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ARRANGEMENT OF SECTIONS

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AN ACT TO IMPLEMENT IN GIBRALTAR THE PROVISIONS OF COUNCIL DIRECTIVE 93/104/EC CONCERNING CERTAIN ASPECTS OF THE ORGANISATION OF WORKING TIME.

PART I.
GENERAL.

Title and commencement.

1. This Act may be cited as the Working Time Act, 1999 and comes into operation on such day as the Minister may appoint by notice in the Gazette and different days may be appointed for different purposes.

Interpretation.

2. In this Act—

“the civil protection services” includes the police, the fire and ambulance services, customs and immigration services, and civilian voluntary rescue services;

“collective agreement” means an agreement reached between an employer or group of employers and their employees, either directly or through a trade union or unions, relating to any of the matters covered by this Act;

“day” means a period of 24 hours beginning at midnight;

“the Directive” means Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time;

“employer”, “employment” and “employed” relate to a contract of employment;

“the Minister” means the minister with responsibility for employment;

“mobile worker” means any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road or air;

“night time” means the period between 11 p.m. and 6 a.m.;

“night work” means work during night time;

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“night worker” means a worker who works, as a normal course, at least three hours of his daily working time during night time or who is likely to work such proportion of his annual working time during night time as may be specified for the purposes of this Act in a collective agreement or workforce agreement;

“rest period” means a period which is not working time, other than a rest break or leave to which a worker is entitled;

“restricted period”, in relation to a worker, means the period between 10 pm and 6 am or, where the worker’s contract provides for him to work after 10 pm, the period between 11 pm and 7 am;

“worker” means a person under a contract of employment or who provides work or services to another person under a contract which is not a contract for professional services;

“workforce agreement” means an agreement between an employer and workers employed by him or their representatives relating to any of the matters covered by this Act; and

“working time” means any period during which a worker is working at the employer’s disposal and carrying out his activity or duties.

PART II.

RIGHTS AND OBLIGATIONS CONCERNING WORKING TIME.

General.

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

Maximum weekly working time.

4.(1) Subject to subsection (3), a worker’s average working time, including overtime, shall not exceed 48 hours each week.

(2) The average time shall be computed over a period of 17 weeks, but excluding any periods of sick leave, maternity leave or annual leave.

(3) Subsection (1) does not apply to any worker who has agreed with his employer in writing that it should not apply to him, if the employer complies with the requirements of subsection (4).

(4) The requirements referred to in subsection (3) are that the employer–

- (a) keeps up-to-date records of all workers who carry out such work;
- (b) permits the Factories Inspectors to inspect those records;
- (c) provides, on request, to the Factories Inspectors information on cases where agreement to carry out such work has been given; and
- (d) does not subject any of his employees to any detriment because he does not agree to carry out such work.

(5) An agreement under subsection (3) may provide for a notice period of not more than three months; where no notice period is provided, the worker may terminate it by giving not less than seven days' notice.

Maximum working time for young workers.

4A.(1) The working time of a worker at least 15 but under 18 years of age ("a young worker") shall not exceed—

- (a) eight hours a day, or
- (b) 40 hours a week (between midnight on successive Sundays).

(2) If a young worker works for more than one employer on any day or during any week, his working time under subsection (1) shall be calculated by adding together the number of hours worked for each employer.

Night work.

5.(1) A night worker's average normal hours of work shall not exceed eight hours in each 24-hour period.

(2) The average hours of work shall be computed over a period of 17 weeks but excluding any period of sick leave, maternity leave or annual leave and any rest period entitlement under section 9.

(3) A night worker whose work involves special hazards or heavy physical or mental strain shall not work for more than 8 hours in any period of 24 hours.

(4) For the purposes of subsection (3), work involving special hazards or heavy mental or physical strain means work identified as such—

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- (a) in any collective or workforce agreement;
- (b) by the employer in any risk assessment made by him; or
- (c) by the Factories Inspectors.

(5) An employer of a night worker shall ensure that he has the opportunity of a health assessment at no cost to the worker before the assignment to night work and at regular intervals thereafter.

(6) The health assessment referred to in subsection (5) shall not be disclosed to any person except the worker to whom it relates unless the worker has given his consent in writing to the disclosure, or the disclosure is confined to a statement that the worker is fit to carry out night work.

