

Regulations made under s. 86 of the Employment Act.

**FISHING VESSELS (WORKING TIME) REGULATIONS
2005**

(LN. 2005/083)

19.5.2005

Implementing:

Directive 2003/88/EC

ARRANGEMENT OF REGULATIONS.

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SCHEDULE

PART 1 GENERAL

Title.

1. These Regulations may be cited as the Fishing Vessels (Working Time) Regulations 2005.

Interpretation.

- 2.(1) In these Regulations—

“collective agreement” means a collective agreement within the meaning of the Working Time Act 2000.

“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;

“Minister” means the Minister with responsibility for employment;

“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.,

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.;

“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 factories inspector;

“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;

“Gibraltar fishing vessel” means a sea-going fishing vessel which is registered in Gibraltar if and when such registration is possible;

“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 the Schedule 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 subregulation (1), words and expressions used in these Regulations shall have the same meaning as in Council Directive 2003/88/EC concerning certain aspects of the organisation of working time.

Application.

3.(1) These Regulations apply to Gibraltar fishing vessels wherever they may be.

(2) Regulations 6 and 15 apply to fishing vessels registered in Member States other than Gibraltar when they are within Gibraltar waters.

PART 2

RIGHTS AND OBLIGATIONS CONCERNING WORKING TIME

General.

4. The provisions of this Part have effect subject to the exceptions provided for in Part 3 of these Regulations.

Maximum weekly working time.

5.(1) A worker's working time, including overtime, in any reference period which is applicable in his case shall not exceed an average of 48 hours for each seven days.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in subregulation (1) is complied with in the case of each worker employed by him in relation to whom it applies.

(3) Subject to subregulation (4) the reference period which applies in the case of a worker is any period of 52 weeks in the course of his employment.

(4) Where a worker 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.

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

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

where—

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- 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 his 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 he has worked equals the number of excluded days during the reference period; and
- C is the number of weeks in the reference period.

(6) In subregulation (5), "excluded days" means days comprised in—

- (a) any period of annual leave taken by the worker in exercise of his entitlement under regulation 11;
- (b) any period of sick leave taken by the worker; and
- (c) any period of maternity, paternity, adoption or parental leave taken by the worker.

Rest.

6.(1) A worker is entitled to adequate rest.

(2) 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.

(3) Without prejudice to the generality of subregulation (2), a worker's minimum rest periods shall be—

- (a) 10 hours in any 24-hour period, and
- (b) 77 hours in any seven-day period.

(4) The rest periods referred to in subregulation (3)(a) may be divided into no more than two periods, one of which shall be at least six hours in length; and the interval between consecutive rest periods shall not exceed 14 hours.

Health assessment and transfer of night workers to day work.

7.(1) An employer—

- (a) shall 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 he takes up the assignment; or
 - (ii) the worker had a 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 that assessment is no longer valid, and
- (b) shall ensure that each night worker employed by him has the opportunity of a free health assessment at regular intervals of whatever duration may be appropriate in his case.

(2) For the purpose of subregulation (1), an assessment is free if it is at no cost to the worker to whom it relates.

(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 makes the disclosure or has given his consent to it in writing, or
- (b) the disclosure is confined to a statement that the assessment shows the worker to be fit—
 - (i) in a case where subregulation (1)(a)(i) applies, to take up an assignment, or
 - (ii) in a case where subregulation (1)(b) applies, to continue to undertake an assignment.

(4) Where—

- (a) a registered medical practitioner has advised an employer that a worker employed by the employer 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—

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- (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.

Pattern of work.

8. Where the pattern according to which an employer organises work is such as to put the health and safety of a worker employed by him at risk, in particular because the work is monotonous or the work-rate is predetermined, the employer shall ensure that the worker is given reasonable rest breaks.

Records.

9. An employer shall—

- (a) keep records which are adequate to show whether regulations 5(1), 6(1), (3) and (4) and 7(1) are being complied with in the case of each worker employed by him in relation to whom they apply; and
- (b) retain such records for two years from the date on which they are made.

