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|  | **Working Time Policy** |
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| **1.** | **Policy Statement** |

1.1. The Working Time Regulations 1998 are a health and safety at work measure. They include basic entitlements and limits on organising working hours.

1.2. Managers are responsible for this policy and ensuring the Regulations are adhered to.

1.3. Employees who may have multiple posts at various locations have a responsibility to inform their Manager about their work patterns and all employment details.

1.4. This policy sets out the basic entitlements provided by the Regulations. The Regulations do allow derogations from these basic entitlements, in some instances, by collective agreement between the Council and Trade Unions.

1.5. Employees should be referred to such collective agreements where they exist in their Service area.

1.6. All provisions whether provided by the Regulations or collective agreement are subject to the overriding principle of ensuring the health and safety of employees.

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| **2.** | **Scope** |
| 2.1. | This policy applies to all employees except employees based in educational establishments with delegated powers. |
| **3.** | **What is working time?** |

3.1. It is important that the calculation of “working time” as defined by the Regulations should not be confused with the calculation of pay.

3.2. The Working Time Regulations define “working time” as

* any period during which he/she is working, at his/her employer’s disposal and carrying out his/her activity or duties,
* any period during which he/she is receiving relevant training, and
* any additional period which is to be treated as working time for the purpose of these Regulations under a relevant agreement.
  + 1. The Regulations define a “relevant agreement” as a “workforce agreement which applies to him/her, any provision of a collective agreement which forms part of a contract between him/her and his/her employer, or any other agreement in writing which is legally enforceable as between the worker and his/her employer”.

3.4 Working time can be defined as any period when the employee is:

* working for and carrying out any activities or duties set by the Council;
* receiving relevant training within their normal duties (for example, on-the-job training, training courses, conferences, seminars and so on);
* at a working lunch or similar business event;
* working at home on a pre-arranged basis (in other words

arranged with their manager);

* travelling between workplaces as part of their job; and
* travelling to any place of work other than their regular workplace. (In other words, travelling time over the normal time

it takes to travel from home to work or vice versa). For those employees without a regular place of work, working time will commence / finish when they leave / arrive home. (N.B. This is for the purpose of monitoring working time from a Health and Safety perspective only. The time taken to travel from home to their first place of work and from their last place of work to home will be unpaid)

3.5. Working time does not include:

* lunch breaks or rest breaks (unless it is a working lunch)
* on-call or standby arrangements – unless the employee actually has to work or has sleep interrupted.
* sleep-in duties – unless the employee actually has to work
* being on a training course run by an education institution or training establishment; i.e.takes place outside of standard working hours such as evenings or weekends
* working at home on their own initiative (in other words in the evenings or at weekends)

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| **4.** | **Rights under the Working Time Regulations** |

4.1. The Regulations currently provide employees with the following basic rights and protections:

* a limit on the time which a worker can be required to work of an average of 48 hours a week over a 17 - week period
* a limit of an average of 8 hours work in 24 hours which night workers can work
* a right to a minimum of 11 consecutive hours rest in every

24 hour period (non mobile workers only – see Section 16)

* at least 24 consecutive hours rest in every 7 day period
* a right to an in-work rest break if the working day is longer than 6 hours
* a right to 28 days paid leave for full-time workers per year (which is including bank holidays).
  1. As outlined in 1.4, the Regulations allow derogations from these basic entitlements, in some instances, by collective agreement between the Council and Trade Unions.
  2. Collective agreements can be reached on:
* Extending the reference period for averaging the 48 hours week from 17 weeks up to a maximum of 52 weeks, and
* Modifying or excluding the application of the regulations concerning the length of night work, health assessments, daily

and weekly rest periods. (refer to Section 10)

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| **5.** | **Opting out** |
| 5.1. | The Regulations allow for employees to ‘opt-out’ from the 48 hours limit meaning that they can work more than an average of 48 hours a week in a 17 weeks period. N.B. Drivers operating under EU Driver Regulations cannot opt out. |
| 5.2. | Opt-outs are a matter of individual choice and without an opt-out agreement in writing, employees cannot be compelled by any contractual term to exceed the 48 hours average working week. |
| 5.3. | No employee of the Council can force another employee to sign an opt-out agreement. |
| 5.4. | If an employee wishes to opt-out of the 48 hours limit, they must do so in writing to Human Resources. The opt-out agreement can last for a fixed duration or indefinitely. |
| 5.5. | An opt-out agreement can be terminated by an employee by giving 7 days’ notice, unless the opt-out agreement itself provides for longer notice (this is subject to a maximum of 3 months’ notice). |
| 5.6. | Even where employees have signed opt-out agreements, the Council is still bound by health and safety laws and Drivers Hours Regulations and should not allow employees to work excessive working hours. |
| 5.7. | Employees should not be subjected to any detriment for refusing to agree to an opt-out of the working time regulations. |
| **6.** | **Manager Responsibilities** |
| 6.1 | Manager must make sure the Regulations are adhered to in line with section 4. |
| 6.2. | If a manager fails to do this, an offence will have been committed under the Health and Safety at Work Act 1974. |
| 6.3. | Human Resources and Occupational Health must be consulted for further advice. |
| **7.** | **The 48-hour weekly limit on working time** |

