

Subsidiary Legislation made under s. 86.

Road Transport (Working Time) Regulations 2005

LN.2005/085

Commencement **19.5.2005**

Amending enactments	Relevant current provisions	Commencement date
LN. 2011/228	rr. 3(2)(a), 15	17.11.2011
Act. 2016-20	r. 5(2), (4)	13.10.2016
LN. 2019/236	rr. 2-3, 4(3)(a), (aa), 7(2), 8(1), 11(g), 15, 17(3)(a)-(c), (e), (8), Sch.2	21.11.2019
2019/236	rr. 2, 3(1), (3)(c)	1.1.2021

Implementing:

Directive 2002/15/EC

1932-16

Employment

2005/085

Road Transport (Working Time) Regulations 2005

This version is out of date

ARRANGEMENT OF REGULATIONS

Regulation

1. Title.
2. Interpretation.
3. Application.
4. Working time.
5. Breaks not included.
6. Periods of availability.
7. Breaks.
8. Rest periods.
9. Night work.
10. Information and Records.
11. An employer of a mobile worker shall
12. A mobile worker shall, at the request of his employer
13. The Minister with responsibility for employment shall arrange for ...
14. Agency workers not otherwise mobile workers.
15. Individual carrying on trade or business and self-employed drivers.
16. Enforcement.
17. Any person who fails to comply with any of the relevant requirements shall
18. Offences due to fault of other person.
19. Offences by bodies corporate.
20. Power of court to order cause of offence to be remedied or, in certain cases, forfeiture.

SCHEDULE 1

WORKFORCE AGREEMENTS

SCHEDULE 2

ENFORCEMENT

Title.

1. These Regulations may be cited as the Road Transport (Working Time) Regulations 2005.

Interpretation.

2. In these Regulations—

“AETR” means the European Agreement concerning the Work of Crews of Vehicles engaged in the International Road Transport of 1 July 1970, as amended from time to time;

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

“the EU Drivers’ Hours Regulation” means Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85, as may be amended from time to time;

“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, and “employed” shall be construed accordingly;

“goods” includes goods or burden of any description;

“goods vehicle” means a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted;

“inspector” means a person appointed under paragraph 1 of Schedule 2;

“mobile worker” means any worker forming part of the travelling staff, including trainees and apprentices, who is in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account;

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads;

This version is out of date

“night time” means in respect of goods vehicles the period between midnight and 4a.m. and in respect of passenger vehicles the period between 1am and 5am;

“night work” means any work performed during night time;

“passenger vehicle” means a motor vehicle which is contracted or adapted to carry more than eight seated passengers in addition to the driver;

“period of availability” means a period during which the mobile worker is not required to remain at his workstation, but is required to be available to answer any calls to start or resume driving or to carry out other work , including periods during which the mobile worker is accompanying a vehicle being transported by a ferry or by a train as well as periods of waiting at frontiers and those due to traffic prohibitions;

“reference period” means the period for calculation of the average maximum weekly working time;

“relevant requirements” means regulations 4(8), 7(5), 8(2), 9(4), 10, 11, 12;

“self-employed driver” means anyone whose main occupation is to transport passengers or goods by road for hire or reward within the meaning of retained EU law under cover of a Gibraltar licence for the Community, a UK licence for the Community or a Community licence or any other professional authorisation to carry out such transport, who is entitled to work for himself and who is not tied to an employer by an employment contract by any other type of working hierarchical relationship, who is free to organise the relevant working activities, whose income depends directly on the profits made and who has the freedom, individually or through a co-operation between self-employed drivers, to have commercial relations with several customers;

“vehicle” means a goods vehicle or a passenger vehicle;

“week” means a period of seven days beginning at midnight between Sunday and Monday;

“worker” means an individual who has entered into or works under (or, where employment has ceased, worked under)-

(a) contract of employment; or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract;

and any reference to a worker's contract shall be construed accordingly;

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

“working time” means the time from the beginning to the end of work during which-

