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## Application of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003

Notice to Shipowners, Companies, Managers, Masters and all crew on vessels operating in inland waters or which operate at sea only exceptionally.

*With effect from 24 December 2003, this notice supersedes paragraph 14 of Merchant Shipping Notice 1525 for Boatmasters and crew on Class IV and V passenger vessels who are employed. It should be read in conjunction with the Regulations.*

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### *Summary*

This Merchant Shipping Notice contains the detailed mandatory requirements specified by the Secretary of State under the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 which come into force on 24 December 2003. It gives guidance on the application of the Regulations.

### *Key points*

**Sections 1 to 4** explain the requirements of the 2003 regulations which:-

- apply to all workers who are travelling personnel of a ship not operating under a certificate for service at sea, employed in the transport of goods or passengers;
- provide for a maximum of 48 hours working time in any 7-day period, averaged over a reference period (normally 17 weeks), and entitles the worker to adequate rest;
- entitle workers to 77 hours rest in every seven day period;
- entitle workers to 4 weeks paid annual leave, and health assessment when they regularly work at night; and
- amend the Merchant Shipping (Local Passenger Vessels) (Masters' Licences and Hours of Work, Manning and Training) Regulations 1993<sup>1</sup> to disapply the Working Hours Code to Boatmasters who are employed; these regulations now apply.

**Section 5** – Explains how the regulations exclude certain work activities, and provide for the reference period to be extended by workforce or other relevant agreement.

**Section 6** – Explains how duties will be enforced, and the remedies available to workers where they do not receive their entitlements.

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<sup>1</sup>S.I. No.1993/1213 These regulations are subject to amendments which do not affect this notice.

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| <p><b>1. INTRODUCTION AND BACKGROUND</b></p> <p>1.1 These regulations introduce new working time rules for mobile workers on inland waterways, based on Council Directive 93/104/EC (the Working Time Directive) as amended by Council Directive 2000/34/EC.</p> <p>1.2 The Working Time Regulations 1998 (S.I. 1998/1833) which came into effect on 1 October 1998 implement the European Working Time Directive (93/104/EC). Those Regulations provided for: an average 48 hour working week; 4 weeks paid annual leave; 11 hours daily rest; 1 day's weekly rest (or 2 in a fortnight); 20 minute in-work rest break where the working day exceeds 6 hours; and, health assessments and working time limits for night workers.</p> <p>1.3 A number of sectors, including the Inland Waterways and Lake transport sectors, were excluded from the Working Time Directive. The Horizontal Amending Directive (HAD) (2000/34/EC) which amends the Working Time Directive, extends to mobile workers an entitlement to an average 48 hour working week, 4 weeks paid annual leave, health assessments for night workers and provision for adequate rest. The Merchant Shipping (Working Time : Inland Waterways) Regulations 2003 (referred to in this notice as "the Regulations") which come into force on 24 December 2003, implement those provisions for mobile workers on inland waters.</p> <p>1.4 Once these regulations are in force, every worker on a ship will be covered by a working time regime. If these regulations do not apply, one of the following does:</p> <ul style="list-style-type: none"> <li>- the regime for seafarers implemented by the 2002 regulations; or</li> <li>- the regime for fishing vessels; or</li> <li>- if they are not mobile workers (because they do not travel with the ship), or are mobile workers of a type not covered by these Regulations,</li> <li>- by the Department of Trade and Industry's (DTI) Working Time Regulations 1998 as amended by the Working Time (Amendment) Regulations 2003<sup>2</sup>.</li> </ul> | <p><b>2. APPLICATION AND DEFINITIONS</b></p> <p>2.1 The Regulations apply to a United Kingdom ship which is ordinarily operating under a certificate that does not allow it to go to sea; and to non-UK ships which are operating in UK inland waters.</p> <p>2.2 It places duties on the employers of mobile workers on these vessels, and provides certain entitlements to those workers.</p> <p>2.3 Certain vessels which ordinarily operate within categorised waters also hold a seagoing (such as a "Class VI") certificate for emergency or exceptional trips. In these cases, the operator should follow whichever is the most appropriate working time regime to follow, that for inland waterways, or seafarers. Workers must be protected by a working time regime, and whichever regime is adopted should be agreed with the workforce and properly adhered to. (Where these Regulations apply, the Regulations for seafarers will not apply.)</p> <p>2.4 "Inland Waterways" means waters of Categories A, B, C or D, as defined in the Merchant Shipping (Categorisation of Waters) Regulations 1992 (or in Europe, outside waters of Zones 1, 2 or 3 as defined in Council Directive 82/714/EC). Further information about categorised waters can be found in MSN 1776.</p> <p>2.5 "mobile worker" means:</p> <ul style="list-style-type: none"> <li>2.4.1 a worker; who is also</li> <li>2.4.2 a member of the travelling personnel of a ship; and,</li> <li>2.4.3 who is employed by an undertaking which operates services for passengers or goods.</li> </ul> <p>This does not include trainees on a sail training vessel, or anyone not engaged in the navigation of, or having no emergency safety responsibilities on, such a vessel.</p> <p>2.6 "employment" means employment under a contract.</p> <p>2.7 A mobile worker on inland waters employed by an undertaking which does not operate transport services for passengers or goods (e.g. workboats), is covered by the DTI Working Time</p> |
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<sup>2</sup>S.I. No. 2003/1684