7.1 Each employee’s contract gives details of their basic working hours.

72. The Council will not expect employees to work more than an average of 48 hours each week.

7.3. To work out the average number of hours an employee works, the Line Manager should use a ‘reference period’ of 17 weeks. This means the average working hours over a period of 17 weeks.

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| **8.** | **The weekly limit on working time – Employees under 18** |
| 8.1 | Employees under 18 may not ordinarily work more than 8 hours a day and 40 hours per week. These hours cannot be averaged over a reference period. |
| 8.2. | There are no normal exceptions to this requirement. In exceptional circumstances employees may work longer hours where this is necessary to maintain continuity of service or respond to a surge in service demands. However, Line Managers must first ensure that:   * there is no adult available to perform the task; and * the employee’s training needs are not adversely affected. |
| **9.** | **Night work** |

The Regulations define ‘night time’ as the period between 11 p.m. and 6 a.m. This may be defined by collective agreement and even if varied, must include the hours between midnight and 0500.

The Council defines night time as 11pm to 6am. A ‘night worker’ must not work more than an average of 8 hours a night.

* 1. A ‘night worker’ is an employee who normally works:
* at least 3 hours of their daily working time during night time as normal course, or is a worker who is likely, during night time, to work a certain proportion of their annual working time as defined in a collective agreement
* Night worker provisions do not apply to ‘out of hours’ standby staff due to the infrequency of the hours worked during the time frame of 12.00 midnight – 07.00 a.m.
  1. **Risk assessment – night work**
* Managers must assess the risk of all night work. If there are any dangers, or any physical or mental strain, a time limit on working hours may apply.

9.3 **Medical assessment – night work**

* Managers will offer night workers a medical assessment each year. The employee will fill in a questionnaire which Occupational Health will assess. Occupational Health may advise us that the employee needs a medical report or examination. The manager will keep a confidential record of any assessments we have offered.
* If an employee has a health condition which is made worse by night work, managers will consult with them and based on medical opinion may offer a transfer to day work.

9.4 **Employees under 18 – night work**

* Employees under 18 may not ordinarily work at night. In exceptional circumstances employees may work at night where this is necessary to maintain continuity of service or respond to a surge in service demands. However, Line Managers must first ensure that: **there is no adult available to perform the task;**
* the employee’s training needs are not adversely affected;  the employee is allowed compensatory rest; and  the employee is properly supervised. Managers must also offer employees under 18 an assessment to test their ability to carry out the work.

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| **10.** | **Daily rest and weekly rest** |

* 1. The following have been agreed:
  2. For an employee carrying out standby and call out duties the consecutive rest period will be modified from 11 hours to 8 hours in any 24 hours period.
  3. Where an employee is called out to work between the 8 hours consecutive rest period this work will be deemed to have broken the consecutive rest period.
  4. Under no circumstances will the “banking” of rest hours be allowed.
  5. For rules relating to mobile workers / Drivers please refer to Section 16 of this policy.
  6. Any enforced rest period which impinges on an employee’s normal working time will be paid.
  7. Managers will be responsible for ensuring that employees receive the appropriate 8 hours consecutive rest period within any 24 hour period.

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| **11.** | **Rest breaks during the day** |

* 1. Employees must take rest breaks during the working shift.
  2. The Regulations state that an employee working more than 6 hours a day is entitled to take a minimum 20-minute unpaid break (30 minutes for employees under 18).
  3. Employees should take these breaks if possible away from the workplace / work station. The break should be during the working shift, not at the beginning or end.

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| **12.** | **Call-out, standby and sleep-in arrangements** |

12.1. Call-out, standby and sleep-in arrangements are not normally classed as working time. However, it is treated as working time if an employee:

* is actually called out to work; or
* has their sleep interrupted to carry out work

12.2. If this applies, the employee must be clearly told what period will be treated as working time.

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| **13.** | **If an employee has more than one job with the Council** |

* 1. The Council does not prevent employees from having more than one job. However, if an employee has more than one job with the Council, the manager must make sure that they declare the total hours they work. This is so we can meet our health and safety obligations.
  2. Managers must make sure employees are fit enough to carry out all their duties safely. Managers must also make sure that their health is not suffering as a result of inadequate breaks.

