

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3423 of 19 August, 2004



I ASSENT,
DAVID BLUNT,
ACTING GOVERNOR.

17th August, 2004.



GIBRALTAR

No. 24 of 2004

AN ORDINANCE to amend the Working Time Ordinance 1999 to implement in Gibraltar the provisions of Council Directive 94/33/EC on the protection of young people at work and Council Directive 2000/34/EC amending Council Directive 93/104/EC on certain aspects of the organisation of working time, and Council Directive 2000/79/EC on the working time of workers in civil aviation.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Ordinance may be cited as the Working Time (Amendment) Ordinance 2004.

PART I

Amendments to the Working Time Ordinance 1999.

2. The Working Time Ordinance 1999 is amended as follows-

(a) in section 2-

(i) after the definition of "Minister", insert-

""mobile worker" means any worker employed as a member of travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road or air;"

(ii) after the definition of "rest period", insert-

""restricted period", in relation to a worker, means the period between 10 pm and 6 am or, where the worker's contract provides for him to work after 10 pm, the period between 11 pm and 7 am";

(b) after section 4, insert-

"Maximum working time for young workers.

4A(1) The working time of a worker at least 15 but under 18 years of age ("a young worker") shall not exceed-

(a) eight hours a day, or

(b) 40 hours a week (between midnight on successive Sundays).

(2) If a young worker works for more than one employer on any day or during any week, his working time under

subsection (1) shall be calculated by adding together the number of hours worked for each employer.”;

- (c) after section 5, insert–

“Night work by young workers.

5A. An employer shall ensure that no worker at least 15 but under 18 years of age employed by him works during the restricted period.”;

- (d) in section 7, after “4” insert “, 4A” and after “5” insert “and 5A”;

- (e) for section 13(1) and (2) substitute the following–

“(1) Sections 4 to 10 (except 4A and 5A) do not apply to workers to whom the European Agreement on the organisation of working time of seafarers dated 30 September 1998 and put into effect by Council Directive 1999/63/EC of 21 June 1999 applies.

- (2) Sections 4 and 5, and 7 to 10 do not apply–

- (a) where characteristics peculiar to certain specific services such as the armed forces or the police, or to certain specific activities in the civil protection services, inevitably conflict with this Ordinance;
- (b) to workers to whom the European Agreement on the organisation of working time of mobile staff in civil aviation concluded on 22 March 2000 and implemented by Council Directive 2000/79/EC of 27 November 2000 applies; as set out in Part IIA;
- (c) to workers to whom Directive 2002/15/EC of the European Parliament and of the Council on the organisation of the working time of persons performing mobile road transport activities, dated 11 March 2002 applies;

(d) to a worker where, on account of the specific characteristics of the activity in which he is engaged, the duration of his working time is not measured or predetermined or can be determined by the worker himself and particularly in the case of-

(i) managing executives or other persons with autonomous decision-making powers;

(ii) family workers; or

(iii) workers officiating at religious ceremonies in churches and religious communities.”;

(f) in section 17(1), before “8 and 10” insert “4A, 5A”;

(g) after section 17, insert the following—

“Mobile workers.

17A.(1) Sections 5, and 8 to 10 apply to a mobile worker not covered by Directives 2002/15/EC and 2000/79/EC of the European Parliament and the Council.

(2) A mobile worker to whom subsection (1) applies is entitled to adequate rest, except where the worker’s activities are affected by any of the matters referred to in section 13(3)(e).

(3) In this section “adequate rest” means that a worker has 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, he does not cause injury to himself, to fellow workers or to others and that he does not damage his health, either in the short term or in the longer term.”

(h) after section 17A, insert–

“Doctors in training.

17B.(1) Subsection (1) of section 4 is modified in its application to workers who are doctors in training as follows–

- (a) for the reference to 48 hours there is substituted a reference to 58 hours with effect from 1st August 2004 until 31st July 2007;
- (b) for the reference to 48 hours there is substituted a reference to 56 hours with effect from 1st August 2007 until 31st July 2009.

(2) In the case of workers who are doctors in training, subsections (3)–(5) of section 4 shall not apply and subsections (3) and (4) of this section shall apply in their place.

(3) Subject to subsection (4), the reference period which applies in the case of a worker who is a doctor in training is, with effect from 1st August 2004–

- (a) where a relevant agreement provides for the application of this regulation in relation to successive periods of 26 weeks, each such period; and
- (b) in any other case, any period of 26 weeks in the course of his employment.

