



STATUTORY INSTRUMENTS.

S.I. No. 245 of 2014

EUROPEAN COMMUNITIES (MERCHANT SHIPPING)
(ORGANISATION OF WORKING TIME) (AMENDMENT)
REGULATIONS 2014

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I, LEO VARADKAR, Minister for Transport, Tourism and Sport, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Council Directive 2009/13/EC of 16 February 2009¹ and certain provisions of Article 15 of Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008² and to give further effect to Council Directive 1999/63/EC of 21 June 1999³, hereby make the following regulations:

1. (1) These Regulations may be cited as the European Communities (Merchant Shipping) (Organisation of Working Time) (Amendment) Regulations 2014.

(2) These Regulations come into operation on 4 July 2014.

2. The European Communities (Merchant Shipping) (Organisation of Working Time) Regulations 2003 (S.I. No. 532 of 2003) are amended—

(a) by the substitution of the following for Regulation 2:

“2. (1) In these Regulations—

‘Act of 1992’ means the Merchant Shipping Act 1992 (No. 2 of 1992);

‘Act of 1996’ means the Protection of Young Persons (Employment) Act 1996 (No. 16 of 1996);

‘Act of 2010’ means the Merchant Shipping Act 2010 (No. 14 of 2010);

‘authorised officer’ means a person appointed under Regulation 11;

‘Competent Authority’ means that part of the Department of Transport, Tourism and Sport which is known as the Marine Survey Office;

‘complaint’ means any information or report submitted by a seafarer, a professional body, an association, a trade union or, generally any person with an interest in the safety of the ship, including an interest in the safety or health of seafarers;

¹OJ No. L 124, 20.5.2009, p. 30

²OJ No. L 323, 3.12.2008, p. 33

³OJ No. L 167, 2.7.1999, p. 33

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 10th June, 2014.*

‘Directive’ means, as the context admits or requires, Directive 1999/63/EC, Directive 1999/95/EC, Directive 2009/13/EC or STCW Directive and a reference to the Directives is a reference to each of them;

‘Directive 1999/63/EC’ means Council Directive 1999/63/EC of 21 June 1999³;

‘Directive 1999/95/EC’ means Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999⁴;

‘Directive 2009/13/EC’ means Council Directive 2009/13/EC of 16 February 2009¹;

‘fishing vessel’ means a vessel designed, equipped or used commercially for catching or taking fish or other living resources of the sea (including sea bed) or freshwater;

‘hours of rest’ means time outside hours of work and does not include short breaks;

‘hours of work’ means any time during which a seafarer is required to do work on the business of, or in connection with, a ship;

‘Irish ship’ has the same meaning as it has in the Act of 2010;

‘Marine Notice’ means a notice described as such, issued by the Minister, and any reference to a particular Marine Notice includes a reference to that notice as amended or replaced from time to time;

‘master’, in relation to a ship, has the same meaning as it has in the Act of 2010;

‘Minister’ means the Minister for Transport, Tourism and Sport;

‘partially smooth waters’ means the areas of water so specified in a Marine Notice within the period or periods, if any, specified therein;

‘Regulations of 2011’ means the European Communities (Passenger Ships) Regulations 2011 (S.I. No. 322 of 2011);

‘scheduled hours of rest’ means hours of rest scheduled in a table under Regulation 7;

‘seafarer’ means a person, including the master, who is employed, engaged or works in any capacity on board a ship and whose normal place of work is on the ship but does not include a person who is a pilot within the meaning of the Harbours Act 1996 (No. 11 of 1996);

