



FREIGHT TRANSPORT ASSOCIATION

Reflecting
final regulations and
DfT guidance notes

Working time for drivers and crew of heavy goods vehicles from 4 April 2005

FTA compliance guide

Transport Manager Action Plan

- ✓ Decide which staff are affected
- ✓ Understand definitions of common terms and basic requirements
- ✓ Establish what other work employees may be doing
- ✓ Analyse current operations and assess the impact
- ✓ Identify periods of availability
- ✓ Identify non-driving work could be delegated to non-mobile workers
- ✓ Discuss delays with customers and agree solutions
- ✓ Negotiate a collective or workforce agreement
- ✓ Budget for productivity changes
- ✓ Undertake trials of necessary rescheduling
- ✓ Discuss and explain recording periods of availability with drivers
- ✓ Select your system for recording working time – records must be kept for two years
- ✓ Check company terms and conditions of employment
- ✓ Organise training for drivers, transport manager, traffic office staff, HR staff

FTA's Compliance Guide is based on FTA's understanding of the Department for Transport's regulations and guidance notes. It forms part of a compliance information package for members that includes FTA E-News, Freight and www.fta.co.uk/workingtime

Revised July 2005

Foreword

The Working Time Directive for the road transport sector will be one of the most expensive pieces of legislation ever to affect goods vehicle operators and drivers. The directive has been a long time in development but FTA has been in Brussels and Westminster every step of the way since it was first proposed in 1997, influencing the requirements to minimise the impact on operators' costs. The final regulations, whilst undoubtedly onerous, are nevertheless far more business friendly than when first proposed and FTA has negotiated numerous concessions and flexibilities into the regulations to minimise the impact on members.

Now that the legislative process is complete the task for transport managers is to implement the new rules in a cost effective manner. This compliance guide describes a step-by-step approach to implementing the regulations and complying with their requirements by making use of these cost saving provisions.

The guide is just part of the range of information and advice services that FTA is offering members to help comply with the Working Time Regulations. For further information on joining FTA, its working time and drivers' hours analysis services, training courses and consultancy or to order further copies of this guide, please phone the Member Service Centre on 08717 11 22 22.



James Hookham
FTA Policy Director

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ROAD TRANSPORT AND WORKING TIME

The road transport sector was excluded from the main working time directive when it was introduced into the UK in 1998. However the Road Transport Directive that is the last in a series of directives applies working time restrictions to drivers and crew of hgv's in operations that are subject to EU drivers' hours and tachograph regulations.

Two separate directives namely the Horizontal Amending Directive (HAD) and the Road Transport Directive (RTD) applied working time restrictions to the road transport industry. These directives serve different purposes. HAD was implemented on 1 August 2003 and RTD took effect from 4 April 2004.

FTA ACTIONS TO MINIMISE THE IMPACT

FTA greatly influenced decisions made by legislators in Brussels and secured changes to the original road transport working time proposals that in their original form would have been significantly more aggressive than the rules that industry now faces. This influence was carried forward during discussions with UK Government and FTA has also secured all available

derogations. While FTA interventions have significantly reduced the impact that would have been imposed by working time restrictions, industry still faces the highest compliance cost of any single piece of transport legislation in living memory. It is therefore essential that operators fully understand the impact this legislation has on their operations.

THE IMPLICATIONS OF WORKING TIME FOR ROAD TRANSPORT OPERATIONS

The road transport industry is the first sector not to have the benefit of the individual opt-out and must also overlay the working time requirements on top of existing drivers' hours rules. The Department for Transport (DfT) has estimated that an additional 12,600 vehicles could be required and a compliance cost to industry in excess of £1 billion per annum. FTA's survey data suggests that a 48 hour average working week

without utilising periods of availability could result in a 10 per cent reduction in productivity, resulting in a need for 21,900 extra drivers (almost five per cent of the current workforce). Faced with the current skills shortage it will be necessary for the road transport industry to utilise every piece of flexibility contained in working time regulations to offset at least some of this impact.

FTA INFORMATION SERVICE

This edition of FTA's compliance guide has been updated to incorporate DfT published final regulations and guidance notes and provides accurate information at the time of writing.

HOW FTA CAN HELP

The compliance guide is designed to take you step-by-step through a process that should help you apply the new regulations to your operations. It aims to familiarise you with the terminology used through to assessing the impact and finding solutions.

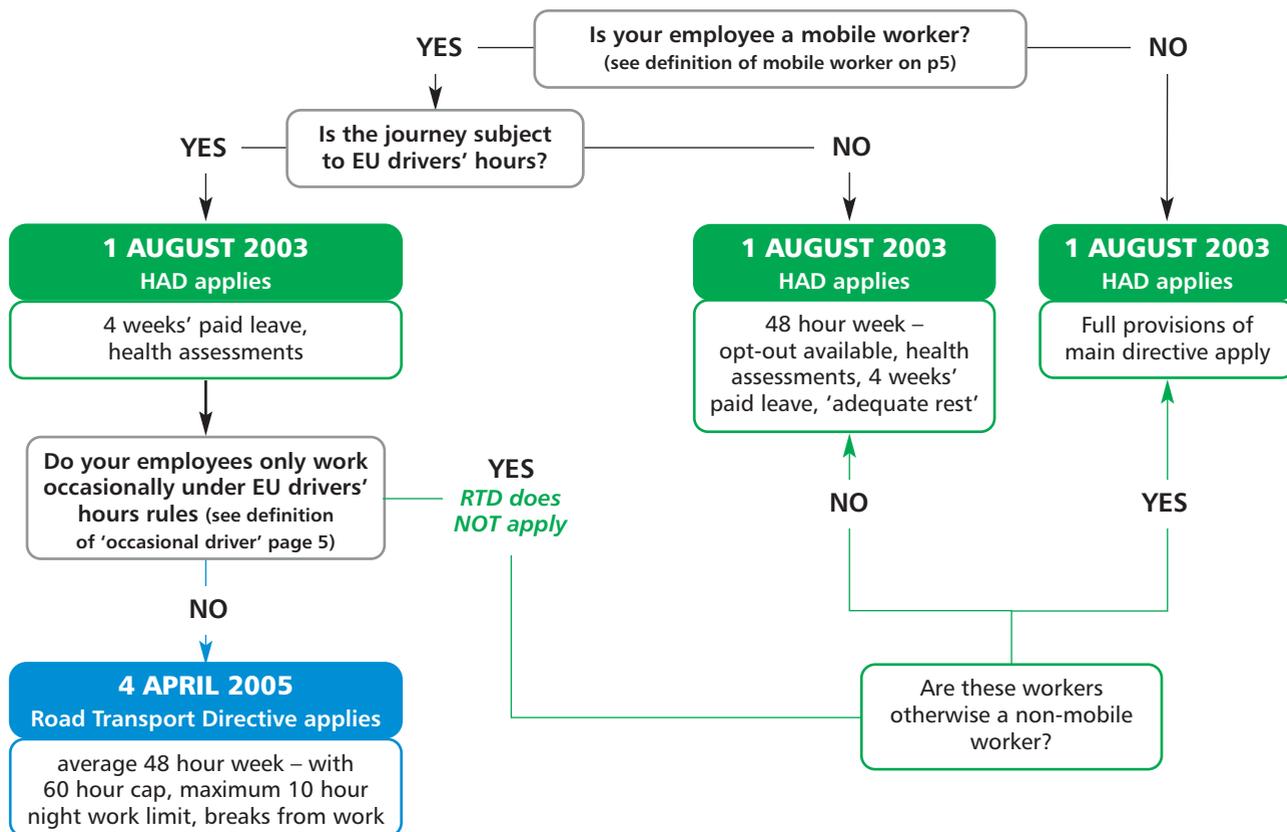
Further assistance can be sought by phoning FTA's Member Service Centre on 08717 11 22 22.

WHICH DIRECTIVE APPLIES TO WHICH STAFF

DECIDE WHICH TRANSPORT SECTOR STAFF ARE AFFECTED

Start by deciding which of the three working time directives apply to each member of staff. The following flow chart should make this simple.

