



## Working time opt out: retained firefighters

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This note gives an overview of retained firefighters in the UK and looks at the recent developments at EU level which some fear may see the abolition of the opt-out provisions in the Working Time rules in respect of the 48 hour working week.

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### 1 Retained firefighters<sup>1</sup>

Retained firefighters provide fire and emergency cover for more than 60% of the area of the United Kingdom, but their important role is not widely understood. As the 2005 review into the sector said:

The public perception is of a fire and rescue service staffed exclusively by firefighters working full-time. The reality is very different: 30% of the service's total workforce are employed on the retained duty system, they operate 60% of fire appliances and provide the primary means of cover across much of the country.<sup>2</sup>

There are 18,200 retained firefighters in the United Kingdom; 14,166 of them in England. They may have full- or part-time jobs, but are on call to respond to emergencies, not only fires but other disasters such as floods or chemical spills. They may also attend the injured or ill if they are distant from an ambulance station, and they get involved in community fire prevention activities. They are generally located in rural areas, though there are some in cities as well, and are paid at varying rates depending on the level of commitment that they are prepared to offer. Retained firefighters can be expected to be called out about 2 or 3 times a week, although this varies a lot between stations. The Fire Service website explains the contracts available:

Most brigades offer several types of retained contract based on different levels of commitment. A full rate contract is usually based on a person offering 120 hours of cover per week. A reduced rate contract attracting at least 75% of the retaining fee is payable for any level of cover below 120 hours per week. In practice many brigades define this as 80 hours per week although many are also realistic, and will pay a reduced rate retainer for people offering substantially less than 80 hours of cover, at times when the station otherwise struggles to crew the appliance.<sup>3</sup>

It has not been easy for fire services to recruit and retain part time firefighters, particularly where a full 120-hour week's commitment is required. In 2005 the Office of the Deputy Prime Minister, then the responsible department, published a report containing recommendations to tackle these difficulties. Among the recommendations were that fire services should work to publicise the retained firefighters system and liaise with local employers to ensure their

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<sup>1</sup> By Ben Smith, Science and Environment Section

<sup>2</sup> [The Fire and Rescue Service Retained Duty System: A Review of the Recruitment and Retention Challenges](#), ODPM, 2005

<sup>3</sup> [Retained Firefighters](#), Fire Service webpage

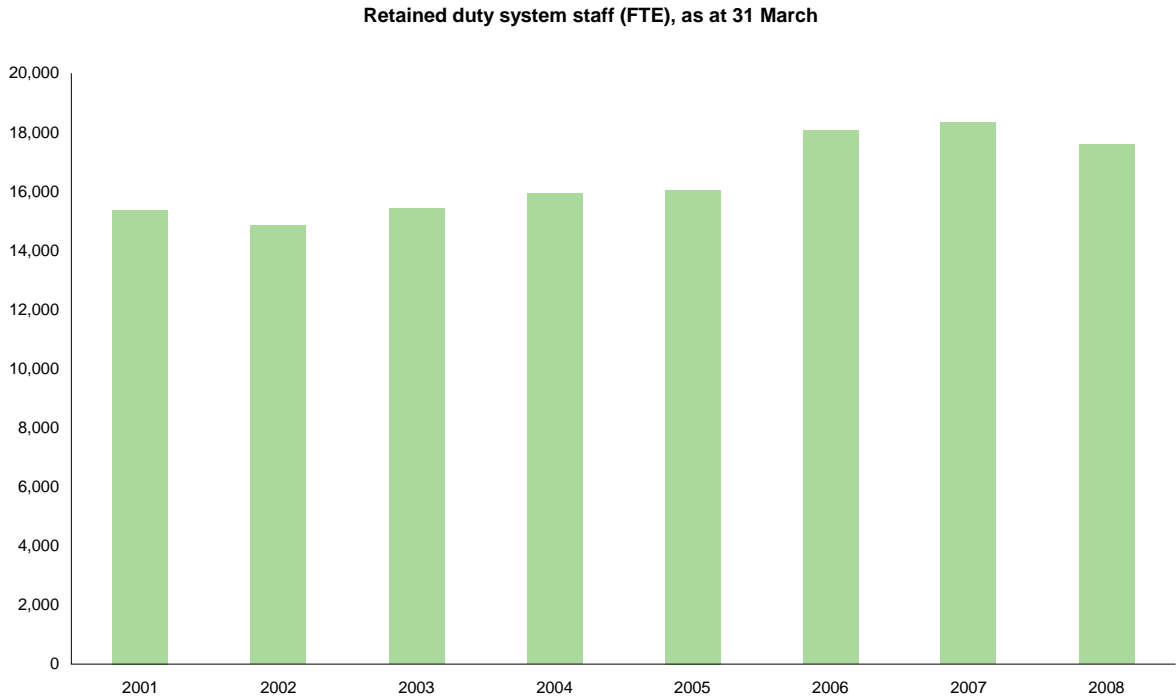
cooperation in releasing employees for fire duties.<sup>4</sup> Securing the cooperation of the principal employer of part timers is essential to making the system work, and observers have suggested that, particularly in times of economic hardship, that cooperation is becoming less likely.

