



TAKE A PROPER REST BREAK

STAY SAFE

THIS GUIDANCE COVERS:

- Rest Breaks and Working Time Regulations
- Regulatory and Professional Requirements
- RP Regulations – including absence provisions and working time
- Advanced Declaration
- FAQs



INTRODUCTION

Proper rest breaks are an important element of maintaining a safe environment for patients and help to protect the health and wellbeing of workers. Pharmacists predominantly work in safety-critical roles where the consequences of being tired or distracted through the lack of an uninterrupted rest break can have serious consequences if an error is made as a result.

The law establishes minimum requirements for rest breaks and sets limits on the working hours of employees and workers. These are absolute minimum safety standards; however, some employment contracts provide for more generous rest breaks than the basic legal minimum and in addition to any legal and contractual rest break entitlement, pharmacists have strict professional standards to maintain which require them to “practise only when fit to do so.”

The ability to take a proper rest break in pharmacy is a challenge encountered by pharmacists in many workplaces and the purpose of this article is to clarify the employment and professional aspects around rest breaks so that pharmacists can protect patients and themselves. This article is designed for Boots employed pharmacists and refers to the Boots Working Time Policy (including Break Policy), Pharmacist Rest Break Policy and Lunch Payments Policy. The PDA also commissioned Charles Russell Speechlys, a highly respected law firm with specialist pharmacy expertise, to produce [an expert briefing note](#) on the Responsible Pharmacist (RP) regulations so that members can consider the legal and ethical obligations on responsible pharmacists, including responsibility for activities that may be carried out in the absence of the responsible pharmacist.

The issue of remaining signed in as the Responsible Pharmacist (RP) whilst on an unpaid break using the absence provisions is a frequent query from pharmacists and the recent Supreme Court judgment on a case involving UBER drivers provides helpful clarification on what constitutes working time.

PDA UNION ADVICE

- At all times when pharmacists are signed in as the RP, including using the absence provisions, this is working time.
- Pharmacists who are required by the company to remain signed in as the RP due to business requirements, including using the absence provisions, should receive payment even when on a break.
- If budgetary constraints prevent payment from being made, pharmacists should sign out as the RP.
- The PDA Union advises that pharmacists should not participate in using the Advance Declaration (AD) process.

REST BREAKS AND WORKING HOURS

[The Working Time Regulations 1998](#), specify that employees and workers have the right to one **uninterrupted** 20-minute rest break during their working day if they work more than 6 hours in a day. The break does not have to be paid and this will depend on the employment contract. Some employers offer a longer contractual break than the minimum specified in law with the length of a break specified in the contract of employment and/or applicable relevant policies.

Under the regulations, workers must have 11 hours rest between working days; for example, if a pharmacist stops work at 11.00pm, they must not start work again until at least 10:00am the following day. They must also have a rest break of at least 24 consecutive hours each week.

The maximum weekly working hours permitted is 48 hours on average unless this has been opted out of by the employee or worker. The maximum weekly hours is the only part of the regulations from which an individual can opt out, workers cannot opt out of the requirements for statutory rest breaks.

Employment case law has clarified that an employer has a duty to positively and proactively enable employees and workers to take adequate rest breaks, to include making every effort to promote and facilitate the taking of breaks and adequate rest.

Please note those considered to be genuinely self-employed locums are not entitled to these breaks as the regulations only apply to employees and workers. Rest breaks are still critically important for self-employed locum pharmacists and the frequency and duration of these will depend on regulatory obligations to “practise only when fit to do so” as well as any agreed contractual break at the time of the booking.

REGULATORY STANDARDS

Pharmacists must comply with strict professional regulatory standards which require them to “practise only when fit to do so”. This standard encompasses rest breaks, and the pharmacist must be mindful of the impact of working hours and workload on their ability to practice. Adequate rest breaks must be taken to maintain safe practice.

Professional guidance emphasises the need for “appropriate” and “adequate and safe” rest breaks, “above and beyond the 20 minutes every 6 hours required by the Working Time Regulations where necessary”, and that, “The frequency and duration of these breaks should be appropriate to the working environment”.

GPhC regulatory standards are not prescriptive about the frequency and duration of breaks and it is left to the professional judgement of the pharmacist to determine what is required. Pharmacists who come to the attention of the regulator for an error or complaint that may be linked to long working hours or intense workloads must be prepared to explain how they ensured adequate rest breaks were taken.

