



Law Society  
of Scotland

# Consultation response

## Eligibility of fishermen for a British Seamen's Card

November 2022



## Introduction

---

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Marine Law Sub-committee welcomes the opportunity to respond to the Maritime and Coastguard Agency's (MCA) Consultation on *Eligibility of fishermen for a British Seamen's Card*<sup>1</sup>. We have the following comments to put forward for consideration.

## Consultation questions

---

### **5.1.1 Do you agree that fishermen should be eligible for a British Seaman's Card and why?**

We are supportive of the proposed approach that fishermen be eligible for a British Seaman's Card by amendment to the existing Regulations. We understand from our members who are working in this sector that the end of free movement has affected the business within the UK of those in the fishing industry.

Though we agree with this move for the reasons set out in the consultation, we understand from members who are engaging directly with the industry that the proposed approach is likely to bring limited benefit to fishermen and fishing vessel owners overall.

### **5.1.2 What will be the benefits for the fisherman and for their employer/the fishing vessel owner?**

We anticipate that a seaman's card will be of little advantage to most UK fishermen, as they and their families are already entitled to certain rights in relation to medical care and shore leave and, during the periods of

<sup>1</sup> <https://www.gov.uk/government/consultations/consultation-on-the-eligibility-of-fishermen-for-a-british-seamens-card>

Covid-19 regulations, local fishermen were classed as ‘key workers’, allowing the crew further transit dispensations.

We anticipate that a small proportion of fishermen working on deep-sea vessels in other parts of the world may be able to benefit from the measures for the reasons set out in the consultation. This may be a matter which could be taken up in future trade negotiations.

### **5.1.3 Do you foresee any adverse impacts?**

The anticipated cost to fishers and businesses of accessing the seaman’s card may mean that take-up is low.

### **5.1.4 Any other comment?**

We recognise the Government’s intention to support the fishing industry, however, we consider that there may be further steps that the Government can take in relation to the UK-inward border restrictions to ease pressures on those operating in the sector.

On 4 March 2021, the Home Office announced changes to the Immigration Rules that confirm deckhands on large vessels (>9m) with three or more years’ experience should be included in the list of occupations eligible for the skilled worker visas<sup>2</sup>. While deckhands were added to the skilled worker list, they have not been added to the shortage occupation list (this was a recommendation made by the Migration Advisory Committee which has not been taken forward by Government).

A skilled worker visa is for employers to recruit people to work in the UK in a specific job, which grants the right to reside in the UK and work for a specific employer to the applicant. The employer must obtain a sponsor licence (which itself brings various duties) which enables them to issue a ‘Certificate of Sponsorship’, which is then used by the worker to make a visa application. As part of the application, a skilled worker must meet certain criteria including evidence that they can speak, listen, read and write in English to a defined level – this requirement can be met, among other ways, by passing a specified English language test. We understand that in the fishing sector, employers are finding that a small minority of potential recruits can pass an English language test to the required level. This is having a considerable impact on how many fishing vessels can utilise the visa route for qualified recruits. We are aware that under other visa systems, the standards required under the English language test are lower (for example, for ‘spouse visas’ which is also a 5-year route to settlement in the UK).

A significant proportion of vessels which operate predominately outside territorial waters but from UK ports engage non-EEA crew by utilising exemptions from immigration control provided by the Immigration Act 1971.

<sup>2</sup> Reported here: <https://www.gov.uk/government/news/new-immigration-rules-provide-boost-for-scottish-fishing-industry>

The route is often known as a ‘transit visa’, though nationals of countries which are signatories to the ILO108 do not require entry clearance and may seek entry on arrival at the UK border.

Mark Harper, the then Minister for Immigration on 28 November 2012 stated that engaging crew members via a transit visa is a ‘perfectly legitimate use of the immigration system’<sup>3</sup>. We consider that the provisions within the Immigration Act 1971, which exempt crew from the requirement to be granted leave to enter on return from a voyage outside UK territorial waters, are sensible and reduce the operational burden on Border Force. This is, however, widely considered as a short-term solution to a broader issue for the industry and we are aware of calls by some stakeholders to end the use of transit visas.

The termination of free movement rights for EU nationals has exacerbated challenges around labour access in some areas. If vessel crew members are unable to be sponsored under the current immigration system, operators in some regions will continue to lose access to non-UK crew, while other areas may be able to engage non-UK nationals utilising a transit visa. We are aware that research has indicated significant reliance on non-UK crew, particularly in Scotland and Northern Ireland, reporting figures up to 30% on certain vessel types and varying by region.

Given the well-known shortage of skilled workers to serve as crew on commercial vessels, and the extensive use of non-UK crew in the Scottish fleet, we suggest that the existing English language requirement be considered with a view to making it easier for the fishing industry to make best use of the changes to the skilled worker list in relation to deckhands.

**For further information, please contact:**

Alison McNab  
Policy Team  
Law Society of Scotland  
DD: 0131 476 8109  
[alisonmcnab@lawscot.org.uk](mailto:alisonmcnab@lawscot.org.uk)

<sup>3</sup> HC Deb, 28 November 2012, c96WH