**Scotland**

Retained firefighters tend to be concentrated in rural areas, and they make a particularly important contribution to fire services in Scotland. Of 391 fire stations across Scotland, 321 are staffed by a total of 3,429 part timers.

**2 Statistics<sup>5</sup>**

There were 67,400 full-time equivalents fire and rescue service staff in the United Kingdom as at 31 March 2008, of which 17,596 were retained duty system (RDS) personnel. Almost one-third of operational personnel (wholetime and RDS) are RDS personnel. The chart below, and table 1, shows how the number of RDS personnel has changed since 2001.



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<sup>4</sup> [The Fire and Rescue Service Retained Duty System: A Review of the Recruitment and Retention Challenges](#), ODPM, 2005

<sup>5</sup> By Gavin Berman, Economic Policy and Statistics Section

**Table 1**  
**Number of staff in post on 31 March 2001-2008 (Full time equivalents), United Kingdom**

	Wholetime	Retained duty system	Fire control	Non-uniformed	Total
2001	38,643	15,372	1,762	7,124	62,901
2002	38,680	14,853	1,768	7,229	62,530
2003	38,845	15,435	1,807	7,207	63,294
2004	38,744	15,928	1,823	7,664	64,159
2005	38,128	16,047	1,897	8,200	64,272
2006	37,696	18,055	1,862	9,262	66,875
2007	37,715	18,325	1,859	9,441	67,340
2008	37,682	17,596	1,899	10,224	67,400

Note: Totals may not add due to rounding

Source: Fire and Rescue Service Statistics, CIPFA

Table 2 shows that approximately three-quarters of RDS staff are firefighters with the remainder engaged in management roles.

**Table 2**  
**Retained duty system staffing by role, as at 31 March (Full time equivalents), United Kingdom**

	2007	2008
Station Manager	93	81
Watch Manager	1,446	1,462
Crew Manager	3,089	3,021
Firefighter	13,698	13,031
Total	18,325	17,596

Note: Totals may not add due to rounding

Source: Fire and Rescue Service Statistics, CIPFA

There are no RDS personnel in London and they make up less than 5% of the workforce in Greater Manchester, West Midlands and Tyne and Wear. Almost three-quarters of the fire service staff in Highland and Islands are RDS personnel.

On 31 March there were 2,052 fire stations across the UK, with RDS staff manning 57% of these. There is wide variation across the UK. No fire stations are manned by RDS staff in London or Merseyside and only one in each of Greater Manchester, West Midlands and Tyne and Wear.

Rural areas have a high proportion of their fire stations manned by retained duty system staff. In Norfolk, Suffolk, Cumbria, Dumfries and Galloway and the Isle of Wight over 85% of fire stations are manned by RDS staff.

The appended table provides statistical information for each individual fire authority in the United Kingdom.

### **Hours worked**

There is little regularly published data relating to the number of hours worked by retained firefighter.

The TUC/FBU carried out an analysis of ONS Labour Force Survey Data. Their results, which are summarised in Table 3, suggest that 55% of retained fire-fighters work for less

than 48 hours per week in all their jobs. Of those that work in excess of 48 hours a week 29% work for over 50 hours and 19% for more than 60 hours a week.

**Table 3**  
**Total hours worked by fire service personnel**

Banded working time	Full-time fire service			
	employees <sup>1</sup>		Retained fire fighters <sup>2</sup>	
	%	Cumulative %	%	Cumulative %
1 to 30	13.1	13.1	6.4	6.4
30.5 to 48	67.3	80.4	48.6	55.0
48.5 to 50	6.5	86.9	15.9	70.9
50.5 to 55	5.4	92.3	7.1	78.0
55.5 to 60	2.4	94.7	3.5	81.5
61 to 65	0.0	94.7	7.4	88.9
66 to 96	5.2	100.0	11.1	100.0

Note: Totals may not add due to rounding

1 - Includes hours in second jobs

2 - All employee jobs combined

Source: The fire service - managing the 48 hour week. A joint TUC/FBU briefing for MEPs and MPs

According to the TUC/FBU briefing ‘an average retained fire fighter works 47.7 hours per week in all their jobs’.

A detailed table of staffing numbers is contained in an annexe to this note below.

