

# Working Time Regulations

## Policy: HR35

This policy and procedure sets out the responsibilities of employees and employers under health and safety law to protect as far as practicable the health and safety of all employees. This policy provides arrangements for protection, record keeping, maximum working time, rest breaks, daily rest periods, working more than 48 hours a week, on-call, rest periods and night work. This policy should be read in conjunction with document HR35a – Working Time Regulations Management Guidance.

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Contact PALS – 0800 0730741 or email [dpn-tr.pals@nhs.net](mailto:dpn-tr.pals@nhs.net)

If you require further help in the interpretation of this policy please contact the **HR Helpdesk on 01392 663915.**

If this document has been printed please note that it may not be the most up-to-date version. For current guidance please refer to the Trust Website.

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## 1. Introduction

- 1.1. The Trust has reached agreement with local Staff Side Representatives in accordance with Section 23 of the Working Time Regulations 1998, Working Time (Amendment) Regulations 2002, 2004, 2007 & 2009 in relation to all Trust employees and workers, with the exception of medical and dental staff who are covered by separate arrangements outlined in Appendix A, F and G.
- 1.2. In particular, it has been agreed that all Trust employees and workers with the exception of certain medical staff (reference paragraphs 1.4) will be subject to the Agenda for Change Terms and Conditions.
- 1.3. Separate arrangements have been agreed with local representatives of medical and dental staff for career grade doctors and junior doctors employed under national terms. These shall also apply to Trust employees in this position and are attached as an appendix to this document.

## 2. Purpose

- 2.1. There is a general responsibility for employers, employees and workers under Health & Safety law to protect as far as is practicable, the health and safety at work of all employees. Control of working hours should be regarded as an integral element of managing health and safety at work and promoting health at work.
- 2.2. In making local arrangements to implement this policy, operational managers and employees are expected to ensure that no arrangements are agreed upon which discriminate against members of staff with family or other carer responsibilities.

## 3. Definitions

- 3.1. **Casual employees** such as nursing or administrative "bank" staff are considered to be "workers" under the terms of the Working Time Regulations 1998 (and subsequent amendments) and are therefore entitled to all the benefits under the Trust Policy. This also applies to agency workers who have worked for the Trust for 12 weeks or more within the same type of work role, in accordance with the Agency Workers Regulations, which came into effect on 1<sup>st</sup> October 2011.

## 4. Records

- 4.1. The employer will keep adequate records, which will be available to recognised Trades Unions, to demonstrate that the limits specified in the following subjects:
  - Maximum Working Weekly Time
  - Rest Breaks
  - Daily Rest
  - Weekly Rest Periods
  - Night Work
- 4.2. These regulations will be complied with and that where there is an entitlement for compensatory rest, this is provided for.

## 5. Maximum Weekly Working Time

- 5.1. Working time is any time where an employee is "working, at his employer's disposal and carrying out activities or duties". For time to be classed as working time, all three elements must be satisfied. Such time may or may not happen to coincide with the time for which a worker receives pay or with the time during which he/she may be required to work under

the contract of employment. Working time will include time taken for training purposes, civic and public duties, health and safety and Trades Union activities.

- 5.2. Employees will normally not be expected to work more than 48 hours per each 7 day period, calculated over an averaging period of 17 weeks. In exceptional circumstances, the reference period may be extended by agreement with locally recognised Trades Union officials to a maximum of 26 weeks.
- 5.3. The averaging reference period shall be the 17 weeks immediately preceding each day in the course of a workers employment.
- 5.4. Working time will be calculated exclusive of meal breaks except where individuals are required to work during meals, in which case such times should be calculated as working time.
- 5.5. Employees need to ensure that they declare on an annual basis any secondary employment they may undertake to their manager by completing an Annual Declaration form on the Daisy intranet <http://daisy.exe.nhs.uk/working-here/your-employment/annual-employment-declaration.aspx> Managers and employees have a responsibility to monitor this, ensuring that the maximum 48 hours are not breached.

## **6. Individual Option to Work More Than 48 Hours per Week**

- 6.1. Under the terms of the Working Time Regulations, individuals may choose to agree to work more than the 48 hours average weekly limit subject to written agreement with their employer. The Trust does not however, consider that working in excess of 48 hours per week accords with the principles outlined section 2 of this Trust policy and shall not, therefore, enter into such agreements other than in exceptional circumstances.
- 6.2. Exceptional circumstances for breaching the Working Time Regulations would be considered once all other options for temporary staffing supply have been exhausted via the approved escalation process. The Trust Safe Staffing Policy details the approved escalation process for temporary staffing supply.
- 6.3. The Managing Partner responsible for the directorate requiring the breach of Working Time Regulations will sanction the individual workers requirement to work outside of agreed policy based upon a risk assessment that will include risks to the organisation and risks to the individual worker.
- 6.4. An RMS detailing the reasons for breaching Working Time Regulations is to be completed once the decision to breach the regulations have been agreed.
- 6.5. Monitoring of data related breaches will be monitored through LPF/DGB and SMB.

