

## NOTES OF GUIDANCE FOR STAFF AND MANAGERS

The following information is offered as a guide to interpreting the Lincolnshire Police Agreement for the purposes of the Working Time Regulations 1998 (as amended)

### 1. Introduction

- 1.1. In November 1998, the European Directive on Working Time became law in the UK through the “Working Time Regulations”. Both pieces of legislation seek to improve the quality of life for all workers by recognising that certain ways of organising working time are unhealthy and anti-social. The Regulations in the UK are the responsibility, for good reason, of the Health and Safety Executive, who enforce and advise on behalf of the UK Government. Penalties for breaches of the Regulations are similar to those imposed for breaches of Health and Safety Law, i.e. fines and/or imprisonment.
- 1.2. Under current law, the Chief Constable, the Police Authority and the Home Office, depending on circumstances, share vicarious liability for the actions of employees. But those employees – including **you** – can still be asked to account for actions taken and decisions made. You should therefore be aware of those aspects of the Regulations that affect you and your staff.
- 1.3. The Working Time Regulations (WTR) apply to all police employees including support staff and any person holding the office of Constable but it is accepted that the dynamic nature of Police work may sometimes require the regulations to be breached, provided “...adequate compensatory rest...” is given after the alleged breach. In normal circumstances, it should be noted that Police Regulations or Support Staff Terms and Conditions of Service will often provide for this period of rest through re-rostering or time off in lieu.
- 1.4. In order for the application of the Regulations to be formalised, there is a requirement for a “Workforce Agreement” – in writing – to be agreed between the employer (in this case the Chief Constable) and “...relevant members of the workforce who belong to a particular group...” (in this case all federated ranks, Superintendents and Support Staff represented by the Police Federation, Superintendents’ Association and UNISON respectively).
- 1.5. This Agreement has now been finalised and a copy is attached for your information. No individual may opt out of this agreement. He/she may only opt out of the 48-hour week maximum.
- 1.6. **The Workforce Agreement does not normally confer upon staff any extra benefits relating to their conditions of service or hours of work.** Generally, Police Regulations or Support Staff Conditions of Service (when applied appropriately) will adequately compensate for most breaches of the Working Time Regulations.

## 2. Length of Working Time

2.1. The Regulations provide that no person should – unless they agree otherwise – work more than an average of 48 hours per week (calculated over 16 weeks). As well as the individual being responsible for the number of hours they work<sup>1</sup>, you are responsible for ensuring that a “long hours culture” does not encroach on the working time of your staff. In reality, to work an average of more than 48 hours per week would require a great deal of overtime, and although unlikely except in large scale events, it is something you should keep an eye on.<sup>2</sup>

2.2. It is now law that adequate records of working time for all employees are kept. You should be aware of how many hours each of your staff have worked and these should be recorded on Forms P614 (police) and P615 (support staff). As a manager you are responsible for ensuring that such data is accurate and up to date. Members of your staff who keep secondary employment should be required to apprise you of this fact to enable you to ensure that they do not overwork themselves and become unfit for duty through fatigue. Such matters are now your business and, by extension, that of your colleagues.

### 2.3. Calculation of Working Time

The circumstances below would be a typical example in respect of an 8-hour shift pattern:

A police officer works a standard 28-day 4-group shift pattern with each shift calculated at 7 hours and 15 minutes (8 hrs – 45 mins refreshment break) and does overtime of 36 hours per 4x weeks for the first 12 weeks of the 16-week reference period. The officer takes 4 days annual leave, 1 day time-off and also has 3 days sick leave during this 16-week period.

The regulations state that annual, sick and maternity leave must be excluded from any calculation of working time so the averaging has to extend to 16 weeks and the next 8 working days (during which 4 hours overtime was worked).

So Working Time =

(72 shifts x 7.25 hours) + (3 x 36 hours overtime) during the 16 weeks  
= 630 hours

plus

(8 shifts (to cover the annual leave etc) x 7.25 hours) + (4 hours overtime)  
= 62 hours

**Average =  $\frac{630 + 62}{16}$  = 43.25 hours per week (less than 48)**

---

<sup>1</sup> Under the Management of Health and Safety Regulations, Regulation 7, an individual has a responsibility for ensuring that they are fit for work

<sup>2</sup>The unique nature of Police work means that, on occasion, (emergencies, the first few days of major investigations, public order situations), staff will be expected to work longer hours than normal. Provided there is “adequate compensatory time off” then the Regulations are not breached

### 3. Rest breaks & Annual Leave

- 3.1. More important is the role of the Regulations in ensuring staff have adequate time off duty. As a manager, you should ensure that staff take their annual leave entitlement – this is now a statutory entitlement under the regulations. There are also responsibilities requiring the employer to ensure minimum 11 hours breaks between shifts and a minimum average of 24 hours off duty per week<sup>3</sup>.
- 3.2. Furthermore, staff are entitled to take regular rest breaks whilst in the workplace. Although Police Regulations and Support Staff Contracts already allow for this, the days of regularly 'skipped' refreshment breaks are now behind us. There is a requirement of any member of Lincolnshire Police to take a minimum refreshment rest break of 20 minutes within a shift period of 6 hours or over. As a manager, it is your responsibility to ensure that your staff take their refreshment break. Where this regularly becomes impossible due to pressure of work, it would be advisable to consult your Divisional Commander/Head of Department about staffing levels at certain times of day.

