



STATUTORY INSTRUMENTS.

S.I. No. 392 of 2022



EUROPEAN UNION (ORGANISATION OF WORKING TIME IN INLAND
WATERWAY TRANSPORT) REGULATIONS 2022

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Record of daily hours of work and rest on board craft

S.I. No. 392 of 2022

EUROPEAN UNION (ORGANISATION OF WORKING TIME IN INLAND WATERWAY TRANSPORT) REGULATIONS 2022

I, EAMON RYAN, Minister for Transport, 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 2014/112/EU of 19 December 2014¹, insofar as it relates to certain aspects of the organisation of working time in inland waterway transport, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Organisation of Working Time in Inland Waterway Transport) Regulations 2022.

Interpretation

2. (1) In these Regulations –

“Act of 1996” means the Protection of Young Persons (Employment) Act 1996 (No. 16 of 1996);

“Act of 2005” means the Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005);

“authorised officer” means a person appointed under paragraph (1) or deemed appointed under paragraph (2) of Regulation 17;

“boatmaster” means a deck crew member who has overall responsibility to sail a craft on the Member States’ inland waterways and including for the crew and for the passengers;

“craft” means a vessel or item of floating equipment;

“Directive” means Council Directive 2014/112/EU of 19 December 2014¹;

“inland waterway” means non-tidal waterways, open to navigation by a craft;

“Minister” means the Minister for Transport;

“mobile worker” means any worker employed as a member of travelling personnel by an undertaking which operates transport services for passengers or goods by inland waterway;

“night time” means the time between 23.00 and 06.00;

“night worker” means —

- (a) any worker who normally works at least 3 hours of his or her daily working time during night time, and

¹ OJ L 367, 23.12.2014, p. 86-95

- (b) the number of hours worked by whom during night time, in each year, equals or exceeds 50 percent of the total number of hours worked by him or her during that year;

“rest day” means an uninterrupted rest period of 24 hours which the worker spends in a place of his or her own choosing;

“rest time” means the time outside working time, including rest periods on a moving craft, on a stationary craft, and on land, but does not include short breaks of up to 15 minutes;

“seasonal work” means work undertaken between 1 April and 31 October;

“worker” means a mobile worker;

“work schedule” contains the planned working days and rest days communicated to the worker in advance by the employer;

“working time” means the time during which a worker is scheduled to work or must be available to work (on-call time) on and for the craft on the instructions of the employer or the employer’s representative.

(2) A word or expression which is used in these Regulations and which is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

Scope

3. (1) These Regulations shall apply to workers employed on board a craft operated within the State in the commercial inland waterway transport sector.

(2) Inland waterway transport operators shall not be considered workers within the meaning of these Regulations, even if they have the status of workers in their own undertaking.

(3) Sections 11, 12, 13, 15, 16, 19 and 25 of the Organisation of Working Time Act, 1997 (No. 20 of 1997) do not apply to workers employed on board a craft operated in the commercial inland waterway transport sector.

Working time and reference period

4. (1) Without prejudice to Regulation 6, standard working hours shall be based on an eight-hour day.

(2) Working time may be extended in accordance with Regulation 6 provided that an average of 48 hours per week is not exceeded within 12 months. Periods of annual leave and sick leave shall not be included in the calculation of the average or shall be neutral. Rest time entitlements resulting from statutory public holidays shall also be deducted.

(3) For employment relationships with a duration of less than 12 months, the maximum permissible working time shall be calculated on a *pro rata* basis.

(4) An owner who fails to comply with this Regulation commits an offence and is liable on summary conviction to a class A fine.

Breaks

5. (1) A worker shall not be required to work—
- (a) for a period of more than 4 hours and 30 minutes without being allowed a break of at least 15 minutes, and
 - (b) for a period of more than 6 hours without being allowed a break of at least 30 minutes, which may include the break provided under paragraph (a).
- (2) A break allowed to a worker at the end of the working day shall not be regarded as satisfying the requirements contained in paragraph (1).
- (3) A boatmaster of a craft who fails to comply with this Regulation commits an offence and is liable on summary conviction to a class A fine.