## **7. Staff "On-Call"**

- 7.1. Staff who have to be "on-call" (being called into work from outside the premises) and so are available to work if called upon, will be regarded as working from when they are required to undertake any work-related activity. Where staff are "on-call" but otherwise free to pursue their time as their own, this will not count towards working time.

## **8. Rest Breaks**

- 8.1. Where the working day is longer than 6 hours, all staff are entitled to take a break of at least 20 minutes. Rest breaks must be taken during the period of work and must not be taken either at the start or the end of a period of working time. Employees should be able to take this rest break away from their workstation. In exceptional circumstances and by agreement

with the worker, where a rest break cannot be taken, the unused entitlement should be claimed as a period of equivalent compensatory rest. Local managers must ensure that provision is made to allow compensatory rest to be taken, normally within the following 2 weeks. Where local arrangements already provide for breaks of more than 20 minutes (eg. lunch breaks), this will meet the requirements of this provision and no further action will be necessary.

- 8.2. In circumstances where work is repetitive, continuous or requiring exceptional concentration, provision must be made for adequate rest breaks as an integral part of the employer's duty to protect their employee's health and safety. In such circumstances, the advice of the Occupational Health Service should be sought.

## **9. Minimum Daily Rest Periods**

- 9.1. Employees should normally have a rest period of not less than 11 hours in each 24 hour period. In exceptional circumstances where this is not practicable because of the contingencies of the service, daily rest may be less than 11 hours. Where this is the case, records must be kept by the local manager which will be made available to the locally recognised Trades Union officials upon request. Local arrangements should be agreed to ensure a period of equivalent compensatory rest is provided. Compensatory rest should be provided within a reasonable time from when the entitlement to rest was modified, usually within the subsequent 2 week period. Any proposed regular amendments to the minimum daily rest period must be agreed with the locally recognised Trades Unions. It is acknowledged that in some emergency situations, compensatory rest may not always be possible.
- 9.2. Where full daily rest cannot be taken because a worker is changing shifts, the local manager should make arrangements to allow equivalent compensatory rest as soon as is practicable.

## **10. Weekly Rest Periods**

- 10.1. All employees should receive an uninterrupted weekly rest period of 35 hours (including the 11 hours of daily rest) in each 7 day period for which they work for the Trust. Where this is not possible, they should receive equivalent rest over a 14 day period, either as one 70 hour period or two 35 hour periods.

## **11. Night Work**

- 11.1. Night time is a period of at least 7 hours, which includes the period from midnight to 5 am. A night worker is an employee who is classed as working for at least 3 hours daily working time during night time hours in the "normal course" of their employment. Local managers must ensure that the "normal" hours of their night workers does not exceed an average of 8 hours over a 17 week period.
- 11.2. "Normal hours" are those which are regularly worked and/or fixed by a contract of employment. Any calculation is not affected by absence from work, as a workers normal hours of work would remain the same regardless of the "actual hours worked". Time worked as overtime is not normal work unless an employee's contract fixes a minimum number of hours.

## **12. Special Hazards of Heavy Physical or Mental Strain**

- 12.1. Local managers must identify any special hazards faced by night workers by undertaking Risk Assessments in accordance with the Management of Health and Safety at Work Regulations 1992. Special hazards identified in this way will be those involving a significant risk to health and safety.

12.2. Where the assessment identifies that the night worker does work which involves special hazards, the local manager must ensure that the member of staff does not actually work for more than 8 hours in any 24 hour period during which the night worker performs night work.

### **13. Health Assessment for Night Workers/Transfer to Day Work**

13.1. All night workers shall be entitled to a free confidential health assessment on a regular basis and/or additionally when a work related problem is identified, to determine whether the worker is fit to undertake the night work to which he/she has been assigned. The format and content of the assessment has been agreed with the locally recognised Trades Unions following the advice of the Occupational Health Department. Employees will be entitled to paid time off to attend health assessments.

13.2. Employees identified by a medical practitioner as having health problems related to night work will be offered, wherever possible, the option of transfer to suitable day work with appropriate pay and conditions of service.

### **14. Annual Leave**

14.1. All employees including "bank" workers, shall be entitled to a statutory period of 5.6 weeks (28 days) paid annual leave per year (pro rata for part-time) to be taken at a time to be agreed with the employer. Bank holidays can be included towards this entitlement.

14.2. Payment for the annual leave entitlement afforded to staff under the terms of this policy, shall be not less than that which an employee normally earns whilst working.

14.3. Entitlement to paid annual leave under these provisions is not in addition to existing contractual entitlements and any contractual leave taken within a particular leave year will count against a workers entitlement under the Regulations.

