

The Road Transport (Working Time) Regulations 2005

The Road Transport (Working Time) Regulations came into force on the 4th April 2005. This guide, whilst not exhaustive, will help you to understand the Regulations.

The Regulations work in conjunction with the present EU Drivers Hours Rules (EC561/2006) and limit the amount of time worked rather than just the time spent driving.

Under the Regulations you must not work more than:

- An average of 48 hours per week over a reference period. See section 8. 60 hours in any single week
 - 10 hours in any 24-hour period, if you are working at night (between the hours of 00:00 and 04:00), unless a 'relevant agreement' exists between you and your employer. (see section 9)
 - You cannot opt out of the Regulations.⁹ Unless the opt out clause is applicable
- Unless the opt out clause is applicable to the rules and regulations you are driving under.

Who's affected by the Regulations?

The regulations affect drivers and other 'mobile workers' who are involved in operations subject to EU Drivers' Hours Rules (EC561/2006). Generally drivers and traveling crew in a vehicle fitted with a tachograph are covered e.g. a drivers mate, conductors and porters. Agency drivers and those working through an Employment Business are also covered by these Regulations.

Who's not affected by the Regulations?

Excluded from the regulations are drivers and crew traveling in vehicles not covered by EU Drivers' Hours Rules. Self-employed drivers based upon a very narrow definition (specific to the Regulations) are currently excluded. Not applicable anymore

Workers who only occasionally work under EU Drivers' Hours Rules are also excluded. They are exempt if they work fewer than 16 days in a reference period of 26 weeks more, or on fewer than 11 days in a reference period of less than 26 weeks.

What counts as Working Time?

Working Time is specifically defined by the Regulations as road transport and other activities undertaken for your employer.

It is the time you spend carrying out your duties such as driving, loading or unloading and maintaining your vehicle. Other examples include; training, daily safety checks, traffic jams, helping passengers and the time spent waiting if it is not known about in advance.

Non-transport related work for your employer, such as warehouse or office work, is counted as working time for the purpose of these Regulations.

Any statutory paid leave including holidays, sickness and domestic leave counts as working time by adding 48 hours to your working time for each complete working week and 8 hours per day for incomplete weeks. If you work for more than one employer, then weekly working time is the combined total of the time worked for all employers. You must notify each employer of the time worked for each employer.

What doesn't count as Working Time?

Working time does not include travel to and from work, rest or break periods, leave taken in excess of statutory entitlement and Periods of Availability.

What is a Period of Availability?

A Period of Availability (POA) is time spent waiting to start or re-commence work the duration of which is known about in advance e.g. a known delay before unloading. You must however be available to resume work if requested to do so i.e. remain on call.

If you use the tachograph to record working time then it is recommended that you use which is the 'on duty and available for work' to record POAs.

What is a Reference Period?

A reference period is the period over which your average weekly working time is calculated. The Regulations provide for a default reference period of 17/26 weeks with set start dates. However alternative reference periods can be agreed with a workforce using a 'relevant agreement'.

Employers may choose to apply a rolling 17 week reference period (similar to the one used in the existing Working Time Regulations) provided they notify the workforce

concerned. No 'relevant agreement' is required. For the purpose of the Regulations a week is period between 00:00 Monday and 24:00 on the following Monday.

What is a 'relevant agreement'?

These can either be a collective agreement or a workforce agreement. A collective agreement is one made between the employer and an independent trade union. A workforce agreement is made between the employer and the relevant mobile workers of their representatives.

A collective or workforce agreement can be used to extend the night work limit, extend reference periods from 17/18 weeks up to 26 weeks, to change the start dates of reference and to allow rolling reference periods in excess of 17 weeks.

What is classed as 'Night time'?

Night time is defined as a period between 00:00 and 04:00 for goods vehicles workers and 01:00 and 05:00 for passenger vehicles. Night work is any work, which starts, finishes within or spans these periods.

Rest and Breaks

The rest requirements under these Regulations are the same as under the EC561/2006 rules except they now include the entire traveling staff not just the driver.

The EC561/2006 rules still apply while you are driving and take precedence. In brief, the major rules regarding breaks are:

- 11 consecutive hours of rest in each 24 hour period
- 45 consecutive hours weekly rest
- 45 minutes break after 4 1/2 hours of driving

The Regulations impose additional break requirements:

- Not to work more than 6 hours without a break
- If working time is between 6 and 9 hours per day then breaks amounting to at least 30 minutes must be taken
- If working time exceeds 9 hours per day then breaks amounting to at least 45 minutes must be taken
- Breaks must be no less than 15 minutes in duration
- Breaks must be taken on days when the mobile worker is not travelling

- Care must be taken to ensure both sets of rules are complied with when driving and other non-driving work is undertaken.

Keeping Records

Your employer must keep accurate working time records for a period of two years. Your employer should provide you with a method of recording your working time. This might be a time sheet or by using the recorded data from the tachograph.

If you work for more than one employer you must inform your employers in writing of who else you work for and the working time you do for each of them.

While employers have responsibility for maintaining accurate working time records, in scope mobile workers are equally responsible for compliance with the Regulations. In scope mobile workers can be prosecuted for knowingly committing breaches including neglecting to inform employers about work undertaken for any other employer or knowingly making a false record.

Emergencies

In the event of an emergency, you may depart from these Regulations in order to safeguard the vehicle, load and yourself but only where it is necessary and does not compromise road safety.

Who is enforcing the Regulations?

DVSA in Great Britain & the **DVA** in Northern Ireland enforce the Regulations.

Disclaimer

This guide gives you a brief summary of the Regulations, and should be read in conjunction with the relevant legislation. You are strongly advised to take professional advice if you wish to be confident that you are complying with the Regulations. Omnia Resourcing accept no liability for any errors or omissions in this document. If you have any questions related to this topic, please contact your Account Manager. Published September 2019. **For full details of all regulations please see document GV262 on the DVSA website.**