

# Road Transport (Working Time) Guidance

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## **Front page**

### **Advice on the new working time regulations for mobile workers in the road transport sector**

This booklet provides guidance on the limits on working time provided for in the Road Transport (Working Time) Regulations 2005. It gives general guidance only and should not be regarded as a complete or authoritative statement of the law.

Readers should be aware that there might be developments in new legislation or case law, which affect the rights of workers.

**This guidance is subject to ongoing review in the light of practical experience and any updates will be published on the DfT website ([www.dft.gov.uk/freight/rtd](http://www.dft.gov.uk/freight/rtd)).**

Version 1.0 March 2005

## Brief overview

A new set of working time regulations will come into force on 4 April 2005. The Regulations are called the Road Transport (Working Time) Regulations and they will affect mobile workers (mainly drivers, crew and other travelling staff) who are travelling in vehicles subject to the Community Drivers' Hours regulation (3820/85/EEC) or, in some cases, the AETR. "Self employed drivers" are exempt from these rules (for this exemption to apply, drivers must satisfy criteria given in Section 1.4). Mobile workers are required to comply with these regulations as well as the existing Community Drivers' Hours regulation.

The new regulations introduce limits on weekly working time (excluding breaks and periods of availability) and a limit on the amount of work that can be done at night. They also specify how much continuous work can be done before taking a break and introduce daily and weekly rest limits for the crew and travelling staff. Under the new regulations, working time for mobile workers must not exceed:

An *average* 48 hour week

60 hours in any single week

10 hours in any 24 hour period, if working at night.

A reference period for the average 48 hour week may be extended from 4 to 6 months and the amount of night work can exceed 10 hours if a collective or workforce agreement is in place (see section 7.1 - "relevant agreements"). However, mobile workers are not allowed to opt-out of the weekly working time limits, even if they want to work longer.

Employers will monitor working time and should do what they can to ensure the limits are not breached. Records need to be kept for 2 years. If there is no employer, the Agency, Employment Business or even the worker concerned must monitor their working time. There is also guidance for using the tachograph for monitoring working time (see Section 6.6).

An employer may use the existing rolling method for calculating working time, already in use for workers under regulation 4(6) of the Working Time Regulations 1998 (see annex E for details). However, these regulations also introduce a new method of calculating average working time. Reference periods are fixed by the calendar, running from April-July; August-November and December-March for calculating the average 48 hour week. Other reference periods and other methods of calculating average working time are possible under a relevant agreement. The options are explained under Section 3.6 of the Guide.

Statutory paid annual leave/sick leave cannot be used to reduce the average working time of a mobile worker. For each week of leave that is taken, 48 hours working time must be added to their working time; for each day's leave, 8 hours must be added to working time. Alternatively, employers may offset statutory leave by counting working time outside the reference period (as laid under regulation 4(6) of the Working Time Regulations 1998 - see Annex E), if they use a rolling reference period.

VOSA will enforce the new regulations.

## Queries concerning this guidance

**If after reading this guide, you feel that further clarification is needed on certain aspects of the rules, please telephone VOSA on 0870 6060 440, for assistance.**

## Section 1 - Who is affected by the Road Transport (Working Time) Regulations?

### 1.1 Main points

- The regulations affect drivers **and** other "mobile workers" who are involved in operations subject to Community Drivers' Hours regulation (3820/85/EEC), or in some cases the AETR, including own-account drivers and agency drivers. Generally anyone in a vehicle that is required by EU legislation to have a tachograph is affected
- If a worker is only occasionally undertaking activities covered by the Community Drivers' Hours regulation (see Section 1.3), they are covered by the Working Time Regulations 1998 (as amended), rather than these regulations
- The Regulations will not affect self-employed drivers provided they fit the definition of self-employed (see Section 1.4). But the Regulations will have to be applied to them from March 2009.

### 1.2 Who is affected?

Mobile workers are covered by the Road Transport (Working Time) Regulations if they are involved in operations subject to the Community Drivers' Hours regulation 3820/85/EEC or in some cases the AETR. Generally, drivers, vehicle crew and travelling staff of goods vehicles where the maximum permissible weight exceeds 3.5 tonnes or passenger vehicles suitable for carrying more than 9 people including the driver.<sup>1</sup>

A **worker** is anyone who provides work or services under a contract, express or implied. A **mobile worker** is any worker forming part of the travelling staff (typically drivers and crew, but also trainees and apprentices) who is in the service of an undertaking which operates road transport services for passengers or the movement of goods. Mobile workers include drivers who work for hire and reward companies or companies with own account operations.

Typically, this means

- drivers of vehicles with a tachograph in them (unless they have an exemption from 3820/85/EC), i.e. goods vehicles over 3.5 tonnes, coaches and inter-urban bus services,
- members of the vehicle crew and
- any others who form part of the travelling staff.
- A number of road transport operations require attendants who must accompany the driver by law, or fulfil a function ancillary to driving (e.g. navigating or crew to accompany abnormal loads), or security staff for high value goods. Travelling staff may include a range of individuals such as porters in household removals; draymen in brewery deliveries movements, conductors on inter-urban buses. These would all be covered by the Regulations.

The Regulations do not apply to:

- Mobile workers who are not participating in road transport activities covered by Community Drivers' Hours regulation or in some cases the AETR (e.g. employed taxi drivers, certain van drivers, chauffeurs)

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<sup>1</sup> More information about regulation 3820/85, who is covered, the exemptions and exceptions can be found in DfT's drivers' hours guidebooks (GV262 and PSV375), under the freight logistics/road transport sections of the DfT website at [www.dft.gov.uk](http://www.dft.gov.uk)

- Any drivers, crew, travelling staff who do not come within the definition of "mobile workers" in the RTD (e.g. a teacher who drives a PSV on a school trip, that is subject to the Community rules)
- Passengers (e.g. construction workers being ferried to a building site would be passengers rather than travelling staff)
- Self-employed drivers (see Section 1.4)
- any worker who only occasionally does work which is within the scope of Community Drivers' Hours regulation - 3820/85/EEC (see Section 1.3)

### 1.3 Occasional mobile workers

These regulations are primarily for the benefit of commercial drivers and crew of vehicles participating in road transport activity under Community Drivers' Hours regulation. However, it is possible that non-mobile workers (for example warehouse workers, mechanics, drivers of light vans) will drive vehicles within scope on an occasional basis.

Any worker who only occasionally works within scope will be subject to the Working Time Regulations 1998 (as amended), rather than these Regulations. You are an occasional mobile worker if you:

- work fewer than 11 days within scope of the Community Drivers' Hours regulation in a reference period that is shorter than 26 weeks;
- work fewer than 16 days within scope of the Community Drivers' Hours regulation in a reference period that is 26 weeks or longer.<sup>2</sup>

As now, limits under the Community Drivers' Hours regulation will apply to occasional drivers.

### 1.4 Self-employed drivers

Self-employed drivers (as defined under these regulations) are excluded from all the requirements until March 2009. However the definition of self-employed driver under the Road Transport (Working Time) Regulations has been tightly drawn and is not the same as the definitions under the Employment Rights Act 1996, or under the Working Time Regulations 1998. Nor is the test the same as applied by the Inland Revenue.

Only a limited number of drivers are likely to be classified as "self-employed". Drivers, who do not satisfy the criteria for being self-employed under these new Regulations, will (along with employees) be subject to them from 4 April 2005.