regulations mentioned in paragraph 1.4 above.

- 2.8 “working time” means:
- (a) any period during which the worker is working, at his employer’s disposal and carrying out his activities or duties,
  - (b) any time 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.

### 3. DUTIES AND ENTITLEMENTS

#### 3.1 Maximum working time

3.1.1 The regulations require employers to take all reasonable steps to ensure that a worker’s working time does not exceed 48 hours per week averaged over the relevant reference period. The reference period is generally 17 weeks, but see section 2 below.

3.1.2 The regulations specify the formula for calculating average weekly working time as

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

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.

Annual leave, sick leave, maternity, paternity, adoption and parental leave are counted as excluded days.

### 3.2 Health Assessment and Transfer of Night Workers to Day Work

3.2.1 The employer has a duty to ensure that any worker required to do night work has the opportunity for a free health assessment – ie at no cost to the worker. If a doctor finds that night work will, or is likely to, put at risk a worker’s health and safety, the employer must, wherever possible, move that worker to day work to which he is suited.

3.2.2 Night work generally means between 11pm and 6 am, or any period specified in a relevant agreement, but in any case a period of not less than 7 hours, which must include the period from midnight to 5am (local time).

3.2.3 A night worker is one who:

- as a normal part of his duties, works more than 3 hours of his daily work time at night; or,
- is likely to work an agreed proportion of his annual working time during night time.

#### 3.3 Rest breaks

3.3.1 Where the pattern of hours of work may jeopardise the health and safety of a worker, and particularly where the work is monotonous, the employer must provide adequate rest breaks. There is no statutory definition of a rest break, but MCA would generally consider any rest of less than 30 minutes to be a “rest break”. Periods taken as rest breaks are not counted in the calculation of hours of rest for the purposes of regulation 10.

#### 3.4 Records

3.4.1 The employer is required to keep records adequate to demonstrate that the workers are not exceeding the maximum working hours, and that the requirements on health assessments for night workers have been complied with. It is also recommended that the records are adequate to demonstrate that workers have received their entitlements (eg adequate rest, annual leave).

