any capacity on board any fishing vessel, but does not include a person solely engaged as a pilot for the vessel.

2.6 "Fishing vessel owner" means the owner of the fishing vessel or any other organisation or person such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner."



- 2.7 “employment” means employment under a contract.
- 2.8 “relevant training” means work experience provided pursuant to a training course or programme, training for employment, or both, other than work experience or training-
- (a) the immediate provider of which is an educational institution or a person whose main business is the provision of training; and
  - (b) which is provided on a course run by that institution or person.
- 2.9 “worker” means a person employed aboard a United Kingdom fishing vessel.
- 2.10 Maximum working time and the provisions on annual leave, health surveillance and remedies for entitlements do not apply to the self-employed, including self-employed share fishermen.

### **3. Duties of owners and employers towards all fishermen**

#### **3.1 Rest periods (reg 7)**

- 3.1.1 Regulation 7(1) entitles fishermen to “adequate rest”, so that safety and health are not jeopardised as a result of fatigue.
- 3.1.2 Regulation 7(3) requires that every fisherman shall have minimum rest of 10 hours in any 24-hour period and of 77 hours in any 7-day period. This provides a safeguard against excessive hours being worked over periods shorter than the reference period.
- 3.1.3 Under Regulation 7(4), for workers daily hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive such periods shall not exceed 14 hours.
- 3.1.4 Rest periods include days off, and any rest period which is not a rest break.
- 3.1.5 It should be borne in mind that one long break is more effective than a number of relatively short breaks in providing adequate rest (see Annex 1 Attachment A).
- 3.1.6 In an emergency the skipper may require a fisherman to work any hours necessary for the immediate safety of the fishing vessel, persons on board the fishing vessel or cargo (including the catch) or for the purpose of giving assistance to another ship or to a person in distress at sea (Regulation 14).

#### **3.2 Authorised Exceptions (reg 13)**

- 3.2.1 Regulation 13 explains that exceptions to the limits for rest described at 3.1 above may be authorised. Such exceptions shall, so far as possible, comply with the standards laid down but may take account of more frequent or longer leave periods or compensatory leave. Provided that the objective or technical reasons, or reasons having to do with the organisation of the work apply, as set out in the Fishing Industry Code of Practice at Annex 1 to this Notice, it is not necessary for individual owners or employers to apply for an exception nor is a separate application needed for each exception.
- 3.2.2 Fishing vessel owners may apply to the MCA for individual exceptions to cover circumstances which fall outside the Code of Practice. To apply for an authorised exception, information should be provided on the expected pattern of work, including time



ashore between fishing trips. Such exceptions will only be authorised where it can be demonstrated that the health and safety of the fishermen is not put at risk. The Secretary of State retains the right to alter or cancel any exception if it appears that the health or safety of fishermen is being compromised.

3.2.3 Applications for authorisation of individual exceptions should be made in writing to the address at the end of this notice.

### **3.3 Records (reg 10)**

3.3.1 The employer or fishing vessel owner is required to ensure that records are kept which are adequate to demonstrate that fishermen are receiving the required minimum rest, subject to any exceptions which may be approved under regulation 13.

3.3.2 If it is possible to derive this information from records which an employer or fishing vessel owner keeps for some other purpose, then separate hours of rest records need not be kept. Records must be kept for two years from the date on which they are made.

3.3.3 In lieu of daily records for each member of the crew, the MCA will accept exception reporting where there is in place for the vessel: -

EITHER

(1) a safe manning document for the vessel,

OR

(2) A safety management code for the vessel in accordance with MIN 558(F), including at section 6.7 an explanation of how the manning levels for the vessel encompass all operations while complying with the hours of work and hours of rest limits as set out in section 3.1 of this notice, or the authorised exception at Annex 1 and Attachment B.

OR

(3) A schedule or other explanation of the expected pattern of work and available times for rest, demonstrating compliance with the hours of work and hours of rest limits as set out in section 3.1 of this notice, or the authorised exception at Annex 1 and Attachment B.

