

HR Guide: Working Time Regulations Version: 1.2

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North Ayrshire Council
Comhairle Siorrachd Àir a Tuath

Contents	
<u>Section 1</u>	<u>Introduction</u>
<u>Section 2</u>	<u>Working Time Regulations</u>
<u>Section 3</u>	<u>Reference Periods Used for Averaging</u>
<u>Section 4</u>	<u>Calculating Working Time</u>
<u>Section 5</u>	<u>Night Working</u>
<u>Section 6</u>	<u>Compensatory Rest</u>
<u>Section 7</u>	<u>Road Transport (Working Time) Regulations</u>
<u>Section 8</u>	<u>Monitoring Working Time and Record Keeping</u>
Related Forms/ Template Letters	<ul style="list-style-type: none"> • Working Time Regulations 48 Hour Working Week Opt-Out Form • Night Workers Health Assessment Letter Template • Night Workers Health Assessment Questionnaire <p>All of the template letters and forms referenced in this document are available on the Councils Intranet site '<u>Connects</u>'.</p>
Related documents/ Law relating to this Procedure	<ul style="list-style-type: none"> • <u>Employment Rights Act 1996</u> • <u>Working Time Regulations 1998 (SI 1998/1833)</u> • <u>Working Time Regulations 1999 (SI 1999/3372)</u> • <u>Working Time (Amendment) Regulations 2007 (SI 2007/1079)</u> • <u>Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)</u> • <u>Road Transport (Working Time) Regulations 2005 (SI 2005/639)</u>

Version Number	Effective Date	Details of Last Revision
1.2	19.06.17	Revised to remove monitoring form and include provision for legislative changes including Mobile Workers and Road Transport Regulations.
1.1	11.07.14 – 31.03.17	Updated onto new policy template
1	01.08.99 -11.07.14	

Equality Impact Assessment	June 2013
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1. Introduction

- 1.1 Contractual working hours for all employees are specified in the employment contract and state the number of working hours the employee is to work per week. Details regarding hours of work and overtime working for Local Government employees can be found in the [Terms and Conditions](#) available on Connects or on the North Ayrshire Council external website.
- 1.2 In order to meet service demands, some of which operate 24/7, a flexible approach to working hours is required.
- 1.3 In UK legislation The Working Time Regulations (WTR) govern the hours most workers can work and set:
- limits on an average working week
 - statutory entitlement to paid leave for most workers
 - limits on the normal hours of night work and regular health assessments
 - special regulations for young workers
 - daily and weekly rest periods
- 1.4 North Ayrshire Council has implemented this policy to provide a standard of required compliance with the regulations to protect the health and safety of workers.

Transport Sector

- 1.5 Although most workers in the UK are governed by the main WTR, those in the transport sector are instead covered by two further sets of working time regulations – The Working Time (Amendment) Regulations 2003 and the Road Transport (Working Time) Regulations 2005.
- 1.6 These regulations define workers in the transport sector as either ‘mobile workers’ or ‘non-mobile workers’:
- A mobile worker is any worker for the Council who is involved in the transport of passengers or goods by road. This obviously covers drivers but also includes the vehicle crew (not passengers such as construction workers being ferried to a site).
 - A non-mobile worker includes those involved in the transport of passengers or goods but remain on site, such as office workers in the Transport Hub.
- 1.7 The Working Time (Amendment) Regulations 2003 removed the exemptions on ‘workers in the transport sector’, in effect, applying the main WTR to non-mobile workers in the transport sector and a limited number of the main regulations to mobile workers.

- 1.8 The Road Transport (Working Time) Regulations 2005 applies to all mobile workers whose work is subject to normal '*EU drivers' hours rules*' and the Department for Transport(DfT) has provided [simplified guidance](#) to these rules. These are EU drivers' hours and working time rules which apply to drivers of large goods vehicles (LGV) and passenger-carrying vehicles (PCV).
- 1.9 A mobile worker, for the purposes of these rules is a driver of goods vehicles or combinations of vehicle and trailer of more than 3.5 tonnes and passenger vehicles with 9 or more seats (including the driver's), unless covered by a specific EU-wide exemption or a national derogation. For details on these exemptions and national derogations please see link below to DfT's published guidance: <https://www.gov.uk/government/collections/drivers-hours-rules-and-guidance>

2. Working Time Regulations

- 2.1 The Working Time Regulations determine the maximum weekly working time, patterns of work and holidays, plus the daily and weekly rest periods. They also cover the health and working hours of night workers. The Regulations apply to both part time and full-time workers, including the majority of casual workers, seasonal workers, work experience trainees, agency workers and freelancers.
- 2.2 In general the Working Time Regulations provide statutory rights to:
- a limit of an average 48 hours a week on the hours a worker can be required to work, though individuals may choose to work longer by "opting out"
 - paid annual leave of 5.6 weeks' a year
 - 11 consecutive hours' rest in any 24-hour period
 - a 20-minute rest break if the working day is longer than six hours
 - one day off each week
 - a limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health assessments.
- 2.3 Normally most workers don't have to work on average more than 48 hours per week unless they agree to. An individual worker can agree to 'opt out' from the 48 hour weekly limit so long as they do so voluntarily and the agreement is in writing. Workers have the right to cancel the opt-out agreement, although they must give at least 7 days' notice in writing.
- 2.4 For the purposes of the Road Transport (Working Time) Regulations 2005 the working time of mobile workers is restricted to an average of 48 hours a week over the relevant reference period (see [Section 3](#)), and must not exceed 60 hours in any week. No opt-out from the average 48-hour week is permitted.