Working time at a glance



Working time legislation in the road transport sector consists of three EU directives • **Main directive** introduced in the UK in 1998 • **Horizontal directive** introduced in the UK on 1 August 2003 • **Road transport directive** introduced in the UK on 4 April 2005

Main Directive

Introduced in 1998 for all workers although certain specified sectors including road transport were temporarily excluded. These regulations gave rise to new rights and obligations relating to work and rest with principal provisions for:

- an average 48 hour working week (though individuals can opt-out)
- an average 8 hour night work
- health assessments for night workers
- minimum daily and weekly rest periods
- rest breaks at work
- paid annual leave

Road Transport Directive

Introduced on 4 April 2005, applies:

- an average 48 hour week with **NO** opt-out available
- a maximum of 60 hours in any week
- a maximum 10 hour night work limit
- night time is between 00.00 hrs and 04.00 hrs for goods vehicles and between 01.00 and 05.00 for passenger vehicles
- a 30 minute break if working time totals between six and nine hours, or 45 minutes if over nine hours. Breaks can be sub-divided into minimum periods of 15 minutes

Horizontal Directive

Introduced on 1 August 2003, this removed the exclusion of the road transport industry from the main directive, applying limited aspects of the main directive to the road transport sector. In particular it applies:

- the full provisions of the main directive to all non-mobile workers
- limited aspects of the main directive to mobile workers (ie drivers and crews of goods vehicles)

The extent to which the provisions of the main directive were applied to mobile workers depends on whether the vehicle operation is covered by EU drivers' hours (tachograph) regulations or domestic drivers' hours rules.

From 1 August 2003, mobile workers not subject to EU drivers' hours rules are entitled to:

- an average 48 hour week (though an opt-out is available)
- 4 weeks' paid annual leave
- free health assessments for night workers
- 'adequate rest' – regular rest periods that are sufficiently long and continuous to ensure that workers do not injure themselves or others, and do not damage their short or long term health.

From the same date, mobile workers subject to EU drivers' hours rules are entitled to:

- 4 weeks' paid annual leave
- health assessments for night workers

Who IS affected by the Road Transport Directive?

Mobile workers

‘Mobile worker’ means any workers forming part of the travelling staff, including trainees and apprentices, who are in the service of an undertaking which operates transport services for passengers or goods by road for hire or reward or on its own account.

Mobile workers involved in operations subject to EU drivers’ hours regulation 3820/85 are in scope of the road transport working time directive, implemented by UK regulations and supported by DfT guidance notes.

The Road Transport Working Time Regulations do not apply to workers who are carried on the vehicle purely as passengers being ferried to a site (eg construction site). These workers will not be regarded as travelling staff (mobile worker) for the purposes of the regulation.

Occasional drivers

It is common for non-mobile and other workers to occasionally drive vehicles ‘in scope’ of EU drivers’ hours rules. Where such workers drive in scope vehicles on no more than 10 days in a reference period that is less than 26 weeks or no more than 15 days in a reference period that is 26 weeks or longer, they will not be subject to any conditions applied by the road transport working time regulations.

The number of concessionary days for occasional drivers is in relation to the reference period applicable to that individual worker. Under the more flexible rules of the main directive, the worker may have opted out of the 48 hour average and therefore no reference period will apply, or alternatively the worker might have agreed a 52 week reference period in which case as it stands they would only be allowed 15 days over 52 weeks instead of 30 days if they had 2 x 26 or 3 x 17 weeks reference periods. We advise that in these circumstances you look to include these workers in any agreements with other mobile workers (instead of the non-mobile worker agreement) or alternatively arrange

for a group agreement specifically for occasional drivers. For further information on reference periods see pages 7–8 and on agreements see pages 13–14.

Self-employed

Self-employed workers are excluded from the regulations until March 2009. However, the definition of self-employed in the RTD has been tightly drawn and only a limited number of drivers are likely to be excluded from the scope of the 2005 implementing regulations.

‘Self-employed’ means:

- anyone whose main occupation is to transport passengers or goods by road for hire or reward within the meaning of Community legislation under cover of a Community licence or any other professional authorisation to carry out the aforementioned transport
- who is entitled to work for himself and who is not tied to an employer by a contract or by any other type of working hierarchical relationship
- who is free to organise the relevant working activities
- whose income depends directly on the profits made, and
- who has the freedom to, individually or through a co-operation between self-employed drivers, have commercial relations with several customers

Owner drivers regarded as self-employed in accordance with the Employment Rights Act 1966, the Inland Revenue or the 1998 working time regulations are most often subject to tight controls by their client/customer and are explicitly or implicitly restricted from working for other customers.

If this is the case, they will not be considered self-employed for the purposes of the Road Transport (Working Time) Regulations.

Drivers who do not meet the criteria of ‘self-employed driver’, but who are driving the vehicle for the purpose of carrying on a trade or business (and do not work through an

EXAMPLE: NON-DRIVING CREW MEMBERS

Drivers of vehicles over 3.5 tonnes are in general subject to EU drivers’ hours rules and therefore in scope of the road transport working time regulations.

A number of road transport operations require additional non-driving crew to be carried in the vehicle, such as porters in household removals, draymen in brewery vehicles, attendants in abnormal load movements and security staff in high value goods and cash transport operations. These workers are regarded as mobile and are in scope of the road transport working time regulations.

EXAMPLE: OCCASIONAL DRIVERS

Occasional drivers may include:

- warehouse workers who provide cover for drivers taking holiday or sick leave
- mechanics taking vehicles for annual test or to replace a broken down vehicle
- drivers of light vans who occasionally drive larger vehicles
- drivers of large vehicles mainly exempt from EU drivers’ hours rules, such as local authority refuse collection or highway maintenance work, that may in some instances be in scope of EU drivers’ hours rules



WARNING

It is common for drivers to register with and work for more than one agency and they must therefore inform all employers in writing of hours worked for other employers. Calculation of working time must include work performed for all employers during the reference period.



TOP TIP

Self-employed drivers in scope of the Road Transport Directive are not entitled to the four weeks' paid holidays and health assessments provided by the Horizontal Amending Directive.

agency) are considered to be their own employers and, for example, are responsible for keeping their own records.

Self-employed drivers who do not meet these criteria set out in the regulations have to comply with all other requirements of the road transport directive and be required to keep records of their working time for two years after the end of the period covered.

NB: In order to meet the criteria of being free to organise their working activities and not tied by a hierarchical relationship, a self-employed driver must hold an operator's licence.

Agency drivers

Agency drivers subject to normal terms and conditions of employment under contract to a driver agency or agencies and not party to

the commercial contract between an agency and its client(s) will be regarded as being employed by that agency.

Where no contract of employment exists, whoever pays the agency worker for their work will be regarded as the employer for the purposes of the road transport working time regulations.

EU drivers' hours rules require tachograph records to be returned to the first employer, however it is standard practice within the industry for contracts between agencies and their clients/customers to transfer responsibility for retaining these records to the client/customer. This is not the case with working time records, therefore it is possible that agencies will request either photocopies of tachograph records or a summary of data extracted from these records from their clients/customers.

ESTABLISHING HOW STAFF ARE AFFECTED

The next step is to decide how members of your staff are affected by the Road Transport Directive. To do this, you must understand the definitions and terminology involved with the new working time regulations.

UNDERSTAND DEFINITIONS OF COMMON TERMS AND BASIC REQUIREMENTS

DEFINITIONS OF WORKING TIME

WORKING TIME

The regulations define 'working time' as the time from the beginning to the end of work during which the mobile worker is at his workstation at the disposal of the employer and exercising his functions or activities – in other words the time devoted to all road transport activities.

WHAT COUNTS AS WORKING TIME?

Working time includes

- driving a vehicle
- vehicle loading and unloading
- assisting passengers who are boarding or disembarking from a vehicle
- vehicle cleaning and maintenance
- other work intended to ensure the safety of the vehicle and its cargo or passengers, including daily defect checks and reports
- waiting time where the foreseeable duration is not known in advance or just before the start of the period in question – for example, queueing to load or offload or monitoring loading/unloading of the vehicle
- any other work, including administrative duties
- overtime
- training that is part of normal work and is part of the commercial operation
- time worked for another employer for whom a mobile worker carries out any in scope road transport activities

Working time does NOT include

- periods of availability
- breaks during a shift, whether paid or unpaid
- evening classes or day-release courses
- daily rest
- weekly rest
- voluntary work
- private use of hgvs



TOP TIP

What counts as voluntary work

- charitable work
- special constables
- territorial army
- retained firefighters

Emergency Provided road safety is not jeopardised, and to enable a safe stopping place to be reached, workers may depart from the rules to the extent necessary to ensure the safety of persons, the vehicle or of its load. An emergency only applies in cases where it unexpectedly becomes impossible to comply with the road transport working time regulations and mobile workers must record all reasons for exceeding working time limits. The limits most likely to be affected would be the 10 hour night work limit or the 60 hour cap since in most instances future work schedules could be altered to bring hours back in line with the 48 hour average.

Week The period between 00.00 hours on any Monday and 24.00 hours on the following Sunday.

Night time The period from 00.00 hours and 04.00 hours for drivers and crews of goods vehicles and between 01.00 hours and 05.00 hours for drivers and crews of passenger vehicles.

Night worker Mobile workers subject to the road transport working time regulations are regarded as night workers if any work is undertaken during night time.

Night work Night workers subject to the road transport regulations are restricted to a maximum of 10 hours' working time in each 24 hour period in which they undertake night work. The 10 hour limit can be extended by a collective or workforce agreement, however this must not cause the 48 hour average and maximum weekly working time limit to be exceeded. Daily and weekly rest requirements imposed by EU drivers' hours regulation 3820/85 must also be observed.

