

2004 No.1713

MERCHANT SHIPPING

**The Fishing Vessels (Working Time: Sea-fishermen) Regulations
2004**

<i>Made</i> - - - -	<i>5th July 2004</i>
<i>Laid before Parliament</i>	<i>13th July 2004</i>
<i>Coming into force</i> - -	<i>16th August 2004</i>

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 section 2(2) of the European Communities Act 1972, and by sections 85(1), (3), (5)(a), (6) and (7) and 86(1) and (2) 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 Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 and shall come into force on 16th August 2004.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Merchant Shipping Act 1995;

(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.

“collective agreement” means a collective agreement within the meaning of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992^(a), 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;

“employment”, in relation to a worker, means employment under his contract of employment, 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;

“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—

- (c) who, as a normal course, works at least three hours of his daily working time during night time, or
- (d) 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 inspector” means a person mentioned in paragraph (a), (b) or (c) of section 258(1) of the Act;

“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;

“United Kingdom fishing vessel” means a sea-going fishing vessel which is registered in the United Kingdom;

“worker” means a person employed (or, where the employment has ceased, who was employed) on board a fishing vessel;

“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

^(a) 1992 c.52 The Trade Union and Labour Relations (Consolidation) Act 1992 has been amended but the amendments are not relevant.

“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, and
 - (b) any period during which he is receiving relevant training,
- 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 organisation of working time^(a).

Application

3.—(1) These Regulations apply to United Kingdom fishing vessels wherever they may be.

(2) Regulations 7, 16 and 17 apply to fishing vessels registered in Member States other than the United Kingdom when they are within United Kingdom waters.

Northern Ireland

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

- (a) for any reference to an 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 11(4) for the words “Sections 221 to 224 of the Employment Rights Act 1996” there shall be substituted the words “Articles 17 to 20 of the Employment Rights (Northern Ireland) Order 1996^(d)”
- (d) in regulation 11(5) for the words “sections 227 and 228” there shall be inserted the words “Articles 23 and 24”;
- (e) in regulation 20(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^(e) (conciliation)”;

(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. 1996/1919 (N.I.16).

(e) 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; by paragraph 5 of Schedule 2 to the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, S.I. 2003/3049; by paragraph 1 of Schedule 5 to the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 S.R. (N.I.) 2003 No. 497; by regulations 3 and 30 of the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004, S.R. (N.I.) 2004 No 55 and by paragraph 4 of Schedule 2 to these Regulations..

- (f) in regulation 20(2)(b) for the words “section 18(1)(n) of the Employment Tribunals Act 1996” there shall be substituted the words “Article 20(1)(l) of the Industrial Tribunals (Northern Ireland) Order 1996”.

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 all 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 paragraph (4) the reference period which applies in the case of a worker is any period of 52 weeks in the course of his employment.

(4) Where a worker has worked for his employer for less than 52 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his employer.

(5) 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.

(6) In paragraph (5), “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.

Rest

7.—(1) A worker is entitled to adequate rest.

(2) For the purposes 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) Without prejudice to the generality of paragraph (2), a worker's minimum rest periods shall be—

- (a) 10 hours in any 24-hour period, and
- (b) 77 hours in any seven-day period.

(4) The rest periods referred to in paragraph (3)(a) above 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 rest periods shall not exceed 14 hours.

Health assessment and transfer of night workers to day work

8.—(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 that 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 makes the disclosure or has given his consent to it in writing, 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

9. 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 or the work-rate is predetermined, the employer shall ensure that the worker is given reasonable rest breaks.

Records

10. An employer shall—

- (a) keep records which are adequate to show whether regulations 6(1), 7(1), (3) and (4) and 8(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.

Entitlement to annual leave and payment for leave

11.—(1) Subject to paragraph (2), a worker is entitled to at least 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.

(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.

^(a) 1996 c.18

PART 3

EXCEPTIONS

Exceptions

13.—(1) The Secretary of State may grant an exception from the limit in regulation 6(1) or the requirements of regulation 7(3) and 7(4) for objective or technical reasons or reasons concerning the organisation of work if—

- (a) he has first (so far as is possible) consulted representatives of the employers and workers concerned, and
- (b) the exception is subject to such conditions and limitations as will protect the health and safety of workers.

(2) The Secretary of State may, on giving reasonable notice and after consulting such persons (if any) as he considers may be affected, alter or cancel any exception granted under paragraph (1).

(3) An exception granted in accordance with paragraph (1) above

- (a) shall be limited to the extent necessary for the reasons mentioned in that paragraph; and
- (b) may take account of the granting of compensatory leave periods to workers in place of the limit in regulation 6(1) and the rest periods required by regulation 7(3) and 7(4).