3.3.4 If none of these documents is in place, daily records of the hours of rest of each member of the crew must be completed.

#### Exception reporting:

3.3.5 An exception must be reported where the skipper or any other fisherman breaches the weekly hours of rest of 77 hours. When they have received their compensatory rest (at least an equal period of rest to the breached period of rest) this should be signed off by the skipper and the fisherman.

#### Young Persons:

3.3.6 If there is anyone under the age of 18 working on the vessel, the Schedule must specify their hours separately. See Section 6 of MSN 1882(F) on minimum age and employment of young persons.



## **4. Duties and Entitlements for workers**

### **4.1 Maximum working time (reg 6)**

4.1.1 The Regulations require employers to take all reasonable steps to ensure that a worker's working time does not exceed 48 hours per week averaged over a 52 week reference period. The calculation of the average weekly working time takes account of a worker's absence during the reference period because of paid annual leave, maternity, paternity, adoption or parental leave, or sickness, by adding the hours worked during the period immediately following the reference period for the same number of days as those when work was missed.

### **4.2 Rest breaks (reg 9)**

4.2.1 Where the pattern of hours of work may jeopardise the health and safety of a worker, and particularly where the work is monotonous (including repetitive work), the employer must provide reasonable rest breaks.

#### Guidance:

4.2.2 There is no statutory definition of a rest break, but MCA would generally consider any rest of less than 30 minutes to be a "rest break" rather than a rest period. If there is only one rest break in a period of 6 hours work that break should be at least 20 minutes.

4.2.3 Time taken as rest breaks is not counted in the calculation of hours of rest for the purposes of regulation 6.

## **5. Annual leave and additional leave (reg 11 and 11A)**

5.1 For the purposes of these regulations, a worker is entitled in each year to a period of annual leave totalling at least four weeks, for which he is entitled to be paid at the rate of a week's pay in respect of each week of leave. Annual leave may be taken in instalments, but may not be replaced by a payment in lieu, except where a worker's employment is terminated.

5.2 In addition, a worker is entitled to 1.6 weeks of additional leave, or pro rata for periods of employment of less than a year. The amount of additional leave is to be calculated in days, and any fraction of a day should be treated as a whole day.

5.3 The maximum total entitlement can be no more than 28 days per annum.

## **6. Health Assessment and Transfer of Night Workers to Day Work (reg 8)**

6.1 An employer must offer any worker who is required to carry out night work the opportunity for a free health assessment – i.e. at no cost to the worker. If a doctor finds that a worker's health is suffering, and there is a connection with night work, the employer must, wherever possible, move that worker to day work to which he is suited.

6.2 Night work generally means between 11pm and 6am, or any period specified in a relevant agreement, but in any case a period of not less than 7 hours, which must include the period from midnight to 5am (local time).

6.3 A night worker is one who:



- as a normal part of his duties, works more than 3 hours of his daily work time at night;  
or,

- is likely to work an agreed proportion of his annual working time during night time.

6.4 The employer must keep records which are sufficient to demonstrate that the requirements on health assessments for night workers have been complied with (reg 10).

## **7. Enforcement/Remedies (reg 18 and 19)**

7.1 MCA is the enforcement authority for fishing vessel owner duties in relation to:

- maximum working hours (reg 6(2));
- minimum hours of rest (reg 7);
- provision of health assessment for night workers (reg 8(1));
- transfer of night workers to day work on advice of a medical practitioner (reg 8(4));
- provision of adequate rest breaks (reg 9)
- record keeping (reg 10)

7.2 Regulation 15 requires an employer to provide MCA with information on night workers when required to do so. (MCA surveyors have powers under the Merchant Shipping Act to have access to any ship, company offices and company records relating to compliance with Merchant Shipping legislation.)

7.3 If a worker considers that his entitlements under the Regulations to adequate rest or annual leave are being denied he may complain to an employment tribunal or to the Advisory, Conciliation and Arbitration Service (ACAS) (Tel. 08457 47 47 47).

