Working Time Provisions

Introduction
This Guideline sets out the working time provisions of The Organisation of Working Time Act 1997. The Act was drawn up to comply with an EU Health and Safety Directive, and it is important to bear this in mind when considering the purpose of the legislation.

The Organisation of Working Time Act, 1997 sets out statutory rights for employees in respect of rest, maximum working time and holidays. In specified circumstances certain categories of employees are excluded or exempted from all, or parts of the Act’s provisions. Otherwise, all employees are covered. Part III of the Act deals with Public Holidays and Annual Leave (See SFA Guideline 12).

LEGAL BACKGROUND
A number of Ministerial Regulations have been made dealing with various aspects of the Act. The Labour Court has produced guidelines to its functions and procedures under the legislation, and the Department of Enterprise, Trade and Employment has prepared important codes of practice on Compensatory Rest Periods and also on Sunday Working in the Retail Trade.

SCOPE OF THE ACT – WHO IS COVERED?
With specified exceptions, the working time rules apply to:

- all employees, apprentices and ‘outworkers’ working under a contract of employment;
- State employees, including civil servants, officers and servants of local authorities, health boards, harbour authorities and vocational education committees, and
- agency workers. The person who is liable to pay the worker’s wages is deemed to be the worker’s employer for the purpose of the legislation. This would normally be the employment agency but may be the client, if the client is liable to pay the worker’s wages.

The following categories of employees are excluded from the provisions regulating daily rest, rest breaks at work, weekly rest and night working, subject to compensatory rest. Such employees are covered by the maximum average working week of 48 hours and Part III of the Act which regulates holiday entitlements.

Excluded Employees
Members of the Garda Siochana and Defence Forces are totally excluded from the provisions of the Act.

A person engaged in the following activities is excluded from Part II of the Act, which governs matters relating to working time. They are still covered by Part III which regulates holiday entitlements.

- Persons engaged in sea fishing,
- Other work at sea, (excluding offshore work)
- Activities of a doctors in training,
- Any person living with and working for their relative, where the living and working area are treated as the same location,
- persons who determine their own working time (not including any core minimum time stipulated by the employer in an employment contract). The employee does not have to be fully autonomous with regard to their hours, but must have a definable degree of discretion over their working hours. This would typically apply to management and executive staff.

Under the Act, certain activities are expressly excluded, whilst many other activities are covered by exemptions, which, whilst not excluding employees from the provisions of the legislation, allows the application of such provisions to be varied.
Mobile workers: defined as 'any worker employed as a member of a travelling or flying personnel by an undertaking which operates transport services for passengers or goods by road, air or inland waterway'; This means that the 48 hour working week will apply to any mobile worker NOT already covered by the Tachograph Regulations or the AETR (an international hauliers agreement).

Offshore workers: includes workers on offshore installations (including drilling rigs) or connected with mineral exploration/extration.

The following categories are exempt from the provisions regulating daily rest, rest breaks at work, weekly rest, and night working, subject to compensatory rest but are covered by provisions relating to holiday entitlements:

- The carriage of passengers on regular urban transport services,
- Persons working in railway transport whose activities are intermittent or who spend their working time on board trains or whose activities are linked to transport timetables and to ensuring the continuity and regularity of traffic.

The following categories are excluded from the provisions regulating daily rest, rest breaks at work, weekly rest, maximum working time and night working, but are covered by provisions relating to holiday entitlements:

- Persons employed in the civil protection services, e.g. prison officers, retained fire fighters, marine service;
- Persons performing mobile road transport activities, as defined in Directive 2002/15/EC (i.e. workers covered by the tachograph regulations);
- Mobile staff in civil aviation as defined in the annex to Directive 2000/79/EC.

Exempted Employees

An exemption does not function in the same way as an exclusion, which effectively removes individuals from coverage of the legislation. Where provided, an exemption from the Act allows an employer not to apply certain provisions of the legislation subject to conditions on ‘compensatory rest’. The Act details a number of exemptions in relation to specific activities and circumstances. It should be noted that under certain circumstances where it is not possible to give ‘compensatory rest’, it will be acceptable for an employer to provide the employee concerned with ‘other compensatory arrangements’. The Act refers to such arrangements as ‘appropriate protection’.

