

2016 No. XXXX

MERCHANT SHIPPING

SAFETY

CANALS AND INLAND WATERWAYS

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

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| <i>Made</i> - - - - | 2016 |
| <i>Laid before Parliament</i> | 2016 |
| <i>Coming into force</i> - - | 2016 |

The Secretary of State for Transport makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and section 85(1), (3) and (7) and section 86(1) of the Merchant Shipping Act 1995(b).

He is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the safety of ships and the health and safety of persons on them(c).

In so far as these Regulations are made in exercise of the powers conferred by section 85 of the Merchant Shipping Act 1995, he has, pursuant to section 86(4) of that Act, consulted such persons in the United Kingdom as he considered would be affected by these Regulation.

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Working Time: Inland Waterways) (Amendment) Regulations 2016.

(2) These Regulations come into force on 31st December 2016.

(a) 1972 c.68.

(b) 1995 c.21. Sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), section 8. Section 85 was amended by Schedule 7, the British Overseas Territories Act 2002 (c.8), section 2 and the Health Act 2006 (c.28), section 5. Sections 85 and 86 apply to hovercraft by virtue of the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350), to which Order there are amendments not relevant to these Regulations.

(c) S.I. No.1993/595, to which there are amendments not relevant to these Regulations.

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

2. The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003(a) are amended as follows.

Amendment of regulation 2

3.—(1) Regulation 2(1) is amended as follows.

(2) Before the definition of “collective agreement”, insert—

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

(3) After the definition of “employment”, insert—

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

(4) For the definition of “night time”, substitute—

““night time” means the period between 11 p.m. and 6 a.m.;”.

(5) After the definition of “night worker”, insert—

““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;

(a) S.I. No. 2003/3049 *add note about amendments.*

(b) 1995 c.21.

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“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;”.

(6) After the definition of “relevant training”, insert—

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

(7) After the definition of “sail training vessel”, insert—

““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;”.

(8) For the definition of worker, substitute—

““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;”.

(9) After the definition of “workforce agreement”, omit “and” and insert—

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

(10) In the definition of “working time”, in sub-paragraph (a), after “period” insert “, including overtime;”.

(11) At the end, replace the full stop with “;”, and insert—

““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(a).”.

4. In regulation 2(2), for the words from “Council Directive” to the end, substitute “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(b).”.

Amendment of regulation 3

5. For regulation 3 (application), substitute—

“3. 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

(a) S.I. 1986/594 (N.I. 3); Article 46 was substituted by Article 156 of S.I. 1989/2406 (N.I. 20).

(b) O.J. No. L 299, 18.11.2003, p.9.

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(b) is not a pleasure vessel.”

Amendment of regulation 4

6.—(1) In regulation 4(c) omit “Article 20” and insert “Articles 20A to 20C”.

(2) After regulation 4(d) replace the full stop with “;” and insert—

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

New regulations 6, 6A, 6B, 6C and 6D

7. For regulation 6 (maximum weekly working time), substitute—

“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.

(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;

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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(a);
- (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 that a worker's average weekly working time shall not exceed 72 hours over a 4 month period."

New regulations 7, 7A, 7B, 7C, 7D and 7E

8. For regulation 7 (health assessment and transfer of night workers to day work), substitute—

"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.

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.

(a) 1971 c.80.

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(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.”

Amendment of regulation 8

9. In regulation 8 (pattern of work), after “monotonous” insert “or at a predetermined work-rate”.

Amendment of regulation 9

10. For regulation 9 (records), substitute –

“(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,

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- (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.”

Amendment of regulation 10

11.—(1) Regulation 10 (rest periods) is amended as follows.

(2) In paragraph (1), omit the words “Subject to paragraph (4).”

(3) For paragraph (3), substitute—

“(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.”

(4) Omit paragraph (4).

New regulations 10A and 10B

12. After regulation 10 (rest periods), insert—

“10A Rest breaks

(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.

