

# HR17

## Implementation of Working Time Regulations

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### Attachments

[Attachment 1- Working Time Regulations](#)

### Appendices

[Appendix 1- Individual Opt-out Agreement](#)

## 1.0 Policy Statement (Purpose / Objectives of the policy)

- 1.1 The Working Time Regulations are an important addition to health and safety protection at work. The Trust believes that all employees, contractors, etc. must be protected from the risks of working long hours that will affect their health and safety.
- 1.2 The Trust regards control of working hours to be an integral element of managing health and safety at work and promoting health at work.
- 1.3 No member of staff will suffer any detriment because they have exercised their rights under the Working Time Regulations.
- 1.4 The provisions of the Working Time Regulations are not maximum standards. Conditions currently in place, which are more favourable to the employee, will not be changed to a lower standard simply to comply with the minimum standards laid down in the Regulations.

In adhering to this Policy, all applicable aspects of the Conflicts of Interest Policy must be considered and addressed. In the case of any inconsistency, the Conflicts of Interest Policy is to be considered the primary and overriding Policy.

## 2.0 Definitions

- 2.1 Terms used in the Policy are defined in paragraphs 2.1.1 to 2.1.4
  - 2.1.1 **Reference Period** – period used for averaging the 48-hour weekly limit.
  - 2.1.2 **Nighttime** – 11pm – 6am, however if a different period is agreed it must be at least 7 hours long and include midnight - 5am.
  - 2.1.3 **Compensatory rest** - the difference between the amount of rest actually taken and the amount of rest that ought to have been taken to ensure compliance with the Working Time Regulations.
  - 2.1.4 **Young workers** - workers aged 16 and 17 years.

## 3.0 Accountabilities

- 3.1 The **Author** will be accountable for the revision of this policy which may be necessary from time to time as a result of changes in the law or in the light of experience when applying the policy. Any revisions will be agreed through the Trust Joint Negotiating Committee.

3.2 The Chief Operating Officer, Directors, Deputy Chief Operating Officer, Deputy Directors and Divisional Managers will be responsible for ensuring that this policy is fairly and consistently applied within their areas of responsibility.

#### 4.0 Policy Detail

4.1 This Policy applies to all employees/workers permanent or temporary directly engaged by the Trust including consultants and other medical staff. For junior doctors, the rest requirements of the Working Time Directive sit jointly with the requirements of the Terms and Conditions of Service for NHS Doctors and Dentists in Training (England) 2016. Therefore, this policy must be read alongside these terms and conditions.

4.2 The working hours of agency staff will be the responsibility of the employing agency.

#### 5.0 Financial Risk Assessment

1	Does the implementation of this policy require any additional Capital resources	No
2	Does the implementation revenue resources of this policy require additional	No
3	Does the implementation of this policy require additional manpower	No
4	Does the implementation of this policy release any manpower costs through a change in practice	No
5	Are there additional staff training costs associated with implementing this policy which cannot be delivered through current training programmes or allocated training times for staff	No
	Other comments	

#### 6.0 Equality Impact Assessment

An equality analysis has been carried out and it indicates that:

Tick	Options
x	A. There is no impact in relation to Personal Protected Characteristics as defined by the Equality Act 2010.

#### 7.0 Maintenance

7.1 This policy will be reviewed every four years or earlier if warranted by a change in employment legislation, national standards of best practice or if changes are deemed necessary from internal sources. The Director of Workforce has overall

responsibility for the update and maintenance of this policy.

## **8.0 Communication and Training**

- 8.1 All Executive Directors/Clinical Directors/Deputy Chief Operating Officers /Heads of Nursing, Divisional Managers, Group and Directorate Managers are responsible for the communication of this Policy to their staff.

## **9.0 Audit Process**

- 9.1 The Trust will keep records which are adequate to demonstrate it has complied with the weekly working time limit, weekly rest periods and night work. These will be monitored by Workforce, Employee Services (Payroll) and Temporary Staffing Bank.

