

GUIDE TO THE WORKING TIME REGULATIONS

Version control table	
Original version published:	November 2018
Current version number:	Version 1
Current date	November 2021
Date current version published:	November 2021
Due date for next review:	November 2023
Author:	Human Resources
Equality and Diversity Impact Assessment date(s):	August 2021
Assessed by:	Simone Doyle - Equality & Diversity Officer (Human Resources) Iain Davidson Employee Relations Manager
Contact details:	Human Resources Scottish Borders Council Headquarters Old School Building Newtown St Boswells Melrose TD6 0SA ☎ Tel 01835 825052/3 (HR reception) ✉ askhr@scotborders.gov.uk
This is an electronically retained document. All printed copies are uncontrolled.	

This document can be made available **in an alternative format or language**. For further details please contact Human Resources (as above).

GUIDE TO THE WORKING TIME REGULATIONS

Contents Page:

	Page No.
1. Introduction	2
2. A limit of 48 hours for the average working time	2
3. Minimum daily and weekly rest periods	3
4. Rest breaks during working hours	4
5. Paid annual leave	4
6. Limit on night workers average normal daily working time to 8 hours	4
7. Requirement to offer health assessments to night workers	4
8. Exceptions	5
9. Records	5
10. Enforcement	5
11. Roles and responsibilities	5

Appendix 1 Agreement to Opt Out of the 48 Hour Working Week Limit

1 Introduction

1.1 This is a guide to the Working Time Regulations 1998 which set out rights for workers, ensuring that they do not have to work excessive hours. The regulations implement the EC Directive on the organisation of working time. All Departments need to ensure that they are complying with the Regulations.

There are 6 main provisions under the Regulations which are described in turn below:

2 A limit of 48 hours for the average weekly working time.

2.1 Working time is when a worker '*is working at the employer's disposal and carrying out their activities or duties*'. A lunch break or being on-call when free to undertake other activities is not considered to be working time.

2.2 There is a limit of an average of 48 hours a week which a worker can be required to work, averaged over a 17 week period (excluding annual leave and sick leave). This can be extended to up to 26 weeks for specific groups of staff through a collective agreement between the Council and the recognised Trades Unions.

There is a separate limit for workers under 18 years of age (Young Workers). They cannot work more than 8 hours a day or 40 hours a week.

These limits apply on a week to week basis and cannot be calculated as an average over any period.

- 2.3 A worker can choose to work more than an average of 48 hours a week. This can only be varied through individual agreement. This must be in writing and the worker must be allowed to give notice to bring the agreement to an end. A sample agreement is included as an appendix to this guidance note.

Because the agreement has Employment Law consequences, advice must be taken by the department from Human Resources before an employee signs an agreement.

Where this is agreed, the form must be sent to HR Shared Services for retention and the actual hours worked by the worker must be recorded by the department.

Young workers cannot opt out of the weekly maximum of 40 hours.

3 Minimum daily and weekly rest periods

- 3.1 Workers are entitled to a daily rest break of 11 consecutive hours between each working day and in addition to an uninterrupted weekly rest period of not less than 24 hours in each 7 days period or alternatively two 24 hour periods in any 14 day period. Ideally the weekly rest should be linked to a daily rest period (giving a 35 hour rest period).
- 3.2 The rest periods do not apply in some special circumstances. These include where:
- a worker's activities are affected by an occurrence due to unusual and unforeseeable circumstances. This provision relates essentially to emergency situations.

However, workers must be permitted to take an equivalent period of compensatory rest.

These rest periods do not apply to drivers but all drivers must have adequate rest periods.

This is defined by the Council as follows:

Daily Rest – a minimum 9 hours' uninterrupted daily rest.

Weekly rest – an uninterrupted weekly rest period of not less than 24 hours in each 7 day period or alternatively two 24 hour periods in any 14 day period.

Please read the Guide to HGV Drivers Hours for further information .

Young workers are entitled to a daily rest period of 12 hours and a weekly rest period of 48 hours. The weekly rest period can be reduced to 36 hours for operational reasons.

- 3.3 The entitlement to rest may be modified by a collective agreement (but not for young workers). This may be required where staff undertake stand by duty and are called out to work.