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(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.”

Amendment of regulation 13

13.—(1) Regulation 13 (unmeasured working time) is amended as follows.

(2) In paragraph (1), for the words “Regulation 6(1) and (2) does”, substitute “Regulations 6, 6A, 6B, 6C, 6D and 7C do”.

(3) In paragraph (2), for the words “regulation 6(1) and (2)”, substitute “regulations 6, 6A, 6B, 6C, 6D and 7C”.

Amendment of regulation 14

14. For regulation 14 (other special cases), substitute—

“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.”

Amendment of regulation 15

15. For regulation 15 (collective and workforce agreements), substitute—

“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.

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(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.”

Amendment of regulation 17

16.—(1) Regulation 17 (offences) is amended as follows.

(2) For paragraph (1), substitute—

“(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.”

Amendment of regulation 18

17.—(1) Regulation 18 (remedies) is amended as follows.

(2) In paragraph (1)(a)—

(a) after “regulation” insert “7(1), 7E(3),”;

(b) after “or (3)” insert “, 10A(1), 10B(2)”.

Amendment of regulation 19

18. In regulation 19(2)(b), for “Employment”, substitute “Employment”.

New regulation 19A

19. After regulation 19 (restriction on contracting out), insert—

“19A Review

(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.

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(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.”

Amendment of Schedule 2

20. In Schedule 2 (amendments to legislation), omit paragraphs 7, 8 and 9.

Signed by authority of the Secretary of State for Transport

2016

Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive 2014/112/EU implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF).

The Regulations make a number of amendments to the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049 – “the 2003 Regulations”).

Regulation 3 amends the definitions contained in the 2003 Regulations.

Regulation 5 changes the application of the 2003 Regulations so that they apply to ships not ordinarily operating beyond UK category A-D waters which are not pleasure vessels.

Regulation 6 amends regulation 4 of the 2003 Regulations to update references to the Northern Irish legislation referred to there.

Regulation 7 replaces regulation 6 of the 2003 Regulations with new provisions governing the calculation of working time.

Regulation 8 replaces regulation 7 of the 2003 Regulations with new provisions governing health assessments; the transfer of night workers to day work; the length of night work; safety and health protection for night and shift workers and young persons working at night.

Regulation 9 amends regulation 8 of the 2003 Regulations relating to pattern of work.

Regulation 10 substitutes new requirements regarding the keeping of records for regulation 9 of the 2003 Regulations.

Regulation 11 amends regulation 10 of the 2003 Regulations relating to rest periods.

Regulation 12 makes provision for rest breaks and rest days.

Regulation 13 amends regulation 13 of the 2003 Regulations relating to unmeasured working time.

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Regulation 14 contains an exception for emergency situations.

Regulation 15 inserts a specific provision applying to workers who undertake seasonal work on passenger vessels. Employers of such workers can elect to apply different daily and weekly working time provisions to them and make different arrangements for rest days compared to those which apply to other workers.

Regulation 16 updates the offences which apply to an employer who fails to comply with the 2003 Regulations.

Regulation 17 updates the remedies available to workers.

Regulation 18 corrects a typographical error in regulation 19(2)(b) of the 2003 Regulations.

Regulation 19 inserts new regulation 15A into the 2003 Regulations which requires the Secretary of State to review the operation and effect of the 2003 Regulations and to publish a report within five years after 31 December 2016 and at intervals not exceeding five years thereafter.

Regulation 20 amends Schedule 2 to the 2003 Regulations to omit amendments to legislation which has been revoked.

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 and Marine Guidance Notes are published by the Maritime and Coastguard Agency. Copies may be downloaded from the MCA's website <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency> or by e-subscription from mnotices@ecgroup.co.uk with 'Subscribe' in the subject heading, or obtained from M-Notices Subscriptions, PO Box 362, Europa Park, Grays Essex RM17 9AY, tel 01375 484548, fax 01375 484556.