### **15. Monitoring**

15.1. In order to ensure a consistent application of this policy, Managers and employees are encouraged to seek any further advice when necessary on this policy from the HR Connect on 01392 663915.

15.2. Working time reports for permanent staff will be monitored on a monthly basis and reports will be sent out to managers and Workforce Business Partners highlighting any breaches.

15.3. Managers and individual employees are responsible for ensuring there are no breaches of this policy. Letters will be sent to individuals who are in breach of this policy and disciplinary action may be taken in some cases.

**Signed on Behalf of Devon Partnership NHS Trust**



**Signed on Behalf of Staff Side**



**Date for Review**

April, 2020

## **Appendix A - Implementation of the Working Time Regulations Agreement**

### **MEDICAL AND DENTAL STAFF (SENIORS) AGREEMENT (AL (MD) 6/98)**

#### **1. Introduction**

1.1 This paper sets out the agreement reached with the Medical Local Negotiating Committee (LNC) and the Trust concerning the local implementation of the Working Time Directive.

#### **2. Application**

2.1 This agreement extends the provisions of AL(MD)6/98 to all career grade doctors who undertake work for the Trust.

#### **3. Derogation**

3.1 It is confirmed that the derogation's set out in Regulation 21 of the Working Time Regulations 1998 shall apply to all career grade doctors (excluding clinical academics).

#### **4. Reference Periods**

4.1 For the purposes of this agreement reference periods shall commence on 1 April and 1 October each year.

4.2 It is agreed that doctors should keep diaries of their hours worked over a minimum period of 13 weeks or over the rota cycle, whichever is preferable. The average figure for the 13 week monitoring period will apply over the 26 week reference period.

4.3 Where variations between doctors working time is insignificant, it is agreed that the hours worked on-call will be calculated on a Departmental basis. This figure will then be used to calculate the average number of hours worked by doctors on the same on-call rota in the same Department/Unit. A decision on whether to implement this averaging will be taken by the doctors concerned at Directorate/Department level.

#### **5. Protection**

5.1 Conditions currently in place which are more favourable than the entitlements under the Regulations will not be changed to a lower standard simply to comply with the minimum laid down by the Regulations.

5.2 It is confirmed that doctors will not suffer any detriment as a consequence of them having exercised any of their entitlements under the Regulations.

#### **6. Calculations of Hours Worked**

6.1.1 Periods of leave (e.g. annual leave, sick leave, study leave and maternity leave) are excluded from the calculation of hours worked. Therefore, where a doctor takes such leave when monitoring the number of hours worked, the average number of hours worked will be calculated over the weeks in which the doctor was not on leave.

#### **7. Duties included in the definition of work**

7.1 In assessing weekly working hours a doctors normal contractual commitments as outlined in their job plan, any additional duties performed as a result of the needs of the service (e.g. management and other non-clinical duties), work undertaken whilst on-call and work

undertaken where the doctor is not on-call but has been contacted by the hospital will be taken into account. Private practice is excluded from the calculation of hours worked.

7.2 The following are examples of duties falling within the definition of work. The list is not exhaustive:

- Out-patients clinics
- Ward rounds
- Operating procedures
- Investigative work
- Participation in medical audit
- Administration
- Teaching/training
- Domiciliary visits
- Work for postgraduate deans
- Official travel on duties listed above (including for on-call work)
- Work for LMWAGS
- Employment of staff duties, i.e. interviewing committees (internal and external)
- Duties undertaken in respect of clinical governance (internal and external to employers)
- Management commitments
- Emergency visits
- Attendance at hospital committees
- Place of Work Accredited Representative (POWAR) duties
- MD SIG/LNC duties
- Representation on ACDA/RAC
- Category I activities
- Category III activities
- Research
- Work for regional/national NHS offices
- Participation in disciplinary procedures as an internal or external assessor

7.3 Under the definition of work in the Regulations, some duties will not be counted even though they will be undertaken for legitimate purposes. These duties will be treated in the same way as annual leave and excluded from the overall calculation of hours worked, except where it is agreed within the LNC that these duties will be calculated as work.

## 8. On-Call

- 8.1 Working time will be assessed on the basis that work begins when the doctor is called and commences work related activities (e.g. giving advice over the telephone or leaving home to visit a patient). Work during on-call will be calculated in 30 minute blocks, however long the activity takes to complete.
- 8.2 For the purpose of calculating time worked on-call, travelling time is included in working time.
- 8.3 The calculation of working time ends when the task is complete (e.g. when a doctor arrives back at home).
- 8.4 The Trust does not employ any doctors as resident on call. Therefore the following paragraphs 8.5 – 8.7 do not apply but have been left in for reference.
- 8.5 Where doctors are compulsory resident on-call the whole of the time spent in residence is classed as work for the purpose of this agreement.
- 8.6 When, in the interests of patient care, a doctor needs to be resident on-call, the whole of the time spent in residence is classed as work for the purposes of this agreement.
- 8.7 If the doctor concerned and the person responsible for job plans cannot agree whether residence in hospital is clinically necessary, the matter shall be referred to the Co-Medical Director.
- 8.8 Where a doctor has been contacted by the hospital and is not formally on-call, working time will be assessed as set out in 8.1, 8.2 and 8.3 above.



