



STATUTORY INSTRUMENTS.

S.I. No. 672 of 2019



EUROPEAN UNION (INTERNATIONAL LABOUR ORGANISATION
WORK IN FISHING CONVENTION) (WORKING HOURS)
REGULATIONS 2019

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I, SHANE ROSS, Minister for Transport, Tourism and Sport, 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 effect to Article 3 of and Article 11 of the Annex to Council Directive (EU) 2017/159 of 19 December 2016¹, hereby make the following regulations:

1. These Regulations may be cited as the European Union (International Labour Organisation Work in Fishing Convention) (Working Hours) Regulations 2019.

2. (1) In these Regulations -

“authorised officer” has the meaning assigned to it by Regulation 11(1);

“competent authority” means the body designated as the competent authority under Regulation 5;

“direction” has the meaning assigned to it by Regulation 13;

“Directive” means Council Directive (EU) 2017/159 of 19 December 2016¹;

“fisherman” means a person who works in any capacity under a contract of employment or in an employment relationship on board a fishing vessel, including any other person engaged in activities related to fishing who is present on the same vessel in order to protect the overall health and safety of the persons on board, but does not include:

(a) a person who is a pilot within the meaning of the Harbours Act 1996 (No. 11 of 1996), or

(b) a shore person carrying out work on board a fishing vessel at the quay side;

“fishing vessel” means any ship or boat registered in the State, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing;

¹ OJ No. L25, 31.1.2017, p.12.

“master” means the fisherman having command of the fishing vessel;

“Minister” means the Minister for Transport, Tourism and Sport;

“notice of detention” has the meaning assigned to it by Regulation 12;

“owner” means the owner of a fishing vessel or any other organisation or 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.

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

4. The European Communities (Workers on Board Sea-Going Fishing Vessels) (Organisation of Working Time) Regulations 2003 (S.I. No. 709 of 2003) shall not apply to a worker to whom these Regulations apply.

5. The Marine Survey Office is designated as the competent authority in the State for the purposes of Article 11 of the Annex to the Directive.

6. An owner or master shall not permit a fisherman to work more than an average of 48 hours a week, calculated over a reference period that does not exceed 12 months.

7. (1) A fisherman on board a fishing vessel shall not be required to work in excess of -

(a) 14 hours in any 24 hour period, and

(b) 72 hours in any 7 day period.

(2) A fisherman on board a fishing vessel shall have not less than -

(a) 10 hours rest in any 24 hour period, and

(b) 77 hours rest in any 7 day period.

(3) The hours of rest referred to in paragraph (2)(a) may be provided in 2 rest periods where -

- (a) one rest period is at least 6 consecutive hours, and
- (b) the interval between the first and the second rest period does not exceed 14 hours.

(4) An owner shall comply with paragraphs (1) and (2) in respect of every fisherman on board the fishing vessel.

8. (1) An owner may apply to the competent authority for an exemption from the requirement to comply with Regulation 6 or 7.

(2) An application under paragraph (1) shall be in writing and shall contain details of the objective or technical reasons or reasons concerning the organisation of work which, in the opinion of the owner, require the grant of an exemption under paragraph (3).

(3) In accordance with the general principles of the protection of the health and safety of workers, the competent authority may, on application in that behalf, for objective or technical reasons or reasons concerning the organisation of work, grant an exemption to an owner from the requirement to comply with Regulation 6 or 7.

(4) An exemption granted under paragraph (3) shall comply with the requirements of Regulation 6 and 7 as far as possible, however those requirements may be varied by the competent authority having regard to the possible provision of more frequent or longer leave periods and the availability of compensatory rest.

(5) Before granting an exemption under paragraph (3), the competent authority shall consult representatives of the employer and the fishermen concerned.

(6) Where an exemption is granted by the competent authority under paragraph (3), it shall notify the owner in writing and the notice shall:

- (a) specify the date on which it takes effect;
- (b) specify the terms on which it is granted;
- (c) require the owner to provide the fishermen concerned with compensatory rest as soon as practicable.

(7) Where the competent authority decides to refuse to grant an exemption under paragraph (3), the competent authority shall notify the owner in writing and the notice shall specify the reasons for that decision.

(8) On giving reasonable notice to the owner, the competent authority may for objective or technical reasons or reasons concerning the protection of the health and safety of workers or the organisation of work, vary or revoke an exemption granted under paragraph (3) and the notice shall specify the reasons for that decision.

