

# The Newcastle upon Tyne Hospitals NHS Foundation Trust

## Working Time Regulations Policy

Effective: May 2010

Reviewed: April 2013

### 1. Introduction

- 1.1 The purpose of this Policy is to outline the Trust's approach in respect of Working Time Legislation.
- 1.2 This Policy applies to all employees employed by the Trust although there are specific and separate arrangements for Career Grade Doctors which are outlined in a separate policy. The terms of the Policy are binding and, unless otherwise stated, must be adhered to by all employees of the Trust.
- 1.3 Working time is recognised by the Trust as a health and safety related issue and as such, this Policy shall complement the Trust's existing health and safety policies.
- 1.4 The implementation of this Policy shall be undertaken in such a way as to ensure that employees are treated fairly and equitably.

### 2. Summary of the Policy

- 2.1 This Policy lays down the entitlement of employees to:

- periods of rest
- in-work rest breaks
- limits on average working time
- night work limits
- health assessments
- paid annual leave

In addition, it stipulates how the above entitlements are to be enforced and what records must be kept.

- 2.2 This Policy identifies very clear minimum limits and standards, a feature of the Regulations and this Policy is an acknowledgement to adopt a flexible approach to implementation. This is in recognition of the fact that the Trust maintains 'round the clock' services, on a twenty-four hour basis and that unforeseen circumstances can occur which may reasonably prevent the normal application of this Policy. It is stressed, however, that such occasions will be rare. In any event, primary consideration will be given to the health and safety implications for affected employees.
- 2.3 Underpinning the implementation of this Policy is the need for the Trust, through its managers and employees, to observe and carry out their obligations in respect of working time. In paragraph 1.3 of this Policy it is stated that working time is a health and safety related issue. As such, all employees have a legal obligation to take reasonable care for the health and safety of themselves and others at work and to co-operate with the requirements of this Policy.
- 2.4 Any employee who is uncertain as to the application of any aspect of this Policy

should contact either their line manager, safety representative, a Trust Health and Safety Adviser, or a member of the Human Resources Department for clarification.

### **3. Definitions**

- 3.1 Working Time is defined as any time that an employee is 'working, at the Trust's disposal and carrying out his/her activities or duties'. All three elements of this definition must be satisfied in order that time may be classed as working time. For the purposes of this Policy working time need not equate to paid time.
- 3.2 An employee who is required to be on-call/stand-by shall be regarded as working time from the time that he/she is contacted and asked to attend work to the time that he/she returns home directly from work. Provided that an employee is otherwise able to pursue time as his/her own, the remaining time spent on-call/stand-by shall not be classed as working time. An employee who is rostered to be on-call/stand-by shall be expected to remain fit for work as a condition of his/her participation in any on-call/stand-by arrangement.
- 3.3 An employee required to sleep-in on Trust premises for a specified period shall be regarded as working for the purposes of this Policy.
- 3.4 Where an employee is contacted at home (e.g. by telephone) regarding a work-related matter, but there is no requirement for him/her to attend work, he/she shall be classed as working for the duration of the contact (e.g. telephone call(s)) and will be entitled to equivalent compensatory rest.
- 3.5 When attending approved non-residential study leave, the time at the event will be classed as working time. Travel time will be subject to agreement with the manager and in line with the Trust's Study Leave Policy.
- 3.6 There may be instances where an employee may spend time at home carrying out work that would otherwise be performed in the workplace. This shall be regarded as working time for the purposes of this policy, provided that the line manager has given prior permission. In such instances, it will be necessary for the employee and the manager to determine the amount of time to be allocated to such work prior to it being undertaken.
- 3.7 Trade union duties undertaken by an accredited representative of a recognised trade union/staff organisation shall be classed as working time for the purposes of this Policy. Trade Union duties are defined in the Trust's Recognition Agreement for Trade Unions/Professional Staff Organisations.
- 3.8 Health and safety and union learning duties undertaken by an accredited Safety Representative of a recognised trade union/staff organisation, shall be classed as working time.
- 3.9 Authorized public duties undertaken by an employee, shall be classed as working time. Public duties arise when an employee is a member of:
  - a) a local authority,
  - b) a statutory tribunal,
  - c) a police authority,