### 3 EU level developments

The *Working Time Regulations 1998*, SI No. 1833, implemented the EC *Working Time Directive* (93/104/EC) in Great Britain, and came into force on 1 October 1998. They regulate working time in various ways including by placing a general limit of 48 hours on the working week, which can be averaged over 17 weeks. Individual workers can agree in writing with their employers voluntarily to “opt out” of the 48 hour limit.<sup>6</sup> The Department for Business Enterprise and Regulatory Reform has published detailed guidance on how the regulations operate.<sup>7</sup>

Many workers agree with their employers to “opt out” of the 48 hour limit on the working week imposed under the *Working Time Directive*. The European Commission has made proposals to reform the facility to opt out following a review. The European Parliament has voted to abolish it entirely. The matter was considered by the Council of Ministers where it was subject to qualified majority voting (QMV).

These negotiations have been subject to ongoing deadlock in the Council for many years, with the UK trying to retain the opt-out and other countries trying to get it abolished. This deadlock was broken in June 2008 when a common position was reached retaining the opt-out. However, on 17 December 2008 the European Parliament voted again to abolish it. Ultimately, the matter will now go to the final “conciliation stage”, involving negotiation between all three EU institutions: the Commission, Parliament and Council.<sup>8</sup>

However it is not clear whether the opt-out from the Working Time Directive will survive. When the European Parliament voted to abolish the opt-out there were two points of contention. The Committee on Employment and Social Affairs (rapporteur: Alejandro Cercas)

<sup>6</sup> Regulations 4 & 5

<sup>7</sup> BERR, [Your guide to the Working Time Regulations: sections 5 – 11](#), URN No: 08/837/B

<sup>8</sup> See: SN/BT/2073 *Working time directive: opt out from 48 hour limit on working week*

had outlined two controversial points: opt-outs and on-call time. MEPs voted in the European Parliament on 17 December 2008 to adopt the Cercas amendments against both the opt-out and the proposal for a new category of “inactive on call time”.<sup>9</sup>

The following standard note gives an overview of the opt-out and the negotiation process:

*SN/BT/2073 Working time directive: opt out from 48 hour limit on working week*

## **4 Emergency Services**

In many ways the issues faced by firefighters in respect of working time rules are no different from other emergency services. The rules already have provisions allowing for more flexible treatment in the case of emergency services with regard to rest breaks and night work limits. An EDM recently raised concern about the impacts of abolishing the opt-out:

### **John Thurso MP**

That this House notes with regret the vote by the European Parliament on 17 December 2008 which voted in favour of removing Britain's Working Time Directive opt-out; further notes with serious concern the removal of this opt-out will have on retained firefighters across Scotland, and the consequences the removal of the opt-out may have on public health and safety; further notes that of 391 fire stations across Scotland 321 are staffed by 3,429 retained firefighters; further notes the valuable service these volunteer firefighters provide to their communities; further notes that the Retained Firefighters Union (RFU) opposes the removal of the opt-out and that if the opt-out is removed and retained duty system fire stations are proven unviable under the Working Time Directive, 91 per cent. of the UK land mass will lose valuable emergency fire cover; and further notes the serious and potentially fatal consequences the removal will have on communities across Scotland.<sup>10</sup>

The Retained Firefighters Union issued the following press statement in December 2008:

Discussions took place yesterday (10th December) with Department for Business Enterprise and Regulatory Reform (BERR) the UK lead Department for the WTD where we made representations, seeking to ensure that the potential impact on RDS is brought to their attention.

The RFU has today written to all MEPs over our concerns regarding the need for the existing UK Opt-Out to be retained within the Working Time Directive. MEPs and EU Member States will vote on whether to retain the Opt-Out in the European Parliament on the 17th December.

Whilst we are aware the TUC fully supports the removal of the Opt-Out and that it has a right to represent its member's wishes, we also have a right to represent our member's wishes and that is to continue to work as we do within the RDS with all the benefits it provides within the community. We will fight for the right for our members to have the choice they obviously want in providing this vital emergency service.

Notwithstanding the fact that larger unions within all sectors in UK are campaigning to remove the Opt-Out for their own well documented reasons; collective opt-out through collective bargaining would impose draconian restrictions on everyone irrespective of union affiliation or membership.

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<sup>9</sup> Personnel Today, [Working time opt-out may be under threat from MEPs](#), 27 October 2008

<sup>10</sup> EDM 552 of 2008-09, [Retained firefighters and Working Time Directive opt-out](#), 22 January 2009

Our members are trained and have individual responsibilities under Health & Safety to monitor their own availability for work; to remove this option would undermine this specific skill.