‘seagoing’, in relation to a ship, means—

⁴OJ No. L 14, 20.1.2000, p. 29

- (a) a ship in respect of which a certificate is required to be in force in accordance with the Merchant Shipping (Load Lines) Act 1968 (No. 17 of 1968),
- (b) a passenger boat that proceeds to sea of Class P3, P4, P5 or P6 in respect of which a passenger boat licence is required to be in force in accordance with the Act of 1992,
- (c) a passenger ship of Class I, II, II(A), III or VI in respect of which a passenger ship certificate is required to be in force in accordance with the Act of 1992,
- (d) a passenger ship of Class A, B, C or D in respect of which a passenger ship safety certificate is required to be in force in accordance with the Regulations of 2011,
- (e) a high-speed passenger craft in respect of which a High Speed Craft Safety Certificate and a Permit to Operate High Speed Craft outside waters of Categories A, B, C or D are required to be in force in accordance with the Regulations of 2011,
- (f) a Dynamically Supported Craft (“DSC”) in respect of which a DSC Construction and Equipment Certificate, and a DSC Permit to Operate High Speed Craft outside waters of Categories A, B, C or D are required to be in force in accordance with the Regulations of 2011, or
- (g) any other ship that proceeds to sea beyond the limits of smooth or partially smooth waters;

‘ship’ means any vessel, whether publicly or privately owned, which is ordinarily engaged in commercial operations, being a vessel other than a fishing vessel, warship or naval auxiliary;

‘shipowner’, in relation to a ship, means the owner of the ship or any other organisation or person, such as the manager or bareboat charterer, who has assumed responsibility for the operation of the ship from the owner, and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with the Directives;

‘smooth waters’ means any areas of water not being to sea or partially smooth waters, and in particular, the areas of water specified in a Marine Notice;

‘STCW Directive’ means Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008² as amended by Directive 2012/35/EU of the European Parliament and of the Council of 21 November 2012⁵;

⁵OJ No. L 343, 14.12.2012, p. 78

(2) A word or expression that is used in these Regulations and is also used in a Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Directive.”,

(b) by the substitution of the following for Regulation 3:

“3. (1) These Regulations apply to—

(a) seagoing Irish ships wherever they may be, and

(b) ships (other than ships referred to in subparagraph (a)), when in a port in the State.

(2) For the purposes of these Regulations, a ship that is registered in two or more states is deemed to be registered in the territory of the state whose flag the ship flies.”,

(c) by the insertion of the following Regulation after Regulation 4:

“Minimum age

4A. (1) Notwithstanding the provisions of the Act of 1996 or Regulations made under that Act, a person under the age of 16 years shall not be employed on a ship to which these Regulations apply.

(2) No seafarer under the age of 18 years shall be employed or engaged in duties on board a ship to which these Regulations apply that are likely to cause a risk to his or her health or safety”,

(d) in Regulation 6—

(i) by the substitution of the following for paragraph (1)(b):

“(b) 77 hours in any 7 day period.”, and

(ii) by the insertion of the following paragraph after paragraph (4):

“(5) The Competent Authority may, in accordance with paragraph 11 of Article 15 of the STCW Directive, permit exceptions to the limits set out in paragraphs (1)(b) and (2) but only if—

(a) the rest period is not less than 70 hours in any 7 day period,

(b) the exceptions are within the limits set out in paragraphs 12 and 13 of Article 15 of the STCW Directive, and

(c) are otherwise in accordance with paragraph 11 of Article 15.”,

(e) by the insertion of the following Regulation after Regulation 6:

“Night work

6A. (1) Notwithstanding section 6(1)(b)(i) of the Act of 1996 and subject to paragraph (2), no seafarer under the age of 18 years shall work at night.

(2) A seafarer who is 16 or 17 years of age may be required to work at night if—

(a) the work forms part of an established training programme the effectiveness of which would be impaired by the prohibition in paragraph (1), or

(b) the specific nature of the duty or an established training programme requires such a seafarer to perform duties at night.

(3) The shipowner and the master shall ensure that a seafarer who is 16 or 17 years of age and is required to work at night is allowed equivalent compensatory rest time.

(4) In this Regulation, “night” means a period the duration of which is not less than 9 consecutive hours and which includes a period of 6 hours commencing not later than 11 p.m. on any one day.”,

(f) in Regulation 7(2)(c) by the substitution of “a Marine Notice” for “Schedule 1”,

(g) in Regulation 9—

(i) in paragraph (2)(b) by the substitution of “a Marine Notice” for “Schedule 2”,

(ii) in paragraph (4) by the substitution of the following for that paragraph:

“(4) The records referred to in paragraph (1) shall be retained for at least three years from the date of their making. If during that period, ownership of the ship changes then the duty to preserve records shall be on the shipowner for the time being or, if the ship ceases to be an Irish ship, on the last owner before the ship ceased to be an Irish ship.”, and