Shift changeover exemption

The daily rest and weekly rest provisions will not apply to a person employed in shift work, each time he or she changes shift.

Split shift exemption

The daily rest and weekly rest provisions will not apply to a person employed in an activity consisting of periods of work spread out over the day.

Unforeseeable circumstances exemption

An employer will not be obliged to comply with the daily rest, rest break, weekly rest, night work and information on working time provisions where:

- due to exceptional circumstances or an emergency (including an accident or the imminent risk of an accident) the consequences of which could not have been avoided despite the exercise of all due care,
- or
- due to the occurrence of unusual and unforeseeable circumstances beyond the employer’s control, it would not be practicable for the employer to comply with the provision concerned.

Exemption by Ministerial Regulation

In the Regulations establishing these exemptions, it is specified that the employee will not be covered by an exemption if he/she ‘is not engaged wholly or mainly in carrying on or performing the duties of the activity concerned’, if they are covered by a Joint Labour Committee, or if they are a ‘Special Category’ night worker (i.e. nightworkers who are engaged in work which involves specific hazards or heavy mental or physical strain).

To avail of a Ministerial exemption an organisation has to assess whether it is covered by the General Exemptions regulations. There is no need to specifically apply to the Minister or his/her Department to be covered by an exemption once an organisation or its employees are wholly or mainly involved in one or more of the activities listed below.

Organisation of Working Time (General Exemptions) Regulations, 1998

Employees exempted by regulation are those engaged in the following activities:

(a) An activity in which the employee is regularly required by the employer to travel distances of significant length, either from his or her home to work, or from one workplace to another.

(b) Persons involved in security and surveillance activities requiring a permanent presence in order to protect property and persons, in particular security guards or caretakers.

(c) Activities of a seasonal nature or where there is a foreseeable surge in activity. Also exempt are employees who are directly involved in ensuring the continuity of production or provision of services, particularly in the following:

- Services relating to the reception, treatment and/or care provided by hospitals, residential institutions and prisons,
- Provisions of services at a harbour or airport;
- Production in the Press, Radio, Television, Cinematographic production, postal and telecommunications services;
- Provision of ambulance, fire and civil protection services;
- Gas, water and electricity production, transmission and distribution, household refuse collection and incineration plants;
- Industries which cannot be interrupted on technical grounds;
- Research and development activities;
- Agriculture;
- Tourism.

Exemption by Collective Agreement
Any sector or business may be exempted from the statutory rest times by collective agreement. Collective agreements to vary the rest times may be drawn up between management and a trade union or other accepted body under the Act. Such agreements must be approved by the Labour Court. In addition employees covered by registered employment agreements or employment regulation orders may be exempted.

Non Unionised employments cannot conclude a collective agreement.

COMPENSATORY REST
All exemptions are subject to equivalent compensatory rest being made available to the employee. In these circumstances rest may be postponed temporarily and taken within an adjacent time-frame. Basically this ensures that although employers may operate a flexible system of working, employees must not lose out on rest. In determining when to allocate compensatory rest, consideration should be given to the circumstances in the individual place of employment and the health and safety requirements for adequate rest. This includes the type of work done (manual/physical work), the location of the job (i.e. in a crane/on a scaffold) and the employee's distance from home, etc. The Department of Enterprise, Trade and Employment, through the Labour Relations Commission, has produced a 'Code of Practice on Compensatory Rest' which sets out guidelines on the application and requirements of this provision in the legislation.

APPROPRIATE PROTECTION
If, for justifiable reasons, an employer cannot provide compensatory rest, the employer must make adjustments to the employee's conditions of employment in order to compensate the employee. What exactly constitutes appropriate protection is not specified in the Act. It cannot mean:
- The granting of monetary compensation to the employee.
- The provision of any other material benefit to the employee, other than benefits or amenities that would improve the physical conditions under which the employee works. This can be taken to mean that the use of vouchers or presents will not be allowed.

