

# DRAFT MERCHANT SHIPPING NOTICE

## 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 [31 December 2016], this notice supersedes MSN 1778(M) for Boatmasters and crew commercial inland waterway transport vessels. 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 as amended by the Merchant Shipping (Working Time: Inland Waterways) Regulations 2016 which come into force on [31 December 2016]. It gives guidance on the application of the Regulations.

### Key points

- The Regulations apply to vessels other than pleasure vessels operating in categorised waters.
- Employers of workers on vessels engaged in the carriage of passengers or cargo
- must comply with the daily, weekly and annual limits on working time and daily and weekly minimum rest periods laid down.
- The schedule of work must allow rest days for workers, based on the number of days they have worked continuously, normally following immediately the period of continuous work.
- A rest break must be provided if the worker works for more than 6 hours continuously.
- Records must be kept to demonstrate compliance with the Regulations.
- Workers must be provided with at least four weeks paid leave per year (or pro rata for periods of less than one year).
- Annual health assessments must be available at no cost to the worker
- Special provision is made for passenger vessels during the tourist season.
- There are exceptions for emergencies and for those who can determine their own working time.
- Workers may seek to enforce their entitlements through an employment tribunal (industrial tribunal in Northern Ireland).

## 1 INTRODUCTION

1.1 The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. 2003/3049 as amended by S.I. 2016/xxxx) lay down working time rules for workers in commercial inland waterways transport, in accordance with European Directive 2014/112/EU, implementing the social partners' agreement on working time for mobile workers on inland waterways.

## 2. APPLICATION

These Regulations apply to any vessel which

- 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
- is engaged in the commercial transport of passengers or cargo.

The regulations do not apply to pleasure vessels.

The Regulations apply to workers who are, or were, employed as a member of the travelling personnel of a ship to which the Regulations apply by an undertaking which operates services for passengers or goods.

They do not include people who operate such services on their own account or to those training in a sail training vessel or those who are not engaged in the navigation of, or have no emergency safety responsibilities on, such a vessel.

### ***Additional Guidance***

#### *Area of operation:*

Some vessels which ordinarily operate within categorised waters also hold a seagoing (e.g. EC Class C (restricted) or D (restricted) passenger ship certificate) for emergency or exceptional trips. In these cases, the operator should follow whichever working time regime is the most appropriate, the regime for inland waterways under these Regulations, or the regime for seafarers under the Merchant Shipping (Hours of Work) Regulations 2002 (as amended – see MSN 1842(M)).

Workers must be protected by regulation of their working time. In cases where the applicable regime is unclear, because the vessel works at the margins of categorised waters and sea (for example, in one of the areas where there are different summer and winter limits for categorised waters), the decision on which regime is appropriate should be agreed between the employer and the workforce and recorded.

Those workers not covered by these Regulations will, nevertheless, be subject to one of the following:

- the [Merchant Shipping (Hours of Work) Regulations 2002 as amended] (for seafarers on sea-going ships); or
- the Merchant Shipping (Working Time: Sea Fishing) Regulations 2004 (for fishing vessels); or
- the Working Time Regulations 1998 as amended.

The Working Time Regulations 1998 apply to any worker who does not travel with the vessel or to anyone who works on an inland waterway vessel (i.e. a vessel operating solely in categorised waters) which is not engaged in the carriage of cargo or passengers.

Owners who operate their own commercial vessel do not fall within the definition of worker are therefore not covered by the Regulations, even if they are considered as workers in their own business

### **3. WORK, REST, NIGHT WORK AND SHIFT WORK**

#### Work and rest

“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;

“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;

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

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

#### Night work

“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
- (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;

#### Shift work

“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.

### **4. RIGHTS AND OBLIGATIONS CONCERNING WORKING TIME**

#### **4.1 Maximum daily working time (Regulation 6)**

4.1.1 The employer must ensure that a worker's working time does not exceed 14 hours in any 24 hour period.

#### **4.2 Maximum weekly working time (Regulation 6A)**

4.2.1 The employer must ensure that a worker does not work more than 84 hours in any 7 day period.

#### **4.3 Maximum annual working time (Regulation 6B)**

4.3.1 A worker's working time over a full year must not exceed 2,304 hours, calculated as follows:

$$(A-B) \times C$$

Where-

A is 52 weeks;

B is 4 weeks annual leave; and

C is 48 hours.

