

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (WORKING TIME: INLAND WATERWAYS)
(AMENDMENT) REGULATIONS 2017

2017 No. 1149

1. Introduction

1.1 This explanatory memorandum has been prepared by the Maritime and Coastguard Agency and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument implements Directive 2014/112/EU¹, which implements the European sectoral social partners' agreement (SPA) on working time for mobile workers in inland waterway transport (IWT). The SPA contains sector specific rules on daily, weekly and annual work limits, rest periods, rest days, night work, annual leave, patterns of work, health assessments and record keeping.

2.2 On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the United Kingdom remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The outcome of these negotiations will determine what arrangements apply in relation to EU legislation in future once the United Kingdom has left the EU.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and is not expected to be prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The working time of workers in the European Union is regulated by Directive 2003/88/EC, which lays down common minimum standards, including daily and weekly work and rest limits, night work and annual leave. However that Directive allows for more specific rules to be made for specific sectors. Directive 2014/112/EC provides those sector-specific rules for mobile workers on inland waterways by virtue of a sectoral SPA. The SPA is intended to harmonise working time rules to facilitate cross-border operations on inland waterways. It recognises the particular characteristics of inland waterway transport operations, including where mobile workers live on board inland waterway vessels for extended periods, and provides

¹ Directive 2014/112/EU of the European Parliament and of the Council of 19 December 2014 concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF)

safeguards to protect the health and safety of these workers. It also provides flexibility for seasonal peaks and troughs in commercial transport operations.

- 4.2 The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003² ('the 2003 Regulations') implemented the requirements of Directive 2003/88/EC for mobile workers on inland waterways. The instrument amends those Regulations to comply fully with Directive 2014/112/EU.
- 4.3 The proposal that resulted in Directive 2014/112/EU was the subject of Explanatory Memorandum ('EM') 11688/14, submitted by the Department for Transport on 30 July 2014.
- 4.4 The House of Commons European Scrutiny Committee considered the EM on 3 September 2014. The Committee recommended that the proposal was politically important and held it under scrutiny pending further information and developments (Report 9, Session 2014-15, Committee reference 36216).
- 4.5 The Chairman of the House of Lords Select Committee on the European Union considered EM 11688/14 at the 1555th Chairman's sif on 12 August 2014 and referred it to Sub-Committee B.
- 4.6 Further information on developments was provided to both Committees by Ministerial letters on 9 October 2014, 27 November 2014 and 15 January 2015. The House of Commons European Scrutiny Committee cleared the proposal from scrutiny on 20 January 2015 (Report 30, Session 2014-15). The House of Lords Select Committee on the European Union cleared it by letter from the Chairman on 19 November 2014.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is all ships ordinarily operating within inland waterways in the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

- 7.1 The objectives of the SPA are:
 - to allow more flexibility for the operations in IWT to balance between periods of high and low work load;
 - to ensure minimum health and safety protection for all mobile workers in the sector;
 - to facilitate enforcement of working time rules in particular in cross-border situations.
- 7.2 The provisions were drawn up by the sectoral Social Partners, the European Barge Union, the European Skippers Organisation and the European Transport Workers Federation, as a SPA in accordance with Article 155(2) of the Treaty on the Functioning of the European Union.

² S.I. No. 2003/3049

- 7.3 The SPA is intended to apply to all mobile workers, whether members of the navigational crew or other shipboard personnel (such as “hotel” staff on large passenger ships). It also applies to all commercial transport operations (cargo and passengers), and there are specific provisions for passenger ships including alternative rules to be applied during the tourist season (which provide for slightly more stringent working time limits, but allow for earned rest days to be deferred). However, those who own and operate their own vessel are not covered – thereby excluding the small number of traditional narrow boats in the United Kingdom operating commercially or semi-commercially.
- 7.4 Young persons (workers under the age of 18) are protected by Directive 1994/33/EC which was implemented in the United Kingdom by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998 (S.I. 1998/2411). Those regulations include some provisions on minimum rest for young persons. The instrument applies to young persons except where the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998 give a higher level of protection. The regulations which do not apply to young persons are set out in regulation 3(2) of the 2003 Regulations (as inserted by regulation 5 of the instrument).
- 7.5 The rules implemented by the Directive are based around a standard daily working time of eight hours, an average weekly working time of 48 hours, and four weeks of paid leave. This is used to calculate the maximum annual working time of 2304 hours. However, the average weekly working time may be calculated over a “reference period” of up to 52 weeks. For that calculation, annual leave, additional leave (as described in paragraph 7.7), and public holidays (to the extent that they are not already included in annual leave or additional leave) are all excluded days (as well as any sick leave, maternity, paternity, adoption or parental leave taken by the worker). Within that reference period, there is a maximum working day of 14 hours, and maximum working week of 84 hours (72 hours on passenger vessels). A maximum of 31 days can be worked consecutively, and rules are laid down regarding rest days (which are non-working days which are separate from annual leave). Minimum daily and weekly rest periods are also specified. Provision is made allowing the master to require workers to work any hours necessary in an emergency situation.
- 7.6 Special protection is provided for those who work at night, by limiting maximum hours worked at night and requiring a health assessment for those moved from day work to night work.
- 7.7 The minimum period of paid annual leave is set at four weeks. The instrument provides for an additional entitlement of 1.6 weeks of leave in each leave year, in line with other workers in the United Kingdom which recognises that it is appropriate to give leave in respect of public holidays. Both entitlements are calculated pro rata for periods of less than one year. For those whose leave year has started before this instrument comes into force, their entitlement to additional leave in the current leave year is calculated pro rata for the remainder of the leave year after the coming into force date.
- 7.8 Requirements are imposed for record keeping to allow compliance to be checked.
- 7.9 All mobile workers on inland waterways are given the right to an annual free health assessment, and general provisions are included to ensure the health and safety protection of night workers and shift workers. The results of the health assessment (other than a statement that the assessment shows the worker to be fit) are confidential. The instrument contains no specific offences for failure to respect that confidentiality. However, processing of personal data and/or sensitive data must

