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STATUTORY INSTRUMENTS

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**2004 No. 756**

**CIVIL AVIATION**

**The Civil Aviation (Working Time) Regulations 2004**

*Made* - - - - *11th March 2004*  
*Laid before Parliament* *19th March 2004*  
*Coming into force* - - *13th April 2004*

The Secretary of State for Transport, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 <sup>M1</sup> in relation to measures relating to the organisation of working time <sup>M2</sup>, in exercise of the powers conferred by that section hereby makes the following Regulations:

**Marginal Citations**

**M1** 1972 c. 68.  
**M2** S.I. 1997/1174.

**Citation and commencement**

1. These Regulations may be cited as the Civil Aviation (Working Time) Regulations 2004 and shall come into force on 13th April 2004.

**Scope**

[<sup>F1</sup>2. These Regulations apply to persons employed to act as crew members on board a civil aircraft flying for the purpose of—

- (a) public transport; or
- (b) the performance of a commercial air transport flight.]

**Textual Amendments**

**F1** Reg. 2 substituted (28.6.2010) by [The Civil Aviation \(Working Time\) \(Amendment\) Regulations 2010 \(S.I. 2010/1226\)](#), regs. 1, **2(2)**

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*Status: Point in time view as at 06/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the The Civil Aviation (Working Time) Regulations 2004. (See end of Document for details)*

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## Interpretation

### 3. In these Regulations—

“the 1974 Act” means the Health and Safety at Work Act 1974 <sup>M3</sup>;

“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;

“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 12 months beginning with 1st January in any year;

“collective agreement” means a collective agreement within the meaning of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992 <sup>M4</sup> the trade union parties to which are independent trade unions within the meaning of section 5 of that Act;

[<sup>F2</sup>“commercial air transport flight” has the same meaning as in article 255(1) of the Air Navigation Order 2009;]

<sup>F3</sup>  
...

“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;

“employer” means an undertaking established in the United Kingdom by whom a crew member is (or where the employment has ceased, was) employed;

“employment” in relation to a crew member, means employment under his contract, and “employed” shall be construed accordingly;

“the Executive” means both the Health and Safety Executive [<sup>F4</sup>referred to in section 10(1)] of the 1974 Act, and the Health and Safety Executive of Northern Ireland <sup>M5</sup>;

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

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

[<sup>F5</sup>“local mean time” means the time to which a crew member is acclimatised for the purposes of a scheme;]

<sup>F6</sup>  
...

“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;

[<sup>F7</sup>“public transport” is to be construed in accordance with the conditions set out in article 260(2) of the Air Navigation Order 2009 in relation to an aircraft that is flying on a public transport flight;]

“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 regulations 5(2), 6, 7(2)(a), 8, 9 and 10;

“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 pursuant to [F8 article 145(1)(b) or 149(a) of the Air Navigation Order 2009];

“standby”, in relation to a crew member, means a crew member who in accordance with the terms of his employment holds himself ready to act as a crew member if called upon to do so by his employer;

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

“working time”, in relation to a crew member 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, F9 ...
- (c) any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement, [F10 and
- (d) subject to regulation 9A, any period during which he is on standby,]

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

### Textual Amendments

- F2** Words in reg. 3 inserted (28.6.2010) by [The Civil Aviation \(Working Time\) \(Amendment\) Regulations 2010 \(S.I. 2010/1226\)](#), regs. 1, **2(3)(a)**
- F3** Words in reg. 3 omitted (1.4.2008) by virtue of [The Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\)](#), art. 1, **Sch. 3** (with art. 21)
- F4** Words in reg. 3 substituted (1.4.2008) by [The Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\)](#), art. 1, **Sch. 3** (with art. 21)
- F5** Words in reg. 3 inserted (28.6.2010) by [The Civil Aviation \(Working Time\) \(Amendment\) Regulations 2010 \(S.I. 2010/1226\)](#), regs. 1, **2(3)(b)**
- F6** Words in reg. 3 omitted (28.6.2010) by virtue of [The Civil Aviation \(Working Time\) \(Amendment\) Regulations 2010 \(S.I. 2010/1226\)](#), regs. 1, **2(3)(c)**
- F7** Words in reg. 3 inserted (28.6.2010) by [The Civil Aviation \(Working Time\) \(Amendment\) Regulations 2010 \(S.I. 2010/1226\)](#), regs. 1, **2(3)(c)**
- F8** Words in reg. 3 substituted (28.6.2010) by [The Civil Aviation \(Working Time\) \(Amendment\) Regulations 2010 \(S.I. 2010/1226\)](#), regs. 1, **2(3)(d)**
- F9** Word in reg. 3 revoked (28.6.2010) by [The Civil Aviation \(Working Time\) \(Amendment\) Regulations 2010 \(S.I. 2010/1226\)](#), regs. 1, **2(3)(e)(i)**
- F10** Words in reg. 3 inserted (28.6.2010) by [The Civil Aviation \(Working Time\) \(Amendment\) Regulations 2010 \(S.I. 2010/1226\)](#), regs. 1, **2(3)(e)(ii)**