Entitlement to annual leave and payment for leave.

10.(1) Subject to subregulation (2), a worker is entitled to at least four weeks' annual leave and to be paid in respect of any such leave at the rate of a week's pay in respect of each week of leave.

(2) In respect of a period of employment of less than one year, a worker is entitled to annual leave of a proportion of four weeks equal to the proportion the period of employment in question bears to one year; the proportion to be determined in days and any fraction of a day to be treated as a whole day.

(3) Leave to which a worker is entitled under this regulation—

- (a) may be taken in instalments;
- (b) may not be replaced by a payment in lieu, except where the worker's employment is terminated.

(4) A right to payment under subregulation (1) does not affect any right of a worker to remuneration under his contract (“contractual remuneration”).

(5) Any contractual remuneration paid to a worker in respect of a period of leave goes towards discharging any liability of the employer to make payments under this regulation in respect of that period; and, conversely, any payment of remuneration under this regulation in respect of a period goes towards discharging any liability of the employer to pay contractual remuneration in respect of that period.

Entitlements under other provisions.

11. Where during any period a worker is entitled to a rest period or annual leave both under a provision of these Regulations and under a separate provision (including a provision of his contract), he may not exercise the two rights separately, but may, in taking a rest period or annual leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.

PART 3 EXCEPTIONS

Exceptions.

12.(1) The Minister may grant an exception from the limit in regulation 5(1) or the requirements of regulation 6(3) and 6(4) for objective or technical reasons or reasons concerning the organisation of work if–

- (a) he has first (so far as is possible) consulted representatives of the employers and workers concerned, and
- (b) the exception is subject to such conditions and limitations as will protect the health and safety of workers.

(2) The Minister may, on giving reasonable notice and after consulting such persons (if any) as he considers may be affected, alter or cancel any exception granted under subregulation (1).

(3) An exception granted in accordance with subregulation (1)–

- (a) shall be limited to the extent necessary for the reasons mentioned in that paragraph; and
- (b) may take account of the granting of compensatory leave periods to workers in place of the limit in regulation 5(1) and the rest periods required by regulation 6(3) and 6(4).

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(4) An exception under subregulation (1) may relate to classes of cases (a "class exception") or to individual cases (an "individual exception").

(5) An individual exception granted under subregulation (1), and an alteration or cancellation of such an exception under subregulation (2), shall—

- (a) be given in writing,
- (b) specify the date on which it takes effect, and
- (c) in the case of the grant of an exemption, specify the conditions and limitations subject to which it is granted in accordance with subregulation (1)(b).

(6) A class exception granted under subregulation (1), and an alteration or cancellation of such an exception under subregulation (2)—

- (a) may relate to particular types of fishing vessel and methods of fishing, and
- (b) shall be specified by the Minister.

Emergencies.

13.(1) Nothing in these Regulations prevents the master of a fishing vessel from requiring a worker to work any hours of work necessary for the immediate safety of the fishing vessel, persons on board the fishing vessel or cargo or for the purpose of giving assistance to another ship or to a person in distress at sea.

(2) For the purposes of this regulation the word "vessel" includes her fishing gear and the word "cargo" includes the catch of a fishing vessel.

**PART 4
MISCELLANEOUS****Power to require information.**

14. An employer shall provide the Minister with such information on night workers as the Minister may specify in writing.

Detention and enforcement of detention.

15.(1) Where a relevant inspector is of the opinion that:—

- (a) the requirements of regulation 6 have not been complied with in respect of any worker on a fishing vessel; and
- (b) a hazard to the health or safety of any worker is thereby created,

the fishing vessel may be detained until the worker has had sufficient rest to resume his duties without creating a hazard to the health or safety of any worker.

(2) The power of detention in this regulation may not be exercised unreasonably.

Offences.