### 4. Night Work

- 4.1. Night work has finally been recognised as potentially harmful and the Regulations provide that people who work nights (and this includes shift workers on nights), should be given special protection. A **Night Worker** is recognised as someone who works at least **three** hours of his or her working time between the hours of **2300 and 0600 hours** on a regular basis. Night workers are entitled to:
- Work no more than 8 hours **average** on night work
  - Free health assessments – subject to medical confidentiality
  - Where possible, transfer to alternative duties if the Force Occupational Physician indicates the individual suffers ill-health as a result of working nights
  - Adequate periods of compensatory rest between shifts
- 4.2. You should, therefore, monitor all staff for whom you are responsible, taking particular notice of those individuals who may not be coping well with night work. Examples include a member of staff who uses sleeping tablets, stimulants or alcohol to cope with working nights.
- 4.3. Once you know that there is a problem, you should take steps to counsel the individual and **make a note that you have done so**. The member of staff should be referred to the Occupational Health Department or encouraged to seek outside medical advice. The important thing is that **you** have taken all reasonable steps to assist and have recorded your actions.
- 4.4. The Workforce Agreement provides that a night worker should not be rostered to work any more than 10 hours on a night shift.

---

<sup>3</sup> The regulations actually provide for a minimum of 48 hours weekly rest in any 14-day period. Police Regulations and Conditions of Service are more beneficial than this, so they take priority.

#### 4.5. Calculation of Night Work

This calculation is based on **normal rostered hours** and does not take account of shift changes, overtime and any other leave such as annual leave or sickness.

A dispatcher normally works 22 x 8 hours and 20 minutes (9-hour – 40 mins refreshment break) night shifts in 16 weeks = 183.333 hours.

There are 112 days in the 16-week reference period and 16 weekly rest periods of 24 hours (statutory rest days)

**So average night working =**

$$\frac{183.333}{112-16} = 1.91 \text{ hours per day (less than 8)}$$

#### 5. Compensatory Rest

5.1. The Working Time Regulations provide for a total of 90 hours rest per week ie 6 x 11 hours daily rest and 1 x 24 hour weekly rest. This rest may be averaged over a 2-week period.

5.2. In the event of staff not being able to take the daily or weekly rest due to unforeseen operational requirements then compensatory rest **equal to the amount of the rest period** should be provided.

5.3. This compensatory rest may be offset against higher entitlements to rest days provided by Police Regulations or Support Staff Terms and Conditions of Employment.

#### 5.4. Examples of Compensatory Rest

5.4.1 An officer is rostered to work late shift of 1400 to 2300 hours. During the shift the officer is advised that he/she is required to extend their duty to cover a major incident until 0200 hours. The officer is also required to attend court at 1000 hours. The maximum period of rest is, therefore, 1000 less 0200 = 8 hours.

The officer is entitled to an **additional** period of 11 hours rest (not just another 3 hours to bring the total to 11)

5.4.2 A Superintendent is required to provide off-duty cover having worked a 0900 to 1800 day. The period of standby does not count as working time but during this period he/she receives 7 work-related telephone calls totalling 2 hours and 10 minutes ending at 2330. He/she is due to commence duty the next day at 0900. The maximum period of rest is, therefore, 0900 less 2330 = 9.5 hours.

The superintendent is entitled to an **additional** period of 11 hours rest (not just another 2.5 hours to bring the total to 11)

5.5. In the 2 examples above we need to look at the 2-week period including these interruptions to daily rest. Provided that there is provision for:

12 x 11-hour daily rest and 2 x 24-hour weekly rest in those 14 days

**no additional compensatory rest need be allocated.** The additional 11-hour rest can be offset against any rest days over and above the 2 required by the Working time Regulations.

**but**

where **more than one period** of rest has been interrupted or curtailed then care must be taken to ensure that compensatory rest is not offset more than once against a rest day or other period of time-off.

- 5.6. Compensatory rest **does not apply** to voluntary overtime or re-rostered rest days.

## **6. Basic Rules**

- 6.1. The Health and Safety of your staff has now become a matter of not only good management practice, but also of Law. As a manager, you are required to monitor the health and safety of your staff and ensure they are not suffering because of certain working practices. The things to be aware of are:
- All shift rosters and Forms P614 and P615 must be retained for a **period of 2 years**
  - How many hours have been worked?
  - Have they taken or booked all of their annual leave?
  - Are they having regular days off?
  - Are they suffering ill health due to night work?
  - Are they getting their refreshment breaks?
  - Is there a record of the hours worked and the times breaks were taken?
  - If they have a second job, is their performance suffering?
  - Have you done all that is reasonably possible to ensure the Regulations are being complied with?
- 6.2. Where regulations have to be set aside for unforeseen or exceptional circumstances as in Paras 12 and 13 of the Workforce Agreement you should consider the completion of a Risk Assessment to cover the health and safety aspects of inadequate rest periods and long periods of duty.