



DEBATE PACK

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Working Time Directive (Limitation) Bill

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Summary

The *Working Time Directive (Limitation) Bill 2015-16* is a Private Members' Bill sponsored by Christopher Chope MP. The Bill received its first reading on 6 July 2015. It is expected to have its second reading debate on **Friday 22 January 2016**.

Contents

1.	The Bill	2
2.	The relevant law	2
2.1	Scope of the Regulations	3
2.2	Working time limits	4
2.3	Rest	4
3.	European Commission consultation	7

The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

1. The Bill

The [Working Time Directive \(Limitation\) Bill 2015-16](#) seeks to limit the application of the *Working Time Directive*, and the *Working Time Regulations 1998 (SI 1998/1833)* which implement the Directive in domestic law. The Bill has one substantive clause, which provides:

Limitations on definition of working time

Notwithstanding the European Communities Act 1972, the provisions in the EU Working Time Directive and the European Working Time Regulations 1998 shall not apply to—

- (a) any employee who with the agreement of the employer has chosen to opt out of the provisions of the Directive and the Regulations;
- (b) doctors and other health professionals;
- (c) any time spent by an employee on call and not working;
- (d) the calculation of entitlements to holiday and holiday pay, bonuses and overtime;
- (e) time spent by employees overseas;
- (f) time spent in travelling to and from or between a place of work.

The progress of the Bill can be followed on the Parliament website, [here](#).

The following provides an overview of the law on working time.

2. The relevant law

Summary

Subject to various qualifications discussed below, the *Working Time Regulations 1998* (which implement the Working Time Directive):

- limit average working time to 48-hours per week and eight hours per night for night workers;
- entitle workers to:
 - a daily rest period of eleven hours in each 24-hour period;
 - a weekly rest period of 24 hours in each seven-day period;
 - a 20-minute rest break once daily working time exceeds six hours; and
 - 5.6 weeks annual leave.

The [Working Time Regulations 1998 \(SI 1998/1833\)](#), as amended, implement EU law on working time, originating with [Directive 93/104/EC](#) and consolidated in [Directive 2003/88/EC](#) (the 'Working Time Directive'). The Regulations set limits on weekly working time and night work, and provide rights to rest periods and breaks.

2.1 Scope of the Regulations

“Working time” is defined under the Regulations as including any period during which the worker is working, at his employer’s disposal and carrying out his activity or duties, or undertaking certain types of work-related training. Employment contracts or collective/workforce agreements may specify additional types of working time for the purposes of the Regulations.¹

The Regulations apply to workers, including agency workers, although there are a number of exceptions. The Regulations either wholly or mainly do not apply to:

- merchant seafarers;
- sea-fisherman;
- work on vessels operating on inland waterways;
- mobile staff in civil aviation; and
- mobile staff in road transport.

Working time in these sectors is addressed by separate legislation,² and discussed in a Library [briefing paper](#).³ Additionally, the provisions setting limits on working time and entitling rest do not apply to “unmeasured working time”, which is time that “is not measured or predetermined or can be determined by the worker himself” (e.g. managers who control their own work).

The Regulations do not apply:

where characteristics peculiar to certain specific services such as the armed forces or the police, or to certain specific activities in the civil protection services, inevitably conflict with the provisions of these Regulations⁴

The exception applies to ensure the:

proper operation of services essential for the protection of public health, safety and order in cases the gravity and scale of which are exceptional and a characteristic of which is the fact that, by their nature, they do not lend themselves to planning as regards the working time of teams of emergency workers.⁵

Thus, it does not apply to the routine operation of emergency services.

In addition to the above, the Regulations do not apply to children (those of compulsory school age⁶) and apply differently to young workers under 18 years old (see below).