## **9. Compensatory Rest**

- 9.1 When work significantly infringes upon a prescribed rest break as set out in the Regulations, the full compensatory rest period (over and above any other form of leave) will be granted.
- 9.2 For the purpose of this agreement, examples of significant interruptions include any recall to hospital and interruptions during sleeping hours (11pm to 7am), a single lengthy or series of phone calls (in excess of 90 minutes in total) or frequent interruptions (three or more) during the on-call period.
- 9.3 In circumstances where a doctor experiences a trivial interruption, for example during on-call, it may be agreed at departmental level for work to commence at a later time the following day.
- 9.4 It is confirmed that doctors on part-time contracts are entitled to the same compensatory rest breaks as doctors on whole time contracts.
- 9.5 Compensatory rest must be uninterrupted and taken at a time when the doctor is otherwise scheduled to undertake their normal contractual commitments.
- 9.6 It is agreed that any compensatory rest will normally be built into the rota commitments i.e. taken every 13 weeks. In any event, compensatory rest will be taken in the same 26 week reference period as it is accrued.
- 9.7 Rest entitlements will be reviewed in each department/locality every 26 weeks.
- 9.8 When monitoring compensatory rest entitlement, doctors will calculate encroachment on prescribed rest breaks in relation to 48 hours rest per fortnight.
- 9.9 In order to calculate entitlements to compensatory rest, doctors will monitor the total hours worked (including hours worked on-call) over a minimum of 13 weeks using the diary in Appendix 1 **or**;
- 9.10 Because of difficulties involved in evaluating compensatory rest entitlements on an individual day to day basis, it is agreed that a system of aggregates (over a minimum 4 week period) will apply on a local level. It is recognised that it may be necessary to undertake different calculations for doctors on different grades depending upon the rota arrangements in force.

## **10. Exceeding the 48 hour limit on Working Time**

- 10.1 As soon as it becomes clear that a doctor will exceed the 48 hours average working week the person responsible for the job plan will commence consultation with the doctor to vary the job plan to reduce the work commitment of the doctor.
- 10.2 This re-negotiation of the job plan must be completed and the revised job plan implemented within the 26 week reference period.

## **11. Locum Career Grade Doctors**

- 11.1 This agreement applies to Locum Career Grade doctors employed by the Trust.
- 11.2 Where the appointment is short term the reference period shall reflect the entire period of employment.
- 11.3 Where rest breaks are encroached upon, the contract of employment will be extended accordingly.
- 11.4 Where the doctor is employed through an agency, the agency will be responsible for enforcing the Regulations.

11.5 Where locums are employed directly or indirectly by the NHS, it is agreed that the Trust will remain within the spirit of this agreement.

## **12. Doctors with more than one NHS employer**

12.1 Where a doctor holds a Contract of Employment with more than one NHS employer, this agreement will apply across all NHS posts. Secondary employment must be notified to the Trust in accordance with the Trust's Standards of Business Conduct Policy. A lead employer will be identified and will be responsible for monitoring with the individual the hours worked, and ensuring this agreement is correctly implemented.

## **13. Clinical academics**

13.1 Where a doctor holds a contract of employment with an NHS employer and a university, this agreement will not apply. Clinical academics are covered by the terms of the Regulations and therefore entitled to be restricted to an average 48 hour working week and the prescribed rest breaks as set out in the Regulations. The Trust will not advertise posts where they require doctors to work more than an average 48 hour working week.

13.2 The Trust will liaise with the university employer and develop an agreed monitoring system to ensure that these doctors receive their entitlements under the Regulations.

## **14. Opting out of the Provisions of the Directive and the Collective Agreement**

14.1 If a doctor wishes to exercise their option to work more than 48 hours per week in accordance with paragraph 24 of AL(MD)6/98 they should discuss this with the Co-Medical Director and Medical Workforce Lead.

14.2 A decision to exercise this option will lapse after one year unless it is renewed in writing.

14.3 The Trust will issue an annual list of all doctors who have decided to opt out of the agreement to the BMA. This list will identify the doctors concerned and specify the number of hours worked by each doctor during each reference period.

## **15. Health Assessments**

15.1 It is confirmed that a health assessment without cost to the doctor will be available to any doctor who meets, or who is to take up work which means that they will meet, the definition of a night worker under the Regulations. Any doctor requesting a health assessment will not suffer any loss of pay or incur any expenses in connection with the assessment.

