



Ministry
of Defence



MINISTRY OF DEFENCE STATEMENT OF CIVILIAN PERSONNEL POLICY

WORKING TIME REGULATIONS

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WORKING TIME REGULATIONS

DESCRIPTION

The Policy, Rules and Guidance that apply to managing attendance in the MOD and its Agencies, in relation to the Working Time Regulations (WTR).

OVERVIEW

The WTR are part of UK Employment Law derived from European Union Directives providing rights and protection to workers.

EQUALITY AND DIVERSITY ASSESSMENT

This policy has been Equality and Diversity Impact assessed in accordance with the Department's Equality and Diversity Impact Assessment Tool against:

Part 1 screening only completed (no direct discrimination or adverse impact identified). This policy is due for review in May 2011.

WHO DOES THIS APPLY TO?

Applies to all MOD civilian employees wherever they are based, including Ministry of Defence Police (MDP) officers.

Defence Medical Services should also refer to [Implementation of Working Time Regulations within the Defence Medical Services](#).

Exception

Royal Fleet Auxiliary (RFA) Employees are exempt from this legislation and should refer to [RFA Sea Going Appointment - Working Patterns & Leave](#).

TASK 1- HOW TO COMPLY WITH THE WORKING TIME REGULATIONS

FOR YOU AS AN EMPLOYEE

WHAT YOU NEED TO KNOW

1. The WTR provide rights and protection for workers.
2. The basic rights and protections provided by the regulations are:
 - A limit of an average of 48 hours per week which a worker can be required to work (though workers can choose to work more hours if they want to - this is known as opting-out).
 - A limit of an average of 8 hours work in 24 hours which night workers can be required to work.
 - A right for night workers to receive free regular health assessments.
 - A right to 11 hours rest a day.
 - A right to a day off each week.
 - A right to an in-work rest break if the working day is longer than 6 hours.
3. The WTR provide all employees in the UK with a statutory (pro rata) entitlement to paid leave annually, including public holidays. It allows for 24 days minimum rising to 28 days with effect from 1 April 2009; in MOD there are different entitlements in excess of that minimum, the entitlement being dependent on the employment group to which you belong and length of service. See [Understand, Apply for and Record Annual Leave](#).

Defence Medical Services should also refer to the [Implementation of Working Time Regulations within the Defence Medical Services](#) for additional guidance on how the WTR applies to medical grades
4. **Night workers** are defined as any worker whose daily working time includes at least three hours of night time (between 11pm and 6am):
 - On the majority of the days they work;
 - On such a proportion of the days they work as is agreed between employer and workers in a collective or workforce agreement; or
 - Sufficiently often that they may be said to work such hours as a normal course.
5. A worker may be said to work at night 'as a normal course' if they do so on

a regular basis, e.g. on a rotating shift pattern that resulted in them working regularly during night time, as opposed to on an infrequent or ad hoc basis. This would mean, for example, regular shift working in which a night shift was worked on a one shift in three basis.

6. The basic rights and protections for young workers (above the minimum school leaving age but under 18) are:
 - Minimum daily and weekly rest periods i.e. 12 hours daily rest in each 24 hour period and two complete days rest in each week.
 - Rest breaks at work i.e. 30 minutes after each 4.5 hours worked.
 - Health and capacities assessments for night working.
7. Managers of young people must ensure that these provisions are complied with.
 - Day working - A limit of no more than 8 hours per day and 40 hours per week. These hours cannot be averaged out and there is no opt-out available.
 - Night working - Young workers should not ordinarily work at night between 10pm and 6am, or between 11pm and 7am if the contract of employment provides for work after 10pm.
8. Young workers may work longer hours where necessary to either:
 - a. maintain continuity of service or production, or
 - b. respond to a surge in demand for a service or product

and provided that:

 - c. there is no adult available to perform the task
 - d. the education or training needs of the young worker are not adversely affected.
9. The provisions detailed above are met and, in part, exceeded by the MOD's terms and conditions of employment.
10. The Regulations provide some flexibility in how they are applied; some rights may be modified by agreement. The Cabinet Office has reached a collective agreement with the Council of Civil Service Unions (CCSU) on how working time should be defined when applying the provisions of the Regulations in the following areas (MOD has extended this to cover industrial staff through a collective agreement with the industrial Trade Unions as well as the Defence Police Federation for MDP officers):
 - Meal breaks.
 - On call time.

