



Dorset Fire Authority

MEETING	Dorset Fire Authority
DATE OF MEETING	10 February 2015
OFFICER	Chief Fire Officer
SUBJECT OF THE REPORT	Review of the Working Time Directive
EXECUTIVE SUMMARY	<p>On 8 December 2014, the Department for Communities and Local Government (DCLG) published a consultation document titled 'Review of the Working Time Directive' on behalf of the European Commission, which is open until 15 March 2015.</p> <p>This report provides Members with a brief summary of the reasons for the Working Time Directive and its review. Appendix A sets out the draft response to the consultation document to be approved by Members on 10 February 2015.</p> <p>CFOA has verbally briefed DCLG on the potential impact of any changes to the Working Time Directive, and DFRS are awaiting a copy of the formal response from CFOA.</p>
RISK ASSESSMENT	Changes to the Working Time Directive could have a direct impact on how DFRS manages its staffing resources.
COMMUNITY IMPACT ASSESSMENT	N/A
	<i>Note: If the matrix indicates negative impacts on the community or staff, an equality impact assessment (EIA) will need to be completed.</i>
BUDGET IMPLICATIONS	This is a consultation document and we are therefore unsure at this stage what, if any, financial impact there might be on changes to the Working Time Directive. Some potential budget implications have been highlighted in the response document.
RECOMMENDATIONS	It is recommended that Members note the draft consultation response and agree the general principles, with the final response delegated to the Chief Fire Officer in consultation with the Chairman and Clerk.
BACKGROUND PAPERS	N/A

APPENDICES	A: DFA response to the Review of the Working Time Directive (Directive 2003/88/EC)
REPORT ORIGINATOR AND CONTACT	Darran Gunter, Chief Fire Officer Tel: (01305) 252604

1. Background

1.1 On the 1 October 1998, the Working Time Regulations were introduced into UK law in order to implement the European Union's (EU) Working Time Directive. The Directive was established to provide a statutory framework to protect workers from health and safety risks, excessive or inappropriate working hours, paid annual leave, and ensure adequate time for rest and recovery from work. It aimed to guarantee the following minimum standards for all workers across the European Union:

- ◆ A limit to weekly working hours, which must not exceed 48 hours on average (normally averaged over a 17 week period) including any overtime;
- ◆ A minimum daily rest period of 11 consecutive hours in every 24;
- ◆ A rest break during working hours if the worker is on duty for longer than six hours;
- ◆ A minimum weekly rest period of 24 uninterrupted hours for each seven day period, in addition to the 11 hours daily rest;
- ◆ Paid annual leave of at least four weeks per year;
- ◆ Extra protection for night work.

1.2 Employees who want to work more than 48 hours a week can choose to opt out of the 48 hour limit. This must be voluntary and in writing. For our RDS staff, their hours are managed locally and documented through their Statement of Particulars and 'Availability to Attend Incidents Form'.

2. The Review of the Working Time Directive

2.1 The European Commission is currently reviewing the Working Time Directive through a two stage consultation of EU workers' and employers' representatives and a detailed impact assessment.

2.2 European workers and employers organisations took part in the first stage of consultation, launched in March 2010. Most agreed that EU rules on working hours needed to be reviewed. However, views differed on the kind of changes needed. Business called for more flexibility, while the unions wanted more effective protection.

2.3 The main outcome of second stage of consultation, launched in December 2010, was that all the main cross sector workers and employers' representatives favoured the option of negotiating on the Working Time Review themselves. In November 2011, they took a joint decision to start negotiations. Extensive talks were held throughout 2012, but no agreement was reached.

2.4 Since workers and employers organisations have been unable to reach agreement, it is now up to the European Commission to decide on the review of the Working Time

Directive. The Commission is carrying out a detailed impact assessment, which will take full account of both social and economic aspects, building on preliminary studies and further analysis of the possible options and their foreseeable effects to reflect on how to best meet the needs of workers, businesses, public services and consumers. This consultation aims at contributing to the current review and impact assessment.

3. Wiltshire

- 3.1 Wiltshire and Swindon Fire and Rescue Service are still in the process of responding to this consultation.

4. Consultation Response

- 4.1 A draft response to the consultation is attached at Appendix A.
- 4.2 DFRS is awaiting further guidance from CFOA. Guidance has also been sought from the LGA, who are attending briefings with BIS and CEEP UK (Public sector employers organisation) in early February 2015 before responding. Feedback from the LGA and CFOA will be considered prior to submitting a final response.