Please note that it is unlikely a Fitness to Practice Committee would accept being “too busy” or “customer pressure” as valid reasons for making an error where lack of breaks was a factor. The GPhC expect every pharmacist to be an autonomous professional with the authority to control their own working environments, including taking rest breaks, to ensure patient safety.

RESPONSIBLE PHARMACIST (RP) REGULATIONS

The RP regulations place strict legal and ethical obligations on responsible pharmacists, including responsibility for activities that may be carried out in the absence of the responsible pharmacist. A complete list of these obligations can be found [here](#).

The recent [Uber Supreme Court judgment](#) provides helpful clarification of what constitutes “working time” and the principles in that case also apply to pharmacists.

For the purpose of the Working Time Regulations 1998, “**working time**” is defined in regulation 2(1), in relation to a worker, as “**any period during which he is working, at his employer’s disposal and carrying out his activity or duties**”. A pharmacist is undertaking activities defined as “working time” whenever they are identified as the RP on the RP record, including when using the absence provisions, and as such the union believes they should receive payment or other recompense for this working time.

ABSENCE OF THE RESPONSIBLE PHARMACIST

The Regulations provide that the responsible pharmacist may be absent from the premises for a maximum period of two hours during the pharmacy’s business hours. The responsible pharmacist **must not be** absent from the premises unless the following arrangements have been put in place:

1. Where it is reasonably practicable for the responsible pharmacist to be contactable throughout the period of absence, arrangements must ensure that the responsible pharmacist can be contacted by other pharmacy staff and return to the premises with reasonable promptness if, in the opinion of the responsible pharmacist, this is necessary to secure the safe and effective running of the pharmacy business.
2. For any period of absence where it is not reasonably practicable to put in place the arrangements above, arrangements must ensure that another pharmacist is both available and contactable to provide advice to other pharmacy staff.

RP ABSENCE GUIDANCE

When the Regulations were introduced, the Department of Health issued guidance on the Responsible Pharmacist Regulations and the legal duties on the responsible pharmacist.

The Guidance makes the following clear: In terms of the responsible pharmacist’s absence from the pharmacy, the Guidance states that “**the responsible pharmacist must comply with the requirements in section 72A and the Regulations throughout the time s/he is responsible for the pharmacy - that is, whether or not s/he is present on the registered pharmacy premises.**”

The regulations regarding absence require the RP to be contactable throughout the period of absence and be able to return to the premises within reasonable promptness if required unless alternative arrangements are put in place.

Please note that regardless of any arrangements in place for another pharmacist to be available and contactable, the RP retains full responsibility for what happens in the pharmacy during their absence.

An RP using the absence provisions is effectively operating under an “on call” arrangement due to the retained legal and professional responsibilities whilst absent as well as the requirement to be contactable and be able to return to the pharmacy within reasonable promptness.

SUPREME COURT CONSIDERS ON CALL

The Supreme Court in the Uber case found no difficulty in principle, in a finding that the time when an Uber driver is “on call”, falls within the definition of “**working time**” under the regulations.

The Supreme Court went on to state that a number of decisions of the Court of Justice of the European Union (CJEU) establish that, for the purpose of the Working Time Directive, to which the UK Regulations aim to give effect and which defines “working time” in the same way, time spent on call counts as “working time” if the worker is required to be at or near his or her place of work. For example, in *Ville de Nivelles v Matzak* (Case C-518/15) the CJEU held that time spent by firefighters on stand-by at their homes, which were required to be within eight minutes travelling distance of the fire station, was working time.

The Supreme Court decision in the Uber case leaves no doubt that whenever a pharmacist is recorded as being the RP (absent or otherwise) this counts as working time due to the statutory requirement of the role.

RP STATUS AND PAYMENT

The following is the Boots Lunch Policy on payment whilst signed in as the RP and this policy was developed prior to PDAU recognition. Please note that the union legal and professional experts consider this policy to be outdated and in significant conflict with other company policies as well as developments in employment case law.

CURRENT BOOTS LUNCH POLICY

“As a business with over 2300 Pharmacies, serving communities across the UK, our approach to breaks for pharmacists reflects the different needs of our patients and customers across our diverse store portfolio and supports flexibility.