"Self-employed driver" 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 such transport, who is entitled to work for himself and who is not tied to an employer by an employment 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, individually or through a co-operation between self-employed drivers, to have commercial relations with several customers".

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<sup>2</sup> Whilst 26 weeks is the maximum reference period under these regulations, the Working Time Regulations 1998 (as amended) allow for 12 month reference periods to be used.

A self-employed driver must have an operator's licence.

- The amount of control that the driver has over their work is a key point, as is their reliance on profits to provide them with an income.
- If the worker is restricted (either implicitly or explicitly) from working for another client / customer, then they would be covered by all the requirements of these regulations.
- In addition, most agency workers would not count as a self-employed driver because they are normally paid at a fixed rate. Once they accept a job, an agency worker is not free to organise their working activities.

For the purpose of these regulations, drivers who are partners in a firm or who have limited liability will be treated no differently to sole traders, providing they do not regularly employ other drivers. Providing they have an operator's licence and meet the other requirements under the regulations, then they are classed as a self-employed driver.

### 1.5 Working via employment agencies and employment businesses

Mobile workers who work via an employment agency or an employment business are subject to normal terms and conditions of employment under their contract with the agency or business. Workers are normally paid by (and have a contractual relationship) with an employment business. The employment business is responsible for monitoring their work and keeping working time records. However some workers who are employed via an employment agency (on a fixed or short term contract) are paid and have a contract with the hirer. Under these circumstances, the hirer monitors working time records. Where no contract of employment exists, whoever directly pays the worker in respect of work undertaken will be regarded as the employer for the purpose of these regulations.

Some workers register with (and work for) more than one employment business. But the calculation of working time must include work performed for all employers during the reference period, so the worker must inform all employers in writing (or whoever is responsible for keeping records), of the hours worked for another employer.

Agencies and employment businesses are not generally allowed to keep original tachograph charts. If tachograph records are going to be used to monitor working time, then the agency / business should copy the chart before returning it to the client, otherwise they will have to ask the client for a copy of the chart (or for a summary of the information on the chart).

#### **Frequently asked questions:**

**Q: If a driver is normally deemed to be self-employed (for example for Inland Revenue purposes), but fails to meet the criteria of "self-employed driver" under these regulations, is s/he covered by provisions under any other working time legislation (e.g. Working Time Regulations 1998 - as amended)?**

A driver does not necessarily become an employee for the purposes of other employment legislation, because s/he fails to meet the definition of a self-employed driver under these regulations. The definition of "self-employed driver" under these regulations should not be seen as introducing a precedent, in relation to other UK employment legislation.

## Section 2 - What counts as working time?

### 2.1 Main points

- Working time is *not* attendance or shift time. It does not include travelling between home and work (it needs to be noted however, that in certain circumstances such periods may count as "other work" under the separate EU drivers' hours rules), lunch breaks, other breaks, periods of availability, evening classes or day-release courses.
- Working time includes job-related training associated with normal work and training that is part of the company's commercial transport operation.
- The longer maximum weekly working time limit for international non-regular (unscheduled) coach journeys is unaffected.
- Working time for another employer counts towards the total working hours performed by the mobile worker.
- But voluntary work and activities performed by mobile workers who are part-time retained fire fighters, special constables and members of the reserve forces should not be counted towards these limits.

#### **Employers check:**

- Identify activities that count as working time and those which count as periods of availability.
- Ask workers to confirm any working time they have performed for another employer.

### 2.2 What is 'working time'?

The new Regulations define working time as the time from the beginning of work, during which the mobile worker is at the workstation (typically this means the driver's cab - but see glossary for fuller definition of this and other terms) at the disposal of the employer and exercising his functions or activities - that is to say

#### ***a) the time devoted to all road transport activities including:-***

driving;

loading / unloading;

Training that is part of normal work and is part of the commercial operation;

assisting passengers boarding / disembarking from vehicle;

Cleaning, maintenance of vehicle

work intended to ensure safety of vehicle and its cargo and passengers (e.g. monitoring loading and unloading / including daily defect check and report);

Administrative formalities or work linked to legal or regulatory obligations directly linked to the specific transport operations under way

***b) time devoted to other activities***

time during which the mobile worker cannot freely dispose of his/her time and is required to be at the workstation (typically this means the driver's cab - but see glossary for fuller definition of this and other terms) ready to take up normal work, with certain tasks associated with being on duty (e.g. working in the warehouse, or in an office or doing other activities for the employer);

waiting periods where the foreseeable duration **is not known** in advance, by the mobile worker, either before departure or just before the start of the period in question.

***Working Time does not include:***

- Routine travel between home and their normal place of work.
- Rest and breaks when no work is done.
- Periods of availability (see below).
- Evening classes or day-release courses.
- Voluntary work or time spent as a Retained Fire Fighter, a Special Constable, or member of the Reserve Forces).

**2.3 What is a period of availability (PoA)?**

Generally speaking a period of availability (PoA) is waiting time whose duration is known about in advance by the mobile worker. Under the regulations, these periods have to meet the following criteria:

- A mobile worker should not be required to remain at his workstation
- (but) he must be available to answer calls to start work or resume driving on request; and
- the period and the foreseeable duration should be known in advance, by the mobile worker, either before departure or just before the start of the period in question.

Examples of PoAs include the time when accompanying a vehicle being transported by boat or train; or time spent waiting at frontiers; or delays due to traffic prohibitions. Unless the driver is taking a break or performing other work (e.g. navigation), periods of availability also includes time spent sitting next to the driver while the vehicle is in motion (when driving in a team). In addition to drivers, other travelling staff may count travelling time as PoA, providing they're not performing any other work.

Like breaks and rest periods, a PoA can be taken at the workstation. Providing the worker has a reasonable amount of freedom (e.g. he can relax and read), for a known duration, this would satisfy the requirements for a PoA. Where the mobile worker knows about a delay in advance, but it is deemed prudent that the driver should remain in the cab for reasons of security or safety, this should not in itself, disqualify this delay being recorded as a period of availability. Typical examples might include waiting at a site that is unsafe for pedestrians or staying in a vehicle carrying high value goods or cash.

Mobile workers do not need to be formally notified about a period of availability and its duration in advance. It is enough that they **know** about it (and the foreseeable duration), in advance.

PoA does not apply to delays where the mobile worker has to continue working. For example, where a driver is diverted due to a road closure, he would still be driving. Normally, delays due to congestion would also count as working time because the driver would be stopping and starting the vehicle. If the mobile worker is monitoring a discharge from the vehicle (eg. Petrol at filling station), this time will also count as working time.

### *Examples of PoA:*

When a driver experiences delays at a distribution centre or depot, waiting for someone to load or unload his vehicle. He knows the length of the delay at the start of the period (because someone has told him, or because he has arrived too early for his slot, or because he always experiences a delay at one of his regular customers).

If a driver typically experiences a delay of about 1 hour when visiting a regional distribution centre, then this time counts as a period of availability. However, if he experiences a 2 hour delay when he normally only expects an hour, then the second hour would count as working time.

If the mobile worker is notified of a 1 hour delay, but is then notified (before the end of the first hour) that a further 1 hour delay is expected, then the second hour also counts as a PoA.

Where a mobile worker reports for work, is informed that he will not be required to undertake any duties for a specified period (albeit, he needs to remain on site to answer calls and be ready to take up work), but is free to wait in the canteen or rest facility.