DARRAN GUNTER

Chief Fire Officer

2 February 2015

Review of the Working Time Directive (Directive 2003/88/EC)

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Language of your contribution: English

Type of organisation: Other Public Authority

Your reply:

- can be published with your personal information (I consent to publication of all information in my contribution and I declare that none of it is under copyright restrictions that prevent publication)
- can be published in an anonymous way (I consent to publication of all information in my contribution except my name/the name of my organisation and I declare that none of it is under copyright restrictions that prevent publication)
- cannot be published - keep it confidential (The contribution will not be published, but will be used internally within the Commission)

Please note that:

- The Working Time Directive only sets minimum standards and Member States are always allowed to provide higher levels of protection for workers in their national laws and regulations.
 - Filling in the questionnaire, please keep in mind that the Working Time Directive only applies to workers and not to self-employed persons. Also keep in mind that it does not set levels of pay for working time, which is a purely national responsibility.
 - The background document provides useful information regarding the concepts used in the following questionnaire. Please refer to it as necessary.
 - There are a number of questions offering the possibility of making additional contributions under each point, and also a longer opportunity to express your opinion at the end.
- Please confirm you have read through these important elements.

1. Objectives and approach to the review of the Working Time Directive

1.A. Impact of the Working Time Directive

In your opinion, what is the impact of the current Working Time Directive giving workers the right to a limit to average weekly working time (currently set at 48 hours) and to minimum daily and weekly rest periods?

	Fully Disagree	Tend to disagree	No opinion	Tend to agree	Fully agree
It protects the health and safety of workers and people they work with				✓	
It ensures a level playing field in working conditions across the Single Market, avoiding that countries lower their labour standards to gain a competitive advantage				✓	
It boosts productivity notably by fostering a healthy European workforce				✓	
It allows flexible organization of working time				✓	
It allows workers to reconcile work and private life				✓	
It impacts on job creation				✓	
Self-employment is used to circumvent the application of the limits imposed by the Directive			✓		
It impacts the costs of running a business				✓	
It has no major impact				✓	

Please elaborate on your opinion with regard to the impact on health and safety of workers and people they work with:

In general, the current Working Time Directive sets an average weekly working time, and therefore provides employers and employees with a clear expectation of what is a reasonable number of hours, protecting the health and safety of workers and the people they work with.

The Dorset Fire Authority (DFA) is highly *reliant on its 'on call' retained duty system firefighters, and firefighters that work in a wholetime role during the day and the retained duty system at night (*of the 40 frontline fire engines, 33 or 83% are crewed by 'on call' retained duty system firefighters). What is important is effective fatigue management processes that ensure the wellbeing of our workforce, together with the retention of the 48 hour average working week opt-out to ensure that we can deliver our Services in the most cost effective and efficient way as possible.

Please elaborate on your opinion with regard to the impact on job creation:

In times of austerity, the DFA need to further develop cost effective solutions regarding crewing systems without impacting on service delivery, in order to continue to offer a high level of protection to our local communities. Limiting the number of hours in a week can inhibit creative thinking to devise new crewing system initiatives, although the DFA would always aim to protect its firefighters and put schemes in place that do this.

In addition to RDS, new crewing systems are emerging as a result of austerity measures, to ensure that front lines services are maintained as the highest possible level. For example, Day Crewing Plus is a crewing system whereby firefighters work a number of day shifts, and are on-call from an on-site/nearby base during the night. The DFA may consider introducing such a system in the future, ensuring that it protects the health and safety of its firefighters. Research shows that day crewing plus is an attractive proposition for staff and meets the needs of the business. The opt-out clause is used for such purposes, which demonstrates there are some restrictions with the 48 hour working week. Therefore, the retention of this opt out clause is imperative to allow creative solutions to new working patterns.

Please elaborate on your opinion with regard to the impact on the cost of running a business:

Please refer to the box above.

If you see another impact, please specify:

2. Thematic Questions

2.A. Scope

Concurrent contracts

A single worker may be employed under several concurrent contracts. Should the limits provided in the Working Time Directive apply to all contracts taken together or to each contract separately?

If the Directive applies per worker, this means for example that all the hours worked under the different contracts should be added together and cannot exceed 48 hours on average (unless the worker signed an opt-out).

If the Directive applies per contract, this means for example that the worker can work 48 hours on average under each separate contract without an upper limit.

- It is up to Member States to decide whether working time rules shall apply per worker or per contract

- The Directive should stipulate that working time rules shall apply per worker in situations where a worker has more than 1 contract with the same employer
- ✓ The Directive should stipulate that working time rules shall apply per worker in situations where a worker has more than 1 contract in any event
- The Directive should make it clear that it only applies per contract
- Other
- Do not know

Please specify:

If the Directive does not stipulate that it applies to the worker, then it will be difficult to enforce the principles of the average 48 hour working week in total. A worker could work 47 hours with one employer on one contract, and then another 47 hours with another employer or contract, without any processes in place to monitor overall total numbers of hours worked.