(4) An exception under paragraph (1) may relate to classes of cases (a "class exception") or to individual cases (an "individual exception").

(5) An individual exception granted under paragraph (1), and an alteration or cancellation of such an exception under paragraph (2), shall—

- (a) be given in writing,
- (b) specify the date on which it takes effect, and
- (c) in the case of the grant of an exemption, specify the conditions and limitations subject to which it is granted in accordance with paragraph (1)(b) of this regulation.

(6) A class exception granted under paragraph (1), and an alteration or cancellation of such an exception under paragraph (2)—

- (a) may relate to particular types of fishing vessel and methods of fishing, and
- (b) shall be specified by the Secretary of State in a Merchant Shipping Notice which is considered by him to be relevant from time to time.

Emergencies

14.—(1) Nothing in these Regulations prevents the master of a fishing vessel from requiring a worker to work any hours of work necessary for the immediate safety of the fishing vessel, persons on board the fishing vessel or cargo or for the purpose of giving assistance to another ship or to a person in distress at sea.

(2) For the purposes of this regulation the word "vessel" includes her fishing gear and the word "cargo" includes the catch of a fishing vessel.

PART 4

MISCELLANEOUS

Power to require information

15. An employer shall, by sending it to the MCA, provide the Secretary of State with such information on night workers as the Secretary of State may specify in writing.

Detention and enforcement of detention

16.—(1) Where a relevant inspector is of the opinion that:—

- (a) the requirements of regulation 7 have not been complied with in respect of any worker on a fishing vessel; and
- (b) a hazard to the health or safety of any worker is thereby created,

the fishing vessel may be detained until the worker has had sufficient rest to resume his duties without creating a hazard to the health or safety of any worker.

(2) The power of detention in this regulation may not be exercised unreasonably.

(3) Subject to the modifications in paragraph (4), section 284(1) to (6) and (8) of the Act (a) (enforcement of detention) applies to a fishing vessel which may be detained under this regulation as it applies to ships which may be detained under the Act.

(4) The modifications referred to in paragraph (3) are –

- (a) the reference in subsection (1)(b) to “any officer of a Minister of the Crown” includes reference to a relevant inspector as defined by these Regulations;
- (b) “competent authority” means the Secretary of State; and
- (c) for the words “this Act” in section 284(6) there shall be substituted “the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004”.

Arbitration and compensation

17.—(1) Subject to the modifications in paragraph (2), sections 96 and 97 of the Act (arbitration and compensation) shall apply in relation to a detention notice under section 284 of the Act (as applied by regulation 16) as they apply to a detention notice under section 95(3) of the Act.

(2) The modifications referred to in paragraph (1) are the omission from section 96 of the following words—

- (a) in subsection (3), “to whether the ship was or was not a dangerously unsafe ship”; and
- (b) in subsection (5), “as a dangerously unsafe ship”.

Offences

18.—(1) Subject to regulation 14, an employer who fails to comply with regulation 6(2), 8(1), 8(4) or 9 shall be guilty of an offence, punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(2) An employer who fails to comply with regulation 10 or 15 shall be guilty of an offence, punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(3) 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

19.—(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 7(1), 7(3), or 7(4) 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).

(a) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997, Schedule 1, paragraph 5 (c.28).

(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.

(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

20.—(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)(n) 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) 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 Employment Tribunals Act (Application of Conciliation Provisions) Order 2000 S.I. 2000/1299 article 2; 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(a); the Employment Equality (Religion or Belief) Regulations 2003 S.I. 2003/1660, Schedule 5, paragraph 1; the Employment Equality (Sexual Orientation) Regulations 2003 S.I. 2003/1661, Schedule 5, paragraph 1; the Disability Discrimination Act 1995 (amendment) Regulations 2003, S.I. 2003/1673, regulations 3 and 31; the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, S.I. 2003/3049, paragraph 2(2) of Schedule 2 and by paragraph 1(2) of the Schedule to these Regulations.

- (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.
- (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), if the trade union 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; or
 - (b) both are companies of which a third person (directly or indirectly) has control;
- and “associated employer” shall be construed accordingly.

(a) 1990 c.41.