If the vehicle breaks down and the mobile worker is told how long it will take to be rescued

Unless doing some other work (e.g. navigating), a relief driver who is travelling as a passenger would count this time as a period of availability. This time (or a part of it) can also be counted as a break.

Traffic prohibitions that would count as PoAs include for example, where the police have delayed the movement of an abnormal load for a set period of time, or where vehicles are banned from city centres during specified hours, and the driver has to park the vehicle and wait.

## **2.4 What is a week?**

The working week must start and finish at 00.00 hours on Monday morning.

## **2.5 Working for two or more employers or another organisation**

If an employee works for two or more employers, then the weekly working time is the combined total of the hours worked (excluding breaks, rest and periods of availability) for all the employers. The mobile worker must tell their employer(s) in writing, of any time worked for another employer.

However, time spent on voluntary activities (e.g. driving a vehicle in a carnival / gala days) does not count towards the working time limits. In addition, time spent performing activities for the emergency services or Armed Forces (such as being a retained fire fighter, special constable, and duties performed whilst being a member of the reserve forces (Territorial Army etc) should not count towards the limits under the these Regulations.

Nevertheless, employers should bear these other activities in mind when deciding how much work (and what type), can be performed. Workers should not do any work that would compromise road safety or impair the health of the employee. In addition, all the rest requirements and limits under the Community Drivers' Hours regulation will still apply.

## **2.6 Exemption from the 60 hour rule for coach drivers**

Coach drivers on an international (non-regular) unscheduled journey can work longer than 60 hours in a week because the fourth and fifth subparagraphs of Article 6(1) of the Community Drivers' Hours regulations (3820/85/EEC) are not overridden by the Regulations. So coach drivers on such journeys will be allowed to drive their vehicle over 60 hours in a single week. Although the 60 hour working time limit will not apply to the week in question, the mobile worker is still bound by the average 48 hour working week along with the daily and weekly rest requirements under the Community rules.

**Frequently asked questions:**

**Q: Must a worker be paid for periods of availability - even if these periods do not count towards the working time limits under these Regulations?**

Yes. Working time is not the same as paid time and we would expect employees to be paid for availability time.

**Q: If a worker is given some work halfway through a PoA, does any of the time count as PoA?**

Yes, the first part counts as PoA. For example, if a worker is told to wait for 1 hour but is subsequently told to start work after 30 minutes, the PoA should be recorded as 30 minutes.

**Q: Although the time spent next to the driver while the vehicle is in motion is counted as PoA, can he also count part of this time as a break?**

Yes, providing he is not doing other work and complies with all the necessary requirements for a break.

**Q: Can crew count travel time as PoA?**

Yes, providing they are not performing other work and know the duration of the journey in advance.

## Section 3 - Weekly working time limits (and how to calculate them)

### 3.1 Main points

- Workers may not exceed **an average** 48 hours working time a week over the reference period, nor may they exceed 60 hours working time in a single week (a week always starts at 00.00 on Monday morning)
- Workers covered by these regulations cannot opt-out from the average 48-hour weekly limit.
- The average weekly working time should be calculated over 17 weeks (some methods allow 18 weeks). This can be extended to a maximum of 6 months (26 weeks) under a relevant agreement (see section 7.1)
- Enforcement will be on the basis of a fixed reference period, but companies are free to manage working time on the basis of rolling reference periods. The important thing is that where fixed periods are used, the start date is established in advance so that compliance can be monitored.
- The average 48 hour weekly limit can be monitored using a rolling reference period over 17 weeks like the existing period under the Working Time Regulations 1998 (see annex E). A collective or workforce agreement is only required under this method if the reference period exceeds 17 weeks.
- Employers and employees may agree on the reference period to be used (see Section 7.1 - relevant agreements). In the absence of such agreement, employers can either use option 1 (fixing dates by the calendar) or option 2 (the rolling method) - see Section 3.6 for details of the options.
- Statutory annual leave entitlement, sick leave, maternity and paternity leave cannot be used to bring down the average weekly working time.
- Employers must enter 48 hours for each week of statutory leave and 8 hours for each day of statutory leave. Alternatively, if using the rolling reference period, leave can be offset using the method described under the Working Time Regulations 1998 (see Annex E)

#### **Employers check:**

- Decide on your preferred option (fixed or rolling) to monitor compliance with the average 48 hour working week
- If a longer reference period or different start / finish dates are needed, consider a collective or workforce agreement with the employees
- If an agreement is reached, make sure the reference period does not exceed 26 weeks

### 3.2 Limits

If you are an employer, you must ensure your workers do not work more than an average 48-hour week or more than 60 hours in any single week.

Unlike under other working time legislation, mobile workers cannot opt-out from these weekly limits.

### 3.3 What is the reference period and when does it start?

Normally, the number of hours worked each week should be averaged out over a continuous 17 week period. However, the "default calendar option" referred to below, includes some 18 week periods. This is to allow 3 reference periods to be accommodated into one calendar year. In addition, this period can be extended up to 26 weeks if there is a relevant agreement in place (see section 7.1). This continuous 17 - 26 week period is used to calculate the average weekly working time and is known as the 'reference period'.

The working week must start and finish at 00.00 hours on Monday morning. So the starting point for calculating the average 48 hour and 60 hour weekly limits should always be 00.00 on Monday morning.

### 3.4 Calculating the average weekly working time

The average weekly working time is calculated by dividing the number of hours worked by the number of weeks in the reference period. It is possible to work up to 816 hours in a 17 week reference period, 864 hours in an 18 week period and up to 1248 hours in a 26 week period.

#### Example 1:

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

The total number of hours worked is:

17 weeks of 40 hours and 10 weeks of 12 hours of overtime

$$(17 \times 40) + (10 \times 12) = 800$$

Therefore the average (total hours divided by number of weeks) is:  $800 \div 17 = 47.1$

The 48 hour average & the 60 hour cap have been complied with.

### 3.5 Calculating the average when leave is taken

You cannot use statutory annual leave, sick leave, maternity or paternity leave in order to reduce the average working time performed during the reference period. So when calculating the average weekly working time, any maternity, paternity, adoption, parental leave, sick leave - as well as the statutory paid annual leave entitlement must not significantly affect the result of your calculation.

This is a little more complicated, but it can be done by adding **48 hours** for each week of annual leave that is taken and adding **8 hours** for each additional leave day that is taken.

So if someone takes 1 week off on leave and takes 2 days additional days leave over a 17 week reference period, then you add a notional 48 hours + 16 hours to bring the total working time up to the equivalent of 17 weeks. The total working time is then divided by 17 to find the average.

#### Example 2:

During a 26 week reference period a driver works 35 hours for 13 weeks and 60 hours for 10 weeks + 1 day (for 9 hours). The remaining period, (2 weeks 5 days) is taken as leave during this period.

The total hours worked in the reference period is:

$$(35 \times 13) + (60 \times 10) + (1 \times 9) = 1064 \text{ hours worked in 23 weeks} + 1 \text{ day}$$

Add 2 x 48 hours for the 2 weeks leave and add 8 hours per day to bring the time worked up to 26 weeks.

$$2 \text{ weeks} \times 48 = 96$$

$$5 \text{ (days)} \times 8 = 40$$

$$1064 + 96 + 40 = 1200$$

Therefore the average (total hours divided by number of weeks) is:  $1200 \div 26 = 46$  hours

The 48 hour average & the 60 hour cap have been complied with.

