

STATUTORY INSTRUMENTS

2014 No. 308

MERCHANT SHIPPING

**The Merchant Shipping (Maritime Labour Convention)
(Hours of Work) (Amendment) Regulations 2014**

<i>Made</i>	- - - -	<i>13th February 2014</i>
<i>Laid before Parliament</i>		<i>19th February 2014</i>
<i>Coming into force</i>	- -	<i>17th March 2014</i>

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 ^{M1} in relation to measures relating to the safety of ships and the health and safety of persons on them ^{M2}.

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 85(1)(a) and (b), (3), (5) and (7) and 86(1) of the Merchant Shipping Act 1995 ^{M3} and section 2(2) of the European Communities Act 1972.

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.^{F1}

F1 [Regulations](#) revoked in part, except for regulation 3 and the Schedule (6.4.2018) by [The Merchant Shipping \(Maritime Labour Convention\) \(Hours of Work\) Regulations 2018 \(S.I. 2018/58\)](#), **reg. 30(c)** (with regs. 3, 4)

Marginal Citations

M1 [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 \(c.7\)](#). The Maritime Labour Convention 2006 is regarded as one of the EU Treaties within the meaning of section 1(2) of the European Communities Act 1972 by virtue of the European Communities (Definition of Treaties) (Maritime Labour Convention) Order 2009 ([S.I. 2009/1757](#), as amended by [S.I. 2011/1043](#)).

M2 [S.I. 1993/595](#).

M3 [1995 c.21](#). Sections 85 and 86 were amended by section 8 of the [Merchant Shipping and Maritime Security Act 1997 \(c.28\)](#) and are applied to hovercraft by article 4 of the [Hovercraft \(Application of Enactments\) Order 1989 \(S.I. 1989/1350\)](#) (sections 85 and 86 re-enact sections 21 and 22 of the [Merchant Shipping Act 1979 \(c.39\)](#) which are referred to in that article). Section 85 was amended by Part 1 of Schedule 7 to the [Merchant Shipping and Maritime Security Act 1997 \(c.28\)](#) and section 2

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of the [British Overseas Territories Act 2002 \(c.8\)](#). There are other amendments to sections 85 and 86 which are not relevant.

Citation and commencement

^{F1}1.

F1 [Regulations](#) revoked in part, except for regulation 3 and the Schedule (6.4.2018) by [The Merchant Shipping \(Maritime Labour Convention\) \(Hours of Work\) Regulations 2018 \(S.I. 2018/58\)](#), **reg. 30(c)** (with regs. 3, 4)

Amendment of the Merchant Shipping (Hours of Work) Regulations 2002

^{F2}2.

F1 [Regulations](#) revoked in part, except for regulation 3 and the Schedule (6.4.2018) by [The Merchant Shipping \(Maritime Labour Convention\) \(Hours of Work\) Regulations 2018 \(S.I. 2018/58\)](#), **reg. 30(c)** (with regs. 3, 4)

Amendments to legislation

3. The Schedule (amendments to legislation) has effect.

Signed by authority of the Secretary of State for Transport

Department for Transport

Stephen Hammond
Parliamentary Under Secretary of State

SCHEDULE

Regulation 3

AMENDMENTS TO LEGISLATION

- 1.—(1) The Employment Tribunals Act 1996 ^{M4} is amended as follows.
- (2) In section 18(1) (cases where conciliation provisions apply)—
- (a) omit the “or” at the end of paragraph (w) ;
 - (b) at the end of paragraph (x) insert “ , or ”;
 - (c) after paragraph (x) insert—
“*(y)* under regulation 22 of the Merchant Shipping (Hours of Work) Regulations 2002.”.
- (3) In section 21(1) (jurisdiction of the Appeal Tribunal)—
- (a) omit the “or” at the end of paragraph (x) ;
 - (b) at the end of paragraph (y) insert “ , or ”;
 - (c) after paragraph (y) insert—
“*(z)* the Merchant Shipping (Hours of Work) Regulations 2002.”.