(7) An employer shall wherever possible transfer a night worker who is suffering from health problems connected with the fact that he performs night work to day work to which he is suited.

Night work by young workers.

5A. An employer shall ensure that no worker at least 15 but under 18 years of age employed by him works during the restricted period.

Pattern of work.

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

Records.

7. An employer shall keep records for a minimum of two years from the date to which they refer which are adequate to show whether the limits referred to in sections 4, 4A and 5 and 5A are being complied with.

Daily rest.

8.(1) A worker aged 18 or over is entitled to a rest period of not less than 11 consecutive hours in each 24 hour period during which he works for his employer.

(2) A worker between the ages of 15 and 18 is entitled to a rest period of not less than 12 hours in each 24 hour period during which he works for his employer; this rest period may be interrupted in the case of in the case of

activities involving periods of work that are split up over the day or of short duration.

Weekly rest period.

9.(1) A worker aged 18 or over is entitled to an uninterrupted rest period of not less than 24 hours in each 7 day period during which he works for his employer.

(2) In place of the entitlement in subsection (1), if the employer so determines, a worker aged 18 or over is entitled to two uninterrupted rest periods of not less than 24 hours in each 14 day period or one uninterrupted rest period of not less than 48 hours in each 14 day period; the rest period should normally include a Sunday.

(3) A worker between the ages of 15 and 18 is entitled to a rest period of not less than 2 days, consecutively if possible, in each 7 day period in which he works for his employer.

(4) For the purposes of subsections (1) to (3), a 7 or 14 day period begins at the time set out in a workforce or collective agreement, or, in the absence of such an agreement, at the start of a week.

(5) The minimum rest period under subsection (1) or (2) shall not include any part of a rest period to which the worker is entitled under section 8(1), except where this is justified by technical or work organisation conditions.

Rest breaks.

10.(1) A worker aged 18 or over is entitled to a rest break if his daily working time is more than 6 hours.

(2) The details of the rest break may be contained in a collective or workforce agreement; in the absence of such an agreement the rest break shall be an uninterrupted period of not less than 20 minutes.

(3) A worker aged between 15 and 18 is entitled to a rest break of an uninterrupted period of not less than 30 minutes if his daily working time is more than 4 hours; and, if such a worker works for more than one employer, his daily working time shall be aggregated.

Annual holiday.

11.(1) The following is deleted from paragraph 7(1)(a) of the Employment (Annual and Public Holidays) Order - “for not less than twenty hours”.

(2) The following is inserted after “Schedule 2” in paragraph 4(1) of the Employment (Annual and Public Holidays) Order - “and the duration of the annual holiday of part-time employees shall be calculated pro rata to the columns headed “5 days or less” in Schedule 2.”.

(3) In the Table in Schedule 2 to the Employment (Annual and Public Holidays) Order, the words “or less” are deleted in each column headed “5 days or less”.

Employment in dangerous industries.

12. No person under the age of 16 years shall be admitted to any employment which, by its nature or the circumstances in which it is carried on, is dangerous to life, health or morals of the persons employed therein.

PART IIA

WORKING TIME IN CIVIL AVIATION.

Scope.

12A. This Part applies to persons employed to act as crew members on board a civil aircraft flying for the purposes of public transport.

Interpretation.

12B. In this Part—

“block flying time” means the time between an aircraft first moving from its parking place for the purpose of taking off until it comes to rest on its designated parking position with all its engines stopped;

“the CAA” means the Civil Aviation Authority of the United Kingdom;

“cabin crew” means a person on board a civil aircraft, other than flight crew, who is carried for the purpose of performing in the interests of the safety of the passengers duties that are assigned to him for that purpose by the operator or the commander of that aircraft;

“calendar year” means the period of twelve months beginning with 1st January in any year;

“crew member” means a person employed to act as a member of the cabin crew or flight crew on board a civil aircraft by an undertaking established in the United Kingdom;

“flight crew” means a person employed to act as pilot, flight navigator, flight engineer or flight radiotelephony operator on board a civil aircraft;

“protection and prevention services or facilities” means those services or facilities that are designed to preserve the health and safety of the crew member from any hazards that may threaten his health or safety during the course of his undertaking his work and are capable of being provided by his employer;

