

2003 No. 3049

**MERCHANT SHIPPING
SAFETY
CANALS AND INLAND WATERWAYS**

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

Made - - - - - 27th November 2003
Laid before Parliament 3rd December 2003
Coming into force - - 24th December 2003

Whereas the Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to the safety of ships and the health and safety of persons on them(b) and the organisation of working time(c):

And whereas, in so far as the following Regulations are made in exercise of the powers conferred by section 85 of the Merchant Shipping Act 1995(d), the Secretary of State has in pursuance of section 86(4) of that Act consulted the persons referred to in that subsection:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by the said section 2(2) of the European Communities Act 1972, and by sections 85(1), (3) and (7) and 86(1) of the Merchant Shipping Act 1995, hereby makes the following Regulations:

**PART 1
GENERAL**

Citation and Commencement

1. These Regulations may be cited as the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 and shall come into force on 24th December 2003.

Interpretation

2.—(1) In these Regulations—

“collective agreement” means a collective agreement within the meaning of section 178 of the Trade Union and Labour Relations (Consolidation Act 1992(e), the trade union parties to which are independent trade unions within the meaning of section 5 of that Act; “employer”, in relation to a worker, means the person by whom the worker is (or, where the employment has ceased, was) employed;

(a) 1972 c. 68.

(b) S.I. 1993/595.

(c) S.I. 1997/1174.

(d) 1995 c. 21; sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 8. Sections 85 and 86 apply to hovercraft by virtue of the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350), to which Order there are amendments not relevant to these Regulations.

(e) 1992 c. 52.

“employment”, in relation to a worker, means employment under his contract, and “employed shall be construed accordingly;

“MCA” means the Maritime and Coastguard Agency, an executive agency of the Department for Transport;

“Merchant Shipping Notice” means a Notice described as such and issued by the MCA; and any reference to a particular Merchant Shipping Notice includes a reference to any document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

“night time” means a period—

(a) the duration of which is not less than seven hours, and

(b) which includes the period between midnight and 5 a.m. (local time),

which is determined for the purposes of these Regulations by a relevant agreement, or, in default of such a determination, the period between 11 p.m. and 6 a.m. (local time);

“night work” means work during night time;

“night worker” means a worker—

(a) who, as a normal course, works at least three hours of his daily working time during night time, or

(b) who is likely, during night time, to work at least such proportion of his annual working time as may be specified for the purposes of these Regulations in a collective agreement or a workforce agreement,

and, for the purpose of paragraph (a) of this definition, a person works hours as a normal course (without prejudice to the generality of that expression) if he works such hours on the majority of days on which he works;

“relevant agreement”, in relation to a worker, means a workforce agreement which applies to him, any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the worker and his employer;

“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;

“rest period” means a period which is not working time, other than a rest break or leave to which the worker is entitled under these Regulations;

“sail training vessel” means a sailing vessel which is being used either—

(a) to provide instruction in the principles of responsibility, resourcefulness, loyalty and team endeavour and to advance education in the art of seamanship; or

(b) to provide instruction in navigation and seamanship for yachtsmen;

and to which one of the following codes applies^(a)—

The Code of Practice for the Safety of Small Commercial Sailing Vessels^(b);

The Code of Practice for Safety of Large Commercial Sailing and Motor Vessels^(c);

The Code of Practice for the Safety of Small Commercial Motor Vessels^(d); or

The Code of Practice for the Safety of Small Vessels in Commercial Use for Sport or Pleasure Operating from a Nominated Departure Point^(e);

“ship” includes hovercraft;

“worker” means a person employed (or, where the employment has ceased, who was employed) as a member of the travelling personnel of a ship to which these Regulations apply by an undertaking which operates services for passengers or goods, but does not include persons who are training in a sail training vessel or persons who are not engaged in the navigation of, or have no emergency safety responsibilities on, such a vessel;

(a) Certain vessels are required to comply with the codes by the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998, S.I. 1998/2771, amended by S.I. 2000/482 and S.I. 2002/1473.

(b) Published by The Stationery Office in 1993 (ISBN 0-11-551184-9).

(c) Published by The Stationery Office in 1997 (ISBN 0-11-551911-4).

(d) Published by The Stationery Office in 1993 (ISBN 0-11-551185-7).

(e) Published by The Stationery Office in 2000 (ISBN 0-11-551812-6).

