

2003 No. 1684

TERMS AND CONDITIONS OF EMPLOYMENT

The Working Time (Amendment) Regulations 2003

<i>Made - - - -</i>	<i>3rd July 2003</i>
<i>Laid before Parliament</i>	<i>4th July 2003</i>
<i>Coming into force</i>	
<i>For all purposes except</i>	
<i>regulation 7</i>	<i>1st August 2003</i>
<i>Regulation 7</i>	<i>1st August 2004</i>

The Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972^(a) in relation to measures relating to the organisation of working time^(b), in exercise of the powers conferred on her by that provision hereby makes the following Regulations—

1. These Regulations may be cited as the Working Time (Amendment) Regulations 2003. These Regulations, with the exception of regulation 7, shall come into force on 1st August 2003. Regulation 7 shall come into force on 1st August 2004.

2. The Working Time Regulations 1998^(c) shall be amended as provided below.

3. In paragraph (1) of regulation 2 (interpretation)—

(a) after the definition of “employment” insert the following definitions—

““fishing vessel” has the same meaning as in section 313 of the Merchant Shipping Act 1995^(d);

“mobile worker” means any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road or air;”;

(b) after the definition of “night worker” insert the following definition—

““offshore work” means work performed mainly on or from offshore installations (including drilling rigs), directly or indirectly in connection with the exploration, extraction or exploitation of mineral resources, including hydrocarbons, and diving in connection with such activities, whether performed from an offshore installation or a vessel;”;

(c) after the definition of “the restricted period” insert the following definition—

““ship” has the same meaning as in section 313 of the Merchant Shipping Act 1995;”.

(a) 1972 c. 68.

(b) S.I. 1997/1174.

(c) S.I. 1998/1833, amended by S.I. 2002/3128 and other instruments not relevant to these Regulations.

(d) 1995 c. 21.

4. For regulation 18 (excluded sectors) substitute the following—

“Excluded sectors

18.—(1) These Regulations do not apply—

- (a) to workers to whom the European Agreement on the organisation of working time of seafarers dated 30th September 1998 and put into effect by Council Directive 1999/63/EC of 21st June 1999^(a) applies;
- (b) to workers on board a sea-going fishing vessel; or
- (c) to workers on board a ship or hovercraft employed by an undertaking which operates services for passengers or goods by inland waterway or lake transport.

(2) Regulations 4(1) and (2), 6(1), (2) and (7), 7(1) and (6), 8, 10(1), 11(1) and (2), 12(1), 13 and 16 do not apply—

- (a) where characteristics peculiar to certain specific services such as the armed forces or the police, or to certain specific activities in the civil protection services, inevitably conflict with the provisions of these Regulations;
- (b) to workers to whom the European Agreement on the organisation of working time of mobile staff in civil aviation concluded on 22nd March 2000 and implemented by Council Directive 2000/79/EC of 27th November 2000^(b) applies; or
- (c) to the activities of workers who are doctors in training.

(3) Paragraph (2)(c) has effect only until 31st July 2004.

(4) Regulations 4(1) and (2), 6(1), (2) and (7), 8, 10(1), 11(1) and (2) and 12(1) do not apply to workers to whom Directive 2002/15/EC of the European Parliament and of the Council on the organisation of the working time of persons performing mobile road transport activities, dated 11th March 2002^(c) applies.”.

5. In regulation 21 (other special cases)—

- (a) in paragraph (a) after “his place of work and place of residence are distant from one another” insert “, including cases where the worker is employed in offshore work,”;
- (b) in sub-paragraph (c)(i) after “hospitals or similar establishments” insert “(including the activities of doctors in training)”;

(c) after sub-paragraph (c)(vii) add the following—

“(viii) the carriage of passengers on regular urban transport services;”;

(d) after paragraph (e) add the following paragraph—

“(f) where the worker works in railway transport and—

- (i) his activities are intermittent;
- (ii) he spends his working time on board trains; or
- (iii) his activities are linked to transport timetables and to ensuring the continuity and regularity of traffic.”.

6. After regulation 24, insert—

“Mobile workers

24A.—(1) Regulations 6(1), (2) and (7), 10(1), 11(1) and (2) and 12(1) do not apply to a mobile worker in relation to whom the application of those regulations is not excluded by any provision of regulation 18.

(2) A mobile worker, to whom paragraph (1) applies, is entitled to adequate rest, except where the worker’s activities are affected by any of the matters referred to in regulation 21(e).