“relevant agreement”, in relation to a crew member, 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 crew member and his employer;

“the relevant requirements” means the requirements of sections 12D(2), 12E, 12F(2)(a), 12G, 12H and 12I;

“relevant training” means the training required to enable a person to perform the duties of flight crew or cabin crew carried out or undertaken whilst employed by an employer;

“rest break” and “rest period”, in relation to a crew member, means a period which is not working time;

“scheme”, means a scheme operated by an employer and approved by the CAA;

“standby”, in relation to a crew member, means a crew member who in accordance with the terms of his employment holds himself ready to perform work if called upon during any period when he would not otherwise be at work;

“workforce agreement” means an agreement between an employer and crew members employed by him or his representatives;

“working time”, in relation to a crew member and for the purposes of this Part means—

- (a) any period during which he is working at his employer’s disposal and carrying out his activity or duties,
- (b) any period during which he is receiving relevant training, and
- (c) any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement,

and “work” and “to work” shall be construed accordingly.

Entitlement to annual leave.

12C.(1) A crew member is entitled to paid annual leave of at least four weeks, or a proportion of four weeks in respect of a period of employment of less than one year.

(2) Leave to which a crew member is entitled under this Part—

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

Health assessments.

12D.(1) An employer shall ensure that each crew member employed by him is entitled to a free health assessment before he commences his employment and thereafter at regular intervals of whatever duration may be appropriate in the case of the crew member.

(2) Subject to subsection (3), no person shall disclose a health assessment referred to in paragraph (1) made in respect of a crew member to any person other than that crew member.

(3) A registered medical practitioner who makes a health assessment referred to in subsection (1) may advise the employer of the crew member in question that the crew member is suffering from health problems which the practitioner considers to be connected with the fact that the crew member works during night time.

(4) Where—

- (a) a registered medical practitioner has advised an employer pursuant to subsection (3); and
- (b) it is possible for the employer to transfer the crew member to mobile or non-mobile work—
 - (i) for which the crew member is suited, and
 - (ii) which is to be undertaken during periods such that the crew member will cease to work during night time,

then the employer shall transfer the crew member accordingly.

(5) A health assessment referred to in subsection (1) is free if it is undertaken at no cost to the crew member to whom it relates.

(6) For the purposes of this section, a crew member works during night time when he works at any time between the hours of 2.00am and 4.59am local mean time; and in this section “local mean time” means the time to which a crew member is acclimatised for the purposes of a scheme.

Health and safety protection at work.

12F. An employer shall ensure that each crew member employed by him is at all times during the course of that employment provided with adequate health and safety protection and prevention services or facilities appropriate to the nature of his work .

Pattern of work.

12G.(1) Where an employer intends to organise work according to a certain pattern he shall take into account the general principle of adapting work to the worker to the extent that is relevant to the objective of protecting workers’ health and safety.

(2) Without prejudice to the generality of subsection (1), in a case where an employer intends to organise work according to a certain pattern he shall—

- (a) ensure that pattern affords the crew member adequate rest breaks, and
- (b) take into account the need to ensure, where practicable, that pattern offers the crew member work, within the scope of his duties, that alleviates monotony or working at a pre-determined rate.

Provision of information.

12H.(1) When requested to do so by the CAA, an employer shall provide the CAA with such information as it may specify relating to the working patterns of crew members in his employ.

(2) Any information which is generated by an employer relating to the working patterns of crew members shall be retained by the employer for a period of not less than two years.

Maximum annual working time.

12 I.(1). An employer shall ensure that in any month—

- (a) no person employed by him shall act as a crew member during the course of his working time, if during the period of 12 months expiring at the end of the month before the month in question the aggregate block flying time of that person exceeds 900 hours; and
- (b) no crew member employed by him shall have a total annual working time of more than 2,000 hours during the period of 12 months expiring at the end of the month before the month in question.

(2) For the purposes of subsection (1)(b), “total annual working time” includes overtime and any period deemed to be spent acting as a standby for the purposes of a scheme.

Rest days.

12J.(1) Without prejudice to section 12C, an employer shall ensure that all crew members employed by him are notified in writing as soon as possible of their right to rest days which shall be free of all employment duties including acting as a standby for work.