“workforce agreement” means an agreement between an employer and workers employed by him or their representatives in respect of which the conditions set out in Schedule 1 to these Regulations are satisfied; and

“working time”, in relation to a worker, means—

- (a) any period during which he is working, at his employer’s disposal and carrying out his activity or duties,
- (b) any period during which he is receiving relevant training, and
- (c) any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement,

and “work” shall be construed accordingly.

(2) Subject to paragraph (1), words and expressions used in these Regulations shall have the same meaning as in Council Directive 93/104/EC concerning certain aspects of the organization of working time(a).

Application

3.—(1) These Regulations apply to any United Kingdom ship, wherever it may be, which—

- (a) operates, or ordinarily operates, under a certificate which does not allow the ship to go beyond the limits of waters of category A, B, C or D (as categorised in Merchant Shipping Notice No. MSN 1776 (M)), or
- (b) is not required to be certificated.

(2) These Regulations apply to any ship, other than a United Kingdom ship, which operates in the United Kingdom and does not go beyond the limits of waters of categories A, B, C and D, as categorised in Merchant Shipping Notice No. MSN 1776 (M).

Northern Ireland

4. These Regulations apply to Northern Ireland with the following modifications—

- (a) for any reference to any employment tribunal there shall be substituted a reference to an industrial tribunal within the meaning of section 42(5) of the Interpretation Act (Northern Ireland) 1954(b);
- (b) in regulation 2(1) for the definition of “collective agreement” there shall be substituted the following definition—
““collective agreement” means a collective agreement within the meaning of Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992(c), the trade union parties to which are independent trade unions within the meaning of that Article;”;
- (c) in regulation 19(2)(a) for the words “a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996 (conciliation)” there shall be substituted the words “the Labour Relations Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996(d) (conciliation)”;
- (d) in regulation 19(2)(b) for the words “section 18(1)(m) of the Employment Tribunals Act 1996” there shall be substituted the words “Article 20(1)(k) of the Industrial Tribunals (Northern Ireland) Order 1996”.

(a) OJ No. L 307, 13.12.1993, p.18; amended by Directive 2000/34/EC of the European Parliament and of the Council, OJ No. L 195 1.8.2000, p.41

(b) 1954 c. 33 (N.I.); section 42(5) was substituted by paragraph 1 of Schedule 1 to the Industrial Tribunals (Northern Ireland) Order 1996, S.I. 1996/1921 (N.I. 18).

(c) S.I. 1992/807 (N.I. 5); the definition of “collective agreement” was amended by Schedule 2 to the Trade Union and Labour Relations (Northern Ireland) Order 1995, S.I. 1995/1980 (N.I. 12).

(d) S.I. 1996/1921 (N.I. 18); Article 20 was amended by paragraph 10 of Schedule 2 to the Race Relations (Northern Ireland) Order 1997, S.I. 1997/869 (N.I. 6); by paragraph 20 of Schedule 1 to the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998, S.I. 1998/1265 (N.I. 8); by section 30(2) of the National Minimum Wage Act 1998 (c. 39); by paragraph 5 of Schedule 2 to the Employment (Northern Ireland) Order 2002, S.I. 2002/2836 (N.I. 2); by regulation 33 of the Working Time Regulations (Northern Ireland) 1998, S.R. (N.I.) 1998 No. 386; by regulation 33(2) of the Transnational Information and Consultation of Employees Regulations 1999, S.I. 1999/3233; by paragraph 2 of the Schedule to the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000, S.R. (N.I.) 2000 No. 219; by paragraph 3 of Part I of Schedule 2 to the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002, S.R. (N.I.) 2002 No. 298; and by paragraph 5 of Schedule 2 to these Regulations.

PART 2

RIGHTS AND OBLIGATIONS CONCERNING WORKING TIME

General

5. The provisions of this Part have effect subject to the exceptions provided for in Part 3 of these Regulations.

Maximum weekly working time

6.—(1) A worker's working time, including overtime, in any reference period which is applicable in his case shall not exceed an average of 48 hours for each seven days.

(2) An employer shall take reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each worker employed by him in relation to whom it applies.

(3) Subject to paragraphs (4) and (5) and any agreement under regulation 15, the reference periods which apply in the case of a worker are—

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period, or
- (b) in any other case, any period of 17 weeks in the course of his employment.

(4) Where a worker has worked for his employer for less than 17 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his employer.

(5) Paragraphs (3) and (4) shall apply to a worker to whom regulation 14 applies as if for each reference to 17 weeks there shall be substituted a reference to 26 weeks.