9. (1) The master may suspend the scheduled hours of rest of a fisherman and require him or her to perform any hours of work necessary for the immediate safety of the vessel, the persons on board or the catch, or for the purpose of giving assistance to other boats or ships or persons in distress at sea.

(2) Where a scheduled rest period is suspended in accordance with paragraph (1), the master shall ensure that the fisherman receives an adequate period of rest as soon as practicable after the normal situation has been restored.

10. (1) The master, 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 calendar 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.

11. (1) 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.

(2) For the purposes of ensuring compliance with these Regulations and any exemption granted by the competent authority under Regulation 8(3), an authorised officer may do any of the following:

- (a) at all reasonable times board any fishing vessel while the vessel is in the State;
- (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 12.

(3) 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.

12. (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 6 or 7, 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 competent authority shall serve a notice (in this Regulation referred to as a “notice of detention”) on the owner or the master.

(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 14,
- (f) state that a failure to comply with the notice is an offence under Regulation 16, and
- (g) be signed and dated by the competent authority.

(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 competent authority.

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

(6) The competent authority 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 14.

13. (1) Where the competent authority considers that an owner or master is failing to comply with these Regulations, the competent authority may serve a direction on that person (in this Regulation referred to as a “direction”).

(2) A person 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 competent authority in relation to the direction.

(3) Any representations made under paragraph (2) shall be considered by the competent authority 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 person,
- (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 person of the requirement to confirm compliance with the direction in accordance with paragraph (6),
- (e) inform the person of the right to appeal the direction under Regulation 14,
- (f) state that a failure to comply with the direction is an offence under Regulation 16, and
- (g) be signed and dated by the competent authority.

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

(6) A person 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 competent authority, as soon as practicable after so complying.

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

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

(9) A person on whom a direction has been served may appeal the direction under Regulation 14.

14. (1) A person aggrieved by a notice of detention or a direction 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 12(2), the direction was served under Regulation 13(1) or the direction was confirmed or modified under Regulation 13(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 competent authority, not less than 48 hours before the hearing of the appeal, and the competent authority 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.

15. (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 competent authority is contained in a document which -

- (a) purports to have been made by or at the direction of the competent authority, 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.

16. (1) An owner shall be guilty of an offence where he or she -

- (a) fails to comply with Regulation 6 or 7, or
- (b) fails to comply with the terms of an exemption granted by the competent authority under Regulation 8(3).

(2) A master shall be guilty of an offence where he or she fails to comply with Regulation 9(2) or 10.

(3) An owner or a master shall be guilty of an offence where he or she fails to comply with a notice of detention or a direction.

(4) A person shall be guilty of an offence where he or she -

- (a) prevents, obstructs, impedes or delays an authorised officer in the performance of his or her functions under Regulation 11,
- (b) fails to comply with a requirement or request of an authorised officer under Regulation 11, 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.

(5) A person guilty of an offence under paragraph (1), (2), (3) or (4) shall be liable on summary conviction to a Class A fine.

(6) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary, or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

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

SCHEDULE 1

Please mark periods of rest, as applicable, with an X, or using a continuous line or an arrow																								Total Hours of rest in 24h period	Hours of Work in 24hr period	Comments
Hours	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23			
Date																										
1																										
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Name of Fishing Vessel : _____ IMO number (if any): _____ Fisherman (full name): _____

Position/ rank: _____ Month and year: _____ Watchkeeper ¹: yes no

I agree that this record is an accurate reflection of the hours of rest of the fisherman concerned.

Signature of Master or person authorised by the Master: _____ Signature of Fisherman: _____

This document is for completion and use in accordance with the European Union (International Labour Organisation Work in Fishing Convention) (Working Hours) Regulations 2019.

Please note: hours of work and rest: 6 (1) Subject to the limit of an average of 48 hours of work a week over a reference period not exceeding 12 months, the limits on hours of work and rest in respect of a worker on board a sea-going fishing vessel shall be:

(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

(b) minimum hours of rest which shall not be less than: (i) 10 hours in any 24-hour period, and (ii) 77 hours in any seven-day period.

6(2) 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.

¹ Tick as appropriate.



GIVEN under my Official Seal,
19 December, 2019.

SHANE ROSS,
Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

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

These Regulations:

- (a) Implement the provisions of Article 11 of the Annex to Council Directive 2017/159/EU implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche).
- (b) These Regulations prescribe maximum hours of work and minimum hours of rest for workers on board sea-going fishing vessels, require records to be kept of their hours of work or rest and provide for enforcement measures.

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