(3) For the purposes of this regulation, “adequate rest” means that a worker has regular rest periods, the duration of which are expressed in units of time and which are sufficiently

(a) OJ No. L 167, 2.7.99, p. 33.

(b) OJ No. L 302, 1.12.00, p. 57.

(c) OJ No. L 080, 23.3.02, p. 35.

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.”.

7. After regulation 25, insert—

“Doctors in training

25A.—(1) Paragraph (1) of regulation 4 is modified in its application to workers who are doctors in training as follows—

- (a) for the reference to 48 hours there is substituted a reference to 58 hours with effect from 1st August 2004 until 31st July 2007;
- (b) for the reference to 48 hours there is substituted a reference to 56 hours with effect from 1st August 2007 until 31st July 2009.

(2) In the case of workers who are doctors in training, paragraphs (3)–(5) of regulation 4 shall not apply and paragraphs (3) and (4) of this regulation shall apply in their place.

(3) Subject to paragraph (4), the reference period which applies in the case of a worker who is a doctor in training is, with effect from 1st August 2004—

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 26 weeks, each such period; and
- (b) in any other case, any period of 26 weeks in the course of his employment.

(4) Where a doctor in training has worked for his employer for less than 26 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his employer.”

8. After regulation 25A, insert—

“Workers employed in offshore work

25B.—(1) In the case of workers employed in offshore work, paragraphs (3)–(5) of regulation 4 shall not apply and paragraphs (2) and (3) of this regulation shall apply in their place.

(2) Subject to paragraph (3), the reference period which applies in the case of workers employed in offshore work is—

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 52 weeks, each such period; and
- (b) in any other case, any period of 52 weeks in the course of his employment.

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

9. Regulation 26 is hereby revoked.

10. For regulations 28 (enforcement) and 29 (offences) substitute—

“Enforcement

28.—(1) In this regulation, regulations 29–29E and Schedule 3—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974(a);

“the Civil Aviation Authority” means the authority referred to in section 2(1) of the Civil Aviation Act 1982(b);

“code of practice” includes a standard, a specification and any other documentary form of practical guidance;

“the Commission” means the Health and Safety Commission referred to in section 10(2) of the 1974 Act;

“enforcement authority” means the Executive, a local authority, the Civil Aviation Authority or VOSA;

(a) 1974 c. 37.
(b) 1982 c. 16.

“the Executive” means the Health and Safety Executive referred to in section 10(5) of the 1974 Act;

“local authority” means—

- (a) in relation to England, a county council so far as they are the council for an area for which there are no district councils, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple or the Under-Treasurer of the Middle Temple;
- (b) in relation to Wales, a county council or a county borough council;
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**(a)**;

“premises” includes any place and, in particular, includes—

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or the subsoil thereof, or resting on other land covered with water or the subsoil thereof) and
- (c) any tent or movable structure;

“relevant civil aviation worker” means a mobile worker who works mainly on board civil aircraft, excluding any worker to whom regulation 18(2)(b) applies;

“the relevant requirements” means the following provisions—

- (a) regulations 4(2), 5A(4), 6(2) and (7), 6A, 7(1), (2) and (6), 8, 9 and 27A(4)(a);
- (b) regulation 24, in so far as it applies where regulation 6(1), (2) or (7) is modified or excluded, and
- (c) regulation 24A(2), in so far as it applies where regulations 6(1), (2) or (7) is excluded;

“relevant road transport worker” means a mobile worker to whom one or more of the following applies—

- (a) Council Regulation (EEC) 3820/85**(b)**,
- (b) the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) of 1st July 1970, and
- (c) the United Kingdom domestic driver’s hours code, which is set out in Part VI of the Transport Act 1968**(c)**;

“the relevant statutory provisions” means—

- (a) the provisions of the 1974 Act and of any regulations made under powers contained in that Act; and
- (b) while and to the extent that they remain in force, the provisions of the Acts mentioned in Schedule 1 to the 1974 Act and which are specified in the third column of that Schedule and the regulations, orders or other instruments of a legislative character made or having effect under a provision so specified; and

“VOSA” means the Vehicle and Operator Services Agency.

(2) It shall be the duty of the Executive to make adequate arrangements for the enforcement of the relevant requirements except to the extent that—

- (a) a local authority is made responsible for their enforcement by paragraph (3);
- (b) the Civil Aviation Authority is made responsible for their enforcement by paragraph (5); or
- (c) VOSA is made responsible for their enforcement by paragraph (6).

