

SAFETY INFORMATION SHEET

THE WORKING TIME REGULATIONS

Introduction

This Information Sheet is one of a series produced by the LEIA Safety and Environment Committee on topics relevant to the Lift and Escalator Industry. Whilst every effort has been taken in the production of these sheets, it must be acknowledged that they should be read in conjunction with the relevant legislation, codes of practice etc. They should not be taken as an authoritative interpretation of the law but a guidance to it.

Working Time Regulations

The Working Time Regulations 1998 (SI 1998/1833) and the Working Time Regulations (Northern Ireland) (SI 1998/ 386), which implement aspects of two European Directives on the organisation of working time (Council Directive 93/104/EC) and the protection of young people (94/33/EC) came into effect on 1st October 1998 and 23rd November 1998 respectively.

There are five Parts and two Schedules to the Regulations as follows:

PART I: General

A number of definitions are set out including:-

'Adult worker'	a worker who has attained the age of 18 years.
'Calendar year'	a period of 12 months beginning on 1st January in any year.
'Collective Agreement'	a collective agreement within the meaning of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992, (in Northern Ireland, Article 2 of the Industrial Relations (Northern Ireland) Order 1992) the trade union parties to which are independent trade unions within the meaning of section 5 of that Act (or Article);
'Day'	a period of 24 hours beginning at midnight.
'Employer'	the person by who the worker is employed.
'Employment'	employment under a worker's contract and employed is construed accordingly.
'Night time'	a period, the duration of which is not less than seven hours, which includes the period between midnight and 5 am, which is determined for the purposes of the Regulations by a relevant agreement, or, in default of such a determination, the period between 11 p.m. and 6 a.m.
'Night work'	work during night time
'Night worker'	a worker who, as a normal course, works at least three hours of his daily working time during night time or who is likely during night time to work at least such proportion of his annual working time as may be specified in a collective or work force agreement, and if he works these hours on the majority of his working days.

'Relevant agreement'	a work force agreement, a collective agreement which forms part of a contract between employer and employee, or any other written agreement which is legally enforceable between them.
'Relevant Training'	means work experience provided pursuant to a training course or program, training for employment, or both, other than work experience or training - the immediate provider which is an educational institution or a person whose main business is the provision of training, and which is provided on a course run by that institution or person;
'Rest period'	a period which is not working time other than a rest break or leave to which the worker is entitled.
'Shift worker'	any worker whose work schedule is part of shift work.
'Shift work'	the organization of work in shifts whereby workers succeed each other at the same workstations according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for workers to work at different times over a given period of days or weeks.
'Working time'	any period during which a worker is working at his employer's disposal and carrying out his activity or duties, any period during which he is receiving relevant training, and any additional period which is to be treated as working time under a relevant agreement.
'Worker'	an individual who has entered into or works under a contract of employment; or any other contract, whether express or implied where the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any business undertaking carried on by the individual;
'Young worker'	a worker who has attained the age of 15 (in Northern Ireland; who is over compulsory school age within the meaning of Article 46 of the Education and Libraries (Northern Ireland) Order 1986) but not the age of 18.

PART II: Rights and obligations concerning working time

Maximum weekly working time (Regulation 4)

A worker's working time, including overtime, in any 'reference period' of 17 weeks (normally 17 successive weeks, but could be in other cases any period of 17 weeks) shall not exceed an average of 48 hours for each seven days. The employer is responsible for ensuring that the specified limit is complied with by each worker. This limit does not apply where a worker has agreed with his employer in writing that it shall not apply in his case, when for a specified period or indefinitely and, unless agreed otherwise, the agreement shall be terminable by the worker giving the employer seven days' notice in writing.

Where an agreement on working time makes provision for the termination of that agreement after a period of notice, that period shall not exceed 3 months.

The employer must maintain up to date records on working time to identify each of the workers who has agreed that the limit shall not apply, setting out the terms on which that agreement was reached, and specify the number of hours worked by him for the employer during each reference period since the agreement came into effect.

The employer must permit an appointed inspector for the authority enforcing the Regulation (i.e. the Health and Safety Executive or the local authority) to inspect the records and any other information on an agreement that the limits shall not apply. Where an employee has worked for the employer for less than 17 weeks, the reference period is that which has elapsed since he started work. The reference period is increased to 26 weeks for those listed as 'special cases' in Regulation 21. These include workers where:-