- d) a board of prison visitors
- e) a health authority or a primary care trust,
- f) an educational governing body or local education authority,
- g) the Environment Agency

- 3.10 Night-time is identified as the hours of 11.00 p.m. to 6.00 am inclusive.
- 3.11 A night worker is an employee whose contract of employment requires him/her to work at least 3 hours of night-time, and/or he/she works these hours regularly (over a 17 week period) as opposed to on an infrequent or ad hoc basis.
- 3.12 A worker is an individual who has entered into or works under either a contract of employment, or any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client, or customer of any profession or business undertaking carried on by the individual. (The word “worker” in the context of this Policy is interchangeable with “employee”).
- 3.13 Shift work is defined as any method of organising work in shifts where employees succeed each other at the same workstation according to a certain pattern, including a rotating pattern, and which may be continuous or discontinuous, entailing the need for employees to work at different times over a given period of days or weeks.
- 3.14 Shift worker is defined as any employee whose work schedule is part of shift work.
- 3.15 The leave year for the purposes of this Policy is the period 1 April to 31 March inclusive each year.
- 3.16 Equivalent compensatory rest is defined as the difference between the amount of rest actually taken and the amount of rest that ought to be taken to ensure compliance with the Working Time Regulations.
- 3.17 Young worker is defined as an employee who is 15 years of age or over but under 18 years of age.
- 3.18 Normal working hours are defined as those hours stated in the employees’ terms and conditions of employment as their contractual hours. Overtime hours that are neither guaranteed nor compulsory, shall not be classed as normal working hours.

#### **4. Entitlement to Rest Breaks & Rest Periods**

##### **4.1 Daily Rest**

- 4.1.1 An employee is entitled to a rest period of not less than 11 consecutive hours between each working day in each 24 hour period. This entitlement may be disapplied for shift workers subject to equivalent compensatory rest being provided. The entitlement of employees not regarded as shift workers may also be disapplied provided that this is not done on a regular or routine basis and that it is in response to exceptional service needs. In such instances, equivalent compensatory rest shall be provided within two weeks: equivalent compensatory rest for Doctors in Training should be provided within 72 hours.

4.1.2 Where an employee works on-call/stand-by that breaks the 11 hour rest period, he/she is entitled to equivalent compensatory rest. Where practicable this should be taken as soon after the period of the breach as possible and, in any event, within two weeks or 72 hours for Doctors in Training. Exceptions to this may be made by local agreement.

4.1.3 Where an employee is not able to take 11 hours daily rest because of a request to work extra hours above the standard working week, the implementation of rest periods shall be without prejudice to any financial benefits or payments to which he/she is entitled notwithstanding that the normal working week hours paid at the normal hourly rates have not been completed. The decision to disapply the 11 or 24 hour rest periods shall remain with the worker.

## 4.2 Weekly Rest

4.2.1 A normal week starts at 00.00 on Monday and ends at 23.59 on the following Sunday.

4.2.2 An employee shall not normally be rostered to work more than 7 continuous shifts (one per day) over a 2 week period. In exceptional circumstances an employee may work a maximum of 8 continuous shifts by arrangement (a Doctor in Training may work a maximum of 12 continuous shifts by arrangement). In such instances, the manager must be able to demonstrate the need. The weekly rest period that has been breached should be taken as soon as possible and no later than 4 weeks from the date of entitlement.

4.2.3 An employee is entitled to an uninterrupted rest period of not less than 24 hours in each 7 day period. Daily and weekly rest are separate entitlements and should be taken consecutively in either one continuous weekly period of 35 hours (i.e. 24 hours weekly rest plus 11 hours daily rest), or one continuous fortnightly period of 70 hours.

4.2.4 The daily rest period of a young worker shall not be less than 12 consecutive hours. Such employees will be given two days consecutive rest in each 7 day period - normally Saturday and Sunday - unless otherwise agreed locally.