Daily and weekly working time

6. (1) Working time shall not exceed—
- (a) 14 hours in any 24-hour period, and
 - (b) 72 hours in any seven-day period.
- (2) Where the work schedule provides for more working days than rest days, an average weekly working time of 72 hours shall not be exceeded over a four-month period.
- (3) An owner or boatmaster of a craft who fails to comply with this Regulation commits an offence and is liable on summary conviction to a class A fine.

Rest periods

7. (1) Rest periods shall not be less than—
- (a) 10 hours in any 24-hour period, of which at least six hours are uninterrupted, and
 - (b) 84 hours in any seven-day period.
- (2) An owner or boatmaster of a craft who fails to comply with this Regulation commits an offence and is liable on summary conviction to a class A fine.

Working days and rest days

8. (1) Subject to paragraph (2) and Regulation 9, a worker shall, in each period of 7 days, be granted a rest period of at least 24 consecutive hours which shall be immediately preceded by a daily rest period as set out in Regulation 7(1)(a).
- (2) An employer may, in lieu of granting to a worker in any period of 7 days the first-mentioned rest period in paragraph (1), grant to him or her, in the

next following period of 7 days, 2 rest periods each of which shall be a period of at least 24 consecutive hours and,

- (a) if the rest periods so granted are consecutive, the time at which the first of those periods commences shall be such that that period is immediately preceded by a daily rest period as set out in Regulation 7(1)(a), and
- (b) if the rest periods so granted are not consecutive, the time at which each of those periods commences shall be such that each of them is immediately preceded by a daily rest period as set out in Regulation 7(1)(a).

(3) An owner of a craft who fails to comply with this Regulation commits an offence and is liable on summary conviction to a class A fine.

Seasonal work

9. (1) Notwithstanding the requirements set out under Regulations 6, 7 and 8, working time for a worker undertaking seasonal work shall not exceed—

- (a) 12 hours in any 24-hour period, and
- (b) 72 hours in any seven-day period,

and such a worker shall be granted at least two rest days during every period of 31 days, with any remaining rest days to be granted by agreement. A worker shall be credited with 0.2 rest days per working day.

(2) An owner shall ensure that Regulations 4(2) and 4(3) are adhered to when making provision for seasonal work.

(3) An owner who fails to comply with this Regulation commits an offence and is liable on summary conviction to a class A fine.

Maximum working time during night time

10. (1) A worker shall not work more than 7 hours during the night time and no more than 42 hours per seven-day period.

(2) An owner or boatmaster of a craft who fails to comply with this Regulation commits an offence and is liable on summary conviction to a class A fine.

Annual leave

11. (1) A worker shall be entitled to paid annual leave equal to—

- (a) 4 working weeks in a leave year in which he or she works at least 1,365 hours (unless it is a leave year in which he or she changes employment),
- (b) one-third of a working week for each month in the leave year in which he or she works at least 117 hours, or

- (c) 8 per cent of the hours he or she works in a leave year (subject to a maximum of 4 working weeks).

(2) If more than one of the sub-paragraphs of paragraph (1) is applicable and the period of annual leave of the worker, determined in accordance with each of those paragraphs, is not identical, the annual leave to which the worker shall be entitled shall be equal to whichever of those periods is the greater.

(3) A day that a worker was absent from work due to illness shall, if the worker provided to his or her employer a certificate of a registered medical practitioner in respect of that illness, be deemed to be a day on which the worker was —

- (a) at his or her place of work or at his or her employer's disposal, and
- (b) carrying on or performing the activities or duties of his or her work.

(4) A day which would be regarded as a day of annual leave shall, if the worker concerned is ill on that day and furnishes to his or her employer a certificate of a registered medical practitioner in respect of his or her illness, not be regarded, for the purposes of these Regulations, as a day of annual leave.

(5) The annual leave of a worker who works 8 months or more in a leave year shall include an unbroken period of 2 weeks.

(6) References in this Regulation to a working week shall be construed as references to the number of days that the worker concerned usually works in a week.