## **More Information**

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## FISHING INDUSTRY CODE OF PRACTICE ON WORKING TIME STANDARDS

### Preamble

Fishing is a hunting activity. It deals with a highly perishable commodity and operates in an unpredictable working environment. These require that work activities must be prioritised to ensure the safety of the vessel, the effective prosecution of fishing operations and the rapid initial processing, icing and refrigeration of the catch. However, this should never be at the cost of operating safely, and that includes ensuring that crew have sufficient sleep.

### 1. Purpose of the Regulations

The Fishing Vessels (Working Time: Sea Fishermen) Regulations 2004 as amended are intended to avoid risks to the health and safety of those working on fishing vessels, by ensuring that they have adequate rest. They do this by setting rules for minimum rest time. These rules should not be considered as guiding normal operating patterns.

Human beings have evolved to be awake for about 16 hours a day and asleep for 8 hours, i.e. broadly speaking for **every 2 hours we are awake we need 1 hour sleep**.

If our sleep falls below this requirement we build up a **sleep debt**. People with a sleep debt;

- a) Fail to stay alert
- b) Misread situations
- c) Overlook key information
- d) Fall asleep
- e) Put themselves and colleagues at extreme risk

Lack of sleep is sometimes referred to as “fatigue”. Guidance on preventing and managing fatigue is at Attachment A.

### 2. Purpose of the Code of practice

The purpose of this *Code of Practice* is to apply common standards of working time throughout the fishing industry, to ensure that the crews of fishing vessels receive adequate rest, taking account of the different operating patterns of different sectors.

### 3. Application

The Regulations and the Code apply to all those working on fishing vessels, regardless of their employment status.

### 4. Responsibilities

#### 4.1 Owners responsibility for safe manning

The fishing vessel owner must ensure that their vessel has a sufficient number of appropriately qualified or trained crew to ensure that it can be safely operated, including keeping a safe navigational watch in accordance with STCW-F Chapter IV, both while travelling to and from the fishing ground and while engaged in fishing or searching for fish. This must be achievable





without prejudice to the requirement for fishermen to have regular periods of rest of sufficient length to ensure health and safety.

#### 4.2. *Skippers*

The skipper has responsibility for the safety of fishermen and the safe operation of the vessel, including managing the fishermen in a manner which respects health and safety, including prevention of fatigue, and ensuring compliance with safety of navigation, watchkeeping and good seamanship standards.

The skipper should not be constrained by the fishing vessel owner from taking any decision which, in their professional judgement, is necessary for the safe operation of the vessel. This may include providing adequate opportunities for the crew to rest, including, if necessary, by modifying the pattern of operation of the vessel.

#### 4.3 *Crew members*

All fishermen have responsibility for their own health and safety and to ensure that nothing that they do, or fail to do, puts at risk the health and safety of others working in the vessel. This includes ensuring that they are adequately rested when they arrive at the vessel to work, and when they go on duty.

### **5. Definitions**

For the avoidance of doubt and for the purposes of this Code working time shall be as defined in regulation 2 of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 as amended.

### **6. Working Time Standards**

Subject to the exceptions and compensatory arrangements set out in section [x], the following working time standards shall apply:

#### Minimum Daily Rest

10 hours rest in any 24 hour period

#### Rest Periods

Daily rest periods may be divided into no more than two rest periods, one of which shall be at least six hours in length and the interval between consecutive rest periods shall be no more than fourteen hours in length.

#### Minimum Weekly Rest

77 hours in a 7 day period

#### Annual Limits

A maximum of 2304 hours



## **7. Exceptions and Compensatory Leave**

It is recognised that there are constraints on strict application of limits on working time which arise from the nature of fishing, for example weather, tidal conditions and daylight hours. Other external factors will also influence intended working patterns, such as seasonal fishing quota and working days constraints.