(2) For the purposes of this section, rest days are—

- (a) not less than 7 days in each month during which a crew member works for his employer; and
- (b) not less than 96 days in each calendar year during which a crew member works for his employer.

Offences.

12K.(1) An employer who fails to comply with any of the relevant requirements shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) The provisions set out in sections 12L to 12N shall apply in relation to the offences provided for in subsection (1).

Offences due to fault of other person.

12L. 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 section whether or not proceedings are taken against the first mentioned person.

Offences by bodies corporate.

12M.(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 subsection 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.

12N. Proceedings for an offence shall not be instituted except by, or with the consent of, the Attorney General.

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

12O.(1) This section applies 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.

(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 subsection (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 section, as the case may be.

(4) Where a person is ordered under subsection (2) to remedy any matters, that person shall not be liable under this Act in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under subsection (3).

Remedies.

12P.(1) A crew member may present a complaint to an industrial tribunal that his employer has refused to permit him to exercise any right he has under sections 12C, 12D(1), (3), (4) or 12G(1) and 12G(2)(b).

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

- (a) before the end of the period of three months beginning with the date on which it is alleged—
 - (i) 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 have been permitted to begin), or,
 - (ii) the payment under section 12C (2)(b) should have been made;

as the case may be;

- (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 section 12C, 12D or 12G(2)(b) 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 crew member.

(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 crew member to exercise his right; and

- (b) any loss sustained by the crew member which is attributable to the matters complained of.

PART III.
EXCEPTIONS.

Excluded sectors.

13.(1) Sections 4 to 10 (except 4A and 5A) do not apply to workers to whom the European Agreement on the organisation of working time of seafarers dated 30 September 1998 and put into effect by Council Directive 1999/63/EC of 21 June 1999 applies.

- (2) Sections 4 and 5, and 7 to 10 do not apply—
 - (a) where characteristics peculiar to certain specific services such as the armed forces or the police, or to certain specific activities in the civil protection services, inevitably conflict with this Act;
 - (b) to workers to whom the European Agreement on the organisation of working time of mobile staff in civil aviation concluded on 22 March 2000 and implemented by Council Directive 2000/79/EC of 27 November 2000 applies; as set out in Part IIA;
 - (c) to workers to whom Directive 2002/15/EC of the European Parliament and of the Council on the organisation of the working time of persons performing mobile road transport activities, dated 11 March 2002 applies;
 - (d) to a worker where, on account of the specific characteristics of the activity in which he is engaged, the duration of his working time is not measured or predetermined or can be determined by the worker himself and particularly in the case of—
 - (i) managing executives or other persons with autonomous decision-making powers;
 - (ii) family workers; or
 - (iii) workers officiating at religious ceremonies in churches and religious communities.

- (3) Sections 5, 8, 9 and 10 do not apply to a worker—

- (a) where the worker's activities are such that his place of work and place of residence are distant from one another or his different places of work are distant from one another;
- (b) where the worker is engaged in security and surveillance activities requiring a permanent presence in order to protect property and persons, particularly security guards and caretakers or security firms;
- (c) where the worker's activities involve the need for continuity of service or production, particularly—
 - (i) services relating to the reception, treatment or care provided by hospitals or similar establishments, residential institutions and prisons;
 - (ii) work at docks or airports;
 - (iii) press, radio, television, cinematographic production, postal and telecommunications services and civil protection services;
 - (iv) gas, water and electricity production, transmission and distribution, household refuse collection and incineration;
 - (v) industries in which work cannot be interrupted on technical grounds;
 - (vi) research and development activities;
- (d) where there is a foreseeable surge of activity, particularly in—
 - (i) tourism; and
 - (ii) postal services;
- (e) where the worker's activities are affected by—
 - (i) an occurrence due to unusual and unforeseeable circumstances, beyond the control of the worker's employer, or to exceptional events, the consequences of which could not have been avoided despite the exercise of all due care; or

- (ii) an accident or the imminent risk of an accident.

Shift workers.

14.(1) Subject to section 16 –

- (a) section 8 does not apply in relation to a shift worker when he changes shift and cannot take a daily rest period between the end of one shift and the start of the next one;
- (b) section 9 does not apply to a shift worker when he changes shift and cannot take a weekly rest period between the end of one shift and the start of the next one; and
- (c) neither section 8 nor section 9 applies to a worker engaged in activities involving periods of work split up over the day, particularly those of cleaning staff.

