
STATUTORY INSTRUMENTS

2003 No. 1684

The Working Time (Amendment) Regulations 2003

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⁽¹⁾;

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

“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;

“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⁽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;

“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);

(1) 1974 c. 37.
(2) 1982 c. 16.
(3) 1994 c. 39.

- (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⁽⁴⁾,
- (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⁽⁵⁾;

“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 Authority) Regulations 1998⁽⁶⁾, 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.

⁽⁴⁾ OJNo. L 370, 31.12.85, p. 1–7.

⁽⁵⁾ 1968 c. 73.

⁽⁶⁾ S.I. 1998/494.

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;
- (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)."