

INFORMAL CONSULTATION WORKING TIME DIRECTIVE FOR MOBILE WORKERS ON INLAND WATERWAYS

Introduction

1. This consultation is the first stage of the development of proposals to implement the European Working Time Directive applying to mobile workers on inland waterways. Inland waterways means primarily any waters of Categories A, B C or D as listed in Merchant Shipping Notice 1758 (M) on the Categorisation of Waters. This includes estuaries, harbours, rivers, canals, lakes and lochs.
2. Regulations implementing the Working Time Directive for mobile workers on inland waterways will cover those workers on ships which are not covered by the Merchant Shipping (Hours of Work) Regulations 2002. For general information about the Directive and its implementation in the UK see Annex A.
3. Those regulations will be drafted taking account of the responses to this paper. There will be public consultation on the draft regulations, including a draft regulatory impact assessment, in the autumn of this year.

Background

4. The regulation of working time by the European Commission has been addressed by a general directive (93/104/EC) laying down the general rules, known as the "Horizontal Directive", followed by a number of sectoral ("vertical") directives addressing particular industries, and negotiated by the social partners – including the Seafarers Working Time Directive 1999/63/EC.
5. The Horizontal Directive was implemented by the Department of Trade and Industry in the Working Time Regulations 1998 (S.I. 1998/1833) which came into force on 1 October 1998. The Seafarers Working Time Directive is currently being implemented. Many of you will have seen the two consultation documents published by the Department of Transport, Local Government and the Regions (now the Department for Transport) in January and November 2001.
6. Council Directive 2000/34/EC (known as the "Horizontal Amending Directive" – HAD) extended the application of the Horizontal Directive to certain sectors excluded from the earlier directive, for which there is no separate sector specific Community legislation. One of those excluded sectors, now to be included, is inland waterway transport. (Another is sea-fishing, which will be subject to separate regulations).

The Working Time Directive as it applies to mobile workers on inland waterways

7. The consolidated directive (93/104/EC as amended by 2000/34/EC) is attached at Annex B. Article 17a brings in mobile workers and the effect is to apply to such workers Articles 1,2, 6,7 and 9 to the end.
8. The purpose of the Directive is to improve health and safety. The European Commission's objective, supported by the Government, is to ensure that there are appropriate limits on working time for the health and safety of all workers in the Community.
9. The Directive requires a limit on working time so that workers do not work more than an average 48 hours a week, and the provision of health assessments for night workers. Workers are also entitled to 4 weeks paid annual leave and "adequate rest" (see below). There is some scope for exceptions and variations from the basic rules, provided that workers receive

compensatory rest time, where a collective or other agreement, for example a workforce agreement, is in force between employers and workers, as well as by laws, regulations and administrative provisions.

10. In particular, derogations with regard to the reference period for calculating average working time may be agreed for specified reasons, provided that equivalent compensatory rest periods are provided for workers. These reasons are wide ranging (see article 17.2.1 and 17.2.2) and include the requirement for continuous provision such as civil protection and emergency services and urban public transport, and “foreseeable surges of activity” such as seasonal tourism.

11. Alternatively, the directive allows Member States to specify a longer reference period, where there are objective or technical reasons for doing so, or allow the two sides of industry to agree to extend the reference period up to a specified maximum period. (Article 17.4).

Summary of the proposals

12. It is proposed that

- no more favourable provisions will be specified in legislation than are laid down in the Directive;
- the UK will comply with the timetable set out in the Directive and expect national legislation to come into force on 1 August 2003;
- the regulations will apply to workers as defined in the MS and FV (Health and Safety at Work) Regulations 1997 (S.I. 1997/2962 as amended by S.I. 1998/2411 and S.I. 2001/54); ie those *employed by an employer under a contract of employment, including trainees and apprentices*;
- provisions in the directive relating to the health and safety aspects of working time, will not be transposed as part of these regulations. Health and safety provisions are already contained in the MS and FV (Health and Safety at Work) Regulations 1997 (S.I. 1997/2962 as amended by S.I. 1998/2411 and S.I. 2001/54);
- the enforcement of working time regulations will be primarily through investigation of complaints from workers that they are being denied their protection granted by the Directive. MCA will be the enforcement authority, and the Regulations will provide for penalties in the event of a breach;
- the regulations will set maximum working hours per week as specified in the Directive (this is different from the way that the Directive for seafarers has been implemented, where the regulations require minimum hours of rest to be provided in a given period).