¹ *Working Time Regulations 1998*, regulation 2(1)

² *The Merchant Shipping (Hours of Work) Regulations 2002 (SI 2002/2125)*; *The Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004 (SI 2004/1713)*; *The Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (SI 2003/3049)*; *The Civil Aviation (Working Time) Regulations 2004 (SI 2004/756)*; *The Road Transport (Working Time) Regulations 2005 (SI 2005/639)*

³ [Working Time Directive: Excluded Sectors](#), Commons Library Standard Note, SNBT137, 7 October 2009

⁴ *Working Time Regulations 1998 (SI 1998/1833)*, regulation 18(2)(a)

⁵ [Pfeiffer v Deutsches Rotes Kreuz, Kreisverband Waldshut eV](#) C-397/01 to C-403/01, para 55

⁶ In England and Wales a child may not legally leave school until the last Friday in June of the school year during which they reach the age of 16; see [section 8](#) of the *Education Act 1996*

2.2 Working time limits

Maximum weekly working time

Regulation 4 provides that, subject to a worker agreeing to opt-out, “working time, including overtime ... shall not exceed an average of **48 hours**”. An employer must take reasonable steps to ensure this limit is complied with.

The limit does not apply where an employer has obtained a worker’s agreement in writing to this effect. This may relate to a specific period or apply indefinitely. Unless the agreement provides otherwise, it is terminable by the worker if he gives at least seven days’ written notice (any otherwise agreed notice period cannot exceed three months).⁷

Working time is averaged over a period of 17 weeks, although this is extended to 26 weeks in certain cases, such as offshore work; security and surveillance activities; where there is a need for continuity of service or production (e.g. hospital care); where there is a foreseeable surge of activity (e.g. in agriculture); or where activities are affected by unexpected circumstances.⁸ A collective or workforce agreement may in certain cases extend this to 52 weeks.⁹

Length of night work

A night worker's normal hours of work must not exceed an average of **eight hours** during each 24 hours, averaged across a 17-week period.¹⁰ His employer must take reasonable steps to ensure this limit is complied with.

“Night time” for these purposes is defined by the employment contract or collective/workforce agreement (but must include the period between midnight and 5 a.m.). If no period is specified, the default is the period between 11 p.m. and 6 a.m. A “night worker” is a one who normally works at least three hours during night time.¹¹

2.3 Rest

Daily rest period

Workers are entitled to a daily rest period of **eleven consecutive hours** in each 24-hour period. In the case of a shift worker, the requirement does not apply when he changes shift and cannot take a daily rest period between the end of one shift and the start of the next one, although compensatory rest should be provided.¹²

⁷ *Working Time Regulations 1998 (SI 1998/1833)*, regulations 4(1), 5

⁸ *Working Time Regulations 1998 (SI 1998/1833)*, regulations 4(5), 21

⁹ *Working Time Regulations 1998 (SI 1998/1833)*, regulation 23

¹⁰ This period may be modified by a collective or workforce agreement

¹¹ *Working Time Regulations 1998 (SI 1998/1833)*, regulation 2(1)

¹² *Working Time Regulations 1998 (SI 1998/1833)*, regulations 22(1)(a), 24

Weekly rest period

A worker is entitled to an uninterrupted rest period of not less than **24 hours in each seven-day period**, although the employer may change this to either:

- two uninterrupted rest periods each of not less than 24 hours in each 14-day period; or
- one uninterrupted rest period of not less than 48 hours in each 14-day period.¹³

As with daily rest, the requirement is disapplied in certain cases for shift workers.

Rest breaks

Where a worker's working time exceeds six hours, he is entitled to a 20-minute break.¹⁴ The entitlement does not multiply; a worker working 12 hours is entitled to one 20-minute break. The length of the break may be modified or excluded by a collective or workforce agreement. In order to count as a rest break, it must be an uninterrupted break which the worker knows is a break and can use as he pleases.¹⁵

Holiday

Under the *Working Time Regulations 1998* workers are entitled to 5.6 weeks' paid annual leave. For those working five days per week, this amounts to 28 days' paid leave, inclusive of public holidays ($5.6 \times 5 = 28$).¹⁶ Part-time workers are also entitled to 5.6 weeks' leave. For example, working three days per week entitles one to 16.8 days' leave ($5.6 \times 3 = 16.8$).