**Note:** You should only input 48 hours for one week of leave that starts / finishes 00.00 hours on Monday morning. Any other period of 7 consecutive days (e.g. Wednesday to Tuesday) should be worked out on a daily basis)

### 3.6 Who decides what reference period should be used?

The employer and employee may agree, **in advance**, what reference period should be used. But if no agreement is reached, then the regulations will require that the employer uses either the first or second option.

#### *The options:*

Whichever method is in place, the employer and worker must know in advance how working time is being monitored and when the reference period starts and when it ends.

There are several methods you can use to calculate and monitor compliance with the weekly average.

The first two options (basic fixed calendar and the rolling reference period) can be used without the need for a relevant agreement. However, employers will still need to tell their workers about which method they are going to use; in particular they must give written notice if they choose Option 2, the rolling reference period. The third option provides employers with extra flexibility and does require a collective or workforce agreement (section 7.1).

#### *(i) Basic fixed calendar option for a group of workers:*

Companies looking for an off-the-shelf approach to complying with the regulations may like to use this option. It will in any case, be one of the two approaches open to an employer if no workforce or collective agreement is in place.

Default reference periods will begin at 00.00 hours on the nearest Monday morning on or after 1 April, 1 August and 1 December each year. So for 2005/06 the start and finishing dates for the reference periods are as follows.

<b>4 April 2005</b>	<b>-</b>	<b>31 July 2005</b>	<b>(17 week period)</b>
<b>1 August 2005</b>	<b>-</b>	<b>4 Dec 2005</b>	<b>(18 week period)</b>
<b>5 December 2005</b>	<b>-</b>	<b>2 April 2006</b>	<b>(17 week period)</b>
<b>3 April 2006</b>	<b>-</b>	<b>6 Aug 2006</b>	<b>(18 week period)</b>
<b>7 August 2006</b>	<b>-</b>	<b>3 Dec 2006</b>	<b>(17 week period)</b>

At least one of the reference periods each year will contain 18 weeks. When this occurs, the average 48 hour week should be divided by 18 weeks, rather than 17 weeks.

#### *(ii) Rolling reference period:*

This is the normal method used under regulation 4(6) of the Working Time Regulations 1998 (WTR98) for monitoring working time.

Under a rolling average, the reference period should not result in an average working week in excess 48 hours. For a 17 week reference period for example, this would mean that in addition to the period from 4 April - 31 July 2005 not exceeding the 48 hour average, the period from 11 April - 7 August should not exceed the average - and so on. Nor indeed should any other consecutive 17 - 26 week period in the weekly record exceed the average 48 hour working week (see annex E for details).

The method of compensating for leave is different under the WTR98. Under these regulations, actual working time from outside the reference period is used to offset the statutory leave taken inside the reference period. So if 1 week + 2 days leave is taken within the 17 week reference period, the actual working time from the 18<sup>th</sup> week + 2 days from week 19 is used offset this leave. For the purposes of these regulations, employers using this option can choose to offset statutory leave with either method. That is by using actual working time, or by using the notional figures of 48 hours / 8 hours described above.

### *(iii) Reference period settled by agreement*

This offers additional flexibility for employers and employees via a relevant agreement to have:

- Different start and finish dates for the reference period, and
- Longer reference periods (up to 26 weeks).

For example, three reference periods starting on the nearest Monday on or after 1 May; 1 Sept and 1 Jan, could be chosen, or two 26 week reference periods may be agreed. However, whatever start date is agreed, the reference period must begin at the start of the week, from 00.00 on Monday morning. (see option 2 - Annex C)

A relevant agreement does not have to apply to all the workers in a company. For example:

- Different agreements can be agreed between different groups of workers in the same company (so the start dates and the length of the reference period can vary within the same organisation).
- An agreement may allow different reference periods to apply to certain individuals. For example, it might be better if drivers who work for two employers to have their own reference period.

### **3.7 Which method should I use?**

That depends on your circumstances:

- Fixing the reference period could simplify the monitoring and enforcement of compliance. It also gives employers more flexibility; e.g. the worker could work above average hours for the second half of the first period and the first half of the second period, without breaching the 48 hour limit.
- Companies, who are happy using a rolling reference period for existing non-mobile workers, may want to apply the same method for their mobile workers. However, this gives least flexibility for employers.
- Workers, who work for 2 or more employers, may prefer a rolling period or have their own unique fixed reference period.
- If an occasional mobile worker **exceeds** the limit in the definition (see section 1.3), the simplest method would be to use option 4. Over the next four months, the individual should not exceed an average working time of 48 hours a week, nor exceed the 60 hour limit on working time for any single week during this period.

### **3.8 Other points to note**

- If an employee works for two or more employers, then the weekly working time - (i.e. work, excluding breaks, rest and periods of availability) is the working time performed for all employers.

## Road Transport (Working Time) Guidance

- Employers must ask the mobile worker concerned in writing for an account of time worked for another employer and a written record needs to be kept by the employer of any time spent working elsewhere. The mobile worker must declare this information in writing. One approach would be to notify each new and existing employee of this requirement in a letter. Thereafter, this requirement (for an employee to disclose work for another employer) could be set out in a contract of employment, or under a social or workforce agreement.
- If a worker has been working for an employer for less than the full reference period (e.g. 12 weeks), then the average is worked out over the time that has elapsed since the start of his or her employment.

### **Frequently asked questions:**

**Q: Can an employer use 2 methods (e.g. the default option for some workers (option 1) and fixed by agreement for another group of workers (option 3))?**

Yes, as long as employees know which method is being used to monitor their working time.

**Q: Can an employer switch methods?**

Yes, providing his employees agree. If the switch is from one fixed reference period, to another fixed period, care needs to be taken to ensure that working time does not exceed an average 48 hours per week.

**Q: Can I use annual leave and sick leave to reduce my average working time?**

Statutory annual leave entitlement (paid leave under the Working Time Regs 98), sick leave, maternity and paternity leave cannot be used to reduce average working times. However, any **additional** annual leave over and above the 4 week entitlement, can be used bring down the average working time.

## Section 4 - Working at night

### 4.1 Main points

- Night time is between midnight and 4am for goods vehicles and 1am and 5am for passenger vehicles.
- If night work is performed, the daily working time should not exceed 10 hours in any 24 hour period.
- If a mobile worker does any work during the night time period, s/he will be subject to the night work limit.
- The night work limit can only be exceeded where this is permitted by a relevant agreement ([section 7.1](#)).

#### Employers check:

- Identify the mobile workers who are likely to be affected by the limits on night work.
- If more than ten hours working time is normally performed (during a 24 hour period) consider whether the number of hours can be reduced.
- If necessary, consult your workforce about the possibility of working longer hours under a relevant agreement (see section 7).

### 4.2 What is night time?

Night time is the period between midnight and 4am for drivers and other mobile workers on goods vehicles and 1am and 5am for those on passenger services. Employers and workers cannot choose a different period.

If a mobile worker does **any** work during the night time period, they will be subject to the night work limit. The night work limit can only be exceeded where this is permitted in a relevant agreement - (see section 7).

### 4.3 What is the working time limit for night work?

Unless you have a relevant agreement, workers are limited to 10 hours work (i.e. working time) over the 24 hour period. As with the other working time limits under this legislation, breaks periods and periods of availability are not included in the 10 hour limit.