13. The provisions of the directive as it applies to mobile workers on inland waterways, are set out below. Where UK proposals involve some elaboration or interpretation of the directive this is indented.

(1) Mobile workers (Article 2)

A “mobile worker” shall mean any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road air or inland waterway.

It is intended that the regulations would not include shore-based (non-travelling) personnel within an operation. Workers covered are those who work on the vessel (eg master, crew, catering staff). We interpret “transport services” as including passenger vessels engaged in pleasure trips.

However, where mobile workers also work on shore for part of their working time, that shore-based work is included within the working hours allowed by the regulations.

(2) Rest periods

Articles 3-5 do not apply to mobile workers on inland waterways.

(a) There are no specific provisions for daily or weekly rest periods applying to mobile workers. However, the Directive requires that workers are entitled to adequate rest (Article 17a para 2).

“Adequate rest” (defined in Article 2) shall mean that workers have regular rest periods, the duration of which is expressed in units of time and which are sufficiently long and continuous to ensure that, as a result of fatigue or other irregular working patterns, they do not cause injury to themselves, to fellow workers or to others and that they do not damage their health, either in the short term or in the longer term.

Existing health and safety duties under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 include requirements to ensure that systems of work are in place which are safe and without risk to health for workers and those affected by the undertaking. See MGN 211.

There is an exception to this provision for vessels engaged in search and rescue or other emergency or security activities.

Also, the Merchant Shipping (Local Passenger Vessels) (Master’s Licences and Hours, Manning and Training) Regulations 1993 require boatmasters to ensure that they are properly rested before starting the working day.

(3) Maximum weekly working time (Article 6)

(a) The average working time for each seven-day period, including overtime, shall not exceed 48 hours.

The reference period over which this average can be calculated is 17 weeks (Article 16.2). However, under Article 17.2.1(d), the normal reference period can be extended by regulation or collective or other agreement, where there is a foreseeable surge in activity, eg in tourism, or where a continuous service is needed), provided always that workers are given compensatory rest periods. In exceptional cases where these requirements cannot be met, workers must be given appropriate protection.

The existing hours of work Code for Boatmasters under the MS (Local Passenger Vessels) (Master’s Licensing and Hours, Manning and Training) Regulations 1993 (S.I. 1993/1213 – see regulation 12) does not comply with the Directive requirements for maximum working time, because it allows the master to work a 16-hour day, with no limit on the number of days worked consecutively.

(b) Periods of paid annual leave or sick leave are not included in the calculation of the average.

(c) Working time does not include travelling time to and from home and work.

(4) Annual leave (Article 7)

(a) Every worker shall be entitled to at least four weeks paid annual leave, complying with the terms of national legislation.

In the UK, this means that the 4 weeks leave entitlement should be used within a specified leave year. The worker has no statutory right to carry unused leave forward into the next leave year or be paid in lieu, except where the employment relationship is terminated.

Protection for night workers (Articles 9-12)

Article 8 does not apply to mobile workers on inland waterways.

(a) "Night worker" means

- (a) on the one hand any worker who during night time works at least three hours of his daily working time as a normal course; and
- (b) on the other hand any worker who is likely during night time to work a certain proportion of his annual working time, as defined at the choice of the Member State concerned:
 - (i) by national legislation, following consultation with the two sides of industry; or
 - (ii) by collective agreements or agreements concluded between the two sides of industry at national or regional level.

"Night time" in the Working Time Regulations 1998 (S.I. 1998/1833) means the period between 11pm and 6am, where no other provision has been made. Employers and workers may, for the purposes of those Regulations, agree any period of not less than seven hours as night time, which must include in any case the period between midnight and 5am.