(3) Where the relevant requirements apply in relation to workers employed in premises in respect of which a local authority is responsible, under the Health and Safety (Enforcing

(a) 1994 c. 39.

(b) OJ No. L 370, 31.12.85, p. 1–7.

(c) 1968 c. 73.

Authority) Regulations 1998^(a), for enforcing any of the relevant statutory provisions, it shall be the duty of that authority to enforce those requirements.

(4) The duty imposed on local authorities by paragraph (3) shall be performed in accordance with such guidance as may be given to them by the Commission.

(5) It shall be the duty of the Civil Aviation Authority to enforce the relevant requirements in relation to relevant civil aviation workers.

(6) It shall be the duty of VOSA to enforce the relevant requirements in relation to relevant road transport workers.

(7) The provisions of Schedule 3 shall apply in relation to the enforcement of the relevant requirements.

(8) Any function of the Commission under the 1974 Act which is exercisable in relation to the enforcement by the Executive of the relevant statutory provisions shall be exercisable in relation to the enforcement by the Executive of the relevant requirements.

Offences

29.—(1) An employer who fails to comply with any of the relevant requirements shall be guilty of an offence.

(2) The provisions of paragraph (3) shall apply where an inspector is exercising or has exercised any power conferred by Schedule 3.

(3) It is an offence for a person—

(a) to contravene any requirement imposed by the inspector under paragraph 2 of Schedule 3;

(b) to prevent or attempt to prevent any other person from appearing before the inspector or from answering any question to which the inspector may by virtue of paragraph 2(2)(e) of Schedule 3 require an answer;

(c) to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice (including any such notice as is modified on appeal);

(d) intentionally to obstruct the inspector in the exercise or performance of his powers or duties;

(e) to use or disclose any information in contravention of paragraph 8 of Schedule 3;

(f) to make a statement which he knows to be false or recklessly to make a statement which is false, where the statement is made in purported compliance with a requirement to furnish any information imposed by or under these Regulations.

(4) An employer guilty of an offence under paragraph (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(5) A person guilty of an offence under paragraph (3) shall be liable to the penalty prescribed in relation to that provision by paragraphs (6), (7) or (8) as the case may be.

(6) A person guilty of an offence under sub-paragraph (3)(a), (b) or (d) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A person guilty of an offence under sub-paragraph (3)(c) shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum;

^(a) S.I. 1998/494.

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(8) A person guilty of an offence under any of the sub-paragraphs of paragraph (3) not falling within paragraphs (6) or (7) above, shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment—

(i) if the offence is under sub-paragraph (3)(e), to imprisonment for a term not exceeding two years or a fine or both;

(ii) if the offence is not one to which the preceding sub-paragraph applies, to a fine.

(9) The provisions set out in regulations 29A–29E below shall apply in relation to the offences provided for in paragraphs (1) and (3).

Offences due to fault of other person

29A. Where the commission by any person of an offence is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

Offences by bodies corporate

29B.—(1) Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the preceding paragraph shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Restriction on institution of proceedings in England and Wales

29C. Proceedings for an offence shall not, in England and Wales, be instituted except by an inspector or by or with the consent of the Director of Public Prosecutions.

Prosecutions by inspectors

29D.—(1) An inspector, if authorised in that behalf by an enforcement authority, may, although not of counsel or a solicitor, prosecute before a magistrate's court proceedings for an offence under these Regulations.

(2) This regulation shall not apply to Scotland.

Power of court to order cause of offence to be remedied

29E.—(1) Where a person is convicted of an offence in respect of any matters which appear to the court to be matters which it is in his power to remedy, the court may, in addition to or instead of imposing any punishment, order him, within such time as may be fixed by the order, to take such steps as may be specified in the order for remedying the said matters.

(2) The time fixed by an order under paragraph (1) may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this paragraph, as the case may be.

(3) Where a person is ordered under paragraph (1) to remedy any matters, that person shall not be liable under these Regulations in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under paragraph (2)."

11. In regulation 30 (remedies), omit "or" at the end of paragraph (1)(a)(ii) and, for paragraph (1)(a)(iii), substitute—

“(iii) regulation 24A, in so far as it applies where regulation 10(1), 11(1) or (2) or 12(1) is excluded; or

(iv) regulation 25(3), 27A(4)(b) or 27(2); or”.

