



STATUTORY INSTRUMENTS.

S.I. No. 441 of 2020

EUROPEAN UNION (WORKERS ON BOARD SEAGOING FISHING
VESSELS) (ORGANISATION OF WORKING TIME) (NO. 2)
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 purposes of giving 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:

Citation

1. These Regulations may be cited as the European Union (Workers on Board Seagoing Fishing Vessels) (Organisation of Working Time) (No. 2) Regulations 2020.

Interpretation

2. (1) In these Regulations –

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

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

“Minister” means Minister for Transport;

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

“port” in relation to a port in the State, includes a harbour (within the meaning of the Harbours Act 1996 (No. 9 of 1996)) or a fishery harbour centre (within the meaning of the Fishery Harbour Centres Act 1968 (No. 18 of 1968)).

(2) A word or expression which is used in these Regulations and 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 a seagoing fishing vessel flying the flag of another Member State while in a port in the State.

Hours of work and rest - workers on board seagoing fishing vessels

4. (1) A worker on board a seagoing fishing vessel to which these Regulations apply is entitled to adequate rest and a limit to the number of hours

¹ OJ No. L 299, 18.11.2003, p. 9

he or she works to 48 hours a week on average calculated over a reference period not exceeding 12 months, as set out in this Regulation.

(2) Subject to Article 21(6) of the Directive, the limits on hours of work 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 seagoing fishing vessel to which these Regulations apply who fails, without reasonable excuse, to comply with this Regulation commits an offence and is liable on summary conviction to a class A fine.

Authorised officers

5. (1) The Minister may appoint such persons as he or she considers necessary to be authorised officers for the purpose of ensuring compliance with Regulation 4 and Article 21 of the Directive.

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

(3) An authorised officer shall, when exercising a power conferred on him or her under this Regulation, produce, upon request by any person affected, a warrant of his or her appointment or proof of his or her identity.

(4) For the purpose of ensuring compliance with Regulation 4 and Article 21 of the Directive, an authorised officer may do all or any of the following:

- (a) at all reasonable times, board a seagoing fishing vessel to which these Regulations apply;
- (b) search and inspect the vessel and any records or documents found on board;
- (c) require the master of the vessel to produce to him or her any record or document (including in the case of information in non-legible form, a copy of the information, or extracts from it, in permanent legible form) as the officer may reasonably require for the purposes of these Regulations;
- (d) inspect, examine and take copies or extracts from or take away, if necessary, for the purpose of examination, any record or

document (including in the case of information in non-legible form, a copy of the information, or 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 record or document is kept or who produced it to certify the copy as a true copy.

(5) An authorised officer, where he or she considers it necessary, may be accompanied by a member of the Garda Síochána when exercising any powers conferred on him or her under this Regulation.

(6) A person who –

- (a) obstructs or interferes with an authorised officer when the officer is exercising a power under this Regulation,
- (b) fails to comply with a requirement 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 false or misleading,

commits an offence and is liable to a class A fine.

MSO report to flag state

6. Where an authorised officer obtains evidence, in relation to a seagoing fishing vessel to which these Regulations apply, of a failure to comply with the requirements of Regulation 4 or Article 21 of the Directive, the MSO shall prepare a report in this regard addressed to the competent authority of the flag Member State of the vessel.

Directions

7. (1) Where the MSO considers that a master of a seagoing fishing vessel to which these Regulations apply is failing to comply with Regulation 4, the MSO may serve a direction on the master (in this Regulation referred to as a “direction”).

(2) The master of a seagoing fishing vessel 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) The MSO may, where it considers it appropriate to do so, by notice in writing to the master of the seagoing fishing vessel on whom a direction was served, confirm, modify or withdraw the direction.