Where there are objective or technical reasons or reasons having to do with the organisation of the work why the standards in Section 6 above may not be able to be met at all times, the MCA may allow temporary exceptions to the limits provided that:-

- the general principles of the health and safety of the workers are respected, and
- the arrangements comply with the standards as far as practicable;
- exceptions to the minimum daily rest period of 10 hours will only be considered to fall within this authorised exception where an equal amount of compensatory rest to the rest foregone is taken within 7 days of the daily breach.
- Exceptions to the minimum weekly rest period of 77 hours will only be considered to fall within this authorised exception where an equal amount of compensatory rest to the rest foregone is taken within a period of 3 days from the end of the 7-day period in question.

Exceptions should take account of more frequent or longer leave periods or the granting of compensatory leave.

## **8. Scope for Compensatory Rest**

Within the pattern of activity of most fishing vessels, there is considerable scope for compensatory rest and relaxation for some members of the crew when the vessel is steaming to and from the fishing grounds, between operations and when the vessel is in port. The application of compensatory rest periods to offset those occasions when the standards set out in Section 6 above cannot be met for operational or technical reasons or for reasons having to do with the organisation of the work, is, therefore, a central feature of this Code.

## **9. Fleet Specific Constraints**

The table in Attachment B illustrates common working patterns within some specific fisheries. The table describes some of the objective technical/operational circumstances in which exceptions from the standards laid down in Section 6 may be required and for which compensatory rest and/or compensatory leave may need to be made available.

This Code complies with the standards laid down in the Regulations as far as practically possible.

## **10. Annual Leave**

Under the Regulations, employed fishermen are entitled to 5.6 weeks of paid annual leave for a full year of employment. The normal patterns of work and remuneration in the fishing industry may incorporate both minimum requirements for annual leave and payment for such, into the usual operational patterns of the vessels and the system of remuneration by trip. Any entitlement to annual leave or payment for annual leave should be stated in the fishermen's work agreement.

## **11. Endorsement**

This Code of Best Practice is recognised and commended by ...



## FATIGUE

Fatigue amongst those working at sea is recognised to be a serious safety issue. Evidence shows that fatigue is a contributory cause of accidents, injuries, death, long term ill health, major damage, loss of vessels and enormous environmental harm.

We naturally get tired just by being awake as our bodies use energy reserves. The more energy we use, whether physical, mental or emotional, the more tired we become. The two **essential** ways we recover from this tiredness are through eating and sleep. Approaching both issues with greater awareness can make a significant contribution to fatigue avoidance.

Think of sleep like a fuel tank. As we use fuel we need to replenish it. Once the tank is full we cannot add any more fuel. The same is true for sleep. We need sleep to replenish our energy **after** wakeful activity, by sleeping. We cannot store extra sleep up front.

We have evolved to be awake for about 16 hours a day and asleep for 8 hours, i.e. broadly speaking for **every 2 hours we are awake we need 1 hour sleep**.

If our sleep falls below this requirement we build up a **sleep debt**. People with a sleep debt;

- a) Fail to stay alert
- b) Misread situations
- c) Overlook key information
- d) Fall asleep
- e) Put themselves and colleagues at extreme risk

The only remedy is sufficient good quality sleep. The greater the sleep debt, the longer we need to sleep to pay off the debt.

Other factors affecting tiredness include –

Time of day – we are more likely to feel tired and sleepy during the night (particularly between 0200 and 0600) and to a lesser extent in the early afternoon (1400 to 1800).

Workload – generally the harder people work the more tired they become and the sooner they need rest and sleep; the physical and mental stamina of the individual will however also have an impact.

Environment – Noise, poor light, motion or vibration and extremes of temperature are all likely to make us feel tired more quickly.

General health – lean, fit people generally get tired less quickly than overweight, unfit people.

Nutrition – lots of carbohydrates tend to generate sleepiness; light, protein-based food aids alertness.

Stress – a high workload of difficult work in unpleasant conditions may generate harmful stress, but so can issues outside work, such as family problems or financial worries.

Shift patterns – fishermen are required to work, and perform safely, at times when the body naturally wants to sleep.

This guidance is a very brief and simplified summary of the issues. Further guidance is contained in MGN 505(M).



