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Target Audience:
All HSE Staff

THE WORKING TIME REGULATIONS 1998: ENFORCEMENT GUIDELINES

This OC provides guidance on enforcing those provisions of the [Working Time Regulations 1998](#) enforced by HSE. It includes a framework for applying the EMM to identified breaches of these Regulations. This guidance should be read together with [OC 1/6 The Working Time Regulations 1998: Guidance on the Legislation](#).

INTRODUCTION

1 The document provides guidance on how to determine the appropriate enforcement action to achieve compliance with the provisions of the Working Time Regulations 1998 (WTR).

2 The document should be read in conjunction with:

- (1) the procedure for handling working time related work; and
- (2) the document *The Working Time Regulations 1998: Guidance on the Legislation*.

3 Whilst each situation is unique, all enforcement action must be in accordance with HSC's Enforcement Policy Statement. In particular it must be proportionate, consistent in approach, transparent, and targeted at those who control the risks. In addition, decisions concerning enforcement action must be made in accordance with the principles in the Enforcement Management Model (EMM).

GUIDELINES

General

4 Enforcement action may be required in two general circumstances:

- (1) where an investigation reveals that an employer is failing to comply with the Working Time Regulations themselves. Under these circumstances the remainder of this guidance applies;
- (2) where the investigation reveals that the hours being worked give rise to health and safety risks (NB: it is possible that there are health and safety risks even though the working limits are being complied with). Any concerns in this area should be referred to the appropriate Inspector. If it is appropriate, enforcement action could be taken under both WTR and relevant health and safety legislation.

Application of the Enforcement Management Model

5 For the purposes of the EMM, these Regulations fall under the description of “compliance and administrative arrangements” since they are not in themselves risk based. Details of the general approach to enforcement can be found in the [EMM itself, in particular paras 52-53](#).

6 To determine the appropriate action, it is first necessary to assess the level of non-compliance. This can fall into three categories (absent, inadequate, minor) each of which is defined in EMM Table 4. This is then combined with the authority of the benchmark standard (in this case principally the legislation itself) to reach an initial enforcement expectation as in EMM Table 5.2.

7 The next stage is to apply dutyholder and strategic factors ([EMM Tables 6 and 7 respectively](#)) to the initial enforcement expectation in order to reach an enforcement conclusion, ie the action that should be taken in the particular circumstances.

8 The [appendix](#) contains two tables which apply the EMM principles to the specific WTR requirements enforced by HSE and provide further guidance on the dutyholder and strategic factors that might be taken into consideration. Whilst this is not intended to force those making decisions down a single path, it should be used as a framework in all investigations as an aid to consistency.

Prosecution

9 Application of the EMM may lead to the enforcement conclusion that prosecution is appropriate. In addition, prosecution should always be considered where a dutyholder has failed to comply with an Improvement Notice. Once the conclusion to prosecute has been reached, it will be still be necessary to consider whether there is sufficient evidence to provide a realistic prospect of conviction.

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APPENDIX (para 8)

Table 1: Aid to determining the initial enforcement expectation following non-compliance with the Working Time Regulations

Reg.	Regulatory requirements with examples of possible breaches	Non-compliance descriptor	Authority of benchmark standard
4(1)	Employer to take all reasonable steps to ensure weekly working limit complied with: a) 48-hour average exceeded by more than 2 hours b) 48-hour average exceeded by less than 2 hours	Absent Minor	Defined Defined

4(2)	Employer to keep up-to-date records of all workers who agree to exceed the weekly working limit: a) No records at all b) Records kept but not up-to-date	Absent Minor	Defined Defined
6(2)	Employer to take all reasonable steps to ensure compliance with night working limits: a) Limits exceeded on average by more than 2 hours b) Limits exceeded on average by less than 2 hours	Absent Minor	Defined Defined
6(7)	Employer to ensure that 8 hour night work limit for work involving special hazards etc. is not exceeded: a) Limit exceeded by more than 20 minutes b) Limit exceeded by less than 20 minutes	Absent Minor	Defined Defined
7(1)	Employer to provide adult night workers with opportunity of free health assessments: a) Failure to offer health assessments b) Initial assessments offered but no provision for routine re-assessments	Absent Inadequate	Defined Defined
7(2)	Employer to provide young workers working in the restricted period with free health assessments: a) Failure to offer health assessments b) Initial assessments offered but no provision for routine re-assessments	Absent Inadequate	Defined Defined
7(6)	Employer to transfer night worker suffering health problems from night work where possible: a) Failure to transfer	Absent	Defined
8	Employer to give adequate rest breaks where work pattern puts health and safety at risk*: a) Failure to provide breaks *Consider need to consult inspector	Absent	Defined
9	Employer to keep adequate records to show compliance with working time limits and to retain these for 2 years: a) No records kept b) Some records but not completely adequate c) Records not kept for 2 years	Absent Inadequate Minor	Defined Defined Defined
24	Employer to allow compensatory rest where night work limits are excluded or modified by either the Regulations or a relevant agreement: a) Compensatory rest not allowed b) Rest not allowed within reasonable time Employer to afford such protection as appropriate in exceptional cases where not possible to grant rest period - consult inspector	Absent Minor	Defined Defined

Table 2: Dutyholder and strategic factors to be taken into account when determining

the enforcement conclusion following non-compliance with the Working Time Regulations

NB: This table provides additional guidance on some of the factors contained in [EMM Tables 6 and 7](#). The full table must be referred to when considering the enforcement conclusion in a particular situation.

Dutyholder factors	Guidance
Is there history of relevant written or verbal enforcement?	This should be considered in terms of any previous contact with the dutyholder on WTR issues. In particular have they been given previous advice on the actual aspect of the Regulations in question?
Is there relevant incident history?	This is not relevant in the context of these Regulations
What is the standard of general conditions?	Consider in terms of the extent of the WTR non-compliance. Is it an isolated incident egg relating to only a small part of the workforce or does it apply across the board?
What is the inspection history of the dutyholder?	Unless it is proposed to take action under both WTR and health and safety legislation, these factors should not be considered.

Strategic factors	Guidance
Does the action coincide with the public interest?	The EMM considers this in the context of the public expectations of HSE and also how we target resources based on risk. The latter is not particularly relevant in this situation. There is, however, continued attention on WTR issues and we are expected to take action where this is appropriate.
Are vulnerable groups protected?	This will be particularly relevant when considering young workers and situations where special hazards, etc are an issue.
What is the functional impact of the action?	This is considered in terms of the impact on the workers themselves. Because of the fact that working hours determine how much people earn it is possible that any reduction in hours could have a considerable impact. Whilst this is not our primary concern (we ultimately seek compliance with the law), it is important that we point out to employers that the law itself allows a reasonable amount of flexibility (eg relevant agreements).