- (a) the mobile worker or self-employed driver is at his workstation;
- (b) the mobile worker is at the disposal of his employer, or (as applicable) the self-employed driver is at the disposal of the client; and
- (c) the mobile worker or self-employed driver is and exercising his functions or activities, being-
 - (i) time devoted to all road transport activities, including, in particular-
 - (A) driving;
 - (B) loading and unloading;
 - (C) assisting passengers boarding and disembarking from the vehicle;
 - (D) cleaning and technical maintenance;
 - (E) all other work intended to ensure the safety of the vehicle, its cargo and passengers or to fulfil the legal or regulatory obligations directly linked to the specific transport operations under way, including monitoring of loading and unloading and dealing with administrative formalities with police, customs and immigration officers and others; or
 - (ii) time during which the mobile worker or self-employed driver cannot dispose freely of his time and is required (or, in relation to a self-employed driver, chooses) to be at his workstation, ready to take up normal work, with certain tasks associated with being on duty, in particular during periods awaiting loading or unloading where their foreseeable duration is not known in advance, that is to say either before departure or just before the actual start of the period in question, or under collective agreements or workforce agreements;

but, in relation to self-employed drivers, general administrative work that is not directly linked to the specific transport operation under way is excluded from working time;

“workstation” means

- (a) in relation to a mobile worker the location of the main place of business of the undertaking for which the person performing mobile transport activities carries out duties, together with its various subsidiary places of business, regardless of whether they are located in the same place as its head office or its main place of business;
- (b) in relation to a mobile worker or self-employed driver the vehicle which the person performing mobile road transport activities uses when he carries out duties; or
- (c) in relation to a mobile worker or self-employed driver any other place in which activities connected with transport are carried out.

Application.

3.(1) These Regulations apply to mobile workers who are employed by, or who work for, undertakings established in a Gibraltar, and to whom paragraph (2) or paragraph (3) applies.

(2) This paragraph applies to mobile workers who, in the course of their employment or working activities, drive or travel in or on vehicles-

- (a) which are vehicles within the meaning of Article 4(b) of the EU Drivers’ Hours Regulation;
- (b) which are not vehicles described in Article 3 of the EU Drivers’ Hours Regulation; and
- (c) which are not vehicles exempted from the provisions of the EU Drivers’ Hours Regulation under paragraph 2 of Schedule 3 to the Transport Act 1998.

(3) This paragraph applies to mobile workers who in the course of their employment or working activities drive, or travel in, vehicles-

- (a) which fall within the meaning of a “vehicle “ in Article 1 of the AETR;
- (b) which are not referred to in Article 2(2) of the AETR; and

- (c) which are performing transport operations wholly or partly outside Gibraltar.
- (4) These Regulations do not apply to any mobile worker who does work which is included in the calculation of working time-
- (a) where the reference period is shorter than 26 weeks, on fewer than 11 days in a reference period applicable to that mobile worker; or
- (b) in any other case on fewer than 16 days in a reference period applicable to that mobile worker.

Working time.

4.(1) Subject to sub-regulation (2) below, the working time, including overtime, of a mobile worker shall not exceed 60 hours in a week.

(2) In any reference period which is applicable to his case, a mobile worker's working time shall not exceed an average of 48 hours for each week.

(3) The reference periods which apply in the case of a mobile worker shall be-

- (a) where a collective agreement or a workforce agreement provides for the application of this regulation in relation to successive periods of 17 weeks, each such period
- (aa) in a case where there is no such provision, and the employer gives written notice to the mobile worker in writing that he intends to apply this subparagraph, any period of 17 weeks in the course of the worker's employment; or
- (b) in any other case, the period ending at midnight between Sunday 31st July 2005 and Monday 1st August 2005 and thereafter, in each year, the successive periods beginning at midnight at the beginning of the Monday which falls on, or is the first Monday after, a date in column 1 below and ending at midnight at the beginning of the Monday which falls on, or is the first Monday after, the date on the same line in column 2.

Column 1 (beginning)	Column 2 (end)
1 st December	1 st April
1 st April	1 st August
1 st August	1 st December

(4) The reference period may be extended in relation to particular mobile workers or groups of mobile workers for objective or technical reasons or reasons concerning the organisation of work, by a collective agreement or a workforce agreement, by the substitution for 17 weeks of a period not exceeding 26 weeks in the application of sub-regulations (2) and (3)(a).