## **10.0 References**

- 10.1 The Working Time Regulations (1998)  
10.2 The Working Time (Amendment) Regulations 2003  
10.3 Terms and Conditions of Services for NHS Doctors and Dentists in Training (England) 2016

## Part A - Document Control

<b>Policy number and Policy version:</b>  HR17 Version 6	<b>Policy Title</b>  Implementation of Working Time Regulations	<b>Status:</b>  Final		<b>Author:</b> HR Manager  <b>Chief Officer Sponsor:</b> Group People Officer
Version / Amendment History	Version	Date	Author	Reason
	1	January 2002	Terms and Conditions working Group	Original Policy
	2	February 2008	Terms and Conditions working Group	Timely review of policy
	3	July 2012	Policy Development Group	Timely review of policy
	4	July 2017	HR Manager	Timely review of policy
	5	June 2020	HR Manager	Timely review of policy
	6	April 2023	HR Manager	Timely review of policy
<b>Intended Recipients:</b> All Trust employees				
<b>Consultation Group / Role Titles and Date</b>  Trust Policy Group: 5 <sup>th</sup> May 2023 JNC: 31 <sup>st</sup> May 2023 Trust Management Committee: 26 <sup>th</sup> May 2023				
<b>Name and date of Trust level group where reviewed</b>		Trust Policy Group 5 <sup>th</sup> May 2023		
<b>Name and date of final approval committee</b>		Trust Management Committee 26 <sup>th</sup> May 2023		
<b>Date of Policy issue</b>		June 2023		
<b>Review Date and Frequency</b> (standard review frequency is 3 yearly unless otherwise indicated – see section 3.8.1 of Attachment 1)		May 2027 then every 4 years		
<b>Training and Dissemination:</b> Information sharing and engagement meetings at manager's meetings, launches via Senior Leaders Brief and Divisional Management forums.				
<b>To be read in conjunction with:</b> N/A				

<b>Initial Equality Impact Assessment (all policies): Completed Yes</b> <b>Full Equality Impact assessment (as required): Completed NA</b> If you require this document in an alternative format e.g., larger print please contact Policy Administrator8904	
<b>Monitoring arrangements and Committee</b>	People and Organisational Development Committee
<b>Document summary/key issues covered.</b>  The Working Time Regulations are an important addition to health and safety protection at work. The Trust believes that all employees, contractors, etc. must be protected from the risks of working long hours that will affect their health and safety.  This policy therefore covers the rules set by the Working Time Regulations 1998 and Working Time Regulations (Amendment) Regulations 2003.	
<b>Key words for intranet searching purposes</b>	Working Time; Opt Out; 48 Hours

## Working Time Regulations

### **1.0. Maximum Weekly Working Time**

- 1.1 Staff will not normally be expected to work more than 48 hours per 7-day period, calculated over an averaging period of 17 weeks.
- 1.2 Working time is any time when the employee is:
  - (i) working and;
  - (ii) at their employer's disposal and;
  - (iii) carrying out activities or duties.
- 1.3 For time to be classed as working time all three elements must be satisfied.
- 1.4 Working time will include time allowed for training purposes, civic and public duties, health and safety and trade union duties for accredited representatives (but not trade union activities, e.g. branch meetings, recruitment drives etc).
- 1.5 Working time may include time for which staff are not paid under a contract of employment, e.g. voluntary overtime.
- 1.6 Working time will be calculated exclusive of meal breaks and other unpaid breaks, except where staff are required to work during meals in which case the time will be counted as working time.

### **2.0 On Call**

- 2.1 Staff who are on call and are called into work from outside Trust premises will be regarded as working from the time when they are required to undertake any work related activity until they return home from such activity or the start of their normal shift. This will include time spent giving advice over the telephone and includes travelling time.
- 2.2 Where staff are on call but not on Trust premises this will not count towards working time, except travelling time and when giving advice over the telephone.
- 2.3 On call payments will not be affected by this provision.

### **3.0 Sleep Ins**

- 3.1 Where staff are required to be on Trust premises for a specified period and are, therefore, not free to pursue their time as their own, this will be regarded as working time for the purposes of this agreement.