(2) For the purposes of this section–

“shift worker” means any worker whose work schedule is part of shift work; and

“shift work” means any method of organizing work in shifts whereby workers succeed each other at the same workstations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks.

Collective and workforce agreements.

15. A collective agreement or a workforce agreement may–

- (a) modify or exclude the application of sections 5, 8, 9, and 10, and
- (b) for objective or technical reasons or reasons concerning the organization of work, modify the application of section 4 by the substitution, for each reference to 17 weeks, of a different period, being a period not exceeding 52 weeks,

in relation to particular workers or groups of workers.

Compensatory rest.

16. Where the application of any provision of this Act is excluded by section 13 or 14, or is modified or excluded by means of a collective agreement or a workforce agreement under section 15, and a worker is accordingly required by his employer to work during a period which would otherwise be a rest period-

- (a) his employer shall wherever possible allow him to take an equivalent period of compensatory rest, and
- (b) in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, his employer shall afford him appropriate protection.

Young workers: force majeure.

17.(1) Sections 4A, 5A, 8 and 10 do not apply in relation to a worker aged between 15 and 18 where his employer requires him to undertake work which no worker aged 18 or over is available to perform and which-

- (a) is occasioned by unusual and unforeseeable circumstances, beyond the employer's control, or exceptional events, the consequences of which could not have been avoided despite the exercise of all due care;
- (b) is of a temporary nature; and
- (c) must be performed immediately.

(2) Where the application of section 8 or 10 is excluded by sub-section (1), and a worker under the age of 18 is accordingly required to work during a period which would otherwise be a rest period or rest break, his employer shall allow him to take an equivalent period of compensatory rest within the following three weeks.

Mobile workers.

17A.(1) Sections 5, and 8 to 10 apply to a mobile worker not covered by Directives 2002/15/EC and 2000/79/EC of the European Parliament and the Council.

(2) A mobile worker to whom subsection (1) applies is entitled to adequate rest, except where the worker's activities are affected by any of the matters referred to in section 13(3)(e).

(3) In this section "adequate rest" means that a worker has regular rest periods the duration of which is 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.

Doctors in training.

17B.(1) Subsection (1) of section 4 is modified in its application to workers who are doctors in training as follows-

- (a) for the reference to 48 hours there is substituted a reference to 58 hours with effect from 1st August 2004 until 31st July 2007;
- (b) for the reference to 48 hours there is substituted a reference to 56 hours with effect from 1st August 2007 until 31st July 2009.

(2) In the case of workers who are doctors in training, subsections (3)–(5) of section 4 shall not apply and subsections (3) and (4) of this section shall apply in their place.

(3) Subject to subsection (4), the reference period which applies in the case of a worker who is a doctor in training is, with effect from 1st August 2004–

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 26 weeks, each such period; and
- (b) in any other case, any period of 26 weeks in the course of his employment.

(4) Where a doctor in training has worked for his employer for less than 26 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his employer

PART IV.
MISCELLANEOUS.

Enforcement.

18.(1) It shall be the duty of the Factories Inspectors to make adequate arrangements for the enforcement of this Act and the Minister with responsibility for employment may make regulations prescribing their duties.

Offences.

19.(1) An employer who fails to comply with sections 4A, 5(5) to (7), 5A, 6 and 7 is guilty of an offence.

- (2) An employer guilty of an offence under sub-section (1) is liable—
 - (a) on summary conviction, to a fine up to level 5 on the standard scale;
 - (b) on conviction on indictment, to a fine.

Remedies.

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

- (a) has refused to permit him to exercise any right he has under—
 - (i) section 8, 9, 10 or 11; or
 - (ii) section 16, in so far as it applies where section 8, 9 or 10 is modified or excluded; or
- (b) has failed to pay him the whole or any part of any amount due to him under section 11.

(2) The industrial tribunal shall not consider a complaint under this section 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 extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;
- (b) within such other 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 the industrial tribunal finds a complaint under subsection (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 sub-section (1)(b) the industrial tribunal finds that an employer has failed to pay a worker in accordance with section 11, it shall order the employer to pay to the worker the amount which it finds to be due to him.