## 4.3 Compensatory Rest

4.3.1 Where an employee is required to work during any time which is supposed to be rest time (e.g. daily or weekly) due to a need for continuity of service or where there is a foreseeable surge of activity then he/she must:

- a) be permitted to take an equivalent period of compensatory rest as soon as possible. This should amount to the same number of hours rest lost. Daily rest lost should be taken within two weeks or 72 hours for Doctors in Training and weekly rest lost within four weeks; or
- b) in exceptional cases, where providing equivalent compensatory rest is not possible, be granted rest in order to protect his/her health and safety. This should be a minimum of half the amount of equivalent compensatory rest entitlement to be taken within a 7 day period - the remainder to be taken in the following 7 day period.
- c) where rest is taken as in b) above, this shall be without prejudice to any

financial benefits or payments to which the employee is entitled, notwithstanding that the normal working weekly hours paid at the normal hourly rates have not been completed.

- 4.3.2 When a shift worker changes shifts and cannot take his/her entitlement to daily or weekly rest between the end of one shift and the start of the next one, he/she is entitled to equivalent compensatory rest in accordance with 4.3.1 a) above.
- 4.3.3 Where an employee cannot take his/her entitlement to daily or weekly rest because his/her work is split up over the day, he/she is entitled to equivalent compensatory rest in accordance with 4.3.1 a) above.
- 4.3.4 Compensatory rest will be paid or unpaid depending on whether the period of daily and/or weekly rest lost was paid or unpaid. If paid rest is due, it will be at the rate applicable during the period of daily and/or weekly rest lost.

#### 4.4 In-Work Rest Breaks

- 4.4.1 When daily working time is more than 6 hours, an employee is entitled to a minimum uninterrupted break of 20 minutes away from his/her work station. It should be a break during working time and not at the start or the end of the working day. In-work rest should not overlap with daily rest entitlement.
- 4.4.2 Where an employee cannot take his/her entitlement to in-work rest, he/she is entitled to compensatory rest. This should be taken within two weeks.
- 4.4.3 Where a young employee's daily working time is more than four and half hours, he/she is entitled to a break of at least 30 minutes (consecutive if possible) away from his/her work station. This should be a break during working time and not at the start or the end of the working day.

#### 4.5 Entitlement under Other Provisions

Where an employee is entitled to a rest period, rest break or annual leave both under the Working Time Regulations and under a separate provision (e.g. his/her contract of employment), he/she may not exercise the two rights separately, but may, in taking a rest period, rest break or annual leave, take advantage of whichever right is the more favorable.

### 5. Average Working Time Limits

#### 5.1 Maximum Weekly Working Time Limits

- 5.1.1 An employee's working time, including overtime, in any reference period which is applicable in his/her case shall not exceed an average of 48 hours per week. From the 1 August 2009 this now includes Doctors in Training.
- 5.1.2 The Trust will take all reasonable steps, in keeping with the need to protect the health and safety of employees, to ensure that the above maximum weekly limit is complied with.
- 5.1.3 It is acknowledged that an employee may wish to work more hours than the maximum weekly limit. Such an employee shall be permitted to do so provided that he/she has entered into an individual and voluntary written

agreement with the Trust to disapply the 48-hour rule (see 5.4 below).

## 5.2 Reference Periods

- 5.2.1 The standard reference period to be used for calculating average weekly working time shall be 17 weeks. ST3+ level doctors have a 26 week reference period; those Doctors in Training on four monthly rotations have a reference period of 17 weeks.
- 5.2.2 Where an employee has completed less than 17/26 weeks service, the reference period shall be the period that has elapsed since he/she started.
- 5.2.3 In exceptional circumstances the standard reference period may be extended to a maximum of 52 weeks by means of a collective agreement at departmental/ward level.
- 5.2.4 A collective departmental/ward level agreement may also determine alternative dates over which average weekly working time may be calculated.
- 5.2.5 A collective departmental/ward level reference period agreement shall only apply to employees in that particular area of work.
- 5.2.6 Employees who are covered by an agreement in 5.2.5 above cannot collectively agree to work in excess of the average maximum weekly limit. This may only be done on an individual and voluntary basis in writing (see 5.4 below).