Appropriate management within the Fire Service has ensured that our members do not work excessive hours with any negative impact on their Health, Safety and Welfare. There are arrangements in place to relieve crews at protracted incidents.

Removal of the UK Opt-Out could see the RDS depleted across the UK with the alternatives being either no local fire cover (increased response times from locations further afield) or increases in Wholetime establishments at huge cost to the tax payer at a time when there is great pressure on personal finances.<sup>11</sup>

Concerns have been raised by Chief Fire Officers that changes to the UK implementation of the *Working Time Directive* will have a negative impact on the recruitment and availability of retained firefighters. The Fire Service describes the role of retained fire-fighters as follows:

Retained fire-fighters will generally be in full-time employment with an agreement from their employers to allow them to leave work in the event of an emergency call. Many people who are unemployed are also attracted to this worthwhile commitment.

Each retained fire-fighter is issued with a pocket alerter, which will alert the user in the event of an emergency. Depending on the type of cover given, the retained fire-fighter will respond to their local fire station from home or work, day or night.<sup>12</sup>

There are three related ways in which recent developments in European law on working time could have an impact on this group of workers:

- The current review of the UK opt-out provisions in the *Working Time Directive* which allow individual workers to sign opt-out agreements in respect of the 48 hour week.
- The cross-sectoral implementation of the European Court of Justice (ECJ) decisions in the *SIMAP* and *Jaeger* cases, which held the doctors "on-call" time counts toward the weekly limits on working hours. The effect of these decisions has not been limited to doctors.
- There is also concern about the separate EU Driver's Hours Regulations and how volunteer firefighters are affected.

A Written Answer on 9 October 2007 summarised the general position as follows:

#### **Fire Services: Working Time Directive**

**Mrs. Lait:** To ask the Secretary of State for Communities and Local Government whether there is a derogation from the Working Time Directive for retained firefighters who have other employment. [155699]

**Mr. Dhanda:** Retained duty system firefighters are able to work beyond the 48 hours a week set by the working time regulations provided they have signed a waiver for their primary and secondary employment.<sup>13</sup>

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<sup>11</sup> RFU Press Statement, [Future employment of Part-Time Firefighters under threat should UK Opt-Out be removed](#), 12 December 2008

<sup>12</sup> Fire Service, [About the retained duty system](#) (retrieved 18 October 2007)

<sup>13</sup> [HC Deb 9 October 2007 c563W](#)

In practical terms this means that an individual worker may agree to work more than 48 hours a week by signing an opt-out agreement, which they can cancel at any time. The employer and worker can agree how much notice is needed to cancel the agreement, which can be up to three months. In the absence of an agreed notice period, the worker needs to give a minimum of seven days' notice of cancellation. Employers cannot force a worker to sign an opt-out. It is unlawful for a worker to be dismissed or subjected to detriment for refusing to sign an opt-out. Employers are required to keep records of who has agreed to work longer hours.

The Department for Business website gives the following useful summary of how the opt out currently works:

Workers can agree to work longer than the 48-hour limit. An agreement must be in writing and signed by the worker. This is generally referred to as an opt-out. It can be for a specified period or an indefinite period. There is no opt-out available from the Young Workers limits.

Workers can cancel the opt-out agreement whenever they want, although they must give their employer at least seven days' notice, or longer (up to three months) if this has been agreed.<sup>14</sup>

There is also a lack of clarity in the Directive about whether the 48 hour limit applies per worker or per contract. The current review of the Directive could lead to a clarification that it applies per worker. Clearly this is an important issue in the case of retained fire-fighters who are generally in full time employment. The number of hours worked in that employment could place limits on their activities as fire-fighters.

The European Court of Justice has ruled that all time spent by doctors on call at a "health centre" counts as working time.<sup>15</sup> Accordingly, abolition of the opt out could result in staffing problems in the UK where there are proportionally fewer doctors than other EU member states. These judgements are referred to as "SIMAP" and "Jaeger". Whilst the judgements concerned doctors, their impact has had a wider cross-sectoral application in domestic judicial interpretation.<sup>16</sup>

On 22 September 2004, the European Commission announced the results of its review of the opt out and issued a new draft amending directive.<sup>17</sup> Its key proposals were:

- The individual opt out would remain but would be subject to stricter conditions to prevent abuse (including a requirement that it be contained in a collective or workplace agreement where such arrangements are in place)
- Member States would be able to extend the reference period over which the 48 hour limit is calculated from 4 months to one year
- "Inactive" time spent on call would not count towards "working time"

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<sup>14</sup> [BERR, Your guide to the Working Time Regulations: sections 1 – 4, URN No: 07/1253/A1](#)

<sup>15</sup> *Landeshauptstadt Kiel v Jaeger* ECJ 2003 , ECJ case C-151/02, reported at [2003] IRLR 805; and *Sindicato Medicos Publica (SIMAP) v Valenciana* 2001 ICR 1116, ECJ case C-303/98 on 3 October 2000

<sup>16</sup> See *MacCartney v Oversley House Management*, [2006] ICR 510: The ECJ *SIMAP* and *Jaeger* judgements were applied to the on-call time of a residential manager of sheltered accommodation.