#### **4.0 Option to work in excess of maximum weekly working limit**

4.1 Individual staff may choose to work more than the 48 hours average weekly limit. They must agree this with their manager in writing on an annual basis and will be required to sign an annual Individual Agreement. Please see [Appendix 1](#).

4.2 This decision is individual and voluntary. No pressure will be placed on a member of staff to take this option.

4.3 To end an agreement

- non medical staff must give one month notice in writing to their manager. Conversely, if managers want to end an agreement, one month notice in writing must be given to staff.
- For medical staff, please refer to the Job Planning Procedure [http://intranet.xrwh.nhs.uk/pdf/policies/CorporateSopsProtocolsPractices/Job\\_Planing\\_Procedure\\_Printable\\_Version.pdf](http://intranet.xrwh.nhs.uk/pdf/policies/CorporateSopsProtocolsPractices/Job_Planing_Procedure_Printable_Version.pdf)

4.4 A copy of the opt-out agreement will be placed on the staff member's personal file and a copy retained by the individual. These will be available for inspection by accredited union representatives and relevant statutory bodies as required. A record will also be kept by the Trust Workforce Department.

#### **5.0 Staff Who Work for Other Employers**

5.1 The Trust will take all reasonable steps to enquire of its staff if they have secondary employment and whether they are working over the 48- hour weekly limit.

5.2 Where staff who work for more than one employer are working over the 48-hour average weekly limit they will need to sign an opt-out form if they wish to continue to do so. The provisions of paragraph 4.0 above will still apply.

5.3 Staff will be required to advise their manager if they wish to take additional employment with the Trust or another employer and to keep their manager informed of any related changes.

#### **6.0 Emergency**

6.1 Where there is an emergency need for a service to be provided or a need for a service to be continued, individuals may be required to work more than 48 hours in any week or may be required to vary their breaks and rest periods. Local arrangements will be agreed so that the equivalent compensatory rest is provided.

#### **7.0 The Reference Period**

7.1 The reference period for averaging the 48-hour limit is 17 weeks.

#### **8.0 Night Work**

8.1 The normal hours of night work will not exceed an average of 8 hours per night over the 17-week reference period.

8.2 A definition of night time will be determined locally and will be a period of at least 7 hours which includes the period from midnight to 5.00 a.m.



- 8.3 A night worker is someone who has to work at night as a normal part of their contractual duties, whether on permanent nights or on a rota including some night work, however infrequent.
- 8.4 The manager, with advice from the Health and Safety Team as required, will carry out risk assessments for the night teams to determine whether any staff who work at night time are doing work involving heavy physical or mental strain greater than the equivalent day time worker experiences. If, after the risk assessments, this is the case, individuals will not be able to work any more than 8 hours per night unless there is an emergency or need for a service to be provided.

## **9.0 Health Assessments for Night Workers**

- 9.1 All night workers will be entitled to an annual free and confidential health assessment by the Trust Occupational Health and Wellbeing Service to determine whether they are fit to undertake the night work to which they are assigned. Although this is voluntary it is recommended that all eligible staff have the health assessment.
- 9.2 In addition, the Trust reserves the right to refer an individual to the Occupational Health and Wellbeing Service where work may be adversely affecting the individual's health.
- 9.3 The format and content of the health assessment will be determined by the Occupational Health and Wellbeing Service. If necessary, paid time off will be given to staff to attend health assessments with the Occupational Health and Wellbeing Service.
- 9.4 Staff who are identified as having health problems related to night work will, wherever possible, be transferred to suitable day work with appropriate pay and conditions of service.

## **10.0 Daily Rest Period**

- 10.1 The Trust will plan rotas in accordance with working time regulations to ensure the adult daily rest period of 11 consecutive hours is adhered to where possible.
- 10.2 It is recognised that there may be occasions, for example due to emergencies, service needs or shift patterns, where staff may be unable to take their full rest entitlement. In such cases managers are responsible for providing compensatory rest at the earliest opportunity. The Trust expects compensatory rest, where provided, to be taken as this is the individual's responsibility.