The statutory entitlement does not increase beyond 28 days for those working more than five days per week. Contracts of employment may, of course, entitle longer periods of leave.

The "leave year" for the purposes of the Regulations is either that specified in the contract of employment or other relevant written agreement. If no dates are specified, the leave year begins on the date employment commenced (unless it commenced prior to 1 October 1998, in which case the leave year begins on 1 October).¹⁷

Statutory annual leave must be paid at the worker's normal rate of remuneration. The question of how to calculate this has been a source of repeated litigation both domestically and at the European Court of Justice. Broadly, the reason for the uncertainty stemmed from the difficulty in squaring the method used under the 1998 Regulations to calculate pay with that required by the Working Time Directive.¹⁸ Case

¹³ *Working Time Regulations 1998 (SI 1998/1833)*, regulation 11

¹⁴ *Working Time Regulations 1998 (SI 1998/1833)*,

¹⁵ See *Gallagher and others v Alpha Catering Services Ltd* [2004] EWCA Civ 1559

¹⁶ *Working Time Regulations 1998*, regulations 13-13A

¹⁷ *Working Time Regulations 1998*, regulation 13(3)

¹⁸ Council Directive 93/104/EC. Under regulation 16 holiday pay is calculated using the method set out in sections 221-224 of the *Employment Rights Act 1996*, which provide that a week's pay includes overtime only if it is both compulsory and guaranteed (i.e. excludes voluntary overtime). This gave rise to a challenge to the

law has now confirmed that workers are entitled to remuneration reflecting the overtime they would normally work and commission they would normally earn. In the latter case, this may require payment following the period of leave, representing commission that would have been earned had the worker not been on leave.

Annual leave accrues during sickness absence and can be carried over into the next leave year if that absence prevents the worker taking leave. If a worker falls ill while on annual leave, he may bring an end to the leave and take it at a later date.

3. European Commission consultation

Between 1 December 2014 and 18 March 2015 the European Commission ran a “Public consultation on the review on the Working Time Directive (Directive 2003/88/EC)”. The details of the consultation are set out on the European Commission’s website, [here](#).

In a letter to the European Scrutiny Committee on 24 March 2015 the then Parliamentary Under Secretary of State for Employment Relations, Jo Swinson, set out the Coalition Government’s position on the Directive. Ms Swinson indicated that the Government did not expect the Commission to bring forward any proposals until 2016. The full text of the letter is set out below:

Letter from Jo Swinson to the Chair

Update on the Working Time Directive

Thank you for your letter of 7 January. I am writing to update you on the Government’s response to the Commission’s consultation.

The consultation invites insights and contributions to support the Commission’s continuing review and impact assessment processes regarding the Directive. The responses, including the Government’s response, will be published on the European Commission website. The Commission will use the responses to develop their thinking in future proposals for change.

The Department for Business, Innovation and Skills hosted a series of stakeholder events to inform the Government’s response. The Government’s response, which was cleared with the European Affairs Committee, is in line with the contents of the National Implementation Report and the Review of Evidence, which set out our priorities.

These priorities include maintaining the right to opt out from the maximum 48-hour working week, leaving national governments to determine how to calculate holiday pay and achieving more flexibility on the issues of on-call time and compensatory rest. The Commission’s consultation did not specifically raise the issue of holiday pay, but we have made clear that this is a key issue for the UK.

We do not expect the Commission to put forward any proposals for reform of the Directive until early 2016. The Government intends to continue constructive dialogue with the Commission in order to emphasise our position on the Directive.¹⁹

¹⁹ [Ministerial Correspondence, House of Commons European Scrutiny Committee, p2](#)

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