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STATUTORY INSTRUMENTS

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**2004 No. 1713**

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

**PART 4**

MISCELLANEOUS

**Power to require information**

**15.** An employer shall, by sending it to the MCA, provide the Secretary of State with such information on night workers as the Secretary of State may specify in writing.

**Detention and enforcement of detention**

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

- (a) the requirements of regulation 7 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.

(3) Subject to the modifications in paragraph (4), section 284(1) to (6) and (8) of the Act <sup>M1</sup> (enforcement of detention) applies to a fishing vessel which may be detained under this regulation as it applies to ships which may be detained under the Act.

(4) The modifications referred to in paragraph (3) are –

- (a) the reference in subsection (1)(b) to “any officer of a Minister of the Crown” includes reference to a relevant inspector as defined by these Regulations;
- (b) “competent authority” means the Secretary of State; and
- (c) for the words “this Act” in section 284(6) there shall be substituted “ the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 ”.

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**Marginal Citations**

**M1** Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997, Schedule 1, paragraph 5 (c.28).

### Arbitration and compensation

17.—(1) Subject to the modifications in paragraph (2), sections 96 and 97 of the Act (arbitration and compensation) shall apply in relation to a detention notice under section 284 of the Act (as applied by regulation 16) as they apply to a detention notice under section 95(3) of the Act.

(2) The modifications referred to in paragraph (1) are the omission from section 96 of the following words—

- (a) in subsection (3), “to whether the ship was or was not a dangerously unsafe ship”; and
- (b) in subsection (5), “as a dangerously unsafe ship”.

### Offences

18.—(1) Subject to regulation 14, an employer who fails to comply with regulation 6(2), 8(1), 8(4) or 9 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 10 or 15 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

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

- (a) has refused to permit him to exercise any right he has under regulation 7(1), 7(3), or 7(4) or 11(1); or
- (b) has failed to pay him the whole or any part of any amount due to him under regulation 11(1).

(2) An employment 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 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.

[<sup>F1</sup>(2A) Regulation 19A (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2).]

(3) Where an employment tribunal finds a complaint under paragraph (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 paragraph (1)(b) an employment tribunal finds that an employer has failed to pay a worker in accordance with regulation 11(1), it shall order the employer to pay to the worker the amount which it finds to be due to him.

**Textual Amendments**

**F1** Reg. 19(2A) inserted (6.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2014 \(S.I. 2014/386\)](#), art. 1, **Sch. para. 28**

**[<sup>F2</sup>Extension of time limit to facilitate conciliation before institution of proceedings**

**19A.—(1)** In this regulation—

- (a) Day A is the day on which the worker concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
- (b) Day B is the day on which the worker concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(2) In working out when the time limit set by regulation 19(2)(a) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(3) If the time limit set by regulation 19(2)(a) would (if not extended by this paragraph) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(4) The power conferred on the employment tribunal by regulation 19(2)(b) to extend the time limit set by paragraph (2)(a) of that regulation is exercisable in relation to that time limit as extended by this regulation.]

**Textual Amendments**

**F2** Reg. 19A inserted (6.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Employment\) Order 2014 \(S.I. 2014/386\)](#), art. 1, **Sch. para. 29**

**Restriction on contracting out**

**20.—(1)** 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.

(2) Paragraph (1) does not apply to—

- (a) any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under [<sup>F3</sup>any of sections 18A to 18C] of the Employment Tribunals Act 1996 <sup>M2</sup> (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings within [<sup>F4</sup>section 18(1)(r)] of the Employment Tribunals Act 1996 (proceedings under these Regulations where

conciliation is available), if the conditions regulating [<sup>F5</sup>settlement] agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating [<sup>F6</sup>settlement] agreements under these Regulations are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular complaint,
- (c) the worker must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal,
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or a professional body, covering the risk of a claim by the worker in respect of loss arising in consequence of the advice,
- (e) the agreement must identify the adviser, and
- (f) the agreement must state that the conditions regulating [<sup>F6</sup>settlement] agreements under these Regulations are satisfied.

