



Belfast Health and
Social Care Trust

Working Time Regulations

Guidance for Managers

December 2011

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Introduction

The Working Time Directive was implemented in Northern Ireland by The Working Time Regulations (Northern Ireland) 1998 (SR 1998 No. 386) (“the Regulations”) on the 23rd November 1998. The Regulations set out measures designed to protect the safety and health of workers from the risks related to working excessive hours.

The stated aim of the Regulations is to “improve health and safety at work” by introducing minimum rules for workers relating to daily and weekly rest periods, rest breaks, annual leave entitlements, length of working week, and on night work.

The purpose of this Trust guidance for managers is to provide guidance as to how the provisions of the Regulations should be implemented and applied within the Trust by all Managers in respect of the staff whom they manage and their own working arrangements. This guidance applies to all Trust staff, excluding Junior Doctors in training whose working hours are monitored under separate arrangements.

Definitions

For the purpose of this guidance:

Working Time is defined as when a staff member is working, at their employer’s disposal and carrying out their activity or duties.

Working time includes:

- Travelling between Trust sites once at work;
- Stand by or On Call once the worker has been contacted;
- Sleeping-in, if the sleeping-in is required by the employer;
- Contractual Overtime;
- Working lunches;

- Time taken for training purposes provided it is directly related to the job, civic and public duties, health and safety and trade union duties.

Working time **does not** include:

- Routine travel between home and work;
- Rest breaks and meal breaks when no work is done;
- Time resting at the end of the working day even if the worker is required to stay away from home overnight;
- Time spent on-call when away from the workplace and not carrying out duties provided the worker is free to carry out his activities;
- Training such as non-job related evening classes or day release courses.

A worker is defined as an individual who works under a contract of employment or any other contract whereby the individual undertakes to do any work personally and where the individual is not genuinely in business on their own account.

A young worker is defined as anyone less than eighteen years of age.

Responsibilities of Trust Staff

(i) Line Managers are responsible for:

- Ensuring they are conversant with this Guidance and that their staff are fully acquainted with it;
- Ensuring all Trust staff are working in accordance with the Guidance and the Regulations;
- Ensuring that working hours of their staff are monitored;
- Identifying and addressing as quickly as possible any areas of non-compliance with the Regulations;
- Record keeping as detailed in the Check List at Appendix 1.

(ii) Workers are responsible for:

- Ensuring that they are fully acquainted with the Guidance and that they adhere to it;
- Ensuring that they take appropriate breaks in agreement with their Line Managers and in line with this Guidance;
- Advising their Line Manager of any change in circumstances affecting their ability to comply with the Regulations e.g. undertaking additional employment;
- Declaring additional employment by filling in the Dual Employment Form (Appendix 2).

(iii) Human Resources are responsible for:

- Governance arrangements including seeking evidence from Service Groups that the Regulations are being complied with, and seeking evidence from Occupational Health that night workers assessments have been carried out;
- Providing advice to staff and managers on the Regulations;
- Updating this Guidance in line with relevant changes in the law.

Key Points of the Regulations

An overview of the basic entitlements under the Regulations can be found at Appendix 4.

1. Maximum Weekly Working Time Limits.

No individual worker should work more than an average of 48 hours per week over a 17-week rolling reference period unless they have agreed in writing to do so by signing an Opting-Out Agreement Form (Appendix 3).

Generally, Line Managers must be satisfied that the health and safety of the individual worker and the safe delivery of the service will not be adversely affected when making such individual agreements. Patient care must not be affected as a result of workers working over the maximum weekly limit.

In calculating the average weekly working time the following formula is used:

Total number of hours worked during the reference period plus 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, sick leave or maternity leave.

Divided by

The number of weeks in the reference period.

If a worker has worked for the Trust for less than 17 weeks, e.g. only 4 weeks, then it is the average over that 4-week period which must be considered. Consequently, care needs to be taken with regard to overtime for a short busy period with new workers.

Example:

A worker has a standard working week of 37.5 hours (7.5 hours per day) and does overtime of 7.5 hours a week for the first 12 weeks of the 17 week reference. He also takes 8 days sick leave during the reference period.

