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

Notice to Owners, Operators, Skippers and all crew on sea-fishing vessels

This Notice takes effect from 16 August 2004 and should be read in conjunction with the Regulations.

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 which come into force on 16 August 2004. It gives guidance on the application of the Regulations. However the Regulations do not apply to the self-employed, including self-employed share fishermen.

Key points

Parts 1 to 3 explain the requirements of the Regulations which:-

- apply to United Kingdom fishing vessels wherever they may be;
- specify that a worker's working time shall not exceed 48 hours per seven day period averaged over 52 weeks;
- entitle a worker 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;
- 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;
- require a worker to be given reasonable rest breaks if the pattern of work puts a worker's health at risk, particularly if the work is monotonous;
- entitle a worker to paid annual leave of at least four weeks;
- permit exceptions to the limits on hours of rest for objective and technical reasons or reasons concerning the organisation of work. The Fishing Industry Code of Practice on Working Time Standards at Annex 1 to this MSN constitutes an approved exception. 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; and
- permit a skipper to require a worker to work any hours of work in an emergency.

Part 4 sets out the way in which duties will be enforced and the remedies available to workers where they do not receive their entitlements.

1.0 Introduction and Background

1.1 The Fishing Vessels (Working Time: Sea-Fishermen) Regulations 2004 (referred to in this notice as “the Regulations”), which come into force on 16 August 2004 introduce new working time rules for employed sea-fishermen. They are based on Directive 93/104/EC (the Working Time Directive) as amended by the Horizontal Amending Directive (HAD) (2000/34/EC).

2. Application and Definitions

2.1 The Regulations apply to United Kingdom fishing vessels wherever they are. The Regulations relating to detention of vessels apply also to fishing vessels registered in other EU Member States while those vessels are in UK waters.

2.2 They place duties on the employers of sea-fishermen on these vessels, and provide certain entitlements to those workers.

2.3 “employment” means employment under a contract.

2.4 “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.

2.5 “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.

2.6 “worker” means a person employed aboard a United Kingdom fishing vessel.

2.7 The Regulations do not apply to the self-employed, including self-employed share fishermen.

3. Duties and Entitlements

3.1 Maximum working time

3.1.1 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.

3.2 Health Assessment and Transfer of Night Workers to Day Work

3.2.1 The employer has a duty to ensure that any worker required to do night work has 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.

3.2.2 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).

3.2.3 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.

3.3 Rest breaks

3.3.1 Where the pattern of hours of work may jeopardise the health and safety of a worker, and particularly where the work is monotonous, the employer must provide reasonable rest breaks. 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”.

	Periods taken as rest breaks are not counted in the calculation of hours of rest for the purposes of regulation 6.		in instalments, but may not be replaced by a payment in lieu, except where a worker's employment is terminated.
3.4	Records	4.	Exceptions
3.4.1	The employer is required to keep records adequate to demonstrate that employed sea-fishermen are receiving the minimum rest to which they are entitled, subject to any exceptions which may be approved under regulation 13 and that the requirements on health assessments for night workers have been complied with.	4.1	Regulation 13 explains that exceptions to the limits for rest described at 3.5.2 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 employers to apply for an exception nor is a separate application needed for each exception. It will also be possible to apply for individual exceptions to cover circumstances which fall outside the Code. However the Secretary of State retains the right to alter or cancel any exception if it appears that the health and safety of workers are being compromised.
3.4.2	If it is possible to derive this information from records which an employer keeps for some other purpose, then separate records need not be kept. Records must be kept for two years from the date on which they are made.		
3.5	Rest periods		
3.5.1	Regulation 7(1) entitles a worker to "adequate rest", so that safety and health are not jeopardised as a result of fatigue.		
3.5.2	Regulation 7(3) requires that every worker 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. Under Regulation 7(4) 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.	4.2	Applications for authorisation of individual exceptions should be made in writing to any MCA Marine Office (listed at Annex 2).
3.5.3	Rest periods include days off, and any rest period which is not a rest break.	5.	Enforcement/Remedies
3.5.4	It should be borne in mind that one long break is more effective than a number of relatively short breaks in providing adequate rest.	5.1	MCA is the enforcement authority for employer duties in relation to: <ul style="list-style-type: none"> • maximum working hours (reg 6(2)); • 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)
3.6	Annual leave	5.2	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.)
3.6.1	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	5.3	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).