- Travel time.
- Work performed away from the normal place of work.
- Other business engagements.
- Time off for Trade Union or Health and Safety representative duties.

11. Working Time is any period during which someone is working, at the employer's disposal and is carrying out their activities or duties. It includes:

- Travelling during the working day (e.g. a journey between meetings or to a place of detached duty).
- Working lunches.
- When an employee is undertaking training which is job related.
- Time spent in the work place awaiting work to be allocated.
- Work performed away from the normal place of duty e.g. working from home or on the phone.
- Time spent on call in the normal place of duty.
- Time spent on secondary employment.
- Time spent on Trades Union or Health and Safety duties.
- Time spent at work related functions, where staff are required to attend as part of their duties.
- Private study time for training courses sponsored by the Department.
- Paid or unpaid overtime.

It does not include:

- Journey between home and the normal place of duty.
- Rest breaks when no work is being done e.g. meal breaks.
- Time resting at the end of the day (even if the employee is required to stay away from home overnight).
- Time spent on call away from the workplace, where the employee is free to pursue leisure activities.

12. The number of hours worked each week should be averaged out over 17 weeks or however long you have been working for the MOD, if this is less than 17 weeks. This period of time is called the 'reference period'. The average weekly working time is calculated by dividing the number of hours worked by 17 weeks. Care must be taken to make sure that any subsequent changes to original rosters do not cause the average weekly working time to be exceeded. The reference period for MDP officers can be a rolling period of 26 weeks, instead of 17, in the case of officers who are for the time being engaged in security and surveillance activities

requiring a permanent presence to protect property and persons.

Opting Out of the Working Time Regulations

13. You may agree to work more than 48 hours a week. If this is the case you should sign an opt-out agreement. Please refer to [HR Form 071: Opt Out Agreement](#). However, you cannot be forced to sign an opt-out; it must be agreed between you and your line manager.

You cannot be fairly dismissed or subjected to detriment for refusing to sign an opt-out. Personnel working in direct support to urgent and essential military operations should comply so far as possible with the regulations but there may be times when such support inevitably conflicts with its provisions. In such cases there is no requirement for you to complete an opt out form.

Advertising Vacancies

14. When vacancies are advertised, they should not be advertised in such a way that it would only attract applicants willing to work beyond the 48 hour limit. Where a post carries the possibility of unpredictable working hours this should be discussed with you. Employers are not permitted to make it a condition to work in excess of the 48 hour limit when advertising a vacant post.

WHAT YOU NEED TO DO

1. Normal working hours within the MOD are well within the allowable time limits. You should ensure that you do not work more than an average of 48 hours per week (over a seventeen week period). If you are consistently working more than the 48 hour limit, you should speak to your line manager to consider adjusting your working hours and/or redesigning your job.

Opting Out of the Working Time Regulations

2. If you agree to work more than 48 hours a week, you should sign an opt-out agreement; see the [HR Form 071: Opt out Agreement](#), which you can cancel at any time. You need to agree with your Line Manager how much notice is needed to cancel the opt-out agreement, which can be **up to** three months. In the absence of an agreed notice period, you need to give a minimum of seven days notice, to cancel your opt-out agreement. A signed and dated copy of the opt-out agreement will be retained by Defence Business Services (DBS) Civilian HR and a copy held by your line manager. Defence Fire and Rescue Service (DFRS) staff should also send an additional copy to their fire station manager. MDP officers should send an additional copy to their Roster Managers. The agreement will be retained for the duration of the opt-out or for the period specified in the agreement.

3. If you are working in excess of the 48 hour limit, you must bring this to the attention of your line manager. Your line manager must consider adjusting your working hours, reallocating work or redesigning your job. If you choose to work in excess of the 48 hour limit, and refuse to sign an opt out, your line manager must write to you instructing you that you are not permitted to work more than 48 hours per week over a seventeen week period. If you fail to comply with the instruction, the action taken will be recorded.
4. Your line manager must arrange to keep a record of who has agreed to work longer hours and who has signed the opt-out agreement. This record must include:
 - A physical signed copy of the agreement which is to be retained by DBS and a copy forwarded to line manager.
 - Which members of staff have signed the opt-out agreement.
 - What terms have been agreed to.
 - DBS must provide records to the Health and Safety Executive or Local Authority Environmental Health Officer should they wish to see them.