- 1) their activities are such that either his place of work and place of residence or his different places of work are distant from one another.
- 2) they are engaged in security and surveillance activities requiring a permanent presence in order to protect property and persons eg security guards, caretakers, security firms.
- 3) their activities involve the need for continuity of service or production in relation to:
 - services relating to the reception, treatment or care provided by hospitals or similar establishments, residential institutions and prisons;
 - work at docks or airports;
 - press, radio, television, cinematography production, postal and telecommunication services and civil protection services (e.g. police, fire brigades, ambulance services, security and intelligence services, customs and immigration officers, prison services, coastguard, lifeboat crew and other voluntary rescue services);
 - gas, water and electricity production, transmission and distribution;
 - household refuse collection and incineration;
 - industries in which work cannot be interrupted on technical grounds;
 - research and development activities;
 - agriculture
- 4) there is a foreseeable surge of activity as may be the case in relation to:
 - agriculture
 - tourism
 - postal services
- 5) their activities are affected by:
 - an occurrence due to unusual and unforeseeable circumstances beyond the control of the employer;
 - exceptional events, the consequences of which could not have been avoided despite the exercise of all due care by the employer;
 - an accident or the imminent risk of an accident.

In order to calculate a worker's average working time for each seven days during a reference period, the following formula is used:-

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

Where:

A = aggregate number of hours comprised in the worker's working time during the course of the reference period;

B = aggregate number of hours comprised in the worker's working time during the course of the period beginning immediately after the end of the reference period and ending when the number of days in that subsequent period equals the number of 'excluded days' during the reference period;

C = the number of weeks in the reference period.

'Excluded days' means those comprised in any period of annual leave, any period of sick leave, any period of maternity leave and any period where the limit of 48 hours in any seven day period does not apply (Regulation 5).

Length of night work (Regulation 6)

A night worker's normal hours of work in any reference period shall not exceed an average of eight hours for each 24 hours, and the employer must take all reasonable steps to ensure that this limit is complied with by each night worker.

The 'reference periods' which apply are successive or any periods of 17 weeks. Where a night worker has worked for the employer for less than 17 weeks, the reference period is the time that has lapsed since he started work.

The average normal hours of work for each 24 hours during a reference period are calculated using the following formula:-

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

Where:

A = number of normal working hours during the reference period;

B = number of days during the reference period; and

C = total number of hours during the reference period comprised in weekly rest periods, divided by 24.

A night worker's normal hours of work are his normal working hours that applies to him.

An employer must ensure that no night worker whom he employs whose work involves special hazards, heavy physical work or mental strain (defined as being identified as such in a collective or work force agreement or is recognised as a 'significant risk' in the risk assessments made by the employer under the Management of Health and Safety at Work Regulations 1999 (in Northern Ireland, the Management of Health and Safety at Work Regulations (Northern Ireland) 1992)) for more than eight hours in any 24 hour period.

Health assessment and transfer of night workers to day work (Regulation 7)

An employer must not transfer an adult worker to night work unless he has ensured that the worker will have the opportunity of a free health assessment before he takes up the assignment or the worker had a health assessment before being assigned to night work and the employer has no reason to believe that the assessment is no longer valid. The employer will ensure the worker has the opportunity for a free health assessment prior to taking up the assignment.

An employer is not permitted to assign a young worker to work between 22.00 and 06.00 hours (known as the 'restricted period') unless he has ensured that the young worker will have the opportunity of a free assessment of his health and capacities before he takes up the assignment, or the young worker had a health/capacities assessment before being assigned to night work and the employer has no reason to believe that the assessment is no longer valid. These requirements do not apply where a young worker is assigned to do work of an exceptional nature.

The employer shall also ensure that each night (adult or young) worker has the opportunity of a free health assessment at regular intervals of whatever duration may be appropriate. The requirements do not apply in a case where the work a young worker is assigned to do is of an exceptional nature.

'Free' assessments are those at no cost to the worker. The findings of an assessment are not to be disclosed to anyone except the worker to whom it relates unless he has given his consent in

writing to the disclosure or the disclosure is confined to a statement that he is fit to undertake or take up an assignment. Where a registered medical practitioner has advised an employer that an employed night worker is suffering from health problems which he considers to be connected to the fact that the worker is undertaking night work, the employer shall transfer the worker to work for which he is suited and which he can undertake during periods so that he will cease to be a night worker.

Pattern of work (Regulation 8)

Where an employer organizes a pattern of work which is such as to put the health and safety of a worker at risk, particularly because the work is monotonous or the work rate is pre-determined, the employer must ensure that the worker is given adequate rest breaks.

Records (Regulation 9)

The employer is to keep records to ensure the requirements in Regulation 7 are complied with, and retain them for two years from the date on which they were made, to show that:-

- the limits on the maximum weekly working time;
- the length of night work;
- the limitations on night work for those whose work involves special hazards or heavy physical or mental strain; and
- the requirements on health and health/capacities assessments for adult and young night workers respectively are being complied with.

Daily rest (Regulation 10)

An adult worker is entitled to a rest period of not less than eleven consecutive hours, and a young worker is entitled to a rest period of not less than twelve consecutive hours in each 24 hour period. However, the minimum rest period for a young worker may be interrupted in the case of activities involving periods of work that are split up over the day or of short duration.

