



THE SCOTTISH OFFICE

Department of Health

00142097



Dear Colleague

WORKING TIME DIRECTIVE AGREEMENT FOR CAREER GRADE DOCTORS

Summary

1. This circular notifies employers of an agreement in the Joint Negotiating Committee (Seniors) to modify the application of the Working Time Directive, as allowed by Regulation 21 of the Working Time Regulations 1998. The agreement at Annex A applies to all career grade doctors on national terms and conditions of service.

Action

2. NHS Trusts and Health Boards should note the modifications to the directive.
3. Details of what is required are set out below in the attached appendix and annexes.

Yours sincerely

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NHS Circular:
PCS(DD)1999/1

NHS Management Executive
St. Andrew's House
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13 January 1999

Our Ref: PIL/8/20

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Background

1. The Working Time Directive Regulations came into force on 1 October 1998. They apply to all directly employed NHS workers except junior doctors who are excluded from the Directive. In our negotiations with the BMA we have been concerned to strike a balance between the Government's commitment to the Directive and the need to maintain services to patients.

2. Career grade doctors cannot be classified as *autonomous workers* and, therefore, cannot be excluded from the requirements of the Regulations. The basic 48 hour limit cannot be negotiated away through a collective agreement with the Central Consultants and Specialists Committee or by any other national or local collective agreement. It is only on an individual basis that career grade doctors can volunteer to work longer than 48 hours.

3. We have, therefore, negotiated a derogation, as allowed by the Regulations, which removes those provisions in the Regulations applying to:

- the limit on the number of hours worked in a 24 hour period for night work
- weekly rest periods
- uninterrupted rest
- daily rest and rest breaks
- night work.

This is intended to give employers as much flexibility as possible under the Regulations to organise service cover to comply with the basic 48 hour limit.

4. This does not mean that career grade doctors can work over 48 hours (except where they volunteer to do so). Essentially the agreement states that where doctors are called out during rest periods they should receive compensatory rest. Rather than have complicated monitoring arrangements for individual doctors it has been agreed that a process of locally-decided collective monitoring should underpin the agreement. This will allow employers to take a longer view and to build compensatory rest into their duty rotas. Our aim is to enable employers to have as much scope as possible, within the Regulations, to construct working patterns which are not restricted by preset limits.

5. Further guidance on the application of the Working Time Directive in the NHS is contained in *Working Time Regulations: Implementation in the NHS (NHSMEL(1999)1)*.



**NATIONAL HEALTH SCOTLAND
APPROVAL OF REMUNERATION AND CONDITIONS
OF SERVICE**

The Secretary of State in exercise of his powers under Regulations 2 and 3 of the National Health Service (Remuneration and Conditions of Service)(Scotland) Regulations 1991 (SI 1991 No 537) and under paragraph 5 of Schedule 1 and paragraph 7 of Schedule 5 to the National Health Service (Scotland) Act 1978 hereby approves the agreement of the Joint Negotiating Committee for Hospital Medical and Dental Staff set out in Annex A which is attached to NHS Circular PCS(DD) 1999/1 dated 13 January 1999.

A handwritten signature in black ink, appearing to read 'R. Naysmith'.

ROBIN NAYSMITH
Assistant Director of Human Resources(Policy)

NHS Management Executive
St Andrew's House
Edinburgh
13 January 1999

AGREEMENT BY THE JOINT NEGOTIATING COMMITTEE (SENIORS)

THE WORKING TIME DIRECTIVE

IMPLEMENTATION OF THE WORKING TIME REGULATIONS

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 Management Executive in Scotland 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 B.

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 (NHSMEL(1999)1)*.

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 (NHS MEL(1999)1)* 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 doctor 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.

Voluntarily resident on-call

16. There may be occasions when, in the interests of patient care, a career grade 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 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 specialties 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 BMA's Local Negotiating Committee 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 (NHSME(1999)1)* 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 the Working Time Regulations are complied with, however, rests with the principal employing body. NHS employers will, however, need to be alert to the position and 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 are 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 (NHSME(1999)1)* refers. This means a health assessment must be available without cost to the 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 locums 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.