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Consolidated version of S.I. 2003/3049

Key:

Black text = original text from 2003 Regulations.

Red text = amendments made by the amending regulations.

Part 1

General

1 Citation and Commencement

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

2 Interpretation

(1) In these Regulations—

“the Act” means the Merchant Shipping Act 1995();

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

“free health assessment” means a health assessment which is at no cost to the worker to whom it relates;

“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 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

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(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;

“passenger” means any person carried in a vessel other than—

(a) the master, a member of the crew or other person employed or engaged in any capacity on board the vessel on the business of the vessel,

(b) a person on board the vessel in pursuance of an obligation laid upon the master to carry shipwrecked, distressed or other persons or by reason of any circumstance that neither the master nor the owner could have prevented or forestalled, and

(c) a child under one year old;

“passenger ship” means a vessel carrying more than 12 passengers;

“pleasure vessel” means—

(a) a vessel which at the time it is being used is—

(i) in the case of a vessel wholly owned by—

(aa) an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or

(bb) a body corporate, used only for sport or pleasure and on which the persons on board are employees or officers of the body corporate, or their immediate family or friends; and

(ii) on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or

(b) any vessel wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club,

where, in the case of any vessel referred to in paragraph (a) or (b), no other payments are made by or on behalf of users of the vessel, other than by the owner; and in this definition “immediate family” means, in relation to an individual, the spouse or civil partner of the individual, and a relative of the individual or the individual's spouse or civil partner; and “relative” means brother, sister, ancestor or lineal descendant;

“reference period” means—

(a) 52 weeks, or

(b) where the duration of the worker's employment relationship is less than 52 weeks, the length of the worker's employment relationship;

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“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 day” means an uninterrupted rest period of 24 hours which the worker spends in a place of the worker’s own choosing;

“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—

The Code of Practice for the Safety of Small Commercial Sailing Vessels;

The Code of Practice for Safety of Large Commercial Sailing and Motor Vessels;

The Code of Practice for the Safety of Small Commercial Motor Vessels; or

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

“scheduled working day” means a day that, according to a work schedule, is intended to be a working day;

“shift worker” means any worker whose work schedule is part of shift work;

“shift work” means any method of organizing work in shifts whereby workers succeed each other at the same workstations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks.

“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—

(a) operate such services for their own account; or

(b) 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;

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“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;

“working day” means any 24 hour period that includes working time;

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

(a) any period, including overtime, 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.

“work schedule” means a document containing the planned working days and rest days which is communicated to the worker in advance by the employer;

“workstation” means any place where the worker carries out the worker’s duties;

“young person” means any person who is under the age of 18 and, in Great Britain is over school-leaving age for the purposes of section 55 of the Act or, in Northern Ireland, is over compulsory school age within the meaning in Article 46 of the Education and Libraries (Northern Ireland) Order 1986().

(2) Subject to paragraph (1), words and expressions used in these Regulations shall have the same meaning as in Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time().

3 Application

These Regulations apply to any ship which—

(a) does not ordinarily go beyond the limits of waters of category A, B, C or D (as categorised in Merchant Shipping Notice 1837(M)); and

(b) is not a pleasure vessel.

4 Northern Ireland

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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) 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, 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 [any of sections 18A to 18C] of the Employment Tribunals Act 1996 (conciliation)” there shall be substituted the words “the Labour Relations Agency has taken action under **Articles 20A to 20C** of the Industrial Tribunals (Northern Ireland) Order 1996 (conciliation)”;

(d) in regulation 19(2)(b) for the words “[section 18(1)(p)] of the Employment Tribunals Act 1996” there shall be substituted the words “Article 20(1)(k) of the Industrial Tribunals (Northern Ireland) Order 1996”;

(e) in regulation 19(2)(b) and on each occasion where the word “settlement” appears in (3) there shall be substituted the word “compromise”.

Part 2

Rights and Obligations Concerning Working Time

5 General

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

6 Maximum daily working time

An employer shall ensure that a worker’s working time shall not exceed 14 hours in any 24 hour period.

6A Maximum weekly working time

An employer shall ensure that a worker’s working time shall not exceed 84 hours in any 7 day period.

6B Maximum annual working time

(1) An employer shall ensure that a worker’s working time shall not exceed 2,304 hours within 12 months.

(2) The number of hours referred to in paragraph (1) is calculated according to the formula—

$(A-B) \times C$

Where-

A is 52 weeks;

B is 4 weeks annual leave; and

C is 48 hours.