comply with the Data Protection Act 1998 and any unauthorised disclosure of such data could be the subject of enforcement proceedings by an affected worker under that Act.

Consolidation

- 7.10 This is the first substantive amendment to the 2003 Regulations. There is no intention currently to consolidate the Regulations.

8. Consultation

- 8.1 Discussions have been held with the Domestic Passenger Ship Steering Group, the Maritime and Coastguard Agency's consultative body, the Commercial Boat Operators' Association and with representatives of the seafarer unions both during negotiation of Directive 2014/112/EU and since its adoption, including consideration of the likely impacts of the measures.
- 8.2 Formal public consultation ran from 26 January to 10 March 2017 and the consultation documents and a summary of responses can be viewed at <https://www.gov.uk/government/consultations/consultation-on-proposed-merchant-shipping-working-time-inland-waterways-amendment-regulations-2016>
- 8.3 There were seven substantive written responses to the consultation, mainly from trade associations and unions. The majority of those responses commenting on the proposed increase in paid annual leave, in line with other sectors in the United Kingdom, supported the proposal. Many of the comments made related to the guidance supporting the legislation and these have been taken on board in finalising that guidance. Others commented on the impact of the instrument – see Section 10.

9. Guidance

- 9.1 In line with usual practice, Merchant Shipping Notice MSN 1876 (M), produced by the Maritime and Coastguard Agency, has been issued to industry and includes guidance on the requirements of this instrument. This will be kept under review in the light of industry experience implementing the requirements of the instrument.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is low overall. Costs would primarily impact employers. Some workers may be limited as to the hours they can work and therefore may lose earnings.
- 10.2 Costs would arise from:
- the possible need for additional crew member where minimum hours of rest might otherwise be breached in tidal rivers;
 - the larger pool of crew needed for vessels to ensure compliance with prescribed patterns of work days and rest days;
 - the larger pool of crew needed for those operating at night to keep individual night work below limits;
 - health assessments for all mobile workers; and
 - record keeping.
- 10.3 The current regime for inland waterways and for other working time regimes is for health assessment where workers transfer from day work to night work. The costs arising under the fourth bullet above are because the SPA entitles all workers to have a free annual health assessment. This is an administrative burden which does not apply to other sectors. Guidance emphasises that best practice in the United Kingdom makes

health assessments for fitness for night work a relatively low-cost exercise, based on self-assessment, with only those identifying relevant health problems being referred to medical professionals. This approach is in line with the Health and Safety Executive's guidance on health surveillance and is intended to minimise the adverse impact of the SPA requirement by addressing an identified risk to health.

- 10.4 Records of hours worked are required to be kept under the 2003 Regulations. The costs referred to in the fifth bullet in paragraph 10.2 relate to the additional administrative costs for larger companies which may occur as a result of the new requirements for monthly endorsement by the employer and the worker, and the requirement for workers to be given a copy of their hours of work record each month.
- 10.5 No evidence was provided by consultees of additional costs arising from provision of additional leave in respect of public holidays, which brings this sector into line with the statutory entitlement for workers in other sectors.
- 10.6 For workers currently working excessive hours, the instrument will provide health and welfare benefits arising from the tighter controls on their working hours.
- 10.7 The impact on the public sector is considered to be minimal as reviewing the application of the provisions of the instrument on ships will be carried out as part of the Maritime and Coastguard Agency's normal survey regime.
- 10.8 An impact assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is make maximum use of any flexibility to minimise the impacts on any business where there is a low risk to health and safety from patterns of work. There is little scope for specific measures to reduce the impact of the requirements on firms employing up to 50 people because working time legislation is required to be applied to all workers irrespective of the size of the company employing them.

12. Monitoring & review

- 12.1 The Maritime and Coastguard Agency will evaluate how the instrument has impacted on working practices through consultation with industry using the representative organisations referred to in section 8.
- 12.2 The instrument contains a statutory review clause requiring the Secretary of State to review the operation of the amended 2003 Regulations three years after the current instrument comes into force and at five yearly intervals thereafter. The first statutory review period has been set at three years, rather than the usual five years, to provide for an early assessment of the expected impacts explained in section 10 of this Explanatory Memorandum, and an opportunity to streamline or refine requirements and guidance in the light of experience. In particular, the review will consider alternatives to criminal sanctions in these and other regulations governing working time in the maritime sector.

13. Contact

- 13.1 Julie Carlton at the Maritime and Coastguard Agency, Telephone: 020 3817 2498 or email: Julie.Carlton@mcga.gov.uk can answer any queries regarding the instrument.