BRITISH BEER AND PUB ASSOCIATION

GUIDANCE FOR THE LICENSED RETAIL INDUSTRY ON THE WORKING TIME REGULATIONS

This document is for guidance purposes, and is not a legal interpretation of the Working Time Regulations. It is recommended that reference should also be made to the Regulations themselves and the Department of Trade and Industry (DTI) Guide to the Working Time Regulations (revised edition) which provides general guidance on the Regulations. To obtain a copy of the DTI guidance, telephone 0845 6000 925.

BBPA
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Introduction

The Working Time Regulations ("the Regulations") implement the EC Directive on the organisation of working time (The Working Time Directive) and provisions concerning working time in the Directive on the protection of young people at work (The Young Workers Directive). The Regulations came into force on 1st October 1998. Amendments to the record keeping requirements and the definition of "unmeasured working time" were made in December 1999.

The main provisions of the Regulations are:

- a limit on average weekly working time to 48 hours (though individuals can choose to work longer)
- a limit on night workers' average normal daily working time to 8 hours
- a requirement to offer health assessments to night workers
- minimum daily and weekly rest periods
- rest breaks at work
- paid annual leave

The coverage and scope of the Regulations includes employees and agency workers. It also includes young workers of between 15 and18 years of age (some school leavers and modern apprentices, for example, would fall into this category). The Regulations do not apply to the self-employed ie. those who pursue a business activity on their own account. Pub tenants would fall within this definition, although they should be aware that the Regulations will generally apply to most of the staff they employ.

There are a number of exempted sectors under the Regulations:

- air transport
- rail
- road transport
- sea transport
- inland waterway and lake transport
- sea fishing
- "other work at sea" (mainly offshore work in the oil and gas industry)

Road transport is the most relevant of these exempted sectors to the brewing and licensed retail industry. The advice in the DTI Guidance (April 2000) is reproduced below:

"To be considered to be in a transport sector, an employer must be directly involved in the business of transport.
For example, if you work for a road haulage, delivery or distribution firm, you are in the road transport sector and the Regulations will not apply to you, even if you are not a driver. Similarly, if you work for a railway operator, you are in the rail sector and excluded. However, if you work for a retailer in a station or sell petorl at a garage the Regulations will apply to you.

Also you may work in a transport operation for an employer, not wholly in a transport sector. If this is part of an identifiable transport function ("own account" transport services, such as a transport division of a retail chain which delivers goods to its stores, then it is part of the transport sector."

Agreements

Some of the requirements of the Regulations may be modified through agreements between workers and employers to take account of particular business needs. There are three different types of agreement possible under the Regulations.

(a) Collective Agreements

These are agreements between an independent trade union and an employer or employers' association.

(b) Workforce Agreements

The Regulations introduce the concept of workforce agreements, which are a new mechanism for employers to agree working time arrangement with workers who do not have any terms or conditions set by collective agreement. This type of agreement may be applied to:

- the whole of the workforce
- a group of workers within a particular function, eg. all bar staff, all pub managers, all chefs etc.
- a group of workers within the same workplace eg. per pub outlet
- a group of workers within the same "organisational unit", eg. accounts, sales, etc.

The DTI Guidance sets out the procedures for the election of workforce representatives to negotiate agreements. Workforce agreements must:

- be in writing;
- be circulated first in draft to all workers to whom it applies along with guidance to assist their understanding of it;
- be signed, before it comes into effect, either:
  ⇒ by all the representatives of the members of the workforce or group of workers; or

⇒ if there are 20 workers or fewer employed by a company, either by all the representatives of the workforce or by a majority of the workforce;

- have effect for no more than 5 years.

With regard to consultation with representatives, this could be carried out in conjunction with any existing systems set up by companies to consult with employees under the Health and Safety (Consultation with Employees) Regulations 1996. However, while the Health and Safety Executive (HSE) have accepted that licensed retail companies will manage health and safety matters through pub managers, who act as the representative conduit between the company head office and individual pub employees, the Working Time Regulations require the formal election of employee representatives. This is likely to prove difficult for companies operating large managed house estates.

(c) Relevant Agreements

A "relevant agreement" is any agreement in writing which is legally binding between a worker and their employer, for example on provisions of a collective or workforce agreement, or between an individual worker and employer through an employment contract. Individuals may choose to agree with their employer to work in excess of the weekly working time limit of 48 hours.