(5) A mobile worker's average weekly working time during a reference period shall be determined according to the formula—

$$(A+B)/C$$

where—

‘A’ is the aggregate number of hours comprised in the mobile worker's working time during the course of the reference period;

‘B’ is the number of hours excluded during the reference period; and

‘C’ is the number of weeks in the reference period.

(6) In sub-regulation (5), “excluded hours” means hours comprised in—

- (a) any period of annual leave taken by the mobile worker in exercise of entitlement under the Working Time Act 2000;
- (b) any period of sick leave taken by the mobile worker;
- (c) any period of maternity, paternity, adoption or parental leave taken by the mobile worker;

(7) For the purposes of sub-regulation (5), the number of hours in a whole day shall be eight and the number of hours in a whole week shall be forty-eight.

(8) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of the mobile worker, to ensure that the limits specified above are complied with in the case of each mobile worker employed by him.

Breaks not included.

5. The times of breaks, rests and periods of availability shall not be included in the calculation of working time.

Periods of availability.

6.(1) A period shall not be treated as a period of availability unless the mobile worker knows before the start of the relevant period about that period of availability and its reasonably foreseeable duration.

(2) The time spent by a mobile worker, who is working as part of a team, travelling in, but not driving, a moving vehicle as part of that team shall be a period of availability for that mobile worker.

(3) Subject to sub-regulation(4) a period of availability shall not include a period of rest or a break.

(4) A period of availability may include a break taken by a mobile worker during waiting time or time which is not devoted to driving by the mobile worker and is spent in a moving vehicle, a ferry or a train.

Breaks.

7.(1) No mobile worker shall work for more than six hours without a break.

(2) Where a mobile worker's working period exceeds six hours but does not exceed nine hours, the worker shall be entitled to a break lasting at least 30 minutes and interrupting that time.

(3) Where a mobile worker's working time exceeds nine hours, the worker shall be entitled to a break lasting at least 45 minutes and interrupting that period.

(4) Each break may be made up of separate periods of not less than 15 minutes each.

(5) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of the mobile worker, to ensure that the limits specified above are complied with in the case of each mobile worker employed by him.

Rest periods.

8.(1) In the application of these Regulations, the provisions of the EU Drivers' Hours Regulation relating to daily and weekly rest shall apply to all mobile workers to whom they do not apply under that Regulation as they apply to other mobile workers under that Regulation.

(2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of the mobile worker, to ensure that those provisions are complied with in the case of each mobile worker employed by him, to whom they are applied by sub-regulation (1).

Night work.

9.(1) The working time of a mobile worker, who performs night work in any period of 24 hours, shall not exceed 10 hours during that period.

(2) The period of 10 hours may be extended in relation to particular mobile workers or groups of mobile workers for objective or technical reasons or reasons concerning the organisation of work, by a collective agreement or a workforce agreement.

(3) Compensation for night work shall not be given to a mobile worker in any manner which endangers road safety.

(4) An employer shall take all reasonable steps in keeping with the need to protect the health and safety of mobile workers to ensure that the limit specified in sub-regulation (1), or extended in accordance with sub-regulation (2) is complied with in the case of each mobile worker employed by him.

Information and Records.

10. An employer of mobile workers shall notify each worker of the provisions of these Regulations and the provisions of any collective or workforce agreement which is capable of application to that worker.

11. An employer of a mobile worker shall—

- (a) request from each mobile worker details of any time worked by that worker for another employer;
- (b) include time worked for another employer in the calculation of the mobile worker's working time;
- (c) keep records which are adequate to show whether the requirements of these Regulations are being complied with in the case of each mobile worker employed by him to whom they apply;
- (d) retain such records for two years after the end of the period covered by those records;

- (e) provide, at the request of a mobile worker, a copy of the record of hours worked by that worker;
- (f) provide to an enforcement officer copies of such records relating to mobile workers as the officer may require;
- (g) provide to a mobile worker or an enforcement officer copies of such documentary evidence in his possession as may be requested by the mobile officer or an enforcement officer in relation to records supplied to him in accordance with paragraph (c)(e) or (d)(f) above.

12. A mobile worker shall, at the request of his employer under regulation 11(a), notify his employer in writing of time worked by the worker for another employer for inclusion in the calculation of the mobile worker's working time.