## **11.0 Weekly Rest Period**

- 11.1 The Trust will plan rotas in accordance with working time regulations to ensure the adult weekly rest period of 35 hours (24 hours plus the 11 hours of daily rest) in each 7-day period is adhered to where possible.
- 11.2 Where it is not possible to give an uninterrupted period of 35 hours in a 7-day period, staff will receive equivalent compensatory rest over a 14-day period either as one 59-hour period or two 35-hour periods.

- 11.3 The 7-day period for averaging the weekly rest period will start at midnight between Sunday and Monday.

## **12.0 Rest Breaks**

- 12.1 Where the working day is longer than 6 hours, staff are entitled to take an unpaid break of at least 20 minutes, away from the workplace where practicable. The rest break will be taken within the period of work, not at the start or end of a period of working time.
- 12.2 Managers are responsible for ensuring that working patterns meet the requirements of this provision or to vary it for individuals working on night shifts.
- 12.3 Where, due to the needs of the service, staff are prevented from taking the agreed in-work rest break they will be entitled to compensatory rest as soon as possible, at a time agreed with their manager.
- 12.4 When the breaks have been agreed the onus will be on the individual to take their break, as the Trust expects staff to take the break time to which they are entitled. This, however, must be subject to the needs of the service.

## **13.0 Compensatory Rest**

- 13.1 Compensatory rest is defined as the difference between the amount of rest actually taken and the amount of rest that ought to have been taken to ensure compliance with the Working Time Regulations.
- 13.2 Where an employee is required to work during any time which is supposed to be rest time (e.g. daily or weekly rest periods) then the individual must be permitted to take an equivalent period (the same number of hours lost) of compensatory rest.
- 13.3 Where an employee works beyond their scheduled working hours for which they are eligible for payment or time off in lieu, the employee will be entitled to take time off in lieu / receive payment in line with their terms and conditions of employment. Unpaid compensatory rest will, therefore, be given for daily or weekly rest periods at scheduled alternative times of the week / month.
- 13.4 Where an employee works within their scheduled weekly hours and their rest breaks are insufficient to meet the daily and weekly rest requirements, unpaid compensatory rest must be scheduled outside normal working hours.

13.5 Compensatory rest must be provided within a reasonable time from when the entitlement to rest was modified; this must usually be within 4 weeks for daily rest and 8 weeks for weekly rest. In practice, cases where it is not possible to take compensatory rest due to 'exceptional circumstances' will be rare, but will also be self-evident. Therefore, the flexibility provided for here is not-something that will be used on a routine basis. Therefore, where compensatory rest relating to daily rest has not been possible within one month and where compensatory rest relating to weekly rest has not been possible within eight weeks, the following will apply:

- A special arrangement must be made with the employee to either agree when compensatory rest is to be taken or,
- Alternatively, agree payment for any additional hours worked.

13.6 This flexibility in the regulations must not be used on a routine basis except where planned as part of a local agreement on hours/shifts etc.

#### 14.0 **Young Workers**

14.1 Young workers are workers aged 16 and 17 years. These workers have a few additional and different rights to protect them at work.

14.2 Young workers must not work more than 8 hours a day and 40 hours a week.

14.3 Young workers are entitled to a rest break of at least 30 minutes if their working days last longer than 4.5 hours.

14.4 They are entitled to at least 12 hours of uninterrupted rest within any 24-hour period in which they work. Although this rest period may be interrupted if periods of work are split up over the working day or are of short duration.

14.5 Young workers are also entitled to two consecutive days off per week which cannot be averaged over a two-week period. Although this may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration, and may be reduced where this is justified by technical or organisational reasons, but not to less than 36 consecutive hours.

14.6 Young workers under the age of 18 must not work between the hours of midnight and 4.00am. In addition, they are usually not allowed to work after 10.00pm or before 7.00am. On occasion an employer may need a worker during the night to maintain continuity of service or to respond to a sudden increase in demand. In these circumstances where there are no appropriate adult workers available, a younger worker under the age of 18 may be asked to work between 10.00pm – midnight or 4.00am – 7.00am.