Some examples, which are by no means exhaustive, of what might constitute 'appropriate protection' have been provided, these are:
- Refreshment facilities, recreational and reading material.
- Appropriate facilities/amenities such as television, radio and music.
- Alleviating monotonous work or isolation.
- Transport to and from work.

DEFINITION OF WORKING TIME & REST PERIODS
Working time is defined as any time that the employee is:
- at his/her place of work or at his/her employer's disposal,
- at his/her place of work or at his/her employer's disposal, and,
- is carrying on or performing the activities or duties of his/her work.

The Act defines a rest period as any time that is not working time.

Working Time for Mobile Workers
Working time for mobile workers means the time during which the mobile worker is at their workstation, at the disposal of their employer and exercising their functions or activities. Working time will include driving, loading and unloading, technical maintenance and all other work necessary for the safety of the vehicle and its passengers.

However, it will not include periods of availability where the mobile worker is not required to be at their workstation, but must be available to answer any calls to start, or resume work. The worker should know of these periods of availability in advance, i.e. either before departure or just before the actual start of the period in question. The Regulations specifically refer to time spent accompanying a vehicle being transported by ferry or train, waiting at frontiers, or due to traffic prohibitions, as periods of availability. Time spent by a mobile worker who is working as part of a team, travelling, but not driving, shall also be a period of availability for that mobile worker.
THE MAIN PROVISIONS OF THE ACT

MAXIMUM WEEKLY WORKING TIME

The legislation limits the maximum average working week to 48 hours. Weekly working time can be averaged out over a 4, 6 or up to 12 month reference period. Working time is defined as net working time i.e. exclusive of breaks, on call or stand by time.

Reference Periods
A reference period is a consecutive period of time that does not include the following:

- Any period of statutory annual leave
- Any period of sick leave
- Leave granted under the Maternity Protection Acts, 1994 and 2004
- Leave granted under the Adoptive Leave Act, 2005
- Leave granted under the Parental Leave Acts, 1998 and 2006 including Force Majeure leave

4 Month reference period
Weekly working time can be calculated over a basic reference period of 4 months, this applies to all activities.

6 Month reference period
A 6 month reference period can be utilised if the organisation or employee is involved in an activity that is exempted by Ministerial regulation under the General Exemptions (see above); or

- where due to exceptional circumstances or an emergency (including an accident or the imminent risk of accident), the consequences of which could not have been avoided despite the exercise of all due care, or due to unusual and unforeseeable circumstances beyond the employer’s control, it would not be practicable for the employer to comply with a 4 month averaging period.

Up to 12 month reference period
The reference period may be extended up to a period of 12 months where this is specified in a registered collective agreement and in an activity where:

- the weekly working hours may vary on a seasonal basis, or
- where it would not be possible to comply with either a 4 or 6 month reference period for technical, objective or work organisational reasons.

A non unionised employment cannot average over a period greater than four months, unless covered by an exemption listed in the General Exemptions, when it then may avail of a 6 month averaging period. The 12 month averaging period cannot be applied by non-unionised employments.

References for Mobile Workers
Provided that the maximum average working week of 48-hours is still observed over the appropriate reference period, the maximum working week can be increased to a 60-hour absolute maximum in any single week.

The reference period will apply to either:

- successive periods of 17 weeks where a collective agreement, employment regulation order or a registered employment provides;

- or

- where there is no such provision to any period of 17 weeks as long as the employer gives notice in writing to the employee that she intends to apply this provision;

- or

- in all other cases using a fixed calendar option which for 2006 ends at midnight between 30 April 2006 and 1 May 2006. Thereafter it will begin at midnight on the nearest Monday morning on, or after, 1 January, 1 May and 1 September.

REST BREAKS

Daily Rest
Under the legislation an employee is entitled to 11 hours consecutive rest in each 24 hour period. This effectively means that having completed a day’s work an employee cannot report back to work until 11 consecutive hours have elapsed. Time spent by an employee on ‘standby’ or ‘on call’ is not considered working time. However, an employee who is ‘called-out’ would be considered to be working. Such ‘Call outs’ will therefore break consecutive rest if the employee has not had 11 consecutive hours rest before the call out, or if she cannot avail of the 11 consecutive hours after the call out.