Weekly rest (Regulation 11)

An adult worker is entitled to an uninterrupted rest period of not less than 24 hours in each seven day period. Alternatively, if the employer so determines, an adult worker shall be entitled to either two uninterrupted rest periods of not less than 24 hours or one uninterrupted rest period of not less than 48 hours in each 14 day period. These periods of seven or fourteen days begin at the start of each week or every other week respectively, starting at midnight between Sunday and Monday. For adult workers, any daily rest entitlements are not to be used in calculating weekly rest periods, except where this is justified by objectives or technical reasons concerning the organisation of work.

A young worker is entitled to a rest period of not less than 48 hours in each seven day period.

The young workers' rest periods may be interrupted in the case of activities involving periods of work that are split up over a day or are of short duration, or may be reduced where this is justified by technical or organisation reasons, but not to be less than 36 consecutive hours.

Rest breaks (Regulation 12)

Where an adult worker's daily time is more than 6 hours, he is entitled to a rest break, the duration and terms of which are to be as set out in workplace or collective agreement, but in any event for an uninterrupted period of not less than 20 minutes, which he is entitled to spend away from his workstation if he has one.

Where a young worker's daily working time is more than four and a half hours, he is entitled to a rest break of not less than 30 minutes (consecutive, if possible), also away from his workstation if he has one. If on any day a young worker works for more than one employer, the number of hours worked for each is to be aggregated to determine the rest breaks.

Annual leave (Regulation 13)

Workers are entitled to annual leave once they have been employed for 13 weeks as follows:-

- In any leave year beginning on or before 23rd November 1998 - 3 weeks.
- In any leave year beginning after 23rd November 1998 but before 23rd November 1999 - 3 weeks + a proportion of a fourth week in proportion to the preceding year.
- In any leave year beginning after 23rd November 1999 - 4 weeks.

When calculating leave entitlements for parts of years, fractions of days are to be rounded up to whole days. The leave may be taken in installments but only in the leave year in which it is due and may not be replaced by a payment in lieu except where employment is terminated.

Compensation related to entitlement to leave (Regulation 14)

Where a worker's employment is terminated during the course of his leave year and on the date in which the termination takes effect the proportion of leave entitlement taken differs from the proportion of the leave year which has expired, the employers must make a payment in lieu, determined by the following formula, in respect of the proportion of leave not taken

$$(A \times B) - C$$

Where:

A = period of leave to which the worker is entitled;

B = proportion of the worker's leave year which expired before the termination date; and

C = period of leave taken by the worker between the start of the leave year and the date of determination.

If the period of leave taken exceeds the entitlement at the date of the termination, a relevant agreement may provide that the worker compensates the employer, either by payment or by undertaking additional work or otherwise.

Dates on which leave is taken (Regulation 15)

A worker may take leave on such days as he may elect by giving notice of all or part of his entitlement, including part days, to his employer. The employer may require the worker to take leave or not on particular days by giving notice, which may relate to part or all of the leave and specify the days where leave must or not be taken. The notice must be given by the party before the relevant date, giving twice as many days in advance of the earliest day as the number of days/part days to be taken or, in the case of an employer requiring leave not to be taken, as many days in advance of the earliest day/part day specified. These rights or obligations may be varied or excluded by a relevant agreement.

Payment in respect of periods of leave (Regulation 16)

A worker is entitled to be paid for periods of annual leave at his weekly rate in respect with each week and leave, as determined by the Employment Rights Act 1996.

Entitlements under other provisions (Regulation 17)

Where workers are entitled to rest periods, rest breaks or annual leave both under these Regulations and under a separate provision (including a provision of his contract) they may not

exercise the two rights separately but may take advantage of whichever is the more favorable.

PART III: Exceptions

A number of sections are excluded from some or all of the provisions of these Regulations, including:

- air, road, rail, sea, inland waterway and lake transport
- sea fishing
- other work at sea
- activities of doctors in training
- where characteristics peculiar to a specified service (eg the armed forces, police, civil protection services) conflict with these regulations
- domestic servants in a private household
- managing executives or other persons with autonomous decision-taking powers where the duration of his working time is not measure or predetermined or can be determined by the worker themselves.
- family workers
- workers officiating at religious ceremonies in churches and religious communities.
- other special cases (as set out under the notes to Regulation 4)

Shift workers (Regulation 22)

Some parts of Regulations 10 and 11 do not apply to shift workers in respect of daily rest periods, weekly rest periods, or periods of shift work over a day, e.g. cleaners.

A collective agreement or a workforce agreement (Regulation 23)

It may modify or exclude the application of regulations 6(1) to (3) and (7), 10(1), 11(1) and (2) and 12(1), and for objective or technical reasons or reasons concerning the organisation of work, modify the application of regulation 4(3) and (4) by the substitution, for each reference to 17 weeks, of a different period, being a period not exceeding 52 weeks, in relation to particular workers or groups of workers.