(6) For the purposes of this regulation, a worker's average working time for each seven days during a reference period shall be determined according to the formula—

$$\frac{A + B}{C}$$

where—

A is the aggregate number of hours comprised in the worker's working time during the course of the reference period;

B is the aggregate number of hours comprised in his working time during the course of the period beginning immediately after the end of the reference period and ending when the number of days in that subsequent period on which he has worked equals the number of excluded days during the reference period; and

C is the number of weeks in the reference period.

(4) In paragraph (6), "excluded days" means days comprised in—

- (a) any period of annual leave taken by the worker in exercise of his entitlement under regulation 11;
- (b) any period of sick leave taken by the worker; and
- (c) any period of maternity, paternity, adoption or parental leave taken by the worker.

Health assessment and transfer of night workers to day work

7.—(1) An employer—

- (a) shall not assign a worker to work which is to be undertaken during periods such that the worker will become a night worker unless—
 - (i) the employer has ensured that the worker will have the opportunity of a free health assessment before he takes up the assignment; or
 - (ii) the worker had a health assessment before being assigned to work to be undertaken during such periods on an earlier occasion, and the employer has no reason to believe that the assessment is no longer valid, and

- (b) shall ensure that each night worker employed by him has the opportunity of a free health assessment at regular intervals of whatever duration may be appropriate in his case.
- (2) For the purpose of paragraph (1), an assessment is free if it is at no cost to the worker to whom it relates.
- (3) No person shall disclose an assessment made for the purposes of this regulation to any person other than the worker to whom it relates, unless—
- (a) the worker has given his consent in writing to the disclosure, or
 - (b) the disclosure is confined to a statement that the assessment shows the worker to be fit—
 - (i) in a case where paragraph (1)(a)(i) applies, to take up an assignment, or
 - (ii) in a case where paragraph (1)(b) applies, to continue to undertake an assignment.
- (4) Where—
- (a) a registered medical practitioner has advised an employer that a worker employed by the employer is suffering from health problems which the practitioner considers to be connected with the fact that the worker performs night work, and
 - (b) it is possible for the employer to transfer the worker to work—
 - (i) to which the worker is suited, and
 - (ii) which is to be undertaken during periods such that the worker will cease to be a night worker,
- the employer shall transfer the worker accordingly.

Pattern of work

8. Where the pattern according to which an employer organises work is such as to put the health and safety of a worker employed by him at risk, in particular because the work is monotonous, the employer shall ensure that the worker is given adequate rest breaks.

Records

- 9.** An employer shall—
- (a) keep records which are adequate to show whether the limit specified in regulation 6(1) and the requirements in regulation 7(1) are being complied with in the case of each worker employed by him in relation to whom they apply; and
 - (b) retain such records for two years from the date on which they are made.

Rest periods

- 10.—(1)** Subject to paragraph (4), a worker is entitled to adequate rest.
- (2) For the purpose of this regulation, “adequate rest” means that a worker has regular rest periods, the duration of which are expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, he does not cause injury to himself, to fellow workers or to others and that he does not damage his health, either in the short term or in the longer term.
- (3) During any reference period^(a) applicable to a worker the total number of hours comprised in the rest periods referred to in paragraph (2) shall not be less than 77 hours for each seven days.
- (4) Paragraph (1) does not apply in relation to a worker to whom regulation 14(d) applies.

Entitlement to annual leave and payment for leave

11.—(1) Subject to paragraph (2), a worker is entitled to four weeks’ annual leave and to be paid in respect of any such leave at the rate of a week’s pay in respect of each week of leave.

^(a) See regulation 5(3) to (5) in relation reference periods.

(2) In respect of a period of employment of less than one year, a worker is entitled to annual leave of a proportion of four weeks equal to the proportion the period of employment in question bears to one year; the proportion to be determined in days and any fraction of a day to be treated as a whole day.

(3) Leave to which a worker is entitled under this regulation—

- (a) may be taken in instalments;
- (b) may not be replaced by a payment in lieu, except where the worker's employment is terminated.

(4) Sections 221 to 224 of the Employment Rights Act 1996^(a) shall apply for the purpose of determining the amount of a week's pay for the purposes of paragraph (1), subject to the modifications set out in paragraph (5).