Daily Rest Breaks for Mobile Workers
Mobile workers cannot work for a period of more than six hours without a break. Where the working time is between six and nine hours, the mobile worker is entitled to a break of at least 30 minutes. Where the time worked exceeds nine hours, the mobile worker is entitled to a break of at least 45 minutes. Each break should be given in blocks of at least 15 minutes each.

Rest Breaks at Work
An employer must not require an employee to work for more than 4.5 hours without a break of 15 minutes. If the hours of work are greater than 6 hours an employee’s total rest break entitlement is 30 minutes which can include the 15 minute break already referred to. Rest breaks must not be given at the end of the day. There is no requirement for paid rest breaks and such breaks are not considered as ‘working time’.
Rest Breaks for Shop Employees

There are special provisions governing the daily rest breaks of retail workers which have been authorised by Ministerial regulation, (S. I No 57 of 1998). It covers any retail trade or business, not including hotels, the preparation of food including catering operations or licensed premises. For any shop employee whose hours of work include the hours from 11.30am to 2.30pm, and who works more than 6 hours, the minimum duration of the break shall be one hour. The one hour break should take place between the hours mentioned and cannot be granted at the end of the working day. (These special provisions for retail workers relate back to an entitlement granted under the Shops Acts, 1938.)

Weekly Rest Period

An employee is entitled to a period of 24 hours consecutive rest in each seven day period. This period can be averaged over 14 days. If the weekly rest day is preceded by a working day then the employee concerned must first receive his/her daily rest entitlement of 11 hours consecutive rest. This effectively means that such an employee is entitled to 35 hours consecutive rest. The 35 hours rest can be shortened to 24 hours for objective technical reasons relating to the work concerned.

Unless otherwise provided in a contract of employment an employee will be entitled to have Sunday off as his/her weekly rest period. If weekly rest is averaged over 14 days at least one rest day must be a Sunday.

These are just the minimum weekly rest periods legislated for and of course there is nothing to prevent employers providing longer weekly breaks.

For employees involved in activities covered by an exemption the rest breaks can be varied subject to granting compensatory rest.

SUNDAY WORKING

Employees who are required to work on Sundays should have such a requirement stated in their contracts of employment. Employees who are contracted to work on a Sunday have to be compensated in some way. Where the minimum value of compensation to be given to an employee for working on Sunday is not specified in a collective agreement, then the Labour Court or Rights Commissioner can hear a dispute in relation to non-compliance. The amount of premium will depend on what is paid in comparable employment’s. These comparable employment’s have not been specified but according to the Department of Enterprise, Trade and Employment it will ‘be equivalent to the closest applicable collective agreement which applies to the same or similar employment and which provides for a Sunday premium’.

The premium can be in the form of:
- added payment
- time off in lieu
- a portion of shift premium
- unsocial hours premium

The Department of Enterprise, Trade and Employment through the Labour Relations Commission has produced a ‘Code of Practice on Sunday Working in the Retail Trade’.

NIGHT WORK

For the purposes of this Act, night time is defined as the period between midnight and 7am. Night work is taken to mean any work carried out during the defined night time hours.

Night Worker

A night worker for the purposes of this Act is defined as an employee,
- who normally works at least 3 hours of his or her daily working time during night time, and,
- the number of hours worked by the employee concerned during night time in each year equals or exceeds 50% of the total number of hours worked by him or her during that year.
Night Work for Mobile Workers
The definition of night work for road transport workers will be any period of time worked between 00.00 hours and 04.00 hours in respect of vehicles used for carrying goods and between 01.00 and 05.00 for vehicles used for carrying passengers. If any work is performed during night time, the total hours worked in each 24-hour period cannot exceed 10 hours. This, however, may be extended for objective, technical reasons or work reasons by a collective agreement, an employment regulation order, or a registered employment agreement.

Night Work Restrictions
An employer cannot allow an employee who is a night worker to work more than an average of 8 hours per 24 hour period calculated over a reference period of 2 months.

