



Scottish Police Federation

5 Woodside Place Glasgow G3 7QF

JCC Circular 31 of 2018 (amended)

Ref: CS/KB

17 July 2018

Attachments:

Dear Colleague

Operation Roll – Questions and Answers

I refer to the above and appreciate that given the exceptional demand and challenges created by this event that a number of you will have inquires.

This communication seeks to help you understand the organisational realities that prevailed on the run up to, and during the event, as well as the legal framework within which police officers work and are compensated. This is not an attempt to answer every single question you may have and if your specific inquiry can't be answered from what follows, you should not hesitate to contact your local federation office for assistance. You should note that your particular circumstances may span a number of the areas identified below. If they do you are entitled to the compensation for each and every set of applicable examples.

Resourcing

The SPF is not responsible for resourcing. Any decisions taken in respect of where and when police officers were required to work is a matter entirely for the police service. It is however important to note that as a general provision a police officer can be directed to work anywhere and at any time by the chief constable. This is part and parcel of what makes police officers unique and the most flexible workforce there is.

However that flexibility still has to fit within the regulatory frameworks that govern policing. In the simplest of terms these are the Police Service of Scotland Regulations (and associated Determinations), and the Working Time Regulations. These regulations do not impede the ability to work but do put costs and safeguards on what can be expected from officers.

Did the force breach The Workforce Agreement (WFA) & Working Time Regulations (WTRs)?

The WFA meets the requirements of Regulations 23 and 41 of the WTRs and contains the following within its policy statement:

The purpose of the Working Time Regulations is to provide minimum standards of health and safety at work by setting out certain entitlements and limitations concerning working time.

In terms of exemptions and modifications it states as follows at paragraph 20:

The nature of the duties carried out by police officers may mean that exceptionally there may be occasions where the provisions of the Working Time Regulations cannot reasonably be complied with. Any such exceptions, however, should be instigated to provide short-term solutions to immediate policing demands and not used as a blanket exemption from the provisions of the Working Time Regulations.

This is consistent with regulation 18(c) of the WTRs which details the areas under which derogations to the WTRs apply. In summary these are

Regulations 4(1) and (2)	Maximum Working Week
Regulations 6(1), (2) and (7)	Limitation on night working
Regulations 7(1), and (6)	Derogation from working at night
Regulation 8	Rest Breaks
Regulation 10(1)	Daily Rest
Regulation 11(1) and (2)	Weekly Rest
Regulation 12(1)	A guaranteed break after 6-hours
Regulation 13	Entitlement to leave
Regulation 16	Payment for leave

Operation Roll created unique and pressing demands on the Police Service of Scotland (PSoS). The Service considered that the derogations provided by the WTRs and contained within the WFA applied.

The demand for resources was exceptional and entirely out with the control of the Police Service. This was due to, amongst other things, the short notice of the proposed itinerary, the ever developing potential for multiple public order situations, and of course the phenomenal security associated with the visit of the President of the United States of America. The SPF agrees.

Whilst the derogations to the WTRs did apply the policy intention was to attempt to ensure as far as is possible the standards provided by the WTRs could be met.

It is important to note that as the WTRs provide derogations for the police service in certain circumstances, the PSoS was not in breach of the WTRs in the areas under which the derogations applied.

On a practical level this means that if for example you:

- did not receive 11 hours rest between shifts

- did not receive a rest day after seven working days OR 2 rest days after 14 working days
- did not receive rest breaks
- worked in excess of an average 48-hour week

this did not amount to a breach of the WTRs.

When do the derogations to the WTRs cease to apply?

The SPF view is that the derogations cease to apply from Sunday night. A number of officers will be required for security and ancillary duties directly linked to the operation for a few more days but this does not justify a continued derogation from the WTRs.

The planning was a shambles – why wasn't I given more notice?

The SPF considers that this criticism is unfair. We were privy to information that shows the planning team were to a large extent working to an ever changing set of assumptions that were entirely out with their control. It is recognised that this created considerable disruption and uncertainty for many police officers and whilst highly regrettable is one of those things that come along from time to time in the police service.

I was told to be out for a briefing and despite attending I'm now told the briefing wasn't mandatory and I won't get paid – surely this isn't right?

This isn't right – unless you were explicitly told that your attendance was not mandatory, you are entitled to payment at the appropriate rate.

I think my days off count as a period of Annual Leave and I was required to work – am I right and if so what compensation am I entitled to?

A qualifying period of Annual Leave is a period of four days or more containing at least one day of annual leave and other days made up of either, or a combination of, rest days, public holidays, or days take as time of in lieu of overtime.