13.(1) The Minister with responsibility for employment shall arrange for the publication, in such form and manner as he considers appropriate, of information and advice concerning the operation of these Regulations.

(2) The information and advice shall be such as appear to him best calculated to enable employers and workers affected by these regulations to understand their respective rights and obligations.

Agency workers not otherwise mobile workers.

14.(1) This regulation applies in any case where an individual ("the agency worker")—

- (a) is supplied by a person ("the agent") to do the work of a mobile worker for another ("the principal") under a contract or other arrangements made between the agent and the principal; but
- (b) is not, as respects that work, a worker, because of the absence of a worker's contract between the individual and the agent or the principal; and
- (c) is not a party to a contract under which he undertakes to do the work for another party to the contract whose status is, by virtue of the contract, that of a client or customer or any profession or business undertaking carried on by the individual.

(2) In a case where this regulation applies, the other provisions of these Regulations shall have effect as if there were a contract for the doing of the work by the agency worker made between the agency worker and—

- (a) whichever of the agent and the principal is responsible for paying the agency worker in respect of the work; or
- (b) if neither the agent nor the principal is so responsible, whichever of them pays the agency worker in respect of the work,
- (c) and as if that person were the agency worker's employer.

Individual carrying on trade or business and self-employed drivers.

15.(1) This regulation applies in any case where an individual drives a vehicle described in regulation 3(2) or 3(3) for the purpose of a trade or business carried on by him and to self-employed drivers.

(2) Where this regulation applies—

- (a) subject to paragraph (b), the other provisions of these Regulations shall have effect as if—
 - (i) the individual were a mobile worker, and
 - (ii) the individual were the employer of that mobile worker;
- (b) regulations 10, 11(a) and (e) and 12 shall not have effect.

(3) This regulation shall not apply in any case where regulation 14 applies.

Enforcement.

16.(1) It shall be the duty of the Factories Inspectors ("an inspector") to enforce the requirements of these Regulations.

(2) Schedule 2 shall apply in relation to the enforcement of the relevant requirements.

17.(1) Any person who fails to comply with any of the relevant requirements shall be guilty of an offence.

(2) The provisions of sub-regulation (3) shall apply where an inspector is exercising or has exercised any power conferred by Schedule 2.

(3) It is an offence for a person—

- (a) to contravene any requirement imposed by an inspector under paragraph 1 of Schedule 2;
 - (b) to prevent or attempt to prevent any other person from appearing before an inspector or from answering any question to which an inspector may by virtue of paragraph 1(2)(e) of Schedule 2 require an answer;
 - (c) to contravene any requirement or prohibition imposed by an improvement notice or a prohibition notice referred to in paragraphs 2 and 3 Schedule 2 (including any such notice as is modified on appeal);
 - (d) intentionally to obstruct an inspector in the exercise or performance of his powers;
 - (e) to use or disclose any information in contravention of paragraph 7 of Schedule 2;
 - (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) Any person guilty of an offence under sub-regulation (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 sub-regulation (3)(b) or (d) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) A person guilty of an offence under sub-regulation (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.
- (7) A person guilty of an offence under sub-regulation (3)(a),(e) or (f) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment—

This version is out of date

- (i) if the offence is under sub-regulation (3)(e), to imprisonment for a term not exceeding two years or a fine or both,
- (ii) if the offence is under sub-regulation (3)(a) or (f), to a fine.

(8) The provisions set out in regulations 18 to 20 shall apply in relation to the offences provided for in sub-regulations (1) and (3).

Offences due to fault of other person.

18. 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 the conviction of the offence by virtue of this regulation whether or not proceedings are taken against the first mentioned person.

Offences by bodies corporate.

19.(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 direct of the body corporate.

Power of court to order cause of offence to be remedied or, in certain cases, forfeiture.

20.(1) This regulation applies where a person is convicted of an offence in respect of any matter which appears to the court to be a matter which it is in his power to remedy.

(2) In addition to or instead of imposing any punishment, the court may order the person in question to take such steps as may be specified in the order for remedying the said matters within such time as may be fixed by the order.

(3) The time fixed by an order under sub-regulation (2) 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.

(4) Where a person is ordered under sub-regulation (2) to remedy any matters, that person shall not be liable under these Regulations in respect of that matter in so far as it continues during the time fixed by the order or any further time allowed under sub-regulation (3).