(5) A direction shall –

- (a) state the grounds upon which the direction is made,

- (b) identify the manner in which Regulation 4 has not been or is not being complied with by the master,
 - (c) specify the action to be taken by the master 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 under paragraph (7),
 - (e) inform the master of his or her right to appeal the direction under Regulation 9, and
 - (f) be signed and dated by the MSO.
- (6) A direction shall be complied with within such period as may be specified in the direction.
- (7) The master of a seagoing fishing vessel 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.
- (8) Upon receiving confirmation under paragraph (7), and when satisfied that the master has so complied, the MSO shall give notice to the master confirming that compliance.
- (9) A master of a seagoing fishing vessel on whom a direction has been served may appeal the direction under Regulation 9.
- (10) The master of a seagoing fishing vessel to which these Regulations apply who fails to comply with a direction served on him or her commits an offence and is liable on summary conviction to a class A fine.

Detention of a seagoing fishing vessel

8. (1) An authorised officer may detain a seagoing fishing vessel to which these Regulations apply where he or she obtains evidence –
- (a) that there has been a failure to comply with the requirements of Regulation 4, and
 - (b) that in his or her opinion the detention of the fishing vessel is necessary for the protection of the health and safety of the fishermen on board.
- (2) An authorised officer shall not, in the exercise of his or her powers under this Regulation, unreasonably detain or delay a seagoing fishing vessel.
- (3) The detention of a seagoing fishing vessel under paragraph (1) shall be by way of notice and shall –
- (a) state the grounds upon which the fishing vessel is detained,
 - (b) identify the manner in which Regulation 4 has not been or is not being complied with,

- (c) specify the action to be taken before the notice will be withdrawn and, where appropriate, the period within which that action shall be taken,
- (d) inform the master of the fishing vessel of the requirement to confirm compliance with the notice under paragraph (6),
- (e) inform the master of the fishing vessel of his or her right to appeal the notice under Regulation 9, and
- (f) be signed and dated by the MSO.

(4) A notice under this Regulation may be served on or given to the master of the seagoing fishing vessel concerned to whom it is addressed by any of the following methods –

- (a) by delivering it to the master of the vessel;
- (b) by leaving it on board the vessel;
- (c) where the vessel has facility for receiving electronic mail, by electronic means, where confirmation of its delivery is sent to the sender.

(5) If a seagoing fishing vessel is detained under paragraph (1), the MSO shall inform –

- (a) the owner of the vessel, and
- (b) the competent authority of the flag Member State concerned or the nearest diplomatic or consular representative of that Member State.

(6) The master of a seagoing fishing vessel 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.

(7) Where the master confirms compliance under paragraph (6) the MSO shall, on being satisfied that the person has so complied, withdraw the notice of detention.

(8) 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.

(9) Where a seagoing fishing vessel puts to sea, when the vessel has been detained under paragraph (1), the master of the vessel commits an offence and is liable on summary conviction to a class A fine.

Appeal

9. (1) The master of a seagoing fishing vessel aggrieved by a direction under Regulation 7 or a notice of detention under Regulation 8 may appeal against –

- (a) the direction, to the judge of the District Court in whose district the person ordinarily resides or carries on business, or
- (b) the notice of detention, to the judge of the District Court in whose district the fishing vessel has been detained.

(2) An appeal may be made not later than 14 days from the date upon which the direction was served under Regulation 7(1), or confirmed or modified under Regulation 7(4), or the notice of detention was served under Regulation 8(3), 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 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 (4).

(4) The bringing of an appeal shall not have the effect of suspending the operation of the direction or the notice of detention as the case may be, but the District 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 District Court may confirm, vary or revoke the direction or the notice of detention, as the case may be.

Summary proceedings

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

Revocation

11. The European Union (Workers on Board Seagoing Fishing Vessels) (Organisation of Working Time) Regulations 2020 (S.I. No. 331 of 2020) are revoked.



L.S.

GIVEN under my Official Seal,
14 October, 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 workers on board seagoing fishing vessels registered in another Member State whilst in a port in the State. In particular, these Regulations set out the maximum hours of work and minimum hours of rest for workers on board such seagoing fishing vessels, along with enforcement powers for authorised officers and requirements to notify the relevant flag state of any breaches to the Regulations.

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