



Working Time Regulations for transport services and mobile workers

This briefing provides a summary of the main requirements of the Working Time Directive, particularly in relation to transport services and drivers. It is provided to APSE member authorities throughout the UK.

Key issues:

- Senior Traffic Commissioner concerns over compliance with the Working Time Directive
- APSE briefing paper identifies main requirements under the Directive
- If you need any further information, please email djohns@apse.org.uk

1. Introduction

APSE has been approached by the Senior Traffic Commissioner, Mrs Beverley Bell, due to their concerns that *“some local authorities do not appear to have proper arrangements in place to ensure compliance with the Working Time Directive”*. She has asked for APSE to remind its members of their obligations under the Working Time Directive and to make members aware that traffic commissioners may be focusing on this in the not too distant future. In order to support our member authorities further, we have provided this briefing paper which sets out the main obligations of the Working Time Directive.

Working time legislation in road transport originates from the following EU directives.

1. Working Time Regulations 1998

This was introduced in the UK in 1998, although this was amended in 2004 with a Horizontal Directive to include the transport sector. The Horizontal Directive applied the rules of the Main Directive to non-mobile workers and some of the rules to mobile workers. How far the Main Directive rules apply to mobile workers depends on whether the vehicle operation is covered by tachograph or domestic drivers' hours rules.

2. Road Transport Directive 2005

This was introduced in 2005. It added specific rules to mobile workers of operations subject to EU drivers' hours (tachograph) regulations.

The following briefing paper outlines the main obligations of the working time rules. Member authorities may also find the following links helpful:

- APSE past briefing papers: <http://www.apse.org.uk/apse/index.cfm/members-area/briefings/>
- Health and Safety Executive's website: <http://www.hse.gov.uk/contact/faqs/workingtimedirective.htm>
- Gov.uk website (VOSA produced document): https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208091/rules-on-drivers-hours-and-tachographs-goods-vehicles-in-gb-and-europe.pdf
- Freight Transport Association's website: http://www.fta.co.uk/policy_and_compliance/road/drivers/drivers_hours.html

2. Main requirements of the Working Time Directive

The working time rules that apply to you depend on whether you drive a vehicle in scope of the EU or GB domestic drivers' hours' rules. The following information has been extracted from the VOSA publication '*Rules on Drivers' Hours and Tachographs: Goods vehicles in GB and Europe, revised 2011*' – see link above. Please note, the information below is a brief resume of the main provisions and is not intended as full regulatory guidance. Whichever system is used by your Authority, it would be advisable that your drivers are informed whether they are operating under EU or GB domestic drivers' hours' rules (under domestic if a vehicle is fitted with a digital tachograph, the read out from this device can either confirm or disprove entries in a log book) especially drivers of HGV's and PCV's.

2.1 If you are driving under the EU drivers' hours rules

If you operate a vehicle in scope of the EU drivers' hours rules, then you are subject to the Road Transport (Working Time) Regulations 2005 (as amended – 'the 2005 Regulations'), unless you are an occasional mobile worker.

The main provisions of the 2005 Regulations are as follows:

- **Weekly working time** must not exceed an average of 48 hours per week over the reference period. A maximum working time of 60 hours can be performed in any single week providing the average 48-hour limit is not exceeded.
- **Night work:** if night work is performed, working time must not exceed 10 hours in any 24-hour period. Night time is the period between 00.00 and 04.00 for goods vehicles and between 01.00 and 05.00 for passenger vehicles. The 10-hour limit may be exceeded if this is permitted under a collective or workforce agreement.
- **Breaks:**
 - Mobile workers must not work more than 6 consecutive hours without taking a break.
 - If your working hours total between 6 and 9 hours, working time should be interrupted by a break or breaks totalling at least 30 minutes.
 - If your working hours total more than 9 hours, working time should be interrupted by a break or breaks totalling at least 45 minutes.
 - Breaks should be of at least 15 minutes' duration.
- **Rest:** the regulations are the same as the EU or AETR drivers' hours rules.
- **Record keeping:** records need to be kept for two years after the period in question.

The reference period for calculating the 48-hour week is normally 17 weeks, but it can be extended to 26 weeks if this is permitted under a collective or workforce agreement. There is no 'opt-out' for individuals wishing to work longer than an average 48-hour week, but breaks and 'periods of availability' do not count as working time. Generally speaking, a

period of availability (POA) is waiting time, the duration of which is known about in advance. Examples of what might count as a POA are accompanying a vehicle on a ferry crossing or waiting while other workers load/unload your vehicle. For mobile workers driving in a team, a POA would also include time spent sitting next to the driver while the vehicle is in motion (unless the mobile worker is taking a break or performing other work i.e. navigation).

In addition, you are affected by two provisions under the Working Time Regulations 1998 (as amended – ‘the 1998 Regulations’). These are:

- an entitlement to 4.8 weeks’ paid annual leave (increased to 5.6 weeks from 1 April 2009); and
- health checks for night workers.

If you only occasionally drive vehicles subject to the EU drivers’ hours rules, you may be able to take advantage of the exemption from the 2005 Regulations for occasional mobile workers. A mobile worker would be exempt from the 2005 Regulations if:

- They work 10 days or less within scope of the European drivers’ hours rules in a reference period that is shorter than 26 weeks; or
- They work 15 days or less within scope of the European drivers’ hours rules in a reference period that is 26 weeks or longer.

2.2 If you are driving under the GB domestic drivers’ hours rules (or are an occasional mobile worker)

If you drive a vehicle subject to the GB domestic drivers’ hours rules or are an occasional mobile worker, you are affected by four provisions under the 1998 Regulations. These are:

- weekly working time, which must not exceed an average of 48 hours per week over the reference period (although individuals can ‘opt out’ of this requirement if they want to);
- an entitlement to 4.8 weeks’ paid annual leave (increased to 5.6 weeks from 1 April 2009);
- health checks for night workers; and
- an entitlement to adequate rest.

Adequate rest means that workers should have regular rest periods. These rest periods should be sufficiently long and continuous to ensure that workers do not harm themselves, fellow workers or others and that they do not damage their health in the short or long term.

The reference period for calculating the 48-hour average week is normally a rolling 17-week period. However, this reference period can be extended up to 52 weeks, if this is permitted under a collective or workforce agreement.

Please note, it is good practice for those driving under the GB domestic drivers’ hours rules to follow the recommended break times stated under the EU drivers’ hours rules in 2.1 above.

3. Further information

If you require further advice on the working time rules or would benefit from a dedicated event or training session on this subject, please let us know by emailing djohns@apse.org.uk

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