The 24 hour period is very important, and should not be confused with 10 hours night work per day. This prevents a worker starting slightly earlier on the following day, unless they did less than 10 hours work on the previous day.

***Night work limit example for goods vehicle driver:***

hours:	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23
Mon			—	—	—	—	—	—	—	—	—	—	—											
Tues			—	—	—	—	—	—	—	—	—	—	—											
Wed		—	—	—	—	—	—	—	—	—	—	—	—											
Thurs	—	—	—	—	—	—	—	—	—	—	—	—	—											

**For simplicity, this example excludes breaks and periods of availability.**

In the above example, the 10 hour limit is complied with on Monday and Tuesday. However, an early start on Wednesday breaks the 10 hour rule (11 hours work is being performed in the 24 hour period). The 10 hour limit is complied with on Thursday, despite an even earlier start. This is because only 9 hours work was performed on Wednesday.

**4.4 Working longer than 10 hours**

More than 10 hours work at night can be performed, if there is a relevant agreement in place. The amount of working time that can be performed is still restricted by the minimum rest requirements under Community Drivers' Hours regulation.

**Frequently asked questions:**

**Q: Does the limit apply to you if you only occasionally work at night?**

Yes, unless:

- a) you are an occasional mobile worker (see Section 1.3)
- b) there is a relevant agreement that allows you to work longer than 10 hours in the 24 hour period.

**Q: If I am a night worker under these Regulations, am I entitled to a health check under the main working time regulations?**

In most cases the answer will be 'yes', but the right to health checks for night workers is governed by the Working Time Regulations 1998 (as amended), rather than by the Road Transport Regulations. The Working Time Regulations define 'night time' as a period between 11pm and 6am - although this definition may be varied by a relevant agreement as long as the period is still 7 hours long and includes midnight to 5am. The regulations define a night worker as someone who works for at least three hours during the night time period on the majority of their working days. This definition can also be varied by a relevant agreement.

## Section 5 - Rest and breaks

### 5.1 Main points

- Minimum daily and weekly rest provisions are generally applied to drivers by Community Drivers' Hours regulation.
- The new regulations also apply daily / weekly rest requirements to other mobile workers, trainees and apprentices when travelling under 3820/85/EC.
- Additional break requirements under these regulations also apply.
- Break requirements under EU drivers hours take precedent when driving.

#### **Employers check:**

- That all mobile workers can take the rest and breaks they are obliged to take.
- That mixing driving with other work does not lead to a breach in the break requirements under these Regulations (see examples below).

All workers are subject to rest provisions under the Community Drivers' Hours regulation when travelling.

### 5.2 Daily rest

Drivers already have minimum daily rest requirements under Community Drivers' Hours regulation. When driving, the Community Drivers' Hours regulation requires 11 consecutive hours rest in each period of 24 hours (calculated from the moment the driver commences work), with the possibility of reducing this to 9 consecutive hours up to 3 times a week. Any reduced daily rest must be compensated for by the end of the following week. Alternatively, 12 hours rest may be taken in two or three periods, the last of which must be at least 8 consecutive hours long.

Under the new working time regulations, identical daily rest requirements will also apply to other members of the travelling staff (the crew, trainees and apprentices).

### 5.3 Weekly rest

The Community Drivers' Hours regulation require 45 consecutive hours weekly rest, but this can be reduced to 36 or 24 hours (depending upon where it is taken) provided that any reduction is compensated for within three weeks. Rest requirements, are additional to any paid annual leave entitlement that drivers are entitled to under other working time legislation.

### 5.4 Breaks

The Community Drivers' Hours regulation require a break of 45 minutes after 4½ hours cumulative or continuous driving (or 2 or 3 breaks of no less than 15 minutes which total 45 minutes during or immediately after the driving period). However, the break requirements under the new regulations will affect workers who do a mixture of driving and non-driving work. The rules on breaks will also apply on days when the mobile worker is not travelling.

The new regulations require:

- Those mobile workers should not work more than 6 consecutive hours without taking a break.

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- If working hours total between 6 and 9 hours a day, breaks totalling at least 30 minutes in total are required.
- Where working hours total more than 9 hours a day, breaks totalling a minimum of 45 minutes must be taken overall.
- Breaks should be of at least 15 minutes duration.

When taking a break, drivers may not perform anything that might be regarded as "other work" during this period. Breaks taken under these regulations may be taken at the workstation (typically this means the driver's cab - but see glossary for fuller definition of this and other terms).

### Frequently asked questions:

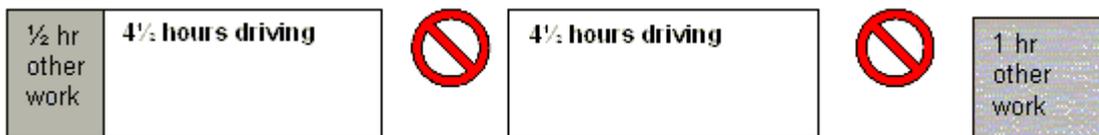
**Q: Do these breaks count towards the working time of mobile workers.** No. Whether paid or unpaid, breaks do not count towards any of the limits under these Regulations.

**Q: How are breaks calculated when a driver has also taken a period of availability?**

Breaks requirements under working time legislation are triggered by the amount of working time that is performed, rather than the length of shift or attendance time (see example 4 over the page). In addition, there is nothing to prevent a mobile worker taking a break in the middle of a period of availability, as long as they meet all the appropriate requirements for taking a break.

### Examples of breaks:<sup>3</sup>

1. ½ hour other work + 4½ hour driving triggers a 45 minute break under EU drivers hours rules. Another 4½ hours driving triggers another 45 minute break under EU drivers' hours rules. No breaks taken under the Road Transport Regulations (RTR). Daily break time = 90 minutes



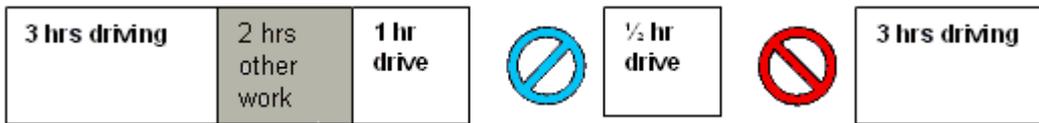
2. 4 hours other work + 2 hours driving triggers a break (30 minutes in this case) under Working Time Regulations. Another 3 hours work (9 hours in total) and another 15 minute break is needed under working time regulations. *Total breaks = 45 minutes*



3. Three hours driving + 2 hours other work + 1 hour driving will trigger a break (30 minutes in this case) under working time rules. Another ½ of driving = 4½ driving, requiring another 15 minute break under EU drivers hours rules. No further breaks are required. *Daily break time = 45 minutes.*

<sup>3</sup> Note: If "other work" consists of driving under UK Drivers' Hours rules, then additional break requirements may apply.