- 2.5 The working time of a *mobile worker* who performs night work must not exceed 10 hours in any 24-hour period. Night work is any work performed during night time, which is defined as the period between midnight and 4am for goods vehicles and the period between 1am and 5am for passenger vehicles.
- 2.6 There are special regulations for young workers (16 and 17 year olds), which restrict their working hours to 8 hours per day and 40 hours per week. The rest break is 30 minutes if their work lasts more than 4.5 hours. They are also entitled to two days off each week. Due to the restriction on their working hours they cannot opt-out of the 48 hour working week.
- 2.7 Teachers have an [Arrangement for Working Time](#) agreed by the LNCT and information regarding this is available on Connects

3. Reference periods used for averaging

- 3.1 The Working Time Regulations stipulate that the average working week is calculated by taking the average over a 17 week reference period. However, provision is made for a collective agreement to specify a local arrangement.
- 3.2 North Ayrshire Council has agreed with the trade unions that the reference periods used to calculate the average weekly working hours will be two fixed periods of 26 weeks, these being 26 weeks from January to June and 26 weeks from July to December.
- 3.3 The exception to the above being the reference period for road workers who undertake driving duties and grounds maintenance employees where the full year will be the reference period.
- 3.4 The regulations state that days lost within the reference period due to sick leave, annual leave, maternity, paternity, adoption or parental leave must be added on at the end of the reference period and the hours worked within this extended period taken into account when calculating the average weekly working hours.

4. Calculating Working Time

Calculating average weekly hours

- 4.1 The average number of hours worked by a worker in any week is calculated by adding together the hours (including overtime hours) worked by that worker during the period of 26 weeks ending with that week, and by dividing that total number of hours by 26.
- 4.2 If this yields a figure of 48 hours or less, the employer has complied with the worker's statutory right not to be required to work more than an average of 48 hours a week.

- 4.3 The same approach must be adopted if the reference period is an agreed longer period of weeks up to 52 weeks. For these purposes, a "week" is generally understood to be the period of seven consecutive days that begins on Sunday and ends at midnight on the following Saturday.
- 4.4 Under reg.4(4) of the Working Time Regulations 1998 the reference period for a worker who has worked for fewer than 26 or up to 52 weeks is the period that has elapsed since he or she first started work.
- 4.5 The calculations become a little more complicated if at any time during the reference period, the worker is absent from work on statutory holiday under reg.13 of the Working Time Regulations 1998, sick leave or maternity, paternity, adoption or parental leave. These are known as "excluded days" (reg.4(7)). In such a situation, the worker's average weekly hours during the reference period must be calculated using the formula:

$$(A + B) / C$$

Regulation 4(6) of the Working Time Regulations 1998 provides that **A** is the aggregate number of hours worked during the reference period; **B** is the aggregate number of hours worked during the period that starts immediately after the reference period has expired and ends when the number of days worked equals the number of days that were excluded during the reference period; and **C** is the number of weeks in the reference period.

- 4.6 The formula for determining a mobile worker's average weekly working time over the applicable reference period, which is set out in reg.4(5) of the Road Transport (Working Time) Regulations 2005, is:

$$(A + B) / C$$

Where **A** is the aggregate number of hours of working time during the reference period, **B** is the number of hours excluded (any hours of annual leave, sick leave, or maternity, paternity, adoption or parental leave, for which purposes a day is eight hours and a week 48 hours) and **C** is the number of weeks in the reference period.

5. Night Working

- 5.1 A night worker is someone who normally works at least 3 hours during the night period, which is the period between 11pm to 6am, unless the worker and employer agree a different night period. (See [Section 2.5](#) for mobile workers).
- 5.2 Night workers should not work more than an average of 8 hours in 24-hour period (different for mobile workers, see [Section 2.5](#)). This average is usually calculated over the agreed reference period. Regular overtime is included in the average and workers can't opt out of this limit.
- 5.3 North Ayrshire council offers workers a free health assessment with Occupational Health before they become a night worker and on a regular

basis while they are working nights. Workers do not have to accept this health check, however it is advisable under health and safety that this check is taken up.

- 5.4 Line Managers are expected to arrange annual health assessments for night workers and a template letter is available on Connects to write to employees inviting them to undertake the health assessment along with the Nightshift Worker Health Assessment Form.