Your line manager and DBS must retain these records for the period of the opt-out agreement.

5. Your line manager must also identify staff who, although they do not breach the 48 hour limit, are close to doing so. They must monitor the hours you work to ensure compliance with the Regulations. You should notify your line manager if you have **more than one job**. If the combined hours of the two (or more) jobs exceed the 48 hour limit, you will be asked to sign the opt-out agreement. Drivers should also refer to **Related Document - [JSP 800 Vol 5](#)** Part 3 Chapter 3 which provides policy guidance on the road transport working time regulations. Personnel who drive for the reserve forces must declare all hours spent driving as part of their civilian employment. Vocational drivers should take into account work undertaken with another employer, including time spent training with the reserve forces.

Compensatory Rest

6. Compensatory rest is normally a period of rest the same length as the period of rest, or part of a period of rest, that a worker has missed. The regulations give all workers a right to 90 hours of rest in a week which is the total of your entitlement to daily and weekly rest periods. The principle is that everyone gets their entitlement of 90 hours rest a week on average, although this may come slightly later than normal. If you are a Duty Officer (e.g. Press Officer) you are entitled to compensatory rest if you have been at work, even if you sleep undisturbed all night.

Rest Breaks for Part-Time Staff

7. Part-time staff working more than six hours a day must take an unpaid rest break of at least twenty minutes which must be taken during the working day, not at the beginning or end of it. For MDP officers this break is paid.

Night Worker Health Assessments

8. If you are a night worker, or you are about to become a night worker, your line manager must give you the opportunity, on an annual basis, to have a free health assessment. You are not obliged to take up the offer. Your line manager must record your name and the date the assessment was offered and will forward this information to DBS who will keep your records for two years.
9. If you choose to have a free health assessment, you must complete [HR Form 072: Night worker Health Questionnaire](#). Once completed, it is classed as Medical. Completed questionnaires must be sent to the DBS in a sealed envelope marked Medical for onward transmission to the occupational health provider. If necessary, the occupational health provider will contact you to arrange either a telephone or face to face assessment. The occupational health provider will tell you, your line manager and the DBS of the outcome of the assessment and whether you have a medical condition that would prevent you from nightworking.
10. Although health assessments will be offered on an annual basis, if you become aware of a medical condition which may affect your continuing night work you should inform your line manager as soon as possible so that consideration may be given to adjustment to your work pattern.

FOR YOU AS A MANAGER

WHAT YOU NEED TO KNOW

1. Working Time is any period during which someone is working, is at the employer's disposal and is carrying out their activities or duties. It includes:
 - Travelling during the working day (e.g. a journey between meetings or place of detached duty).
 - Working lunches.
 - When an employee is undertaking training which is job related.
 - Time spent in the work place awaiting work to be allocated.
 - Work performed away from the normal place of duty e.g.

working from home or phone calls.

- Time spent on call in the normal place of duty.
- Time spent on secondary employment.
- Time spent on Trades Union or Health and Safety duties.
- Time spent at work related functions where staff are required to attend as part of their duties.
- Private study time for training courses sponsored by the Department.

It does not include:

- Journey between home and the normal place of duty.
- Rest breaks when no work is being done.
- Time resting at the end of the day (even if the employee is required to stay away from home overnight).
- Time spent on call away from the workplace, where the employee is free to pursue leisure activities.

2. The number of hours worked each week should be averaged out over 17 weeks or however long a worker has been working for you, if this is less than 17 weeks. This period of time is called the 'reference period'. The average weekly working time is calculated by dividing the number of hours worked by 17 weeks. Care must be taken to make sure that any subsequent changes to original rosters do not cause the average weekly working time to be exceeded. The reference period for MDP officers can be a rolling period of 26 weeks, instead of 17, in the case of officers who are for the time being engaged in security and surveillance activities requiring a permanent presence to protect property and persons.