6. Further Information

6.1 Questions on these regulations should be directed to MCA's Seafarer Health and Safety Branch. They may be e-mailed to:

seafarer_health&safety@mcga.gov.uk

Alternatively, the address is:
Seafarer Health and Safety Branch
Maritime and Coastguard Agency
Bay 2/09 Spring Place
105 Commercial Road
Southampton
SO15 1EG

Telephone: 023 8032 9216
Fax: 023 8032 9251
MCA Website Address: <http://www.mcga.gov.uk>

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Department for
Transport

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of the Department for Transport

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.

1. Purpose

In recognition of European Directives 93/104/EC and 2000/34/EC, 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, thereby minimising risk to health and safety arising from fatigue.

2. Self-employed Fishermen

This *Code* recognises that the limits in the Working Time Directive cannot be enforced against self-employed fishermen. However they should regard the *Code's* limits on working hours as useful benchmarks to avoid excessive hours.

3. Skippers

Insofar as the masters of fishing vessels meet the conditions set out in article 17(1) of Council Directive 93/104/EC of 23 November 1993¹ it is for the individual master/skipper to determine his/her own compensatory rest and compensatory leave periods, within the context of the principles of the protection of health and safety and the overall safety of the vessel,

4. Working Time Standards

This Code acknowledges the merit of applying working time standards to all personnel aboard fishing vessels. Directive 2000/34/EC recognises the distinctive characteristics of the sea-fishing sector and provides that, in accordance with the general principles of the protection of the health and safety of workers, Member States may allow exemptions from daily and weekly rest periods within it. It is in line with the spirit of the Directive that this Code complies with the standards laid down in the Directive as far as practically possible.

5. Scope for Compensatory Rest

Within the pattern of activity of most fishing vessels, there is considerable scope for compensatory rest and relaxation 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 Clause 7 below are not 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.

¹ Article 17(1) "1. With due regard to the general provisions of the protection of the safety and health of workers, member States may derogate from Articles 3, 4, 5, 6, 8 or 16 when, on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves, and particularly in the case of ...managing executives or other persons with autonomous decision-taking powers,"

6. **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 200X.

7. **Working Time Standards**

Subject to the exceptions and compensatory arrangements, the following working time standards shall apply:

Minimum Daily Rest

10 hours rest in any 24 hour period

Minimum Weekly Rest

77 hours in a 7 day period

Annual Limits

A maximum of 2304 hours

Rest Periods

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 periods shall be at least six hours in length.

8. **Annual Leave**

Under the Working Time Directive employed fishermen are entitled to paid annual leave. The normal patterns of work and remuneration in the fishing industry 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.

9. **Exceptions and Compensatory Leave**

For objective or technical reasons or for reasons having to do with the organisation of the work, the standards in Clause 7 above may not be able to be met. In such cases, while the standards will remain as a benchmark, exceptions to the limits may be allowed provided that the general principles of the health and safety of the workers are respected. Such exceptions should take account of more frequent or longer leave periods or the granting of compensatory leave.

The degree and regularity to which the standards laid down in Clause 7 will be met and compensatory rest required will vary according to the type of fishing vessel, method of fishing and area of operation. However there are constraints to the strict application of limits on working time which arise from the nature of fishing as an occupation. For example, operational parameters and working patterns are, to a considerable degree, dictated by external factors such as weather, seasonal fishing, quota constraints, tidal conditions and daylight hours.

10. **Fleet Specific Constraints**

The table in ATTACHMENT A 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 Clause 7 may be required and for which compensatory rest/leave may need to be made available.

11. Endorsement

This Code of Best Practice is recognised and commended by

The National Federation of Fishermen's Organisations
The Scottish Fishermen's Federation
The Northern Ireland Fishermen's Federation

and other sea-fishermen represented on the Fishing Industry Safety Group.