(5) The provisions referred to in paragraph (4) shall apply as if—

- (a) references to the employee were references to the worker;
- (b) references to the employee's contract of employment were references to the worker's contract;
- (c) the calculation date were the first day of the period of leave in question; and
- (d) the references to sections 227 and 228 did not apply.

(6) A right to payment under paragraph (1) does not affect any right of a worker to remuneration under his contract ("contractual remuneration").

(7) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Entitlements under other provisions

12. Where during any period a worker is entitled to a rest period or annual leave both under a provision of these Regulations and under a separate provision (including a provision of his contract), he may not exercise the two rights separately, but may, in taking a rest period or annual leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.

PART 3

EXCEPTIONS

Unmeasured working time

13.—(1) Regulation 6(1) and (2) does not apply in relation to a worker where, on account of the specific characteristics of the activity in which he is engaged, the duration of his working time is not measured or pre-determined or can be determined by the worker himself, as may be the case for—

- (a) managing executives or other persons with autonomous decision-taking powers, or
- (b) family workers.

(2) Where part of the working time of a worker is measured or pre-determined or cannot be determined by the worker himself but the specific characteristics of the activity are such that, without being required to do so by the employer, the worker may also do work the duration of which is not measured or pre-determined or can be determined by the worker himself, regulation 6(1) and (2) shall apply only to so much of his work as is measured or pre-determined or cannot be determined by the worker himself.

(a) 1996 c. 18.

Other special cases

- 14.** This regulation(a) applies to a worker—
- (a) where the worker is engaged in security and surveillance activities requiring a permanent presence in order to protect property and persons, as may be the case for security guards and caretakers;
 - (b) where the worker's activities involve the need for continuity of service or production, as may be the case in relation to—
 - (i) work at docks;
 - (ii) industries in which work cannot be interrupted on technical grounds;
 - (iii) the carriage of passengers on regular urban transport services;
 - (c) where there is a foreseeable surge of activity, as may be the case in relation to tourism;
 - (d) where the worker's activities are affected by—
 - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the control of the worker's employer;
 - (ii) exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer; or
 - (iii) an accident or the imminent risk of an accident.

Collective and workforce agreements

15. A collective agreement or workforce agreement may for objective or technical reasons or reasons concerning the organisation of work, modify the application of regulation 6(3) and (4) in relation to particular workers or groups of workers by the substitution, for each reference to 17 weeks, of a different period (being a period not exceeding 52 weeks).

PART 4

MISCELLANEOUS

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

17.—(1) An employer who fails to comply with regulation 6(2), 7(1) or (4), 8, 9 or 16 shall be guilty of an offence, punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(2) In any proceedings for an offence under these Regulations it shall be a defence for the defendant to show that all reasonable steps had been taken by him to ensure compliance with the Regulations.

Remedies

- 18.—(1)** A worker may present a complaint to an employment tribunal that his employer—
- (a) has refused to permit him to exercise any right he has under regulation 10(1) or (3) or 11(1); or
 - (b) has failed to pay him the whole or any part of any amount due to him under regulation 11(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

(a) Regulation 14 is relevant to regulations 6(5) and 10(4).

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.

(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), it shall order the employer to pay to the worker the amount which it finds to be due to him.

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 section 18 of the Employment Tribunals Act 1996(a) (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings within section 18(1)(m) of the Employment Tribunals Act 1996 (proceedings under these Regulations where conciliation is available), if the conditions regulating compromise agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating compromise 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 compromise agreements under these Regulations are satisfied.

(a) 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.

- (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, a barrister (whether in practice as such or employed to give legal advice), a solicitor who holds a practising certificate, or a person other than a barrister or solicitor who is an authorised advocate or authorised litigator (within the meaning of the Courts and Legal Services Act 1990(a));
 - (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.

Amendments to legislation

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

Signed by authority of the Secretary of State for Transport

27th November 2003

David Jamieson
Parliamentary Under-Secretary of State,
Department for Transport

(a) 1990 c. 41.