Marginal Citations

M4 1996 c.17. Sections 18 and 21 were amended by section 1 of the [Employment Rights \(Dispute Resolution\) Act 1998 \(c.8\)](#). Section 18 was also amended by section 5 of the [Employment Act 2008 \(c. 24\)](#) and section 21 by [S.I. 1998/1833](#). Extensive amendments to section 18 were made by Schedule 1 to the [Enterprise and Regulatory Reform Act 2013 \(c.24\)](#) but these are not yet in force or not yet in force for relevant purposes. There are other amendments to sections 18 and 21 which are not relevant to these Regulations.

- 2.—(1) The Employment Rights Act 1996 ^{M5} is amended as follows.
- (2) In section 45A(5) (right not to suffer detriment: working time cases) after paragraph (c) insert—
“*(d)* the Merchant Shipping (Hours of Work) Regulations 2002.”.
- (3) In section 101A(2) (fairness in dismissal: working time cases) after paragraph (c) insert—
“*(d)* the Merchant Shipping (Hours of Work) Regulations 2002.”.
- (4) In section 104(4) (fairness in dismissal: assertion of statutory right), in paragraph (d), after “the Working Time Regulations 1998,” insert “ the Merchant Shipping (Hours of Work) Regulations 2002, ”.

Marginal Citations

M5 1996 c.18. Section 45A was inserted by [S.I. 1998/1833](#) and subsection (5) was inserted by [S.I. 2003/3049](#) and amended by [S.I. 2004/1713](#) and [S.I. 2008/1660](#). Section 101A was inserted by [S.I. 1998/1833](#) and subsection (2) was inserted by [S.I. 2003/3049](#) and amended by [S.I. 2004/1713](#) and [S.I. 2008/1660](#). Section 104(4)(d) was inserted by [S.I. 1998/1833](#) and amended by [S.I. 2004/1713](#) and [S.I. 2008/1660](#).

- 3.—(1) The Employment Rights (Northern Ireland) Order 1996 ^{M6} is amended as follows.
- (2) In Article 68A(5) (rights not to suffer detriment: working time cases)—

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- (a) omit the “and” at the end of sub-paragraph (b);
 - (b) at the end of sub-paragraph (c) insert “ ; and ”;
 - (c) after sub-paragraph (c) insert—
 - “(d) the Merchant Shipping (Hours of Work) Regulations 2002.”.
- (3) In Article 132A(2) (right not to be unfairly dismissed: working time cases)—
- (a) omit the “and” at the end of sub-paragraph (b);
 - (b) at the end of sub-paragraph (c) insert “ ; and ”;
 - (c) after sub-paragraph (c) insert—
 - “(d) the Merchant Shipping (Hours of Work) Regulations 2002.”.
- (4) In Article 135(4) (right not to be unfairly dismissed: assertion of statutory right), in sub-paragraph (d), after “the Working Time Regulations (Northern Ireland) 1998,” insert “ the Merchant Shipping (Hours of Work) Regulations 2002, ”.

Marginal Citations

M6 [S.I. 1996/1919 \(N.I. 16\)](#). Article 68A was inserted by S.R. [1998 No. 386](#) and Article 68A(5) was inserted by [S.I. 2003/3049](#). Article 132A was inserted by S.R. [1998 No. 386](#) and Article 132A(2) was inserted by [S.I. 2003/3049](#). Article 135(4)(d) was inserted by [S.I. 2004/1713](#). There are other instruments amending Articles 68A, 132A and 135 which are not relevant to these Regulations.

- 4.—(1) The Industrial Tribunals (Northern Ireland) Order 1996 ^{M7} is amended as follows.
- (2) In Article 20(1) (cases where conciliation provisions apply)—
- (a) omit the “or” at the end of sub-paragraph (s);
 - (b) at the end of sub-paragraph (t) insert “ , or ”;
 - (c) after sub-paragraph (t) insert—
 - “(u) under regulation 21 of the Merchant Shipping (Hours of Work) Regulations 2002.”

Marginal Citations

M7 [S.I. 1996/1921 \(N.I. 18\)](#). Article 20 was amended by Schedule 2 to [S.I. 2002/2836 \(N.I. 2\)](#) and section 8 of the [Employment Act \(Northern Ireland\) 2011 \(c.13 \(N.I.\)\)](#); there are other amending instruments which are not relevant to these Regulations.