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4. Three hours driving + 2 hours availability + 3 hour other work triggers a break requirement under Working Time Regulations (30 minutes in this case). Another 1½ hours driving triggers the remaining 15 minutes under EU drivers' hours rules. No further breaks are required. *Daily break = 45 minutes.* (If all the conditions are met, then a driver could take his mandatory break during the PoA)



Key:



Break under EU drivers' hrs
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Break under Working Time Regulations
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## Section 6 - Record keeping

- Records need to be kept for 2 years after the end of the period in question.
- The employer is responsible for keeping working time records, making the records available for inspection and informing employees of their responsibilities. Employees must see details of any relevant agreement in advance.
- Employment agencies / employment businesses should keep working time records if the mobile worker is paid by (or via) them.
- Mobile workers are responsible for notifying an employer (in writing) of work performed for another employer.
- Owner drivers who do not comply with the definition of self-employed driver under these regulations should keep a record of their own working time.

### Employers check:

- Inform employees of their rights under the regulations, details of any relevant agreement
- Notify employees that they must provide (in writing) an account of any working time they have performed for another employer.
- Decide which records / systems you are going to use to record working time.
- If tachograph records are used:
  - a) Tell your drivers to use a different mode switch to distinguish "other work" from "periods of availability".
  - b) A separate record of working time may be required if the mobile worker is not travelling that day
- (where necessary) Check that the agency or employment business has had the opportunity to copy the tachograph chart, so they can keep a record of working time performed by their drivers.

### 6.2 Who keeps a record of working time?

and other relevant information, such as a copy of any relevant agreement. Where a driver is paid directly by an agency or employment business rather than by one or more employers, the agency or employment business should keep a record of the working time.

Under Section 97A of the Transport Act 1968 tachograph records go to employers rather than agencies. If tachograph records are going to be used to monitor working time, then the agency or employment business should get a copy of the chart before returning it to the client.

Drivers and other workers who do not meet the criteria of a "self-employed driver" under these regulations, but are not employed, nor do they work via an agency, will need to keep their own record of working time. These records need to be kept for 2 years and should demonstrate that the worker is complying with both sets of weekly limits, the 10 hour night work limit and the minimum break and rest requirements.

### 6.3 Main requirements for employers

In brief, they must:

- Inform mobile workers of requirements under the regulations and details of any collective or workforce agreements.
- Inform employees that they must provide (in writing) an account of the time worked for another employer.
- Keep working time records for 2 years after the period covered.
- Provide (on request), a record of the working time performed by the mobile worker for:
  - the worker concerned, and
  - the enforcement officer.
- In the event of a dispute, provide documentary evidence for inspectors to enable them to investigate without recourse to a full court hearing.
- Be able to show they are complying with the regulations.

### 6.4 Main requirements for mobile workers

Employers must ask the mobile worker concerned in writing for an account of time worked for another employer. The mobile worker must declare this information in writing and the employer should keep this information.

Although most of the requirements for monitoring and keeping records lie with the employer, both the mobile worker and employer share the responsibility for complying with the regulations. Both employer and mobile worker are potentially liable for prosecution if the rules are systematically broken.

### 6.5 What records need to be kept?

The regulations do not specify which records should be kept - so it will be up to the employer to decide which system is most appropriate.

However, the records will need to show:

- That weekly working time and night work limits are being complied with. It is for you to determine what records need to be kept for this purpose. You may be able to use existing records maintained for other purposes, such as pay or tachograph sheets or you may need to make new arrangements.
- You need only make occasional checks of workers who do standard hours and who are unlikely to reach the average 48-hour limit. However, workers who work near to the maximum working time limits, should be monitored more closely
- You must keep a record of any relevant agreement with your employees (or group of employees).

### 6.6 Using the tachograph to record working time

We expect some employers will use data from tachograph records to monitor the working time of their employees. Currently, most drivers use the "on duty and available for work" switch (*the square symbol*) on the tachograph to record both "other work" **and** "periods of availability". However, using this switch in this way will give a misleading impression of the amount of working time (as defined under these regulations) that has been performed. If you wish to monitor working time using tachograph records, it is recommended that you instruct your employees to use the:



*Cross-hammers mode* - for **other work** and for any **waiting time or periods of availability**<sup>4</sup> that are not known about in advance.



*On-duty and available for work* - **waiting time or periods of availability known about in advance (as defined under these regulations)**.

On this basis, tachograph records may be sufficient to record the working time of drivers. However, employers will need other records for those employees who, for example, do not use a tachograph on one or more days or if there are other mobile workers who are subject to these regulations (e.g. crew).

### 6.7 Other points to note

- Under the Community Drivers' Hours regulation, tachograph records only need to be kept for a year. If tachograph charts are being used to monitor working time, then they must be kept for 2 years after the end of the period covered.

#### Frequently asked questions:

**Q: Can we use planning / scheduling software to monitor working time?**

Whatever method is used, employers must be able to demonstrate compliance (not simply their intention to comply). It is unlikely therefore, that scheduling records by themselves will be enough to demonstrate that the limits have been adhered to.

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<sup>4</sup> The EU tachograph rules (3821/85/EC) have a different definition of **periods of availability** (PoA). This definition (which will be amended shortly and will match the definition under the Road Transport(Working Time) Directive - 2002/15/EC), does not require that the duration of the PoA must be known in advance by the mobile worker.

## Section 7 - More about the application of the regulations

### 7.1 Relevant agreements

These can be either a **collective agreement** or **work force agreement**.

In general, employers and workers can agree to extend the reference period for the average 48 hour working time limit up to 26 weeks and agree whether this will be monitored using a fixed or rolling method. Agreements can also be used to exceed the 10 hour limit for night work.

These agreements can be made by '*collective agreement*' (between the employer and an independent trade union) or a '*workforce agreement*'. If a worker has any part of their conditions determined by a collective agreement they cannot be subject to a workforce agreement.

A workforce agreement is made with elected representatives of the workforce in most cases (see below). A workforce agreement can apply to the whole workforce or to a group of workers. The conditions relating to a workforce agreement are as follows:

- 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 to be determined by the employer

To be valid, a workforce agreement

- must be in writing and have effect for a specific period (not exceeding 5 years);
- have been circulated in draft to all workers to whom it applies together with the guidance to assist their understanding of it;
- be signed before it comes into effect either:
  - - By all the representatives of the members of the workforce or group of workers; or
  - - If there are 20 workers or fewer employed by a company, either by all representatives of a workforce or by a majority of the workforce.

*Example of a workforce agreement*



## 7.2 Emergencies

Employers must schedule work in such a way that workers are able to comply with these regulations. However, provided road safety is not jeopardised, and to enable the worker to reach a suitable stopping place, the mobile worker may depart from these rules to the extent necessary to ensure the safety of persons, the vehicle or of its load. This provision only applies in cases where it unexpectedly becomes impossible to comply with these regulations.

It is for the mobile worker to decide whether it is necessary to depart from the working time rules (taking account of ensuring road safety in the process, and any instruction that may be given by an enforcement officer (for example under Police Escort)). The driver (or mobile worker) should record all the reasons for doing so. Repeated and regular occurrences however might indicate that employers were not in fact scheduling work to enable compliance with these regulations.

## 7.3 Enforcement

The Vehicle & Operator Services Agency (VOSA) - formerly Vehicle Inspectorate, will enforce these regulations in Great Britain. The Driver and Vehicle Testing Agency (DVTA) will enforce the working time regime used in Northern Ireland. The response will be proportionate, with the onus on educating employers and workers rather than prosecution.

## Road Transport (Working Time) Guidance

As with existing working time legislation, VOSA and DVTA will normally enforce in response to any complaints they receive. However, they have the right to look at working time records. Examples of when they are particularly likely to do so are: in response to a licensing issue, as part of an investigation into a breach of the Community Drivers' Hours rules or following a road accident or other serious incident.