SCHEDULE 1

Regulation 2(1)

WORKFORCE AGREEMENTS

1. The following are the conditions that must be satisfied for an agreement between an employer and workers employed by him or their representatives to constitute a workforce agreement for the purposes of these Regulations—

- (a) the agreement is in writing;
- (b) it has effect for a specified period not exceeding five years;
- (c) it applies either—
 - (i) to all of the relevant members of the workforce, or
 - (ii) to all of the relevant members of the workforce who belong to a particular group;
- (d) the agreement is signed—
 - (i) in the case of an agreement of the kind referred to in sub-paragraph (c)(i), by the representatives of the workforce, and in the case of an agreement of the kind referred to in sub-paragraph (c)(ii), by the representatives of the group to which the agreement applies (excluding, in either case, any representative not a relevant member of the workforce on the date on which the agreement was first made available for signature), or
 - (ii) if the employer employed 20 or fewer workers on the date referred to in sub-paragraph (d)(i), either by the appropriate representatives in accordance with that sub-paragraph or by the majority of the workers employed by him; and
- (e) before the agreement was made available for signature, the employer provided all the workers to whom it was intended to apply on the date on which it came into effect with copies of the text of the agreement and such guidance as those workers might reasonably require in order to understand it fully.

2. For the purposes of this Schedule—

“a particular group” is a group of the relevant members of a workforce who undertake a particular function, work at a particular workplace or belong to a particular department or unit within their employer’s business;

“relevant members of the workforce” are all of the workers employed by a particular employer, excluding any worker whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement;

“representatives of the workforce” are workers duly elected to represent the relevant members of the workforce, “representatives of the group” are workers duly elected to represent the members of a particular group, and representatives are “duly elected” if the election at which they were elected satisfied the requirements of paragraph 3 of this Schedule.

3. The requirements concerning elections referred to in paragraph 2 are that—

- (a) the number of representatives to be elected is determined by the employer;
- (b) the candidates for election as representatives of the workforce are relevant members of the workforce, and the candidates for election as representatives of a group are members of the group;
- (c) no worker who is eligible to be a candidate is unreasonably excluded from standing for election;
- (d) all the relevant members of the workforce are entitled to vote for representatives of the workforce, and all the members of a particular group are entitled to vote for representatives of the group;
- (e) the workers entitled to vote may vote for as many candidates as there are representatives to be elected; and
- (f) the election is conducted so as to secure that—
 - (i) so far as reasonably practicable, those voting do so in secret, and
 - (ii) the votes given at the election are fairly and accurately counted.

SCHEDULE 2

Regulation 20

AMENDMENTS TO LEGISLATION

1. In regulation 11 of the Merchant Shipping (Local Passenger Vessels) (Masters’ Licences and Hours, Manning and Training) Regulations 1993(a) (application of provisions about masters’ hours of work), paragraph (a) is revoked.

2.—(1) The Employment Tribunals Act 1996(b) is amended as follows.

(a) S.I. 1993/1213, to which there is an amendment not relevant to these Regulations.

(b) 1996 c. 17.

(2) In section 18(1) (cases where conciliation provisions apply), the word “or” preceding paragraph (1) is omitted and after that paragraph there is inserted—

“(m) under regulation 18 of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.”.

(3) In section 21(1) (jurisdiction of the Employment Appeal Tribunal), the word “or” preceding paragraph (m) is omitted and after that paragraph there is inserted—

“(n) the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.”.

3.—(1) The Employment Rights Act 1996(a) is amended as follows.

(2) In section 45A (right not to suffer detriment: working time cases), after subsection (4) there is inserted—

“(5) A reference in this section to the Working Time Regulations 1998 includes a reference to the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.”.

(3) In section 101A (fairness in dismissal: working time cases), the existing provision shall become subsection (1) and after it there is inserted—

“(2) A reference in this section to the Working Time Regulations 1998 includes a reference to the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.”.

(4) In section 104(4)(d) (fairness in dismissal: assertion of statutory right), at the end there is inserted “or the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003”.

4.—(1) The Employment Rights (Northern Ireland) Order 1996(b) is amended as follows.

(2) In Article 68A (right not to suffer detriment: working time cases), after paragraph (4) there is inserted—

“(5) A reference in this Article to the Working Time Regulations (Northern Ireland) 1998 includes a reference to the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.”.

(3) In Article 132A (fairness in dismissal: working time cases), the existing provision shall become paragraph (1) and after it there is inserted—

“(2) A reference in this Article to the Working Time Regulations (Northern Ireland) 1998 includes a reference to the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003.”.

(4) In Article 135(4)(d) (fairness in dismissal: assertion of statutory right), at the end there is inserted “or the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003”.

5. In Article 20(1) of the Industrial Tribunals (Northern Ireland) Order 1996(c) (cases where conciliation provisions apply), at the end there is inserted—

“(k) under regulation 18 of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003”.