(7) The minimum period of paid annual leave may not be replaced by payment in lieu, except where the employment relationship is terminated.

(8) An owner of a craft who fails to comply with this Regulation commits an offence and is liable on summary conviction to a class A fine.

Protection of minors

12. (1) Notwithstanding section 3 of the Act of 1996, an owner shall not employ a person under the age of 18 for work on board a craft until that person has reached the age of 16 and is no longer subject to compulsory full-time schooling.

(2) Subject to paragraph (3), an owner shall not require a person under the age of 18 to perform night work on board a craft.

(3) A person over the age of 16 may be permitted to perform night work where there are objective grounds justifying the requirement provided the effective training of the person under an established training programme would be impaired if he or she did not perform night work, and such work will not have a detrimental impact on the person's health or well-being.

(4) The owner shall ensure that a person who is required to perform night work under paragraph (3) receives appropriate compensatory rest.

(5) This Regulation shall apply notwithstanding sections 6(1)(b), 7 and 8 of the Act of 1996.

(6) An owner of a craft who fails to comply with this Regulation commits an offence and is liable on summary conviction to a class A fine.

Maintaining records

13. (1) An owner shall maintain a record of the daily hours of work and rest for every worker on board the craft in the model form detailed in the Schedule.

(2) Each record maintained in accordance with paragraph (1) shall be completed monthly in arrears and shall include at a minimum –

- (a) the name of the craft,
- (b) the name of the worker,
- (c) the name of the competent boatmaster,
- (d) the date,
- (e) working day or rest day, and
- (f) the beginning and end of the daily working and rest periods.

(3) Every record maintained in accordance with paragraph (1) shall be endorsed by the boatmaster, or a person authorised by the boatmaster, and by the relevant worker no later than 7 days after the last day of the month to which the record relates and the worker shall be given a copy of the record as endorsed.

(4) Each record maintained in accordance with paragraph (1), as endorsed in accordance with paragraph (3), shall be retained on board for 12 months.

(5) An owner of a craft who fails to comply with paragraph (1), (2) or (4) commits an offence and is liable on summary conviction to a class A fine.

(6) A boatmaster who fails to comply with paragraph (3) commits an offence and is liable on summary conviction to a class A fine.

Emergency situations

14. (1) The boatmaster of a craft may suspend the scheduled hours of rest of a worker and require him or her to perform any hours of work necessary for the immediate safety of the craft, the persons on board, or cargo or for the purpose of giving assistance to other craft or persons in distress, until such time as the normal situation has been restored.

(2) Where a scheduled rest period is suspended in accordance with paragraph (1), the boatmaster shall ensure that the worker receives an adequate period of rest as soon as practicable after the normal situation has been restored.

Health assessment

15. (1) An owner shall ensure that each worker is provided with an annual health assessment, free of charge, by a registered medical practitioner or a person under the practitioner's supervision.

(2) In discharging the duty under paragraph (1), an owner –

- (a) may take into account any entitlement to an assessment that is provided by the State, and
- (b) shall facilitate the worker's attendance at the assessment if so required.

(3) The person who performs an assessment referred to in paragraph (1) shall endeavour to detect if the health of the worker concerned is being, or will be, adversely affected—

- (a) by the fact that the worker performs, or will perform, night work, or
- (b) as a result of work on board the craft with minimum daily rest periods or rest days in accordance with Regulations 8 and 9.

(4) On the completion of the assessment, the person who performs the assessment shall inform the owner and the worker concerned –

- (a) of their opinion as to whether the worker is fit or unfit to perform the work concerned, and
- (b) if that opinion is that the worker is unfit to perform that work by reason only of the particular conditions under which that work is performed, may suggest changes in those conditions that could be made so that the worker could be considered fit to perform that work.

(5) Neither a registered medical practitioner nor a person acting under his or her supervision shall disclose—

- (a) the clinical details of the assessment referred to in paragraph (1) to any person other than the owner concerned or a person designated under section 63 of the Act of 2005, or
- (b) the opinion of the registered medical practitioner of such an assessment to any person other than the worker and owner concerned.