**OBJECTIVE TECHNICAL/OPERATIONAL CIRCUMSTANCES IN WHICH EXCEPTIONS FROM THE STANDARDS MAY BE PERMITTED IN SPECIFIC FISHERIES**

<b>FLEET SEGMENT</b>	<b>OPERATIONAL AND TECHNICAL FACTORS</b>	<b>COMPENSATORY REST FACTORS</b>
<b>GILL NETTERS</b>	Gill netters' operational patterns are to a large degree dictated by tides. It is not possible to work static nets during spring tides. Work time is therefore concentrated on the two weeks in the month when the neap tides occur.	Compensatory rest is available during the two weeks when the vessels are unable to work their gear (i.e. alternate weeks).  Due to the tidal nature this type of fishing and extreme weather conditions it is not uncommon for this class of vessel to lose up to 170 working days per year.
<b>BEAM TRAWLERS</b>	Beam trawlers target prime species in the main. It is not possible to tow the gear for long periods of time, as the catch will be subject to damage and spoilage due to abrasion in the net. Long tows would result in increased debris (sand/stones) in the gear damaging catch and increasing weight in the gear. This would risk the safety of the vessel. Work time is therefore concentrated around regular hauls throughout the trip.	Compensatory rest is available in periods steaming to and from the grounds and between trips.  Short tows, small quantities of prime fish result in relatively short time on deck and longer overall periods of rest. However short tows means that there is no opportunity for meaningful rest between tows.  Due to extreme weather conditions it is not uncommon for this class of vessel to lose up to 130 working days per year.
<b>WHITE FISH TRAWLERS</b>	Work time is concentrated around the hauling operations and working the catch. Heavy fishing will routinely result in a requirement for prolonged periods of intensive work in order to gut, ice, stow and process the catch (which might include freezing). Snagging of gear and subsequent repair could also result in periods of intensive work.	Compensatory rest is available in periods steaming to and from the grounds, between hauls and between trips. A system of crew rotation is also common (in particular on the larger vessels operating longer trips)  Although dependant on the size of vessel and area of operation due to extreme weather conditions it is not uncommon for this class of vessel to lose up to 130 working days per year.



<p><b>NEPHROP TRAWLERS</b></p>	<p><b>Traditional single net:</b> Operational parameters are generally set by natural phenomena such as daylight and tide. Work time is concentrated on favourable weather and tidal conditions.</p> <p><b>Twin rig:</b> Vessels tend to be bigger and more powerful and as result tows are generally longer. Work time is concentrated between tows working the catch and preparing the decks ahead of the next haul.</p>	<p>Compensatory rest may be available throughout the year due to unfavourable weather and tidal conditions. This may be concentrated on spring tides or periods of prolonged poor weather.</p> <p>It is not uncommon for this class of vessel to lose up to 160 days per year because of the factors outlined above.</p> <p>Compensatory rest may be available throughout the year due to extremes of tide and weather.</p> <p>It is not uncommon for this class of vessel to lose up to 120 days per year because of the factors outlined above.</p>
<p><b>CRABBERS</b></p>	<p>Larger crabbers at sea for more than one day often work from first light. Work time is then concentrated for the period of time taken to haul and re-shoot the gear.</p>	<p>Compensatory rest is available in periods steaming to and from the grounds. It is uncommon for hauling to continue through the hours of darkness. Compensatory rest is often available on the basis of crew rotation.</p> <p>Due to extreme weather conditions it is not uncommon for this class of vessel to lose up to 120 working days per year.</p>
<p><b>INSHORE DAY BOATS</b></p>	<p>Diversity in mode of fishing characterises the inshore fleet. Work time is dictated by weather, season and tide and is, therefore, concentrated on periods of good weather and suitable tides/seasons.</p>	<p>Compensatory rest is available throughout the year due to factors such as weather, season or tide. This may be concentrated during seasonal extremes. It is not uncommon for this class of vessel to lose up to 170 days per year because of the factors outlined above.</p>