4.3.2 If the worker is employed for less than 12 months, their maximum working time must be calculated pro rata, as follows:

$$(A-B) \times C$$

Where-

A is number of weeks of employment;

B is number of weeks annual leave (calculated pro-rata); and

C is 48 hours.

#### **4.4 Maximum average 48 hour working week (Regulation 6C)**

4.4.1 The employer must ensure that a worker does not work more than 48 hours per week, averaged over the relevant reference period. The reference period is normally 12 months. Where the period of employment is less than 12 months, the reference period is the length of the employment relationship.

4.4.2 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 under regulation 11, sick leave, maternity, paternity, adoption and parental leave are counted as excluded days.

#### **4.5 Maximum average weekly working time where there are more working days than rest days (Regulation 6D)**

4.5.1 This provision applies in addition to the maximum weekly average for working time calculated over a full year, or over the duration of the seafarer's period of employment if that is less than a year. It is designed to protect workers from being required to work excessive hours during a busy season.

4.5.2 Where workers are scheduled to have 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.

### **5. HEALTH ASSESSMENTS (Regulation 7) AND HEALTH ASSESSMENTS FOR NIGHT WORKERS (Regulation 7A)**

5.1 Workers to whom these Regulations apply are entitled to annual health assessment at no cost to themselves. This assessment should include identifying conditions or symptoms which could be as a result of work on board particularly if the worker is only receiving the minimum rest periods or rest days under these Regulations.

5.2 In addition, health assessment must be offered to any worker starting to work as a night worker (i.e. working at least three hours of their daily working time during night time). An opportunity for a free health assessment must be provided at regular intervals while they continue as a night worker.

#### ***Additional guidance on health surveillance***

5.3 The entitlement to health assessment (normally referred to as health surveillance in the UK) is separate from any requirement for a medical examination to establish a person's fitness to do the job. The purpose of health surveillance is to establish whether a person's work is having any adverse effect on their health.

5.4 Workers are entitled to an annual health assessment at no cost to themselves. In the UK, occupational health surveillance must be provided by the employer, and is not available on the National Health Service.

### **6. TRANSFER OF NIGHT WORKERS TO DAY WORK (Regulation 7B)**

6.1 Like night workers ashore, night workers in inland waterway transport have the right to be transferred to available day work for which they are suitable if they suffer from health problems as a result of night work. This applies if a registered medical practitioner has advised the employer that the health problems are connected to their work at night.

## **7. LENGTH OF NIGHT WORK (Regulation 7C)**

7.1 The employer must ensure that no worker carries out more than 42 hours of night work during any 7-day period.

## **8. SAFETY AND HEALTH PROTECTION FOR NIGHT AND SHIFT WORKERS (Regulation 7D)**

8.1 Night workers and shift workers must be provided with appropriate safety and health protection relevant to their work. For many workers, night work and shift work lead to sleep disruption and fatigue, appetite disruption and social and family issues. While in the context of commercial transport it may be impossible to avoid altogether, careful consideration of the issues, and adoption of best practice can mitigate these effects.

8.2 The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (as amended), require the employer to ensure that a competent person is available to provide protective and preventive services for their undertaking to ensure the health and safety of all workers, which includes night workers and shift workers.

## **9. YOUNG PERSONS**

### **9.1. Protection of young persons (Regulation 7E)**

9.1.1 A young person is any worker under the age of 18.

9.1.2 The Regulations do not supersede the provisions of the EC Directive 94/33/EC<sup>1</sup> implemented in the UK by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998<sup>2</sup>. Those Regulations require that where young persons are employed on ships, a risk assessment must consider any risks to which they may be exposed as a result of their immaturity or lack of experience. MGN 473(M+F) gives guidance on these requirements.

9.1.3 There are also stricter rules on hours of work and rest for young persons:

- A rest period of 12 consecutive hours in every 24 hour period; and
- A rest period of at least 2 days, which shall be consecutive if possible, in every week;

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<sup>1</sup> Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work, O.J. L 216, 20.8.1994.

<sup>2</sup> S.I. 1988/2411

- A rest break of at least 30 minutes if daily working time exceeds four and a half hours;
- Training time to be counted as working time.

9.1.4 See MGN 473(M+F) for exceptions.

## **9.2 Young persons working at night (regulation 7e)**

9.2.1 Workers under the age of 18 years may not work at night [between the hours of 10pm and 6am] on a vessel to which the Regulations apply.