## **16. Unresolved differences**

16.1 Any differences over the implementation of the agreement arising between individual doctors and the person responsible for job plans should be referred to the Co-Medical Director in the first instance. If the matter is not resolved informally at this stage then the individual shall be entitled to pursue their grievance in accordance with the Trust's Grievance Procedure.

## **17. Review of this agreement**

17.1 This agreement will be formally reviewed through the Medical LNC as required but at least on an annual basis.

## **18. Agreement and Implementation**

18.1 This paper sets out the terms of the agreement through the Medical LNC.

## Appendix B - Example Calculations – Average Weekly Hours

The average weekly hours can be calculated using the equation:

$$A+B/C$$

Where: **A** is the total number of hours worked during the reference period.

**B** is the total number of hours worked, immediately after the reference period, during the number of working days equal to the number of days missed due to annual leave entitlement, sick leave and maternity leave; and

**C** is the number of weeks in the reference period.

1. A worker has a standard working week of 40 hours and does overtime of 12 hours a week for the first 10 weeks of the 17 week reference period. He has no leave of any sort during the reference period.

The total hours worked is:

17 weeks of 40 hours and 10 weeks of 12 hours of overtime

$$(17 \times 40) + (10 \times 12) = 800$$

The average is calculated as follows:

$$800/17 = 47.1 \text{ hours per week}$$

**Therefore the average limit of 48 hours has been complied with.**

2. A worker has a standard working week of 40 hours (8 hours a day) and does overtime of 8 hours a week for the first 12 weeks of the 17 week reference period. He also takes 8 days sick leave during the reference period.

Of the 17 week reference period 15 weeks and 2 days were worked together with 12 weeks of 8 hours overtime. Therefore the total hours worked for the 17 week reference period:

$$(15 \times 40) + (2 \times 8) + (12 \times 8) = 712$$

To this must be added hours worked for the 8 days of his sick leave during the reference period. Therefore the hours worked in the first 8 working days after the reference period is added to the total. If the worker does no overtime this will be  $(8 \times 8) = 64$ .

Therefore his average is:  $712 + 64/17 = 45.6$  hours per week.

**The average limit has been complied with.**

## Appendix C - Example Calculation – Night Work

Average night hours can be calculated using the following equation:

$$A/B - C$$

Where: **A** is the number of hours during the applicable reference period which are normal working hours for that worker.

**B** is the number of days during the applicable reference periods.

**C** is the number of hours of weekly rest to which a worker is entitled under the Regulations (i.e. 24 hours for 7 days) divided by 24. (It should be noted that this is not the total amount of hours that the worker is at rest each week. Only the hours making up the weekly rest period that the worker is entitled to under the Regulations are counted).

A night worker normally works 4 x 12 hour shifts each week. Therefore, the total number of normal hours of work for a 17 week reference period would be:

17 weeks of 4 shifts of 12 hours

$$17 \times (4 \times 12) = 816$$

There are 119 days in the reference period of 17 weekly rest periods of 24 hours to which the worker is entitled. Therefore, C is:

$$17 \times 24/24 = 17$$

The calculation becomes the total of hours divided by the number of days a worker would be required to work:

$$816/119 = 6.857$$

This equals an average of 6.857 hours in each 24 hour period.

### Appendix D - Healthcare Assessment (1) for Night Workers

You have the right to a health assessment under the Working Time Regulations 1998. If you tick **YES** to any of the questions below then arrangements may be made for you to see the Occupational Health Nurse or Physician.

<b>Name:</b>		<b>Date of Birth:</b>	
<b>Job Title:</b>		<b>NI No:</b>	
<b>Trust/Company:</b>		<b>Department:</b>	
<b>Shift Pattern/Details of Internal Rotation:</b>			

Do you suffer from any of the following? To preserve medical confidentiality you are not obliged to identify which conditions / illnesses you have.

- Diabetes?
- Epilepsy?
- Heart Problems eg. High Blood pressure / angina?
- Psychiatric or Nervous problems?
- Gastro-intestinal problems eg. peptic ulcer?
- Any medical condition requiring you to take medication on a strict timetable?
- Any other health factors that might affect you fitness to work nights?

**Please tick Yes \_\_\_\_\_ No \_\_\_\_\_**

Do you wish to talk to the Occupational Health Nurse about working nightshifts?

**Please tick Yes \_\_\_\_\_ No \_\_\_\_\_**

I certify that I have answered the above questions to the best of my knowledge.

**Signed** \_\_\_\_\_ **Date** \_\_\_\_\_

Please return this form to your manager. If you answered YES to any questions your manager will forward this Health Questionnaire to the Occupational Health Department who will send you a

more detailed questionnaire. You will then be contacted personally if you need an appointment. If you have any concerns please contact Occupational Health department.