Protection for workers

The Regulations protect workers from "being subjected to a detriment" - in other words, workers cannot be discriminated against for asserting an entitlement under the Regulations. Regulation 31 amends Section 45 of the Employment Rights Act 1996 with regard to the right not to suffer detriment from their employer on the grounds of:

(a) refusal to comply with a requirement which the employer imposed (or proposed to impose) in contravention of the Working Time Regulations 1998,
(b) refusal to forgo a right conferred on him by those Regulations,
(c) failing to sign a workforce agreement for the purposes of those Regulations, or to enter into, or agree to vary or extend, any other agreement with his employer which is provided for in those Regulations, or
(d) being

(i) a representative of members of the workforce for the purposes of Schedule 1 to those Regulations, or
(ii) a candidate in an election in which any person elected will, on being elected, be such a representative, performed (or proposed to perform) any functions or activities as such a representative or candidate.

(e) bringing proceedings against the employer to enforce a right conferred on him by those Regulations, or
(f) alleging that the employer had infringed such a right.

Detriment can cover a wide range of discriminatory actions, including denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available. Workers may pursue claims of detriment through an Employment Tribunal.

Weekly Working Time Limits ("the 48 hour week")

Definition of "working time"

Under the Regulations, "working time" is defined as being when a worker is "working, at his employer's disposal and carrying out his activity or duties". The DTI has previously advised that for time to be "working time" all three elements contained in the definition must be satisfied. Therefore, with regard to being "on call", time when a worker is "on call", but otherwise free to pursue their own activities was thought not to be working time, since they would not be working. However, an interim judgement in a recent case before the European Court of Justice has challenged this thinking by suggesting that "on-call" time:

- is working time where a worker is restricted to their workplace;
- is not working time if a worker is free to pursue leisure activities.

A final ruling has yet to be reached.

Determining the reference period

The Regulations provide a "reference period" over which average working time can be calculated. The standard reference period for the averaging of weekly working time is 17 weeks. If a worker has worked for an employer for less than 17 weeks, the reference period becomes the period worked to date.

There is scope for extending the standard reference period:

⇒ For reasons of **"special circumstances"** where there is sufficient justification for modification to **26 weeks** for reasons of "continuity of service or production" or "foreseeable surge(s) of activity" as in relation to tourism. Since licensed retail is a service industry which experiences "foreseeable surge(s) of activity" common in the tourism sector, it should be possible to apply this extension of the standard reference period to 26 weeks during particularly busy periods.

⇒ **Example:** the summer months, and the run up to Christmas usually means increased trade for pubs, to which they must have the flexibility to react in order to maintain continuity of service and meet consumer demand.

⇒ **Example:** brewing is a continuous production process and experience surges of extra activity during the year for a number of reasons, such as seasonal upturns in trade.

⇒The standard reference period may be extended by way of a **collective or workforce agreement to a maximum of 52 weeks**. Brewing companies where union negotiations are common, have the option under the Regulations to do this, and in some instances this may complement annual hours working agreements across production sites.

Since union recognition is not widespread in the licensed retail sector, collective agreements will not generally be an option, and in order to extend the standard reference period to the maximum, companies may consider making a workforce agreement with employees (see above), bearing in mind the likely practical difficulties involved.

Calculating average working time

When calculating average working time, employers must take account of periods where a worker is absent due to annual leave, sick leave, maternity leave or any working days that are covered by an agreement in which a worker has consented to work in excess of the weekly working limit. The calculation for average working time is set out in the Regulations as detailed below:

$$\frac{A + B}{C}$$

A = total number of hours worked during the reference period

B = total number of hours worked, immediately after the reference period, during the number of working days equal to the number of days missed due to annual leave entitlement, sick leave, maternity leave

C = the number of weeks in the reference period

Example 1: If a worker works 40 hours per week for ten weeks, and 45 hours a week for 7 weeks with no annual leave or sick leave, their average working time over the standard reference period is:

40 x 10 = 400 hrs +
45 x 7 = 315 hrs

715hrs - 17 weeks = an average of 42 hours per week

Example 2: If a worker works 40 hours per week for the first ten weeks (ie. 8 hrs per day), and 45 hours a week for 7 weeks, with 5 days annual leave in the third week of the reference period, the calculation is as follows:

715 hrs (A) + 40 hrs (5 days x 8 hrs annual leave) (B) = 755 ÷ 17 (C) = an average of 44.4 hours per week

Disapplication of the average weekly limit

There is scope to disapply the average weekly limit through:

(i) Agreement with individual workers

An individual worker may choose to agree to work more than the 48 hour average weekly limit. An "individual agreement" must be in writing, and the worker must have the option to terminate the agreement. If the agreement does not specify a given notice period, a minimum period of seven days will apply. The following sample opt out agreement is contained in the DTI Guidance to the Regulations:

Opt-out agreement – Working Time Regulations

I *(name)* agree that I may work for more than an average of 48 hours a week. If I change my mind, I will give my employer *(amount of time – up to three months)* notice in writing to end this agreement.

Signed ..... **Dated**.....

The maximum notice period that may be specified for termination of an agreement is three months. To end the agreement, the worker must give a minimum of seven days written notice to their employer.

NB: Employers must keep an up-to-date record of those workers who have signed individual opt-out agreements to work longer hours, eg. in the form of a list of names. This record should be made available to Health and Safety Executive inspectors or local authority Environmental Health Officers upon request.

The UK is the only EU member state to have taken up the opt out facility contained in the Working Time Directive. The Directive states that the European Commission is to review the opt out provision and submit a report to the Council for consideration within seven years of the implementation date of the Directive, ie. by 23rd November 2003. There is no guarantee that the opt-out provision will continue after that date, although the UK is lobbying for it to remain in place.

(b) Unmeasured working time exception:

Under the Regulations, the weekly working time limit does not apply to a worker where:

"...on account of the specific characteristics of the activity in which he is engaged, the duration of his working time is not measured or predetermined or can be determined by the worker himself..."

According to DTI Guidance, this means the 48-hour limit does not apply if a worker can decide how long they work. For example, this exemption would apply to any additional hours workers choose to do over their contracted hours, but would not apply to paid overtime which is measured and the duration of which is determined by the employer. The types of worker most likely to fall within the scope of the exemption would be those who determine when they work, when they start and finish, and can decide their work priorities and how much time to spend on these.

Pub Managers:

Members need to interpret the Working Time Regulations with regard to pub managers, as appropriate to their company. The vast majority of companies have already decided that assistant pub managers are covered by these Regulations. Some companies may also take the view that pub managers fall within the scope of the Regulations, since some of their working time is prescribed, or they are expected to carry out certain core duties. The BLRA Council has agreed that it is not possible for the Association to reach an industry position on this issue.

Companies are also reminded of their legal obligations regarding the national minimum wage. Under the National Minimum Wage Regulations 1999, companies must pay all employees the minimum hourly rate, presently £3.60 per hour (£3.70 from October 2000), or the appropriate development/young persons rate.

This may have some implications where the hours worked by some pub managers become an issue. In addressing working time arrangements, companies should ensure that salaried pub managers are receiving the national minimum wage for the hours they are expected to work. Pub managers (and assistant managers) should receive the national minimum wage for their contracted hours as agreed between themselves and their employer, eg. 60 hours per week, regardless of whether companies have decided that:

(a) These employees are not within the scope of the Regulations;

(b) These employees are covered by the Regulations but have decided to sign an opt-out agreement to work more than 48 hours per week.

It should be made clear to all employees that any hours worked over and above their contracted hours are of their own volition and will be unpaid.

Assistant/Deputy Pub Managers:

Assistant/Deputy managers are likely to fall within the scope of the Regulations, although it is of course also possible to make an individual agreement with these workers, for example via their employment contracts, if they are willing to work more than the 48 hour average.

Where assistant managers are on relief, however, they will be acting up to the position of manager and, depending on individual company policy, may not necessarily be covered by the Regulations when providing such cover. Again, this could be clarified further in employment contracts.

Senior Managers:

Senior managers in brewing and licensed retail companies will generally be outside the scope of the Regulations.

Other Workers:

In most cases, bar staff, food preparation staff and waiting staff will fall within the scope of the Regulations. The reference period over which their working time is averaged may, however, be subject to the extensions outlined above.

Second jobs

The DTI guidance states that employers are required to take all reasonable steps to ensure that workers do not exceed an average of 48 hours of weekly working time. Since the licensed retail sector in particular employs large numbers of people for whom the employment is their second job (normally evening bar work), employers should consider making enquiries at interview or at some stage during the recruitment process as to whether the prospective employee has other work. Where such employees are likely to exceed the 48 hour average limit by having a second job, individual agreements should be considered. Employees should also be required to inform their second employer of any increase in the hours of their main employment.