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| **14.** | **If the employee also works for another employer** |

* 1. If an employee works for more than one employer, the amount of combined hours shouldn't exceed the 48 hour average limit. The employee should let the Council know of any other work they carry out in line with the Secondary Employment Policy

* 1. If an employee works for another employer, the manager should
* let the employee know about our duty of care to clients and other employees; and
* decide whether the hours they work follow the same principles as if they had more than one job with us.

14.3. Where working hours may exceed the 48 hours limit, the employee could either:

* consider signing an opt-out agreement, or
* reducing hours worked to meet the 48-hour limit
  1. The Council reserves the right to refuse any request to undertake secondary employment.

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| **15.** | **Health and Safety** |

15.1. The City & County of Swansea is committed to ensuring the health, safety, and wellbeing of all its employees, and those affected by it working practices. In all instances, Line Managers will ensure this duty of care is met by ensuring an unbroken rest period of a minimum 8 hours in a 24 hour period. For rules relating to Drivers please see Section 16 of this policy.

Line Managers (as defined by the Corporate Health & Safety Policy) will in all instances ensure that the minimum rest period is provided by ensuring working arrangements, and call out rotas are implemented that prevent employees being put at risk, that they are regularly reviewed, and monitored effectively.

Where a call out occurs, in close proximity, to the standard start time (i.e approximately 1hr) Line Managers may in conjunction with the employee assess the risks, and allow the employee to continue working, reducing the finish time as appropriate, at no time should this place the employee or others at risk, and must ensure that the employee is afforded the 8 hours consecutive rest, with rota provisions for the following 24 hour period being reviewed and revised as appropriate.

Employees will in all instances discharge their duties in such a way as to not place themselves or others at risk.

Employees will in all instances report, any circumstance or unaddressed risk known to them, which has the capability of impacting upon the safe delivery of services to their direct line manager.

The authority recognises its responsibility to deliver critical services in extreme circumstances, which may impact on statutory rest arrangements. However, under no circumstances will an employee be placed at risk, whilst this duty is discharged. In all such instances, Line Managers will ensure a risk assessment is undertaken and communicated to those undertaking the work.

This policy is written to meet compliance with the Working Time Regulations, by adopting a common sense approach in delivering vital services, whilst ensuring the health, safety & wellbeing of employees.

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| **16.** | **Mobile workers/Drivers** |

A ‘mobile worker’ is any worker involved in the transport of passengers or goods by road. This obviously covers drivers but also includes members of the vehicle’s crew such as driver’s mates or attendants.

Workers carried on a vehicle purely as passengers (for example being taken to site) will not be classed as ‘Mobile Workers’.

# Drivers of Vehicles over 3500kg Gross Vehicle Weight (GVW)

Drivers of vehicles over 3500kg GVW are required by law to take rest in full accordance with GB Domestic Drivers’ Hours Rules.

Drivers of these vehicles must ensure that the application of this compensatory rest policy does not contravene their legal obligations in respect of the statutory daily, and any weekly, rest requirements.

# Operating under GB Domestic Drivers’ Hours Rules

Drivers of vehicles subject to GB Domestic Drivers’ Hours Rules are normally required to take 13 hours rest in each 24 hour period.

Drivers of these vehicles do not have a consecutive hour’s rest requirement but are required as ‘Mobile Workers’ to take “adequate rest” under the Working Time Regulations.

“Adequate rest” is defined as regular rest periods sufficiently long and continuous to ensure that workers do not harm themselves, fellow workers or others and that they do not damage their health on the short or long term.

This policy’s 8 hour consecutive rest period will apply to Mobile Workers and Drivers of vehicles subject to GB Domestic Drivers’ Hours Rules to ensure “adequate rest”.

Drivers of vehicles subject to GB Domestic Drivers’ Hours Rules ’24 hour period’ commences at the start of daily duty.

If any Driver or Line Manager is unsure of the application of the Working Time regulations or GB Domestic Drivers’ Hours Rules, they should contact the Council’s Fleet Management section for clarification.

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| **17.** | **Policy monitoring** |

The Council will monitor the application of this policy and has discretion to review it at any time through the appropriate consultation mechanisms.

Responsibility for the implementation, monitoring and development of this policy lies with the Head of Human Resources. Day to day operation of the policy is the responsibility of nominated officers who will ensure that this policy is adhered to.

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