



## **ICC CIRCULAR 14/2008**

### **TO ALL IBB SECRETARIES**

#### **INSPECTING RANKS HOURS - 30+ SCHEME - REG A19**

The purpose of this circular is to address some questions frequently asked about the terms and conditions of members of inspecting ranks. Reference is made below to inspectors, but the position is the same in relation to chief inspectors.

#### **HOURS OF WORK**

##### **1. Which legal provisions are relevant to inspectors' hours?**

The main legal provisions are the Police Regulations 2003 and the Working Time Regulations 1998.

PNB agreements and Home Office Circulars may also be relevant.

##### **2. What do the Police Regulations provide for in relation to inspectors' hours?**

Regulation 22 Police Regulations 2003 and the determination for it at Annex E deal with duty but many of their provisions do not apply to inspectors.

Paragraph 1 of the determination deals with hours of duty but only applies to full time constables and sergeants, and not to inspectors.

##### **3. What are "normal hours" for inspectors?**

There is no provision for "normal hours" for inspectors in the Police Regulations. HOC 21/97 includes the following:

"For sound reasons to do with the health and welfare of the officer, the safety of others and effective working, no police officer should be required to work regular excessive hours, and, over a period of time, each officer should be allowed to take their full entitlement to days free from the



requirements of duty. This is a particular consideration in the case of inspectors, chief inspectors and higher ranks, who are not paid overtime.

The changes to conditions for members of the ranks of inspector and chief inspector introduced with effect from 1 September 1994 should not have altered, nor were they intended to alter, the average hours worked each week in posts filled by members of those ranks. “

(Prior to 1 September 1994 inspectors were entitled to be paid for overtime. In 1994 salary was increased and entitlement removed.)

This may be useful for an IBB, but it is considered unlikely that a court would accept that it creates a legitimate expectation (enforceable by judicial review) for a 40 hour week.

#### **4. Can an inspector be required to work more than 40 hours in a week?**

There is no restriction in the Regulations preventing this. Constables and sergeants can be required to work more than 40 hours per week and we consider that it would be surprising if a court concluded this could not be expected of higher ranks. Of course unlike constables and sergeants, inspectors are not paid overtime, but that in itself does not affect the question of whether they can be required to work.

In discussions with the Force the IBB may seek to rely on HOC 21/97, quoted above. We do not however consider this provides a legal right not to be required to work more than 40 hours a week.

#### **5. What do the Police Regulations provide for in relation to inspectors' rosters?**

Paragraph 3 deals with duty rosters. It applies to constables and sergeants and to part time members of inspecting ranks, but not to full time inspectors.

There is therefore no right under the Police Regulations 2003 for full time inspectors have a duty roster.

This does not prevent hours being determined or a roster being provided by local agreement. Indeed Home Office Circular 21/97 (included in the Guide to Negotiable Conditions of Service) states:

“Inspectors and chief inspectors, no less than other members of police forces, need to be able to plan both for their work and their personal and family commitments. Consequently it is important that they should be given, so far as the exigencies of duty permit, reasonable notice of when they will be required to be on duty. “

Indeed in the absence of some form of roster it is likely that there will be practical issues in relation to rest days, annual leave and food expenses.

## **6. Can inspectors take time off in lieu (“TOIL”)?**

There is no entitlement under the Regulations to take TOIL of additional hours, but it may be possible to negotiate local agreements to that effect.

Where such an agreement is reached, it is sensible to avoid very large amounts of untaken TOIL building up as:

- there is no entitlement to be paid for such time; and
- forces may become alarmed at the position and look to change the arrangements.

## **7. What do the Regulations say about rest days?**

In relation to rest days, the entitlement of inspectors, by virtue of paragraph (4)(b) of the determination at annex E, is to be granted rest days at the rate of two in each week.

If because of the exigencies of duty it is not possible to take a rest day in a particular week, the officer must be granted a rest day in lieu during the next 12 months.

We consider that the duty is upon the force to grant the days off and they should not be lost if they are not granted within that period.

## **8. And annual leave?**

Inspectors’ entitlement to annual leave is to the appropriate number of days provided for in the determination at Annex O for regulation 33.