## 5.3 Calculation of Average Working Time

- 5.3.1 Average working time shall be calculated by dividing the total number of hours worked (see Section 3) by the number of weeks in the reference period applicable to the employee.
- 5.3.2 The calculation shall take account of periods where an employee is absent, for example due to annual leave, sickness absence, maternity and paternity leave, parental leave, special leave or compassionate leave, as this is not classed as working time. If any such day's absence fall within a reference period, then the hours worked in the equivalent number of working days falling immediately after the reference period will be added to the total of hours worked. For example, if five days annual leave were taken in the reference period the end date of the reference period would be extended to cover the next five working days.

## 5.4 Agreement to Exceed the Maximum Weekly Working Time Average Limit

- 5.4.1 An employee is not expected to work more than an their applicable average weekly working time average limit, in most cases this will be 48 hours per week.
- 5.4.2 He/she may make a request to disapply the limit if he/she wishes provided this is done on a voluntary basis in writing (see Appendix I).
- 5.4.3 In assessing a disapplication, consideration shall be given to the Health and Safety implications and, if necessary, a risk assessment shall be undertaken in conjunction with the Trust's Health & Safety Adviser and/or Occupational

Health. If, in the opinion of the Trust, a disapplication would compromise the Trust's obligations under Health & Safety legislation then it would not be allowed.

5.4.4 Where an employee also holds employment with another employer(s) and he/she wishes to disapply the limit, it is his/her responsibility to ensure that they have given their written agreement to that employer(s) to disapply it.

## 5.5 Records

A copy of an employee's agreement and termination of the disapplication notice will be retained in his/her personal file.

## 5.6 Maximum Night Working Limits

5.6.1 A night worker's normal working time, including overtime, in any reference period which is applicable in his/her case shall not exceed an average of 8 hours for each 24 hours.

5.6.2 Where a night worker's duties involve special hazards or heavy physical or mental strain, he/she shall not work for more than 8 hours in any 24 hour period (see Section 6).

5.6.3 The Trust will take all reasonable steps, in keeping with the need to protect the health and safety of employees, to ensure that the maximum limits under 5.6.1 and 5.6.2 above are complied with.

5.6.4 The standard reference period to be used shall be 26 weeks.

5.6.5 Where an employee has completed less than 26 weeks service, the reference period shall be the period that has elapsed since he/she started.

5.6.6 In exceptional circumstances the standard reference period may be extended to a maximum of 52 weeks by means of a collective agreement at departmental/ward level.

5.6.7 A collective departmental/ward level agreement may also determine alternative dates over which the average 8 hours in 24 hours may be calculated.

5.6.8 A collective departmental/ward level reference period agreement shall only apply to employees in that particular area of work.

5.6.9 Employees who are covered by an agreement in 5.6.7 above cannot collectively agree to work in excess of the average of 8 hours in 24 hours maximum limit. This may only be done on an individual voluntary basis in writing (see 5.4 above).

5.6.10 A collective departmental/ward level agreement may also vary or exclude the night working limits and referencing periods subject to the night workers receiving compensatory rest as defined in Section 3.16.

## 5.7 Calculating Working Time and Breaks

5.7.1 Weekly Working Time – the average weekly working time (48 hours)

calculation is:

$$\frac{A+B}{C}$$

- 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 leave (see 5.3.2 above).
- C is the number of weeks in the reference period.

#### 5.7.2 Example

An employee 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. No leave is taken.

The total hours worked is:

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

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

Therefore the average (total hours divided by number of weeks):

$$\frac{800}{17} = 47.1 \text{ hours a week}$$

The average limit of 48 hours has been complied with.