6. In regulation 18(1) of the Working Time Regulations 1998(d) (excluded sectors), for paragraph (c) there is substituted—

“(c) to workers to whom the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 apply”.

7. In regulation 18(1) of the Working Time Regulations (Northern Ireland) 1998(e) (excluded sectors), for paragraph (c) there is substituted—

“(c) to workers to whom the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 apply”.

8. In regulation 3(3) of the Merchant Shipping (Medical Examination) Regulations 2002(f) (application of Regulations), at the end there is inserted “or the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003”.

(a) 1996 c. 18; section 45A was inserted by regulation 31(1) of the Working Time Regulations 1998, S.I. 1998/1833 (the 1998 Regulations) and amended by the Employment Relations Act 1999 (c. 26), section 18(3) and Schedule 9, Table 3; section 101A was inserted by regulation 32(1) of the 1998 Regulations and section 104(4)(d) was inserted by regulation 32(2) of those Regulations.

(b) S.I. 1996/1919 (N.I. 16); Article 68A was inserted by regulation 31(1) of the Working Time Regulations (Northern Ireland) 1998 (S.R. (N.I.) 1998 No. 386) (“the 1998 Regulations”) and amended by the Employment Relations (Northern Ireland) Order 1999, S.I. 1999/2790 (N.I. 9), Article 20(3) and Schedule 9; Articles 132A and 135(4)(d) were inserted by regulation 32(1) and (2) of the 1998 Regulations, respectively.

(c) See footnote (b) on page 3.

(d) S.I. 1998/1833; regulation 18 was substituted by the Working Time (Amendment) Regulations 2003, S.I. 2003/1684, regulation 4.

(e) S.R. (N.I.) 1998 No. 386; regulation 18 was substituted by the Working Time (Amendment No. 2) Regulations (Northern Ireland) 2003, S.R. (N.I.) 2003 No. 330.

(f) S.I. 2002/2055.

9. In regulation 3(2) of the Merchant Shipping (Hours of Work) Regulations 2002(a) (application of Regulations), at the end there is inserted “or the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive 93/104/EC concerning aspects of the organization of working time (OJ No. L 307, 13.12.1993, p.18), as inserted by Directive 2000/34/EC of the European Parliament and of the Council (OJ No. L 195, 1.8.2000, p.41), so far as the Directive applies to mobile workers on inland waterways.

The Regulations are made under the powers contained in the Merchant Shipping Act 1995 except in respect of regulation 18 and some of the amendments Schedule 2, where the power is provided by section 2(2) of the European Communities Act 1972.

Subject to the exceptions in Part 3 of the Regulations, a worker to whom the Regulations apply should not work more than 48 hours a week, averaged over a reference period of 17 weeks, and the worker's employer should take all reasonable steps to ensure that the limit is complied with (regulation 6). A reference period of 26 weeks applies in the case of a worker to whom regulation 14 applies (e.g. where there is a foreseeable surge of activity, as may be the case in relation to tourism). By virtue of regulation 15 a different reference period not exceeding 52 weeks applies where there has been a collective or workforce agreement to that effect and there are objective or technical reasons, or reasons concerning the organisation of work, justifying a longer reference period.

A worker is entitled to adequate rest (regulation 10) and, whatever the reference period applying to the worker, the total number of hours comprised in rest periods is not to be less than 77 for each seven days.

Regulation 11 provides for a worker's entitlement to paid annual leave.

Regulation 7 is concerned with health assessments where a worker is a “night worker” within the meaning in the Regulations. Companies may be required to provide information on night workers to the Maritime and Coastguard Agency.

An employer must keep records of the hours worked by workers (regulation 9).

Regulation 18 makes provision in respect of complaints to an employment tribunal. Regulation 19 prevents contracting out of the provisions of the Regulations (subject to exceptions).

Regulation 20 and Schedule 2 contain amendments to primary and secondary legislation.

A Regulatory Impact Assessment has been produced and a copy placed in the library of both Houses of Parliament. Copies may be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone number 02380 329216).

A transposition note has been prepared and copies may be obtained from the Seafarer Health and Safety Branch of the Maritime and Coastguard Agency (at the address given above).

Merchant Shipping Notices are published by the Maritime and Coastguard Agency. Copies may be obtained from Mail Marketing (Scotland), Blooms Grove Industrial Estate, Norton Street, Nottingham NG7 3JG (telephone number 0115 9013336; fax 0115 9013334; e-mail mca@promo-solution.com).

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