- 5.—(1) The Working Time Regulations 1998 ^{M8} are amended as follows.
- (2) In regulation 18(1) (excluded sectors) for sub-paragraph (a) substitute—
- “(a) to workers to whom the Merchant Shipping (Hours of Work) Regulations 2002 apply.”.

Marginal Citations

M8 [S.I. 1998/1833](#). Regulation 18(1) was amended by [S.I. 2003/1684](#), [S.I. 2003/3049](#) and [S.I. 2004/1713](#).

- 6.—(1) The Working Time Regulations (Northern Ireland) 1998 ^{M9} are amended as follows.

(2) In regulation 18(1) (excluded sectors) for sub-paragraph (a) substitute—

“(a) to workers to whom the Merchant Shipping (Hours of Work) Regulations 2002 apply.”.

Marginal Citations

M9 S.R. 1998 No. 386. Regulation 18(1) was amended by S.R. 2003 No.330, S.I. 2003/3049 and S.I. 2004/1713.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Merchant Shipping (Hours of Work) Regulations 2002. They implement the following provisions relating to seafarers' leave entitlements:

Regulation 2.4 of the Maritime Labour Convention, 2006 (Cmd. 7049) (“the MLC”);

Article 2(5) of Council Directive [2009/13/EC](#) implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 (O.J. L124, 20.5.2009, p. 30), which replaces clause 16 of the Agreement annexed to Council Directive [1999/63/EC](#) concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) (O.J. L167, 2.7.1999, p. 33); and

Regulation 2.4 of the Agreement annexed to Council Directive [2009/13/EC](#).

The 2002 Regulations are also amended so as to provide enforcement mechanisms which distinguish between non-UK ships carrying a valid Maritime Labour Certificate (including an interim Maritime Labour Certificate) and other non-UK ships and to change some definitions. *Regulation 2(4)* inserts new definitions of seafarer and employed seafarer into regulation 2 of the 2002 Regulations. An employed seafarer includes a seafarer engaged under a contract for personal performance of work or services, unless it is a contract with a client or customer of a profession or business carried out by the seafarer.

Regulation 2(5) replaces regulation 3 of the 2002 Regulations and provides that the 2002 Regulations apply to sea-going United Kingdom ships wherever they may be and to sea-going non-UK ships in United Kingdom waters, except as provided in regulation 3(4), (5) and (6).

Regulation 2(6) provides for the 2002 Regulations to apply to Northern Ireland with appropriate modifications.

Regulation 2(11) replaces regulation 12 of the 2002 Regulations and confers on employed seafarers an increased entitlement to paid annual leave and a new entitlement to additional paid leave of eight days per year.

Regulation 2(12) inserts a new regulation 12A into the 2002 Regulations which confers on seafarers a new right to shore leave.

Regulation 2(14) to (19) amends the 2002 Regulations by making new provisions and amending existing provisions concerning inspection and detention of ships.

Regulation 2(21) amends regulation 19 of the 2002 Regulations (release of information) so as to refer to a new MSN which specifies the information to be published.

Regulation 2(22) amends the offences in regulation 20 of the 2002 Regulations (penalties) to enforce the new obligations.

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Regulation 2(23) inserts new regulations 22 and 23 into the 2002 Regulations which give employed seafarers the right to present a complaint to an employment tribunal (in Northern Ireland, an industrial tribunal) in order to enforce their entitlements to paid annual leave and additional paid leave and restrict the contracting out of rights under the Regulations.

Regulation 2(23) also inserts a new regulation 24 into the 2002 Regulations, requiring the Secretary of State to review the 2002 Regulations and to publish a report of that review within five years of the coming into force of these Regulations (and within every five years after that). Following a review it will fall to the Secretary of State to consider whether the 2002 Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the relevant provisions or to amend them.

Regulation 3 and the Schedule make consequential amendments to other legislation arising from the new right for employed seafarers to present a complaint to an employment tribunal.

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The MLC is available on the website of the International Labour Organisation at www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm.

Two full impact assessments of the effect that this instrument will have on the costs of business and the voluntary sector are published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

Changes to legislation:

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