### Marginal Citations

- M3** 1974 c. 37.
- M4** 1992 c. 52.
- M5** [S.I. 1998/2795](#). Article 3 of this Order establishes the Health and Safety Executive of Northern Ireland which was previously known as the Health and Safety Agency for Northern Ireland which was established under article 12 of [S.I. 1978/1039](#).

*Status: Point in time view as at 06/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the The Civil Aviation (Working Time) Regulations 2004. (See end of Document for details)*

### Entitlement to annual leave

4.—(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 regulation—

- (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

5.—(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 paragraph (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 without that crew member's consent in writing.

(3) A registered medical practitioner who makes a health assessment referred to in paragraph (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 paragraph (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 paragraph (1)—

- (a) may be conducted within the National Health Service, and
- (b) is free if it is undertaken at no cost to the crew member to whom it relates.

(6) For the purposes of this regulation, a crew member works during night time when he works at any time between the hours of 2.00 am and 4.59 am local mean time; <sup>F11</sup>...

#### Textual Amendments

**F11** Words in reg. 5(6) omitted (28.6.2010) by virtue of [The Civil Aviation \(Working Time\) \(Amendment\) Regulations 2010 \(S.I. 2010/1226\)](#), regs. 1, 2(4)

### Health and safety protection at work

6. 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 employment.

### Pattern of work

7.—(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 paragraph (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

8.—(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

9. 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.

### [<sup>F12</sup>Standby time

9A.—(1) For the purpose of calculating the total annual working time under regulation 9(b), time spent by a crew member on standby is to count in full as working time except where paragraph (2) or (3) applies, when it is to count as half the time spent.

(2) This paragraph applies where the period of notice given by the employer to the crew member before the crew member must report for duty is at least 2 hours 15 minutes.

(3) This paragraph applies where time spent by the crew on standby—

- (a) is spent—
  - (i) at home,
  - (ii) in accommodation provided by the employer away from the place where the crew member is next required to report for duty, or
  - (iii) in other accommodation arranged by the crew member to stay in while temporarily deployed away from home; and
- (b) is between the hours of 10.00 pm and 8.00 am local mean time, and during that time the crew member—
  - (i) can take undisturbed rest, and
  - (ii) is not called upon to report for duty.]

*Status: Point in time view as at 06/04/2014.*

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### Textual Amendments

**F12** Reg. 9A inserted (28.6.2010) by [The Civil Aviation \(Working Time\) \(Amendment\) Regulations 2010 \(S.I. 2010/1226\)](#), regs. 1, **2(5)**

### Rest days

**10.**—(1) Without prejudice to regulation 4, 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.

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

- (a) not less than 7 days in each month during which a crew member works for his employer, which may include any rest periods required under [<sup>F13</sup>a scheme referred to in article 145(1) or 149 of the Air Navigation Order 2009]; and
- (b) not less than 96 days in each calendar year during which a crew member works for his employer, which may include any rest periods required under [<sup>F13</sup>a scheme referred to in article 145(1) or 149 of the Air Navigation Order 2009].

### Textual Amendments

**F13** Words in reg. 10(2)(a)(b) substituted (28.6.2010) by [The Civil Aviation \(Working Time\) \(Amendment\) Regulations 2010 \(S.I. 2010/1226\)](#), regs. 1, **2(6)**

### Enforcement

**11.** The provisions of Schedule 2 to these Regulations shall apply in relation to the enforcement of the relevant requirements.