5.7.3 Where an employee has more than one job the Trust is under an obligation to ensure that the 48 hour weekly average is not exceeded. This will entail asking the employee whether he/she has worked elsewhere and, if so, for how many hours. It may be that the employee is asked to provide written consent to working more than the 48 hour weekly average limit.

5.7.4 Night Workers Working Hours – the normal working hours of a night worker should not exceed the limit of an average of 8 in any 24 hour period. The standard reference period for the calculation of this average is 26 weeks. This may be extended to a maximum of 52 weeks by means of a collective agreement at departmental/ward level. The calculation to be used is as follows: A B-C

- A is the number of hours during the reference period which are normal working hours for that worker.
- B is the number of twenty-four hour periods (days) during the reference period.
- C is the number of hours of weekly rest to which the employee is entitled under the Regulations (i.e. twenty-four hours for each seven days) divided by 24. (It should be noted that this is not the total amount of hours that the

employee is at rest in each week. Only the hours making up the weekly rest period that the worker is entitled to under the Regulations are counted).

#### 5.7.5 Example

The reference period is 26 weeks, if a night worker usually works 4 x 12 hours in each 7 day period he/she will work for 26 (4 x 12) = 1248. There are 182 twenty-four hour periods in the reference period and 26 twenty-four rest periods. The calculation is as follows:

$$\frac{1248}{(182-26)} = \text{an average of 8 hours (i.e. compliance)}$$

## 6. Night Duty Issues

- 6.1 The identification of night duty special hazards of heavy physical and mental strain shall be undertaken by a process of risk assessment in accordance with the Management of Health and Safety at Work Regulations 1992 and the Trust's local risk assessment procedures.
- 6.2 Employees whose work involves special hazards or heavy physical or mental strain identified by the risk assessment process referred to in 6.1 above shall be rostered to work for absolutely no more than 8 hours in any 24 hour period during which the worker performs night work. Managers must decide whether to change the duties or working hours of those employees identified as undertaking work at night which constitutes special hazards or heavy physical or mental strain. Appropriate consultation with employees and their representatives must also take place.
- 6.3 Free health assessments and/or screening are to be offered by the Occupational Health Department to night workers with the following frequency:
- (i) upon appointment;
  - (ii) upon undertaking night work for the first time;
  - (iii) if aged 45 or under every 3 years; if aged 60 or under every 2 years; if aged 61 or over every year;
- 6.4 It is for night workers to decide whether they take up the offer of a free health assessment or health screening.
- 6.5 Details regarding those records that must be kept in respect of night work can be found in Section 8.
- 6.6 The Health & Safety Executive has the authority to examine night-working practices and records and enforce the working time regulations accordingly.
- 6.7 Details regarding the calculation of average hours worked at night can be found in Section 5 of this Policy.

## 7. Annual Leave

### 7.1 Entitlement to Leave

- 7.1.1 Employees are entitled to paid annual leave, including Bank Holidays in accordance with their terms and conditions of employment. The first 5.6 weeks (pro rata for part time employees) of contractual annual leave entitlement will be off-set against any entitlement to statutory annual leave

under the Working Time Regulations.

7.1.2 The leave year shall be 1 April to 31 March each year.

## 7.2 Carry-Over of Annual Leave

Only in very rare and exceptional circumstances may annual leave entitlement equivalent to one working week be carried forward from one leave year to the next. This is subject to the prior written approval of the employee's line manager. Any leave carried forward must be taken as soon as possible and must be the first leave to be taken in the following annual leave year.

## 8. Records

8.1 Records must be kept which demonstrate that departments, wards and the Trust comply with the weekly working and night working time limits.

8.1.1 There is no requirement to keep a running calculation of each employee's weekly working time. Records which are kept for the purposes of this Policy will be of time already worked rather than of current or prospective working time.

8.1.2 Where an employee has agreed to work over the 48 hours per week average limit there is a requirement to keep records of the number of hours actually worked.

8.1.3 All working time records including health assessments for Night Workers must be kept for two years from the date on which they were made.

## 9. Secondary Employment

For an employee who also has employment with another employer, it is the duty of both the Trust and the individual to recognise that all working time with all employers are relevant for the purposes of this Policy.