SCHEDULE 1**WORKFORCE AGREEMENTS****Regulation 2**

1. An agreement is a workforce agreement for the purposes of these Regulations if the following conditions are satisfied—

- (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 relevant 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 employees might reasonably require in order to understand it in full.

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 group” are workers duly elected to represent the members of a particular group;

“representatives of the workforce” are workers duly elected to represent the relevant members of the workforce;

and representatives are “duly elected” if the election at which they were elected satisfied the requirements of paragraph 3.

2. 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 candidates for election as representatives of the 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 the 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 is reasonably practicable, those voting do so in secret, and
 - (ii) the votes given at the election are fairly and accurately counted.

SCHEDULE 2

ENFORCEMENT

Regulation 16

Powers of inspectors.

1.(1) Subject to the provisions of this paragraph, an inspector may for the purpose of carrying into effect these Regulations exercise the powers set out in sub-paragraph (2).

(2) The powers of an inspector are the following, namely—

- (a) at any reasonable time (or in a situation which in his opinion may be dangerous, at any time) to enter any premises which he has reason to believe it is necessary for him to enter for the purposes mentioned in sub-paragraph (1);
- (b) to take with him a constable if he has reasonable cause to apprehend any serious obstruction in the execution of his duty;
- (c) without prejudice to paragraph (b), on entering any premises by virtue of paragraph (a) to take with him—
 - (i) any other person duly authorised by the Minister; and
 - (ii) any equipment or material required for any purpose for which the power of entry is being exercised;
- (d) to make such examination and investigation as may in any circumstances be necessary for the purpose mentioned in sub-paragraph (1);
- (e) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (d) to answer (in the absence of persons other than a person nominated by him to be present and any persons whom the inspector may allow to be present) such questions as the inspector thinks fit to ask and to sign a declaration of the truth of his answers;
- (f) to require the production of, inspect, and take copies of or of any entry in—
 - (i) any records which by virtue of these Regulations are required to be kept, and

- (ii) any other books, records or documents which it is necessary for him to see for the purposes of any examination or investigation under paragraph (d);
- (g) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the inspector to exercise any of the powers conferred on him by this sub-paragraph;
- (h) any other power which is necessary for the purpose mentioned in sub-paragraph (1).

(3) No answer given by a person in pursuance of a requirement imposed under sub-paragraph (2)(e) shall be admissible in evidence against that person or the husband or wife of that person in any proceedings.

(4) Nothing in this paragraph shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the Supreme Court.

Improvement notices.

2. If an inspector is of the opinion that a person—

- (a) is contravening one or more of these Regulations; or
- (b) has contravened one or more of these Regulations in circumstances that make it likely that the contravention will continue or be repeated,

he may serve on him a notice (in this Schedule referred to as “an improvement notice”) stating that he is of that opinion, specifying the provision or provisions as to which he is of that opinion, giving particulars of the reasons why he is of that opinion, and requiring that person to remedy the contravention or, as the case may be, the matter occasioning it within such period (ending not earlier than the period within which an appeal against the notice can be brought under paragraph 5 as may be specified in the notice.

Prohibition notices.

3.(1) This paragraph applies to any activities which are being or are likely to be carried on by or under the control of any person, being activities to or in relation to which any of these Regulations apply or will, if the activities are so carried on, apply.

(2) If as regards any activities to which this paragraph applies an inspector is of the opinion that, as carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve a risk of serious personal injury, the inspector may serve on that person a notice (in this Schedule referred to as “a prohibition notice”).

(3) A prohibition notice shall—

- (a) state that the inspector is of the said opinion;
- (b) specify the matters which in his opinion give or, as the case may be, will give rise to the said risk;
- (c) where in his opinion any of those matters involves or, as the case may be, will involve a contravention of any of these Regulations, state that he is of that opinion, specify the regulation or regulations as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
- (d) direct that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matters specified in the notice in pursuance of paragraph (b) and any associated contraventions of provisions so specified in pursuance of paragraph (c) have been remedied.

(4) A direction contained in a prohibition notice in pursuance of sub-paragraph (3)(d) shall take effect—

- (a) at the end of the period specified in the notice; or
- (b) if the notice so declares, immediately.