<sup>17</sup> *Proposal for a directive of the European Parliament and of the Council amending directive 2003/88/EC concerning certain aspects of the organisation of working time*, COM(2004) 607 final, 22 September 2004, [http://europa.eu.int/comm/employment\\_social/news/2004/sep/working\\_time\\_directive\\_proposal\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2004/sep/working_time_directive_proposal_en.pdf)



A European Commission press notice explaining the proposal in more detail is reproduced below:

The Commission has today, after extensive consultation across Europe, adopted a proposal to update key aspects of the working time directive. It is a balanced package of inter-related measures which retains the principal objective - health & safety of workers - while responding to the needs of the modern European economy. The individual opt-out from the 48 hour week would remain possible, but be subject to stricter conditions to prevent abuse. Member States would be given the possibility to extend the reference period for calculating the 48-hour maximum working week from 4 months to a year. Time spent on call that is not worked would not be counted as working time, with compensatory rest granted within 72 hours.

Employment and Social Affairs Commissioner Stavros Dimas said: "This proposal will address shortcomings in the present system, demonstrated in the course of its application. It is a balanced package of measures that protect the health and safety of workers whilst introducing greater flexibility and preserving competitiveness."

The proposal says that Member States can put into place measures at national level to apply the individual opt-out to the 48 hour limit. The conditions that must be respected in the case of an agreement between the employer & the individual have been made more explicit. For example, the employer will not be able to obtain this consent at the time of signing the employment contract, and the employee will be free to withdraw his consent at any moment. The individual opt-out will be done by collective agreement or by agreements between the two sides of industry within a sector or workplace. An individual can agree to opt out with his employer directly when, under national legislation or practice, collective bargaining cannot be used to negotiate agreements on working time. This is in particular the case where no collective agreement is in force and there is no staff representation at company level that is empowered to conclude such an agreement.

In a related move, Member States will be given the possibility to extend the standard reference period for calculating the average working week of 48 hours from 4 months to up to 1 year, provided they consult the two sides of industry. This will allow companies greater flexibility and adaptability for the demands of their business.

Under today's proposal a new category of on-call time is created, the "inactive" part of on-call time. This is the time the worker, although available for work at his place of employment, does not carry out his duties. This will not be counted as working time, unless otherwise stipulated by national law or collective agreement.

The proposal also specifies that compensatory rest would not have to be granted immediately, but within 72 hours.

The proposal is being made by the Commission after a two-stage consultation process, as required by the Treaty, which culminated in the European level representatives of employers and workers indicating that they were unable to enter into negotiations on this issue. The proposal will now be sent to the Council & Parliament for agreement.<sup>18</sup>

A debate in Westminster Hall on 11 February 2009 tabled by Alistair Carmichael discussed the issues facing the sector in terms of the working time opt-out. Mr Carmichael gave the following overview:

Retained firefighters, who are employed under a retained duty scheme, are generally already in full-time employment with a primary employer. They supplement that

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<sup>18</sup> IP/04/1129, 22 September 2004, *Commission proposes revision of working time directive*,

employment by giving service to their communities and being available for anything up to 120 hours of “inactive on-call” time a week. They are available at the drop of a hat or the press of a pager button. They respond to road accidents, fires and the whole range of situations in which any firefighter might be called on to serve.

In some ways, the existence of the retained duty system is a historical accident; it is just how the service evolved. Often, such historical accidents provide a service that does not quite fit the needs of the community, and change can be challenging. That is not the case with the retained duty system. If we were to set out today with a blank sheet of paper to design a service to provide fire and rescue services for less densely populated areas of the country and more remote communities, I suspect that we would end up with something that looked pretty much like the retained duty system.

That is why I take any threat or challenge to that system seriously, as we all should. It is one of the most important services that any community can call on. Its importance is that, looked at in the abstract, the service is designed to meet the needs of the communities that it serves and not necessarily those of the people who provide the service.<sup>19</sup>

Andrew Dismore raised the health and safety issues behind the intentions of the working time regulations:

We can get a little lost in double and treble negatives about what the directive is all about and ending the opt-out, but essentially it is about restricting the maximum number of working hours to 48. Why is that being done? It is not because of some European desire to screw up the British fire service; it is a health, safety and welfare issue that aims to improve the lives of individuals. Jobs such as those in the fire service have many inherent risks and are dangerous enough already. We do not want to increase those risks either for the firefighters concerned or for the people whom they might be called upon to rescue.