(iii) in paragraph (5) by the substitution of “an Irish ship” for “a ship registered in the State”,

(h) in Regulation 10 by the insertion of the following paragraph after paragraph (2):

“(3) In paragraph (2) ‘registered medical practitioner’ means a medical practitioner registered on the General Register of Medical Practitioners under the Medical Practitioners Act 2007.”,

(i) by the insertion of the following Regulation after Regulation 10:

“Entitlement to annual leave

10A. (1) Notwithstanding section 19 of the Organisation of Working Time Act 1997 (No. 20 of 1997), a seafarer is entitled to paid annual leave calculated on the basis of a minimum of 2 and a half calendar days per month of employment and on a pro rata basis for incomplete months.

(2) Annual leave to which a seafarer is entitled under this Regulation may not be replaced by a payment in lieu except where the seafarer’s employment is terminated.”,

(j) by the substitution of the following for Regulation 13:

“Inspection of Irish ships

13. (1) An authorised officer may inspect any seagoing Irish ship to satisfy himself or herself as to compliance with these Regulations.

(2) Where an authorised officer is satisfied that there has been a failure to comply, in relation to a ship, with any of the requirements of Regulation 4A, 5, 6, 6A, 7, 9 or 10A, the authorised officer—

(a) shall take such measures as he or she believes necessary so as to ensure compliance with the relevant Regulation or to avoid future infringements, and

(b) may detain the ship.

(3) An authorised officer shall not, in the exercise of his or her powers under this Regulation, unreasonably detain or delay the ship.”,

(k) in Regulation 14—

(i) in paragraph (1) by the substitution of “an Irish ship” for “a ship registered in the State”,

(ii) in paragraph (1)(a) by the substitution of “a Marine Notice” for “Schedule 1”,

(iii) in paragraph (1)(c) by the substitution of “a Marine Notice” for “Schedule 2”, and

(iv) in paragraph (2) by the substitution of “(in this Regulation referred to as a ‘relevant complaint’)” for “(a ‘relevant complaint’)”,

(l) in Regulation 18 by renumbering the existing provision as paragraph (1) and by the insertion of the following paragraph after that paragraph:

“(2) ‘Port Authorities’ means companies established pursuant to the Harbours Act 1996 (No. 11 of 1996) and harbour authorities within the meaning of the Harbours Act 1946 (No. 9 of 1946).”

(m) in Regulation 19 by the substitution of the following for paragraph (1):

“(1) A person being—

(a) the master of a ship who fails to comply with Regulation 5(1)(a) or (b), 6A(1) or (3), 7(1), 8(3), 9(1), (3) or (6),

(b) a person authorised by the master of a ship who fails to comply with Regulation 9(1) or (3), or

(c) a shipowner who fails to comply with Regulation 4A, 5(1)(a) or (b), 5(2), 6A(1) or (3), 9(1), (4), (6), 10(1) or 10A,

is guilty of an offence.”

(n) by the substitution of the following for Regulation 21:

“*Penalties*

21. A person who is guilty of an offence under these Regulations is liable on summary conviction to a class A fine.”, and

(o) by the deletion of Schedule 1 and Schedule 2.



GIVEN under my Official Seal,
4 June 2014.

LEO VARADKAR,
Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations:

- (a) implement the provisions of Council Directive 2009/13/EC implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC;
- (b) give further effect to Council Directive 1999/63/EC concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST); and
- (c) implement certain provisions of Article 15 of Directive 2008/106/EC of the European Parliament and of the Council on the minimum level of training of seafarers (as amended by Directive 2012/35/EU).

These Regulations amend the European Communities (Merchant Shipping) (Organisation of Working Time) Regulations 2003.

These Regulations provide seafarers with an entitlement to specified minimum hours of rest, require records to be kept of seafarers' daily hours of rest and provide for the enforcement of the Regulations. They also provide for a minimum age for seafarers working on ships to which the Regulations apply, set out the conditions under which seafarers under the age of 18 may work at night, and provide for annual leave entitlements for seafarers, as set out in the Maritime Labour Convention, 2006 and in Council Directive 2009/13/EC.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
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