Provisions supplementary to paragraphs 2 and 3.

4.(1) In this paragraph “a notice” means an improvement notice or a prohibition notice.

(2) A notice may (but need not) include directions as to the measures to be taken to remedy any contravention or matter to which the notice relates; and any such directions—

- (a) may be framed to any extent by reference to any approved code of practice; and
- (b) may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

(3) Where an improvement notice or prohibition notice which is not to take immediate effect has been served—

- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified therein in pursuance of paragraph 2 or paragraph 3(4) as the case may be; and
- (b) the period so specified may be extended or further extended by an inspector at any time when an appeal against the notice is not pending.

Appeal against improvement or prohibition notice.

5.(1) In this paragraph “a notice” means an improvement or prohibition notice.

(2) A person on whom a notice is served may within 21 days from the date of its service appeal to an employment tribunal; and on such an appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit.

(3) Where an appeal under this paragraph is brought against a notice within the period allowed under the preceding sub-paragraph, then—

- (a) in the case of an improvement notice, the bringing of the appeal shall have the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal;
- (b) in the case of a prohibition notice, the bringing of the appeal shall have the like effect if, but only if, on the application of the appellant the tribunal so directs (and then only from the giving of the direction).

(4) One or more assessors may be appointed for the purposes of any proceedings brought before an employment tribunal under this paragraph.

Restrictions on disclosure of information.

6.(1) In this paragraph—

“relevant information” means information obtained by an inspector in pursuance of a requirement imposed under paragraph 1; and

This version is out of date

“the recipient”, in relation to any relevant information, means the person by whom that information was so obtained or to whom that information was so furnished, as the case may be.

(2) Subject to the following sub-paragraph, no relevant information shall be disclosed without the consent of the person by whom it was furnished.

(3) The preceding sub-paragraph shall not apply to—

- (a) disclosure of information to a government department;
- (b) without prejudice to paragraph (a), disclosure by the recipient of information to any person for the purpose of any function conferred on the recipient by or under any of the relevant statutory provisions or under these Regulations;
- (c) without prejudice to paragraph (a), disclosure by the recipient of information to a police officer authorised by the Commissioner to receive it; or
- (d) disclosure by the recipient of information in a form calculated to prevent it from being identified as relating to a particular person or case.

(4) A person to whom information is disclosed in pursuance of sub-paragraph (3) shall not use the information for a purpose other than—

- (a) in a case falling within sub-paragraph (3)(a), a purpose of a government department in connection with these Regulations or with the relevant statutory provisions, or any enactment relating to working time;
- (b) in the case of information given to a police officer, the purposes of the police in connection with these Regulations, the relevant statutory provisions or any enactment relating to working time.

(5) A person shall not disclose any information obtained by him as a result of the exercise of any power conferred by paragraph 1 (including in particular any information with respect to any trade secret obtained by him in any premises entered by him by virtue of any such power) except—

- (a) for the purposes of his functions; or
- (b) for the purposes of any legal proceedings; or
- (c) with the relevant consent.

In this sub-paragraph “the relevant consent” means, in the case of information furnished in pursuance of a requirement imposed under paragraph 1, the consent of the person who furnished it, and, in any other case, the consent of a person having responsibilities in relation to the premises where the information was obtained.

(6) Notwithstanding anything in sub-paragraph (5) an inspector shall, in circumstances in which it is necessary to do so for the purpose of assisting in keeping persons (or the representatives of persons) adequately informed about matters affecting their health, safety and welfare or working time, give to such persons or their representatives the following descriptions of information, that is to say—

- (a) factual information obtained by him as mentioned in that sub-paragraph which relates to their working environment; and
- (b) information with respect to any action which he has taken or proposes to take in or in connection with the performance of his functions in relation to their working environment;

and, where an inspector does as aforesaid, he shall give the like information to the employer of the first-mentioned persons.

(7) Notwithstanding anything in sub-paragraph (5), a person who has obtained such information as is referred to in that sub-paragraph may furnish to a person who appears to him to be likely to be a party to any civil proceedings arising out of any accident, occurrence, situation or other matter, a written statement of the relevant facts observed by him in the course of exercising any of the powers referred to in that sub-paragraph.