

Executive Summary to NPIA Circular 03/2011

The Working Time Regulations 1998 and the Special Constabulary

1. Following requests from police forces seeking clarity over the legal status of Special Constables in relation to the Working Time Regulations 1998 SI 1998/1833 (WTR), this circular is being issued to provide updated guidance on the application of the WTR to the Special Constabulary. The circular has been produced by the NPIA, and its contents agreed by the Special Constabulary National Consultative Group. It supersedes the guidance contained in Home Office Circular 54/1999.

2. The WTR implement the European Working Time Directives within UK legislation. Volunteer police officers are expressly included within the scope of this Directive, and so Special Constables are classified as workers under the WTR.

3. Since the WTR were implemented within UK law in 1998, there have been several updates to case law within this area. Most relevant has been the case of the Commission of the European Communities v United Kingdom [2006] ECR I-7471 which clarified the obligation on Member States to take the necessary measures to ensure that every worker is entitled to minimum daily and weekly rest periods.

4. The content of this circular updates the legal position as it currently stands in light of these aspects of case law. It is intended as a means of supporting and assisting forces by highlighting particular areas and issues of relevance relating to members of the Special Constabulary, rather than a way to prescribe a rigid set of procedures to which police forces must adhere. The circular covers aspects of the legislation relevant to the Special Constabulary in recognition of its unusual status as a volunteer body whose members are classified as workers under the WTR.

5. Many police forces may already have necessary procedures in place to adequately manage their responsibilities as employers under this legislation. However, it will be in the interests of all forces to familiarise themselves with the details contained in this circular to support compliance.

6. The emphasis that forces should place on the application of the WTR to their Special Constables is to look to achieve an appropriate balance between better safeguarding the safety of officers and the public by complying with the requirements of the WTR, while also continuing to provide an effective policing service. It is considered this can be achieved through the proportionate management of the risks involved in ensuring these two goals are mutually compatible. The circular aims to show how these could be achieved, wherever possible, with a minimum of bureaucracy.

7. One particular issue of contention identified during discussions with key policing stakeholders has been the perceived difficulties of applying the mandatory rest periods of the WTR to the Special Constabulary - notably the requirement for an 11-hour rest period to be taken by an individual during any 24 hours within which work is carried out.

8. The NPIA have discussed the particular issue of rest-period requirements with officials at the Department for Business Innovation and Skills (BIS). Following these discussions a possible means has been identified whereby an element of flexibility can be used by forces in meeting this requirement, whilst maintaining compliance with the WTR. This can be achieved through implementing workforce agreements (applying to the Special Constabulary as a distinct group of workers within a police force) to allow compensatory rest to be taken by Special Constables when their working time contravenes the minimum daily and weekly rest periods. This provision should allow police forces to maintain compliance with the WTR with a minimal impact upon the operational capabilities of the Special Constabulary. Further information and a sample version of a possible Workforce Agreement is contained within the text of the circular.

9. The following circular is divided into sections addressing each of the main provisions of the WTR that could affect the Special Constabulary. However, it is not intended as an exhaustive guide to the WTR, neither is it intended to outline any defined procedure that forces must apply to their working arrangements for Special Constables. As such, forces may wish to seek their own legal advice in relation to the legislation contained therein. This circular provides updated information and guidance which forces should consider in relation to their Special Constables.

10. Police forces should note that the responsibility for complying with the WTR will rest with individual police forces, as does the local structure and priorities of the Special Constabulary. Forces are advised to consider the details contained in this circular and the implications for the management of the Special Constabulary locally¹.

¹ In the application of this circular upon members of the Special Constabulary in England and Wales, forces are subject to The Equality Act 2010. The public sector duties place on forces legal obligations to eliminate discrimination, harassment and victimisation, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Forces are expected to comply with The Public Sector Equality Duty in the application of this guidance.