### Offences

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

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

(3) It is an offence for a person—

- (a) to contravene any requirement imposed by an inspector under paragraph 2 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 2(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 3 and 4 of 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 8 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 paragraph (1) shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (5) A person guilty of an offence under paragraph (3)(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 paragraph (3)(c) shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months, or a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine or both.
- (7) A person guilty of an offence under paragraph (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—
    - (i) if the offence is under paragraph (3)(e), to imprisonment for a term not exceeding two years or a fine or both,
    - (ii) if the offence is under paragraph (3)(a) or (f), to a fine.
- (8) The provisions set out in regulations 13 to 17 shall apply in relation to the offences provided for in paragraphs (1) and (3).

#### **Offences due to fault of other person**

**13.** 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 regulation whether or not proceedings are taken against the first mentioned person.

#### **Offences by bodies corporate**

**14.—(1)** Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the preceding paragraph shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### **Restriction on institution of proceedings in England and Wales**

**15.** Proceedings for an offence shall not be instituted in England or Wales except by an inspector or by, or with the consent of, the Director of Public Prosecutions.

#### **Prosecution by inspectors**

**16.—(1)** If authorised in that behalf by the CAA, an inspector may prosecute proceedings for an offence before a magistrates' court even though the inspector is not of counsel or a solicitor.

(2) This regulation shall not apply in Scotland.

*Status: Point in time view as at 06/04/2014.*

*Changes to legislation: There are currently no known outstanding effects for the The Civil Aviation (Working Time) Regulations 2004. (See end of Document for details)*

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

17.—(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 paragraph (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 paragraph (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 paragraph (3).

### **Remedies**

18.—(1) A crew member may present a complaint to an employment tribunal that his employer has refused to permit him to exercise any right he has under regulation 4, 5(1), (4), 7(1) or 7(2)(b).

(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—

(i) that the exercise of the right should have been permitted (or in the case of a rest period or annual leave extending over more than one day, the date on which it should have been permitted to begin), or

(ii) the payment under regulation 4(2)(b) should have been made;

as the case may be; or

(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>F14</sup>(2A) Regulation 19 (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of paragraph (2)(a).]

(3) Where an employment tribunal finds a complaint under regulation 4, 5(1), (4), 7(1) or 7(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.

#### **Textual Amendments**

**F14** Reg. 18(2A) inserted (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. 31](#)



**[<sup>F15</sup>Extension of time limits to facilitate conciliation before institution of proceedings**

**19.**—(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 18(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 18(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 18(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**

**F15** Reg. 19 inserted (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. 32**

Signed by authority of the Secretary of State for Transport

*Tony McNulty*  
Parliamentary Under Secretary of State  
Department for Transport

**Status:** Point in time view as at 06/04/2014.  
**Changes to legislation:** There are currently no known outstanding effects for the The Civil Aviation (Working Time) Regulations 2004. (See end of Document for details)

## SCHEDULE 1

Regulation 3

### WORKFORCE AGREEMENTS

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 individuals 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 individuals employed by him; and
- (e) before the agreement was made available for signature, the employer provided all the employees 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.

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 employees employed by a particular employer, excluding any employee whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement;

“representatives of the group” are employees duly elected to represent the members of a particular group;

“representatives of the workforce” are employees 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.

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 candidates for election as representatives of the group are members of the group;
- (c) no employee 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 employees 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.
4. In this Schedule “employee” means an individual who has entered into or works under a contract of employment.

## SCHEDULE 2

Regulation 11

### ENFORCEMENT

1.—(1) The CAA may appoint as inspectors (under whatever title it may from time to time determine) such persons having suitable qualifications as it thinks necessary for carrying into effect these Regulations, and may terminate any appointment made under this paragraph.

(2) Every appointment of a person as an inspector under this paragraph shall be made by an instrument in writing specifying which of the powers conferred on inspectors by these Regulations are to be exercisable by the person appointed; and an inspector shall in right of his appointment under this paragraph—

- (a) be entitled to exercise only such of those powers as are so specified; and
- (b) be entitled to exercise the powers so specified only within the field of responsibility of the CAA.

(3) So much of an inspector’s instrument of appointment as specifies the powers which he is entitled to exercise may be varied by the CAA.

(4) An inspector shall, if so required when exercising or seeking to exercise any power conferred on him by these Regulations, produce his instrument of appointment or a duly authenticated copy thereof.

2.—(1) Subject to the provisions of paragraph 1 and 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 CAA; and
  - (ii) any equipment or material required for any purpose for which the power of entry is being exercised;

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- (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 High Court or, as the case may be, an order for the production of documents in an action in the Court of Session.

**3.** 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 (6) as may be specified in the notice.

**4.—(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.

**5.—(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 3 or paragraph 4(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.