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(3) Where the duration of a worker's employment relationship is less than 12 months, paragraph (1) shall not apply and a worker's maximum working time shall be calculated pro rata.

6C Maximum average weekly working time

(1) Subject to regulation 6D, a worker's working time shall not exceed an average of 48 hours for each 7 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 the employer employs in relation to whom it applies.

(3) For the purposes of this regulation, a worker's average working time for each 7 days during the reference period shall be determined according to the following formula—

$(A+B)/C$

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 the worker's 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 (3), "excluded days" means—

(a) days comprised in any period of annual leave taken by the worker in exercise of the worker's entitlement under regulation 11;

(b) any day which is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971();

(c) days comprised in any period of sick leave taken by the worker; and

(d) any period of maternity, paternity, adoption or parental leave taken by the worker.

6D Maximum average weekly working time where there are more working days than rest days

Where, according to the work schedule, there are more working days than rest days, an employer shall ensure a worker's average weekly working time shall not exceed 72 hours over a 4 month period.

7 Health assessments

(1) All workers shall be entitled to an annual free health assessment.

(2) During the assessment referred to in paragraph (1), particular attention shall be paid to identifying symptoms or conditions which could be as a result of work on board with minimum daily rest periods or rest days.

(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 consent in writing to the disclosure, or

(b) the disclosure is confined to a statement that the assessment shows the worker to be fit.

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7A Health assessments for night workers

(1) An employer shall—

- (a) 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 free 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) 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 the night worker's case.

(2) Paragraph (3) of regulation 7 shall apply to free health assessments undertaken for the purposes of this regulation.

7B Transfer of night workers to day work

(1) 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.

7C Length of night work

An employer shall not require any worker to do more than 42 hours of night work during any seven-day period.

7D Safety and health protection for night and shift workers

(1) Night workers and shift workers shall have safety and health protection appropriate to the nature of their work as specified in MSN XXX.

(2) Appropriate protection and prevention services or facilities with regard to the safety and health of night and shift workers shall be equivalent to those applicable to other workers and available at all times.

7E Young persons working at night

(1) A worker under 18 years of age must not work at night on board a ship to which these regulations apply.

(2) Paragraph (1) does not apply where it is necessary for a young person to work at night in order to achieve the objective of a recognised training course (as specified in MSN YY).

(3) A young person to whom paragraph (2) applies shall be allowed suitable compensatory rest time.

(4) In this regulation, “night” means a period between 10 p.m. and 6 a.m.

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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 at a predetermined work-rate, the employer shall ensure that the worker is given adequate rest breaks.

9 Records

(1) An employer shall keep records which are adequate to show whether the requirements specified in regulations 6, 6A, 6B(1) and (3), 6C(1), 6D, 7C, 7E(3), 10(1) and (3), 10B, 11(1) to (3), 14(3), 15(2) to (4) are being complied with in the case of each worker the employer employs in relation to whom they apply.

(2) Those records shall be kept on board a ship until at least the end of the reference period.

(3) Those records shall contain the following minimum information—

- (a) the name of ship,
- (b) the name of the worker,
- (c) the name of the master,
- (d) the date,
- (e) whether a day was a working day or a rest day, and
- (f) the beginning and end of the daily working or rest periods.

(4) The records shall be examined and endorsed jointly by the employer (or its representative) and the worker at appropriate intervals which will be no later than by the end of the following month to which they relate.

(5) A copy of the endorsed records shall be given to the worker to whom they relate and that worker shall keep those records with them for one year.

10 Rest periods

(1) 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) The rest periods referred to in paragraph (2) shall not be less than-

- (a) 10 hours in each 24 hour period, of which at least six hours are uninterrupted; and
- (b) 84 hours in any seven day period.

10A Rest breaks

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- (1) Any worker whose daily working time exceeds six hours is entitled to a rest break.
- (2) The details of the rest break to which the worker is entitled under paragraph (1), including its duration and the terms on which it is granted shall be in accordance with any provisions for the purposes of this regulation which are contained in a collective agreement or a workforce agreement.
- (3) Subject to the provisions of any applicable collective agreement or workforce agreement, the rest break is an uninterrupted period of not less than 20 minutes and the worker is entitled to spend it away from the worker's workstation if the worker has one.