If you are a worker and you feel you are being forced to break the regulations, we suggest you take the following steps:

- Talk to your manager; you may be able to settle the matter straight away
- Contact a trade union (if you have one). They will be able to advise you what to do.
- If you cannot resolve the matter, you should contact VOSA on 0870 6060 440; or DVTA on 02890 254 117

It is worth noting however, that the mobile worker also has a responsibility for complying with the regulations. If the mobile worker knowingly breaks the rules (e.g. neglects to inform his employer about other work, or knowingly makes a false record), then s/he may be liable for prosecution.

### 7.4 Penalties

VOSA's aim is to educate employers and employees about their entitlement and responsibilities under the new regulations. Much of this will take place on an informal basis.

However, if formal action is required VOSA will use:

- improvement notices - to notify the employer of a likely breach of the regulations and to set out the changes that need to be made in a given timescale
- enforcement notices - requiring the employer to stop a dangerous activity, or to start complying with the regulations

Ultimately, the Courts have a system of fines and custodial sentences that can be applied to anyone who persistently contravenes the regulations.

### 7.5 Driving abroad

In theory, it would be possible to enforce the 10 hour and 60 hour working time limits at the roadside. However the enforcement of working time limits across Europe is expected to be carried out at the employer's premises, rather than at 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 night work limit when travelling abroad.

## Glossary of terms:

**AETR:** The European Agreement Concerning the Work of Crews of Vehicles Engaged in International Transport

**Derogations:** Provisions in the European legislation that allow Member States to introduce some added flexibility. In this case, extending the reference period up to 26 weeks for calculating the average working week and allowing workers to exceed the 10 hour limit for night work.

**Mobile Worker:** A worker is anyone who provides work or services under a contract, express or implied. A mobile worker is any worker forming part of the travelling staff (typically drivers and crew, but also trainees and apprentices) who is in the service of an undertaking which operates road transport services for passengers or the movement of goods. Mobile workers include drivers who work for hire and reward companies or companies with own account operations.

**Night time:** Is defined as a period between 00.00 and 04.00 hours for drivers and crew of goods vehicles and between 01.00 and 05.00 hours for drivers and crew of passenger vehicles.

**Night work:** Workers subject to these regulations will be restricted to a maximum of 10 hours working time in each 24 hour period. Any worker who does any work during the night time period is subject to the 10 hour limit. The 10 hour limit can be dis-applied by a relevant agreement.

**Periods of Availability** (See section 2.3) Loosely speaking, covers waiting time whose duration is known about in advance by the mobile worker.

**Reference Period:** is 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. The reference period can be extended to 26 weeks by a collective or workforce agreement (relevant agreement).

**Relevant Agreement:** There are 2 types agreement covered by this term. There is a 'collective agreement' between the employer and an independent trade union or a 'workforce agreement' which is between the employer and group of employees (see section 7.1). If any worker has their conditions determined by a collective agreement they cannot be subject to a workforce agreement.

**Rest (daily / weekly):** the Working Time (Road Transport) Regulations do not make provision for daily and weekly rest as these requirements are set by Community Drivers' Hours Regulation 3820/85.

**Self-employed driver** - (see section 1.4) This is not the same definition as that used by the Inland Revenue or in other UK employment legislation.

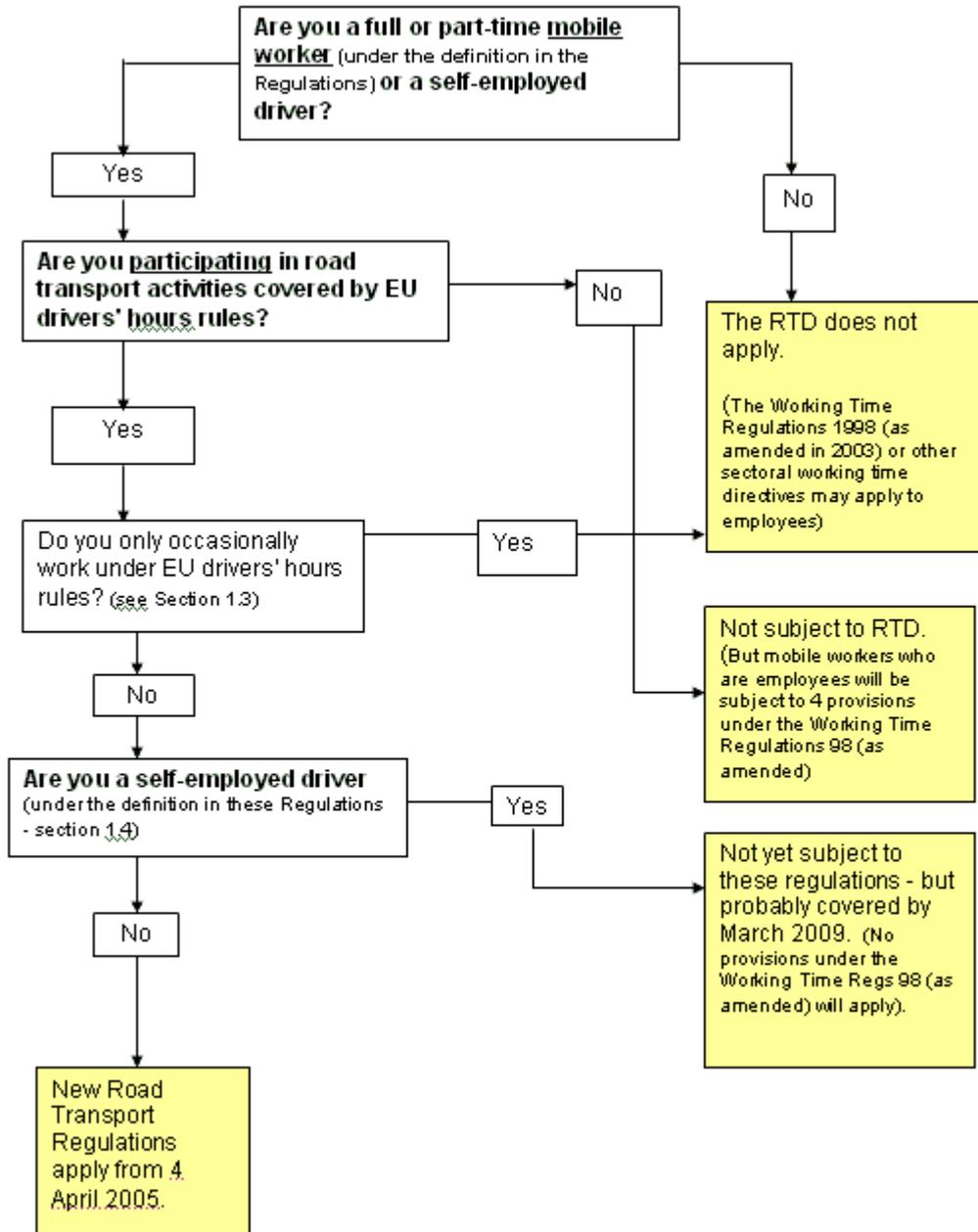
**Week:** is defined as the period between 00.00 hours Monday and 24.00 hours on the following Sunday.

**Working Time** - (see section 2.2) Loosely speaking, covers driving and other duties normally associated with working. It does not include breaks or periods of availability.