Night Work

"Night time" is defined under the Regulations as a period of at least seven hours incorporating the hours from midnight to 5am. It is possible for employers, by way of agreements, to define night time as 10pm to 5am or 12pm to 7am. In the absence of any agreement, night time is defined in the Regulations as 11pm to 6am. Employers may wish to include the hours of 12 midnight to 5.00am in contracts as the core night-time hours.

Definition of "night worker"

A night worker is any worker whose daily working time includes at least three hours of night-time (as defined):

(i) on the majority of days they work;
(ii) on such a proportion of the days they work as is agreed between employer and workers in a collective or workforce agreement;
(iii) sufficiently often that they may be said to work such hours as a normal course eg. production workers who work nights on a regular rotating shift pattern.

Special Hazards

Where a night worker's work involves special hazards or heavy physical or mental strain, the worker's actual daily working time is limited to eight hours in any period of 24 hours. Such work should be identified either by agreement between the employer and workers in a collective or workforce agreement, or as a result of a risk assessment carried out under the Management of Health and Safety at Work Regulations 1992. It is unlikely that night work in breweries and licensed retail outlets would generally involve special hazards or heavy physical or mental strain.

Determining the reference period for night work

Under the Regulations, a night worker's normal hours of work should not exceed an average of 8 hours for each 24 hours. The standard reference period is 17 weeks, but this may be subject to extension by **collective/workforce agreements**.

Disapplication of the night work limits

There is scope to disapply the night work limits through:

(i) the unmeasured working time exception ie. where "…on account of the specific characteristics of the activity in which he is engaged, the duration of his working time is not measured or predetermined or can be determined by the worker himself…" as above.

(ii) the "special circumstances" exception where there is sufficient justification for modification to 26 weeks for reasons of "continuity of service or production" or "foreseeable surge(s) of activity" (as above), or where a worker is "engaged in security and surveillance activities".

Compensatory rest

Where the night work limits are disapplied as a result of the "special circumstances exception, or where the standard reference period is extended by a collective/workforce agreement, there is a requirement in the Regulations for a worker:

(a) to be permitted to take "an equivalent period of compensatory rest" - this would normally be an interval of rest as long as that to which the worker

was entitled but not able to take, and it should be provided within a reasonable time period; or

(b) in exceptional cases, where providing equivalent compensatory rest is not possible, be given other appropriate protection.

Calculating night work hours

When calculating average hours worked as night work, the number of normal hours of working time worked by a worker in the reference period should be divided by the total number of days in that period, minus the number of rest days to which the worker is entitled under the Regulations (see below). The calculation for average working time is set out in the Regulations as detailed below:

$$\frac{A}{B-C}$$

A = the number of hours during the applicable reference period which are normal working hours for that worker

B = the number of days during the applicable reference periods

C = the number of hours of weekly rest to which a worker is entitled under the Regulations (ie. 24 hours for each seven day period) divided by 24.

Example: If a production worker normally works four 12-hour shifts per week over a reference period of 17 weeks:

A = 17 x (4 x 12) = 816 hrs (ie. the total number of normal hours of work for a 17 week reference period)

B= 17 x 7 = 119 (ie. the number of days during the applicable reference period)

C = 17 x 24 = 408 (the total number of hours of weekly rest in the reference period) ÷ **24 = 17**

Therefore:

$$\frac{816\ (A)}{119\ (B) - (C)\ 17}$$

The production worker works an average of 8 hours in each 24-hour period.

Health assessments for night workers

Workers are entitled to free health assessments to determine their fitness for the night work to which they are assigned. Employers are liable to pay for any relevant charge for such assessments. The DTI Guidance identifies the following medical conditions which may be affected by night work:

- diabetes, particularly where treatment with insulin injections on a strict timetable is required;
- some heart and circulatory disorders, particularly where factors such as physical stamina are affected;
- stomach or intestinal disorders, such as ulcers, and conditions where the timing of a meal is particularly important;
- any conditions which cause difficulties sleeping;
- some chronic chest disorders where night-time symptoms may be particularly troublesome;
- other medical conditions requiring regular medication on a strict timetable.