Reference period The period of time over which working time is averaged. The number of hours worked each week should normally be averaged out over 17 weeks, but this can be extended by a collective or workforce agreement to 26 weeks.

The Government has defined the 17 week (occasional 18 week) periods over which average working time should be calculated. These can be changed by a relevant agreement to fixed calendar periods to suit the needs of individual businesses. However, agreements must be in place before changes take effect.

In the absence of such an agreement reference periods will default to the dates set by Government. The default period will begin at 00.00 hours on the nearest Monday on or after 1 April, 1 August, and 1 December each year. For 2005/06 reference periods will start on the following dates:

4 April 2005 – 31 July 2005 (17 week)*
1 August 2005 – 4 December 2005 (18 week)
5 December 2005 – 2 April 2006 (17 week)

3 April 2006 – 6 August 2006 (18 week)
7 August 2006 – 3 December 2006 (17 week)

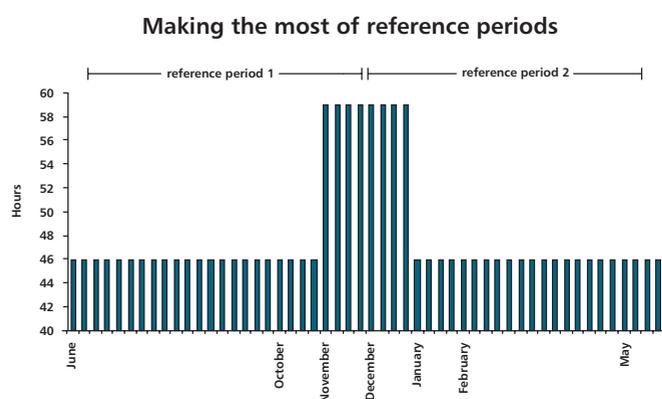
A relevant agreement is not required to calculate working time using rolling reference periods. Employers can decide to use this method provided they inform workers in advance. Rolling reference periods are more restrictive and less flexible than fixed reference periods. While employers are free to manage working time based on rolling reference periods, enforcement is on the basis of fixed reference periods.

Whatever reference period is to be used, workers must know in advance how working time is being calculated and when reference periods start and end.



TOP TIP

If you have a workforce agreement you can set your reference periods to suit your operational needs. For example, if you have an eight week pre-Christmas peak starting in late October, you could have two 26 week reference periods, with the first period ending in late November and the second period starting the following week.



Reference period 1

22 weeks@ 46 hours 1,012 hours
 plus 4 weeks @59 hours 236 hours
 = 1,248 hours

= 48 hour average

Reference period 2

4 weeks @ 59 hours 236 hours
 plus 22 weeks@ 46 hours 1,012 hours
 = 1,248 hours

= 48 hour average

*For the purposes of simplicity the implications of holidays have been excluded from this example.

Breaks at work Working time must not exceed six hours without a break. A 30 minute break is required if total working time is between six and nine hours. A 45 minute break is required if total working time exceeds nine hours. Breaks may be sub-divided into minimum 15 minute periods.

In most instances, drivers subject to EU drivers' hours rules will satisfy this requirement if breaks are taken in accordance with the EU rules. Non-driving vehicle crew and drivers likely to clock up more than six hours' working time before reaching the 4.5 hour driving limit will, however, need to satisfy the working time break requirements. The rules on breaks will also apply on days when the mobile worker is not travelling.

Daily/weekly rest Drivers of vehicles subject to EU drivers' hours rules are governed by the daily and weekly rest requirements contained in the EU Drivers Hours' Regulation 3820/85. The road transport working time regulations extend those rest provisions to other mobile workers, trainees and apprentices when travelling in vehicles subject to 3820/85, as they apply to drivers.

Relevant agreement Workers and employers can agree to remove the 10 hour night work limit, to extend the reference period and to fix reference period by the calendar to suit the needs of individual businesses. These agreements must be made either by a 'collective agreement' between the employer and an independent trade union, or by a 'workforce agreement'. If a worker has their conditions determined by a collective agreement, they cannot be subject to a workforce agreement.

EXAMPLE

⌚ 2 hours	After a maximum of six hours a 15 minute break was taken with a further 15 minute break taken before nine hours' working time were completed. This example satisfies breaks in terms of EU drivers' hours and also working time regulations.
✂ 3 hours	
⌚ 1 hour	
⌌ 15 minutes	
⌚ 1 hour	
✂ 1 hour	
⌌ 15 minutes	
⌚ 30 minutes	
⌌ 15 minutes	
✂ 30 minutes	

ESTABLISH WHAT OTHER WORK EMPLOYEES MAY BE DOING

Under the new regulations if an employee works for two or more employers all work undertaken for all road transport employers counts towards the 48 hour weekly average and 60 hour maximum weekly working time – even if that work is split among multiple employers.

It is also important to remember that, for the purposes of EU drivers' hours rules, any other work is unlikely to be able to be counted as rest, if the worker is not able to freely dispose of his time.

Employers should therefore write to all mobile workers in scope of the road transport directive asking for details in writing of work undertaken for any other employer, stressing that it is the employee's responsibility under the new regulations to keep employers informed of all work they may be undertaking. Employers must then look at all other work in terms of EU drivers' hours rules and Working Time Regulations.

Time spent on voluntary activities, for example driving floats on gala days, does not count towards working time limits. In addition time spent working for the emergency services in the role of a retained firefighter or special constable, the armed

forces or reserve forces (territorial army) does not count towards working time limits. However such activities should generally be taken into account when allocating workload to ensure road safety and the worker's health is not compromised.

For the purposes of the RTR, working time is restricted to work for employers for whom a mobile worker carries out any in scope road transport activities (ie work covered by tachograph rules). It includes both road transport activities and any other work for such employers.

Sample letter to employees

DonA Transport UK Co
Mercury House, St Elmo's Street, SouthWell

1 March 2005

Dear Employee,

As you may know the new road transport working time regulations, effective from 4 April 2005, require us as your employer to take account of any work you may be engaged in for other employers in our calculations of your weekly average working time.

It is the employee's responsibility under the new regulations to keep employers informed of any such work.

Whether or not you are engaged in any other work, would you please fill in the declaration form at the end of this letter as appropriate and return it to us as soon as possible.

Yours sincerely
DonA Transport UK Co

DonA Transport UK Co EMPLOYEE DECLARATION – WORKING TIME

Please fill out this form to provide details of any work undertaken for another employer, sign and return to the HR department as soon as possible.

Please note that charitable work and work undertaken as a special constable, retained firefighter or in the territorial army will not count towards working time. However if you are engaged in any of these activities you still need to inform us and should fill out the declaration below as if you were engaged in other work. We will exclude time spent on such activities from our calculations of your working time.

Employee declaration

Option A – no other work

I (name) hereby declare that I **AM NOT** currently engaged in any work outside of my commitments to DonA Transport UK Co. I undertake to inform DonA Transport UK Co immediately if this situation should change at any point during my employment.

Signed Date

Option B – other work

I (name) hereby declare that I **AM** currently engaged in work outside of my commitments to DonA Transport UK Co. I undertake to keep DonA Transport UK Co informed in writing of the hours worked elsewhere should these change.

Please provide basic details of any other employers:

1 Employer name and address

Type of work Date started Hours worked per week

2 Employer name and address

Type of work Date started Hours worked per week

3 Employer name and address

Type of work Date started Hours worked per week

Signed Date

ANALYSE CURRENT OPERATIONS AND ASSESS THE IMPACT



WARNING

Remember to take account of work undertaken for other employers in your assessment.



WARNING

Even if your mobile workers currently **DO NOT** exceed a weekly average working time of 48 hours calculated over the appropriate reference period, from 4 April 2005 you still need to:

- ensure you have appropriate systems in place to record working time
- factor in the minimum break requirements in the new rules (see page 8)
- make sure the maximum worked in any given week does not exceed 60 hours
- respect the night work limit of 10 hours (unless a workforce agreement is in place)



WARNING

Existing contracts of employment between you and your staff are legally binding and may specify minimum working hours or basic weekly/annual wage. Note that contracts of employment cannot legally be changed without the employee's specific consent and agreement.

Employers cannot unilaterally vary contracts of employment without proper consultation prior to amendment. Where the employee refuses to accept a change and providing there is justification for such a change the employer has the right to terminate the existing contract and re-employ on new terms.

Once you have identified which members of staff are affected by the road transport working time regulations, you need to establish how compliance with the new rules affects your business. There are four key areas to consider:

- the hours staff work
- staff costs
- vehicle numbers
- your customers

The impact of a 48 hour average week must be assessed in conjunction with the 10 hour night work limit and also the maximum 60 hours cap in any one week.