Pharmacists are entitled to claim their lunch payment where this does not already form part of their contracted hours and they remain signed in and working i.e. actively working in the dispensary or consultation room. It is expected that they find another time to take a 20-minute uninterrupted break during their shift if it is longer than 6 hours. Lunchtime breaks are not paid whenever absence provisions are in use.

In principle all breaks are unpaid. However, with regard to Pharmacists there are some exceptions.

Whether or not a Pharmacist chooses to remain signed in as the Responsible Pharmacist (RP) is a matter for their professional judgment:

- If the Pharmacist is scheduled to have a break in line with our break guidance, then the Pharmacist will not be expected to remain signed in as RP and the break is unpaid. Signing out is a matter for their professional judgement.
- If the Pharmacist is not scheduled to have a break but has worked more than 6 hours, then they must take a 20-minute continuous and uninterrupted break. In this case, providing the Pharmacist remains signed in as RP, they would be paid for the break.
- If the Pharmacist wishes to sign out as RP, then they could take an unpaid continuous and uninterrupted break and should refer to the responsible pharmacist SOP RP1v1.

Under the Working Time Regulations, an adult worker whose daily working time is more than 6 hours is entitled to an uninterrupted rest period of not less than 20 minutes, which they are entitled to spend away from their workstation if he/she has one. While a rest break should be taken away from their workstation, a colleague can be required to remain in or about their workplace while taking a rest break, provided that they are not having to perform any duties. The break need not be paid. Remaining signed on as the RP whilst on a break, including using the RP absence provisions, is compatible with the accepted legal definition of a break.

The policy is clear that where the shift is over 6 hours, a 20-minute uninterrupted break is available, and it is the Pharmacist's responsibility to manage this in line with the store. Where the 20-minute break is interrupted another 20-minute period should be taken at a later point.”

Separate to the above Lunch Policy there is an overarching [Boots Working Time Policy including Boots break standards policy](#) which the company describe as providing clear and consistent guidelines for all colleagues working in stores. The following table is the entitlement to a rest break for all store colleagues depending on their shift length.

Shift length (hours)	Break Length (hours)	Paid Hours
Up to 4.0	No break	Up to 4.0
4.25 - 7.25	30 minutes	3.75 - 6.75
7.50 - 8.75	60 minutes	6.50 - 7.75
9.00 - 13.50	90 minutes	7.5 - 12.0

PDA COMMENT ON THE LUNCH POLICY

The legal and professional experts at the PDA make the following observations on the Boots Lunch policy:

- The policy is confusing and conflicts with an overarching company Working Time Policy – for example the “Boots Working Time Policy (including break policy)” provides “**guidance on break standards and daily and weekly rest periods to ensure that our colleagues feel rested and refreshed to support our customers.....**” and also states “**Boots break standards provide clear and consistent guidelines for all colleagues working in stores**” Under this policy a non pharmacist staff member working a shift between 4.25 hours and 7.25 hours in the store has a break entitlement of 30 minutes.

This is a 50% greater entitlement to a rest break than a pharmacist who under the pharmacist specific policy is only permitted a 20 minute break if they work more than 6 hours, which is the absolute minimum required under the regulations.

It is unclear why, pharmacists operating in a safety critical role and often under intense pressure, have significantly less entitlement to a rest break than any other member of staff in the store.

- The policy states, **“While a rest break should be taken away from their workstation, a colleague can be required to remain in or about their workplace while taking a rest break, provided that they are not having to perform any duties”**. However, a pharmacist who is signed in as the RP or using the absence provisions is clearly undertaking “duties” as the RP for the reasons described in [the legal briefing note](#). For this reason, the PDA team believe that the following company statement is incorrect **“Remaining signed on as the RP whilst on a break, including using the RP absence provisions, is compatible with the accepted legal definition of a break.”**

ADVANCE DECLARATION (AD)

Boots uses the Advance Declaration (AD) to allow a pharmacy to operate in the absence of a pharmacist usually before they have arrived at work. In the view of PDA, the Advance Declaration (AD) is at best an untested mechanism to interpret the RP regulations to permit the pharmacy to operate under the absence provisions outside normal trading hours. The PDA believes that the use of the AD is contrary to both the spirit and letter of the RP regulations. The AD is a document that is signed in advance by the RP who agrees to accept responsibility for the operation of the pharmacy for up to 2 hours each day usually prior to the pharmacy opening the following morning.

