



STATUTORY INSTRUMENTS.

S.I. No. 585 of 2020

EUROPEAN UNION (WORKERS ON BOARD SEAGOING FISHING
VESSELS) (ORGANISATION OF WORKING TIME) (SHARE
FISHERMEN) REGULATIONS 2020

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I, EAMON RYAN, Minister for Transport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Article 21 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003¹, hereby make the following regulations:

1. These Regulations may be cited as the European Union (Workers on Board Seagoing Fishing Vessels) (Organisation of Working Time) (Share Fishermen) Regulations 2020.

2. (1) In these Regulations –

“authorised officer” means a person appointed under Regulation 6;

“Directive” means Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003¹;

“fisherman” means a person who –

- (a) works in any capacity on board a fishing vessel manned by more than one person,
- (b) is not employed under a contract of services, and
- (c) is paid in whole or in part on the basis of a share of the profits or gross earnings of the catch of the fishing vessel,

but does not include –

- (i) a person who is a pilot (within the meaning of the Harbours Act 1996 (No. 11 of 1996)), or
- (ii) a shore person carrying out work on board the fishing vessel at the quay side;

“fishing vessel” means an Irish sea-fishing boat (within the meaning of the Sea-Fisheries and Maritime Jurisdiction Act 2006 (No. 8 of 2006));

“master” in relation to a fishing vessel, means the person having command of the vessel;

“Minister” means Minister for Transport;

“MSO” means Marine Survey Office of the Department of Transport;

¹ OJ No. L 299, 18.11.2003, p. 9

“owner” in relation to a fishing vessel, means the owner of the vessel or any other person, such as the manager, agent or charterer, who has assumed responsibility for the operation of the fishing vessel from the owner.

(2) A word or expression which is used in these Regulations and which is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

Application

3. These Regulations apply to fishing vessels engaged in sea fishing.

Hours of work and rest

4. (1) The master of a fishing vessel shall not permit a fisherman on board to work more than an average of 48 hours a week, calculated over a reference period that does not exceed 12 months.

(2) The limits on hours of work for a fisherman on board a fishing vessel shall be either:

(a) maximum hours of work which shall not exceed –

(i) 14 hours in any 24-hour period, and

(ii) 72 hours in any seven-day period;

or

(b) minimum hours of rest which shall not be less than –

(i) 10 hours in any 24-hour period,

(ii) 77 hours in any seven-day period.

(3) Hours of rest may be divided into no more than 2 periods, one of which shall be at least 6 hours in length and the interval between consecutive periods shall not exceed 14 hours.

(4) The master of a fishing vessel who fails to comply with paragraph (1), (2) or (3) commits an offence.

(5) Notwithstanding this Regulation, the master of a fishing vessel may require a fisherman on board to perform any hours of work necessary for the immediate safety of the vessel, persons on board or the catch, or for the purpose of giving assistance to other vessels or persons in distress at sea.

(6) Where a rest period is suspended in accordance with paragraph (5), the master shall ensure that the fisherman concerned receives an adequate period of rest as soon as practicable after the necessity required under paragraph (5) has passed.

Records

5. (1) The master of a fishing vessel, or a person authorised by the master, shall maintain on board the fishing vessel a record of the daily hours of work or rest for every fisherman on board the vessel.

(2) Each record under paragraph (1) shall –

- (a) be completed monthly in arrears, and
- (b) be in the form set out in the Schedule, or in a form to the like effect which provides evidence of compliance with these Regulations.

(3) Every record maintained under paragraph (1) shall be endorsed by the master, or a person authorised by the master and by the relevant fisherman no later than 7 days after the last day of the month to which the record relates and the fisherman shall be given a copy of the record as endorsed.

(4) The record referred to in paragraph (1) shall be retained for at least one year from the date of its making.

(5) The master of a fishing vessel who fails to comply with this Regulation commits an offence.

Authorised officers

6. (1) The Minister may appoint such persons as he or she considers necessary to be authorised officers for the purpose of ensuring compliance with these Regulations.

(2) A person appointed as a surveyor of ships under section 724 of the Merchant Shipping Act 1894 (c. 60) shall be an authorised officer for the purposes of these Regulations.

(3) For the purposes of ensuring compliance with these Regulations an authorised officer may do any of the following:

- (a) at all reasonable times board a fishing vessel;
- (b) search and inspect the fishing vessel and any documents or records found on board;
- (c) require any person on board the fishing vessel to produce to the authorised officer any report, document or record (including, in the case of information in non-legible form, a copy of the information, or of extracts from it, in permanent legible form) as the authorised officer may reasonably require for the purposes of his or her functions under these Regulations;
- (d) inspect, examine and take copies or extracts from or take away, if necessary, for the purposes of inspection or examination, any report, document or record (including in the case of information in non-legible form, a copy of the information, or of extracts from it, in permanent legible form) that the authorised officer finds in the course of his or her inspection and require the person by whom

such document or record is kept or who produced the document or record to certify the copy as a true copy;

(e) detain a vessel in accordance with Regulation 7.

(4) Where he or she considers it necessary, an authorised officer may be accompanied by a member of the Garda Síochána when exercising any powers conferred on him or her by these Regulations.

(5) A person who -

(a) prevents, obstructs, impedes or delays an authorised officer in the performance of his or her functions under this Regulation,

(b) fails to comply with a requirement or request of an authorised officer under this Regulation, or

(c) gives to an authorised officer any information which is false or misleading in any material respect, knowing it to be so false or misleading,

commits an offence.