This list is by no means exhaustive. It should also be noted that the effects of such conditions on fitness for night work may often only be temporary.

There are no set procedures for carrying out health assessments. Employers are advised to use a screening questionnaire for completion by workers prior to beginning night work. A GP and/or other health care professionals, or in-house occupational health departments should be involved in the compilation and interpretation of such questionnaires. A sample questionnaire is at Annex 1 of this guidance. Please note that this is intended to assist companies to develop their own questionnaires tailored to their particular needs, and is not, by any means, comprehensive. The DTI Guidance also contains a sample questionnaire.

Following completion of a questionnaire, workers may then be be subject to further health checks if required. The DTI advise employers to explain the type of work involved to the health care professional(s) carrying out a medical examination of a night worker. The health assessment should result in a fitness for work statement provided by the health care professional to the employer. Any clinical information arising from the assessment must be confidential and can only be released to an employer with the written consent of the worker. In the event of suffering health problems connected with night work, night workers are entitled to be transferred whenever possible to suitable non-night work.

A health assessment should be offered before someone becomes a night worker.

Night workers are then entitled to the opportunity of free health assessments at regular intervals. The frequency of health assessments may, of course, depend on the individual worker. The DTI guidance suggests that it would generally be prudent to follow the necessary procedures at least once a year.

Where adolescent workers are employed, for example as waiters/waitresses in a pub restaurant, they are entitled to a health and capacities assessment if they work during the period 10pm to 6am.

This assessment will need to consider additional issues such as physique, maturity and experience, and competence to undertake night work. Modern apprentices aged under 18 years will also require such assessments if they work after 10pm.

Rest Periods

Under the Regulations, workers are entitled to various types of rest periods, as outlined below:

(i) Daily Rest

Adult workers are entitled to a rest period of 11 consecutive hours between each working day. This does not apply to shift workers who when changing shift cannot take a daily rest period between the end of one shift and the start of another. Nor does it apply to workers engaged in activities involving periods of work split up over the day, for example cleaning staff, chefs, and bar staff.

Adolescent workers are entitled to an uninterrupted period of 12 hours rest in each 24 hour period during which they work. This does not apply if periods of work are split up over the day or are of short duration.

(ii) Weekly Rest

Workers are entitled to an uninterrupted rest period of not less than 24 hours in each 7-day period. This may be averaged over a 2-week period (ie. 2 days rest over a fortnight). Weekly rest is additional to any paid annual leave entitlement under the Regulations. Again, this does not apply to shift workers who when changing shift cannot take a weekly rest period between the end of one shift and the start of the next one or to workers engaged in activities involving periods of work split up over the day.

Difficulties have been highlighted with regard to some pub cleaners employed directly by licensees. Cleaners may work, for example, two to three hours **every day**, which would mean they do not receive their weekly rest entitlement. Due to the service nature of a pub, it is possible that as such cleaning work is necessary in order to ensure "continuity of

service", the entitlement may not apply to directly employed cleaning staff under the special circumstances exception. Where cleaning staff are agency staff, the agency should be responsible for considering the rest arrangements of its workers. Similar difficulties may also be experienced with regard to permanent relief managers who are sometimes required to work 14 days continuously to cover holiday leave.

The Regulations also allow for the daily rest entitlement to be incorporated into the weekly rest entitlement if justified by "objective or technical reasons or reasons concerning the organisation of work".

Adolescent workers are entitled to 2 days rest in each week. This cannot be averaged over a 2 week period. This weekly rest period may be reduced to 36 hours "where justified by technical or organisation reasons".

Disapplication of daily and weekly rest periods

There is scope for the disapplication of adult workers' entitlement to daily and weekly rest through:

(i) collective/workforce agreements which may modify or exclude the entitlement to rest;
(ii) the unmeasured working time exception as described above;
(iii) the "special circumstances" exception as described above.

Again, where the entitlement to rest does not apply or is modified (ie. for some shift workers as outlined previously, or under the above exceptions), provisions for compensatory rest or other appropriate protection should be made.

Modification of adolescent workers' entitlement to daily rest may also be modified or excluded provided all of the following relevant conditions apply:

* in the case of "an occurrence due to unusual or unforeseeable circumstances, beyond the employer's control, or to exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer;

* when the adolescent's employer requires them to undertake work which is "of temporary nature and must be performed immediately";

* no adult worker is available to do the work in place of the adolescent.

