



Working Time Legislation Forthcoming Changes

by Jeremy Clarke and Claire Smeeton

The Working Time Directive (WTD) is arguably one of the most significant pieces of employment legislation to be introduced in the UK in the last decade.

Since the implementation of the Working Time Regulations in October 1998, the majority of workers have benefited from a range of measures in relation to working hours aimed at achieving a better balance between work and family life and improving health and safety.

Current Legislation

Under current working time legislation the main provisions include:

- An average 48-hour working week
- One day's rest in seven or two in a fortnight
- Eleven hours' rest between working days
- A 20-minute rest break if the working day exceeds six hours
- An eight-hour limit on night working
- Four weeks' paid annual holiday
- Health assessments for night workers

At present, specific sectors are excluded from the scope of the WTD and these include workers in road, rail, air, sea and inland waterways transport – broadly the logistics and transport sector. Furthermore, according to DTI guidelines, those workers who work in a transport operation for an employer not wholly in the transport sector, but who have an identifiable transport function, are also currently excluded from the scope of the WTD. »

The Horizontal Amending Directive (HAD)

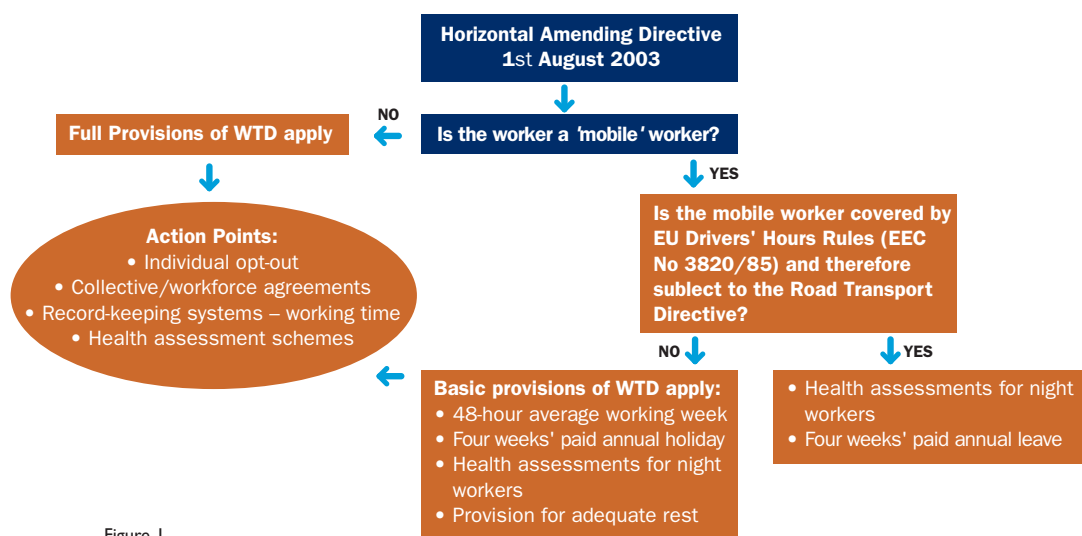


Figure 1

For example, the transport division of a retail chain that delivers goods to its stores.

At the time, the rationale behind the exclusions was that the European Commission and member states considered that these sectors required individual arrangements different from normal working time rules.

Horizontal Amending Directive

The adoption of the Horizontal Amending Directive (HAD), see Figure 1, represents the Commission's established commitment to end the logistics and transport sectors' exclusions. From August 2003, the HAD will extend the full protection of the WTD – see above – to non-mobile workers – for example, clerical, administrative and warehouse personnel – in the key logistics and transport sector. Apparently, their initial exclusion was due to ineffective drafting from Brussels. Mobile workers not subject to the EU Drivers' Hours Rules, for example drivers and crew of light vans and goods vehicles – up to 3.5 tonnes, will benefit from a 48-hour working week, four weeks' paid annual leave, free health assessments for night workers and provision for adequate rest. Those mobile workers subject to EU Drivers' Hours Rules will only be entitled to four weeks' paid annual leave and health assessments for night workers.

According to the DTI, the Government considers the HAD to be an important addition to the health and safety protection of workers in excluded sectors and aims to achieve a balance between 'effective protection' and 'unnecessary regulatory burdens on business'. At the same time, maximum use will be made of available derogations and flexibilities in implementing the HAD. For example, individual opt-outs from the 48-hour working week may

be agreed with workers. Employers can also negotiate collective and workforce agreements to modify, or exclude, the application of regulations relating to, for example, the length of night work, daily and weekly rest periods – subject to compensatory rest in lieu for rest breaks and periods.

Other Legislative Changes

In addition to the introduction of the HAD, logistics and transport sector operators must also consider the impact of a number of other contemporaneous legislative changes that will follow shortly, relating to working time and the monitoring of drivers' hours, see Figure 2. For example, the Road Transport Directive (RTD) detailing the organisation of working time for drivers subject to EU Drivers' Hours Rules – generally drivers and crew of vehicles exceeding 3.5 tonnes – is due to be implemented in March 2005. The self-employed will be excluded from the scope of the Directive for several years to come – 2009, creating what some may argue to be an artificial advantage for manipulation by mainstream companies subcontracting out.