- 3.4.2 These records do not have to be specially created or dedicated to this purpose – they may be included in personnel records, or records kept for the purposes of determining pay. Nor is there any mandatory format for the records. They must however provide sufficient information to allow the MCA, or an employment tribunal, to investigate any claim of a breach of the regulations.
- 3.5 **Rest periods**
- 3.5.1 Regulation 10(1) entitles a worker to “adequate rest”, so that safety and health are not jeopardised as a result of fatigue.
- 3.5.2 Regulation 10(3) requires that every worker shall have rest periods totalling a minimum of 77 hours in any 7 day period. This provides a safeguard against excessive hours being worked over periods shorter than the reference period.
- 3.5.3 Rest periods include days off, and any rest period which is not a rest break.
- 3.5.4 It should be borne in mind that one long break is more effective than a number of relatively short breaks in providing adequate rest. Where workers have to travel home to rest, longer periods are appropriate than where facilities for sleep or rest are provided on the vessel.
- 3.6 **Annual leave**
- 3.6.1 For the purposes of these regulations, a worker is entitled in each year to a period of annual leave totalling four weeks, for which he is entitled to be paid at the rate of a week’s pay in respect of each week of leave. Annual leave may be taken in instalments, but may not be replaced by a payment in lieu, except where a worker’s employment is terminated.
4. **SELF-EMPLOYED BOATMASTERS**
- 4.1 These Regulations (and the Working Time Directive) apply only to employed persons. The working time requirements for self-employed boatmasters continue to be covered by the Merchant Shipping (Local Passenger Vessels) (Masters’ Licences and Hours, Manning and Training) Regulations 1993. A summary is given in paragraphs 4.2 to 4.5.
- 4.2 The master’s maximum working day is 16 hours but the total period of time which he may spend in conning a passenger vessel is limited to 10 hours.
- 4.3 The maximum period of continuous work (which includes breaks of less than 30 minutes) is limited to six hours, after which a period of at least 30 minutes rest must be taken.
- 4.4 A daily rest period of at least eight hours must be taken between two working days.
- 4.5 If in any particular case, the hours of work requirements are considered inappropriate, an application may be made to the MCA for an exemption from the requirements(s) concerned. However, such an exemption will not be granted unless the MCA is satisfied that the safety of the vessel will not be impaired by the proposed operational practices.
5. **EXCEPTIONS**
- 5.1 **Unmeasured working time**
- 5.1.1 The regulations specify certain conditions where the limit on maximum weekly working time does not apply, such as where the worker may determine himself the duration of his working time. It may be that this provision applies to certain elements of a worker’s working time, and not to others. In such cases, the employer should keep records of those parts of working time which are under the employer’s control.
- 5.2 **Reference period of 26 weeks**
- 5.2.1 Regulation 14 specifies certain activities where the reference period for calculating maximum weekly working time can be extended by the employer to 26 weeks. This is to allow greater flexibility to certain types of operation where working time is demand led, and requires continuous or near continuous service. Examples are docks, and urban transport services.
- 5.2.2 Paragraph d. covers circumstances where the reference period may be extended as an ad hoc measure, to cover situations where working time has to be extended due to unforeseen circumstances. This paragraph should be applied only in exceptional circumstances.

**5.3 Extension of reference period under collective and workforce agreements**

- 5.3.1 Regulation 15 provides for an extension of the reference period for calculating maximum weekly working time by agreement between the social partners. This may be a standing agreement, although it must be reviewed at least every five years.
- 5.3.2 The Annex to this notice reproduces the Schedule to the Regulations on workforce agreements.

**6. ENFORCEMENT/REMEDIES**

- 6.1 MCA is the enforcement authority for employer duties:
  - eg maximum working hours (reg 6(2))
  - provision of health assessment for night workers (reg 7(1))
  - transfer of night workers to day work on advice of a medical practitioner (reg 7(4))
  - keeping of adequate records (reg 9)
  - adequate rest (reg 10)
- 6.2 The regulations require an employer to provide MCA with information on night workers where required. (MCA surveyors have powers under the Merchant Shipping Act to have access to any ship, company offices and company records relating to compliance with Merchant Shipping Legislation.)
- 6.3 If a worker considers that their entitlements under the regulations (eg adequate rest, annual leave) are being denied, they may complain to an employment tribunal or to the Advisory, Conciliation and Arbitration Service (ACAS) (Tel. 08457 47 47 47).
- 6.4 Regulation 19 prevents any employer from imposing an agreement on his worker/s, in an attempt to “contract out” or exclude them from the effects or benefits of these regulations. Any such clause in an agreement with a worker is voided by this regulation.

**7. FURTHER INFORMATION**

- 7.1 Many of the provisions of these regulations mirror similar provisions in the Working Time Regulations 1998, as amended by the Working Time (Amendments) Regulations 2003. A guidance booklet produce by the Department for Trade and Industry provides general guidance on interpretation of working time regulations and related employment law. This is available on the DTI website ([www.dti.gov.uk](http://www.dti.gov.uk)).
- 7.2 Specific questions on these regulations should be directed to MCA’s Seafarer Health and Safety Branch. They may be e-mailed to the address shown overleaf.

Alternatively, the postal address is:

Seafarer Health and Safety Branch  
Maritime and Coastguard Agency  
Bay 2/09 Spring Place  
105 Commercial Road  
SO15 1EG

Telephone: 023 8032 9216

Fax: 023 8032 9251

E-Mail: [seafarer\\_health&safety@mcga.gov.uk](mailto:seafarer_health&safety@mcga.gov.uk)

MCA Website Address: Internet:

<http://www.mcga.gov.uk>

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*Department for*  
**Transport**

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## ANNEX

### SCHEDULE

#### Regulation 2 (1)

#### WORKFORCE AGREEMENTS

An agreement is a workforce agreement for the purposes of these Regulations if the following conditions are satisfied –

- (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 in full.

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.