STATUTORY RULES OF NORTHERN IRELAND

2003 No. 330

EMPLOYMENT

Working Time (Amendment No. 2) Regulations (Northern Ireland) 2003

Made - - - - 10th July 2003

Coming into operation in accordance with regulation 1

The Department for Employment and Learning, being a Department designated for the purposes of section 2(2) of the European Communities Act 1972(**1**) in relation to measures relating to the organisation of working time(**2**) and measures relating to the employment of children and young persons(**3**), in exercise of the powers conferred on it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations –

Citation and commencement

1.—(1) These Regulations may be cited as the Working Time (Amendment No. 2) Regulations (Northern Ireland) 2003.

(2) These Regulations, with the exception of regulation 8, shall come into operation on 1st August 2003.

(3) Regulation 8 shall come into operation on 1st August 2004.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**4**), except section 39(2), shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(2) In these Regulations "the principal Regulations" means the Working Time Regulations (Northern Ireland) 1998(**5**).

Amendment of the principal Regulations

3. The principal Regulations shall be amended in accordance with regulations 4 to 13.

(**1**) 1972 c. 68
(**2**) S.I. 1997/1174
(**3**) S.I.1996/266
(**4**) 1954 c. 33 (N.I.)
(**5**) S.R. 1998 No. 386 as amended by S.R. 1998 No. 422, S.R. 1999 No. 133, S.R. 2000 No. 7, S.R. 2002 No. 93 and S.R. 2003 No. 119

4. In paragraph (2) of regulation 2 (interpretation) –

(a) after the definition of "the Executive" insert the following definitions –

""fishing vessel" has the same meaning as in section 313 of the Merchant Shipping Act 1995(**6**);

"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;"; and

(c) after the definition of "restricted period" insert the following definition –

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

5. 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(**7**) 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(**8**) 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(**9**) applies.".

6. In regulation 21 (other special cases) –

(**6**) 1995 c. 21
(**7**) O.J. No. L167, 2.7.99, p. 33
(**8**) O.J. No. L302, 1.12.00, p. 57
(**9**) O.J. No. L80, 23.3.02, p. 35

(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;"; and

(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.".

7. 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 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.".

8. 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) to (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.".

9. After regulation 25A, insert –

"**Workers employed in offshore work**

25B.—(1) In the case of workers employed in offshore work, paragraphs (3) to (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.".

10. Regulation 26 is hereby revoked.

11. For regulations 28 (enforcement) and 29 (offences) substitute –

"**Enforcement**

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

"the 1978 Order" means the Health and Safety at Work (Northern Ireland) Order 1978(**10**);

"the Civil Aviation Authority" means the authority referred to in section 2(1) of the Civil Aviation Act 1982(**11**);

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

"enforcement authority" means the Executive, a district council, the Civil Aviation Authority or the Department of the Environment;

"government department" includes a department of the Government of the United Kingdom;

"improvement notice" means a notice under paragraph 3 of Schedule 3;

"inspector" means an inspector appointed under paragraph 1 of Schedule 3;

"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;

"prohibition notice" means a notice under paragraph 4 of Schedule 3;

(**10**) S.I. 1978/1039 (N.I. 9)
(**11**) 1982 c. 16

"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, insofar as it applies where regulation 6(1), (2) or (7) is modified or excluded, and

(c) regulation 24A(2), insofar as it applies where regulation 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(**12**),

(b) the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) of 1st July 1970, and

(c) the domestic drivers' hours code referred to in Article 56(6) of the Road Traffic (Northern Ireland) Order 1981(**13**);

"the relevant statutory provisions" means –

(a) the provisions of the 1978 Order and of any regulations made under powers contained in that Order; and

(b) while and to the extent that they remain in force, the statutory provisions mentioned in Schedule 1 to the 1978 Order.

(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 district council 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) the Department of the Environment 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 district council is responsible, under the Health and Safety (Enforcing Authority) Regulations (Northern Ireland) 1999(**14**), for enforcing any of the relevant statutory provisions, it shall be the duty of that council to enforce those requirements.

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

(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 the Department of the Environment 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 Department of Enterprise, Trade and Investment under the 1978 Order which is exercisable in relation to the enforcement by the Executive of the relevant

(**12**) O.J. L370, 31.12.85, p. 1
(**13**) S.I. 1981/154 (N.I. 1)
(**14**) S.R. 1999 No. 90