Impact analysis steps

- Analyse hours and pattern of work for each individual worker over a period of sufficient duration to represent your typical work pattern. The length of the period analysed will vary according to the seasonality of your business. For most operations – where variations are constant throughout the year – a six week period will probably be sufficient. For operations with significant seasonal peaks and troughs of activity, it may be necessary to analyse a longer period or two separate periods
- Identify seasonal fluctuations
- Determine whether or not and where the 48 hour average would be exceeded during the chosen reference period
- Add up how many hours over and above the 48 hour average are currently worked. This should give a broad idea of how much productivity will be lost
- Assess the impact of 10 hour limit on night time operations. This may affect overall productivity
- Identify where working exceeds 60 hours in any week. This may result in loss of productivity
- Analyse costs of reduced productivity and include any additional employment costs

- Estimate number of additional drivers and or vehicles that might be required

Where the impact assessment reveals that the 10 hour night work limit would be exceeded or that maximum flexibility is needed to cope with seasonal peaks, you should negotiate with union or workforce representatives to extend the nightwork limit and the reference period over which working time is calculated. You should also consider agreement to fix calendar reference periods to suit the needs of your business. For example, if one reference periods ends with the next period starting in the middle of your busy period you will be able to maximise the number of consecutive weeks at the maximum 60 hours. You must of course ensure that hours are reduced in the early part of the first reference period and also during the latter part of the second reference period to maintain an average of 48 hours per week.

Where mobile workers will have their working hours reduced it may also be necessary to review and consult on terms and conditions of employment.

How to calculate average weekly working times

The number of hours worked each week should be averaged out over the reference period – normally 17 weeks but up to a maximum 26 weeks subject to a collective or workforce agreement.

The average weekly working time is calculated by dividing the total number of hours worked by the number of weeks in the reference period.

When calculating the average weekly working time, if the worker is away during the reference period because they are taking statutory paid annual leave, are off sick or taking maternity, paternity, parental or adoption leave, this time should be neutral in the calculation by adding a notional 48 hours for a full fixed week of absence or a notional eight hours for each individual day of absence. This time must be taken into account when scheduling workloads.

Holidays that are additional to the statutory minimum four weeks can be used in the calculation to reduce average working time. That is to say it is not necessary to add notional hours to the calculation for this time. The Department of Trade and Industry (DTI) has advised that employers can decide which holidays would be statutory and which holidays would be additional, provided this is stipulated when the holiday period is authorised.

Where employers have chosen to opt for rolling reference periods for the whole workforce or a group of workers (see page 8), they have the option of using the method described above to calculate working time when leave is taken, or to use the method established under the main directive of offsetting the leave taken by bringing forward an equivalent amount of working time from the following reference period.

In order to average 48 hours per week, the maximum number of hours avail-

able for work in a 17 week reference period is 816. In a 26 week reference period the maximum number of hours available is 1,248. However it is most certain that holidays and or sick leave will be taken during the reference period thereby reducing the number of hours available for work. Work should therefore be scheduled within each reference period to comply with the maximum number of hours available, bearing in mind that there is a 60 hour maximum in each week.

Calculations for new employees joining the company during the fixed reference period should be based on the number of weeks left in that period. For example to calculate average weekly working time the total number of hours worked by a new employee who works only 12 weeks of a fixed 26 week reference period should be divided by 12 instead of 26. Work undertaken before new employment begins need not be taken into consideration that is to say the calculations start afresh.



TOP TIP

Ensure that you have sufficient management controls in place, so that drivers are not working longer than is needed.



TOP TIP

In order to comply with the 48 hour average there will be a limited number of times that the 60 hour maximum working week can be utilised during a reference period. However, if a fixed calendar reference period is agreed by the workforce then the most effective way to use the 60 hours would be for two reference periods to sit back to back in the middle of the busiest period. This would allow a greater number of 'consecutive' 60 hour working weeks without prejudicing the average 48 hour working week.

EXAMPLE 1 (standard 17 week reference period)

A worker has a standard working week of 40 hours and does 12 hours' overtime during the first 10 weeks of a 17 week reference period. No leave is taken during the reference period.

Total hours worked in the reference period: $(17 \times 40) + (10 \times 12) = 800$ hours
The average is therefore: $\text{hours} \div \text{weeks} (800 \div 17) = 47.1$ hours a week

The average 48 hours and maximum 60 hours limits have been complied with

EXAMPLE 2 (with statutory leave)

A worker has a standard working week of 40 hours and does 8 hours a week overtime during the first 12 weeks of a 17 week reference period. One week of statutory paid leave is taken during the reference period therefore a notional 48 hours must be included in the calculation.

Total hours worked in the reference period is: $(16 \times 40) + (12 \times 8) = 736$ hours + (notional 48 hours) = 784 hours
The average is therefore: $\text{hours} \div \text{weeks} (784 \div 17) = 46.1$ hours per week

The average 48 hours and maximum 60 hours limits have been complied with

EXAMPLE 3 (using 60 hour maximum)

During a 17 week reference period driver works 60 hours for 6 weeks (maximum weekly limit) and 41 hours for the remaining 11 weeks

Total hours worked in the reference period is: $(6 \times 60) + (11 \times 40) = 811$ hours
The average is therefore: $\text{hours} \div \text{weeks} (811 \div 17) = 47.7$ hours per week

The average 48 hours and maximum 60 hours limits have been complied with

EXAMPLE 4 (additional holidays, statutory holidays and sick leave)

During a 26 week reference period a driver works 10 hours per day during a 13 hour shift. He works 22 weeks at 50 hours per week and takes two weeks of statutory leave plus one week of leave that is additional to his statutory entitlement. In week 19 he is off sick for three days. A notional 48 hours must be added for each full week of statutory leave plus a notional 8 hours for each of the individual sick days.

Total hours worked in the reference period is: (22×50) 1,100 hours + (3×8) 24 hours + (2×10) 20 hours + (2×48) 96 hours = 1,240 hours
The average is therefore: $\text{hours} \div \text{weeks} (1,240 \div 26) = 47.69$ hours

The average 48 hours and maximum 60 hours limits have been complied with

HOW FTA CAN HELP

FTA's consultancy experts can visit your premises and carry out assessments of the likely impact of the new working time rules on your mobile and non-mobile staff. Clients receive a driver management report showing the expected impact of the directive and identifying possible management strategies for alleviating the effects. Companies can then decide to manage the subsequent changes themselves or to have FTA help them remain compliant. For more information, contact FTA's Member Service Centre on 08717 11 22 22 or by email at memberservices@fta.co.uk

IDENTIFY PERIODS OF AVAILABILITY

Working time is not to be confused with shift or attendance time. Under certain circumstances, waiting time does not count towards working time. The road transport working time regulations are not linked to pay and therefore terms and conditions of employment will determine payment for period of availability.

A period of availability is time where the mobile worker is available for work but not required to undertake any work. The following conditions apply to a period of availability:

- the mobile worker is not required to remain at his workstation (ie in the vehicle) but must be available to answer calls to start or resume driving or other work; and
- the period and its foreseeable duration are known in advance, either before departure or just before the start of the period in question. A collective or workforce agreement may determine how much notice is required for a period of availability

EXAMPLES OF PERIODS OF AVAILABILITY

- when driving in a team, time spent in a moving vehicle sitting next to the driver to be available for driving provided no other duties are required to be undertaken such as navigating etc
- non-driving vehicle crew working in a team, time spent in a moving vehicle sitting next to the driver, provided no other duties are required to be undertaken such as navigating etc
- accompanying a vehicle being transported by boat or train
- waiting at national borders
- delays due to traffic prohibitions
- waiting for someone else to load/unload a vehicle where the driver is not required to be in attendance or carry out any work and where he knows the duration before the period starts
- delays at customers' premises where the driver knows the foreseeable duration of the delay. Note that if a driver typically expects to be delayed for a specific period of time at a customer's premises, this qualifies as a period of availability. However if the delay extends beyond the expected period, the additional time would be classified as working time
- time spent by a mobile worker who has reported for work, been told they will not be required to undertake any duties for a specified period, but is still required to remain 'on site' and is free to wait in a canteen or rest facility
- staying with a broken down vehicle at the roadside while the vehicle is waiting for repairs or recovery, as long as the driver knows the duration of the delay and is not required to undertake any duties

It should additionally be noted that:

- where a mobile worker knows the duration of a delay in advance but it is deemed prudent for them to remain in the cab for reasons of security or safety, this in itself should not disqualify the delay from being recorded as a period of availability. Typical examples might include operations where the site is unsafe for pedestrians, and where vehicles are transporting dangerous or high value goods
- where delays extend beyond the expected or notified period, there is nothing to preclude consecutive periods of availability if further information is provided on the extended duration and the mobile worker continues to meet the other conditions of a period of availability.