### 9.1 Trust to Enquire

9.1.1 The Trust shall take all reasonable steps to enquire of its employees if they have secondary employment.

9.1.2 The Trust's Schedule of Particulars (issued to all new staff members) states that individuals must disclose any existing secondary employment upon commencement of their role.

9.2 If an employee fails to declare secondary employment, or hours worked for another employer, this may result in an investigation being conducted in accordance with the Trust's Disciplinary Policy/Procedure.

### 9.3 Staff to Declare

If, during the course of his/her employment with the Trust, an employee intends to commence employment with a secondary employer, he/she must request permission from his/her manager in writing seven days prior to the commencement of that employment. Failure to do so may result in an investigation being conducted in accordance with the Trust's Disciplinary Policy/Procedure.

#### 9.4 Safety Implications

It is recognised that all hours worked with all employers may be relevant for the purposes of this Policy and, as such, the Trust and its employees must ensure that any potential safety implications are addressed.

### 10. Monitoring

- 10.1** Compliance with this policy will be monitored by the Director of Human Resources. The figures will be presented to the Heads of Human Resources Meeting on an annual basis who will identify appropriate action plans to address any concerns regarding the management of annual leave and will continue to monitor the plan until its completion.
- 10.2** Monitoring will include reporting of information from ESR to ascertain how adequately managers are managing working time, specifically:
- The number of identified investigations of employees exceeding the maximum weekly working time limits, where no individual disapplication from the regulations has been made.

Policy Author: Human Resources Manager.

**The Newcastle upon Tyne Hospitals NHS Foundation Trust**

**Opt-out Agreement – Working Time Regulations**

Surname: \_\_\_\_\_ DOB: \_\_\_\_\_

Forename(s):

Job Title:

Band:

Ward/Dept:

Specialty:

Site: \_\_\_\_\_

I agree that I may voluntarily work for more than an average of 48 hours a week with effect from (date).

If I change my mind, I will give the Trust (amount of time – up to three months) notice in writing to end this agreement.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**THE NEWCASTLE UPON TYNE HOSPITALS NHS FOUNDATION TRUST**  
**IMPACT ASSESSMENT – SCREENING FORM A**

This form must be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

Policy Title:	<b>Working Time Regulations Policy</b>	Policy Author:	Miss Ceri Liddell – HR Officer (Projects)
		Yes/No?	You must provide evidence to support your response:
1.	Does the policy/guidance affect one group less or more favourably than another on the basis of:	No	Policy applies to all employees of the Trust. It is underpinned by Trust's overriding policy on Equal Opportunities.
	• Race	No	}
	• Ethnic origins (including gypsies and travellers)	No	}
	• Nationality	No	}
	• Gender	No	} As above.
	• Culture	No	}
	• Religion or belief	No	}
	• Sexual orientation including lesbian, gay and bisexual people	No	}
	• Age	No	}
	• Disability – learning difficulties, physical disability, sensory impairment and mental health problems.	No	
2.	Is there any evidence that some groups are affected differently?	No	There was no evidence to support any group was affected differently.
3.	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	No	As above.
4(a).	Is the impact of the policy/guidance likely to be negative? <i>(If "yes", please answer sections 4(b) to 4(d)).</i>	No	
4(b).	If so can the impact be avoided?	N/A	
4(c).	What alternatives are there to achieving the policy/guidance without the impact?	No	
4(d).	Can we reduce the impact by taking different action?	No	

<b>Comments:</b>	<b>Action Plan due (or Not Applicable):</b>

Name and Designation of Person responsible for completion of this form: Miss Ceri Liddell – HR Officer (Projects) Date: 5 May 2010

Names & Designations of those involved in the impact assessment screening process: Members of the Employment Policies and Procedures Consultative Group (EPPCG)

(If any reader of this procedural document identifies a potential discriminatory impact that has not been identified on this form, please refer to the Policy Author identified above, together with any suggestions for the actions required to avoid/reduce this impact.)