## **9. What would happen if a force refused to grant rest days or annual leave to inspectors?**

A force which failed to allow an inspector to take annual leave (or rest days) in accordance with the relevant provisions (which include references to the exigencies of duty, considered further below), would be in breach of its obligations under the Police Regulations, and, in principle, legal action could be taken.

## **10. What are exigencies of duty?**

The term is used in the Police Regulations in a number of places. It is not defined. There are broadly two possibilities:

- (i) pressing needs or urgent wants; or
- (ii) that which is needed or required.

The first is a narrower interpretation. In the absence of a case on the point there is scope for uncertainty. It is however our view that a court is likely to construe the expression so as to give a force more rather than less operational freedom, and therefore choose the second interpretation in any case where a force is seeking to ensure that it has the appropriate number of officers on duty. It may however be difficult for a force to rely on the exigencies of duty so as, say, not to grant within twelve months a replacement rest day.

The Guide to Negotiable Conditions of Service contains more helpful PNB guidance on the issue in the context of changes to the duty roster. While not directly relevant (as inspectors do not have such rosters) it may be indirectly helpful in discussions with the Force if there are regular changes to inspectors' duties.

### **11. Are inspectors entitled to food and accommodation expenses?**

The entitlement to these expenses is not limited to constables and sergeants, so inspectors should be eligible. In practice we consider that a court would regard the issue of normal daily period of duty for the purpose of these expenses to be a matter for local agreement.

## **ON CALL**

### **12. What is "on call"?**

A police officer has the powers and duties of a constable at all times. Police officers can also be recalled to duty at any time. The term "on call" is however generally used to cover circumstances where an officer is not on duty but agrees to be ready to return to duty if called. This may entail restrictions such as being unable to drink alcohol and having to remain within mobile telephone contact and/or within a particular distance of work.

### **13. Can an officer be ordered to be on call?**

It is (strongly) arguable that an officer cannot be ordered to be on call but very great care needs to be taken in relation to this issue:

- 1. our firm view is that individual officers must not refuse a purported order to be on call, which could leave them exposed to misconduct (or even criminal) proceedings;**
2. any issues should be dealt with on a collective basis by the IBB. It is our experience that if forces are asked the following questions they have tended to be amenable to negotiation:
  - (i) are the relevant members being ordered to be on call?
  - (ii) if so, what is considered to be the legal basis for such an order?

3. in negotiating agreements, the absence of a formal limit on inspectors' working hours (subject to the working time provisions considered below) needs to be kept in mind. Members may prefer being on call to being on duty.

## **WORKING TIME REGULATIONS**

### **14. Do the Working Time Regulations apply to police service in general and inspectors in particular?**

Yes, there is express provision that the WTR do apply.

There are exemptions in the regulations, but our view is that they should be interpreted narrowly.

Regulation 18 provides that the WTR will not apply when characteristics peculiar to the police inevitably conflict with the provisions of the WTR. This will not generally apply and is likely to need e.g. a terrorist attack or serious threat to public order.

Regulation 20 excludes some provisions do not apply when the duration of the worker's working time is not measured or predetermined or can be determined by the worker with managing executives or other persons with autonomous decision-taking powers given as examples. We do not consider that this should apply to inspectors.

Regulation 21 excludes some provisions in other special circumstances.

### **15. Is time spent on call working time?**

Unless the member is called or unless there is provision in a workforce agreement that on call time is to be treated as working time, time spent on call will not generally be working time.

The principle that has been established from the case law is that where a worker is required to remain in a particular place by the employer (on the facts of the relevant cases this has tended to be a hospital or residential care home) then time spent on call is working time for the purposes of the WTR. Most police on call arrangements do not have this requirement.

### **16. How does the 48 hour limit on working hours operate?**

The limit is on average working hours, calculated over a reference period, which will be a rolling period of 17 weeks unless a different period is agreed in a workforce agreement. Regulation 4 sets out the formula, which excludes

annual, sick, maternity, paternity, parental and adoption leave days from the calculation.

Breach of this provision is a criminal offence. It is enforceable by the HSE (rather than providing a tribunal claim).

