



Briefing 14/33 September 2014

Working Time Directive - Advice from the Traffic Commissioner.

To: All English, Scottish and Welsh contacts
For information: All contacts in Northern Ireland

Key issues

Advice from the Traffic Commissioner regarding Working Time Directive
APSE has offered to support the process of reviewing the guidance

1. Introduction

At the end of 2013, the Senior Traffic Commissioner noted that she had concerns that “some local authorities do not appear to have proper arrangements in place to ensure compliance with the Working Time Directive”. She asked APSE to remind its members of their obligations under the Working Time Directive and to make members aware that Traffic Commissioners may be focusing on this in the not too distant future. As a result APSE issued a briefing on the topic ([here](#)) and committed to hold an event to include the Traffic Commissioner and relevant speakers, for our members to listen and ask questions with the purpose of the event is to provide legal and technical advice to the local government sector on the Working Time Directive and Driver Hours Rules.

2. Advice

Following the seminar noted above the Traffic Commissioner has provided some general advice which is below.

“I remain concerned that many operators are still not compliant in this area. I was therefore delighted to attend and am extremely pleased that so many people were present.

Whilst writing I would like to take this opportunity to reiterate the key points of my message to your delegates as the area around the WTD and other drivers’ hours’ legislation can sometimes seem complex.

In summary I advised in my presentation that organisations should now take three simple steps which I set out in summary and then in more detail:

- To ensure compliance with the governing legislation
- To train the drivers regarding that legislation and to monitor compliance
- To then retrain and discipline drivers where there are found to be failures.

2.1 To ensure compliance with the governing legislation

I was concerned from listening to some delegates that they did not all seem to appreciate which legislation applied to their differing operations and so I think it useful to set this out. There are 3 pieces of legislation that can apply. These are the domestic drivers' hours' legislation, the EU drivers' hours' legislation and the working time directive legislation. Also some delegates seemed to think that they could opt out of the domestic or EU legislation and this is not the case. Either one or both will apply depending on the work that is carried out. Therefore I would strongly advise all delegates to take expert advice (there are many providers of this advice ranging from trade associations to transport consultants and lawyers) as to which legislation applies to their individual operations. This may be a combination of all three in certain cases.

2.2 To train the drivers regarding that legislation and monitor compliance

Once this has been established the operators can then implement that legislation and this should include a full driver training programme. If there are established systems already there is much to be said for regular driver refresher training – which would of course qualify for driver CPC. Once the training has taken place it is vital to monitor compliance with the legislation. As I said in my presentation there are many reasons why drivers fail to comply and so it is vital to monitor compliance and this can take a number of forms including detailed drivers hours (domestic and EU) analysis by a third party and auditing of the records.

2.3 To then retrain and discipline drivers where there are found to be failures.

There also has to be effective action after that analysis and auditing – and this is also where traffic commissioners see so many otherwise compliant operators fall down. They will have the analysis and audit systems in place but when the breaches are reported they simply pay lip service to the regime by not having proper systems in place for subsequent training and disciplinary actions. Instead many operators just ask the drivers to sign the infringement sheets without any follow up action – this is not sufficient and so operators should again take advice on the various steps to take after the analysis and auditing. In simple terms it is often a case of having refresher training for the drivers who are failing as often the breaches will be caused by ignorance rather than deliberate acts. Sometimes this training may be on a one to one basis and sometimes it may be for a group of drivers especially if the type and nature of the operation has changed. But there will be some drivers who simply do not want to comply and that is where it is vital to have a proper disciplinary process in place. This may involve some discussions with the relevant unions and they should be supportive. If they are not then I or one of my colleagues would be very happy to talk to them! Again driver discipline is an area where many otherwise compliant operators fall down. Organisations may not want to take action for a number of reasons but if they do not they will make difficulties for themselves later on. It is also advisable to have a clear written policy that specifies the type of action that will be likely to taken in certain cases so that drivers know what to expect.

I hope that the above is useful and please feel free to send this letter to all delegates who attended and your members generally. I am also sending a copy of this letter to my fellow traffic commissioners for their information and to DVSA enforcement so that they are aware of the assistance given by APSE.

Finally, I once again enclose the links that were referred to at the seminar:

<https://www.gov.uk/drivers-hours>

<https://www.gov.uk/government/publications/rules-on-drivers-hours-and-tachographs-goods-vehicles-in-gb>

<https://www.gov.uk/government/collections/drivers-hours-rules-and-guidance>

<http://www.acas.org.uk/index.aspx?articleid=1373>

Yours sincerely

Beverley Bell
Senior Traffic Commissioner"

APSE comment

APSE is pleased to work alongside the Senior Traffic Commissioner and is grateful for the time she spent at the seminar. It is helpful that guidance is being revisited and she is right to highlight the fact that the regulations are complex. This complexity can lead to differences in interpretations and this emerged at the workshop sessions during the event.

The advice adds clarity to the regulations as will the updated guidance. APSE has offered to contribute to the process of reviewing the guidance. We hope to ensure that the range of circumstances with which officers are faced are addressed and clear instructions are included.

Phil Brennan
Principal Advisor