**Please send the referral form to the OH Service which is closest to the place your employee will be working:**

<b>Exeter, East, Mid, South Devon and Torbay</b>		
Exeter Occupational Health Service Top Floor,  RD&E Heavitree Hospital Gladstone Road Exeter EX1 2ED	<a href="mailto:rde-tr.occupationalhealth@nhs.net">rde-tr.occupationalhealth@nhs.net</a>	Tel no:  01392 405800
<b>Plymouth, South Hams and West Devon</b>		
Staff Health and Wellbeing, Occupational Health Department Kingstor House Derriford Residences Plymouth PL6 8DH	<a href="mailto:plh-tr.Occupationalhealth-Derriford@nhs.net">plh-tr.Occupationalhealth-Derriford@nhs.net</a>	Tel no:  01752 437222
<b>North Devon</b>		
Occupational Health Department Level 3, Barnstaple Health Centre Vicarage Street Barnstaple EX32 7BT	<a href="mailto:sheilaflynn@nhs.net">sheilaflynn@nhs.net</a>  <a href="mailto:j.armstrong4@nhs.net">j.armstrong4@nhs.net</a>	Tel no:  01271 341520

**Appendix E - Health Assessment (2) for Night Workers**

**MEDICAL IN CONFIDENCE**

In response to your recently completed screening questionnaire you are invited to complete the more detailed questionnaire below:

The purpose of this health questionnaire is to assess your fitness for night work and to advise you and your employer if any action is required (see notes overleaf).

<b>Name:</b>		<b>Date of Birth:</b>	
<b>Job Title:</b>		<b>NI No:</b>	
<b>Trust/Company:</b>		<b>Department:</b>	
<b>Shift Pattern/Details of Internal Rotation:</b>			

Please complete this form to the best of your knowledge and tick the appropriate boxes. If you answer YES, please describe (on the back of this form) any difficulties you think you have with night work.

**Do you suffer from any of the following?**

	<b>Yes</b>	<b>No</b>
Diabetes?		
If Yes does this require treatment with Insulin injections on a strict timetable?		
Epilepsy / Blackouts?		
Gastro – Intestinal problems?		
Heart Disease or High Blood Pressure?		
Psychiatric / Nervous problems?		
Any medical condition requiring you to take medication on a strict timetable?		
Any other health factors that may affect your fitness to do night work?		

**Declaration:**

I certify that I have read the notes overleaf and that the answers to the above questions are correct to the best of my knowledge. I understand that if I have withheld information, this may adversely affect efforts to place me in suitable employment. I agree to this assessment being followed up by an appointment with an Occupational Health Nurse or Physician if necessary.

**Signed** \_\_\_\_\_

**Date** \_\_\_\_\_



## **Appendix F - Agreement by the Joint Negotiating Committee (seniors)**

### **Introduction**

1. The Working Time Directive Regulations came into force on 1 October 1998. This health and safety legislation has the potential to affect significantly the way care is delivered in the NHS. To ensure that continuity of service and established professional working patterns are maintained, the Joint Negotiating Committee (Seniors) has reached agreement to modify the application of the Directive, as allowed by Regulation 21 of the Working Time Regulations 1998. This agreement therefore applies to all career grade doctors on national terms and conditions of service.

2. If the Directive were to be applied as written, and not modified by the NHS Executive and the CCSC, career grade doctors\* would be entitled, irrespective of the nature of their contract - national terms and conditions or local terms and conditions - to the following limits in hours worked and specified entitlements.

- an average of 48 hours per week, including the calculation of hours worked whilst on-call (to be calculated over a reference period of 17 weeks)
- a limit of 8 hours worked in every 24 hours period for night work
- a weekly uninterrupted rest period of 24 hours. This would mean that doctors would not be available to be recalled to the hospital
- one uninterrupted rest period of not less than 48 hours in each 14 day period. This would mean that doctors would be unavailable to be contacted by the hospital during this period
- an entitlement to 11 hours consecutive rest in each 24 hour period
- an entitlement to a minimum 20 minutes rest break where the working day is longer than 6 hours.

*\* consultants, associate specialists, staff grades, clinical assistant, hospital practitioners and those employed directly by the NHS as locum doctors in these grades and any other doctor employed in NHS Hospitals (excluding doctors in junior grades).*

### **Regulation 21**

3. Regulation 21 provides that, subject to regulation 24 (compensatory rest), regulations 6(1), (2) and (7), 10(1), 11(1) and (2) and 12(1) do not apply. These regulations are outlined in Annex A.

4. This means that the regulations relating to night working, daily rest, weekly rest and breaks at work do not apply to career grade hospital doctors. However, under Regulation 21, they will be able to accrue compensatory rest for hours worked during rest breaks. While career grade doctors will remain protected by the 48 hour weekly limit on hours, the application of Regulation 21 will enable career grade doctors to continue to carry out their duties flexibly and professionally ensuring that they are able to maintain continuity of service.