### **17. How can working hours be monitored to ensure that there is no breach of the 48 hour limit?**

Regulation 9 requires the Force to keep records which are adequate to demonstrate compliance. While the WTR do not provide JBBs with a right of access, this can be agreed (e.g. as part of a wider workforce agreement).

The Information Commissioner has confirmed that a force can lawfully agree to allow JBBs access to the records.

### **18. What are the other main rights under the WTR?**

Other than annual leave rights, and the limit on night working dealt with in the next question, the main rights are:

- to daily rest – i.e. a rest period of at least eleven consecutive hours in each 24-hour period
- to weekly rest – i.e. to an uninterrupted rest period of at least 24 hours in each week or if the Force so determines to either two uninterrupted rest periods each of not less than 24 hours or one uninterrupted rest period of not less than 48 hours in each 14-day period
- to rest breaks – i.e. where daily working time is more than six hours, a rest break consisting of an uninterrupted period of not less than 20 minutes, being entitled to spend it away from the workstation if there is one
- to a health assessment if undertaking night work

If a force refuses to permit an officer to exercise the first three rights, a claim can be brought in the employment tribunal. The time limit is three months less a day from the day the rest should have been granted.

### **19. What is the limit on night work?**

Regulation 6(7) provides that where a night worker performs work that is recognised in a risk assessment or workforce agreement as being specially hazardous or involving heavy physical or mental strain, there is a tight limit on the hours that the worker can perform. This limit does not just apply to night work.

Police officers who work nights regularly will be regarded as night workers. Night work will be 11pm – 6am unless varied in a workforce agreement.

Where the limit applies, the force must ensure that no night worker works for more than eight hours in any 24-hour period during which the night worker performs night work, unless this provision is varied or excluded in a workforce agreement. For example, this would mean that someone to whom the limit applied who performed duty from 10pm Friday to 6am Saturday, could not work again until 10pm Saturday.

Breach of this provision is a criminal offence, enforceable by the HSE.

## **PART TIME WORKING**

### **20. How should part time inspectors be paid?**

We consider that part time inspectors should be hourly paid.

## **30+ SCHEME**

### **21. What is the legal basis of the 30+ Scheme?**

The 30+ Scheme arose out of the 2002 PNB Agreement, initially on a pilot basis. It is not mentioned in any of the relevant regulations. It is an “administrative arrangement” that sits beside or on top of the regulations.

The power to recruit and the basis on which, once recruited under the 30+, an officer serves, are exactly the same for an officer under the 30+ as for any other police officer. The Police Act 1996, Police Regulations 2003 and related regulations such as the Police Pensions Regulations 1987, Police (Conduct) Regulations 2008, Police (Performance) Regulations 2008, all apply in the same way.

While in a (fairly limited) number of ways the terms may operate differently because of a change in circumstances (e.g. no entitlement to housing emoluments, commuted lump sum paid and abatement applied), there is no scope for these provisions to be sidestepped.

Regulation A19 Police Pensions Regulations 1987 is central to the operation of the 30+ scheme as it provides the only basis that an officer’s service can be terminated (other than medical retirement, dismissal for conduct or performance, or compulsory retirement on grounds of age).

Current guidance on the 30+ Scheme can be found on the NPIA website.

### **22. Can a decision to invoke regulation A19 be challenged?**

In the case of Hodgson v South Wales Police Authority, the court found that a decision to invoke Regulation A19 is susceptible to judicial review, despite the Force’s argument to the contrary.

Although it was argued that the words “general interests of efficiency” in regulation A19 related to individual officers, the Court found that it was the efficiency of the Force, rather than just the efficiency or effectiveness of the individual officer.

On the facts of the case the Force was found to have acted unlawfully when it made its decision to retire the claimant because there was no consultation with him prior to the decision. This is not the only possible basis for judicial review. In particular, forces will need to ensure that any decision is not irrational, improper or in breach of a legitimate expectation.

If the decision to invoke A19 were for an unlawfully discriminatory reason then that could also lead to a legal challenge.

If a legal challenge is contemplated then short time limits apply and advice should be sought at the earliest opportunity.

A handwritten signature in black ink, appearing to read 'G Appleby', written in a cursive style.

George Appleby  
General Secretary

1 December 2008