EXAMPLE: A driver arrives at an RDC. He is told there will be a 30 minute delay when he arrives. At the end of 30 minutes he is advised of a further delay of 45 minutes.

There is nothing to stop this being two periods of availability, provided that he is not required to remain with the vehicle.

- a driver may 'choose' to remain in the vehicle during a period of availability provided he is not required to stay with the vehicle
- time that satisfies the definition of a period of availability can instead be used towards satisfying breaks from driving or working time requirements

IDENTIFY NON-DRIVING WORK

To make the most of the driving staff you have within the confines of the new regulations, it is important to identify any work your mobile staff are currently engaged in that is non-driving work and consider whether such work might be re-allocated to other, non-mobile workers, leaving your mobile staff free to use more of their working time for driving work.

There is obviously no need to re-allocate work if it is the case that

mobile workers' currently average 48 hours or fewer a week, or do not exceed 10 hours night working or 60 hours working time in any one week.

Examples of non-driving work that might be re-allocated include:

- vehicle loading and unloading
- vehicle cleaning and maintenance
- other administrative duties



WARNING

- as drivers, as well as operators, are legally responsible for ensuring a vehicle's road-worthiness, daily defect checks and reports by mobile staff should NOT be allocated to other, non-mobile workers
- when allocating loading of vehicles to non-mobile staff it must be remembered that overloading axle or gross vehicle weights is an absolute offence and training is likely to be required

DISCUSS DELAYS WITH CUSTOMERS

Another route worth exploring to help make the most of your drivers' working time is to discuss any frequent delays at delivery points with your customers to see if the delays themselves – and their effect on working time calculations – can be minimised.

Under the new rules, time spent waiting at delivery points should count as working time, rather than a period of availability, unless:

- the mobile worker is not required to remain at his workstation (ie in the vehicle); and
- the period and its foreseeable duration are known in advance

Measures that might be taken include:

- re-negotiating delivery windows with customers to minimise waiting periods for your drivers (eg by moving deliveries to quieter times)
- reducing the number of deliveries you make to given sites in a given period by consolidating loads
- getting your customers to provide information either to you beforehand or at the latest to the driver when he arrives of any likely delays so that periods subsequently spent waiting may be made to qualify as periods of availability
- negotiating with customers to provide a parking place to allow your driver to leave his vehicle whilst waiting to load or unload, if he so wishes



WARNING

Bear in mind that time spent waiting at customers only counts as a period of availability if drivers are not generally required to be in their cab or to undertake any other work. While drivers may choose to remain in their cabs, they cannot be obliged to. This means that your negotiations with customers over waiting times may need to include a commitment from them to call your driver on his mobile phone or via a public address system when a vehicle movement is required, and to accommodate your driver on their premises in the interim (ie rest room facilities, etc)

NEGOTIATE A COLLECTIVE OR WORKFORCE AGREEMENT

A workforce agreement is made with elected representatives of the workforce and can apply to the whole workforce or to a group of workers. The conditions relating to a workforce agreement are:

- an election must be conducted and those voting must be able to do so in secret
- the votes must be fairly and accurately counted

- candidates for election must be relevant members of the workforce or, in the case of a group of workers, they must be members of the group
- workers must be able to vote for as many candidates as there are representatives to be elected
- the number of representatives to be elected is determined by the employer



WARNING

These agreements must be made either by a 'collective agreement' between the employer and an independent trade union, or by a 'workforce agreement', between an employer and a group of employees representing the workforce. If a worker has their conditions determined by a collective agreement, they cannot also be subject to a workforce agreement.

- the agreement must be in writing and have effect for a specified period not exceeding five years
- the agreement must be signed by the elected representatives
- before the agreement is signed, the employer must provide all affected workers with copies of the text and any guidance workers might reasonably need to fully understand the agreement
- if there are 20 or fewer employees to which the agreement will apply, a workforce agreement can be signed either by the appropriate representatives or by the majority of the workers

A workforce or collective agreement can be used to:

- extend the reference period up to a maximum of 26 weeks
- disapply the night work limit
- define a fixed reference period for calculating average working

time to suit the needs of the business

Different agreements can be agreed between different groups of workers in the same company so that, for example, the dates and the length of the reference period can vary within the same organisation.

There may be technical or operational reasons why these approaches do not suit all individuals (for example, part time workers who work for two or more employers). Where this is the case, an individual can agree with their employer a more suitable reference period. However, individuals who are not covered by a relevant agreement cannot have a reference period in excess of 18 weeks.

Provided employees agree, employers can change from one fixed reference period to another fixed period. However, care needs to be taken to ensure that all working time does not exceed an average of 48 hours per week during any interim period.

MODEL WORKFORCE AGREEMENT – SUGGESTED FTA TEMPLATE

This agreement is made on the day of..... 200?

RECITALS

- (1) DonA Transport UK Co is in the business of..... (description of business).
- (2) The Working Time Road Transport Regulations came into force on 4 April 2005 and affect the manner in which mobile workers and the company together conduct the operation.
- (3) DonA Transport UK Co and the representatives of the workforce (group of workers) in a workforce agreement have agreed on behalf of the workforce to adopt the flexibility provided by the regulations in respect of the *night-work limit/reference periods* for calculating the 48 hour average working time. (*delete as appropriate*).

PROVISIONS

1 Definitions

- “the locations” shall mean DonA Transport UK Co, St Elmo’s Street, Southwell
- “the regulations” shall mean the Road Transport Working Time Regulations 200x
- “the mobile worker” shall mean mobile workers employed by DonA Transport UK Co
shall mean night workers as defined by the regulations employed by DonA Transport UK Co at the stated location
- (delete as appropriate)*

2 Scope of agreement

This agreement is made pursuant to regulation 9(2) (extend nightwork limit) and/or 4(3)(a) (set fixed calendar reference periods) and/or 4(4) (extend reference period to a maximum of 26 weeks).

3 Term of the agreement

This agreement shall remain in force for a period of years [maximum 5 years] from (date)

4 Operative provision

4.1 The parties acknowledge and agree that the regulations will impact upon the manner in which the operation is conducted. The parties believe that it is in the benefit of both the Company and the Employees for certain of the provisions of the regulations to be extended or modified.

4.2 Night work limit

The worker will work beyond the 10 hour night work limit stated in the regulations but only to the extent where this would not be in breach of other provisions of the regulation or EU Drivers’ Hours Regulations 3820/85.

4.3 Reference period

4.3.1 For the purpose of calculating the 48 hour average the reference period shall be successive 26 week periods.

4.3.2 The first day of a 26 week reference period will begin at 00.00 hours on Monday. The reference periods that will apply mobile workers will be

..... to and to

This pattern of fixed calendar reference periods will continue until this agreement is terminated.

5 Avoidance of doubt

For the avoidance of doubt the parties acknowledge and agree that save as specifically set out above the provisions of the regulations shall be of full force and effect.

Signed for and on behalf of
DonA Transport UK Co
[site location]

Signed for and on behalf of
[insert site location – employee representatives]

BUDGET FOR PRODUCTIVITY CHANGES

If following your impact assessment, changes in productivity have been identified, this will need to be included in budgets as quickly as possible. Budgets will need to reflect:

- additional vehicles
- additional drivers
- increase costs due to rescheduling
- changes to work patterns for drivers resulting in additional costs
- additional activity by non-driving staff resulting in additional costs
- depot relocation/operating costs (if applicable)



TOP TIP

Discuss with your current drivers issues such as periods of availability, reference periods and night work limits to minimise your need for additional drivers. Similarly, negotiate with any driver agencies you use regarding the numbers of drivers they make available to you and with vehicle rental firms about spare vehicle availability and rates.

UNDERTAKE TRIALS OF ANY NECESSARY RESCHEDULING

HOW FTA CAN HELP

If you require, FTA can take your existing operating data and devise optimal operating schedules to ensure that you remain compliant whilst optimising available resources and identifying any need for additional resources. For more information contact FTA's Member Service Centre 08717 11 22 22.

Where operations require rescheduling to take account of the new rules, undertake trials to determine practicality and give yourself sufficient time to consider all the problems or alternatives. Such trials may in themselves require some negotiation

with your workforce in terms of working hours and pay and with your customers in terms of delivery schedules, etc, but will prove invaluable in determining a practical standard operating procedure.



WARNING

Employers must take care to ensure that current drivers' hours legislation is still adhered to during any trials, including the drivers' hours requirements for breaks and rest. They should also take into account the fact that current EU drivers' hours legislation is expected to be changed during 2006. For more information, contact FTA's Member Service Centre on 08717 11 22 22 or by email at memberservices@fta.co.uk

ADMINISTRATION OF WORKING TIME

DISCUSS AND EXPLAIN THE RECORDING OF PERIODS OF AVAILABILITY WITH DRIVERS

Drivers need to understand how to use their tachograph mode switch correctly to record periods of availability.