In simple terms this means all days between when you finished duty and when you are due to recommence duty, provided these days are four or more in number and contain at least one day of annual leave, count as a period of annual leave.

If you were on a period of leave and were required to work you are entitled to be paid a day's pay at double time PLUS receive an additional day of leave in respect of the first two days.

By way of example – if you were on leave on the Saturday but Sunday was to be a normal working day and you were told to commence work at 0500, you are entitled to a day's pay at double time AND an additional day of leave for working between 0500 and 0700 during your period of leave.

I am told I was given enough notice to re-roster my rest days but I'm not convinced?

Any rest day re-rostered with more than 15 days' notice attracts no compensation for overtime. In these circumstances the compensation is another day back.

Any rest day re-rostered with less than 5 days' notice attracts compensation at double time, and any rest day re-rostered with more than 5 days but less than 15 days' notice attracts compensation at time and a half.

HOWEVER the day upon which you are notified AND the day being re-rostered DO NOT COUNT as part of the period of notice. You must be given 5 (or 15) clear days' notice. By way of example an officer told on Sunday that they were required to work the following Friday would be entitled to be paid at double time. Had the officer been advised they were working the following Saturday, they would be entitled to be paid at time and a half as they received more than 5 but less than 15 days' notice.

If you were on duty on what was originally a rest day and your tour of duty commenced at 0500 on that day you are entitled to either a payment of 4 hours at time and a half or double time (if you received less than 15 or 5 days' notice) or payment of 2 hours at time and a third PLUS a re-rostered rest day (if you received more than 15 days' notice).

My rest day was re-rostered but I worked a long day – at which point am I able to claim overtime?

The normal working hours on a day which was a rest day and has now become a normal working day is 8 hours. Therefore any duty you perform beyond 8 hours is overtime at time and a third.

The Force Day starts at 7am but I was told to report for duty at 5am. Can they do this and if so what compensation am I entitled to?

The short answer is yes. Provided due notice is provided this can be done at no cost. Due notice is defined as 24 hours' notice. Where due notice is not provided you are entitled to overtime at time and a third for the two hours between 0500 and 0700.

I was rostered for duty for 12 hours but was told after 10 hours that I could either work on or finish. If I finished am I entitled to the overtime for the remaining 2 hours?

No

I was told to report to X for 0500 but in truth I had to pick my kit up at Y before then so my actual start time was 0430. Does this mean I should get paid from 0430?

The short answer is no. Police officers have to report for duty to any place and at any time they are directed to do so by the chief constable. With very few exceptions the time you take travelling to and from your place of duty are not considered duty hours for pay purposes.

But I was instructed to go to my station and pick my kit up before reporting to X – does that make a difference?

Yes it does – although police officers can be directed to report for duty at any time and at any place, the obligation to convey PPE is not absolute. We know many police officers were

requested to take kit home in order to have it for reporting at X the next day. This is perfectly fine. If however you were instructed to do so, you are on duty for pay purposes from the moment you picked up your PPE at your usual place of duty.

However you also need to ensure that you were not driving your own personal motor car whilst on duty without proper business insurance.

As a consequence of reporting for duty at a place that wasn't my usual place of duty I had to travel additional distance – surely I'm entitled to be compensated for that?

Yes you are and on that front the SPF has worked with the service to simplify the payment of an allowance. We had hoped to be able to get this in place in advance of the operation but we are optimistic it will be sorted and communicated to you in the next few days. Without this allowance we could be looking at a long and drawn out legal process to resolve the obvious dispute this would cause.

As a consequence of the operation I incurred care costs (child / adult dependant etc.) that I simply could not avoid. This is simply unfair – am I entitled to claim these costs back?

Unfortunately this isn't as straightforward as we might like. The Staff Side sought to have precisely this kind of thing compensated as far back as the early part of the 2000s. In 2010 the PNB, and whilst falling short of an actual direction to forces, agreed:

Forces should bear in mind that officers with caring responsibilities may experience particular difficulties when they return to work on non-duty days. Forces should not require officers to attend work without the due consideration of the disruption to the officers care arrangements and the additional costs that will be incurred. Forces should give consideration to formulating local arrangements in support of this.

In light of this we would encourage you to claim the costs from the force and ask for an explanation in the event restitution is declined.

I appreciate this may not address every element of every inquiry and that other issues will require to be addressed on an individual basis over a longer period of time.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Calum Steele', with a long horizontal stroke extending to the right.

Calum Steele
General Secretary