NB: Any adolescent carrying out work in these circumstances must be allowed equivalent compensatory rest time afterwards within a period of 3 weeks.

In-Work Rest Breaks

An adult worker is entitled to an uninterrupted break of 20 minutes where daily working time is more than 6 hours. This should be a break in working time, not

to be taken at the start, or at the end of a working day. Nor should it overlap with a worker's daily rest period. An adolescent worker is entitled to a rest break of 30 minutes when daily working time is more than 4½ hours.

It is advisable that employee contracts determine whether rest breaks are paid time or not. There is no specification for payment of such breaks in the Regulations.

There is scope for disapplication of the entitlement to rest breaks through:

(i) collective/workforce agreements which may modify or exclude the entitlement to rest breaks;
(ii) the unmeasured working time exception as described above;
(iii) the special circumstances exception as described above.

Again, where rest breaks do not apply or are modified by way of the above, provisions for compensatory rest or other appropriate protection should be made.

Paid Annual Leave

Paid annual leave entitlement

Under the Regulations, a worker who has been continuously employed by an employer for 13 calendar weeks will, at the end of that period, become entitled to at least 4 weeks paid leave each year.

Any week in which a worker has a contractual relationship with the employer, whether throughout the week or during part of it, will count towards the 13 week qualifying period. If an employee leaves within the 13 week qualifying period, they will not be owed any holiday since they will not have reached the stage of entitlement.

There has been some confusion, however, as to whether annual leave is accrued from day one of employment but the worker is only entitled to take it after the qualifying period, or whether it only starts to accrue after the 13 weeks. The Regulations would appear to be open to interpretation on this point:

1. If an employee starts work in the first week of the holiday year, they may be entitled to their full leave entitlement for that year, but they cannot take any leave until the end of the first 13 weeks. If they start work mid-way through the holiday year, they are entitled to whatever portion of the leave year they have worked, on a pro-rata basis; or

2. As the Regulations state that the actual entitlement to leave does not arise until the end of the thirteen week qualifying period, (ie. at 13 weeks plus 1 day) it could be construed that an employee starting work in the first week of the holiday year would only be eligible for three quarters of their leave entitlement, on the basis that there was no accrual in the first 13 weeks. Under the Regulations, leave should be taken in the year to which it relates.

The DTI have advised that annual leave does not accrue, as such, but that a worker will have a right to 4 weeks in a leave year, or such a portion of the leave year that is worked. For example, if the leave year begins on 1 January, then workers will have four weeks entitlement from 1 Jan, to be reduced on a pro rata basis if they do not work the full year. The worker must, however, complete the qualifying period before they are able to take any of their leave entitlement.

If leave is accrued during the qualifying period, it would appear to cause difficulties with regard to new employees beginning 13 weeks before the end of the holiday year, who would not be able to take leave earned during this period. Under the Regulations, there is no right to leave that remains untaken at the end of a leave year, although there is scope for employers and workers to agree contractual arrangements to do so.

Definition of leave year

The leave year will normally start on a date contained in a worker's employment contract or specified by agreement between employers and workers. In the absence of any agreement, the Regulations stipulate that the leave year will start:

* on 1st October if the worker started work with the employer on or before 1st October 1998 (and each subsequent leave year will start on the anniversary of that date); or

* on the date the worker started the employment, if the worker starts work with the employer after 1 October 1998 (and each subsequent leave year will start on the anniversary of the date on which they started work).

Calculating paid annual leave

A normal week's pay (as determined by sections 221-224 of the Employment Rights Act 1996) is:

(a) in the case of a worker with regular working hours, what they would earn for a normal working week;

(b) in the case of a worker whose normal working hours vary from week to week, the average hourly rate of pay they get multiplied by an average of their normal weekly working hours over the previous 12 weeks;
(c) in the case of a worker with no normal working hours it is the average pay received over the previous 12 weeks.

A worker's normal working hours are deemed to be the normal hours fixed by their contract of employment. Overtime hours are not normal working hours, unless a minimum number of hours including overtime which is more than notional fixed hours is contained in a worker's employment contract.

A week's leave should be equivalent to the time a worker works in their normal working week.

Example 1: For a full-time worker, working 5 days a week with a minimum entitlement of 20 days (4 weeks) paid annual leave, a week's leave is five days.