16.(1) Subject to regulation 13, an employer who fails to comply with regulation 5(2), 7(1), 7(4) or 8, shall be guilty of an offence, punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(2) An employer who fails to comply with regulation 9 or 14 shall be guilty of an offence, punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(3) In any proceedings for an offence under these Regulations it shall be a defence for the defendant to show that all reasonable steps had been taken by him to ensure compliance with the Regulations.

Remedies.

17.(1) A worker may present a complaint to an industrial tribunal that his employer—

- (a) has refused to permit him to exercise any right he has under regulation 6(1), 6(3), or 6(4) or 10(1); or
- (b) has failed to pay him the whole or any part of any amount due to him under regulation 10(1).

(2) An industrial tribunal shall not consider a complaint under this regulation unless it is presented—

- (a) before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a rest period or leave extending over more than one day, the date on which it should

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have been permitted to begin) or, as the case may be, the payment should have been made;

- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under subregulation (1)(a) well-founded, the tribunal—

- (a) shall make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the worker.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the employer's default in refusing to permit the worker to exercise his right, and
- (b) any loss sustained by the worker which is attributable to the matters complained of.

(5) Where on a complaint under subregulation (1)(b) an industrial tribunal finds that an employer has failed to pay a worker in accordance with regulation 10(1), it shall order the employer to pay to the worker the amount which it finds to be due to him.

Restriction on contracting out.

20. Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of these Regulations, save in so far as these Regulations provide for an agreement to have that effect, or
- (b) to preclude a person from bringing proceedings under these Regulations before an employment tribunal.

SCHEDULE

Regulation 2(1)

1. The following are the conditions that must be satisfied for an agreement between an employer and workers employed by him or their representatives to constitute a workforce agreement for the purposes of these Regulations–

- (a) the agreement is in writing;
- (b) it has effect for a specified period not exceeding five years;
- (c) it applies either–
 - (i) to all of the relevant members of the workforce; or
 - (ii) to all of the members of the workforce who belong to a particular group;
- (d) the agreement is signed–
 - (i) in the case of an agreement of the kind referred to in sub-paragraph (c)(i), by the representatives of the workforce, and in the case of an agreement of the kind referred to in sub-paragraph (c)(ii), by the representatives of the group to which the agreement applies (excluding, in either case, any representative not a relevant member of the workforce on the date on which the agreement was first made available for signature), or
 - (ii) if the employer employed 20 or fewer workers on the date referred to in sub-paragraph (d)(i), either by the appropriate representatives in accordance with that sub-paragraph or by the majority of the workers employed by him; and
- (e) before the agreement was made available for signature, the employer provided all the workers to whom it was intended to apply on the date on which it came into effect with copies of the text of the agreement and such guidance as those workers may reasonably require in order to understand it fully.

2. For the purposes of this Schedule–

“a particular group” is a group of the relevant members of a workforce who undertake a particular function, work at a particular workplace or belong to a particular department or unit within their employer’s business;

“relevant members of the workforce” are all of the workers employed by a particular employer, excluding any worker whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement;

“representatives of the workforce” are workers duly elected to represent the relevant members of the workforce, “representatives of the group” are workers duly elected to represent the members of a particular group, and representatives are “duly elected” if the election at which they were elected satisfied the requirements of paragraph 3 of this Schedule.

3. The requirements concerning elections referred to in paragraph 2 are that—

- (a) the number of representatives to be elected is determined by the employer;
- (b) the candidates for election as representatives of the workforce are relevant members of the workforce, and the candidates for election as representatives of a group are members of the group;
- (c) no worker who is eligible to be a candidate is unreasonably excluded from standing for election;
- (d) all the relevant members of the workforce are entitled to vote for representatives of the workforce, and all members of a particular group are entitled to vote for representatives of the group;
- (e) the workers entitled to vote may vote for as many candidates as there are representatives to be elected; and
- (f) the election is conducted so as to secure that—
 - (i) so far as reasonably practicable, those voting do so in secret, and
 - (ii) the votes given at the election are fairly and accurately counted.