2.B Concept of working time

On-call time

On-call time corresponds to any period where the worker is required to remain at the workplace (or another place designated by the employer) and has to be ready to provide services. An example could be a doctor staying overnight at the hospital, where he can rest if there is no need to attend to patients.

Under the current Working Time Directive, as interpreted by the Court of Justice, on-call time is fully regarded as working time for the purpose of the Directive, regardless of whether active services are provided during that time. The period of on-call time within which the worker actively provides services is usually referred to as 'active on-call time', while the period within which services are not provided can be referred to as 'inactive on-call time'.

(See in particular Cases C-303/98 Simap, C-151/02 Jaeger, C-14/04 Dellas)

Please give your opinion on the following options as regards possible changes in the treatment of on-call time under the Working Time Directive:

	Very Undesirable	Undesirable	No Preference	Desirable	Very desirable
No change to the current rules					✓
Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that all on-call time has to be counted as working time)				✓	
Set the principle that defining "on-call time"					✓

should be agreed in each sector by national social partners, for example determining that only part of inactive on-call time will be counted as working time					
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If you would like to add comments or indicate another option, please specify:

The DFA **strongly** believe that inactive on call time should **not** be classed as working time. Firefighters are free to do as they please. As legislation currently stands, a day crewing plus worker could be 'in active' in a nearby premises. All of our retained duty staff when on call (stand by time as defined by the Working Time Directive) are required to live within a 4 minute location of a station, and these workers are not considered as being 'at work'.

Standby time

Stand-by time corresponds to any period where the worker is not required to remain at the workplace, but has to be contactable and ready to provide services. An example could be when a technician of a nuclear facility is at home, but has to be ready to come to the plant to provide services in an emergency.

Under the current Working Time Directive, as interpreted by the Court of Justice, stand-by time does not have to be considered as working time for the purpose of the Directive. Only active stand-by time, i.e. time in which the worker responds to a call, has to be fully counted as working time.

(See in particular Cases C-303/98 Simap, C-151/02 Jaeger, C-14/04 Dellas)

Please give your opinion on the following options as regards possible changes in the treatment of standby time under the Working Time Directive:

	Very Undesirable	Undesirable	No Preference	Desirable	Very desirable
No change to the current rules					✓
Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that standby time has to be counted as working time)					✓
Introducing the obligation to partially count stand-by time as working time for the purpose of the Directive	✓				
Introducing a limit to the maximum number of hours that a worker may be required to be on stand-by in a given period (for instance 24 hours a week), together with a derogation possibility to set a different limit via collective agreements	✓				

If you would like to add comments or indicate another option, please specify:

The DFA is highly reliant on its 'on call' retained duty system firefighters. It would not be able to operate its services if stand by time was counted as working time and feels exceptionally adamant that this part of the Working Time Directive must not in any way be altered. Our retained duty system firefighters commit to either at least 90 hours a week (3/4 cover), and most usually 120 hours or more a week (full cover) where they are on standby (on call) time, to respond to emergency situations throughout the local community. Our uniformed managers also staff our Flexi Duty System whereby they are on call to oversee and manage emergencies that our workforce attend. The DFA not be able to function if stand by time was limited to a maximum of 24 hours in a week.

2.C Derogations

Compensatory rest

Under the current Working Time Directive, as interpreted by the Court of Justice, a worker who by derogation from the general rules has not received his/her minimum daily rest of 11 consecutive hours in a 24-hour period, will have to receive an equivalent period of compensatory rest (i.e. 11 hours) directly after finishing the extended working time period. This sets a maximum of 24 hours to a single consecutive shift.

(See in particular Case C-151/02 Jaeger)

How would you assess the possible introduction in the Working Time Directive of provisions regarding the period within which such a compensatory rest has to be taken:

	Very Undesirable	Undesirable	No Preference	Desirable	Very desirable
No change to the current rules					✓
Incorporate the interpretation of the Court into the Directive (i.e. codification to clarify that compensatory rest has to be granted immediately after the extended period of work)	✓				
Allowing employers the possibility of granting compensatory rest within 2 days	✓				
Allowing the possibility of granting compensatory rest within 4 days		✓			

If you would like to add comments or indicate another option:

The DFA believes that the provision regarding compensatory rest should be more flexible to allow rest in a reasonable period, taking into account operational factors and staffing levels. Of course, fatigue management processes would take account of individual welfare through this reasonable period.