The requirement for daily and weekly rest periods does not apply where the worker works split shifts, for example, cleaning staff who have a morning and evening shift.

4 Rest breaks during working hours

4.1 Workers are entitled to an uninterrupted unpaid break of at least 20 minutes when their daily working time is more than 6 hours. For young workers the break must be at least 30 minutes when their daily time is more than 4.5 hours. This should be a break in working time and should not be taken at the start or end of the working day.

4.2 Once again it does not apply in those special circumstances described at [3.2](#) above, in which case the worker is entitled to an equivalent period of compensatory rest. This should be provided within a reasonable time.

5 Paid annual leave

5.1 Workers are entitled to paid annual leave of 5.6 weeks. This does not apply until the worker has been continuously employed for 13 weeks. This is not additional to contractual entitlements. Normal annual leave and public holidays count against the worker's entitlement under the Regulations.

The Council's Leave provisions are more generous than this (see the [Annual Leave Policy](#)).

If the worker starts part way through the year, the entitlement is proportionate to the amount of the year worked. Leave entitlement may not be replaced by pay except when someone is leaving. At least 4 weeks' leave must be taken in each leave year.

6 Limit on night workers average normal daily working time to 8 hours.

6.1 A night worker's normal daily working time should not exceed 8 hours, averaged over a 17 week period. Within Scottish Borders Council, night time is classed as the period from 10pm to 6am. Young workers should not be employed on night work.

6.2 The night limit does not apply in the same special circumstances as outlined at [3.2](#). Where the limit does not apply the worker must be permitted to take an equivalent period of compensatory rest.

7 Requirement to offer health assessments to night workers

7.1 A health assessment must be available without cost to the worker. As a minimum employers could construct a screening questionnaire for workers to complete before they begin night work.

Where the answers to the screening questionnaire raise any doubts about an individual's fitness to work at night, they will be contacted by OHS regarding further assessment.

7.2 Night workers are entitled to the opportunity for a free health assessment at regular intervals. In the interim, should a night worker require an assessment this will be arranged.

7.3 Where advised by a health care professional that a worker is suffering from health problems connected to night working they are entitled to be transferred to other suitable work, where possible.

8 Exceptions

8.1 Exceptions can be made from daily rest, weekly rest, daily working time, weekly working time and night working where working time is not fixed or is decided by the worker themselves. Within Scottish Borders Council , this would apply to Chief Officers.

9 Records

9.1 The Regulations require an employer to keep adequate records to show that they have complied with the weekly working time limit and to show that the limits on night work are being complied with. The records must be kept for two years.

9.2 Existing records kept for other purposes, such as pay, can be used. Where time-sheets are completed for all hours worked, this will be considered an adequate record. Other employees who are paid automatically will have contractual working hours and will normally fill in overtime claims, or claim time in lieu, where they work beyond this. Again this will be considered an adequate record. A note of hours worked should be kept for all employees.

10 Enforcement

10.1 The Regulations protect workers from being discriminated against for asserting an entitlement. A worker's entitlements can be enforced through taking a claim to an Employment Tribunal.

10.2 For further advice or information on the Working Time Regulations, please contact the HR Case Management Team: askhr@scotborders.gov.uk / Tel: 01835 825052.

11 Roles and Responsibilities

11.1 **Directors** and **Managers** will ensure:

- That they and their teams are aware of and understand this guidance.
- That adequate records are kept for each employee in line with Section 9.

11.2 **HR Case Management Team:**

- Will give appropriate advice and guidance on the regulations.

Agreement to Opt Out of the 48 Hour Working Week Limit

I am aware that the Working Time Regulations stipulate that a worker should not work more than an average of 48 hours a week, averaged over a 17 week period (or other period as agreed between the Council and the Joint Trades Unions not exceeding 26 weeks). I confirm I have read the guide to the Working Time Regulations of the HR Policies and Guidelines, in particular paragraph 2.3.

I voluntarily agree to work more than the 48 hour average weekly limit and understand that I can bring this agreement to an end by notifying my employer, in writing, giving 4 weeks' notice.

Name _____

Signature _____

Post held _____

Department _____

Date _____