Opting Out of the Working Time Regulations

3. An employee may agree to work more than 48 hours a week. If this is the case the individual should sign an opt-out agreement (Please refer to [HR Form 071: Opt out Agreement](#)). However, you cannot force an individual to sign an opt-out; it must be agreed between you and the individual. Workers cannot be fairly dismissed or subjected to detriment for refusing to sign an opt-out. Personnel working in direct support to urgent and essential military operations should comply so far as possible with the regulations but there may be times when such support inevitably conflicts with its provisions. In such cases there is no requirement for the individual to complete an opt out form.

Advertising Vacancies

4. When advertising vacancies you should not advertise in such a way that it would only attract applicants willing to work beyond the 48 hour limit. Where a post carries the possibility of unpredictable working hours you may discuss this with applicants. You are not permitted to make it a condition to work in excess of the 48 hour limit when advertising a vacant post. Please see [Recruiting Staff](#) and [Moving Jobs](#).

MDP managers should seek advice in the first instance from the Business Support Team.

WHAT YOU NEED TO DO

1. When calculating the average weekly working time, if the individual 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 17-week period – use the same number of days as those when work was missed e.g.

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)

$$800 / 17 = 47.1 \text{ hours per week}$$

The average limit of 48 hours has been complied with.

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 17-week reference period. 4 days' leave are also taken during the reference period.

2. 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

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

3. 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.

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

$$744+32/17= 45.6\text{hours per week.}$$

4. Normal working hours within the MOD are well within the allowable time limits. As a line manager you should ensure that employees do not work more than an average of 48 hours per week (over a seventeen week period). Where you identify employees as consistently working more than the 48 hour limit, you must consider adjusting their working hours and/or redesigning their job.

Opting Out of the Working Time Regulations

5. If an employee agrees to work more than 48 hours a week, they should sign an opt-out agreement Please see [HR Form 071: Opt Out Agreement](#) which they can cancel at any time.

You need to agree, with the employee, how much notice is needed to cancel the opt-out agreement, which can be **up to** three months. In the absence of an agreed notice period, the employee needs to give a minimum of seven days notice to cancel the opt-out agreement. A signed and dated copy of the opt-out agreement will be retained by DBS and a copy held by you. The agreement will be retained for the duration of the opt-out or for the period specified in the agreement.

6. If an individual is working in excess of the 48 hour limit and refuses to sign an opt out, you must write to your member of staff instructing them that they are not permitted to work more than 48 hours per week over a seventeen week period. You must also consider adjusting working hours, reallocating work or redesigning the job. If they fail to comply with the instruction, not to work in excess of the 48 hour limit, you must record the action you have taken including consideration of changes to job design, re-allocation of work etc.
7. You must keep a record of who has agreed to work longer hours and who has signed the opt-out agreement. This should include:

- A physical signed copy of the agreement which is to be retained

by DBS and a copy retained by you.

- DFRS staff must also send a copy to their fire station manager.
 - Which members of staff have signed the opt-out agreement.
 - What terms have been agreed to.
 - DBS must provide records to the Health and Safety Executive or Local Authority Environmental Health Officer should they wish to see them.
 - DBS must retain these records for the period of the opt-out agreement.
8. You must also identify staff who, although they do not breach the 48 hour limit, are close to doing so. You must monitor the hours worked by the individuals identified to ensure compliance with the Regulations. Staff should notify you if they have **more than one job using [HR Form 071: Opt Out Agreement](#)**. If the combined hours of the two (or more) jobs exceed the 48 hour limit, you should ask the individual to sign the opt-out agreement. You should also be aware of the road transport working time regulations if your employee is a driver see **Related Document - [JSP 800 Vol 5](#)** Part 3 Chapter 3. Personnel who drive for the reserve forces must declare all hours spent driving as part of their civilian employment. Vocational drivers should take into account work undertaken with another employer, including time spent training with the reserve forces.

Record Keeping for Ministry of Defence Police Officers

9. In order for the MDP to demonstrate compliance with the Regulations, all stations must retain rosters and MOD Form 260s for a minimum of two years. These should accurately reflect all hours worked as they may be subject to audit.

