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STATUTORY INSTRUMENTS

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**2003 No. 3049**

**The Merchant Shipping (Working Time:  
Inland Waterways) Regulations 2003**

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F1 Pt. 4 heading omitted (5.1.2018) by virtue of [The Merchant Shipping \(Working Time Inland Waterways\) \(Amendment\) Regulations 2017 \(S.I. 2017/1149\)](#), regs. 1(2), 7(3)

**Power to require information**

16. An employer shall provide the MCA with such information on night workers employed by him as the Secretary of State (acting through the MCA) may specify in writing.

**Offences**

[<sup>F2</sup>17.—(1) An employer who fails to comply with any requirement referred to in paragraph (2) commits an offence.

(2) The requirements referred to in paragraph (1) are—

- (a) regulation 6 (maximum daily working time);
- (b) regulation 6A (maximum weekly working time);
- (c) regulation 6B (maximum annual working time);
- (d) regulation 6C(1) (maximum average weekly working time);
- (e) regulation 6D (maximum average weekly working time where there are more working days than rest days);
- (f) regulation 7C (length of night work);
- (g) regulation 15A(2) (seasonal work on passenger ships).

(3) An employer who fails to comply with regulation 7A(1) (health assessments for night workers) commits an offence.

(4) An employer who fails to comply with regulation 7B(1) (transfer of night workers to day work) commits an offence.

(5) An employer who fails to comply with regulation 8 (pattern of work) commits an offence.

(6) An employer who fails to comply with regulation 9 (records) commits an offence.

(7) An employer who fails to comply with regulation 10B(2) (working days and rest days) commits an offence.

(8) An employer who fails to comply with regulation 16 (power to require information) commits an offence.

(9) A master who fails to comply with regulation 14A(3) (emergency situations) commits an offence.

(10) An offence under these Regulations is punishable on summary conviction—

- (a) in England and Wales by a fine; or
- (b) in Scotland or Northern Ireland by a fine not exceeding the statutory maximum.

(11) In any proceedings for an offence under these Regulations it is a defence for the defendant to show that all reasonable steps had been taken to ensure compliance with the Regulations.]

**F2** Reg. 17 substituted (5.1.2018) by [The Merchant Shipping \(Working Time Inland Waterways\) \(Amendment\) Regulations 2017 \(S.I. 2017/1149\)](#), regs. 1(2), **20**

## Remedies

**18.**—(1) A worker may present a complaint to an employment tribunal that his employer—

- [<sup>F3</sup>(a) has refused to permit him to exercise any right he has under regulation 7(1), 7D(1), 10(1) or (3), 10A(1) or (3), 10B(3), (7) or (8), 11(1), 11A(1) or 15A(3) or (4); or]
- (b) has failed to pay him the whole or any part of any amount due to him under regulation 11(1) [<sup>F4</sup>or 11A(1)].

(2) An employment tribunal shall not consider a complaint under this regulation unless it is presented—

- (a) before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

[<sup>F5</sup>(2A) Regulation 18A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2).]

(3) Where an employment tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the worker.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the employer's default in refusing to permit the worker to exercise his right, and
- (b) any loss sustained by the worker which is attributable to the matters complained of.

(5) Where on a complaint under paragraph (1)(b) an employment tribunal finds that an employer has failed to pay a worker in accordance with regulation 11(1) [<sup>F6</sup>or 11A(1)], it shall order the employer to pay to the worker the amount which it finds to be due to him.

**F3** Reg. 18(1)(a) substituted (5.1.2018) by [The Merchant Shipping \(Working Time Inland Waterways\) \(Amendment\) Regulations 2017 \(S.I. 2017/1149\)](#), regs. 1(2), **21(2)**

**F4** Words in reg. 18(1)(b) inserted (5.1.2018) by [The Merchant Shipping \(Working Time Inland Waterways\) \(Amendment\) Regulations 2017 \(S.I. 2017/1149\)](#), regs. 1(2), **21(3)**

- F5** Reg. 18(2A) inserted (6.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2014 (S.I. 2014/386), art. 1, **Sch. para. 22**
- F6** Words in reg. 18(5) inserted (5.1.2018) by The Merchant Shipping (Working Time Inland Waterways) (Amendment) Regulations 2017 (S.I. 2017/1149), regs. 1(2), **21(4)**

### **[<sup>F7</sup>Extension of time limit to facilitate conciliation before institution of proceedings**

**18A.—**(1) In this regulation—

- (a) Day A is the day on which the worker concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
- (b) Day B is the day on which the worker concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(2) In working out when the time limit set by regulation 18(2)(a) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(3) If the time limit set by regulation 18(2)(a) would (if not extended by this paragraph) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(4) The power conferred on the employment tribunal by regulation 18(2)(b) to extend the time limit set by paragraph (2)(a) of that regulation is exercisable in relation to that time limit as extended by this regulation.]

- F7** Reg. 18A inserted (6.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2014 (S.I. 2014/386), art. 1, **Sch. para. 23**

### **Restriction on contracting out**

**19.—**(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of these Regulations, save in so far as these Regulations provide for an agreement to have that effect, or
- (b) to preclude a person from bringing proceedings under these Regulations before an employment tribunal.