Reference Period For Night Work
As mentioned above the reference period for night work is 2 months; however, this reference period can be extended to a length of time specified in a registered collective agreement. The reference period for night work time will not include:
- the weekly rest provision;
- statutory annual leave;
- leave granted under the Maternity Protection Acts, 1994 and 2004;
- leave granted under the Adoptive Leave Act, 2005;
- leave granted under the Parental Leave Acts, 1998 and 2006;
- leave granted under the Carer’s Leave Act, 2001;
- sick leave.

Special Category Night Worker Restrictions
An employer cannot allow an employee who is a special category night worker to work more than 8 hours in each period of 24 hours. This is an absolute limit of 8 hours with no averaging possible. A special category night worker is a night worker in respect of whom an assessment has been carried out by his/her employer under Section 28(1) of the Safety, Health and Welfare at Work Act, 2005.

Special Category Night Workers - Safety Regulations
The Safety, Health and Welfare at Work (Night Work and Shift Work) Regulations, place obligations on employers employing Night Workers and Shift Workers.

Special category night workers must have a risk assessment carried out to identify the risks involved in the work to determine if that work involves special hazards or heavy physical or mental strain.

All night workers, whether they are special category or not, are entitled to a health assessment which must be carried out before employing an employee to do night work and at regular intervals thereafter.

The assessment must be made available free of charge. (Employees who may be entitled to free treatment under state schemes should be facilitated). It must be carried out by a registered medical practitioner.

If an employee who is employed to do night work becomes ill and the illness is connected with the fact that they carry out night work then the employer shall, whenever possible, assign the employee to suitable work that does not involve night work. Such ailments that may be caused or exacerbated by night working include chronic depression, insomnia and diabetes.

INFORMATION ON WORKING TIME

Notification of working hours
The provision of information on working time applies where neither:
- a contract of employment, or,
- employment regulation order, or,
- collective agreement,
specifies the normal or regular starting and finishing times of work of an employee.

Under such circumstances the employer must notify the employee, at least 24 hours in advance of the first or only day in each week on which the employer requires the employee to work, of the times at which the employee will normally be required to start and finish work on each day and the day(s) required in each week.

If the hours for which an employee is required to work for his/her employer include such hours as the employer may from time to time decide, notification of additional hours (i.e. Overtime, Change to a Roster) must be given at least 24 hours in advance of the first or only day of work in that week. The employee must be informed on a day he/she works. Casual staff will similarly have to be given such advance notice of the hours they will be required to work.
If during a period of 24 hours before the first or only day of work an employee has not been required to work, e.g. an employee works on Friday and does not work on Saturday or Sunday, then notification for work on Monday must be given on Friday. Where unforeseeable circumstances justify a change in the notified times, an employer may alter the starting and finishing times, or the timing of additional hours. Basically the provision on advance notification does not affect the employer’s right to require the employee to work different hours other than those notified, if circumstances which could not have been reasonably foreseen arise.

Communication of changes
In general an employee may be notified of working hours or changes to working hours (such as overtime) by the placing of a notice in a conspicuous position in the employee’s place of employment.

Terms of Employment Act – Additional Requirements
Under the Terms of Employment (Information Act), 1994 employees are already entitled to a written statement of their terms and conditions of employment. According to the Terms of Employment (Additional Information) Order, (SI No 49 of 1998) this statement must now include, for all new employees:
- The terms and conditions relating to rest intervals including the times and duration of such breaks. This includes details on the daily rest period, rest breaks at work and weekly rest periods.

ZERO HOUR CONTRACTS
This provision applies to employees whose contract of employment operates on the basis that the employee is required to make himself/herself available to work for an employer in a week on the basis of:
- a certain number of hours (contract hours), or,
- as and when the employer requires him or her to do so, or,
- a combination of both of the above.

This provision states that an employee may not be subjected to zero hour contracts without compensation.

In the event that an employer fails to require an employee to work 25% of the time the employee is contracted to make himself/herself available for, then, the employee will be entitled to payment for 25% of the contract hours or 15 hours whichever is the lesser amount.