The RTD will impose an average 48-hour working week with a maximum of 60 hours in any given week and will set a maximum limit of 10 hours night work. Working time is broadly defined and includes time spent loading and unloading, carrying out cleaning and technical maintenance and administrative formalities with police, customs and immigration officers. Notably, there will be no individual opt-out available. However, derogations from the provisions on the maximum working week and night work 'for objective or technical reasons or reasons concerning the organisation of



Implementation Timetable

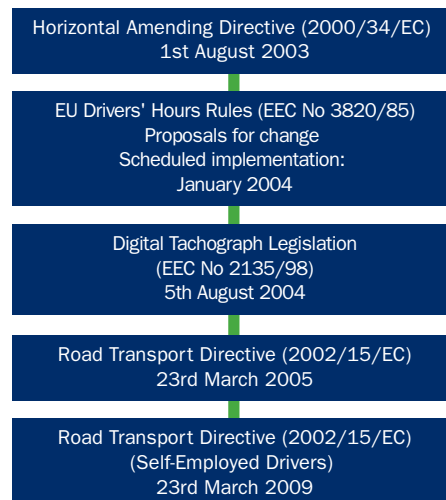


Figure 2

work' will be available by means of collective agreements.

Proposals to repeal current EU Drivers' Hours Rules and replace them with new rules – scheduled to take effect in 2004 – aimed at clarifying and simplifying the existing legislation, are also presently under consultation. In addition to a reduction in the categories of vehicles exempt from the rules, the proposed changes include: a weekly maximum driving time of 56 hours; a one hour increase in daily rest to 12 hours; minimum weekly rest of 45 hours; penalties including the seizure of vehicles in case of serious breach of the regulations.

Finally, 2004 also sees the changeover from the current tachograph to the new digital system. All new vehicles over 3.5t must be fitted with this new device and malfunctioning tachographs fitted to vehicles registered after 1st January 1996 must be replaced with the new digital tachographs. This means that there will be a long transition period during which drivers and logistics operators will be obliged to operate and administer both systems. Coming as it does on the back of so many legislative changes, the timing could not be worse.

DTI Public Consultation – HAD

In January this year, The Institute of Logistics and Transport's Working Time Directive Consultation Group (Group) returned representations to the DTI relating to the draft regulations required to implement the HAD. The Group supported the main principals behind the introduction of the working time legislation, namely improvements to health and safety protection combined with a better balance between work and family life. However, major concerns were expressed

about the financial and strategic impact which the legislation will have on supply-chain managers and the logistics and transport sectors as a whole.

The main conclusions of the Group included:

Links to other legislation – the HAD cannot be viewed in isolation, given the simultaneous regulatory changes coming into effect over the next two years. It is essential that the UK Government clarifies absolutely the scope of the legislation, the derogations that are available and the interrelationship with other sector specific regulations.

Time for implementation – the UK Government must negotiate and establish longer timescales for the implementation of the legislation, given the complexity and significant operational impact of the same.

Environmental impact – an enforced reduction in driver hours, particularly for night workers, will mean more vehicles travelling at 'peak' times, with resultant congestion and an increase in pollution.

Driver resources – the current shortage of drivers affecting the logistics and transport sector will only be exacerbated by an enforced reduction in driver hours and will have a serious effect on the maintenance of operations at a time of economic uncertainty.

Management of the supply-chain – the forthcoming legislation will impact significantly on the management of the supply-chain, forcing companies to renegotiate delivery and collection times and increase the size of radial distribution fleets and the number of warehouses in order to provide similar service levels. Restrictions on non-mobile workers' hours, particularly night workers, will have a major impact on shift patterns and will result in a reduction in warehouse staff hours and a consequent increase in demand for additional staff in an area where there is already a shortage of labour.

Operational costs – the rising driver wage bill, increasing administration costs due to the requirements for recording working time, expenditure on health assessments for night workers, the implementation of daily and weekly rest breaks and increases in paid annual leave will all have major cost implications. Logistics and transport will be unable to absorb the entire financial impact of the legislation, forcing consumers to pay for the rise in transport and distribution costs.

UK working patterns – the 'one-size-fits-all' approach for all EU Member States is not necessarily appropriate for the UK where

flexible working patterns have facilitated major improvements in efficiency and productivity during the last two decades.

Where Next?

Given the timeframe for implementation of the HAD, what should logistics and transport operators do to prepare for the coming legislative changes?

Operational impact assessment – review existing operational shift patterns and activities, and identify scheduling, physical resource – vehicle and depot, human resource and management changes, and the associated cost impact of the same, forecasted to flow from the legislative changes. Where possible, raise and agree the operational and cost implications with customers at future contract review meetings and agree corresponding variations to existing contracts.

Employment reviews – assess whether workers' current contracts of employment permit flexibility in terms of alterations to shift patterns and site locations which will necessarily follow on from the legislative changes.

Opt-out agreements – employers can and may need to agree more flexible arrangements with individual workers regarding the 48-hour working week and may include a

three-month cancellation notice period in any individual opt-out agreement. However, the individual opt-out will not be available under the Road Transport Directive – where collective agreements are required – and may be subject to future review under the HAD.

Collective/workforce agreements – employers may agree to modify, or exclude, certain regulations – see above – by means of collective or workforce agreements negotiated with recognised trade unions or elected employee representatives.

Monitoring systems – employers must ensure that administrative systems are in place to record working time as they are under a duty to keep records of such matters for two years. The Health and Safety Executive and the relevant local authority will have powers to inspect such records. It is good practice to keep accurate records in order to defend any action brought by an employee for breach of the regulations.

Health assessments – all night workers must receive free health assessments at regular intervals and provision should be made for this. Guidance from the DTI suggests that assessments may be provided through an employer's occupational health scheme, by arrangement with a local GP practice able to carry out assessments on the employer's premises, or through consultation with the worker's own GP.



About the Authors



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Claire Smeeton joined LLC Law as a trainee solicitor in September 2002. Since then she has assisted Jeremy Clarke in a variety of logistics law matters and more recently in co-ordinating the responses from the Institute's Working Time Directive Consultation Group.

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