12. After Schedule 2, insert—

“SCHEDULE 3

Regulation 28(7)

ENFORCEMENT

Appointment of inspectors

1.—(1) Each enforcement authority may appoint as inspectors (under whatever title it may from time to time determine) such persons having suitable qualifications as it thinks necessary for carrying into effect these Regulations within its field of responsibility, and may terminate any appointment made under this paragraph.

(2) Every appointment of a person as an inspector under this paragraph shall be made by an instrument in writing specifying which of the powers conferred on inspectors by these Regulations are to be exercisable by the person appointed; and an inspector shall in right of his appointment under this paragraph—

(a) be entitled to exercise only such of those powers as are so specified; and

(b) be entitled to exercise the powers so specified only within the field of responsibility of the authority which appointed him.

(3) So much of an inspector’s instrument of appointment as specifies the powers which he is entitled to exercise may be varied by the enforcement authority which appointed him.

(4) An inspector shall, if so required when exercising or seeking to exercise any power conferred on him by these Regulations, produce his instrument of appointment or a duly authenticated copy thereof.

Powers of inspectors

2.—(1) Subject to the provisions of paragraph 1 and this sub-paragraph, an inspector may, for the purpose of carrying into effect these Regulations within the field of responsibility of the enforcement authority which appointed him, exercise the powers set out in sub-paragraph (2) below.

(2) The powers of an inspector referred to in the preceding sub-paragraph are the following, namely—

(a) at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the purpose mentioned in sub-paragraph (1) above;

(b) to take with him a constable if he has reasonable cause to apprehend any serious obstruction in the execution of his duty;

(c) without prejudice to the preceding sub-paragraph, on entering any premises by virtue of paragraph (a) above to take with him—

(i) any other person duly authorised by the inspector’s enforcement authority; and

(ii) any equipment or materials required for any purpose for which the power of entry is being exercised;

(d) to make such examination and investigation as may in any circumstances be necessary for the purpose mentioned in sub-paragraph (1) above;

(e) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (d) above to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the inspector may allow to be present) such

questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;

- (f) to require the production of, inspect, and take copies of or of any entry in—
 - (i) any records which by virtue of these Regulations are required to be kept, and
 - (ii) any other books, records or documents which it is necessary for him to see for the purposes of any examination or investigation under paragraph (d) above;
- (g) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this paragraph;
- (h) any other power which is necessary for the purpose mentioned in sub-paragraph (1) above.

(3) No answer given by a person in pursuance of a requirement imposed under sub-paragraph (2)(e) above shall be admissible in evidence against that person or the husband or wife of that person in any proceedings.

(4) Nothing in this paragraph shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, as the case may be, on an order for the production of documents in an action in the Court of Session.

Improvement notices

3. If an inspector is of the opinion that a person—
- (a) is contravening one or more of these Regulations; or
 - (b) has contravened one or more of these Regulations in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on him a notice (in this Schedule referred to as “an improvement notice”) stating that he is of that opinion, specifying the provision or provisions as to which he is of that opinion, giving particulars of the reasons why he is of that opinion, and requiring that person to remedy the contravention or, as the case may be, the matters occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought under paragraph 6) as may be specified in the notice.

Prohibition notices

4.—(1) This paragraph applies to any activities which are being or are likely to be carried on by or under the control of any person, being activities to or in relation to which any of these Regulations apply or will, if the activities are so carried on, apply.

(2) If as regards any activities to which this paragraph applies an inspector is of the opinion that, as carried on or likely to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve a risk of serious personal injury, the inspector may serve on that person a notice (in this Schedule referred to as “a prohibition notice”).

- (3) A prohibition notice shall—
- (a) state that the inspector is of the said opinion;
 - (b) specify the matters which in his opinion give or, as the case may be, will give rise to the said risk;
 - (c) where in his opinion any of those matters involves or, as the case may be, will involve a contravention of any of these Regulations, state that he is of that opinion, specify the regulation or regulations as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
 - (d) direct that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of paragraph (b) above and any associated

contraventions of provisions so specified in pursuance of paragraph (c) above have been remedied.

(4) A direction contained in a prohibition notice in pursuance of sub-paragraph (3)(d) above shall take effect—

- (a) at the end of the period specified in the notice; or
- (b) if the notice so declares, immediately.

Provisions supplementary to paragraphs 3 and 4

5.—(1) In this paragraph “a notice” means an improvement notice or a prohibition notice.

