STATUTORY INSTRUMENTS

2004 No. 1713

The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 and shall come into force on 16th August 2004.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Merchant Shipping Act 1995;

"collective agreement" means a collective agreement within the meaning of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992 [M1], the trade union parties to which are independent trade unions within the meaning of section 5 of that Act;

"employer", in relation to a worker, means the person by whom the worker is (or, where the employment has ceased, was) employed;

"employment", in relation to a worker, means employment under his contract of employment, and "employed" shall be construed accordingly;

[[F1]"fisherman" means every person employed, engaged or working in any capacity on board any fishing vessel, but does not include a person solely engaged as a pilot for the vessel;

"fishing vessel owner" means the owner of the fishing vessel or any other organisation or person such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the vessel from the owner;**]**

"MCA" means the Maritime and Coastguard Agency, an executive agency of the Department for Transport;

"Merchant Shipping Notice" means a notice described as such and issued by the MCA;

"night time" means a period–

(a) the duration of which is not less than seven hours, and

(b) which includes the period between midnight and 5 a.m. (local time),

which is determined for the purposes of these Regulations by a relevant agreement, or, in default of such a determination, 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;

"relevant agreement", in relation to a worker, means a workforce agreement which applies to him, any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the worker and his employer;

"relevant inspector" means a person mentioned in paragraph (a), (b) or (c) of section 258(1) of the Act;

"relevant training" means work experience provided pursuant to a training course or programme, training for employment, or both, other than work experience or training–

(a) the immediate provider of which is an educational institution or a person whose main business is the provision of training, and

(b) which is provided on a course run by that institution or person;

"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;

"United Kingdom fishing vessel" means a sea-going fishing vessel which is registered in the United Kingdom;

"worker" means a person employed (or, where the employment has ceased, who was employed) on board a fishing vessel;

"workforce agreement" means an agreement between an employer and workers employed by him or their representatives in respect of which the conditions set out in Schedule 1 to these Regulations are satisfied; and

"working time", in relation to a worker, means–

(a) any period during which he is working, at his employer's disposal and carrying out his activity or duties, and

(b) any period during which he is receiving relevant training,

and "work" shall be construed accordingly.

(2) Subject to paragraph (1), words and expressions used in these Regulations shall have the same meaning as in Council Directive 93/104/EC concerning certain aspects of the organisation of working time [M2].

Textual Amendments

F1 Words in reg. 2(1) inserted (31.12.2018) by The Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018 (S.I. 2018/1109), regs. 1(2), **8(2)**

Marginal Citations

M1 1992 c. 52 The Trade Union and Labour Relations (Consolidation) Act 1992 has been amended but the amendments are not relevant.

M2 OJ No. L 307, 13.12.1993, p.18; amended by Directive 2000/34/EC of the European Parliament and of the Council, OJ No. L 195, 1.8.2000, p.41.

Application

3.—(1) These Regulations apply to United Kingdom fishing vessels wherever they may be.

(2) Regulations 7, 16 and 17 apply to fishing vessels registered in Member States other than the United Kingdom when they are within United Kingdom waters.

Northern Ireland

4. These Regulations apply to Northern Ireland with the following modifications–

(a) for any reference to an employment tribunal there shall be substituted a reference to an industrial tribunal within the meaning of section 42(5) of the Interpretation Act (Northern Ireland) 1954 [M3];

(b) in regulation 2(1) for the definition of "collective agreement" there shall be substituted the following definition–

""collective agreement" means a collective agreement within the meaning of Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992 [M4], the trade union parties to which are independent trade unions within the meaning of that Article;";

(c) in regulation 11(4) for the words "Sections 221 to 224 of the Employment Rights Act 1996" there shall be substituted the words "Articles 17 to 20 of the Employment Rights (Northern Ireland) Order 1996 [M5]"

(d) in regulation 11(5) for the words "sections 227 and 228" there shall be inserted the words "Articles 23 and 24";

[[F2](da) in regulation 19A(1)(a) for the words "subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings)" substitute "paragraph (1) of Article 20A of the Industrial Tribunals (Northern Ireland) Order 1996 (requirement to contact the Labour Relations Agency before instituting proceedings)";

(db) in regulation 19A(1)(b) for the words "(by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section" substitute "(by virtue of regulations made under paragraph (11) of that Article) the certificate issued under paragraph (4) of that Article";**]**

(e) in regulation 20(2)(a) for the words "a conciliation officer has taken action under **[**[F3]any of sections 18A to 18C**]** of the Employment Tribunals Act 1996 (conciliation)" there shall be substituted the words "the Labour Relations Agency has taken action under Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996 [M6] (conciliation)";

(f) in regulation 20(2)(b) for the words "**[**[F4]section 18(1)(r)**]** of the Employment Tribunals Act 1996" there shall be substituted the words "Article 20(1)(l) of the Industrial Tribunals (Northern Ireland) Order 1996".

Textual Amendments

F2 Reg. 4(da)(db) inserted (N.I.) (27.1.2020) by The Industrial Tribunals (1996 Order) (Application of Conciliation Provisions) Order (Northern Ireland) 2020 (S.R. 2020/4), art. 1, **Sch. para. 28(2)**

F3 Words in reg. 4(e) substituted (6.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2014 (S.I. 2014/386), art. 1, **Sch. para. 27**

F4 Words in reg. 4(f) substituted (E.W.S.) (6.4.2014) by The Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014 (S.I. 2014/431), art. 1, **Sch. para. 33(a)**

Marginal Citations

M3 1954 c. 33 (N.I.); section 42(5) was substituted by paragraph 1 of Schedule 1 to the Industrial Tribunals (Northern Ireland) Order 1996, S.I. 1996/1921 (N.I. 18).

M4 S.I. 1992/807 (N.I.5); the definition of "collective agreement" was amended by Schedule 2 to the Trade Union and Labour Relations (Northern Ireland) Order 1995, S.I. 1995/1980 (N.I. 12).

M5 S.I. 1996/1919 (N.I.16).

M6 S.I. 1996/1921 (N.I. 18); Article 20 was amended by paragraph 10 of Schedule 2 to the Race Relations (Northern Ireland) Order 1997, S.I. 1997/869 (N.I. 6); by paragraph 20 of Schedule 1 to the Employment Rights (Dispute Resolution) (Northern Ireland) Order 1998, S.I. 1998/1265 (N.I. 8); by section 30(2) of the National Minimum Wage Act 1998 (c. 39); by paragraph 5 of Schedule 2 to the Employment (Northern Ireland) Order 2002, S.I. 2002/2836 (N.I. 2); by regulation 33 of the Working Time Regulations (Northern Ireland) 1998, S.R. (N.I.) 1998 No. 386; by regulation 33(2) of the Transnational Information and Consultation of Employees Regulations 1999, S.I. 1999/3233; by paragraph 2 of the Schedule to the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2000, S.R. (N.I.) 2000 No. 219; by paragraph 3 of Part I of Schedule 2 to the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002, S.R. (N.I.) 2002 No. 298; by paragraph 5 of Schedule 2 to the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003, S.I. 2003/3049; by paragraph 1 of Schedule 5 to the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 S.R. (N.I.) 2003 No. 497; by regulations 3 and 30 of the Disability Discrimination Act 1995 (Amendment) Regulations (Northern Ireland) 2004, S.R. (N.I.) 2004 No 55 and by paragraph 4 of Schedule 2 to these Regulations..

Changes to legislation:
There are currently no known outstanding effects for the The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, PART 1.