9.2.2 However, they may work at night if the following conditions are met:

- they are over school leaving age;
- it is necessary to achieve the objective of a recognised training course;
- the objectives set out in Article 1 of Directive 94/33/EC are not called into question; and
- if sufficient compensatory rest is granted.

9.2.3 Recognised training courses for this purpose are –

- MCA boatmaster's licence training in accordance with MSN 1853(M)
- Any others?

[9.2.4 This list of training programmes has been agreed following consultation with the shipowners' and seafarers' organisations concerned.]

9.2.5 The objectives of Article 1 of Directive 94/33/EC referred to above are -

- that young people have working conditions which suit their age;
- that young people are protected against –
  - economic exploitation; and
  - any work likely to harm their safety, health or physical, mental, moral or social development or to jeopardize their education.

## **10. PATTERN OF WORK (Regulation 8)**

10.1 In organising the pattern of work, the employer must consider the effects on the health and safety of workers employed by him, in particular where the work is monotonous or requires work at a predetermined rate. Where appropriate, the employer must ensure that the worker is given adequate rest breaks.

## **11. RECORDS (Regulation 9)**

11.1 The employer must keep records which are adequate to show whether the Regulations are being complied with in respect of -

- Maximum daily, weekly and annual working time
- Average weekly working time
- Limitation on night work (including for young persons)

- Minimum daily and weekly rest
- Rest periods
- Rest days
- Annual leave
- Compensatory rest following an emergency
- Special arrangements for passenger ships during the season.

11.2 They may serve other functions such as calculation of pay or record of leave provided that they meet the requirements above.

11.3 The records should be kept on board a ship until at least the end of the reference period used for calculating average weekly hours of work. However, on small vessels where safe storage is at a premium, if the vessel is operating from a single departure point, records may be held in a place where they can be easily viewed both by crew members or inspectors.

11.4 The minimum information to be recorded is -

- the name of ship,
- the name of the worker,
- the name of the master,
- the date,
- whether a day was a working day or a rest day, and
- the beginning and end of the daily working or rest periods.

Provided there is an auditable trail, time sheets may refer to other records for some of this information.

11.5 The records shall be examined and endorsed by the worker and the employer or their representative (such as the master of the vessel) at appropriate intervals, and no later than the end of the month following the month to which they relate.

11.6 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.

## **12. REST PERIODS (Regulation 10)**

12.1 Every worker is entitled to adequate rest. This means that the worker has regular rest periods 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.

12.2 Each worker shall have rest periods of at least -

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



12.3 Although there is no requirement for one day off per week, as there is under the shore-based Working Time Regulations, a worker cannot work their maximum daily working time (14 hours), or have their minimum daily rest (10 hours), for seven days consecutively as this would breach the minimum weekly requirement for 84 hours of rest and the maximum weekly working time limit of 84 hours.

### **13. REST BREAKS (Regulation 10A)**

13.1 Any worker whose daily working time exceeds six hours is entitled to a rest break.

13.2 The details of rest breaks are a matter for agreement between the employer and the workers. However, in the absence of a collective bargaining agreement or workforce agreement, the break must be at least 20 minutes of uninterrupted rest and the worker is entitled to spend it away from their workstation if they have one. The rest break may be a meal break depending on the start and finish times of the workers' working time.

### **14. WORKING DAYS AND REST DAYS (Regulation 10B)**

14.1 No worker may be required to work more than 31 days consecutively.

14.2 After a period of consecutive working days, the worker should be allowed a period of consecutive rest days, 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).

14.3 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.

#### *Example 1:*

Worker A regularly works 5 days a week.

After each 5 days work, they are entitled to  $5 \times 0.2$  rest days (1 rest day).

As they actually get 2 rest days, their working pattern meets the requirements of the Regulations.

#### *Example 2:*

Worker B regularly works 6 days a week, usually Monday to Saturday.

After each 6 days work, they are entitled to  $6 \times 0.2$  rest days (1.2 rest days). Under paragraph 11.3, this should be granted as 2 full days.

As they actually get 1 rest day (normally Sunday), their working pattern does not meet the requirements of the Regulations.

14.4 However, if the schedule of work provides for at least as many rest days as working days, in addition to the immediate rest days that they are entitled to, the worker should be able to take a number of rest days equal to the number of working days they have just worked minus the number of rest days they were immediately entitled to. Those additional days do not need to be taken immediately and can be taken later in the reference period.