Detention of fishing vessel

7. (1) An authorised officer may detain a fishing vessel in a port in the State where he or she is of the opinion –

(a) that there has been a failure to comply with Regulation 4, and

(b) the detention of the vessel is necessary for the protection of the health and safety of the fishermen on board the vessel.

(2) Where a fishing vessel has been detained under paragraph (1), the MSO shall serve a notice (in this Regulation referred to as a “notice of detention”) on the owner or the master of the fishing vessel.

(3) A notice of detention shall –

(a) state the grounds upon which the fishing vessel is being detained,

(b) identify the provision of these Regulations that has not been or is not being complied with by the person,

(c) specify the action to be taken before the notice will be withdrawn,

(d) inform the person of the requirement to confirm compliance with the notice in accordance with paragraph (4),

(e) inform the person of the right to appeal the notice under Regulation 9,

(f) state that a failure to comply with the notice is an offence under this Regulation, and

(g) be signed and dated by the MSO.

(4) A person on whom a notice of detention has been served who is of the opinion that the notice of detention has been complied with shall confirm such compliance in writing to the MSO.

(5) Where a person confirms compliance in accordance with paragraph (4), the MSO shall, on being satisfied that the person has so complied, withdraw the notice of detention.

(6) The MSO may, where it considers it appropriate to do so, by notice in writing to the person on whom a notice of detention was served, withdraw the notice.

(7) A person on whom a notice of detention has been served may appeal the notice under Regulation 9.

(8) The owner or master of a fishing vessel upon whom a notice of detention has been served who fails to comply with the notice commits an offence.

Directions

8. (1) Where the MSO considers that the master of a fishing vessel is failing to comply with these Regulations, the MSO may serve a direction (in this Regulation referred to as a “direction”) on him or her.

(2) A master on whom a direction is served under paragraph (1) may, within 14 days of the service of the direction, make representations in writing to the MSO in relation to the direction.

(3) Any representations made under paragraph (2) shall be considered by the MSO in deciding to confirm, modify or withdraw the direction.

(4) A direction under paragraph (1) shall –

- (a) state the grounds upon which the direction is made,
- (b) identify the provision of these Regulations that has not been or is not being complied with by the master,
- (c) specify the action to be taken by the person on whom the direction is served and where appropriate, the period within which that action shall be taken,
- (d) inform the master of the requirement to confirm compliance with the direction in accordance with paragraph (6),
- (e) inform the master of the right to appeal the direction under Regulation 9,
- (f) state that a failure to comply with the direction is an offence under this Regulation, and
- (g) be signed and dated by the MSO.

(5) A direction shall be complied with within such period as may be specified in the direction.

(6) A master on whom a direction has been served who is of the opinion that the direction has been complied with shall confirm such compliance in writing to the MSO, as soon as practicable after so complying.

(7) Where a master confirms compliance in accordance with paragraph (6), the MSO shall, on being satisfied that the person has so complied, give notice to the master confirming that compliance.

(8) The MSO may, where it considers it appropriate to do so, by notice in writing to the master on whom a direction was served, withdraw a direction.

(9) A master on whom a direction has been served may appeal the direction under Regulation 9.

(10) The master of a fishing vessel upon whom a direction has been served who fails to comply with the direction commits an offence.

Appeal

9. (1) A person aggrieved by a notice of detention under Regulation 7 or a direction under Regulation 8 may appeal against the notice of detention or the direction to the District Court.

(2) An appeal under paragraph (1) shall be made to a judge of the District Court in whose district the notice of detention or the direction was served.

(3) A notice of an appeal shall contain a statement of the grounds on which the appeal is made and be made by written notice, which shall be lodged with the appropriate office of the Court, by the appellant not later than 21 days from the date the notice of detention was served under Regulation 7(2), the direction was served under Regulation 8(1) or the direction was confirmed or modified under Regulation 8(3), as the case may be.

(4) A copy of the notice by which a person makes an appeal under this Regulation shall be given by him or her to the MSO, not less than 48 hours before the hearing of the appeal, and the MSO shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal and at the hearing of any application referred to in paragraph (5).

(5) The bringing of an appeal shall not have the effect of suspending the operation of the notice of detention or the direction as the case may be, but the Court may, on application to it by the appellant, suspend its operation until the appeal is determined or withdrawn.

(6) On the hearing of an appeal, the Court may confirm, vary or revoke the notice of detention or the direction as the case may be.

Service of documents

10. (1) A direction, notice or other document that is required to be served on or given to a person by these Regulations shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;

- (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the direction, notice or document concerned of his or her consent to the direction, notice or document (or documents of a class to which the direction, notice or document belongs) being served on, or given to, him or her in that manner.

(2) For the purpose of this Regulation, a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

(3) Where an opinion, finding, statement or decision of the MSO is contained in a document which –

- (a) purports to have been made by or at the direction of the MSO, and
- (b) is produced in evidence by an authorised officer in any proceedings,

such document shall be admissible in evidence and shall be evidence of any such opinion, finding, statement or decision in such proceedings without further proof.

Penalties and proceedings

11. (1) A person who commits an offence under these Regulations is liable on summary conviction to a class A fine.

(2) Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Minister.



GIVEN under my Official Seal,
8 December, 2020.

EAMON RYAN,
Minister for Transport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations implement Article 21 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 in relation to certain aspects of organisation of working time as they relate to share fishermen working aboard Irish registered seagoing fishing vessels. In particular, these Regulations set out the maximum hours of work and minimum hours of rest for share fishermen working on board such seagoing fishing vessels, along with requirements to maintain records of hours of work and rest for each fisherman. They also set out enforcement powers for authorised officers as well as offences and penalties for non-compliance.

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