



# Presentation to EUROMIL Members WTD Conference Paris 25 May 2022

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# Presentation Content

- Legal Position in Ireland
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- RACO's Legal Action
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- Q&A

# Legal Position in Ireland

- 1997 - Council Directive 93/104/EC (updated by 2003/88/EC) transposed into Irish legislation by the *Organisation of Working Time Act (OWTA)*
  - Para 3.(1) **“[T]his Act shall not apply to a member of the Garda Síochána (Police) or the DF”**
- 2012 - Following legal proceedings police representative associations, Attorney General advises Govt that the OWTA is not compliant with WTD
- 2012 - Police RAs voluntarily agreed a WTD compliant duty roster – Westmanstown Agreement
- Developing European Court of Justice jurisprudence
  - The blanket exclusion of a category of workers “such as the armed forces, the police and the civil protection services” **is not permissible**
- 2016 - Consequently, Govt makes a decision that “such a broadly based exclusion for ALL activities of the DF is NOT compatible with the Directive” and therefore “an amendment [to the 1997 Act] is required to remedy the lacuna”
- 2016 Minister for *Jobs, Enterprise and Innovation* (not Defence!) tasked with drafting new legislation to amend OWTA to enable the removal of the blanket exclusion applying to the DF subject to the application of **derogations permitted by the WTD**
- To date - No amendment drafted or “Bills of Head” produced

# General Situation in the Irish Defence Forces



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- Ireland spends 0.27% of GDP on Defence
- Combined DF 'Establishment' of 9,500 all ranks, Army, Navy Air Corps
- 2022 Commission on the Defence Forces recommends 11,500 Personnel all ranks
- Actual 'Strength' is Circa 8,400 - Shortfall in
  - Enlisted Personnel (NCOs)
  - Mid Ranking Officers (OF2 & OF3)
  - Specialist Service Officers appointments (Engrs, MOs, MEOs, Pilots)
- Circa 460 Deployed Overseas
- Circa 300 undergoing induction training (Cadets / Recruits)
- 100+ on unpaid Leave of Absences or statutory based special Leave
- 35% of RACO members have less than 5 years service (includes their officer cadet training period)
- Personnel Management System does not record actual "Hours" worked
  - Merely 24 or 12 hour regimental duties, ½ day or full day's Leave

# General Situation in the Irish Defence Forces



Óglaigh  
na hÉireann  
IRISH DEFENCE FORCES

- Since 1991 Conciliation & Arbitration Scheme (Council)
- Scope of Representation
  - Inter alia, “Matters relating to the operation of OWTA(1997) and enabling legislation” must be consulted with Representative Associations
- Joint RACO & PDFORRA Council (Sub-committee) on WTD Implementation commenced in Q1. 2019
- Ended in Aug 2019
  - RACO sought to address “Low lying fruit” first
  - ‘Rest Day’ - following a 24 hr duty in barracks
  - ‘Day in Lieu’ – continuous additional rest day to the initial ‘Rest Day’ for 24 hr duties commencing on a Saturday or Sunday
- Mgmt have failed to engaged since them
- With legal action in-play, RACO has ceased seeking to engage with Mil Mgmt or DOD on WTD matters

# RACO Conference Nov 2018



- RACO cognisant of a certain hesitancy by members & Military Management to discuss or negotiate the full and proper implementation of the WTD ran a dedicated conference
- 3 x Day conference held to educate, debate and ultimately progress the implementation of the WTD into the DF
- Attended by DOD, General Staff and DFHQ with colleague from AGS, Swedish and German militaries making significant presentation on how the WTD is being implemented in their own organisations
- Output – following RACO motion was agreed
  - “Forthwith, RACO calls on the Minister of Defence and the Government to fully implement the provisions of the EU Working Time Directive (2003/88/EC), amend the Organisation of Working Time Act (1997) and thereby ensure the wellbeing, health and safety of military personnel”

# RACO Position Following Conference



- Full implementation of the suite of health and safety WTD measures
- Creation of a formal, written & agreed DF wide 'Implementation Plan' (e.g. Westmanstown Agreement)
- Defined the working week/month/ year while factoring in the range of duties, operations and training activities
- Introduction of Management Planning Framework to forecast manage and capture working hours data of personnel (German model)
- Agreement on Compensatory Time-Off and Overtime working arrangements
- Seek the immediate introduction of a day-off (Mon) where personnel perform a 24-hour duty on a Saturday (whether you go bed or not). This is to ensure the minimum 36 hr rest period in any one week.
- Restatement by Mil Mgmt of the entitlement to the Tue off following a 24 Hours Sun day Duty
- Create a internal Dispute Resolution Mechanism where issues arise
- Management to identify and engage with interested member cohorts e.g;
  - EOD, Overseas, Sea-going Nav Service, Residential long term Career Courses, Equitation School, Prison duties

# Positive Impact of Legal Action



- 2019 – Four PDFORRA High Court cases, centring on the lack of appropriate rest periods, are settled by DOD following mediation process
- Although not privy to the High Court action or the outcome of the mediated settlement with PDFORRA, this action also resulted in a positive outcome for RACO members
- Small annual additional Annual Leave and ex-gratia payments backdated to 2015 was granted to 40 officers for
  - EOD Officers on continuous 7 x 24 hrs rosters
  - Loss of statutory Annual Leave for cohort of deployed Officers overseas
  - Extended 96 hr Prison duties
- Extended into 2020 but not yet in 2021?
- Currently both associations seeking to apply similar compensation for any member performing 24 hr duties without appropriate rest periods
- 2021 - Ten RACO members lodge claims to the High Court