(4) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, or
- (c) if he works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.

(5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c)—

- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,
- (b) in the case of a person within paragraph (4)(b), if the trade union is the employer or an associated employer, or
- (c) in the case of a person within paragraph (4)(c), if the worker makes a payment for the advice received from him.

(6) In paragraph (4)(a), “qualified lawyer” means—

- (a) as respects England and Wales, a [<sup>F7</sup>a person who, for the purposes of the Legal Services Act 2007), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act)];
- (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate; and
- (c) as respects Northern Ireland, a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(7) For the purposes of paragraph (5) any two employers shall be treated as associated if—

- (a) one is a company of which the other (directly or indirectly) has control; or
- (b) both are companies of which a third person (directly or indirectly) has control;

and “associated employer” shall be construed accordingly.

[<sup>F8</sup>(8) In the application of this regulation in relation to Northern Ireland, paragraphs (2) and (3) above shall have effect as if for “settlement agreements” (in each place where those words occur) there were substituted “compromise agreements.”]

#### Textual Amendments

- F3** Words in reg. 20(2)(a) substituted (6.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2014 (S.I. 2014/386), art. 1, **Sch. para. 30**
- F4** Words in reg. 20(2)(b) substituted (E.W.S.) (6.4.2014) by The Employment Tribunals Act 1996 (Application of Conciliation Provisions) Order 2014 (S.I. 2014/431), art. 1, **Sch. para. 33(b)**
- F5** Word in reg. 20(2) substituted (30.8.2013) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956), art. 1, **Sch. para. 6(a)**
- F6** Word in reg. 20(3) substituted (30.8.2013) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956), art. 1, **Sch. para. 6(a)**
- F7** Words in reg. 20(6)(a) substituted (1.1.2010) by The Legal Services Act 2007 (Consequential Amendments) Order 2009 (S.I. 2009/3348), arts. 2(1), 23, **Sch. 2**
- F8** Reg. 20(8) inserted (30.8.2013) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Employment) Order 2013 (S.I. 2013/1956), art. 1, **Sch. para. 6(b)**

#### Marginal Citations

- M2** 1996 c. 17; section 1(2) of the [Employment Rights \(Dispute Resolution\) Act 1998 \(c. 8\)](#) provides for the Industrial Tribunals Act 1996 to be cited as the Employment Tribunals Act 1996. Section 18 was amended by the [National Minimum Wage Act 1998 \(c. 39\)](#), [section 30\(1\)](#); the Working Time Regulations 1998, [S.I. 1998/1833](#), [regulation 33](#); the Transnational Information and Consultation of Employees Regulations 1999, [S.I. 1999/3323](#), [regulation 33\(1\)](#); the Employment Tribunals Act (Application of Conciliation Provisions) Order 2000 [S.I. 2000/1299](#) article 2; the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, [S.I. 2000/1551](#), [Schedule](#), paragraph 1(a); the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2001, [S.I. 2001/1107](#), [regulation 2](#); the [Employment Act 2002 \(c. 22\)](#), [section 24\(2\)](#) and [Schedule 7](#), paragraph 23(2); the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, [S.I. 2002/2034](#), [Schedule 2](#), paragraph 2(a); the [Employment Equality \(Religion or Belief\) Regulations 2003 S.I. 2003/1660](#), [Schedule 5](#), paragraph 1; the [Employment Equality \(Sexual Orientation\) Regulations 2003 S.I. 2003/1661](#), [Schedule 5](#), paragraph 1; the [Disability Discrimination Act 1995 \(amendment\) Regulations 2003, S.I. 2003/1673](#), [regulations 3](#) and 31; the [Merchant Shipping \(Working Time: Inland Waterways\) Regulations 2003, S.I. 2003/3049](#), [paragraph 2\(2\)](#) of [Schedule 2](#) and by paragraph 1(2) of the [Schedule](#) to these Regulations.

## Amendments to legislation

- 21.** Schedule 2 (amendments to legislation) shall have effect.

**Changes to legislation:**

There are currently no known outstanding effects for the The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004, PART 4.