5. There is a general responsibility for employers and employees under health and safety law to protect as far as is practicable the health and safety at work of all employees. Control of working hours is an integral element of managing health and safety at work and promoting health at work. It is appropriate, therefore, that health service employers when organising work should take account, wherever possible, of the general principle of adapting work to the worker.

## Exclusions

6. Doctors and dentists in training (pre-registration house officers, house officers, senior house officers, registrars, senior registrars, specialist registrars) and those acting as locum tenens in the training grades, are excluded from the provisions of the Working Time Directive and, therefore, from this agreement.
7. A separate agreement has been reached for non-medical staff covered by the General Whitley arrangements.

## Protection

8. Doctors should suffer no detriment because they have exercised any of their entitlements under the Regulations. The provisions of the Working Time Regulations are not maximum standards. Conditions currently in place which are more favourable to doctors should not be changed to a lower standard simply to comply with the minimum laid down in the Regulations. The Regulations protect employees against detriment imposed by the employer on account of any refusal to exceed any limit on working time applicable under the Regulations. An employee would have the right to pursue a claim that they had been subjected to a detriment through an Employment Tribunal. See Chapter 10 of the *Working Time Regulations: Implementation in the NHS (HSC1998/204)*.

## Reference periods

9. Under the Directive employees should not be required to work more than 48 hours per seven day period calculated over an averaging period of 26 weeks (in accordance with Regulation 21).
10. The averaging reference period (as in paragraph 24) is the 26 weeks following the application of the Working Time Regulations on 1 October 1998 and each 26 week period thereafter. Alternatively, it begins when doctors start their employment or, if they have previously opted to work more than 48 hours (see paragraph 24) when the formal agreement to opt out terminates.

## Working Time

11. In assessing weekly working the following factors should be taken into account:
  - doctors' normal contractual commitments as outlined in their job plans;
  - additional duties, for example, management and other non-clinical duties, performed as a result of the needs of the service;
  - work undertaken while doctors are on-call;
  - where doctors are not formally on-call but have been contacted by the hospital.

See Chapter 1 of the *Working Time Regulations: Implementation in the NHS (HSC 1998/204)* for the legal definition of working time.

## On-call

12. Doctors who have to be on-call and so are available to work if called upon will not be regarded to be working unless they are required to undertake a work-related activity. Staff on-call but otherwise free to pursue time as their own will not be regarded as working unless and until they are actually contacted by the hospital.

13. Working time should be assessed on the basis that work begins when the individual is called and begins the work-related activity, for example, giving advice over the telephone or visiting a patient. For the purpose of calculating time worked on-call, travelling time is included in working time. The calculation of working time ends when the task is complete, for example, when the doctors returns home, or begins another activity at the end of a work-related telephone call.

### **Resident On-Call**

14. Employers should consider carefully whether the needs of the service require a career grade doctor to be compulsorily resident on-call.
15. Where career grade doctors are compulsorily resident on-call, time spent in residence is to be regarded as work for the purposes of this agreement.

### **Voluntary resident on-call**

16. There may be occasions when, in the interests of patient care, a senior hospital doctor may need to be resident on-call on a voluntary basis (that is, where there is no contractual requirement). Such residence falls within the provisions of paragraph 14 and 15 and time spent in residence should be regarded as work. In all other circumstances, where career grade doctors are voluntarily resident on-call, working time should be assessed on the basis that work begins when the individual is called and begins a work related activity.
17. A local assessment may need to be made by the clinical director/supervisor to decide whether residence in hospital is clinically necessary or merely personally convenient. The medical director should be consulted where there is a dispute. Where doctors are required to be resident due to clinical necessity they should be regarded as falling within the same provisions (see paragraph 15 above) as doctors who are compulsorily resident.

### **Compensatory rest periods**

18. While agreement under Regulation 21 (paragraph 3) excludes the application of the regulations relating to night working and daily rest, weekly rest and breaks at work it does so on the basis that, where a doctor is required to work during a rest period, an equivalent period of compensatory rest will be provided.
19. Compensatory rest should be available to doctors within a reasonable period. A system should be developed at a local level to ensure that compensatory rest is available as soon as is practicable.
20. Work patterns and workloads in all hospital specialities are broadly predictable. Employers should be able to assess the extent to which the minimum rest entitlement is not being met. From this information it should be possible to plan levels of compensatory rest required in particular clinical departments or directorates without the need to monitor individual doctor's hours. Management should work with the LNC to make sure all departments and units in a hospital have appropriate arrangements in place as soon as possible.

### **Monitoring and Records**

21. Employers should work with doctors locally to develop effective processes to assess working hours. As noted in paragraph 20 this will be most effective if the working hours and on-call commitments of doctors who can sensibly be grouped together, because their working patterns are similar, can be considered as a whole. The purpose of such monitoring is first to allow employers to act where they are in breach of the Regulations and, second, to allow proper planning of compensatory rest. JNC(S) will establish a monitoring group which will discuss any problems arising from these arrangements.