Compensatory Rest

10. Compensatory rest is normally a period of rest the same length as the period of rest, or part of a period of rest, that a worker has missed. The regulations give all workers a right to 90 hours of rest in a week which is the total of your entitlement to daily and weekly rest periods. The principle is that everyone gets their entitlement of 90 hours rest a week on average, although this may come slightly later than normal. If you are a Duty Officer (e.g. Press Officer) you are entitled to compensatory rest if you have been at work, even if you sleep undisturbed all night.

Rest Breaks for Part-Time staff

11. Part-Time staff working more than 6 hours a day must take an unpaid rest break of at least twenty minutes which must be taken during the working day, not at the beginning or end of it. For MDP officers this

break is paid. Line managers may not agree a local variation to this requirement.

12. You must take steps to ensure that the "normal hours" of **night workers** do not exceed an average of 8 hours in 24 hours over a 17 week period. This does not necessarily rule out longer or extra shifts. It should be noted that this is a separate limit to the weekly working hours limit. Significant overtime hours during a reference period may breach the weekly working hours limit. Where the limit is adapted staff must be permitted immediately to take equivalent periods of compensatory rest. In entirely exceptional circumstances, where providing such rest is not possible, staff must be given the opportunity to take compensatory rest at the earliest opportunity. The flexibility provided for here is not something that could be used on a routine basis.

Night Worker Health Assessments

13. You must give night workers, or those employees who are about to become night workers, the opportunity on an annual basis to have a free health assessment. You must record the name of the night worker, the date the assessment was offered, and forward these details to the DBS using the [HR Form 070: Line Managers Confirmation of offer of Annual Health Assessment for Night Workers](#). Records must be kept for two years by DBS.
14. You should issue a questionnaire to the individual. Please refer to [HR Form 072: Night worker Health Questionnaire](#). Staff are not obliged to complete the questionnaire, however they must be given the opportunity to do so. Once it is completed it is classed as Medical. If they choose to do so, the night worker will forward it to the DBS for action. If circumstances require it, the occupational health provider will arrange to examine the individual and advise if a medical condition prevents night working. The, DBS, yourself and the night worker will be advised of the outcome. If the occupational health provider advises that an individual has a medical condition preventing night work you must take action to seek alternative work. DBS must keep a record of the name of the night worker, the date the assessment was offered, and the result of any assessment. Records must be kept for two years by DBS.
15. Although health assessments are to be offered on an annual basis, if a member of staff becomes aware of a medical condition which may affect their continuing night work they should inform you as soon as possible so that consideration may be given to adjustment to their work pattern.

TIPS, HINTS AND FAQS

Q1. Do I have to sign an opt-out agreement?

A. No. Any opt-out must be agreed to. You cannot be fairly dismissed or subject to a detriment if you refuse to sign it.

Q2. What should I do as a line manager about a worker with a second job?

A. If a worker has a second job, the line manager should ask the worker to sign an opt-out agreement if the total time worked is in excess of 48 hours a week. If a worker does not wish to sign an opt-out in this situation, the worker should consider reducing their hours to comply with the 48-hour limit.

Q3. If I have more than one employer, and work in excess of the 48 hour weekly limit, should I sign an opt-out with each employer?

A. You may complete an opt-out with each employer, if you wish to, however you cannot be forced to sign an opt-out. You cannot be fairly dismissed or subjected to detriment for refusing to sign an opt-out.

Q4. As a night worker, do I have to have a health assessment?

A. No. But your employer must still offer you one before you become a night worker and annually thereafter.

Q5. What if a Medical Practitioner advises that I am suffering with health problems and cannot work at night?

A. Wherever possible, you will be offered alternative work.

Q6. I employ a 16-year old apprentice who works alongside me. I work a 9-hour day. Can my apprentice work the same hours as me?

A. Young workers (i.e. 16 and 17 year olds) can only work a maximum 8-hour day. However, any breaks that a young worker receives are not classed as working time.

Q7. As a part time worker do I have to take a 20 minute break if I work in excess of 6 hours?

A. Yes. MOD policy states that part time employees must take a 20 minute unpaid break if they work in excess of 6 hours. This break must be taken during the 6 hour period and not at either the beginning or end of it. MDP officers who work part time are entitled to a paid 20 minute refreshment break if they work longer than 6 hours.

Q8. Do the Working Time Regulations apply on United States Air Forces- Europe bases located in the UK?

A. Yes.