When using the tachograph to keep working time records it will be necessary for drivers to change established methods of using the mode switch. EU drivers' hours regulations stipulate that 'availability' may be recorded as  and other work as . The definition of availability

in drivers' hours regulations differs from the working time definition of period of availability.

However, FTA has discussed this with the DfT and VOSA, who have agreed to overlook the slight discrepancy in definitions as this will be rectified when the proposals to amend EU drivers' hours are implemented at some point in the future.

HOW FTA CAN HELP

FTA offers full driver training in this aspect of the new regulations as well as producing a driver card that can be carried in the cab to provide on-the-spot guidance at all times. For more information contact the Member Service Centre on 08717 11 22 22 or by email at memberservices@fta.co.uk.

SELECT YOUR SYSTEM FOR RECORDING WORKING TIME

Employers must keep records of working time for mobile workers for two years after the period covered. In the case of a 26 week reference period this would require retaining working time records for two and a half years. These records must include the weekly working time and time spent working at night (if applicable). The regulations do not prescribe the type of records required, only that employers must be capable of demonstrating compliance with the regulations.

There is no mandatory requirement for tachograph records to be the formal record of working time. However the tachograph regulations do require that on days where driving occurs, the record sheet should provide a full 24 hour record of all activities – so in most cases tachograph records will provide sufficient information for working time records. In a day or week where non-driving work is undertaken, however, additional records will be

required. Additional records will also be needed to provide a record of periods of holiday or sickness. Where mobile workers are vehicle 'crew' not drivers, such as draymen, porters etc, an appropriate system of record keeping must be identified.

When using the tachograph to keep working time records it will be necessary for drivers to change established methods of using the mode switch. EU drivers' hours regulations stipulate that 'availability' may be recorded as  and other work as .

You may, of course, already have other systems that could be used as working time records. For instance, where shift time is unlikely to exceed the 48 hour average or the night work and maximum weekly working time limits, clock cards or payroll records may be sufficient. However, if you need to discount breaks and periods of availability from working time then this type of record would be inadequate.



WARNING

In the case of self-employed mobile workers covered by the road transport working time regulations, the self-employed worker is subject to all the same obligations as an employer and is responsible for keeping and producing records and information.



WARNING

It should be remembered that while tachograph records need only be retained for one year, working time records must be kept for two years after the period covered. Thus if tacho charts are used to calculate and record working time, they will need to be kept for up to two and a half years rather than one. In practice, this is likely to require 100 per cent of tachographs to be analysed and additional storage capacity for used charts.

Checklist of data you need for working time records

Data from your business

- Daily record of time counted as working time
- Daily record of breaks and periods of availability
- Daily record of night work undertaken
- Record of sickness absence
- Record of holidays

Data from the driver

- Details of work undertaken for other employers

HOW FTA CAN HELP

FTA offers a working time analysis service based on tachograph charts, alongside its existing tacho analysis service. It has developed a working time reporter which uses data captured from any source, including tachograph charts, manual logs and smart cards, as a basis for analysing working time. This software applies to all workers across your business and provides a detailed working time report on an ongoing basis that will alert you in advance of likely future infringements. For more information contact the Member Service Centre on 08717 11 22 22 or by email at memberservices@fta.co.uk

RECORDS FOR AGENCY DRIVERS

It is the responsibility of whoever pays the agency driver to keep records to demonstrate compliance with working time and in the majority of cases this will be the agency business. Agencies need to decide how to gather

the relevant information and it is possible they may ask their customers to provide data. You may therefore need to consider the data protection implications of your proposed record keeping system.

CHECK TERMS AND CONDITIONS OF EMPLOYMENT



WARNING

While new contracts of employment can be made to reflect these things easily, existing contracts of employment cannot legally be altered without the express consent and agreement of those employees affected. Changes may, however, be made subject to a collective or workforce agreement.

All employers should check their company terms and conditions of employment and ensure these are amended to reflect the requirements of the new working time regulations.

Changes may be needed to the hours required to be worked and to pay rates for that work. There should also be a requirement for employees to notify you of work for any other employer in writing.

TRAINING

ORGANISE TRAINING



TOP TIP

Remember to include all occasional drivers in your training session

HOW FTA CAN HELP

FTA offers a full range of training courses for all affected personnel. For more information contact FTA's Member Service Centre on 08717 11 22 22 or by email at memberservices@fta.co.uk

Consider which employees need to change their working practices in some way in order to accommodate the requirements of the new road transport working time regulations. Drivers and other mobile crew are the most obvious examples, but others will also have to understand the new regulations to properly manage implementation of the rules. They are like to include:

- transport managers
- traffic office staff/schedulers
- human resources staff

EMPLOYER AND EMPLOYEE OBLIGATIONS



WARNING

Because of the different way in which statutory and other additional leave are treated in the regulations, employers need some means of recording when an employee takes leave, whether it counts as part of their statutory holiday or as additional leave.

The new regulations oblige employers to:

- inform employees of the requirements of the new UK road transport working time regulations (see pre-worded letter on page 20 or visit www.fta.co.uk/workingtime for a downloadable copy)
- provide employees with details of any collective or workforce agreements
- keep working time records for two years after the period covered
- provide on request a record of working time performed by employees to the employees concerned and to authorised enforcement officers. VOSA (DVTA in Northern Ireland) is responsible for enforcement of working time regulations for mobile workers
- be in a position to demonstrate that they are complying with the regulations

- produce on request by an authorised enforcement officer any other books, records or documents necessary for the purposes of examination or investigation

Employees, meanwhile, must:

- inform employers in writing of all working time undertaken for any other employer

Although most of the requirements for monitoring and keeping records lie with the employer, both worker and employer share the responsibility for complying with the rules. If the mobile worker knowingly breaks the rules (eg neglects to inform his employer about other work, or knowingly makes a false record), then he may be liable for prosecution.

Health assessments

In addition to the above, the horizontal amending directive (HAD) makes provision for free health assessments for all night workers in the road transport industry from 1 August 2003. While night time for drivers and crew of vehicles in operations subject to EU

drivers' hours rules is between 00.00 hours and 04.00 hours, this period should NOT be used to determine which night workers are entitled to a free health assessment, because under HAD regulations a night worker is defined as any worker who works for at least three hours between 23.00 hours and 06.00 hours.

Paid annual leave

The horizontal amending directive (HAD) also makes provision for all workers to receive four weeks' paid annual leave. There is no legal entitlement to time off on bank holidays, therefore the four weeks' leave can include bank holidays. Employers can continue to stipulate when leave is to be taken. The statutory four weeks' holidays may not be carried over into the next holiday year and workers cannot volunteer to work during holidays for payment in lieu. The DTI has advised that employers can decide which holidays will be statutory and which will be additional, provided that this is stipulated when the holiday period is authorised.

Dear [either carry out a mail merge, type in name individually, or use 'Dear Colleague'],

ROAD TRANSPORT DIRECTIVE

As you may be aware, new regulations on working time for the road transport industry were introduced in the UK on 4 April 2005.

The purpose of this letter is to notify you of the provisions of these regulations [together with details of our collective/workforce agreement that applies to you - delete if not applicable].

Who is affected by the Road Transport Directive?

The new rules apply to:

- drivers subject to tachograph rules; and
- non-driving vehicle crew carried in the vehicle, where the operation is required to comply with tachograph rules.

You may not individually 'opt-out' of any of the rules, which are in addition to (not instead of) tachograph rules.

What are the rules?

The rules are:

- a **maximum average 48 hour working week** - this is normally calculated over a fixed 17 week (occasionally 18 week) reference period which the Government defines. However, reference periods may be extended to up to a maximum of 26 weeks and changed to different fixed calendar periods by collective (union) or workforce agreement. [If relevant, include provisions of collective or workforce agreement in relation to fixed reference periods. We also have the choice to use rolling, rather than where applicable] reference periods.
- a **maximum cap of 60 hours working time in any fixed week** - the fixed week starts at 00.00 hours on each Monday and finishes at 24.00 hours the following Sunday.
- a **maximum limit of 10 hours in any 24 hour period for night workers** - for goods vehicle operations, a night worker is someone who works for any time between 00.00 hours and 04.00 hours, [for passenger operations, a night worker is someone who works for any time between 01.00 hours and 05.00 hours - delete if not applicable, or replace previous sentence if it is]. This night work limit may be extended (or removed) by collective or workforce agreements, but all other rules and limits still apply, including tachograph rules. [If relevant, include provisions of collective or workforce agreement in relation to night work here.]

breaks from work - you may not work for more than 6 hours without a break. A 30 minute break is needed if your total working time is over 6 but not over 9 hours, or 45 minutes is needed if your total working time is over 9 hours. Breaks must interrupt working time - in other words, they may not be taken at the very beginning or end of a shift. They may be sub-divided into periods of at least 15 minutes and spread over the working day. Breaks taken as breaks from driving under tachograph rules can be counted as breaks from working time, and vice versa. When important to remember that breaks must be taken after 6 hours work or after 4.5 hours driving, whichever happens soonest.

daily and weekly rest as specified in the tachograph rules.

