



STATUTORY INSTRUMENTS.

S.I. No. 179 of 2020

EUROPEAN UNION (INTERNATIONAL LABOUR ORGANISATION
WORK IN FISHING CONVENTION) (MINIMUM AGE) REGULATIONS
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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 6 of the Annex to Council Directive (EU) 2017/159 of 19 December 2016¹ and Article 3 of that Directive insofar as it relates to Article 6 of the Annex, hereby makes the following regulations:

1. These Regulations may be cited as the European Union (International Labour Organisation Work in Fishing Convention) (Minimum Age) Regulations 2020.

2. (1) In these Regulations -

“Act of 1996” means the Protection of Young Persons (Employment) Act 1996 (No. 16 of 1996);

“authorised officer” has the meaning assigned to it by Regulation 8(1);

“competent authority” means the body designated as the competent authority under Regulation 4;

“direction” has the meaning assigned to it by Regulation 9;

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

“fisherman” means a person over the age of 18 years 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

¹ OJ No. L25, 31.1.2017, p.12

(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;

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

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

“night work” means work on board a fishing vessel during the period commencing at 10pm and ending at 7am;

“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. That part of the Department of Transport, Tourism and Sport which is known as the Marine Survey Office is designated as the competent authority in the State for the purposes of Article 6 of the Annex to the Directive and these Regulations.

5. (1) Notwithstanding sections 3, 6 and 9 of the Act of 1996 and subject to paragraph (2), an owner shall not employ a person under the age of 18 for work on board a fishing vessel until that person -

- (a) has reached the age of 16 years, or
- (b) has completed 3 years of post-primary education,

whichever occurs later.

(2) An owner may employ a person who is over the age of 15 to do light work on board a fishing vessel during school holidays provided -

- (a) the hours of work do not exceed 7 hours in any day or 35 hours in any week,

- (b) the work is not harmful to the safety, health and development of the person,
 - (c) the person does not do any work for a period of at least 21 days during the summer holidays, and
 - (d) the person receives the minimum rest periods referred to in section 4 of the Act of 1996, subject to the modification that a reference to a child in that section shall be construed as a reference to a person who an owner may employ under this paragraph.
- (3) For the purposes of paragraph (2), light work means -
- (a) assisting with the navigation of the fishing vessel under the supervision of a fisherman, and
 - (b) activities relating to the manual handling and non-automated processing of catch on board the fishing vessel.

6. An owner or a master shall not require a person who is under the age of 18 to use powered machinery on board a fishing vessel without supervision by a fisherman.

7. (1) An owner or a master shall not require a person who is under the age of 18 to perform night work on board a fishing vessel.
- (2) A person over the age of 16 may be required to perform night work where there are objective grounds justifying the requirement provided -
- (a) the effective training of the person under an established training programme would be impaired if he or she did not perform night work, or
 - (b) the specific nature of the duty or an established training programme requires the person to perform duties at night and the competent authority determines that the work will not have a detrimental impact on the person's health or well-being.
- (3) Where a person referred to in paragraph (2) is required to perform night work, the owner or the master shall ensure that the objectives set out in Article 1 of Council Directive 94/33/EC² are not called into question.
- (4) The owner or the master shall ensure that a person who is required to perform night work under paragraph (2) receives appropriate compensatory rest.
- (5) This Regulation shall apply notwithstanding sections 6(1)(b), 7, 8 and 9 of the Act of 1996.

² OJ L216, 20.8.1994, p.12

8. (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, 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 report, document or record 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 a 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 report, document or record is kept or who produced the report, document or record to certify the copy as a true copy.

(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.

9. (1) Where the competent authority considers that an owner or a 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) 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, confirm, modify or withdraw the direction.

(5) 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 (7),
- (e) inform the person of the right to appeal the direction under Regulation 10,
- (f) state that a failure to comply with the direction is an offence under Regulation 12, and
- (g) be signed and dated by the competent authority.

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

(7) 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.

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

(9) A person on whom a direction has been served may appeal the direction under Regulation 10.

10. (1) A person aggrieved by a direction may appeal against the direction to the judge of the District Court in whose district that person ordinarily resides or carries on business.

(2) An appeal, made by written notice containing a statement of the grounds on which the appeal is made, shall be lodged with the appropriate office of the District Court by the appellant not later than 21 days from the date the direction was served under Regulation 9(1) or the direction was confirmed or modified under Regulation 9(4), as the case may be.

(3) 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 at the hearing of the appeal and at the hearing of any application referred to in paragraph (4).

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

(5) On the hearing of an appeal, the Court may confirm, vary or revoke the direction.

11. (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 carries on business 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 carries on business or, in a case in which an address for service has been furnished, to that address; or
- (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 and Regulation 10(1), 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.

12. (1) An owner shall be guilty of an offence where he or she fails to comply with Regulation 5.

- (2) An owner or a master 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 a direction under Regulation 9.
- (3) 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 8,
 - (b) fails to comply with a requirement or request of an authorised officer under Regulation 8, 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.
- (4) A person guilty of an offence under paragraph (1), (2) or (3) shall be liable on summary conviction to a Class A fine.
- (5) 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.
- (6) Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Minister.



GIVEN under the Official Seal of the Minister for Transport,
Tourism and Sport,

21 May, 2020.

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:

- Give effect to the provisions of Article 6 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).
- Prescribe the minimum age for work on board a fishing vessel, including hours and type of work applicable to young persons during summer holidays and provisions around night work.

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