The Act states that the requirement on the part of an employer to oblige an employee to make himself/herself available in the context of work of a casual nature does not constitute a ‘requirement’ for the purposes of this section. Casual workers, or workers who are called in from time to time do not have an automatic entitlement to zero hours compensation by virtue of an expectation alone. The intention of this clause is to remove casual employees from coverage under this section.

Compensation is not payable when an employee is paid wages for making himself or herself available for work or if the employee has an on call liability.

Compensation is not payable when an employee is sick, on short-time or lay-off or in the event of an emergency.

APPROVAL OF COLLECTIVE AGREEMENTS BY THE LABOUR COURT
The Labour Court may, subject to the following provisions, approve of a collective agreement, if an application is made by or on behalf of any of the parties to it:
- the Labour Court must consult such representatives of employers and employees as it considers appropriate;
- the Labour Court shall not approve of a collective agreement if the following conditions are not fulfilled:
  (a) in the case of a collective agreement relating to exemptions or the extension of reference periods for averaging, the Labour Court must be satisfied that the agreement is appropriate to the Directive;
  (b) the agreement has been concluded in a manner usually used in determining the pay or other conditions of employees in the employment concerned;
  (c) the body which negotiated the agreement on behalf of the employees is a holder of a license under the Trade Union Act, 1941, or is an accepted body within the meaning of that Act which is sufficiently representative of the employees concerned;
  (d) the agreement is in suitable form.
If the Labour Court finds that (a) to (d) are not satisfied it may request the parties to vary the agreement appropriately. If a collective agreement is approved of by the Labour Court and subsequently the parties to the agreement wish to make variations to that agreement this may be done subject to the approval of the Labour Court. The Labour Court may withdraw its approval where it is satisfied that there are substantial ground for doing so.

The Labour Court has issued procedural guidelines to be observed when applying for an exemption by collective agreement. Forms which can be used to apply for a Collective agreement have also been produced.

INSPECTORS

The Act empowers the Minister to appoint inspectors who may carry out all or any of the following activities:
- enter premises;
- examine or enquire as necessary whether the legislation is being complied with;
- require the employer concerned to produce records;
- require an employee, former employee or employer to furnish information;
- examine an employer, former employer, employee, former employee in relation to matters under the legislation and require such individuals to answer questions – other than incriminating questions – and to sign a declaration as to the truth of the answers.

An inspector cannot enter a private dwelling other than a part of the dwelling used as a place of work without the consent of the occupier unless the inspector has obtained a District Court warrant. Provision is made in the Act for the issuing of such warrants. An inspector, where necessary, may be accompanied by a member of the Garda Siochana when exercising powers under the legislation.

The Act lists a number of criteria upon which it will be an offence not to co-operate with an inspector.

DISPUTES

An employee or trade union may present a complaint that the employer concerned contravened a relevant provision of the legislation to a Rights Commissioner. The decision of the Rights Commissioner shall do one of the following:
- declare that the complaint was or was not well founded,
- require the employer to comply with the relevant provision,
- require the employer to pay to the employee compensation of such amount as is just and equitable having regard to all the circumstances, but not exceeding 2 years’ remuneration.

A Rights Commissioner shall not entertain a complaint if it is presented after the expiration of a period of 6 months from the date of the contravention to which the complaint relates. This period may be extended to 12 months if the Rights Commissioner is satisfied that the failure to present the complaint was due to reasonable cause.

The Act empowers the Minister to refer a matter to a Rights Commissioner.

A party may appeal a decision from a Rights Commissioner to the Labour Court. An appeal should be referred not later than 6 weeks after the date upon which it was communicated to the party.

The Minister may, at the request of the Labour Court, refer a question of law to the High Court. A party to proceedings before the Labour Court may appeal to the High Court on a point of law.

Where a decision of a Rights Commissioner has not been carried out by an employer and the time for bringing an appeal has expired then an employee may bring a complaint before the Labour Court.

Determinations of the Labour Court will be enforceable through the Circuit Court.
RECORDS

The Act specifies that an employer must keep appropriate records to show that he/she is in compliance with the legislation. These records should be kept for 3 years.