What is working time?

Working time is not the same as attendance, spread-over or shift time.

Working time **includes** all road transport activities, such as:

- driving
- loading and unloading
- vehicle cleaning and maintenance
- work to ensure the safety of the vehicle and its cargo, including daily defect checks
- waiting time that cannot be classed as a period of availability (see below)
- any other work, including administrative duties
- overtime
- job-related training associated with normal work and training that is part of the company's commercial transport operation
- time worked for another road transport employer

Working time **does not include:**

- breaks during a shift
- periods of availability (see next page/below [delete as applicable])
- daily rest
- weekly rest
- voluntary work, including charitable work, special constables, territorial army and retained firefighters
- evening classes or day-release courses
- routine travel between home and your normal place of work

What is a period of availability?

The following three conditions apply to a period of availability:

1. You are available for work, but not required to undertake any work.
2. You must not be 'required' to stay at your workstation (this will usually be the vehicle) - as long as you have the freedom to leave the vehicle, it can still count as a period of availability. Also, if you must remain with the vehicle because of safety or security reasons, this would not in itself disqualify the time as being a period of availability. Typical examples of this might include waiting time at sites where it is unsafe for pedestrians or where vehicles are transporting goods that are dangerous or of a high value.
3. The period and its expected duration must be known in advance. For example, if you typically expect to be delayed for a specific period of time at a customer's premises, this will qualify as being known in advance.

As long as the conditions stated above are met, examples of periods of availability can include:

- accompanying a vehicle being transported by boat or train
- waiting at national borders
- delays due to traffic prohibitions
- time waiting for someone else to load or unload the vehicle - as long as you are not required to be in attendance
- delays at a customer's premises
- staying with a broken-down vehicle at the roadside, waiting for repairs or recovery
- time spent waiting to undertake work after you have reported for work
- time spent travelling in the vehicle to be available for driving (while double manning) or work
- time spent travelling in the vehicle as non driving crew

Calculating average working time when leave is taken
There are special rules that apply when the following types of leave are taken:

- statutory annual leave
- sick leave
- maternity, paternity, adoption or parental leave

When we calculate average working time over the reference period, the regulations require us to add in 48 hours for each fixed week of leave taken and 8 hours for each individual day of leave.

[As we have chosen to use a rolling reference period, we have the option of using the method above, or to offset the leave taken by using actual working time outside of the reference period.]

What happens in emergencies?

Provided that road safety is not jeopardised, and to enable you to reach a safe stopping place, you may depart from the rules - but only to the extent necessary to ensure the safety of persons, the vehicle or its load. An emergency only applies in cases where it unexpectedly becomes impossible to comply with the working time rules and you must record all reasons for exceeding the limits.

What obligations do employers and workers have under the new rules?

The regulations require us to:

- take all reasonable steps to ensure the limits and rules are being complied with
- notify you of the provisions of the regulations and the provisions of any relevant collective or workforce agreement (if applicable)
- request from you details in writing of any time worked by you for another employer, and include that time in working time calculations
- keep adequate working time records for two years
- provide to you on request a copy of your working time records and any other necessary documents to enforcement officers

The regulations require **you** to:

- inform us in writing of all working time undertaken for any other employer

Although most of the requirements for monitoring and keeping records lie with us, we both share the responsibility for complying with the rules. We are both at risk of prosecution if the rules are systematically broken.

Thank you for taking the time to read this letter. Should you have any queries with regard to the working time regulations, please contact [insert relevant name and/or contact number].

Yours sincerely/faithfully [delete as applicable]



TOP TIP

Driving abroad

In theory it would be possible to enforce the 10 hour and 60 hour working time limits at the roadside. It is expected that the enforcement of working time across Europe will be carried out at the employer's premises, rather than the roadside. Nevertheless, we would advise that night workers take a copy of their collective or workforce agreement with them, if they plan to exceed the 10 hour limit for night workers when travelling abroad.

Enforcement

The regulations that introduced the horizontal amending directive for non mobile workers and mobile workers not subject to EU drivers' hours rules stated that 'an employer' who fails to comply with any of the relevant requirements shall be guilty of an offence. However DfT guidance clearly states that mobile workers who withhold information on work undertaken for other employers or knowingly makes a false record may be liable for prosecution.

VOSA (DVTA in Northern Ireland) enforces working time regulations for mobile workers – primarily in response to complaints they receive. It is anticipated that DVTA policy on enforcement will be consistent with VOSA.

VOSA's approach is to educate employers and workers rather than look to prosecute. However, where evidence exists that rules are being systematically broken examiners will be at liberty to check working time records at employers' premises. This policy is consistent with FTA's position expressed in discussions with the DfT and in writing to VOSA.

VOSA may prosecute before a magistrates court, or in Scotland may submit a report to the Procurator Fiscal.

Traffic Commissioners (Licensing Authority in NI) may take account of any information they receive to consider good repute in respect of operator licensing.

Penalties

An inspector can issue an improvement notice requiring a contravention to be rectified within a specified period. A prohibition notice can be served if an inspector believes there is a risk of serious personal injury. There is a right of appeal against improvement and prohibition notices served in respect of contravention of working time regulations.

The penalty for failing to comply with the terms of a notice or failure to provide information or for obstructing an inspector depends on the seriousness of the offence. However, fines can range from £5,000 to an unlimited fine on conviction on indictment. Offences can also result in imprisonment (in addition to any fine) ranging from three months to two years.

FREQUENTLY ASKED QUESTIONS

Q *We operate vehicles that are subject to both EU and domestic drivers' hour rules, and many of our drivers and crew move between these operations. I understand that the Road Transport Regulations apply the EU rules on daily and weekly rest to all mobile workers. Does this mean that they have to comply even on weeks where they are driving or travelling in a vehicle that is on domestic rules?*

A **No.** The regulations apply the EU rules on daily and weekly rest to mobile workers as they already apply to drivers. So, in the same way that a driver would only be required to show daily rest on days on which he drives a vehicle subject to EU rules and a weekly rest on weeks in which he has driven such a vehicle, the same applies to your vehicle crew. But the requirement under the Road Transport Regulations for breaks from work must always be adhered to, along with the working time limits and averages.

Q *We have negotiated agreement with our workforce to extend and set different calendar reference periods. The first 26-week reference period would normally run from January to June, followed by another beginning in July and ending in December. Bearing in mind the regulations took effect from 4 April, what do we do about this first reference period?*

A The Road Transport Working Time Regulations took effect from 4 April 2005 and calculations should start from 00.00 hours on that day.

Companies who want to set reference periods by agreement to suit the needs of their business could find that the very first reference period may fall short of 17 weeks. For example, if they want an agreed 26-week reference period to start on 4 July 2005 then the first reference period will be 13 weeks. DfT has accepted that this may initially be necessary to get reference periods in place, on condition that the 48-hour average is not exceeded when calculated over the 13-week period. This arrangement is in fact more restrictive than calculating over a 17-week period.

It is not possible to apply reference periods before the regulations took effect. Therefore, it is not possible to start your first reference period from January 2005 and make retrospective calculations.

It is advisable to include dates of the first reference period as well as the start date of the agreed 26-week reference period.

Q *I understand that notional figures must be included in the calculation for working time for time off. Does this include time off for things like jury service and union work?*

A **No.** The rules state that notional figures of 48 hours per fixed week and 8 hours per day must be added for:

- statutory holiday
- sick leave
- maternity, paternity, adoption or parental leave

Absences for any other reason do not have to have time added into the equation.

Q *I understand a night worker is someone who works at night time, which is between midnight and 4am for goods vehicles. I have a shift that starts at 4am, are these mobile workers night workers?*

A **No.** They have to be working 'during' the night time period, so a worker who starts at exactly 4am does not fall into the definition. However, if there is a danger they will actually start work, say, 10 minutes earlier and therefore come into scope for the night worker limits, it may be worth considering starting your shift slightly later.

Q *Does the limit of 10 hours per 24 hours for night work only apply on shifts where the worker works during night time?*

A **Yes.**

Q *If a worker starts duty at 3.30am, but is on a break or POA until 4am, are they still subject to the 10 hour limit?*

A It seems unlikely that the worker would be on break or POA for the whole of that period between the start of his shift and 4am. Activities such as reporting for work, collecting paperwork, carrying out a daily defect check and collecting keys will all count towards working time, and if any of this activity takes place during night time the worker will be subject to the 10 hour limit.