(b) There are no limitations specifically relating to night work carried out by mobile workers. However, night workers are entitled to a free health assessment before their assignment to night work and thereafter at regular intervals.

(c) Night workers suffering from health problems recognised as being connected with the fact that they perform night work have the right to be transferred whenever possible to day work to which they are suited.

(d) The provisions in Articles 10 to 13 are largely covered in existing health and safety regulations.

More specific community provisions

- This directive does not apply where there are more specific Community Provisions relating to working time for certain occupations. There are as yet no such provisions relating to mobile workers on inland waterways.
- However, in the European Commission's White Paper on the Common Transport Policy, there is a commitment to further harmonisation of the social conditions for crews on inland waterway vessels. There are as yet no specific proposals in this area, but if such provisions do emerge in future, they may have an impact on the proposed regulations. The UK will seek to ensure that any future proposals provide appropriate levels of protection; and are proportionate, realistic and reflect the needs of industry.

Guidance

14. The Department of Trade and Industry has published very readable guidance on the working time directive, which is available on DTI's web-site (www.dti.gov.uk/er), or from DTI on 0845 6000 925. MCA does not propose to issue separate guidance on the general points covered in the DTI booklet, but the guidance on the Merchant Shipping Legislation may contain references to the DTI guidance.

15. **Views are sought on these outline proposals for implementing the Working Time Directive as it applies to Mobile Workers on Inland waterways.** In particular,

- The regulations will not apply to the self-employed. Should the Hours of Work Code for Boatmasters be revised for self-employed boatmasters, so that it complies with maximum working hours laid down by the Directive?
- Do you think that the reference period of 17 weeks over which maximum weekly working hours are to be calculated needs to be extended for mobile workers on inland waterways under the provisions of Article 17, and if so, under which of the headings listed in Article 17.2.1?
- If the reference period is to be extended, should this be specified in the Regulations, or should this be left for employers and workers to determine under collective or other agreements between the two sides of industry?
- As far as you can judge at this early stage, what will be the cost implications to industry of the implementation of these regulations – with or without the extended reference period?
- Are there aspects of the proposals which require further clarification or guidance?

16. Comments are invited on the proposals in this paper, and their likely impact on the industry. These should be sent with any responses to the above questions, to:

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and should reach MCA by no later than **24 August 2002**.

17. This is an informal consultation, and responses to the consultation document will not be formally published. However, please indicate if you wish your response to be treated in confidence.

18. The consultation package is available on the MCA web-site (www.mcga.gov.uk). The list of those organisations to which this consultation package is being set is attached to the covering letter.

BACKGROUND NOTE

The Working Time Directive

The Working Time Regulations 1998 (S.I. 1998/1833) which came into effect on 1 October 1998 implement the European Working Time Directive (93/104/EC). The Regulations provided for: an average 48 hour working week, 4 weeks paid annual leave, 11 hours daily rest, 1 day's weekly rest (or 2 in a fortnight), 20 minute in-work rest break where the working day exceeds 6 hours, health assessments and working time limits for night workers.

There are additional protections for Young Workers, (those aged from minimum school leaving age and 18th birthday). Young workers are entitled to 2 days rest per week, 12 hours daily rest and a 30 minute rest break when the working day exceeds 4½ hours.

The Government is in the process of implementing the remaining provisions of the Young Workers Directive. These will limit daily working time to 8 hours and weekly working time to 40 hours. There will also be restrictions on night working between the hours of 10pm and 6am or 11pm and 7am. Within these time spans working between midnight and 4am will be prohibited unless justified for objective or technical reasons; whereas there will be greater flexibility between the hours of 10 and midnight and 4am and 6am.

Horizontal Amending Directive

A number of sectors, including the Inland Waterways and Lake transport sectors were excluded from the Working Time Directive. The Horizontal Amending Directive (HAD) (2000/34/EC) which amends the Working Time Directive extends to mobile workers an entitlement to an average 48 hour working week, 4 weeks paid annual leave, health assessments for night workers and provision for adequate rest. The HAD is required to be implemented by 1 August 2003.