Let me deal with some of the myths that surround working time directive requirements. The fire service has peaks and troughs in demand, like many businesses and services, and the working time directive recognises those problems by requiring an average 48-hour week over a 26-week period, so it can provide the operational flexibility that the fire service needs. Moreover, the directive does not apply in emergencies when property, life or limb are at risk, so no firefighter will be stopped from doing their job. Services can waive the 48-hour week requirement in a wide range of emergencies, such as when they have temporary staff shortages, or in periods when they might be called on because of severe weather conditions, as they have been in the past few days.

[...]

Some firefighters might have to change their working patterns, but that could be managed through relatively minor adjustments in the years between now and when the rule changes occur. Full-time firefighters work a variety of shifts, but typically work 48-hour shifts in four-day patterns, which provides for a 42-hour working week. Only 4,000 retained firefighters work more than 50 hours, with 2,500 working more than 60 hours. It should therefore be possible, over time, to manage arrangements to reduce requirements on them.

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<http://europa.eu.int/rapid/pressReleasesAction.do?reference=IP/04/1129&format=HTML&aged=0&language=EN&guiLanguage=en>

<sup>19</sup> [HC Deb 11 February cc411 – 433WH](#)

There is a UK-wide shortage of retained firefighters—between 3,000 and 5,000 across the country—and the way to deal with that problem is to improve recruitment and retention to ease the pressure on retained firefighters and to comply with the directive. The hon. Member for Orkney and Shetland mentioned that the labour market is tight, but it should be easier to recruit retained firefighters at such a time because that is a secure form of employment. Given that many people are losing their job or being put on short-time working—a trend that has been adopted in many parts of the world to deal with the financial pressures being faced—this is a good time to recruit firefighters. That has to be considered.<sup>20</sup>

Mike Penning disagreed with this view and set out the following further background:

In certain parts of the country, the system has worked well. We have four types of firefighters in this country: whole time—the type that we have in London—whole-time retained, day manning, and retained. The system is different from that in any other part of the world. We pay retained firefighters for their dedication—we give them a pension, and payment for the time that they commit to their community—and that is why they fall inside the ludicrous rule on the 48-hour week. The rest of Europe is not affected in the same way. Local community firefighters in the rest of Europe are just as dedicated as ours: they want to serve their community and they regularly go out to protect their community. However, they are classed as volunteers and only get expenses. They are therefore not classed as employed and are exempt from the directive. Our firefighters are not. Will the Minister explain why we do not have an exemption because of the special circumstances we have in relation to the different types of firefighters?

Those of us who have lived on the continent will have seen that ours is a better system. People should not be asked to put their lives on the line and not be paid for it. We should not have an “us and them” situation where whole-time firemen are paid and retained firemen working next to them on jobs are not paid. That is wrong and is something that should be dealt with. I would have thought that that was something the Labour party would understand and fight the cause for.<sup>21</sup>

The minister responding to the debate, Pat McFadden reaffirmed the Government’s position on the opt-out:

One benefit of the debate is that although we have concentrated on a particular service and a particular sector, it shows the sort of impact—it has not been brought out properly in other debates—of simply adopting the European Parliament’s amendments to get rid of the opt-out and of not dealing properly with European Court judgments on inactive, on-call time, and the effect of that on our labour market. I shall explain the Government’s position. First, the opt-out from the 48-hour week is sometimes referred to as a UK opt-out. That is not so. The European Commission estimates that 14 or 15 member states use the opt-out. It is not a British issue, but extends throughout the European Union, as I know from my regular discussions with other employment and social affairs Ministers.

In June last year, we reached agreement in the Council of Ministers on a common position, which would have retained the opt-out and would also dealt with the issue of on-call time, which has caused difficulty in a number of services, particularly health and social care, where residential on-call—that is at the heart of those judgments—has caused problems in shift patterns and so on. We were able to reach that agreement, precisely because it was not just a UK issue. We had the support of the majority in the

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<sup>20</sup> [HC Deb 11 February c416WH](#)

<sup>21</sup> [HC Deb 11 February 2009 cc420-421WH](#)

Council of Ministers. The European Parliament amendments, to which the hon. Member for Huntingdon (Mr. Djanogly) referred, were then introduced, and there is a process called conciliation between the Council of Ministers and the European Parliament to try to reach a solution.