To allow a pharmacy to become operational at 7:00am for 2 hours under the RP absence provisions until the pharmacist arrives at work at 9:00am, the AD is signed the day before. It is unclear how an absent pharmacist can be expected to comply with the regulations when using the AD ([learn more](#)).

Notwithstanding the difficulties of an absent pharmacist being able to comply with the RP regulations, Boots do not believe pharmacists should be paid when an RP agrees to accept responsibility for what goes on in their absence. During recent pay negotiations the union sought to negotiate payment for the AD, the company explained its refusal to agree to this as follows:

“The basis for this is that we do not provide payment for the use of Advanced Declaration (AD) now and do not see any rationale for changing this. There is no obligation on pharmacists to exercise the Advanced Declaration. It remains a matter for the professional judgement of the individual pharmacist.”

The use of the AD also has the potential to cause the company difficulties in complying with **The Working Time Regulations 1998**. For example, if a full-time pharmacist contracted for 40 hours over 5 days each week, agrees to use the AD for 2 hours daily over those 5 days, then the company is in breach of the 48 hours weekly hours limit, unless the pharmacist has opted out. If the pharmacist also remains signed in as the RP whilst on a rest break the situation is compounded by further invisible unpaid working time being undertaken.

PDA UNION ADVICE ON USING AD

The PDA Union strongly advises pharmacists against using the Advanced Declaration for the following reasons:

- The RP takes full responsibility for what happens during their absence, whilst not receiving acknowledgement of the hours worked when using the AD nor any recompense for the working time undertaken. The PDA Union believes the current company position conflicts with the latest Uber judgment handed down by the Supreme Court.
- The company state that using the AD is solely down to the professional judgement of the pharmacist and there is no obligation to use the AD. Although case law confirms that such activity is “working time” Boots does not agree it should pay pharmacists for their working time when using the AD.
- The AD may cause a conflict with the Working Time Regulations which in turn could conflict with GPhC professional standards if excessive hours are worked.

Due to the great variety of working patterns and practices within Boots it is difficult to cover all permutations and members should contact their [local representative](#) or PDA Union office team for individual advice.

FAQS

The following is a list of FAQs the PDA Union has received from members:

1. What are the financial consequences of remaining signed on as the RP during unpaid rest breaks or when using the AD?

A pharmacist who remains signed on during rest breaks, including using the absence provisions, is accepting a reduced hourly rate for their working hours. Example 1, a pharmacist on a 40-hour contract over 5 days with a salary of £42,000 per annum will be on an hourly rate of £20.19. By remaining signed in as the RP each day over a typical 30-minute unpaid rest break, their hourly rate drops by almost 6% to £19.00 per hour.

Example 2, using the same contracted hours and pay rate as above, a pharmacist operating the AD process for two hours each day will add 10 hours of unpaid working time each week on top of their contracted hours and the hourly rate then drops to £16.15, which is a 20% reduction.

2. What happens if I do not take my breaks and rest periods?

Pharmacists risk unsafe practice through tiredness and overwork, which could jeopardise patient safety and put their own health at risk. Pharmacists who make errors resulting from a lack of proper rest breaks may face sanctions from the pharmacy regulator and attract criticism in other judicial processes such as an inquest or fatal accident enquiry.

3. If my scheduled break is interrupted, what should I do?

If employed pharmacists do not achieve at least an uninterrupted statutory rest break of 20 minutes, then they will not have received the minimum rest break which the law requires, and the legislation will have been breached. Pharmacists must take an alternative uninterrupted break as soon as possible after.

4. My manager has told me there is no budget to pay for additional lunch time pharmacist cover, but if I sign out as the RP when I am on a break the pharmacy will be in breach of its NHS contract. Is this correct?

The responsibility for complying with the NHS contract lies entirely with the pharmacy contractor, not the individual pharmacist. The pharmacy can either choose to amend its contractual hours to reflect the need for the pharmacist to take a rest break, provide additional pharmacist lunch cover so a break can be taken or consider using the lunch payment policy subject to the pharmacist agreeing. Pharmacists who exercise their right to sign out as the RP to take a statutory rest break are protected in law from being disadvantaged for doing so.

5. The “Pharmacist Rest Break Policy” on Pharmacy Unscripted suggest a 20-minute break is acceptable, but it also says “pharmacists must adhere to our Working Time Policy” which is more generous – Do you think this is confusing?