(4) Where a doctor in training has worked for his employer for less than 26 weeks, the reference period applicable in his case is the period that has elapsed since he started work for his employer.”

- (i) in section 19(1), for “sections 5(5) to (7)”, substitute “sections 4A, 5(5) to (7), 5A”.

PART II

WORKING TIME IN CIVIL AVIATION

New Part IIA of the Working Time Ordinance 1999.

3. The following Part IIA is added after section 12 of the Working Time Ordinance 1999–

“PART IIA

WORKING TIME IN CIVIL AVIATION.

Scope.

12A. This Part applies to persons employed to act as crew members on board a civil aircraft flying for the purposes of public transport.

Interpretation.

12B. In this Part–

“block flying time” means the time between an aircraft first moving from its parking place for the purpose of taking off until it comes to rest on its designated parking position with all its engines stopped;

“the CAA” means the Civil Aviation Authority of the United Kingdom;

“cabin crew” means a person on board a civil aircraft, other than flight crew, who is carried for the purpose of performing in the interests of the safety of the passengers duties that are assigned to him for that purpose by the operator or the commander of that aircraft;

“calendar year” means the period of twelve months beginning with 1st January in any year;

“crew member” means a person employed to act as a member of the cabin crew or flight crew on board a civil aircraft by an undertaking established in the United Kingdom;

“flight crew” means a person employed to act as pilot, flight navigator, flight engineer or flight radiotelephony operator on board a civil aircraft;

“protection and prevention services or facilities” means those services or facilities that are designed to preserve the health and safety of the crew member from any hazards that may threaten his health or safety during the course of his undertaking his work and are capable of being provided by his employer;

“relevant agreement”, in relation to a crew member, means a workforce agreement which applies to him, any provision of a collective agreement which forms part of a contract between him and his employer, or any other agreement in writing which is legally enforceable as between the crew member and his employer;

“the relevant requirements” means the requirements of sections 12D(2), 12E, 12F(2)(a), 12G, 12H and 12I;

“relevant training” means the training required to enable a person to perform the duties of flight crew or cabin crew carried out or undertaken whilst employed by an employer;

“rest break” and “rest period”, in relation to a crew member, means a period which is not working time;

“scheme”, means a scheme operated by an employer and approved by the CAA;

“standby”, in relation to a crew member, means a crew member who in accordance with the terms of his employment holds himself ready to perform work if called upon during any period when he would not otherwise be at work;

“workforce agreement” means an agreement between an employer and crew members employed by him or his representatives;

“working time”, in relation to a crew member and for the purposes of this Part means—

- (a) any period during which he is working at his employer’s disposal and carrying out his activity or duties,
- (b) any period during which he is receiving relevant training, and

- (c) any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement,

and “work” and “to work” shall be construed accordingly.

Entitlement to annual leave.

12C.(1) A crew member is entitled to paid annual leave of at least four weeks, or a proportion of four weeks in respect of a period of employment of less than one year.

- (2) Leave to which a crew member is entitled under this Part—

- (a) may be taken in instalments;
- (b) may not be replaced by a payment in lieu, except where the crew member’s employment is terminated.

Health assessments.

12D.(1) An employer shall ensure that each crew member employed by him is entitled to a free health assessment before he commences his employment and thereafter at regular intervals of whatever duration may be appropriate in the case of the crew member.

- (2) Subject to subsection (3), no person shall disclose a health assessment referred to in paragraph (1) made in respect of a crew member to any person other than that crew member.

- (3) A registered medical practitioner who makes a health assessment referred to in subsection (1) may advise the employer of the crew member in question that the crew member is suffering from health problems which the practitioner considers to be connected with the fact that the crew member works during night time.

- (4) Where—

- (a) a registered medical practitioner has advised an employer pursuant to subsection (3); and

- (b) it is possible for the employer to transfer the crew member to mobile or non-mobile work—
 - (i) for which the crew member is suited, and
 - (ii) which is to be undertaken during periods such that the crew member will cease to work during night time,

then the employer shall transfer the crew member accordingly.

(5) A health assessment referred to in subsection (1) is free if it is undertaken at no cost to the crew member to whom it relates.