The UK Government's position has not changed. It is our aim, in the process of conciliation, to secure the future of the opt-out. Throughout the discussions, one thing that we have stressed is that it is a matter of choice for the individual and for member states. It is important, in European legislation on these issues, that we respect the different labour markets that operate in the 27 member states and that there is a choice. We have stressed that throughout the negotiations. That does not mean that we were not prepared to support change in the way in which the opt-out worked. For example, we were happy to support a position whereby the opt-out would not be signed at the same time as an employment contract, so that people could be assured that it was a genuine choice, because choice is important. We were happy for workers to renew their agreement to the opt-out periodically, making it clear that it is a matter of choice. However, with those changes, we have made it clear that we want to retain the opt-out. I was asked whether that was still the Government's position, and it is.<sup>22</sup>

## 5 Road Transport

The *Road Transport (Working Time) Regulations 2005* SI No.639 came into force on 4 April 2005. They implemented *Directive 2002/15/EC*, and apply to those "mobile workers" in the road transport sector who are covered by Regulation (EEC) 3820/85. Essentially, this means drivers of goods vehicles over 3.5 tonnes and drivers of passenger vehicles designed to carry more than seventeen people (other than those used on regular services where the route does not exceed 50 kilometres). Mobile workers are required to comply with the Regulations as well as the existing European drivers' hours rules. There is no opt-out from the Regulations.

The Department for Transport give the following guidance on the *Road Transport (Working Time) Regulations* which states that voluntary firefighters are excluded from the limits:

### 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 (however, it should be noted, that in certain circumstances such periods may count as "other work" under the separate European 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.
- Work carried out for another employer (who undertakes road transport activities within scope of the European drivers' hours rules) counts towards the total working time performed by the mobile worker.
- 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.<sup>23</sup>

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<sup>22</sup> [HC Deb 11 February 2009 cc 431-432WH](#)

<sup>23</sup> DfT, [Road Transport \(Working Time\) Guidance](#)

The following debate in the House of Lords concerned the effects of the EU Driver's Hours Regulations on voluntary firefighters:

**Drivers: EU Regulations**

11.13 am

**Lord Willoughby de Broke** asked Her Majesty's Government:

What effect European Union regulations on driving hours will have on volunteers in the Territorial Army, the fire service and special constables.

**Lord Bassam of Brighton:** My Lords, the new European regulation on drivers' hours will have a similar effect on volunteers to that of the existing European regulation. Compliance with the prescribed rest requirements will determine how much time professional drivers can spend as volunteers. With the exception of emergency work, any time spent as a reservist, retained fire fighter or special constable will count as other work, not rest.

**Lord Willoughby de Broke:** My Lords, I am grateful to the Minister for that reply. Can he therefore confirm that these regulations will mean that people who wish to serve in the Territorial Army, the fire fighting services or as special constables will not be able to do so if they have already met the hours specified in the regulations; that is, they will not be able, for example, to drive for the Territorial Army because the time will count as working time and they will already have used all their driving hours?

**Lord Bassam of Brighton:** My Lords, I do not agree with the noble Lord's interpretation. I am sure that matters will proceed pretty much as they have done since the current regulations were put in place in 1985. There are some variations to the way in which the regulation will take effect and it is true that there will be a slight problem in terms of organising operations that reservists have to drive on in order to take account of their fully paid work. The important point here is that we need to ensure that proper health and safety regulations are in place so that they and those who work with them are protected from tiredness. We do not want operations to be undermined by tiredness.

(...)

**Lord Greaves:** My Lords, the retained firefighters cannot arrange when they go out with their machines; they have to go out when the fires occur. Will the Minister give us an absolute assurance that these regulations will not in any way affect the operation of retained fire services, where they exist?

**Lord Bassam of Brighton:** My Lords, there are two points here. First, it is clear that the EU regulation has not been identified as having a significant impact on the ability to recruit or retain retained firefighters. Secondly, drivers volunteering as retained firefighters are exempt from the new EU regulation when dealing with an emergency.

**Baroness Byford:** My Lords, will the Minister define "significant"? Have we lost people who would have been able to serve?

**Lord Bassam of Brighton:** My Lords, I am not aware that we have lost people who would otherwise be available to serve. I am clear that this has not had an impact on the retained fire service.<sup>24</sup>

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<sup>24</sup> [HL Deb 22 March 2007 c1335](#)