Of the 17-week reference period 15 weeks and 2 days were worked and 12 weeks of 7.5 hours overtime.

$$\text{The total number of hours worked} = (15 \times 37.5) + (2 \times 7.5) + (12 \times 7.5) = 667.5.$$

To this must be added the hours worked for the 8 days sick leave. Therefore the hours worked in the first 8 working days after the reference period is added to the total, i.e.

$$(8 \times 7.5) = 60$$

$$\text{Average} = \frac{712 + 60}{17} = 45.4 \text{ hours per week}$$

The average limit has been complied with.

2. Workers with more than one Employer.

Some workers may have employment elsewhere or they may work both as a permanent employee and on the Bank for the Trust. The Line Manager must ask each worker if they have another employer or another contract with the Trust. For new starts and existing staff the Manager must issue the Dual Employment pro forma (Appendix 2) to all workers and to keep records. The Trust's Contract of Employment contains a clause requiring workers to inform the Trust of any additional work elsewhere at any time during their employment.

Where a worker has more than one job or contract, their combined working hours must not exceed the weekly average of 48 hours (unless the individual has signed an Opt-Out form).

Those staff who work irregular hours for the Trust and/or any other employer (e.g. Bank Staff) should confirm with their Line Manager their total weekly working hours across all employments for the reference period. The Line Manager shall review the allocation of work for the next period(s) to ensure that the limit is not exceeded over the full reference period (17 weeks).

If this cannot be ensured, the worker must confirm his/her agreement in writing to disapply the maximum weekly limit by signing an Opt-Out Agreement Pro forma (See Appendix 3). Any Opt-Out Agreements must be retained by the Manager.

Managers will have to monitor these types of situations closely and liaise with the Human Resources Service Group.

If a worker agrees to work above the limit, records will need to be retained by the Manager. These records must identify the worker, the terms of agreement and specify the exact number of hours worked during each reference period (i.e. 17 week period) since the agreement came into effect. It is important to note that these records must be available for inspection by the Health and Safety Executive for NI.

3. Night Work Limits

Night time is a period of at least 7 hours and includes the period from 12 midnight and 5.00am. A night worker is someone who works at least 3 hours daily working time during night time hours as a 'normal course'. Night Workers should not exceed an average of 8 working hours in each 24 hours over a 17- week period. This means that 12-hour shifts are still possible.

The formula for average night hours is:

Number of hours during reference period, which are normal working hours.

Divided by:

The number of days during reference period minus 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.

However, if the work involves heavy physical or mental strain as defined through a risk assessment then the limit is an absolute limit of 8 hours per night.

Example

A night worker normally works 4 x 12 hour shifts each week. The total number of normal hours for a 17 week reference period would be $17 \times (4 \times 12) = 816$.

There are 119 days in the reference period.

There are 17 weekly rest periods of 24 hours, i.e. $17 \times 24 \div 24 = 17$.

Therefore the calculation is
$$\frac{816}{119 - 17}$$

This is an average of 8 hours in each 24-hour period so there is compliance.

4. Health Assessments for Night Workers

The Regulations state that night workers are entitled to a free health check at regular intervals. The purpose of the check is to assess the fitness of the worker to do the night work.

Occupational Health must carry out an assessment of night workers' health every two years. This is a two-step process in which Occupational Health writes out to Line Managers requesting that a letter be distributed to all night workers advising them of the opportunity to avail of a health assessment. If the night worker responds to the letter, Occupational Health will issue them with a confidential health questionnaire which should be completed and returned to Occupational Health. If the results of the questionnaire are satisfactory a simple statement will be sent to the Line Manager confirming the worker's fitness for night work. If any problem is identified by the questionnaire, which is thought to have possible implications for the worker's fitness for night work, they will be contacted and offered an appointment with an occupational health professional.