(6) For the purposes of this section, a crew member works during night time when he works at any time between the hours of 2.00am and 4.59am local mean time; and in this section “local mean time” means the time to which a crew member is acclimatised for the purposes of a scheme.

Health and safety protection at work.

12F. An employer shall ensure that each crew member employed by him is at all times during the course of that employment provided with adequate health and safety protection and prevention services or facilities appropriate to the nature of his work .

Pattern of work.

12G.(1) Where an employer intends to organise work according to a certain pattern he shall take into account the general principle of adapting work to the worker to the extent that is relevant to the objective of protecting workers’ health and safety.

(2) Without prejudice to the generality of subsection (1), in a case where an employer intends to organise work according to a certain pattern he shall—

- (a) ensure that pattern affords the crew member adequate rest breaks, and
- (b) take into account the need to ensure, where practicable, that pattern offers the crew member work, within the scope of his duties, that alleviates monotony or working at a pre-determined rate.

Provision of information.

12H.(1) When requested to do so by the CAA, an employer shall provide the CAA with such information as it may specify relating to the working patterns of crew members in his employ.

(2) Any information which is generated by an employer relating to the working patterns of crew members shall be retained by the employer for a period of not less than two years.

Maximum annual working time.

12 I.(1). An employer shall ensure that in any month—

- (a) no person employed by him shall act as a crew member during the course of his working time, if during the period of 12 months expiring at the end of the month before the month in question the aggregate block flying time of that person exceeds 900 hours; and
- (b) no crew member employed by him shall have a total annual working time of more than 2,000 hours during the period of 12 months expiring at the end of the month before the month in question.

(2) For the purposes of subsection (1)(b), “total annual working time” includes overtime and any period deemed to be spent acting as a standby for the purposes of a scheme.

Rest days.

12J.(1) Without prejudice to section 12C, an employer shall ensure that all crew members employed by him are notified in writing as soon as possible of their right to rest days which shall be free of all employment duties including acting as a standby for work.

(2) For the purposes of this section, rest days are—

- (a) not less than 7 days in each month during which a crew member works for his employer; and

- (b) not less than 96 days in each calendar year during which a crew member works for his employer.

Offences.

12K.(1) An employer who fails to comply with any of the relevant requirements shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) The provisions set out in sections 12L to 12N shall apply in relation to the offences provided for in subsection (1).

Offences due to fault of other person.

12L. Where the commission by any person of an offence is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this section whether or not proceedings are taken against the first mentioned person.

Offences by bodies corporate.

12M.(1) Where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the preceding subsection shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Restriction on institution of proceedings.

12N. Proceedings for an offence shall not be instituted except by, or with the consent of, the Attorney General.

Power of court to order cause of offence to be remedied or, in certain cases, forfeiture.

12O.(1) This section applies where a person is convicted of an offence in respect of any matters which appear to the court to be matters which it is in his power to remedy.

(2) In addition to or instead of imposing any punishment, the court may order the person in question to take such steps as may be specified in the order for remedying the said matters within such time as may be fixed by the order.

(3) The time fixed by an order under subsection (2) may be extended or further extended by order of the court on an application made before the end of that time as originally fixed or as extended under this section, as the case may be.

(4) Where a person is ordered under subsection (2) to remedy any matters, that person shall not be liable under this Ordinance in respect of those matters in so far as they continue during the time fixed by the order or any further time allowed under subsection (3).

Remedies.

12P.(1) A crew member may present a complaint to an industrial tribunal that his employer has refused to permit him to exercise any right he has under sections 12C, 12D(1), (3), (4) or 12G(1) and 12G(2)(b).

(2) An industrial tribunal shall not consider a complaint under this section unless it is presented—

(a) before the end of the period of three months beginning with the date on which it is alleged—

(i) that the exercise of the right should have been permitted (or in the case of a rest period or leave

extending over more than one day, the date on which it should have been permitted to begin), or,

- (ii) the payment under section 12C (2)(b) should have been made;

as the case may be;

- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under section 12C, 12D or 12G(2)(b) well-founded, the tribunal—

- (a) shall make a declaration to that effect; and
- (b) may make an award of compensation to be paid by the employer to the crew member.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the employer's default in refusing to permit the crew member to exercise his right; and
- (b) any loss sustained by the crew member which is attributable to the matters complained of.

Passed by the Gibraltar House of Assembly on the 26th day of July, 2004.

D. J. REYES,

Clerk to the Assembly.

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