Reference period

The limit to weekly working time of 48 hours provided by the Working Time Directive is a limit to *average* working time. This means that in certain weeks the worker can be required to work more than 48 hours as long as this is balanced out by lower hours in other weeks. This average has to be calculated over a certain period, i.e. 'a reference period'. Currently, the standard limit to the reference period is 4 months, which can in certain sectors be extended by law up to 6 months, and by collective agreement it can be set up to 12 months.

What would be in your view the most appropriate approach to the limit set to the reference period to calculate average weekly working time:

[only one answer possible]

- No change in the current provisions
- Allow that reference periods can be set up to 6 months by law in any sector, and maintain that they can only be set up to 12 months by collective agreements

- Maintain that reference periods can be set up to 4 months by law in any sector, but allow that reference periods can be set up to 12 months by law in certain specific sectors (e.g. to take into account the size of the undertaking or to take into account fluctuations of demand)
- ✓ Allow both previous options (i.e. option 2 and option 3), meaning that reference periods can be set up to 6 months by law for any sector and up to 12 months by law in certain specific sectors
- Allow that reference periods can be set up to 12 months by law in any sector
- Other
- Do not know

Please specify:

Six months by law in any sector will allow for more flexibility to cope with peaks and troughs in workloads, spate conditions, and workforce levels. Twelve months by law in certain specific sectors will account for occupational areas that deal with seasonal demands, which would often take into account those workers who work annualised hours.

Opt-out

Under the current Working Time Directive, Member States have the possibility not to apply the limit to average weekly working time of 48 hours, when the worker agrees to it individually and freely with the employer, and does not suffer prejudice for revoking such agreement (the 'opt-out').

What is your view on this opt-out clause:

- ✓ It should be maintained unchanged
- It should be maintained, but stricter conditions for the protection of the worker should be added in the Directive
- It should be maintained, but it should be provided in the Directive that the opt-out cannot be combined with other derogations under the current Directive
- It should be abolished, but in compensation there should be additional derogations made available for employers (e.g. allowing not to count on-call time fully as working time)
- It should be abolished
- Other
- Do not know

Please specify:

The DFA **strongly** believe that the opt out clause **must** be maintained. The loss of the opt out would have a substantial impact on our retained duty system firefighters, and those who work as a wholetime firefighter during the day, and an on call retained duty system at night (sometimes in neighbouring fire and rescue services). The loss of an opt out clause would also have a significant impact on our uniformed managers who staff our Flexi Duty System, whereby they are on call at night to manage and oversee emergencies that our workforce attend.

Autonomous workers

"Autonomous workers", such as for example managing executives, can fully determine their own working time (i.e. decide when and how many hours they work). Member States have the option to apply the main provisions of the Working Time Directive to these workers.

Please choose the most appropriate statement according to your views:

- The current Working Time Directive provides an adequate exemption as regards autonomous workers, and should not be changed
- The current exemption should be maintained in substance, but more clearly formulated, in order to enhance legal clarity and to prevent abuse
- The definition of autonomous workers is too narrow and should be expanded to other categories of workers who should be exempted too
- The definition of autonomous workers is too wide and should be limited
- Other
- Do not know

Please specify:

(Note to DFA Members - we are currently seeking clarification on the definition of Autonomous Workers and the implications to DFRS)

2.D Specific sectors/activities

Emergency services

The current Working Time Directive as interpreted by the Court of Justice applies to workers in emergency services, e.g. civil protection services like fire-fighting services, in the normal operation of these services. The current Directive contains several derogations that can be applied to the working time and rest periods of these workers in order to ensure the effective provision of these services. In the event of a catastrophe/disaster, the Working Time Directive does not apply at all.

(See in particular Cases C 397/01 to C 403/01 Pfeiffer and Case C-52/04 Feuerwehr Hamburg)

Please state your view on the application of the Directive to emergency services:

- The current rules adequately balance the need to protect the health and safety of the workers and the people they work with/for with the need to guarantee effective provision of emergency services, and should remain unchanged
- The current rules should be maintained in substance, but clarified in light of the case law of the Court of Justice, to improve legal certainty
- There should be additional derogations applicable to all or some categories of these workers, addressing their specific situation
- The Working Time Directive should not be applied to workers in emergency services
- Other

Do not know

Please specify which additional derogations and why:

(Note to DFA Members - we are currently seeking clarification on the implications to DFRS)

Please specify why it should not be applied in emergency services

(Note to DFA Members - we are currently seeking clarification on the implications to DFRS)

Please specify:

(Note to DFA Members - we are currently seeking clarification on the implications to DFRS)

Health care sector

The current Working Time Directive provides a derogation for health care services when they require continuity of service, meaning particularly that the rest periods of health care staff can be postponed to some extent.

