



Changes in working time legislation

Introduction

Since the general application of the Working Time Directive (WTD) 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.

However, it was only from August 2003 that certain sectors, including a large slice of the logistics sector, were able to benefit from the WTD, as they had originally been excluded from the legislation. This was because at the time the European Commission and member states agreed that those working in road, rail, air, sea and inland waterways transport – broadly the logistics sector – would require their own specific rules.

The Horizontal Amending Directive

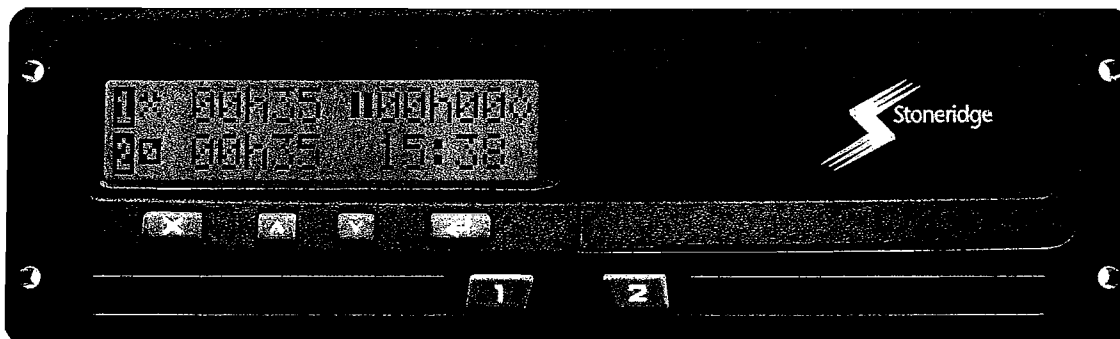
The Horizontal Amending Directive (HAD) extended the full protection of the WTD – for example, the 48-hour working week and an average eight-hour night work limit – to cover non-mobile workers – for example, clerical and administrative

personnel – in excluded sectors and provide some basic protection for mobile workers. From August 2003, mobile workers not subject to the EU Drivers' Hours Rules (3820/85) – for example, drivers and crew of light vans and larger goods vehicles up to 3.5t – were able to benefit from a 48-hour working week, four weeks paid annual leave, free health assessments for night workers and provision for adequate rest. Those road transport workers subject to EU Drivers' Hours Rules (3820/85) were only entitled to four weeks paid annual leave and health assessments for night workers.

According to the DTI, the Government considered the HAD to be an important addition to the health and safety protection of workers in excluded sectors and aimed to achieve a balance between 'effective protection' and 'unnecessary regulatory burdens on business'. It was estimated by the DTI at the time that the total cost of complying with the regulations was going to be in the region of approximately £170 million a year, with 715,000 transport workers working in the sectors covered by the HAD.



In terms of direct costs, such as the rising driver wage bill, many road haulage companies can expect to see an increase in administration costs due to the requirements for recording working time.



Digital tachographs are compulsory on new trucks throughout Europe. They monitor adherence to the new regulations.

The Road Transport Directive

In addition to the introduction of the HAD, a new sectoral directive, the Road Transport Directive (RTD) detailing the organisation of working time for drivers subject to EU Drivers' Hours Rules (3820/85) – generally drivers and crew of vehicles exceeding 3.5t – was implemented in April 2005. The self-employed are excluded from the scope of the directive for several years to come, creating what some may argue to be an artificial advantage for manipulation by mainstream companies subcontracting out.

The RTD imposed an average 48-hour working week with a maximum of 60 hours in any given week and also set a maximum limit of 10 hours night work. Working time was broadly defined by the legislation to include: time spent loading and unloading; carrying out cleaning and technical maintenance; and, administrative formalities with police, customs and immigration officers. Notably, there was 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 work' were still available by means of collective agreements.

Impact on the logistics sector

At a meeting of The Chartered Institute of Logistics and Transport (UK) Working Time Directive Group, the objectives behind the new legislation of improving health, safety and work/life balance were welcomed. However, grave concerns were expressed as to the financial and strategic impact of the HAD and the forthcoming RTD on the logistics sector.

Focusing on road transport, it is feared that the current shortage of drivers affecting the road haulage industry, combined with an enforced reduction in driver hours, may have a serious effect on the maintenance of operations at a time of economic uncertainty. At the same time, limits on working time, particularly for night workers, will inevitably produce indirect costs through reduced productivity. Further, the consequential rise in congestion will mean longer delivery times and increased pollution.

