



Unite response to the Department for Transport proposals for an amendment to the Civil Aviation (Working Time) Regulations 2004 with regard to the recording of standby duty as part of an individual's maximum annual working time.

**1 Introduction**

- 1.1. This response is submitted by Unite the Union, the UK's largest trade union with over 1.5 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, transport, financial services, print, media, construction, local government, education, the health service and not for profit sectors.
- 1.2. Unite, is the largest trade union in the United Kingdom (UK) civil aviation industry, representing more than 80,000 members. In this response Unite intends to highlight the level of abuse of the standby and duty time which undermines the aims of CAP 371.

**2 Consultation Questions**

**Question 1**

Do you agree with the proposal to amend the current Regulations in order to harmonise the calculation of standby duty with CAP 371?

- 2.1. Unite does not agree. Whilst it may be appropriate to include provision for there to be derogation for those in the emergency services, extending the provision to the general civil aviation mobile workers is not appropriate and could cause unacceptable levels of fatigue.
- 2.2. Air sea rescue operations are currently conducted by the Royal Air Force and hence would normally be exempt from the provisions of the working time legislation. Equally some emergency activities are also outside the scope of the directive. Unite therefore does not foresee any reason why a derogation of this nature would not be possible if it became a major concern.

## Question 2

Please explain the reasons for your response to Question 1.

- 2.3. Unite agrees that the proposal will bring the aims of CAP 371 and the actuality closer together, but does not agree that this amendment in itself will result in harmonisation and could cause considerable disruption.
- 2.4. Some airlines require standby cabin crew to be available at the airport, in uniform, to enable there to be the absolute minimum of disruption to the departure times of flights. In these cases the reduction in the equivalent working time to actual time spent would have the potential of reducing safety and increasing fatigue, as crew could be required to spend more time on standby than is the case currently. This would potentially reduce the amount of free time enjoyed by the crew which may include part time employment elsewhere. Such a move would then have the potential of reducing family household income considerably. The change would also increase pressure on salaries to have their annual pay unchanged despite the increase in hours or to reflect equivalent hours worked rather than the actual.
- 2.5. In those airlines where crew spend their standby time as they please (within limitations) the hours spent on call do not generally count towards their 2000 hours limitation. If half of all standby duty counted toward this maximum, it could create a situation where the airline will have to reduce the volume of continuous personal development, training and ground duties. None the less, Unite believes that if there were to be a harmonised approach to the treatment of standby, for health and safety reasons, it should be the case that an hour of standby counts as an hours working time regardless of where this period is spent.
- 2.6. Consequently, Unite believes that the alteration as suggested would have considerable knock on effects which would outweigh any potential gains as a result of harmonisation.

## Question 3

If the suggested amendment is made, what cost savings/benefits would be achieved by your company?

- 2.7. Unite believes that the current benefit of the full inclusion of standby time insures against a crew member being called to work on a long haul flight after several hours effectively on duty on the ground. Such a scenario avoids crew breaching the requirement to avoid fatigue.
- 2.8. If on the other hand the crew member is allowed to spend their standby time as they choose, then this could lead to delays in aircraft departure and potentially the cancellation of the flight. A harmonisation process would increase the pressure on the crews to be present at the airport and lead to a significant reduction in crew personal freedom. This is why there is the current differentiation between those who have had three clear hours notification and those who have to drop everything and make their way to the airport at often far shorter periods.

- 2.9. If an aircraft misses its departure slot allocation it could result in substantial penalties being placed on the airline and additional costs for the use of ground support services. All airlines schedule flights for the absolute minimum period on the ground to make full use of the maximum potential earnings of that aircraft. As a result crew on some budget airlines are now required to clear and prepare aircraft during their turnaround period at airports. Consequently crew rarely have any time to relax throughout their duty time onboard in these cases.

#### Question 4

Do you have any other comments on the proposed amendment?

- 2.10. Unite strongly believes that this measure should not be considered in terms of cost benefits as it relates to the relative safety of everyone on-board an aircraft. If taken to the extreme a single crew member could, under the current legislation, be required to work consistently for up to 18 hours without a rest break. In a modern society and especially in an environment where cabin crew are responsible for ensuring the safety of all passengers, it is unreasonable to expect them to work effectively for such excessive periods without rest.
- 2.11. Minimum crewing levels as determined by aircraft manufacturers do not allow for the provision of additional crew to provide the minimum complement rest on longer haul flights. As a consequence of moves by some airlines to reduce cost the provision of rest is now becoming far more difficult.
- 2.12. Cabin air quality is far from being fresh as it is recycled several times over and may contain several pollutants such as Ozone and potentially a fine mist of engine lubricants which could contain organophosphates<sup>1</sup>. Since the ban on smoking onboard aircraft, airlines have saved fuel and weight by abandoning the need to provide bottled air in cabins. As cabin crew are being physically active during their duty their bodies tend to require a greater intake of this air and, as they cannot move outside of this environment, they can often feel excessively fatigued at the end of their flight.
- 2.13. If the duration of time spent on standby is taken into full account, crew members should be fully rested before commencing their duties. If standby time spent at the airport in uniform is not counted fully against working time, crew could be spending seven hours effectively on duty waiting for a call, only to have just three and a half of those hours counting towards their effective working time period.
- 2.14. If the duration of standby time is spent doing whatever the crew member pleased<sup>2</sup>, where availability to appear at work as soon as practicable after they receive a call out, then such periods should count as at least half of the normal period. If the flight they are called to cover is a long haul trip to