22. Employers need only monitor the hours worked of individual doctors where there is doubt whether the hours of work or rest entitlements of a doctor depart significantly from the general compliance level of the groups of doctors monitored by the employer.
23. Records of the agreed monitoring processes and the results of that monitoring for groups of doctors (as in paragraph 21) should be kept.

#### **Individual option to work more than 48 hours a week**

24. Individuals may choose to agree to work more than the 48 hours average weekly limit. A decision to exercise this option must be:
  - individual,
  - voluntary and,
  - pressure must not be placed on an individual to take this option.
25. In order for this agreement to apply, the employer must:
  - maintain a record of which doctors have made this type of agreement
  - what terms the doctor has agreed to (such as whether it will last indefinitely or if it is for a specific period)
  - specify the numbers of hours worked for the employer during each reference period since the agreement came into effect.

These records must be made available to the Health and Safety Executive and to the BMA locally. Chapter 3 of *Working Time Regulations: Implementation in the NHS (HSC 1998/204)* refers.

#### **Working for more than one NHS employer**

26. Where a doctor holds contracts of employment with more than one NHS employer, the Regulations and this agreement apply across all NHS posts. The NHS employers concerned should act in co-operation to ensure compliance. However, lead responsibility will rest with the employer with whom the individual holds the greater contractual commitment.

#### **Clinical academics and honorary contract holders**

27. Some doctors are employed by, for example, universities or research foundations but also hold honorary contracts to facilitate clinical work or research in the NHS. These doctors are, at present, covered by the Working Time Regulations without any derogation - that is, this collective agreement does not apply to them. To ensure that an appropriate balance of hours is maintained between academic and clinical work, NHS employers should liaise with these other employers. Responsibility for ensuring that Working Time Regulations are complied with, however, rests with the principal employing body. NHS employers will, however, need to be alert to the position to ensure that the hours spent in NHS hospitals are properly monitored and the entitlements under the Regulations, for example, to rest period and rest breaks, applied as necessary.

#### **Health assessments**

28. Any doctors who meet, or who about to take up work which means they would meet, the definition of a night worker under the Regulations are entitled to a free health assessment as specified under regulation 7 of the Directive. Chapter 4 of *Working Time Regulations: Implementation in the NHS (HSC 1998/204)* refers. This means a health assessment must be available without cost to doctor who should not suffer any loss of pay or incur other expenses

because of undergoing the assessment. The purpose of the assessment is to decide whether doctors are fit to undertake the night work to which they have been assigned.

29. No other provisions of the Regulations relating to night work apply under this agreement.

#### **Locums in the career grades**

30. Where locum doctors are directly employed by a locum agency it will be the responsibility of the agency to ensure compliance with the Working Time Directive.

31. Where trusts employ locum career grade doctors either directly or indirectly they will be responsible for ensuring that the provisions of this agreement are applied.

32. Whether locum doctors are employed directly by an agency or directly by the NHS we would expect trusts to remain within the spirit of this agreement.

33. Where the locum appointment is for the short-term only, the reference period shall reflect the entire period of employment. For example, if the appointment is for one week, the reference period shall be for one week, and there will be a strict cap on the 48 hours worked. All other conditions remain as for substantive posts.

#### **Career grade doctors employed on NHS Trust contracts**

34. We recommend strongly that the provisions of this agreement, including the monitoring arrangements, should be applied by NHS employers locally to all career grade doctors, whether or not they are employed on national terms and conditions of service.

## **Appendix G - Regulation 21**

Regulation 21 provides that, subject to regulation 24 (compensatory rest), the following regulations do not apply;

### **Night Work**

6. (1) A night worker's normal hours of work in any reference period which is applicable in his case shall not exceed an average of eight hours for each 24 hours.
- 2) An employer shall take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that the limit specified in paragraph (1) is complied with in the case of each night worker employed by him.
- (7) An employer shall ensure that no night worker employed by him whose work involves special hazards or heavy physical or mental strain works for more than eight hours in any 24-hour period during which the night worker performs night work.

### **Daily Rest**

10. (1) An adult worker is entitled to a rest period of not less than eleven consecutive hours in each 24-hour period during which he works for his employer.

### **Weekly rest period**

11. (1) Subject to paragraph (2), an adult worker is entitled to uninterrupted rest period of not less than 24 hours in each seven-day period during which he works for his employer.
- (2) If his employer so determines an adult worker shall be entitled to either -
- (a) two uninterrupted rest periods each of not less than 24 hours in each 14-day period during which he works for his employer; or
  - (b) one interrupted rest period of not less than 48 hours in each such 14-day period, in place of the entitlement provided for in paragraph (1).

### **Rest breaks**

12. (1) Where an adult worker's daily working time is more than six hours, he is entitled to a rest break