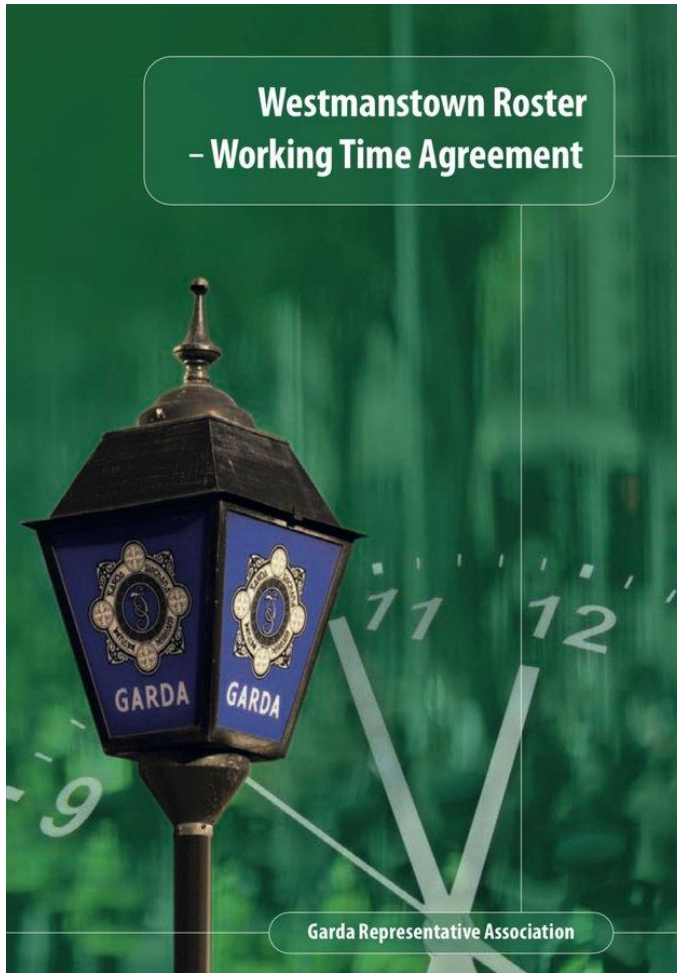


# RACO Legal Action 2021



- Very atypical for RACO members to resort to legal action
- 18 May 21 - RACO on behalf of 10 members initiated legal proceeding against the Minister for Defence for his department's "Failure to comply with the requirements of the WTD"
- The proceedings claim that,
  - Members not afforded the same protection as other workers –
  - Sec.3 of the OMTA "is in clear breach of the WTD and in case law of the ECJ"
- Sought that the Minister for Defence,
  - Acknowledge the entitlement of members to rely on the WTD,
  - Acknowledge the breach members are currently being subjected to,
  - Compensate for these breaches and,
  - Amend work practices without delay to ensure no further breaches occur
- Dec 21 - Attorney General's office responded seeking a vast array of documents
- Our Responses are currently with Senior Counsel

# A Better Way



- *Voluntary agreement reached between Mgmt and RAs*
- *The purpose of this agreement is to . . . efficiently and effectively implementation and ensure the operation of the rosters complies fully with the EWTD*
- *Agreement will comply with the EWTD and subsequent CJEU judgments*
- *Parties recognise that . . . that working time in general and rosters in particular, should be predictable for members*
- *While providing for predictability, this agreement sets out circumstances where management shall be entitled to change tour starting and finishing times . . .y designed to allow for flexibility to respond to policing demands and the needs of the community.*
- *This agreement acknowledges*
  - *that the roster is designed to provide a minimum of 11 hours consecutive rest in each 24 hour period*
  - *that members shall not, in the interest of health and safety, be required to work more than 16 hours in any 24 hour period. Notwithstanding this commitment the agreement provides and prescribes (herein) the occasions where it may not be possible to comply with this requirement*

# Key Elements - “Westmanston” Agreement



## Management Gained

- Provides Agreement & Compliance on derogations allowing for ‘Effective Policing’
- Defines responses to,
  - **“Exceptional”** circumstances. Inherently unpredictable or unforeseen e.g., natural disaster, fatal road accident
  - **“Extraordinary”** circumstances - Large scale event that are predictable and foreseeable e.g., Sports events
  - **“Exigencies of the Services”** - Day to day events – requirement to remain at the ‘scene’ e.g., fatal road accidents
- Allows for continuity and flexibility of policing service in the case of unusual activities
- Enable security and surveillance activities requiring a permanent presence
- Cope with a surge in anti-public order activity
- In cases of accident or imminent risk of an accident

## Police Associations Gained

- Allowed Associations to prioritise Pay, Working time, Welfare and Wellbeing of members at negotiations
- Regulate and limits rosters/duty details
- Not expose members to widely unpredictable working time
- Provides for the Health & Safety of members
- Provides equivalent compensatory rest
  - Where a break of less than 11-hours in 24
  - Compensatory rest
- Weekly rest periods can be either 35 hrs in 7 days or 59 hrs in 14 days
- Limits average working week to 48 hours - Averaged over 6 months
- Does not allow for Individual opt-out
- **AGS are paid overtime**

# In Summary

- For over 10 years the Irish Government has been aware that its domestic legislation is flawed
- Despite efforts to work within the C&A Scheme, legislative change has NOT come about
- While the C&A scheme brought about some changes and compensations, old habits die hard
- Legal proceedings are forcing some engagement but also proving slow
- Mgmt currently working on introducing statutory based Derogations, but failing to engage with PDFORRA or RACO (yet)
- If lack of consultation continues and new legislation is imposed then further legal challenges will emerge