Q *Could working time enforcement affect my O licence?*

A It could, under certain circumstances. VOSA has indicated that it will not be routinely advising TCs of improvement or prohibition notices, although if they are specifically asked by TCs they would have to respond. They are also likely to automatically inform TCs of any convictions. Although RTD convictions are not specifically listed as 'notifiable convictions' (ie convictions which you are obliged to inform TCs about), if you are convicted, the penalties are likely to make it a 'serious offence' (over 3 months in prison, level 4 fine (£2,500), or 60 hours community service) which is also notifiable.

SUMMARY OF THE ROAD TRANSPORT REGULATIONS (RTR)

an average 48 hour working week calculated over a 17 week reference period

NO opt out available

the reference period for calculating the 48 hour average may be extended from 17 weeks to 26 weeks by a collective or workforce agreement (referred to as a relevant agreement)

Government has defined 17 (some will be 18) week reference periods over which average working time should be calculated. A new reference period will start on the Monday which falls on, or is the first Monday after 1 April, 1 August and 1 December of each year. Employers can however decide to calculate working time based on rolling reference periods. Collective or workforce agreements can set dates for fixed calendar reference periods that suit the needs of individual businesses. If no such agreement is in place, reference periods will default to dates set by the Government unless workers have been advised that calculations will be based on rolling periods. Whatever reference periods are to be used, workers must know in advance how working time is being calculated and when reference periods start and end.

4 April 2005	– 31 July 2005	– (17 week period)
1 August 2005	– 4 December 2005	– (18 week period)
5 December 2005	– 2 April 2006	– (17 week period)
3 April 2006	– 6 August 2006	– (18 week period)
7 August 2006	– 3 December 2006	– (17 week period)

a maximum 60 hour working limit in any given week

night time is defined as the period between midnight and 04.00 hours for drivers and crew of goods vehicles, and between 01.00–05.00 for drivers and crew of passenger vehicles

if any work regardless of its duration is undertaken during night time a maximum 10 hour night work limit will apply in a 24 hour period. However the night work limit can be disapplied by a collective or workforce agreement (relevant agreement) but without prejudice to EU drivers' hours rules on daily and weekly rest that *must* be observed

self-employed drivers will not be covered by UK regulations until March 2009. However the definition of self-employed in the RTD has been tightly drawn and only a limited number of drivers are likely to be excluded from the scope of the 2005 implementing regulations

VOSA (DVTA in Northern Ireland) is to enforce the new regulations; primarily in response to complaints they receive. Its approach will initially be to educate employers and workers, rather than look to prosecute. Nevertheless, where evidence exists that the rules are being systematically broken, examiners will be at liberty to check working time records at an employer's premises

An easier way to ensure WORKING TIME COMPLIANCE

FTA has worked closely with the Government and other official bodies in the development of the Working Time Directive (WTD) over a number of years and has been successful in obtaining the best possible deal for our industry. We have developed a complete range of products and services to enable you to monitor your own working time compliance. These range from do-it-yourself options to letting Tachofta take care of your compliance needs, working time training courses and an impact assessment tool which will assess the effect of the new regulations on your business.

DIY working time solutions

Drivers' Daily Log Book

A combined log book for recording both working time and drivers' daily defect checks. The book is A4 in size, has a page for each day and has a grid covering 24 hours in 15 minute blocks. The driver enters his day using the four modes (rest, drive, other work and periods of availability) by marking the box on the grid. For days when the driver does not work he can indicate this by ticking a separate box.

Price: £12.50+VAT = £14.69 for 4 books (100 pages each book)

Working Time Reporter

Spreadsheet based software that has reference period variations built in and calculates the weekly average. The software only calculates weekly totals and averages and does not look for other infringements on breaks or night work. Multi driver entry and input from other spreadsheets can be done on the WTD Reporter. The soft-

ware needs to be downloaded from the web.

Price: £15+VAT = £17.63

Working Time Analyser

This software works in the same way as the WTD reporter but is also programmed to look for all working time infringements. It enables fast data input as the entry screen is by duplication of the log book and the entering of the blocks on the sheet is by mouse click only which in turn calculates working time.

This software will report all working time infringements.

Price: £99+VAT = £116.33

Working Time Auto Analyser

FTA is currently assessing a system using optical character recognition technology for quick scanning of log books. Aimed at the larger operator it requires minimal data entry. The system uses a log book paper record

which is then scanned and the software interprets the data and produces an instant report. FTA will supply the log books, software and suitable scanner (if required).

Please call 08717 11 22 22 for more information

Drivers' Hours and Working Time Toolkit

This product is digital tachograph capable and uses drivers' hours data (from tachograph charts) and calculates working time. You can either analyse all charts or, if only periodic analysis is carried out, then other days can be entered via one of the other three solutions above.

Price: Chart analysis package (software and analyser) £1,250+VAT = £1,468.75) includes installation and half day training. Software support including upgrades is £125 per year. Digital tachograph VU and smart card download devices will be extra.

Working time sources of information

Member Advice Centre

A dedicated helpline for members only, for all your operational and compliance questions and queries regarding the Working Time Directive and the UK regulations.

Comprehensive compliance guide

Ensures that you comply with the working time regulations using FTA's step-by-step action plan.

Freight magazine

FTA's monthly membership magazine offers the latest expert compliance advice and policy insights on current affairs within the freight industry.

FTA e-news

This regular email service delivers weekly updates on the Working Time Directive and other transport policy and compliance issues direct to your inbox.

FTA website

Visit <http://www.fta.co.uk/workingtime> for up-to-the-minute information on working time and other compliance issues facing your business.

Driver literature

- Working Time drivers' card
- Drivers' Handbook
- Workshop/canteen poster

Member Service Centre: 08717 11 22 22

Consultancy

Working Time Impact Assessment

FTA's consultancy experts can visit your premises and carry out assessments on the likely impact of working time on mobile and non-mobile staff. FTA can provide a detailed driver management report to show the expected impact of the directive, and identify possible management strategies for alleviating the effects. You can either decide to manage the change yourselves or FTA can help ensure you remain compliant.

Tachofta

FTA has redesigned its tachograph services offer to reflect changes in legislation, and now through Tachofta, provides analysis and support not only for drivers' hours from tachograph charts but also for working time and digital tachographs – prices start at just £100 per driver per year – that's less than £2 per week!

On-site

With an expert on your site, FTA can analyse up to 100 per cent of your drivers' tachographs plus any additional information for Working Time Directive compliance.

This analysis will ensure you have all the information, advice and one to

one support you need to fully comprehend any issues with drivers' hours or WTD compliance.

Our on-site team can also enter your working time data from log books into the FTA Working Time Analyser.

Analysis

Sending in your charts and/or WTD data, our bureau staff will ensure accurate and precise reporting of your drivers' hours and/or WTD compliance status.

Couple this analysis with on-site visits and you can have complete peace of mind and confidence, not only in your compliance, but also that you are taking actions appropriate to your business.

Audits

Our on-site experts can visit your premises and ensure your reporting systems comply with legal requirements of either or both drivers' hours and WTD regulations. Audits will identify areas of non-compliance, recommend improvements, advise on non-compliance and one to one support will provide answers to your questions.

Drivers' talks

Our on-site team can put together bespoke talks based on findings in analysis carried out on your site. The talks will help your drivers to identify areas for improvement and change to ensure that compliance with the regulations is maintained at all times.

Training

Working time for managers

Content

- how the Working Time Directive can affect your business
- how to control the impact of the legislation through understanding and planning
- controlling the cost of complying with the legislation

Benefits

- get a simplified introduction to the WTD legislation which allows you to grasp it quickly and effectively
- identify working practices and management actions to minimise any major impact on your business

Duration

Half day

Price

£140+VAT = £164.50. Price includes tuition, course notes and refreshments.

Working time workshop for drivers (in-company)

Content

- specifics relating to drivers' working practices
- 48 hour average working week/60 hour maximum week
- driver awareness and responsibility of the legislation
- management of time to ensure working time requirements are met

Benefits

- reassurance that your drivers are fully aware of their responsibilities
- tailored to your company's specific needs

Duration and venue

Half day delivered in-company or at premises to suit you.

Price

£600+VAT = £705. Price includes half day tuition for up to 15 drivers.

Working time workshop for managers (in-company)

Content

- create an action plan to manage the regulations
- how to ensure minimum disruption and cost to your business
- find real solutions to managing the workforce within the scope of the regulations

Benefits

- bespoke workshop for managers
- looks at your own company's internal systems of working
- an audit by an FTA instructor of internal working practices prior to the workshop means the day is focused specifically on your own company

Duration and venue

One day delivered in-company or at premises to suit you.

Price

£1,100+VAT = £1,292.50. Price includes tuition for up to 12 delegates.

Member Service Centre: 08717 11 22 22

To book your training requirements and register your interest in FTA working time services call FTA's Member Service Centre

Member Service Centre: 08717 11 22 22



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