(6) If a night worker—

- (a) becomes ill or otherwise exhibits symptoms of ill-health, and
- (b) that illness is or those symptoms are recognised as being connected with the fact that the night worker performs night work,

the owner, whenever possible, shall assign duties to the worker that do not involve performing any night work and to which the worker is suited.

Safety and health protection

16. (1) In relation to night work, an owner shall carry out, in compliance with section 19 of the Act of 2005, a risk assessment, taking account of –

- (a) the specific effects and hazards of night work, and
- (b) the risks to the safety and health of the worker concerned that attach to the work that a night worker is employed to do,

so as to determine whether that work involves special hazards or a heavy physical or mental strain.

(2) Taking account of the risk assessment referred to in paragraph (1), an owner shall –

- (a) take such steps as are appropriate for the protection of the safety and health of a night worker, having regard to the nature of the work concerned, and
- (b) in taking steps to comply with section 18 of the Act of 2005, have regard to the employer's duty under paragraph (a).

Authorised officers

17. (1) The Minister may appoint such persons as he or she sees fit to be authorised officers for the purposes of these Regulations.

(2) A surveyor of ships appointed under section 724 of the Merchant Shipping Act 1894 is deemed to be an authorised officer for the purposes of these Regulations.

(3) An authorised officer when exercising a power conferred on him or her under this Regulation shall, if requested by a person affected, produce his or her warrant or evidence of appointment as an authorised officer for inspection.

(4) For the purposes of ensuring compliance with these Regulations an authorised officer may do any of the following:

- (a) at all reasonable times board any craft;
- (b) search and inspect the craft and any documents or records found on board;
- (c) require any person on board the craft to produce to the authorised officer any report, document or record (including in the case of information in non-legible form, a copy of the information, or of extracts from it, in permanent legible form) as the authorised officer may reasonably require for the purposes of his or her functions under these Regulations;
- (d) inspect, examine and take copies or extracts from, or take away, if necessary, for the purposes of inspection or examination, any report, document or record (including in the case of information in non-legible form, a copy of the information, or of extracts from it, in permanent legible form) that the authorised officer finds in the course of his or her inspection and require the person by whom such document or record is kept, or who

produced the document or record, to certify the copy as a true copy.

(5) A person who obstructs or interferes with an authorised officer in the exercise of his or her powers under this Regulation commits an offence and is liable on summary conviction to a class A fine.

Fixed payment notice

18. (1) Where an authorised officer believes a person is committing, or has committed, an offence under these Regulations (other than Regulation 17(5)), he or she may serve on the person a notice in writing stating that –

- (a) the person is alleged to have committed the offence,
- (b) the person may, during the period of 28 days beginning on the date of service of the notice, pay to the Department of Transport, by the method and at the address specified in the notice, the amount of €500, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made in accordance with the notice during that period, no prosecution in respect of the alleged offence will be instituted.

(2) Where a notice is served under paragraph (1), a prosecution in respect of the alleged offence shall not be instituted during the period specified in the notice and, if the payment specified in the notice is paid in accordance with the notice, the person concerned shall not be prosecuted in respect of the alleged offence.

(3) In a prosecution for an offence referred to in paragraph (1), the onus of showing that a payment in accordance with a notice under this Regulation has been made shall lie on the person against whom the proceedings are brought.

(4) The Department of Transport may receive the payment pursuant to a notice under paragraph (1) and issue a receipt for it and retain the money so paid. The payment shall not be recoverable by the person who made it.

Summary proceedings

19. Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Minister.



GIVEN under my Official Seal,
27 July, 2022.

EAMON RYAN,
Minister for Transport..

EXPLANATORY NOTE

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

These Regulations transpose Council Directive 2014/112/EU implementing the European Agreement 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). The Regulations set out the maximum hours of work and minimum hours of rest for mobile workers aboard craft operating on inland waterways in the State. They also set out the requirements for rest periods and annual leave. The Regulations require records detailing hours of work and rest to be maintained monthly in arrears and to be signed off by the boatmaster and the worker and retained for 12 months.

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