Example 2: A part-time worker, working 3 days a week, will have a minimum entitlement of 12 days paid leave. For this worker, a week's leave is 3 days (which would be the days on which they normally work).

Example 3: If a part-time worker has their working time set in terms of hours, their annual leave might be expressed in terms of hours too, eg. someone working 15 hours a week would be entitled to 60 hours paid annual leave (ie. 14 x 4).

Public Holidays

There is no statutory requirement to paid leave on bank and public holidays. Where a worker receives a paid day off for a public holiday this will count towards their leave entitlement.

Procedures for giving notice of leave

A procedure is contained in the Regulations for employers and workers to give each other notice as to when leave is or is not to be taken. Agreements as to what the period of notice should be, may be agreed between employers and workers by way of collective or workforce agreements, or through individual employment contracts. Where there is no agreement, the following will apply:

(a) An employer can require a worker to take all or any of the leave to which the worker is entitled at specified times, provided that the worker is given prior notice. The notice period should be at least twice the period of the leave to be taken.

(b) A worker is required to give notice to the employer of when they wish to take leave. The notice period should be at least twice the period of the leave to be taken, ie. two weeks notice for a week's leave. An employer may refuse permission for the leave to be taken, but must notify the worker within a period equivalent to the period of leave requested.

Payment in lieu on termination

Where a worker loses part of their entitlement to annual leave because their employment terminates during a leave year, they have a right to payment in lieu. The sum due can be provided for in a relevant agreement (ie. collective/workforce agreement, or through individual employment contracts). Where there is no such provision, the Regulations provide the following calculation:

(A x B) - C

A = the period of leave to which the worker is entitled
B = the proportion of the worker's leave year which expired before the end of their employment
C = the period of leave taken by the worker between the start of the leave year and the termination date

Example 1: A member of permanent bar staff works 5 days a week and has an entitlement to 4 weeks annual leave. Their employment terminates 9 months into the leave year (ie. three quarters of the leave year has expired), and they have taken only five days leave:

(20 x 0.75) - 5 = 10

The employer should pay the worker the equivalent of ten days pay.

Example 2: A permanent worker with an entitlement to 4 weeks annual leave terminates their employment six months into the leave year (ie. half the leave year has expired). They have taken only 2 days leave, therefore:

(20 x 0.5) - 2 = 8

The employer should pay the worker the equivalent of eight days pay.

The Regulations also provide for employers to be compensated where workers receive more paid leave than was due to them.

Enforcement

Limits

The following will be enforced in breweries by the Health and Safety Executive (HSE), and in public houses by Local Authority Environmental Health Departments.

* **Weekly Working Time Limits ("the 48 hour week")**
* **Night Work Limits**
* **Health assessments for night workers**

To demonstrate compliance:

a) Employers will need to keep adequate records to show that the weekly working time limit is being complied with for those workers within the scope of the Regulations. Such records may be consistent as far as possible with existing records which are maintained for other purposes, such as pay. An up-to-date record of those workers who have signed "individual agreements" to work more than the 48-hour weekly working limit must also be kept.

b) Employers will need to keep adequate records to show that the limits on night work are being complied with;

c) Employers will need to keep adequate records to show they have complied with the requirement to provide for health assessments. These records will need to show the name of the night worker, when they had an assessment and the result of the assessment.

All records must be kept for 2 years. For reference purposes, companies may wish to keep records for longer than this, but this is not obligatory.

For further assistance contact the HSE Infoline on 0541 545500 or contact the Environmental Health Department of your Local Authority. Alternatively, write to HSE Information Centre, Broad Lane, Sheffield, S3 7HQ.

Entitlements

In the event that a worker does not receive their entitlement to one of the following, they should first seek to settle any dispute with their employer through company grievance or appeals procedures. If settlement cannot be reached in this way workers may complain to an Employment Tribunal with regard to:

* **daily rest period**
* **weekly rest period**
* **in-work rest break**
* **paid annual leave**

Further assistance is available from ACAS public enquiry points as detailed below:

Birmingham **0121 456 5856**

Bristol	**0117 974 4066**
Cardiff	**01222 761126**
Fleet	**01252 811868**
Glasgow	**0141 204 2677**
Leeds	**0113 243 1371**
Liverpool	**0151 427 8881**
London	**0171 396 5100**
Manchester	**0161 228 3222**
Newcastle	**0191 261 2191**
Nottingham	**0115 969 3355**