*Example 3:*

Worker C regularly works on board the vessel for 2 weeks, followed by 2 weeks rest ashore.

In order to cover sick leave for another crew member, Worker C works a third week on board. They are then entitled to immediately take 6 days (rounded up from 5.4) rest ashore before they return to work with the remainder – 16 days (rounded up from 15.6) to be taken during the reference period.

## **15. ANNUAL PAID LEAVE (Regulation 11)**

15.1 Workers are entitled to 4 weeks of paid leave in each year.

15.2 Where a worker works for a shorter period than a year, the paid leave entitlement must be calculated pro-rata.

15.3 The level of pay during paid statutory leave should be at the worker's normal level of remuneration.

15.4 Detailed arrangements for leave, including the time at which leave is to be taken, is a matter to be determined between the worker and the employer. Statutory leave may be taken in instalments, and may not be replaced by a payment in lieu, except where the worker's employment is terminated.

15.5 Paid periods off work which form part of a worker's agreed pattern of work (eg two weeks on, two weeks off) may include paid leave, as well as rest days earned during the preceding work days while the worker is on board ship. The nature of this leave should be made clear in the contract. Entitlement to annual paid leave continues to accrue when workers are taking their scheduled rest days ashore as part of the agreed pattern of work.

## **16. EXCEPTIONS (Regulation 14)**

16.1 The Regulations relating to maximum daily, weekly and annual working time; average weekly working time and the length of night work do not apply where, on account of the specific characteristics of the activity in which the worker is engaged, the duration of his working time is not measured or pre-determined, or because the worker is able to determine his own working time, for example a managing executive or anyone with autonomous decision-taking powers or family workers., If this applies only to part of a worker's working time, the exception applies only to that part.

## 16.2 Emergency situations

16.2.1 The master of a ship or his representative may require a worker to perform any hours of work necessary for:

- (a) the immediate safety of the ship, any persons on board or the cargo; or
- (b) for the purpose of giving assistance to other vessels or persons in distress, until the normal situation has been restored.

16.2.2 Emergency situations would include the life-line services, for example where an inland waterway vessel provides an out-of-hours service to transport an ambulance or patient for medical care.

16.2.3 In any safety critical situation, safety of life must be the priority. However, where maximum hours of work are exceeded, or minimum hours of rest not taken because of a safety critical situation, those concerned must be provided with the opportunity for an adequate rest period as soon as possible after the event to minimise the period of time during which they are working while tired.

## **17. SEASONAL WORK ON PASSENGER VESSELS (Regulation 15)**

17.1 The employer may apply the provisions contained in this regulation to workers employed on passenger vessels during the season.

17.2 For the purposes of this section, “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.

17.3 Where these arrangements are applied,

- working time shall not exceed—
  - (a) 12 hours in any 24 hour period; and
  - (b) 72 hours in any seven day period;
- workers shall be credited with 0.2 rest days per working day; and
- at least 2 of the rest days earned under these arrangements must be granted during every period of 31 days; the remaining rest days may be granted by agreement.

17.4 The following rights—

- (a) the rest days to which the worker is entitled as set out in paragraph 14.3; and
- (b) the average weekly working time of 48 hours as set out in paragraph 4.4 of this Notice shall be contained in a collective agreement or a workforce agreement.

## **18. REQUIREMENT FOR INFORMATION (Regulation 16)**

18.1 The MCA may require an employer to supply information about those workers he employs who work at night. This may include the records of their working time, rest periods and rest breaks, and any health assessment [requested or carried out].

## **19. ENFORCEMENT/REMEDIES (Regulation 17 and 18)**

19.1 MCA is the enforcement authority for employer duties: eg maximum working time, minimum rest periods, provision of health assessment for night workers, transfer of night workers to day work on advice of a medical practitioner, keeping of adequate records.

19.2 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 (industrial tribunal in Northern Ireland) or to the Advisory, Conciliation and Arbitration Service (ACAS) (Tel 0300 123 1100 or visit [www.acas.org.uk/](http://www.acas.org.uk/) or, if based in Northern Ireland, Tel 028 9032 1442 and [www.lra.org.uk](http://www.lra.org.uk) ).

19.3 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 made void by this regulation.

## **Workforce Agreements**

### **Regulation 2(1) and Schedule 2**

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

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

2. For the purposes of this Schedule—

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

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

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

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

- (a) the number of representatives to be elected is determined by the employer;

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