(2) Paragraph (1) does not apply to—

- (a) any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under [<sup>F8</sup>any of sections 18A to 18C] of the Employment Tribunals Act 1996 <sup>M1</sup> (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings within [<sup>F9</sup>section 18(1) (p)] of the [<sup>F10</sup>Employment] Tribunals Act 1996 (proceedings under these Regulations where conciliation is available), if the conditions regulating [<sup>F11</sup>settlement] agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating [<sup>F12</sup>settlement] agreements under these Regulations are that—

- (a) the agreement must be in writing,

- (b) the agreement must relate to the particular complaint,
  - (c) the worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal,
  - (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or a professional body, covering the risk of a claim by the worker in respect of loss arising in consequence of the advice,
  - (e) the agreement must identify the adviser, and
  - (f) the agreement must state that the conditions regulating [<sup>F12</sup>settlement] agreements under these Regulations are satisfied.
- (4) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—
- (a) if he is a qualified lawyer,
  - (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, or
  - (c) if he works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.
- (5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c)—
- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,
  - (b) in the case of a person within paragraph (4)(b) or (c), if the trade union or advice centre is the employer or an associated employer, or
  - (c) in the case of a person within paragraph (4)(c), if the worker makes a payment for the advice received from him.
- (6) In paragraph (4)(a), “qualified lawyer” means—
- (a) as respects England and Wales, [<sup>F13</sup>a person who, for the purposes of the Legal Services Act 2007), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act)];
  - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate; and
  - (c) as respects Northern Ireland, a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (7) For the purposes of paragraph (5) any two employers shall be treated as associated if—
- (a) one is a company of which the other (directly or indirectly) has control;
  - (b) both are companies of which a third person (directly or indirectly) has control;
- and “associated employer” shall be construed accordingly.

**F8** Words in reg. 19(2)(a) substituted (6.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2014 \(S.I. 2014/386\)](#), art. 1, **Sch. para. 24**

**F9** Words in reg. 19(2)(b) substituted (E.W.S.) (6.4.2014) by [The Employment Tribunals Act 1996 \(Application of Conciliation Provisions\) Order 2014 \(S.I. 2014/431\)](#), art. 1, **Sch. para. 29(b)**

**F10** Word in reg. 19(2)(b) substituted (5.1.2018) by [The Merchant Shipping \(Working Time Inland Waterways\) \(Amendment\) Regulations 2017 \(S.I. 2017/1149\)](#), regs. 1(2), **22**

**F11** Word in reg. 19(2) substituted (30.8.2013) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2013 \(S.I. 2013/1956\)](#), art. 1, **Sch. para. 4**

- F12** Word in reg. 19(3) substituted (30.8.2013) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2013 \(S.I. 2013/1956\)](#), art. 1, **Sch. para. 4**
- F13** Words in reg. 19(6)(a) substituted (1.1.2010) by [The Legal Services Act 2007 \(Consequential Amendments\) Order 2009 \(S.I. 2009/3348\)](#), arts. 2(1), 23, **Sch. 2**

#### Marginal Citations

- M1** 1996 c. 17; section 1(2) of the [Employment Rights \(Dispute Resolution\) Act 1998 \(c. 8\)](#) provides for the Industrial Tribunals Act 1996 to be cited as the Employment Tribunals Act 1996. Section 18 was amended by the [National Minimum Wage Act 1998 \(c. 39\)](#), **section 30(1)**; the Working Time Regulations 1998, [S.I. 1998/1833](#), **regulation 33**; the Transnational Information and Consultation of Employees Regulations 1999, [S.I. 1999/3323](#), **regulation 33(1)**; the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, [S.I. 2000/1551](#), **Schedule**, paragraph 1(a); the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2001, [S.I. 2001/1107](#), **regulation 2**; the [Employment Act 2002 \(c. 22\)](#), **section 24(2)** and Schedule 7, paragraph 23(2); the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, [S.I. 2002/2034](#), **Schedule 2, paragraph 2, paragraph 2(a)** and paragraph 2(2) of Schedule 2 to these Regulations.

#### [<sup>F14</sup>Review

- 19A.—(1)** The Secretary of State must from time to time—
- carry out a review of the regulatory provision contained in these Regulations; and
  - publish a report setting out the conclusions of the review.
- (2) The first report must be published within three years of the coming into force of the Merchant Shipping (Working Time: Inland Waterways) (Amendment) Regulations 2017.
- (3) Subsequent reports must be published at intervals not exceeding 5 years.
- (4) Section 30(3) of the Small Business, Enterprise and Employment Act 2015 requires that a review carried out under this regulation must, so far as is reasonable, have regard to how [Directive 2014/112/EU](#) is implemented in other member States.
- (5) Section 30(4) of the Small Business, Enterprise and Employment Act 2015 requires that a report published under this regulation must, in particular—
- set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a),
  - assess the extent to which those objectives are achieved,
  - assess whether those objectives remain appropriate, and
  - if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.
- (6) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).]

- F14** [Reg. 19A](#) inserted (5.1.2018) by [The Merchant Shipping \(Working Time Inland Waterways\) \(Amendment\) Regulations 2017 \(S.I. 2017/1149\)](#), regs. 1(2), **23**

#### Amendments to legislation

- 20.** Schedule 2 (amendments to legislation) shall have effect.

**Changes to legislation:**

There are currently no known outstanding effects for the The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, ....