

EXPLANATORY MEMORANDUM TO
THE WORKING TIME (AMENDMENT) (NO. 2) REGULATIONS 2006

2006 No. 2389

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of her Majesty.

2. Description

2.1 The instrument amends the Working Time Regulations 1998 (S.I. 1998/1833) by inserting a phrase to confirm, for the avoidance of doubt only, that the definition of offshore work includes work in the British sector of the Continental Shelf as well as within territorial waters.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 – The Working Time (Amendment) Regulations 2003 (S.I. 2003/1684) amended the Working Time Regulations 1998, implementing Council Directive 2000/34/EC which, among other things, extended working time protections to sectors and activities which were previously excluded from the scope of the 1993 Directive. They included offshore work, defined as work performed mainly on or from offshore installations (including drilling rigs), directly or indirectly in connection with the exploration, extraction or exploitation of mineral resources, including hydrocarbons, and diving in connection with such activities, whether performed from an offshore installation or a vessel.

5. Extent

5.1 This instrument extends to Great Britain.

6. European Convention on Human Rights

6.1

Jim Fitzpatrick MP, the Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs, has made the following statement regarding Human Rights:

In my view the provisions of the Working Time (Amendment) (No. 2) Regulations 2006 are compatible with the Convention rights.

7. Policy Background

- 7.1 When the regulations were introduced, and during the consultation, no distinction was made between offshore workers working in territorial waters and those on the UK part of the Continental Shelf. Clearly the Directive was intended to apply to offshore work on the Continental Shelf otherwise the extension of the Directive would have been something of a nullity as practically all offshore work is carried out beyond territorial waters. The additional costs were taken into account in the associated Regulatory Impact Assessment on this basis.
- 7.2 In 2005, around 300 offshore workers filed applications with the Aberdeen Employment Tribunal office in connection with their entitlement to paid annual leave. In a pre hearing, the employers involved argued that the tribunal had no jurisdiction to hear the claims because the Working Time Regulations did not extend to the UK sector of the Continental Shelf, where the applicants performed the work in question. In its judgment of May 2005, the Employment Tribunal ruled that the Working Time Regulations 1998 applied to offshore work on the Continental Shelf as well as in GB territorial waters. The employers involved appealed against this judgment and their appeal to the Employment Appeal Tribunal should be heard in October 2006.
- 7.3 If the appeal on the jurisdiction issue is maintained through all the stages of the appeal process it will take considerable time to resolve this matter.
- 7.4 While the Government does not believe the current regulations are inadequate, it would like to avoid future uncertainty that the employers' legal action is creating and protracted legal consideration of the jurisdiction point. Therefore this small change to the law is made for the avoidance of doubt in the future. This change does not alter existing rights and obligations for workers or employers.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument given it is a technical amendment. The additional costs of extending the scope of the Working Time Regulations to offshore work in GB waters and the UK part of the Continental Shelf was taken into account in the original RIA.

9. Contact

- 9.1 Karen Wilshaw at the Department of Trade and Industry (Telephone 020 7 215 2849); (email: Karen.Wilshaw@dti.gsi.gov.uk) can answer queries about this instrument.