(2) A notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions—

- (a) may be framed to any extent by reference to any approved code of practice; and
- (b) may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

(3) Where an improvement notice or a prohibition notice which is not to take immediate effect has been served—

- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified therein in pursuance of paragraph 3 or paragraph 4(4) as the case may be; and
- (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

Appeal against improvement or prohibition notice

6.—(1) In this paragraph “a notice” means an improvement or a prohibition notice.

(2) A person on whom a notice is served may within 21 days from the date of its service appeal to an employment tribunal; and on such an appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit.

(3) Where an appeal under this paragraph is brought against a notice within the period allowed under the preceding sub-paragraph, then—

- (a) in the case of an improvement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal;
- (b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction).

(4) One or more assessors may be appointed for the purposes of any proceedings brought before an employment tribunal under this paragraph.

Power of enforcement authority to indemnify inspectors

7. Where an action has been brought against an inspector in respect of an act done in the execution or purported execution of these Regulations and the circumstances are such that he is not legally entitled to require the enforcement authority to indemnify him, that authority may, nevertheless, indemnify him against the whole or part of any damages and costs or expenses which he may have been ordered to pay or may have incurred, if the authority is satisfied that the inspector honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it.

Restrictions on disclosure of information

8.—(1) In this and the two following sub-paragraphs—

- (a) “relevant information” means information obtained by an inspector in pursuance of a requirement imposed under paragraph 2(2)(e) or (f); and

- (b) “the recipient”, in relation to any relevant information, means the person by whom that information was so obtained or to whom that information was so furnished, as the case may be.
- (2) Subject to the following sub-paragraph, no relevant information shall be disclosed without the consent of the person by whom it was furnished.
- (3) The preceding sub-paragraph shall not apply to—
- (a) disclosure of information to the Commission, a government department or any enforcement authority;
 - (b) without prejudice to paragraph (a) above, disclosure by the recipient of information to any person for the purpose of any function conferred on the recipient by or under any of the relevant statutory provisions or under these Regulations;
 - (c) without prejudice to paragraph (a) above, disclosure by the recipient of information to—
 - (i) an officer of a local authority who is authorised by that authority to receive it; or
 - (ii) a constable authorised by a chief officer of police to receive it; or
 - (d) disclosure by the recipient of information in a form calculated to prevent it from being identified as relating to a particular person or case.
- (4) In the preceding sub-paragraph any reference to the Commission, a government department or an enforcement authority includes respectively a reference to an officer of that body or authority (including in the case of an enforcement authority, any inspector appointed by it), and also, in the case of a reference to the Commission, includes a reference to—
- (a) a person performing any functions of the Commission or the Executive on its behalf by virtue of section 13(1)(a) of the 1974 Act;
 - (b) an officer of a body which is so performing any such functions; and
 - (c) an adviser appointed in pursuance of section 13(1)(d) of the 1974 Act.
- (5) A person to whom information is disclosed in pursuance of sub-paragraph (3) above shall not use the information for a purpose other than—
- (a) in a case falling within sub-paragraph (3)(a), a purpose of the Commission, of the government department, or of the enforcement authority in question in connection with these Regulations or with the relevant statutory provisions, as the case may be;
 - (b) in the case of information given to an officer of a body which is a local authority, the purposes of the body in connection with the relevant statutory provisions or any enactment whatsoever relating to working time, public health, public safety or the protection of the environment;
 - (c) in the case of information given to a constable, the purposes of the police in connection with these Regulations, the relevant statutory provisions or any enactment whatsoever relating to working time, public health, public safety or the safety of the State.
- (6) A person shall not disclose any information obtained by him as a result of the exercise of any power conferred by paragraph 2 of this Schedule (including in particular any information with respect to any trade secret obtained by him in any premises entered by him by virtue of any such power) except—
- (a) for the purposes of his functions;
 - (b) for the purposes of any legal proceedings; or
 - (c) with the relevant consent.

In this sub-paragraph “the relevant consent” means the consent of the person who furnished it, and, in any other case, the consent of a person having responsibilities in relation to the premises where the information was obtained.

(7) Notwithstanding anything in the preceding sub-paragraph an inspector shall, in circumstances in which it is necessary to do so for the purpose of assisting in keeping persons (or the representatives of persons) employed at any premises adequately informed about matters affecting their health, safety and welfare or working time, give to such persons or their representatives the following descriptions of information, that is to say—

- (a) factual information obtained by him as mentioned in that sub-paragraph which relates to those premises or anything which was or is therein or was or is being done therein; and
- (b) information with respect to any action which he has taken or proposes to take in or in connection with those premises in the performance of his functions;

and, where an inspector does as aforesaid, he shall give the like information to the employer of the first-mentioned persons.