**6.—(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.

**7.** Where an action has been brought against an inspector in respect of an act done in the execution or purported execution of these Regulations and the circumstances are such that he is not legally entitled to require the CAA to indemnify him, then the CAA may, nevertheless, indemnify him against the whole or any part of any damages or costs or expenses which he may have been ordered to pay or may have incurred, if the CAA is satisfied that the inspector honestly believed that the act complained of was within his powers and that his duty as an inspector required or entitled him to do it.

**8.—(1)** In this paragraph—

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“relevant information” means information obtained by an inspector in pursuance of a requirement imposed under paragraph 2; and

“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; and

“relevant statutory provisions” means—

- (a) the provisions of the 1974 Act and any regulations made under powers contained in that Act; and
- (b) while and to the extent that they remain in force, the provisions of the Acts mentioned in Schedule 1 to the 1974 Act and which are specified in the third column of that Schedule and the regulations, orders or other instruments of a legislative character made or having effect under a provision so specified.

(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 <sup>F16</sup>... the Executive, a government department, or the CAA;
- (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 constable authorised by a chief officer of police 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.

[<sup>F17</sup>(4) In the preceding paragraph, any reference to the Executive, the CAA or a government department includes respectively a reference to an officer of that body, and also, in the case of a reference to the Executive, includes a reference to—

- (a) a person performing any of the functions of the Executive by virtue of section 13(3) of the 1974 Act;
- (b) an officer of a body which is so performing any such functions; and
- (c) an adviser appointed in pursuance of section 13(7) of the 1974 Act.]

(5) 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 <sup>F18</sup>... the Executive, a government department, or the CAA in question in connection with these Regulations or with the relevant statutory provisions, as the case may be;
- (b) in the case of information given to a constable, the purposes of the police in connection with these Regulations, the relevant statutory provisions or any enactment whatsoever relating to working time.

(6) A person shall not disclose any information obtained by him as a result of the exercise of any power conferred by paragraph 2 (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 2, 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.

(7) Notwithstanding anything in the preceding sub-paragraph 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.

(8) Notwithstanding anything in sub-paragraph (6), 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.

#### Textual Amendments

- F16** Words in Sch. 2 para. 8(3)(a) omitted (1.4.2008) by virtue of [The Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\)](#), art. 1, **Sch. 3** (with art. 21)
- F17** Sch. 2 para. 8(4) substituted (1.4.2008) by [The Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\)](#), art. 1, **Sch. 3** (with art. 21)
- F18** Words in Sch. 2 para. 8(5)(a) omitted (1.4.2008) by virtue of [The Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\)](#), art. 1, **Sch. 3** (with art. 21)

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement the provisions of Council Directive [2000/79/EC](#) concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Worker’s Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) (OJ L 302, 1.12.2000, p. 57).

Regulations 5(2), 6, 7(2)(a) and 8 to 10 in these Regulations impose obligations enforceable by the Civil Aviation Authority; failure to comply is an offence. The obligations concern the wrongful disclosure of a health assessment, the maximum annual working time of crew members, the provision or crew members of adequate health and safety protection services and facilities at work along with adequate rest breaks to be given to crew members where work is organised in a certain

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pattern. Crew members are also entitled to a minimum number of rest days, free from all duties, in every calendar month and year and employers are obliged to provide information on the working patterns of crew members which must be kept for not less than two years. The term crew member is defined in regulation 3.

Regulations 4, 5(1), (4) and 7(1) and (2)(b) confer rights on crew members, enforceable by proceedings before employment tribunals. The rights establish a crew members' entitlement to annual leave, a free health assessment prior to starting work and at regular intervals thereafter as well as the right to be moved from night work to more suitable work if that assessment reveals health problems due to working at night. Employers are also obliged to consider adapting a crew member's work and offering him alternative work if he organises work according to a certain pattern.

The remaining regulations make provision for definitions, for medical practitioners to advise employers where an employee is suffering from health problems, for enforcement and remedies (regulations 3, 5(3), 11 to 18).

A Regulatory Impact Assessment has been produced and a copy placed in the library of both Houses of Parliament. Copies may be obtained from the Department for Transport, 76 Marsham Street, London SW1P 4DR. Alternatively copies can be obtained from the Department for Transport's website which is at [www.dft.gov.uk](http://www.dft.gov.uk).

A transposition note has been prepared and copies may be obtained from the Department for Transport, 76 Marsham Street, London SW1P 4DR.



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