The Organisation of Working Time (Records) (Prescribed Form & Exemption) Regulations 2001, effective from 1st November 2001 stipulate the manner in which these records should be documented and maintained.

For each employee, the employer must keep a record of:

■ The name and address of the employee;
■ The PPS number of the employee;
■ A brief statement of the duties of the employee (which can be a reference to a job description or classification);
■ A copy of the statement of terms and conditions of employment which was given to the employee under the Terms of Employment (Information) Acts, 1994-2001 (typically the employee’s contract or letter of appointment);
■ Details of the days and total hours worked in each week.

Additional care may be needed to ensure records exist for:

■ Leave taken by the employee by way of annual leave and public holidays, and the payment received in respect of that leave;
■ Any “additional days pay” paid to the employee in respect of the public holiday entitlement;
■ A copy of any notice given to the employee under Section 17 of the Act (which deals with giving employees information about starting and finishing times and any requirements to work additional hours).

Obligation to record the days and hours worked each week
If there are no clocking in facilities, the employer must record the days and hours worked by each employee each week (excluding meal breaks and rest breaks) using Form OWT 1. The employer and employee can agree that the employee will be responsible for completing Form OWT 1 and it can be signed and retained by the employer each week.

Exemption from the recording of breaks
An employer is exempted from keeping records of rest breaks (daily rest, weekly rest, and rest breaks while at work), if she uses electronic record-keeping facilities, or manual record keeping facilities using Form OWT 1, as long as that employer:

■ puts in place procedures by which an employee can notify the employer in writing within 1 week of missing one of the above breaks, along with the reason for missing the entitlement;
■ notifies each employee in writing of those procedures;
■ keeps a record of having given each employee details of his or her rest entitlements;
■ keeps a record of having notified each employee of procedures to be used in the event the employee misses a break or rest period;
■ keeps a record of any notifications made to him or her by the employee regarding missed breaks.

Once notified of missed rest, the employer must allow the employee to have a rest period or break equivalent to the missed break as soon as possible, having regard to work circumstances and the employee’s health and safety. Failure by the employee to avail of this rest entitlement will not constitute a breach of the legislation by the employer.

The statutory Form OWT 1 can be downloaded from www.sfa.ie

OUTWORKERS

Employers of outworkers (workers who work from home) will be required to keep a register of such workers with such details as will be prescribed. An employer who fails to comply with this requirement will be guilty of an offence.

PROHIBITION ON DOUBLE EMPLOYMENT

An employer will be guilty of an offence under this legislation if he/she employs an employee to work on any day/week on which such employee has done work for another employer, where the aggregate of the periods exceeds the terms of the legislation.

Both the employer and the employee shall be guilty of an offence.

If the employer is prosecuted for an offence under this section it will be considered a good defence for him/her to prove that he/she neither knew nor could by reasonable enquiry have known that the employee concerned had done work for another employer, the cumulative effect of which would have exceeded the limitations laid down under this legislation.
The SFA has drafted a sample form which can be used to enquire about employees secondary employments which is available on www.sfa.ie

**penalties**

A person guilty of an offence under the legislation will be liable on summary conviction to a fine not exceeding €1,905 (€5000 for a breach under the regulations for mobile road transport worker). If the contravention is continued after the conviction the person will be guilty of a further offence on every day and for each such offence the person shall be liable on summary conviction to a fine not exceeding €635 (€1000 under the regulations for mobile road transport worker).

**Future developments**

Following a recent review there is currently a proposal at European level to amend the Working Time Directive, which could lead to changes to the Directives on Working Time, particularly around the issue of on-call time.

In May 2005, the European Parliament agreed a number of amendments to be put forward dealing with the opt-out, reference periods and the definition of working time. As a result of issues raised in the European Parliament, the Commission presented an amended draft Directive which is currently being discussed. The Council Working Group is still attempting to find an agreed solution.

Members should keep in contact with SFA for up to date information. It is expected that when the new Directive is in place it will not be adopted into Irish legislation for a further two years.

**Statutory Instruments**

The following is a list of Statutory Instruments, under the Act that have been issued to date.


Copies of the statutory instruments can be downloaded from www.irishstatutebook.ie