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

FLEET SEGMENT	OPERATIONAL AND TECHNICAL FACTORS	COMPENSATORY REST FACTORS
GILL NETTERS	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.	<p>Compensatory rest is available during the two weeks when the vessels are unable to work their gear.</p> <p>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.</p>
BEAM TRAWLERS	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.	<p>Compensatory rest is available in periods steaming to and from the grounds, between hauls and between trips.</p> <p>Short tows, small quantities of prime fish result in relatively short time on deck and longer overall periods of rest.</p> <p>Due to extreme weather conditions it is not uncommon for this class of vessel to lose up to 130 working days per year.</p>
WHITE FISH TRAWLERS	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.	<p>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)</p> <p>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>

FLEET SEGMENT	OPERATIONAL AND TECHNICAL FACTORS	COMPENSATORY REST FACTORS
NEPHROP TRAWLERS	<p>Traditional single net: 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>Twin rig: 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 is 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 is 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>
CRABBERS	<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. Due to extreme weather conditions it is not uncommon for this class of vessel to lose up to 120 working days per year.</p>
INSHORE DAY BOATS	<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 through out the year due to factors such as weather, season or tide. This may be concentrated during seasonal extremes.</p> <p>It is not uncommon for this class of vessel to lose up to 170 days per year because of the factors outlined above.</p>

MCA Marine Offices

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| 1. | Aberdeen Marine Office
Blaikies Quay
Aberdeen AB11 5EZ | Tel: 01224 597 900
Fax: 01224 571 920 |
| 2. | Belfast Marine Office
Bregenz House
Quay Street
Bangor
Northern Ireland BT20 5ED | Tel: 0289 147 5300
Fax: 0289 147 5321 |
| 3. | Cardiff Marine Office
Anchor Court
Keen Road
Cardiff CF24 5JW | Tel: 02920 448822
Fax: 02920 448810 |
| 4. | Dover Marine Office
Langdon Battery
Swingate
Dover CT15 5NA | Tel: 01304 227710
Fax: 01304 218505 |
| 5. | Falmouth Marine Office
Pendennis Point
Castle Drive
Falmouth
Cornwall TR11 4WZ | Tel: 01326 310811 |
| 6. | Glasgow Marine Office
Navy Buildings
Eldon Street
Glasgow PA16 7QY | Tel: 01475 5533550 |
| 7. | Great Yarmouth Marine Office
4 th Floor
Havenbridge House
Great Yarmouth NR30 1HZ | Tel: 01493 744300
Fax: 01493 744329 |
| 8. | Harwich Marine Office
East Terrace
Walton-on-Naze
Essex CO14 8PY | Tel: 01255 682107 |
| 9. | Hull(Beverley) Marine Office
Crosskill House
Mill Lane, Beverley
North Humberside HU17 9JB | Tel: 01482 866 606
Fax: 01482 869 989 |
| 10. | Leith Marine Office
Suite 3, Waterside House
46, The Shore
Leith, Edinburgh EH6 6QU | Tel: 0131 554 5488
Fax: 0131 554 7689 |

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| 11. | Liverpool Marine Office
Hall Road West
Crosby
Liverpool L23 8SY | Tel: 0151 931 6600
Fax: 0151 931 6615 |
| 12. | London Marine Office
Central Court,
1B Knoll Rise, Orpington
Kent BR6 0JA | Tel: 01689 890 400
Fax: 01689 890 446 |
| 13. | Milford Haven Marine Office
Gorsewood Drive, Hakin
Milford Haven
Pembrokeshire SA73 3HB | Tel: 01646 693272 |
| 14. | Newcastle Marine Office
MCA Tyne
Compass House
Unit 1, Tyne Dock
South Shields,
Tyne and Wear NE34 9PY | Tel: 0191 496 9900
Fax: 0191 496 9901 |
| 15. | Plymouth Marine Office
New Fish Market
Baylys Wharf, Fish Quay
Plymouth PL4 OLH | Tel: 01752 266 211
Fax: 01752 225 826 |
| 16. | Shetland Marine Office
The Knab, Knab Road
Lerwick
Shetland ZE1 0AX | Tel: 01595 743514 |
| 17. | Southampton Marine Office
Spring Place
105 Commercial Road
Southampton SO15 1EG | Tel: 023 80329329
Fax: 023 80329351 |
| 18. | Stockton On Tees Marine Office
3 rd Floor, Victoria House
Pearson Court, Pearson Way
Teesdale Park
Stockton On Tees TS17 6PT | Tel: 01642 611040
Fax: 01642 614048 |

