



# Home Office Circular

**HOC 54/1999**

**Date 11 November 1999**

**This circular is about:**

**Guidance on how Special Constables are affected by the Working Time Regulations 1998**

**From: POLICE PERSONNEL AND TRAINING UNIT**

**Date for implementation: 1 October 1998** This cancels HOC: 54/1998

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**This circular is addressed to:**

**Chief Officers of Police**

**Copies are being sent to:**

**Clerks to Police Authorities, Specials Liaison Officers and Force Commandants**

*Dear Chief Officer*

## **WORKING TIME REGULATIONS : SPECIAL CONSTABLES**

### **Introduction**

1. This circular, which replaces Home Office circular 54/1998, gives general guidance on how special constables are affected by the Working Time Regulations 1998 (SI 1998 No 1833) which came into force on 1 October 1998. It does not seek to comment on all the ramifications of the legislation.

2. The principal amendments/additions to the guidance contained in HOC 54/1998 are:

- that a police force is **not** required under the Regulations to make any contact with a special constable's employer;
- that a police force is required to keep records of the duty hours performed for a minimum of two years but it is recommended that records are kept **six** years;
- that a special is entitled to certain daily or weekly rest periods or rest breaks but may choose not to take them; and
- that in specific circumstances, where police duty inevitably conflicts with the Regulations, the Regulations in respect of the average 48 hours a week limit and rest periods and breaks do not apply.

3. The Regulations (WTR) implement the Working Time Directive and the Young Workers Directive (in respect of adolescent workers) which are EC Directives forming part of measures aimed at improving health and safety at work. Regulation 41 states that for the purposes of the Regulations the holding of the office of constable shall be treated as employment. Therefore, the WTR apply to special constables unless any particular circumstances of a police operation inevitably conflict with the provisions of the Regulations, in which case those Regulations in respect of the average 48 hours a week limit and rest periods and breaks do not apply - Regulation 18(c) refers.

### ***Principal requirements of the Regulations***

4. The provisions of the WTR which may affect special constables:

- set a maximum average working week of 48 hours, excluding daily rest periods (Regulation 4);
- provide a rest period of not less than 11 consecutive hours in a 24-hour period (Regulation 10);
- provide an uninterrupted rest period of not less than 24 hours in a 7-day period (Regulation 11);
- set a limit of 8 hours night work in a 24-hour period (Regulation 6(7));
- entitle a worker, whose normal working time exceeds 6 hours, to a rest break (Regulation 12); and
- require an employer to keep adequate records for two years to show whether the limit on the hours of the working week is being complied with (Regulation 9).

5. It should be noted that Regulation 5 permits a worker to agree with their employer in writing that the 48 hour per week limit should not apply to that worker. Workers with more than one employment would need to have agreements with each employer.

### ***Workers with more than one employment***

6. The WTR apply to special constables who are in private employment as if they are workers with more than one employment.

7. The Department of Trade and Industry (DTI) and Health and Safety Executive guidance says that Regulation 4(2) requires employers to take all reasonable steps to ensure that workers do not exceed an average of 48 hours of weekly working time. Such steps would include enquiring of the worker whether he was working elsewhere (or requesting that they be notified on the worker getting other work) and, if so, adjusting working arrangements accordingly. If a worker were working more than an average of 48 hours per week in total, ie the aggregate of the hours worked for both employers, each employer may wish to agree with the worker that he is willing to work that number of hours per week. It should be noted that an employer has no right to try to restrict the number of hours a worker works for another employer (or performs duty for the police in the case of a special constable) in order to restrict the aggregated hours to an average of 48 per week.

### ***Entitlements***

8. In addition to the maximum of 48 hours per week, the WTR provide entitlements to certain rest periods and breaks. These must be made available to special constables, subject to the circumstances described in paragraph 3 above, but a special constable may choose to waive those entitlements. Furthermore, the WTR do not restrict the activities of a worker during those breaks. For example, during a rest period from employment of not less than 11 consecutive hours in a 24-hour period, a special constable may perform police duty and vice versa.

### ***Guidance for forces***

9. The following guidance not only ensures that forces comply with the Working Time Regulations but also recommends that further steps are put in place to ensure the health and safety of special constables.

### **The Agreement**

10. Where special constables wish to exceed the average of 48 hours per week when their hours of employment are aggregated to the hours of police duty, the force should ask the specials to sign written agreements with the force to that effect. Copies of the agreements should be kept by the force and the specials. An example of such an agreement is annexed to this circular. Specials should be advised to consider drawing up similar agreements with their employers.

11. It would also be advisable to ask specials to confirm the average numbers of hours per week they work for their employers and record this data.

### **The Employer**

12. The force is **not** required to consult or contact a special's employer. But it is recommended that specials be advised to notify their employers of their voluntary work for the police service and the number of hours performed per week. This will assist an employer to discharge its duty of care towards its employees.

Recording hours of duty

13. It is recommended that the number of hours duty performed by specials is recorded and that records of kept for at least six years because a civil claim, for work induced stress for example, can be made up to three years after the effect of the symptoms alleged in the claim become apparent.

*Duty of care*

14. Chief officers have a duty of care to their officers and the public, and forces should already have in place systems to monitor the number of hours performed by special constables to ensure that they are not asked to undertake long hours of duty after a full day's work in their private employment. Indeed, managers should first assess whether a special is fit to do any duty at all following a full day or week at work. Such systems may also satisfy an employer who might be concerned about an employee's service as a special constable causing the individual to work very long hours.

15. In any event, a special constable should not be encouraged to exceed the 48 hours limit unless they clearly wish to do so and the force is satisfied that the health and safety of the officer is not adversely affected. Indeed in exercising the duty of care a force may consider it appropriate to restrict the number of hours duty performed by a special if it is believed that the special may endanger the health and wellbeing of either the individual or others who may be affected by their actions

*Yours faithfully*

A handwritten signature in black ink, appearing to read 'Robin Ford', with a large, sweeping flourish above the name.

**ROBIN FORD**

**EXAMPLE**

..... POLICE / CONSTABULARY

I hereby agree that the 48 hour limit on average weekly working time shall not apply in my case.

I understand that this agreement:

\* is for an indefinite period

\* will end on

Date:

\* *delete as appropriate*

but I can terminate it after giving 7 days' notice of my intention to do so or such other period of notice as I may agree with my line manager.

I also agree to ensure that:

- my holding the office of special constable will in no way adversely affect my ability to perform in my normal occupation to the standard required by my employer.
- I will not jeopardise the safety of myself, my colleagues in the police service, or the public by reporting for duty when not in a fit state owing to an inadequate period of rest prior to the commencement of that duty.

Signed

Name

Grade

Number

Date

Copies of this agreement and any subsequent amendments should be retained by the officer and their line manager (a copy should be retained on the officer's personal file).