10B Working days and rest days

- (1) An employer shall not require a worker to work more than 31 days consecutively.
- (2) After a worker has worked a period of consecutive working days, the worker's employer shall immediately allow the worker to take a period of consecutive rest days.
- (3) The minimum number of consecutive rest days which must immediately follow the consecutive working days shall be calculated as follows—
 - (a) for the 1st to the 10th consecutive working day: 0.2 rest days per consecutive working day (for example 10 consecutive working days = 2 rest days);
 - (b) for the 11th to the 20th consecutive working day: 0.3 rest days per consecutive working day (for example 20 consecutive working days = 5 rest days); and
 - (c) for the 21st to the 31st consecutive working day: 0.4 days per consecutive working day (for example 31 consecutive working days = 9.4 rest days).
- (4) Partial days resulting from the calculation under paragraph (3) shall be added to the minimum number of consecutive rest days and granted only as full days.
- (5) Paragraphs (6) and (7) apply where, according to the work schedule, the number of working days is no more than the number of rest days.
- (6) In addition to the immediate rest days calculated in accordance with paragraph (3), the employer shall allow the worker to take a number of rest days equal to the number of working days worked by the worker during the period minus the rest days the worker became immediately entitled to under paragraph (3).
- (7) The worker shall be entitled to take the rest days referred to in paragraph (6) during the reference period.

11 Entitlement to annual leave and payment for leave

- (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.
- (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.

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- (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 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.

12 Entitlements under other provisions

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.

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Part 3

Exceptions

13 Unmeasured working time

(1) **Regulations 6, 6A, 6B, 6C, 6D and 7C do** 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, **regulations 6, 6A, 6B, 6C, 6D and 7C** shall apply only to so much of his work as is measured or pre-determined or cannot be determined by the worker himself.

14 Emergency situations

(1) The master of a ship or his representative shall have the right to require a worker to perform any hours of work necessary for—

- (a) the immediate safety of—**
 - (i) the ship;**
 - (ii) persons on board; or**
 - (iii) cargo; or**
- (b) for the purpose of giving assistance to—**
 - (i) other vessels; or**
 - (ii) persons in distress.**

(2) In accordance with paragraph (1), the master or his representative may require a worker to perform any hours of work necessary until the normal situation has been restored.

(3) As soon as practicable after the normal situation has been restored, the master or his representative shall ensure that all workers who have performed work in a scheduled rest period are provided with an adequate period of rest.

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15 Seasonal work on passenger vessels

(1) Notwithstanding regulations 6, 6A, 6D and 10B, an employer may apply the provisions contained in this regulation to workers employed on passenger vessels during the season.

(2) Working time shall not exceed—

- (a) 12 hours in any 24 hour period; and
- (b) 72 hours in any seven day period.

(3) Workers shall be credited with 0.2 rest days per working day.

(4) At least 2 of the rest days referred to in paragraph (3) shall be granted during every period of 31 days and the remaining rest days shall be granted by agreement.

(5) The following rights—

- (a) the rest days to which the worker is entitled under paragraph (4); and
- (b) the average weekly working time of 48 hours under regulation 6C paragraph (1)

shall be in accordance with any provisions for the purposes of this regulation which are contained in a collective agreement or a workforce agreement.

(6) In this regulation, “season” means a period of no more than nine consecutive months out of 12 months in which activities are tied to certain times of the year as a result of external circumstances such as weather conditions or tourist demand.”

Part 4

Miscellaneous

16 Power to require information

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.

17 Offences

(1) An employer who fails to comply with regulation 6, 6A, 6B, 6C(2), 6D, 7A(1), 7B(1), 7C, 7E(1) or (3), 8, 9(1), 10B(1) or 16 is guilty of an offence, 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.

(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.

18 Remedies

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- (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), 7E(3), 10(1) or (3), 10A(1), 10(B)(2) 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 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.
- [(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.

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(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.

[18A Extension of time limit to facilitate conciliation before institution of proceedings]

[(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.]

19 Restriction on contracting out

(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.

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(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 [any of sections 18A to 18C] of the Employment Tribunals Act 1996 (conciliation); or

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

(3) For the purposes of paragraph (2)(b) the conditions regulating [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 [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

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(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 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.

19A Review

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(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations;
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the European obligations which are implemented by means of these Regulations are implemented in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with 31 December 2016.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

20 Amendments to legislation

Schedule 2 (amendments to legislation) shall have effect.

Signed by authority of the Secretary of State for Transport

David Jamieson

Parliamentary Under-Secretary of State,

Department for Transport

27th November 2003

SCHEDULE 1

Workforce Agreements

Regulation 2(1)

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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;

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“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

DRAFT

Amendments to Legislation

Regulation 20

1

...

2

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

(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 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.”.

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(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 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 (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

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

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

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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 (eg 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.

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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).