(8) Notwithstanding anything in sub-paragraph (6) above, a person who has obtained such information as is referred to in that sub-paragraph may furnish to a person who appears to him to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, a written statement of the relevant facts observed by him in the course of exercising any of the powers referred to in that sub-paragraph.”

Gerry Sutcliffe
Parliamentary Under Secretary of State for Employment
Relations, Competition and Consumers,
Department of Trade and Industry

3rd July 2003

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Council Directive 2000/34/EC (OJ No. L195, 1.8.2000, p. 41). That Directive amends Council Directive 93/104/EC so that the provisions of the 1993 Directive, which concerned certain aspects of the organisation of working time, now apply to sectors and activities which were previously excluded from the scope of the 1993 Directive. Council Directive 93/104/EC was implemented by the Working Time Regulations 1998 (“the 1998 Regulations”) and these Regulations amend the provisions of the 1998 Regulations.

Regulation 3 amends regulation 2 of the 1998 Regulations to define “fishing vessel”, “mobile worker”, “offshore work” and “ship”.

Regulation 4 substitutes a new regulation 18 of the 1998 Regulations to disapply wholly or partially the provisions of the 1998 Regulations for certain workers. The 1998 Regulations are disappplied in their entirety in the case of workers to whom Council Directive 1999/63/EC applies (seafarers); workers on board sea-going fishing vessels and workers on certain ships and hovercraft on inland waterways.

In the case of workers in the armed forces or emergency services (where their activities conflict with the Regulations), workers covered by Council Directive 2000/79/EC (crew members on board civil aircraft) and doctors in training certain provisions are disappplied. The relevant provisions are the weekly working time and night work limits; the daily, weekly and in-work rest periods; the entitlement to paid annual leave; the right to a health assessment if a night worker and pattern of work protection for certain categories of worker. In the case of doctors in training the disapplication only has effect until 31st July 2004.

In the case of mobile workers covered by the Road Transport Directive 2002/15/EC fewer provisions are disappplied; these are, the weekly working time and night work limits; the daily, weekly and in-work rest periods and pattern of work protection for certain categories of worker.

Regulation 5 amends regulation 21 by adding to the list of special cases to which the night work limits and daily, weekly and in-work rest provisions do not apply in various circumstances, subject to the workers receiving compensatory rest. One additional special case is where the worker is engaged in the carriage of passengers on regular urban transport services. Another is where the worker works in rail transport and his activities are intermittent, he spends time working on board trains, or his activities are linked to transport timetables and to ensuring the continuity and regularity of traffic.

Regulation 6 inserts a new regulation 24A in the 1998 Regulations, which excludes mobile workers from night work restrictions and rest entitlements. Instead, these workers are entitled to “adequate rest” as defined in paragraph 24A(3).

Regulation 7 inserts a new regulation 25A in the 1998 Regulations, which provides for the 48-hour working time limit for doctors in training to be phased in over a period ending on 31 July 2009. Regulation 7 also replaces the 17-week reference period for doctors in training with a period of 26 weeks from 1 August 2004.

Regulation 8 inserts a new regulation 25B in the 1998 Regulations, which provides for a 52-week reference period for workers employed in offshore work.

Regulation 9 revokes regulation 26.

Regulation 10 substitutes new regulations 28–29E concerning enforcement and offences. These essentially replicate the provisions contained in the 1998 Regulations but provide for enforcement by the Civil Aviation Authority and the Vehicle and Operator Services Agency in addition to the Health and Safety Executive and local authorities.

Regulation 11 amends regulation 30 of the 1998 Regulations entitling mobile workers to seek redress through an employment tribunal where an employer has refused to allow adequate rest.

Regulation 12 inserts a new Schedule 3, which provides for the enforcement authorities to enforce through inspectors and sets out the powers of the inspectors.

A Regulatory Impact Assessment (RIA) of the costs and benefits of these Regulations to business, and a Transposition Note explaining how certain of the amendments provided for give effect to Council Directive 2000/34/EC have been placed in the libraries of both Houses of Parliament. Copies of the RIA and Transposition Note are available to the public from the Employment Relations Directorate, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET, and are also accessible at the Directorate’s website: www.dti.gov.uk/er

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