



# Working Time Directive

## Current issues



*Business Support on Your Doorstep*

**Enterprise Europe Network London**

**July 2010**





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## The Working Time Directive

Directive [2003/88/EC](#) of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time is the EU Directive currently in force.

For the sake of clarity and transparency of Community law, this Directive consolidates the original Working Time Directive [1993/104/EC](#), and its amending Directive [2000/34/EC](#) into one, but preserves their content.

The essential aim of Directive 2003/88/EC is to ensure that workers are protected against adverse effects on their health and safety that can be caused by excessively long working hours, inadequate rest or disruptive working patterns.

The Directive establishes in particular:

- a minimum daily rest period of eleven consecutive hours a day
- a rest break when the working day is longer than six hours
- a minimum rest period of one day a week
- a maximum working week of 48 hours on average including overtime
- a right to four weeks of paid annual leave
- normal hours of work for night workers may not exceed an average of eight hours in any 24-hour period

Prior to the 2003 Directive, hospital staff, road, maritime and railway transport workers, offshore workers and workers in the aviation industry were not included in the original 1993 Working Time Directive. Nonetheless, these professions are now covered in the amended Directive. In addition, junior doctors have been included since 2004 and trainee doctors since 2009.

Nonetheless, not all professions are covered by the Directive. This includes people who work in the emergency or armed services, as a domestic servant in a private household or if you choose the terms of your own employment (for example if you are self-employed or you are a managing executive).

## The opt-out of the directive

The 1993 Directive provided Member States with the possibility of opting out of the mandatory 48-hour working week limit. At that time, only the UK put into place general national measures to allow an individual to opt-out. On the accession of 10 new Member States to the EU in May 2004, Cyprus and Malta also introduced a generalised opt-out. Luxembourg, Spain, France and Germany have all put in place measures to allow opting out in specific sectors (hotel and catering, health). However, it is in the UK where the opt-out is most widely applied.

## Issues with the UK opt-out

In principle, anyone over the age of 18 has the legal right to opt-out of the 48 hour per week limit. However, this must be entirely voluntary and any agreement must be made in writing. An agreement cannot be enforced on an entire workforce and no employee can be made redundant or unfairly treated for refusing to sign an opt-out. In addition, a worker has the right to cancel their opt-out at any time within an agreed time period of at least seven days.

However, in reality, the provisions of the Directive have not always been uniformly implemented. For example, employees have often been asked to sign an opt-out at the same time as signing their employment contracts. This pressure which has been placed on workers undermines their freedom of choice.

The directive requires employers to keep records of the hours actually worked by employees who have opted out of the 48-hour limit, but UK national legislation only requires that records of the opt-out agreement itself be kept.

## Changes proposed in 2004

In 2004, the European Commission issued a proposal to amend the Working Time Directive. Between 2004 and 2009 extensive negotiations were launched between the Council of Ministers of the EU states and the European Parliament to the proposed changes listed below. The main consequences of the proposal, had it been adopted, would be:

- employees must give their consent to the opt-out in writing
- opt-out must be renewed after 1 year
- employees cannot consent to an individual opt-out at the time of signing of the employment contract, or as long as their employment is probationary
- no employee can work more than 65 hours a week
- time spent on call is to be counted as work
- employees can withdraw their consent to an opt-out at any time
- collective, rather than individual, agreements will have to be reached in order to implement the opt-out
- if there are no mechanisms for collective agreements, the individual employee can agree to an opt-out with the employer
- reference period for averaging the calculation of the 48-hour maximum working week can be extended from 4 months to a year
- employers are obliged to keep records of the number of hours actually worked and make these records available to the responsible authorities, if required
- proposal states that workers' representatives can be used to decide on the opt-out in line with existing national law and practice

However, the Council, representing member states, and the European Parliament failed to overcome their differences regarding two fundamental issues; whether member states should be allowed to retain the 'opt-out' as well as the need for greater flexibility regarding how time spent on call but in the workplace is counted and when compensatory rest can be taken.