Should there be a different provision on the working time organisation of health care staff with a view to safeguarding patient safety?

Please state your view:

- The current rules provide enough safety for patients
- The current rules should be maintained in substance, but clarified in light of the case law of the Court of Justice on on-call time and on timing of compensatory rest to improve legal certainty
- There should be additional derogations applicable to workers in the health care sector in order to improve continuity of service
- There should be a more narrow derogation applicable to workers in the health care sector in order to improve patient safety
- Other
- Do not know

Please specify which additional derogations there should be:

(Question to DFA Members - Do Members wish to comment?)

Please specify how the current derogation should be limited:

(Question to DFA Members - Do Members wish to comment?)

Please specify:

2.E Patterns of work

Changes in working patterns

The Working Time Directive was conceived more than 20 years ago, when information and communication technologies were not as developed and many types of present jobs did not exist yet. In light of these changes in working patterns and organisation, should the Working Time Directive introduce specific rules regulating particular situations and types of contracts such as telework, zero-hour contracts, flexitime, performance-based contracts without working time conditions, etc?

Please state your view:

- The current rules are satisfactory and do not need to be changed
- The rules should be changed in light of increasing telework
- The rules should be changed in light of zero-hour contracts
- The rules should be changed in light of increased use of flexitime
- The rules should be changed in light of increased use of performance-based contracts without working time conditions
- Other
- Do not know

Please elaborate on your answer concerning telework:

Please elaborate on your answer concerning zero-hours contracts:

DFRS employs only a few members of staff on zero hours contracts, and are in place to suit both the needs of workers and the organisation to provide flexible working arrangements.

Please elaborate on your answer concerning flexitime:

Flexitime works very well in the right circumstances. It provides flexibility and addresses all kinds of personal and professional demands.

Please elaborate on your answer concerning performance-based contracts:

With multiple and complex demands on employees, there may be scope within contracts in the future for elements of pay to include a portion relating to performance.

Please specify:

Reconciliation of work and private life

	Very Undesirable	Undesirable	No Preference	Desirable	Very desirable
The right for a worker to ask for specific working time arrangements (e.g. flexitime, telework) depending on their personal situation, and to have their request duly considered					✓
The right for a worker to ask for specific working time arrangements (e.g. flexitime, telework) depending on their personal situation, and to have their request duly considered					✓

If you would like to add comments or indicate another option:

The DFA supports the right for workers to request to work more flexibly, but the request must always be considered to in light of the employer's needs and the expectations of service delivery.

3. Looking Ahead

Objectives for the future of the Working Time Directive

For the future of the Working Time Directive, how important do you consider the following objectives:

	Not at all important	Of little Importance	Quite Important	Very Important	Do not know
While keeping the current Working Time Directive, to better ensure that Member States correctly and effectively put it into national law and practice					
To improve legal clarity, so that the rights and obligations following from the Directive are clearer and more readable and accessible to all				✓	
To provide more flexibility in working time organisation for workers				✓	
To provide more flexibility in working time organisation for employers				✓	
To provide a higher level of protection to workers					
To protect third parties involved (co-workers, passengers, patients, etc...)			✓		

Approach for the future of the Working Time Directive

Which of the following approaches for the future of the Working Time Directive do you prefer?

- No new initiative (maintaining the current rules)
- No legislative changes but initiatives towards improved legal clarity so that the rights and obligations following from the Directive are clearer and more readable and accessible to all (interpretative communication; 'codification' of the case law (i.e. clearly stating the case law of the Court of Justice in the legal text))
- Legislative changes but focused on the sectors where there is a specific need in terms of continuity of service (e.g. public services; sectors that work on a '24/7' basis like hospital services and emergency services)
- Legislative changes which would lead to an overall revision of the Directive, containing a mix of simplification and additional derogations while avoiding regression of the protection of workers
- Other
- Do not know

Please specify:

In summary, the DFA requests that the Working Time Directive largely remains as it is, but:

- The opt out clause **must** remain
- Stand by time **must** continue to not count as working time
- Compensatory rest is more flexible and taken within a reasonable period
- The reference period extended to six months for any sector, and 12 months in certain specific sectors

Please motivate your answer:

4. Other comments or suggestions

Do you have any other comment or suggestion on the review of the Working Time Directive that you would like to share: