

The European Working Time Directive

*UK notification of Derogation for doctors in
training*

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The European Working Time Directive

UK notification of derogation for doctors in training

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Executive summary

The UK has made considerable progress in achieving compliance with the European Working Time Directive (EWTd) by doctors in training. There are concerns that a number of hospital services delivering 24 hour, immediate patient care, some supra-specialist services and small, remote and rural units may not be able to achieve full compliance with the requirement for an average 48 hour working week by 1 August 2009. The UK governments intend to take up the option of a derogation under Article 17(5) of the EWTd, permitting an average weekly working time of 52 hours for doctors in training to apply to such services from 1 August 2009.

Progress to date

1. The majority of UK doctors in training already work an average 48-hour week, or less. The over-riding objective of the UK government in its health policy is to ensure the quality and safety of patient care. We also want to ensure that health services are managed so that they provide doctors with a good work-life balance and quality training. Many parts of the UK health services have already made good progress and successfully implemented sustainable solutions providing quality training and ensuring patient safety. The government is working together with health services and the representatives of the medical profession on EWTD solutions. Clinical leadership is key to achieving a positive outcome.
2. Returns are made every six months by doctors in training about the hours they work in National Health Service (NHS) employment as part of monitoring arrangements for the New Deal pay agreement for doctors in training.
3. The New Deal monitoring data collects information about the pay band within which each doctor in training is working. Under the current pay structure for doctors in training – the New Deal – doctors in training can work within three pay bands,
 - Band 1 – work between 40 and 48 hours
 - Band 2 - work between 48 and 56 hours
 - Band 3 – work above 56 hours
4. The latest New Deal monitoring data was taken in September 2008 in England and identifies two-thirds of doctors in training as employed on contracts for 48 hours or less in Band 1. The Band 1 data for England is shown by specialty in Annex A.
5. The North West NHS Strategic Health Authority has piloted early compliance with a maximum, average 48-hour working week for all doctors in training working in the North West region of England. In August 2008 the North West Strategic Health Authority monitored compliance against the 1 August 2009 EWTD requirements. At that time 97% of doctors in training in the North West were reported to be compliant with the 1 August 2009 EWTD requirements.

Forecast compliance by 1 August 2009

6. The UK governments are absolutely committed to the objective of reducing the working time for doctors in training to an average of 48 hours per week, or less. The aim is to support services in the National Health Service to achieve this. For example, the Department of Health in England has made available substantial funding of £310m in 2009/10, and funded a major programme of support to National Health services to enable them to reduce the hours that doctors in training need to work and to reach compliance with the 1 August 2009 EWTD requirements. The New Deal pay agreement for doctors in training in the National Health Service was constructed, in part, to provide a strong financial incentive to NHS employers to reduce the working hours of doctors in training.
7. Since September 2008, NHS services have continued to make progress towards this objective. NHS services that have not yet achieved it are working hard to ensure they are on track to do so by 1 August 2009. The expectation is that by 1 August 2009 all doctors in England in their first year of Foundation Programme training will be working 48 hours per week or less on average and that the great majority of services will be managed so that all other doctors in training can also work 48 hours per week on average or less.
8. There are concerns that, for specific and unavoidable reasons, a number of hospital services may not make sufficient progress by 1 August 2009 to support compliance for all doctors in training who are working in services delivering 24-hour immediate care, some supra specialist services and small, remote and rural units. Specific and unavoidable reasons may include services where medical workforce supply constraints have affected progress in securing the additional doctors required to deliver safe patient care within an average 48 hour working week. There are also a small number of locations where plans for changing the way services are provided may not be fully implemented by 1 August 2009 and where this may have a direct impact on the numbers of hours that junior doctors with duties in those service need to work, beyond 1 August 2009. Examples of services with specific and unavoidable reasons that are likely to give rise to special difficulties beyond 1 August 2009 are listed in Annex B.

Medical Workforce Supply Constraints

9. The number of doctors working in the UK health services has increased significantly over the last ten years and more doctors are now being trained to support continued expansion. However, at present not all medical posts are filled. Up to 5% of medical training posts were vacant at the close of medical training recruitment in 2008. The fill rates varied across the UK with some specialties and some parts of the country reporting high vacancy rates. Gaps in training rotas also arise because doctors in training may take leave from their training programme for maternity or personal reasons or to gain further experience elsewhere.
10. Medical locums are needed to fill the gaps in the rotas for doctors in training. Patient safety can be put at risk if critical rotas cannot be filled and in extreme circumstances, specific services may be need to be closed. The supply of medical locums has tightened in the UK since 2007. This is partly because changes to the medical training arrangements mean that UK graduates now move swiftly through the training grades, and so far fewer are out of training programmes and available to take up locum posts, and partly because international recruitment has stalled since recent changes to immigration routes. International medical graduates can still be recruited into the UK but the supply of such doctors has reduced recently as NHS employers and international doctors become familiar with the changes and recruitment practices are adapted to reflect parameters of the new immigration rules.
11. Analysis of the supply of medical locums, of unfilled training posts, and of the number of 3 month old vacancies reported in the 2008 annual vacancy survey in England, indicates an undersupply of medical locums. There are regional and specialty level difficulties below this general position.
12. More doctors are going through training programmes year-on-year and the supply of both trained doctors and doctors in training is set to expand year-on-year. Programmes of support are in place to assist NHS services manage demand for medical locums more effectively and to expand the supply of medical locums. However, it will take time for the current constraints on medical workforce supply to ease and over the next two to three years NHS services are likely to be adversely affected. The impact will be greater in some

locations and for some services, particularly those delivering 24-hours immediate patient care.

Reconfiguration of services

14. Another of the factors affecting achievement of an average 48 hour week is the reconfiguration of certain services, which may not be fully completed by 1 August 2009. For example, the rebuilding of a hospital, or relocation of services can lead to services being shared between different sites until reconfiguration is complete. This can lead to rotas having to be adapted to accommodate out of hours coverage for split sites.

Derogation

13. It is expected that a number of hospital services delivering 24-hours immediate patient care, some supra specialist services and small, remote and rural units will have special difficulties in delivering an average working week for doctors in training of 48 hours or less by 1 August 2009.

14. There is insufficient information available to the UK governments at this stage to be able to identify with confidence all the specific services concerned that will have special difficulties in enabling doctors in training to work 48 hours a week or less on average beyond 1 August 2009.

15. The UK therefore notifies its intention to take a limited derogation for up to three years, that can be applied to doctors in training who have duties in services that are delivering 24-hour immediate patient care, in some supra specialist areas or in small, remote or rural units. In applying this derogation the UK reaffirms its absolute commitment to enabling all doctors in training to work and train safely, in full compliance with the EWTD, and commits to,

- working closely with the medical profession to provide clinical leadership and to support health services so that doctors in training work an average 48 hours a week or less, on average
- regular performance monitoring of progress by individual hospital services in the National Health Service

Running header

- providing further targeted support and interventions to those services identified as making insufficient progress
- continuing action to expand the availability of medical locums

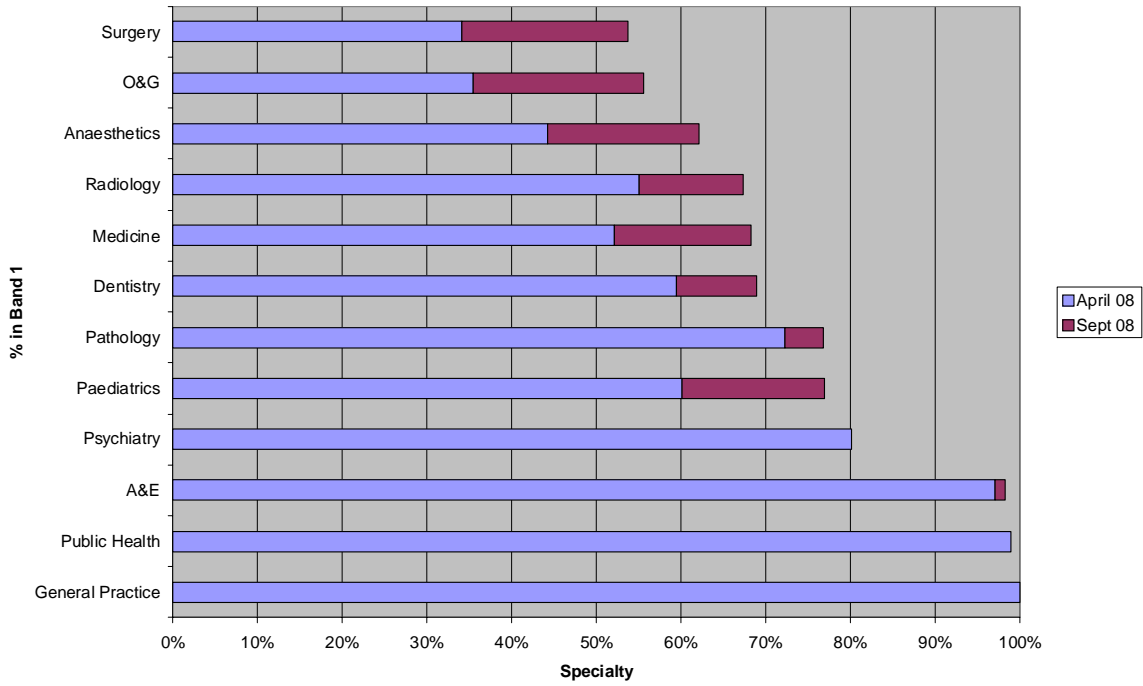
16. By 1 August 2009 the specific services needing to take advantage of the extended derogation will be known. These services will be enabled through the UK Working Time Regulations to plan services with up to a 52 hour week averaged over 26 weeks.

17. The overall aim is to ensure that, consistent with patient safety, the maximum number of services where doctors have emergency, acute responsibilities is supported to achieve compliance and that a minimum number of such services would access the derogation.

Annex A

New Deal Monitoring September 2008 – England only

Band 1 (<48 hours) by specialty



Annex B – Examples of hospital services with special difficulties

North East SHA – Newcastle upon Tyne Hospitals NHS Foundation Trust

Specialty / Grade: Anaesthetics / Specialist Registrar
Paediatrics / Specialist Registrar

Paediatric services are a front line 24-hour immediate care service. The paediatric service, along with other services, is due to be relocated from Newcastle General Hospital to the Royal Victoria Infirmary by June 2010. Due to patient safety reasons, the rota of a resident senior paediatrician on two sites is required and this cannot be achieved within the constraints of a 48 hour rota.

When can WTD Implementation be achieved: The current date for all children's services & Accident & Emergency to be relocated is June 2010. The extension of the working week to 52 hours will provide the ability to provide safe services until the relocation takes place in June 2010

East Midlands – Sherwood Forest Hospitals NHS Foundation Trust

Specialty / Grade: Obstetrics & Gynaecology / ST3+
Paediatrics ST3+
Paediatrics F2/STR1/STR2
Anaesthetics ST3+
Anaesthetics F2/STR1/STR2

The Kings Mill Hospital is being rebuilt and is due for completion in early-mid 2011. Until then, the services are being provided from two individual sites, which are at significant geographic separation. This results in the rota for doctors in training having to accommodate the need for split site out of hours coverage.

There is an agreed plan to revise the rota to reflect single site operations on completion of the building works to become compliant with an average 48 hour working week, or less.

O&G ST3: As well as this, the trust has increased the Foundation Programme year 2/Specialty Training years 1-2 rota by adding two clinical fellow posts until services reflect single site operations. This has reduced pressures on Specialty Training year 3 posts, however, there are no additional training posts at middle grade for this specialty in 2009. It has not proved possible to recruit two additional clinical fellow posts due to the short-term nature of the appointments.

When can WTD Implementation be achieved: Mid 2011

3 - East Midlands – Derby Hospitals NHS Foundation Trust

Specialty / Grade: Acute Medicine / S2/ST1
Anaesthetics (Obstetrics) / ST3/CT1
Anaesthetics (Theatres) / ST3/SpR
Anaesthetics (Theatres) / CT1&2
Anaesthetics (ITU) / ST3/SpR/CT1&2
General Medicine / ST3/SpR
General Medicine/Clinical Oncology/Haematology/Palliative Medicine/
CT1&2/F2/VTS
General Surgery / ST3/SpR
General Surgery/ENT/Urology / CT1&2/F2/VTS

The trust is in the process of relocating all acute services to the Derby City General Hospital site. In the meantime, the trust has been split into two sites that are geographically separated. This results in the rota for doctors in training having to accommodate the need for split site out-of-hours coverage. Revised working patterns cannot be introduced until the move to one site is complete.

Anaesthetics are currently working across both sites, and will not be covered by the hospital at night team. With the loss of training posts and the need to achieve WTD requirements from 2009, the trust has had to model creative work patterns.

In support of the reduction of hours worked by doctors, the trust has introduced a number of non-medical support roles. This has provided additional senior clinical support and removed some inappropriate work previously undertaken by trainees.

When can WTD Implementation be achieved: With removal of the split site working in July 2009 the trust will be able to implement the modelled WTD compliant rotas. With the junior doctor change over in August, the Trust intends to monitor the new working patterns throughout September/October. Major adjustments to working patterns are not expected and therefore services expect to be compliant by February 2010.