STATUTORY INSTRUMENTS

# 2017 No. 1149

# MERCHANT SHIPPING

SAFETY

CANALS AND INLAND WATERWAYS

## The Merchant Shipping (Working Time: Inland Waterways) (Amendment) Regulations 2017

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| *Made - - - -* | *5th December 2017* |
| *Laid before Parliament* | *14th December 2017* |
| *Coming into force - -* | *5th January 2018* |

The Secretary of State makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**), and sections 85(1), (3), (5) and (7) and 86(1) of the Merchant Shipping Act 1995(**2**).

The Secretary of State 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(**3**).

In accordance with section 86(4) of the Merchant Shipping Act 1995 the Secretary of State has consulted the persons referred to in that section.

### Citation and commencement

**1.**—(1) These Regulations may be cited as the Merchant Shipping (Working Time: Inland Waterways) (Amendment) Regulations 2017.

(2) These Regulations come into force on 5th January 2018.

(**1**) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).
(**2**) 1995 c.21. Section 85 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), section 8 and Schedule 7 Part I. Sections 85 and 86 apply to hovercraft by virtue of the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350).
(**3**) S.I. 1993/595.

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

**2.** The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003(**4**) are amended as follows.

**3.**—(1) In regulation 2(1) (interpretation) at the appropriate places insert—

""free health assessment" means a health assessment which is free of charge to the worker to whom it relates;";

""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) any vessel which at the time it is being used is—

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

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

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

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

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

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

""reference period" means—

(a) 52 weeks, or

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

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

(**4**) S.I. 2003/3049, amended by S.I. 2006/3223, S.I. 2009/3348, S.I. 2013/1956, S.I. 2014/386, S.I. 2014/431.

""shift work" means any method of organising 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;";

""shift worker" means any worker whose work involves shift work;";

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

""working day" means any 24 hour period that includes working time;";

""workstation" means any place where the worker carries out the worker's duties.".

(2) For the definition of "night time", substitute—

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

(3) 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 a person who—

(a) owns a business operating such services, or

(b) is training in a sail training vessel or a person who is not engaged in the navigation of, or has no emergency safety responsibilities on, such a vessel;".

(4) For "workforce agreeement", substitute "workforce agreement".

(5) In the definition of "working time", in sub-paragraph (a), after "period" insert ", including overtime,".

**4.** Omit regulation 2(2).

**5.** For regulation 3 (application), substitute—

"**3.**—(1) These Regulations apply to any ship which—

(a) ordinarily operates in, and does not ordinarily go beyond the limits of waters of category A, B, C or D (as categorised in Merchant Shipping Notice MSN 1837(M), Amendment 1), and

(b) is not a pleasure vessel.

(2) Regulations 6, 6A, 6D, 10, 10A, 10B and 15A do not apply to workers under the age of 18.".

**6.** At the end of regulation 4(d), insert—

"(e) in regulation 19(2)(b) for the word "settlement" substitute "compromise";

(f) in regulation 19(3) for the word "settlement" substitute "compromise".".

**7.**—(1) Omit regulation 5 (general).

(2) After regulation 12 omit the heading "Part 3 Exceptions".

(3) After regulation 15 omit the heading "Part 4 Miscellaneous".

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

"**Maximum daily working time**

**6.** Subject to regulation 15A, an employer shall ensure that a worker's working time shall not exceed 14 hours in any 24 hour period.

**Maximum weekly working time**

**6A.** Subject to regulation 15A, an employer shall ensure that a worker's working time shall not exceed 84 hours in any seven day period.

**Maximum annual working time**

**6B.**—(1) Subject to paragraph (2), an employer shall ensure that a worker's working time shall not exceed 2,304 hours within 12 months.

(2) 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 that proportion of 2,304 hours that the employment relationship bears to 12 months.

**Maximum average weekly working time**

**6C.**—(1) A worker's working time shall not exceed an average of 48 hours for any seven day period.

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

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

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 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 the worker has worked equals the number of excluded days during the reference period; and

C is the number of weeks in the reference period.

(3) In paragraph (2), "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 or 11A;

(b) in so far as it is not comprised in any period of annual leave in accordance with sub-paragraph (a), any day which is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971(**5**);

(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.

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

**6D.** Subject to regulation 15A, 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 four month period.".

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

(**5**) 1971 c.80.

"**Health assessments**

**7.**—(1) A worker who so requests 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.

**Health assessments for night workers**

**7A.**—(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 that worker 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 has the opportunity of a free health assessment at regular intervals of whatever duration may be appropriate in the night worker's case.

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

**Transfer of night workers to day work**

**7B.**—(1) Where—

(a) a registered medical practitioner has advised an employer that a worker 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.

**Length of night work**

**7C.** An employer shall not require a worker to do more than 42 hours of night work during any seven day period.