6. Compensatory Rest

- 6.1 In some circumstances a worker may be required to work during a rest period and may have to take rest later, this is known as compensatory rest. Compensatory rest is normally the same length of time as the break or part of the break that a worker has missed.

7. Road Transport (Working Time) Regulations

- 7.1 While North Ayrshire Council has few drivers to which the following regulations would apply, it is important for those who work in the 'Transport Sector' to be aware of the regulations that may affect them.
- 7.2 The Road Transport (Working Time) Regulations 2005 apply to mobile workers in operations subject to EU regulations on 'drivers' hours'. Typically this means drivers of vehicles with a tachograph fitted, non-driving members of the crew and anyone else forming part of the travelling employees, including trainees and apprentices. The Regulations do not, however, apply to mobile workers participating in road transport activities not covered by the 'drivers' hours' rules', such as van drivers and taxi drivers.
- 7.3 For the purposes of the Road Transport (Working Time) Regulations working time is defined as time from the beginning to the end of work during which a mobile worker is at his or her workstation, at the disposal of North Ayrshire Council and exercising his or her activities. These are called [Domestic Rules](#).
- 7.4 The domestic rules include a daily duty limit of 11 hours which includes driving, unloading and loading, assisting passengers on and off the vehicle, cleaning and vehicle maintenance, and all work to ensure the safety of the vehicle, cargo or passengers. Time when the mobile worker cannot freely dispose of his or her time and must be at the workstation ready to take up normal work, such as during periods awaiting loading or unloading when the foreseeable duration of the period is not known in advance, are also included.
- 7.5 Breaks, rests and periods of availability are not included in the calculation of working time.
- 7.6 A period of availability is waiting time during which the mobile worker is not required to remain at his or her workstation, but must be available to answer any calls to start or resume driving or to carry out other work. The mobile worker will know about the duration of the period in advance. Periods of

availability can include periods when a mobile worker is accompanying a vehicle being transported by train or ferry, periods spent waiting at borders and periods of waiting due to traffic prohibitions. Periods of availability can also include time spent travelling in, but not driving, a moving vehicle as part of a team.

- 7.7 Under North Ayrshire Council's Terms and Conditions section 4.4.1 an employee is not entitled to be paid overtime for travelling time or to travel to or from their work location.
- 7.8 On some occasions non-mobile workers, such as mechanics, will drive vehicles within the scope of the EU drivers' hours regulations. Such 'occasional mobile workers' will be subject to the WTR 1998 as amended, and not the Road Transport (Working Time) Regulations 2005. An 'occasional mobile worker' is defined as one who does less than 11 days' work under the drivers' hours' rules during a reference period that is less than 16 days' work and where the reference period is 26 weeks or longer.

8. Monitoring Working Time and Record Keeping

- 8.1 All single post contractual arrangements within North Ayrshire Council would not require a worker to work over a 48 hour working week or exceed any of the provisions of the Working Time Regulations.
- 8.2 Employment contracts provide a clause regarding 'Other Employment' and states: 'Alternative employment outwith the Council is permitted, you have a duty to advise your line manager of any other employment you undertake and have an obligation to notify of any conflict of interest as required in the Council's Code of Conduct'.
- 8.3 A Working Time Regulations 'Opt Out' Form is available on Connects where an employee chooses to opt out of the 48 hour working week.
- 8.4 North Ayrshire Council keeps a record of all workers who opt out of the Working Time Regulations using CHRIS screen A09. These records are created by the Service Admin/Business Support staff. Opt out forms are to be forwarded to Corporate HR to be held in the Personnel File.
- 8.5 Under reg.10 of the Road Transport (Working Time) Regulations 2005 North Ayrshire Council will for any employees covered by these regulations:
- request written details of any working time performed for another employer and include this in the calculation of the worker's working time
 - keep records, e.g. log books and/or timesheets, that are adequate to show whether the requirements of the Regulations are being complied with in the case of each mobile worker to whom they apply, and retain them for two years after the end of the period covered by the records
 - if requested by a mobile worker, provide him or her with a copy of the record of hours that he or she has worked

- provide an enforcement officer with copies of any records relating to mobile workers that he or she might require
- 8.6 Line managers are expected to consider the Working Time Regulations when asking a worker to undertake work that would exceed 48 hours in the working week and cognisant of the 26 week or annual reference period. The calculation details specified in [Section 4](#) above can assist in a check to see if the worker has exceeded this working time.
- 8.7 If a line manager is concerned that a worker is likely on average to exceed an average 48 hour working week over a 26 week period, either through additional hours, overtime or multi-posts within the Council or if the worker holds other external jobs, then they must advise the worker that they could be in breach of the Working Time Regulations. If the worker wants to continue to work in excess of these hours the worker must sign the opt-out form available on Connects. Opt-out forms must be given to service admin/business support for recording on CHRIS and passed onto Corporate HR for the personnel file.