#### 15.0 **Annual Leave**

15.1 Please refer to policy [HR\\_01\\_Attachment9.pdf \(xrwh.nhs.uk\)](https://www.xrwh.nhs.uk/HR_01_Attachment9.pdf)

#### 16.0 **Pay During Annual Leave**

16.1 The Working Time Regulations provide for statutory annual leave to be paid.

16.2 The Trust's normal annual leave entitlements exceed these statutory entitlements.

## **17.0 Monitoring, Procedures and Record Keeping**

- 17.1 The Trust will keep records which are adequate to demonstrate it has complied with the weekly working time limit, weekly rest periods and night work.
- 17.2 Any record of hours worked, including overtime, time sheets and duty sheets, will be used as a record of hours worked. In the absence of duty or time sheets, the Trust will assume that staff have worked their contracted hours and have taken their scheduled breaks.
- 17.3 These records will be kept by Payroll and will be available for inspection by accredited union representatives and the statutory bodies responsible for monitoring the implementation of the Working Time Regulations, e.g. the Health and Safety Executive.
- 17.4 The records will be kept for 2 years from the date on which they were made.
- 17.5 The Trust Workforce Department will as required produce a list of staff who have completed and signed an opt out agreement indicating their wish to work more than the 48 hours average weekly limit.
- 17.6 Payroll will continually monitor the working hours of staff. Any staff identified as working above the average weekly limit will be brought to the attention of the appropriate HR Representative who will discuss this with the appropriate line manager and ensure that an opt-out agreement is completed, or the member of staff will be advised that their working hours will be reduced to ensure compliance with the maximum weekly working limit.
- 17.7 The Temporary Staffing Bank will carry out monitoring in respect of bank workers and will if required deal with any issues in respect of bank staff working above the average maximum weekly working limit and ensure that bank workers have completed and signed opt-out agreements as appropriate.
- 17.8 A copy of the Trust Opt-out Agreement is attached at [Appendix 1](#). Once completed a copy must be returned to the employee's line manager to be retained on the employee's personal file and be subject to inspection by the relevant authorities, in accordance with the requirements of Regulation 28 of the Working Time Regulations 1998. A further copy of the Opt-Out must be taken by the Line Manager and sent to the Trust Workforce Department who will keep a central record of all staff who have signed an opt-out form.

## **18.0 Representation**

- 18.1 At any stage of the policy, members of staff reserve the right to be accompanied/represented by a trade union representative, professional representative, work colleague or other person not acting in a professional or legal capacity.

## **19.0 Appeals**

- 19.1 Any member of staff who is not satisfied with Management decisions regarding the Working Time Regulations must raise the matter with their line manager in the first

instance. If the matter remains unresolved the individual may raise the matter formally under the [Dispute Resolution in the Workplace Policy \(HR06\)](#).

**THE ROYAL WOLVERHAMPTON NHS TRUST**  
**WORKING TIME REGULATIONS INDIVIDUAL OPT OUT AGREEMENT**

This agreement is between THE ROYAL WOLVERHAMPTON NHS TRUST and

..... Name (IN CAPITALS)

I confirm that I am aware of my entitlement under the Working Time Regulations 1998 and that this agreement has been made on an **individual and voluntary** basis.

I wish to waive the following provisions of the Working Time Regulations 1998 with effect from the date specified in the table below for 1 year or until notice is given by either myself or the Trust.

**Tick as applicable**

- I confirm that I wish to work in excess of 48 hours per week (when averaged over 17 weeks).
- I confirm that I have alternate employment for another employer(s). I understand that I must not be required to work in excess of a total of 48 hours per week when counting all employments. I confirm that I wish to work in excess of 48 hours per week.

I understand that this agreement may be terminated by either me or by the Trust giving 1 month's notice in writing to my Line Manager.

If there are any changes/amendments to this agreement a new form must be completed. If there are no changes, space has been provided below for signatures to update the agreement on an annual basis.

<b>Employees Signature:</b>	<b>Managers Signature:</b>	<b>Date:</b>

Please sign both copies of the agreement provided to you and retain one copy for your personal records. One copy must be returned to your Line Manager to be retained on your personal file, a copy should also be sent to the Trust Workforce Department and be subject to inspection by the relevant authorities, in accordance with the requirements of Regulation 28 of the Working Time Regulations 1998.