**Workstation:** Refers to in and around the vehicle, the employer's premises, and other places where the mobile worker might work (e.g. at the customer's site)

## Annex A - Who is covered?

### Who is covered by the Working Time (Road Transport) Regulations 2005?



**Annex B - Comparison table****Working Time (Road Transport) Regulations and the Community Drivers' Hours Regulation (3820/85/EC)**

Type of Duty	Working Time (RT) Regulations 2005	EU Rules HGV & PSV
Maximum working week/attendance time	No limit on attendance / shift time as such, but an average weekly working time limit of 48 hrs will apply. 60 hours working time can be performed in a single week, if the average 48 hour week is not exceeded. (1)	None specified, but minimum daily and weekly rest requirements effectively limit the length of the working week.
Maximum working day/duty time	None specified	None specified, but daily rest requirement effectively limits the length of the working day.
Maximum work performed at night	There is a 10 hour working time limit for night work for each 24 hour period. (2)	None specified but daily rest requirement effectively limits the length of work performed at night.
Cumulative or continuous driving	None specified	4 ½ hrs maximum
Daily Driving	None specified	9 hrs (but this can be increased to 10 hours twice a week).
Fortnightly driving	None specified	90 hrs maximum
Breaks	If driving, the break periods under Community Drivers' Hours rules (Reg. 3820/85) take precedence.  For non-driving activities a break is required after 6 hours work. A 30 minute break is required for 6 - 9 hours work and a 45 minute break for over 9 hours work. Breaks can be divided into 15 minute slots. (For examples on the impact of mixed working - see section 5).	45 minutes (either continuous or 2 or 3 breaks of no less than 15 minutes).
Daily Rest	For drivers and other mobile workers the daily rest periods under community Drivers' hrs rules (Reg. 3820/85).	11 hrs (reducible to 9 hrs 3 times a week when driving (any reductions must be compensated for).
Weekly Rest	The weekly rest periods under Community Drivers' hrs rules (Reg 3820/85), the rest periods therein.	45 hrs reducible to 36 hrs if taken at base or 24 hrs if taken elsewhere (any reductions must be compensated

## Road Transport (Working Time) Guidance

		for).
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## Annex C - Calculating the average working week

Examples of reference periods under 3 options:

Week Commencing	Option 1: Compliance is required over the default calendar period (solid arrows). Compliance is <u>not</u> required over other periods (e.g. broken arrow)	Option 2: Two examples of fixing a 26 week reference period (under a relevant agreement)		Option 3: Rolling reference period - in order to comply, every continuous (17-26 week) period must not exceed the average 48 hour week	
				17 Week	26 Week
04-Apr	↑	↑	↑	↑	↑
11-Apr				↑	
18-Apr				↑	
25-Apr				↑	
02-May				↑	
09-May				↑	
16-May				↑	
23-May				↑	
30-May				↑	
06-Jun	↑	↑	↑		
13-Jun	↓				
20-Jun	↓				
27-Jun	↓				
04-Jul	↓				
11-Jul	↓				
18-Jul	↓				
25-Jul	↓			↓	
01-Aug	↓			↓	
08-Aug	↑			↓	
15-Aug	↓			↓	
22-Aug	↓			↓	
29-Aug	↓			↓	
05-Sep	↓			↓	
12-Sep	↓			↓	
19-Sep	↓			↓	
26-Sep	↓	↓	↓	↓	↓
03-Oct	↓	↓	↓	↓	↓
10-Oct	↓			↓	
17-Oct	↓			↓	
24-Oct	↓			↓	
31-Oct	↓			↓	
07-Nov	↓			↓	
14-Nov	↓			↓	
21-Nov	↓			↓	
28-Nov	↓	↓	↓	↓	↓
05-Dec	↓	↓	↓	↓	↓

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 Option 2: Make sure average 48 hour limit is not broken.

## **Annex D - Employers checklist**

### **What counts as working time?**

- Identify activities that count as working time and those which count as periods of availability.
- Ask workers to confirm any working time they have performed for another employer.

### **Calculating working time**

- Decide on your preferred option (fixed or rolling), to monitor compliance with the average 48 hour working week
- If a longer reference period or different start/finish dates are needed, consider a collective or workforce agreement with the employees
- If an agreement is reached, make sure the reference period does not exceed 26 weeks

### **Night workers**

- Identify the mobile workers who are likely to be affected by the limits on night work.
- If more than ten hours working time is normally performed (during a 24 hour period) consider whether the number of hours can be reduced
- If necessary, consult your workforce about the possibility of working longer hours under a relevant agreement (see section 7)

### **Rest / breaks**

- That all mobile workers can take the rest and breaks they are obliged to take.
- That mixing driving with other work does not lead to a breach in the break requirements under these Regulations

### **Record keeping**

- Inform employees of their rights under the regulations, details of any relevant agreement
- Notify employees that they must provide (in writing) an account of any working time they have performed for another employer.
- Decide which records / systems you are going to use to record working time.

If tachograph records are used:

- Tell your drivers to use a different mode switch to distinguish "other work" from "periods of availability".
- A separate record of working time may be required if the mobile worker is not travelling that day
- (where necessary) Check that the agency or employment business has had the opportunity to copy the tachograph chart, so they can keep a record of working time performed by their drivers

## Annex E - Calculating working time under the Working Time Regulations 1998

### *How is the average weekly working time calculated under the WTR 1998?*

The number of hours worked each week should be averaged out over 17 weeks or however long a worker has been working for their employer if this is less than 17 weeks. This period of time is called the 'reference period'.

Workers and employers can agree to calculate the average weekly working time over a period of up to 52 weeks under a workforce or collective agreement. The reference period is also extended to 26 weeks in other circumstances, for example

- Doctors in training have a 26-week reference period
- The offshore sector has a 52-week reference period

The average weekly working time is calculated by dividing the number of hours worked by the number of weeks over which the average working week is being calculated, for example 17. When calculating the average weekly working time, if the worker is away during the reference period because he or she is taking paid annual leave, maternity, paternity, adoption or parental leave, or is off sick you will need to make up for this time in your calculation. Do this by adding the hours worked during the days which immediately followed the 17week period - use the same number of days as those when work was missed.

#### ***Example 1:***

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

The total hours worked is:

17 weeks of 40 hours and 10 weeks of 12 hours of overtime

$$(17 \times 40) + (10 \times 12) = 800$$

Therefore their average (total hours divided by number of weeks):

$$800 \text{ divided by } 17 = 47.1 \text{ hours a week}$$

**The average limit of 48 hours has been complied with.**

#### ***Example 2:***

A worker has a standard working week of 40 hours (8 hours a day) and does overtime of 8 hours a week for the first 12 weeks of the 17week reference period. 4 days' leave are also taken during the reference period.

The total hours worked in the reference period is:

16 weeks and 1 day (40 hours a week and 8 hours a day) and 12 weeks of 8 hours of overtime

$$(16 \times 40) + (1 \times 8) + (12 \times 8) = 744$$

Add the time worked to compensate for the 4 day leave, taken from the first 4 working days after the reference period. The worker does no overtime, so 4 days of 8 hours ( $4 \times 8 = 32$ ) should be added to the total.

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Therefore their average is (total hours divided by number of weeks):

$(744 + 32)$  divided by  $17 = 45.6$  hours per week

**The average limit of 48 hours has been complied with.**