In terms of direct costs, such as the rising driver wage bill, many road haulage companies can expect to see an increase in administration costs due to the requirements for recording working time. Expenditure on health assessments for night



The new EU rules bring all European countries into line on working hours



About the author



Jeremy Clarke heads the niche logistics law practice LLC Law, specialising in value-adding legal support for its plc and SME clients. The firm assists clients in building effective partnering arrangements across their customer and supplier base, to reduce risk and increase margin for all commercial, corporate and TUPE legal activity, including outsourcing, logistics services, MHE procurement and M&A activity. Jeremy Clarke has written and lectured widely across Europe on those key commercial matters critical to the logistics sector.

Contact, web site: www.llc-law.co.uk

workers and the implementation of daily and weekly rest breaks, as well as increases in paid annual leave, will place a severe financial burden on many operations. Inevitably, the industry will be unable to absorb all of the financial impact of the legislation, forcing the consumer to pay for the rise in transport and distribution costs.

Many would also argue that the timeframe for implementation of the legislation is too short, given the enormity of the task of managing the process. Clearly, as well as financial and strategic planning issues, logistics operations must now give careful consideration to consultation with workers, putting into place collective agreements that will maximise operational flexibility and efficiency.

Changes to EU Drivers' Hours Rules

On 11th April 2007, the current legislation on EU Drivers' Hours Rules (Regulation 3820/85) was replaced by new rules (Regulation 561/2006) aiming to clarify, simplify and bring all member states' existing legislation into line. The new regulations replace legislation that has been in force for more than 20 years and introduces a number of key changes, including: a specified weekly maximum driving time of 56 hours; reduced flexibility to drivers' compulsory breaks for every four hours of driving – drivers must take 45 minutes spread over a maximum of two breaks, the first of which must be for at least 15 minutes; amended daily rest rules – the compensation rule, where employers were required to compensate drivers with additional breaks after they had decreased their 11-hour rest period to nine hours three times in one week, is no longer in force; split daily rest can now only be taken in up to two periods – previously it was three; and lastly, significant amendments to the provisions on weekly rest periods. See Figure 1.

Horizontal Amending Directive (2003/34/EC)
Implementation: 1st August 2003

Full Provisions
Scope:

- Non-mobile transport sector workers (road, sea and inland waterways)
- Workers not subject to the Aviation Directive
- All rail and offshore workers (with specific derogations available for railway workers)
- 48-hour average week
- 1 day rest in 7 (or 2 in a fortnight)
- 11 hours rest between working days
- 20-minute break, if working day exceeds 6 hours
- 8-hour limit on night working
- 4 weeks paid annual holiday
- Health assessments for night workers

Basic Provisions

- Mobile road transport sector workers (non RTD)
 - 48-hour average working week (with individual opt-out)
 - 4 weeks paid annual holiday
 - Health assessments for night workers
 - Provision for adequate rest
- Mobile road transport sector workers (subject to RTD and EU Drivers workers rules)
 - Health assessment for night workers
 - 4 weeks paid annual leave

Road Transport Directive (2002/15/EC)
Implementation: 23rd March 2005

Scope:

- Drivers and crew of vehicles (exceeding 3.5t) subject to EU Drivers' Hours Rules
- 48-hour average week (60-hour option if average remains 48 hours over a period of 4 months)
- 30-minute break after 6 hours work or 45-minute break (6-9 hours work)
- Working day (over 24-hour period) not to exceed 10 hours for night workers
- Records of working time must be kept for at least 2 years by employers
- Derogations (collective agreement only) available for maximum working week and night work
- No individual opt-out
- Self-employed drivers exempt until March 2009

EU Drivers' Hours Rules (561/2006)
Implementation: April 2007

Scope:

- Drivers and crew of vehicles (exceeding 3.5t)
 - Weekly maximum driving time of 56 hours
 - Compulsory drivers breaks for every 4 hours driving – must take 45 minutes and this can only be spread over 2 breaks, the first of which must be for at least 15 minutes
 - Amended daily rest rules – the compensation rule is no longer in force
 - Split daily rest can now only be taken in up to 2 periods – previously it was 3
 - Changes to provisions on weekly rest periods

Working Time Legislation Summary
Figure 1