Therefore, due to the lack of consensus, the legislation still permits countries to retain their opt-out.

## “On-call” time

The failed proposal introduced a new category, on-call time, in addition to working time and rest time. Under the Commission proposal, on-call time is defined as that period during which a worker must be available to work, if required to do so by his/her employer. The proposal stated that the inactive part of on-call time, which is when a worker who is on call is not actually carrying out his/her duties, does not constitute working time within the meaning of the Directive.

However, it also gives Member States the option, under national law or by collective agreement or agreement between the two sides of industry, of counting the inactive part of on-call time as working time.

## UK legislation

Since the new Working Time Directive 2003/88/EC consolidates two earlier Directives, the UK regulations implemented to enforce these earlier Directives still apply today.

The EU Working Time Directive is implemented in the UK by [The Working Time Regulations 1998 No. 1833](#) which came into force on 30 October 1998 and [The Working Time \(Amendment\) Regulations 2003, SI No 1684](#) which came into force on 1 August 2003.

Enforcement of the Directive in the UK is split between various authorities; the Health and Safety Executive, the local authority's environmental health departments, the Civil Aviation Authority, the Vehicle Operator and Services Agency and the Office for Rail Regulation.

## USEFUL WEBSITES FOR MORE INFORMATION

### Department for Business, Innovation and Skills (BIS)

This government website provides links to the UK legislation implementing the EU Working Time Directive in the UK:

[www.bis.gov.uk/policies/employment-matters/rights/working-time](http://www.bis.gov.uk/policies/employment-matters/rights/working-time)

### European Commission, Directorate General for Employment, Social Affairs and Equal Opportunities

This is the website of the EU department of the Commission which deals with EU legislation on social and work-related issues:

<http://ec.europa.eu/social/main.jsp?catId=706&langId=en&intPageId=205>

### 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

This is a link to the original text of the proposal:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52004PC0607:EN:HTML>

### Health and Safety Executive (HSE)

The HSE is responsible for the enforcement of various tenets of the Directive in the UK. These include; the maximum weekly working limit, night work limits and health assessments for night work. Further information of the HSE's role regarding the Directive can be found on the link below:

[www.hse.gov.uk/contact/faqs/workingtimedirective.htm](http://www.hse.gov.uk/contact/faqs/workingtimedirective.htm)

### Civil Aviation Authority (CAA)

The CAA is responsible for the enforcement of the Directive in areas specific to the aviation industry; including rest day entitlement and patterns of work to ensure that adequate rest breaks are taken to protect health and safety. Full information on the CAA's role can be found on the link below:

[www.caa.co.uk/default.aspx?catId=1498&pagetype=90&pageid=8447](http://www.caa.co.uk/default.aspx?catId=1498&pagetype=90&pageid=8447)

### Office for Rail Regulation (ORR)

The ORR is responsible for enforcement of the health and safety aspects of the Directive for workers in the railway industry. Further information regarding its role can be found on the link below:

[www.rail-reg.gov.uk/server/show/nav.1123](http://www.rail-reg.gov.uk/server/show/nav.1123)

### Vehicle and Operator Services Agency (VOSA)

The VOSA, which is an executive agency of the Department for Transport is responsible for aspects of enforcement of the Directive for workers in the transport and freight industries. Further information regarding the VOSA's role can be found on the link below:

[www.dft.gov.uk/vosa/newsandevents/pressreleases/2005pressreleases/04-04-05workingtimedirective.htm](http://www.dft.gov.uk/vosa/newsandevents/pressreleases/2005pressreleases/04-04-05workingtimedirective.htm)

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This factsheet was produced by the Enterprise Europe Network London team at London Chamber of Commerce. The Enterprise Europe Network London brings together GLE, London Chamber of Commerce and London Technology Network. The Enterprise Europe Network London is funded by the European Commission and the London Development Agency.

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