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<sup>1</sup> These neurotoxins are released when aeroengine oil containing anti wear additives seeps from faulty engine oil seals into compressor bleed air used to ventilate and pressurise the cabin. Exposure to organophosphates is banned in all other industries yet is tolerated in civil aviation and in some cases, such occasional fume events are treated as normal (DHL advice to pilots as will be reported in Flight International 16-22 March edition)

<sup>2</sup> As long as they avoid activities that would adversely affect performance such as consuming alcohol.

Singapore this could result in the crew member working a further sixteen hours to eighteen hours as it would be impossible for them to leave the aircraft mid-flight and return home.

2.15. Cabin crew are often able to speak several languages and have completed a three month training course, within which they learn to:-

- Deliver babies.
- Administer CPR.
- Administer EpiPen injections to people who go into anaphylactic shock.
- Operate the Defibrillator for people who have suffered cardiac arrest.
- Take command of a life raft in a ditching scenario.
- Deploy survival techniques.
- Fire fight.
- In search techniques when bomb threats are received.
- In restraint techniques for disruptive passengers.
- In Pilot incapacitation i.e. how to deal with a pilot who becomes unconscious.

They are not just there to hand out hot towels and serve coffee.

2.16. Department of Transport figures<sup>3</sup> for 2008/09 highlight an alarming increase in the number of reported on board disturbances between passengers and crew as well as between passengers. In 2004/05 1,486 incidents were reported. In 2008/9 that number had increased to 3,529. In 2007/8 this amounted to one serious incident per every 4 million passengers. In 2008/9 the ratio has dropped to one serious incident per 2.8 million passengers!

2.17. Despite the claims from British Airways, Unite does not believe that cabin crew can be trained to an acceptable and safe standard in just three weeks.

2.18. No other emergency service worker has this level of service requirements placed upon them and still be required to work such long hours.

### **3 Amendments to include changes to holiday pay calculation**

3.1. Once again there is the opportunity for this legislation to be amended to include appropriate wording with respect to the calculation of average pay during periods of leave.

3.2. Cabin and flight deck crew are, on some UK airlines, discouraged from taking leave entitlements due to the resultant reduction in their salary. Crew pay is generally made up of their basic pay plus commission from onboard sales, sector pay and other allowances. These additional payments can, in

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<http://www.dft.gov.uk/pgr/statistics/datatablespublications/aviation/db/disruptivebehaviour200809.pdf>

some cases, boost the basic salary above the minimum wage and in others reflect over fifty percent of the crew member's income. These payments vary considerably resulting in wide fluctuations in the amount received per calendar month. If for some reason a crew member is grounded or takes annual leave the current mobile workers legislation does not provide for an averaged income to be payable, unlike workers in all other sectors of the economy.

- 3.3. Section 26A(1)c of the general Working Time (Amendment) Regulations 2007 states that the methodology utilised under sections 221 to 224 of the Employment Rights Act 1996 should be utilised in providing a clear method for determining what would amount to a days pay, if the employee worked on the ground. This suggests that an averaged payment should be made based on the average income obtained over the previous thirteen weeks salary. There is, however, no method or reference to such set out in the Civil Aviation version, leading to employers arguing that this methodology does not apply.
- 3.4. In the Court of Appeal case of *British Airways v Williams and Others*<sup>4</sup> the Court felt that, as no such provision had been incorporated into the legislation pertaining to mobile civil aviation workers, the definition of normal pay will equate to the employees basic wage. As a consequence of this judgement crew effectively have to take a cut in their income to utilise periods of annual leave.

#### 4 **Unpaid Work**

- 4.1. Air and cabin crew are, in many cases, required to attend pre flight briefings at airports and effectively be on duty a couple of hours prior to commencing their duties on board aircraft. Following the flight, a crew member would often be expected to attend a post flight debriefing with the management on problems that may have arisen and to file paperwork. It is often the case that these periods are not included, by a number of airlines, as being on duty.
- 4.2. Unite firmly believes that all periods spent by crew at the airport or company offices whilst under the direction of their employer should be included the calculation of working time and salary.

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<sup>4</sup> Before Lord Justice Ward, Lord Justice Lloyd and Lord Justice Rimer – judgement published 28 April 2009.

## 5 Conclusion

- 5.1. Cabin crew assume the role combining all three emergency services on board as well as the company's customer services department. Flight crew equally have the principle role to play in ensuring the flights safe departure, route and arrival. Neither of them can be expected to work efficiently if they are deemed to tired.
- 5.2. Unite recommends that full account should be taken of both the stand by periods spent at the airports and at other locations, on call.
- 5.3. Equally Unite believes more importantly that crew should not be placed at a financial disadvantage when taking annual leave and would call upon the Government to take the opportunity of amending the Civil Aviation Working Time Regulations accordingly.

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