## 6 Annexe: number of retained firefighters <sup>25</sup>

### Retained duty system fire service statistics as at 31 March 2008

	Total Number of Fire Stations retained duty system	Of which manned by	Retained duty system staffing levels by role, full time equivalents				Total
			Station Managers	Watch Managers	Crew Managers	Firefighters	
Avon Combined Fire Authority	23	12	0	11	24	121	156
Bedfordshire Combined Fire Authority	14	7	0	7	6	33	46
Berkshire Combined Fire Authority	19	8	0	11	31	60	102
Buckinghamshire Combined Fire Authority	20	10	0	17	50	154	221
Cambridgeshire Combined Fire Authority	28	20	1	25	58	228	312
Cheshire Combined Fire Authority	24	10	0	11	29	132	172
Cleveland Combined Fire Authority	15	6	0	5	9	55	69
Cornwall	31	24	23	31	55	294	403
Cumbria	38	33	0	36	84	320	440
Derbyshire Combined Fire Authority	31	19	0	19	41	148	208
Devon and Somerset Fire and Rescue	84	67	0	113	191	827	1,131
Dorset Combined Fire Authority	26	18	11	25	61	218	315
Durham Combined Fire Authority	15	7	0	13	28	105	146
East Sussex Combined Fire Authority	24	12	0	16	36	162	214
Essex Combined Fire Authority	52	34	12	31	71	343	457
Gloucestershire	20	16	7	24	43	180	254
Greater Manchester Fire and CD Authority	41	1	2	1	4	11	18
Hampshire Combined Fire Authority	52	38	2	68	95	449	614
Hereford and Worcester Combined Fire	27	19	0	24	56	229	309
Hertfordshire	30	14	0	22	25	155	202
Humberside Combined Fire Authority	32	20	0	22	50	274	346
Isle of Wight	10	9	0	22	28	99	149
Kent Combined Fire Authority	65	43	0	40	100	512	653
Lancashire Combined Fire Authority	39	18	0	31	65	216	312
Leicestershire Combined Fire Authority	20	11	0	12	23	112	147
Lincolnshire	38	32	4	38	71	321	434
London F&EPA	112	0	0	0	0	0	0
Merseyside Fire and CD Authority	26	0	0	34	12	139	185
Norfolk	41	35	0	45	97	389	531
North Yorkshire Combined Fire Authority	38	25	0	29	68	237	334
Northamptonshire	22	14	0	19	33	171	223
Northumberland	18	12	0	12	24	124	160
Nottinghamshire Combined Fire Authority	25	13	0	19	28	159	206
Oxfordshire	24	18	3	24	63	202	292
Shropshire Combined Fire Authority	26	22	2	20	48	222	292
South Yorkshire Fire and CD Authority	23	5	0	6	5	49	60
Staffordshire Combined Fire Authority	30	19	0	27	58	228	313
Suffolk	41	35	0	35	81	286	402
Surrey	24	7	0	6	22	82	110
Tyne and Wear Fire and CD Authority	17	1	0	1	3	17	21
Warwickshire	19	12	0	16	28	89	133
West Midlands Fire and CD Authority	40	1	0	0	0	7	7
West Sussex	28	19	11	13	63	176	263
West Yorkshire Fire and CD Authority	48	14	0	15	21	133	169
Wiltshire Combined Fire Authority	25	18	0	25	56	217	298
Mid and West Wales Fire Authority	57	39	0	54	117	542	713
North Wales Fire Authority	44	36	0	45	88	391	524
South Wales Fire Authority	50	26	0	39	121	464	624
Central Scotland Fire Authority	17	10	0	11	24	92	127
Dumfries and Galloway Fire Authority	18	16	0	16	35	169	220
Fife Fire Authority	14	8	0	10	15	67	92
Grampian Fire Authority	40	33	0	45	71	279	395
Highland and Islands Fire Authority	127	95	0	70	171	751	992
Lothian and Borders Fire Authority	35	19	3	22	40	234	299
Strathclyde Fire Authority	113	43	0	49	68	475	592
Tayside Fire Authority	24	15	0	18	39	172	229
Northern Ireland Fire Authority	68	49	0	61	186	698	945
<b>Total England</b>	<b>1,445</b>	<b>778 0</b>	<b>78</b>	<b>1,021</b>	<b>2,044</b>	<b>8,685</b>	<b>11,829</b>
<b>Total Wales</b>	<b>151</b>	<b>101 0</b>	<b>0</b>	<b>138</b>	<b>326</b>	<b>1,397</b>	<b>1,861</b>
<b>Total Scotland</b>	<b>388</b>	<b>239 0</b>	<b>3</b>	<b>241</b>	<b>463</b>	<b>2,239</b>	<b>2,946</b>
<b>Total Northern Ireland</b>	<b>68</b>	<b>49 0</b>	<b>0</b>	<b>61</b>	<b>186</b>	<b>698</b>	<b>945</b>
<b>Total United Kingdom</b>	<b>2,052</b>	<b>1,167 0</b>	<b>81</b>	<b>1,461</b>	<b>3,019</b>	<b>13,019</b>	<b>17,581</b>

Source: CIPFA Fire and Rescue Service Statistics 2008