Compensatory rest (Regulation 24)

Where the application of any provision of these Regulations is excluded by regulation 21 or 22, or is modified or excluded by means of a collective agreement or a workforce agreement under regulation 23(a), and a worker is accordingly required by his employer to work during a period which would otherwise be a rest period or rest break, his employer shall wherever possible allow him to take an equivalent period of compensatory rest, and in exceptional cases in which it is not possible, for objective reasons, to grant such a period of rest, his employer shall afford him such protection as may be appropriate in order to safeguard the worker's health and safety.

PART IV: Miscellaneous

Enforcement (Regulation 28)

The Health and Safety Executive is the enforcing authority for these Regulations except on those premises where the local authority is the enforcing authority under the Health and Safety (Enforcing Authority) Regulations 1998. Any function of the Health and Safety Commission under the 1974 Act which is exercisable in relation to the enforcement by the Health and Safety Executive of the relevant statutory provisions shall be exercisable in relation to the enforcement by the Executive of the relevant requirements.

Offences (Regulation 29)

An employer who fails to comply with any of the relevant requirements shall be guilty of an offence. Offences and penalties (fines) are in line with those already applicable under the Health and Safety at Work etc. Act 1974 (in Northern Ireland, the Health and Safety at Work (Northern Ireland) Order 1978). An employer guilty of an offence shall be liable to a fine not exceeding the statutory maximum;

Remedies (Regulation 30)

A worker may complain to an Employment Tribunal where his employer has refused him certain rights or to pay him amounts due under these Regulations. Such a complaint must be made within three months of the date on which the right should have been exercised (or within six months if in the Armed Forces), or such further period as the tribunal considers reasonable.

Where the tribunal finds a complaint well founded it shall make a declaration to that effect and may require the employer to pay compensation to the worker, taking into account both the employer's default in refusing the worker's exercising of his rights and any loss sustained by the worker.

Right not to suffer detriment (Regulation 31)

This Regulation adds an extra section (45A) to the Employment Rights Act 1996 and makes other amendments to that Act.

Unfair dismissal (Regulation 32)

This Regulation adds an extra section (101A) to the 1996 Act and makes other amendments to that Act.

Conciliation (Regulation 33)

This Regulation amends section 18(1) of the Employment Tribunals Act 1996.

Appeals (Regulation 34)

This Regulation amends section 21 of the Employment Tribunals Act 1996.

Restrictions on contracting out (Regulation 35)

This is the longest of the Regulations, dealing with industrial relations, tribunals, agreements, independent advisers and so on.

PART V: Special Classes of Person

There are particular provisions in respect of:

- Agency Workers (Regulation 36)
- Crown Employment (Regulation 37)
- Armed Forces (Regulation 38)
- House of Lords staff (Regulation 39)
- House of Commons staff (Regulation 40)
- Police service (Regulation 41)
- Non-employed trainees (Regulation 42) *
- Agricultural Workers (Regulation 43)

*a person receiving relevant training otherwise than under a contract of employment shall be

regarded as a worker and the person whose undertaking is providing the training shall be regarded as his employer.

SCHEDULE I: Workforce Agreements

Conditions for a workforce agreement are that:

- It is to be in writing
- It has effect for a maximum of five years
- It applies either to all relevant members of the workforce or to all those who belong to a particular group
- It is signed — by the representatives of the workforce or group, or, if the employer employs twenty or less, appropriate representatives, or a majority of the employed workers.
- It was provided prior to signature in test form and with any such guidance as the workers might reasonably require so as to fully understand it.

SCHEDULE II: Workers employed in agriculture

(Not Applicable)

Useful Information:

Initial enquiries should be to ACAS (the Arbitration, Conciliation and Advisory Service):

ACAS Helpline:

0300 123 1100 Monday-Friday, 8am-8pm and Saturday, 9am-1pm

ACAS Online:

<http://www.acas.org.uk/index.aspx?articleid=1339>

Enforcement

Enforcement responsibilities are split between HSE, Local Authority Environmental Health departments, CAA, VOSA, ORR and the Maritime and Coastguard Agency

References

The Working Time Regulations 1998:

<http://www.legislation.gov.uk/uksi/1998/1833/contents/made>

The Working Time (Amendment) Regulations 2003:

<http://www.legislation.gov.uk/uksi/2003/1684/contents/made>

The Working Time Regulations (Northern Ireland) 1998:

<http://www.legislation.gov.uk/nisr/1998/386/contents/made>

The Working Time (Amendment) Regulations (Northern Ireland) 2003

<http://www.legislation.gov.uk/nisr/2003/119/made/data.pdf>

The Working Time Regulations information page

<http://www.hse.gov.uk/contact/faqs/workingtimedirective.htm>