This policy was developed by Boots in conjunction with the Boots Pharmacists Association (BPA). It is unclear why the BPA agreed to a confusing and significantly less generous rest break policy for pharmacists compared to the overarching company policy for all store staff. The BPA was derecognised by pharmacists in 2017 and this legacy policy is due to be renegotiated this year by the PDAU.

6. Do I have to sign the ADT if I am asked to by a manager?

No and the PDAU advises against using the AD for the reasons set out in this article

7. Do I get paid for the time where I have signed the AD?

No, the company does not pay for this working time.

8. Can I eat my lunch in the back of the pharmacy as the store is so small and does not have any staff rest facilities?

No, eating in the pharmacy is not permitted and the PDAU is aware of Boots pharmacists and other staff being disciplined regarding the consumption of food in the pharmacy.

9. If I remain signed in as the RP but take a lunch break in the staff area, so that I am immediately available if needed by the Pharmacy team or counter staff, can I claim payment for this break?

Not according to the current Boots Lunch Policy. The PDAU advises that in such circumstances the pharmacist should sign out as the RP and take a proper rest break away from the workplace.

10. The store manager has told me I have to take a 60-minute break and I will not be paid for it as their budget does not allow for it; however, the pharmacy wants to continue selling medicines from the Chemist Counter. Is this allowed?

If the pharmacist remains signed on as the RP including using the absence provisions this is “working time” and in the view of the PDAU this should be paid time. If the RP remains signed in throughout the day any break taken may be incompatible with the Working Time Regulations 1998 due to the restrictions and responsibilities of the RP when on duty.

11. Should I be paid when I am using the RP absence provision for example over a lunch period when I am not actively working but I am still contactable and able to return to the pharmacy if needed?

Not according to the current Boots policy. The company states that "Whether or not a Pharmacist chooses to remain signed in as the Responsible Pharmacist (RP) is a matter for their professional judgment". Remaining signed in as the RP counts as working time although Boots do not pay in such circumstances where the pharmacist is taking full responsibility for the operation of the pharmacy.

12. If the company will not pay me for using the RP absence provision can I sign out as RP and close the store?

Yes, it is entirely at the discretion of the pharmacist whether to sign out as the RP if payment is not available. Remaining signed in as the RP counts as working time and the pharmacist retains regulatory and legal responsibility for what is happening in their absence.

13. Can my manager make me work my 9hr shift without a break to keep the store open?

No, this would be unlawful and potentially unsafe. It is also in breach of company policy.

14. Can the company make me move stores to suit the business needs if I insist on signing out as RP over my lunch break?

There is clear protection under employment legislation should an employee be put at a detriment for exerting a statutory right, such as taking a rest break. The PDAU has successfully supported pharmacists who were asked to move from their place of work after deciding to sign out as the RP during an unpaid rest break.

15. Can I take additional unplanned breaks during the day if I think I need to ensure I can continue to work safely?

Yes and professional obligations towards patients may require more frequent rest breaks.

16. Can I be RP in one store and signed in using the absence provision in another store to keep it open for a 2 hour period?

No, this is not permitted under the regulations.

17. Should I use the absence provision at the end of the day so that staff can continue working after I have left for 2 hrs when the store is closed so that they can catch up?

The PDA Union advises against using the Advanced Declaration for the reasons set out earlier in this article. The company currently do not pay for this time although it counts as working time. The pharmacist retains regulatory and legal responsibility for what is happening in the pharmacy during their absence.

18. If I do not sign out at lunchtime, can I claim lunchtime payment?

Yes, under the current Lunch Policy payment can be claimed providing the policy criteria are met.

19. What happens if I have signed the AD for a store and I am unable to attend due to sickness?

If a pharmacist is unable to attend work due to illness then they will not be able to comply with the RP absence regulations and should instruct the relevant store to cease all activities that the AD is being used to legitimise.

20. Can you confirm the maximum permitted 'absence' is 2 hours per day including lunch, ie The AD can only be used for 1.5hrs if I take a 30 minutes rest break that day?

Yes, the absence provisions can only be used for a maximum of 2 hours each day.

21. Should I fax an ADT to store from another store, if I have no idea what I will be walking into the next day?

No, as it is highly unlikely the RP regulations can be met, notwithstanding the risk of accepting unpaid responsibility for a pharmacy where the pharmacist has not made a thorough assessment of the skill mix, operational compliance and working environment.

GETTING IN TOUCH

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