Amendments to legislation

21. Schedule 2 (amendments to legislation) shall have effect.

Signed by authority of the Secretary of State
for Transport

5th July 2004

David Jamieson
Parliamentary Under Secretary of State,
Department for Transport

SCHEDULE 1

Regulation 2(1)

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 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 may 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 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 22

AMENDMENTS TO LEGISLATION

- 1.—(1) The Employment Tribunals Act 1996(a) is amended as follows.
- (2) In section 18(1) (cases where conciliation provisions apply), after paragraph (m) there is inserted—
- “(n) under regulation 19 of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.”.
- (3) In section 21(1) (jurisdiction of the Employment Appeal Tribunal), after paragraph (n) there is inserted—
- “(o) the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.”.
- 2.—(1) The Employment Rights Act 1996(b) is amended as follows.
- (2) In section 45A(5) (right not to suffer detriment: working time cases)—
- (a) After “reference to” there is inserted “(a)”; and
 - (b) At the end there is inserted—
 - “(b) the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.”.
- (3) In section 101A (2) (fairness in dismissal: working time cases)—
- (a) After “reference to” there is inserted “(a)”; and
 - (b) At the end there is inserted—
 - “(b) the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.”.
- (4) In section 104(4) (fairness in dismissal: assertion of statutory right), for paragraph (d) there is substituted—

(a) 1996 c.17.

(b) 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. Those sections were amended by paragraph 3 of Schedule 2 to the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, S.I. 2003/3049.

“(d) the rights conferred by the Working Time Regulations 1998, the Merchant Shipping (Working Time: Inland Waterway) Regulations 2003 or the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.”.

3.—(1) The Employment Rights (Northern Ireland) Order 1996(**a**) is amended as follows.

(2) In Article 68A (right not to suffer detriment: working time cases)–

(a) After “reference to” there is inserted “(a)”; and

(b) at the end there is inserted–

“(b) the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004”.

(3) In Article 132A (fairness in dismissal: working time cases)–

(a) after “reference to” there is inserted “(a)”; and

(b) at the end there is inserted

“(b) the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004”.

(4) In Article 135(4) (fairness in dismissal: assertion of statutory right), for paragraph (d) there is substituted–

“(d) the rights conferred by the Working Time Regulations (Northern Ireland) 1998, the Merchant Shipping (Working Time: Inland Waterway) Regulations 2003 or the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.”.

4. In Article 20(1) of the Industrial Tribunals (Northern Ireland) Order 1996(**b**) (cases where conciliation provisions apply), at the end there is inserted–

“(1) under regulation 19 of the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.”.

5. In regulation 18(1) of the Working Time Regulations 1998(**c**) (excluded sectors), for paragraph (b) there is substituted–

“(b) to workers to whom the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 apply;”.

6. In regulation 18(1) of the Working Time Regulations (Northern Ireland) 1998(**d**) (excluded sectors), for paragraph (b) there is substituted–

“(b) to workers to whom the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 apply.”.

7. In regulation 3 of the Merchant Shipping (Medical Examination) Regulations 2002(**e**) (application of Regulations), for paragraph (3) there is substituted–

“(3) These Regulations shall not apply to any person who is subject to any requirement contained in the Working Time Regulations 1998, the Merchant Shipping (Working Time: Inland Waterway) Regulations 2003 or the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004.”.

(**a**) 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. Those Articles were amended by paragraph 4 of Schedule 2 to the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, S.I. 2003/3049.

(**b**) See footnote (e) on page 3.

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

(**d**) 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.

(**e**) S.I. 2002/2055.

8. 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 Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004”.

^(a) S.I. 2002/2125.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive 2000/34/EC of the European Parliament and of the Council (OJ No. L 195, 1.8.2000, p.41) in so far as that Directive applies to workers on sea-going fishing vessels. Council Directive 2000/34/EC amends Directive 93/104/EC concerning aspects of the organisation of working time (OJ No. L 307, 13.12.1993, p.18).

The Regulations are made under the powers contained in the Merchant Shipping Act 1995 except in respect of regulation 19 and the amendments in the Second Schedule, 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 52 weeks, and the worker's employer should take all reasonable steps to ensure that the limit is complied with (regulation 6).

A worker is entitled to adequate rest (regulation 7) and the total number of hours comprised in rest periods is not to be less than 10 hours in each day and 77 hours for each seven day period.

Regulation 8 is concerned with health assessments where a worker is a "night worker" within the meaning in the Regulations. The limits of "night work" are either prescribed by the Regulations, or may be determined by a relevant agreement, such as a workforce agreement complying with the requirements of Schedule 1. Companies may be required to provide information on their night workers to the Maritime and Coastguard Agency.

An employer must keep records of the hours worked by workers employed by him (regulation 10).

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

Regulation 19 makes provision in respect of complaints to an employment tribunal. Regulation 21 prevents contracting out of the provisions of the Regulations (subject to exceptions).

Regulation 22 and the Second Schedule 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 023 80329 100).

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@promosolution.com).

2004 No.1713

MERCHANT SHIPPING

**The Fishing Vessels (Working Time: Sea-fishermen) Regulations
2004**

£3.00

© Crown copyright 2004

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E0919 7/2004 140919T 19585

ISBN 0-11-049479-2



9 780110 494791