There are few, if any health factors which rule out night work in every case, and very few workers are likely to be found permanently unfit to work at night. If the Occupational Health advice is that a worker is suffering from health problems connected with the fact that they work during night-time, the Trust must, whenever reasonably practicable and subject to service delivery requirements, offer the worker the option to transfer to suitable alternative day work, with pay and conditions applicable to day work.

If Line Managers identify any health concerns with their night workers outside the biennial night workers health screening programmes they should use the normal Occupational Health referral method.

Young Workers

Young workers must not work more than 8 hours per day or 40 hours per week. These hours cannot be averaged over a reference period and there is no opt-out available.

Young workers should not ordinarily work at night unless:

- There is no adult available to perform the task;
- They are allowed an equivalent period of compensatory rest;
- And they are adequately supervised where necessary for their protection.

5. Rest Periods (applicable equally to day and night staff)

Subject to relevant exceptions described below

- (i) **Daily Rest** – A worker is entitled to an uninterrupted rest period of not less than 11 consecutive hours between each working day in each 24-hour period during which he/she works for his/her employer.

Young workers (under 18 years) are entitled to 12 consecutive hour's uninterrupted rest.

- (ii) **Weekly Rest** – For this purpose, a week starts at midnight between Sunday and Monday. A worker is entitled to an uninterrupted rest period of not less than 24 consecutive hours in each 7-day period. This can be arranged as a rest period of 48 hours over 2 weeks.

Daily and weekly rest are separate entitlements, which should be taken consecutively, e.g. one period of 35 hours consecutive rest per 7-day period.

- (iii) **In Work Rest Breaks** – When daily working time is more than 6 hours workers are entitled to a minimum uninterrupted rest break of 20 minutes away from his/her

work station, but not necessarily away from the premises. This should be in working time and not taken at the start or end of the day or overlap with the worker's daily rest. Meal breaks cover this provision and the Regulations do not provide for this rest period to be paid.

Young workers are entitled to a rest break of at least 30 minutes after more than 4½ hours working.

6. Exceptions and Compensatory Rest

The Regulations recognise that there will be occasions when the full entitlements to daily and weekly rest periods cannot practically be achieved, for instance:

- Where the worker changes shifts (e.g. from a late shift to early shift);
- Where the worker works split shifts (e.g. a morning shift and an evening shift);
- Where there is need for continuity of care in areas where workers work in direct contact with patients in “round the clock” services;
- Where workers have undertaken work during an on-call period which is preceded and/or followed by a period of duty;
- Where workers are required to work due to emergency or unforeseeable circumstances.

In the case of such exceptions applying, the worker must be allowed to take equivalent periods (i.e. the same number of hours lost) as compensatory rest. For example:

- (A) If there are only 8 hours daily rest one day, to be allowed the remaining 3 hours rest the next day in addition to the 11 hours for that day. Compensatory rest should be taken as soon as possible within a reasonable period.

(B) If an employee only received a 9 hour daily rest break on a Wednesday evening, there would be 2 hours compensatory rest to be taken at another time. On the Thursday they work 9am – 5pm, and the Friday they also work 9am – 5pm. This means that on the Thursday night the member of staff had 16 hours rest which is an additional 5 hours rest over and above the 11 hour requirement. Therefore the two hours compensatory rest will have been given at that time i.e. there is 5 hours compensatory rest built into the rota each night when the member of staff is not on-call.

Managers should ensure that suitable arrangements / protocols are in place to allow workers to take their entitlements to compensatory at the earliest practicable opportunity.

Compensatory rest only applies if workers have been prevented from taking their rest entitlement due to the needs of the service, rather than choosing not to take their (full) rest entitlement. Workers should notify their line manager if they are being prevented from taking their (full) rest entitlement by matters beyond their own control.

7. On-Call and Sleeping-In

It should be noted that when a worker is “on-call” but otherwise free to pursue their own activities this is not working time. Working time will not start until the worker is interrupted, for example by being contacted to go into work or required to provide on-call advice from a distance. Working time will end when the work related task is complete (e.g. in the case of telephone advice, when the call ends; or when required to attend at work, when the worker returns to the place from which they were called in from). In these cases only, travelling time will be classed as working time for the purposes of the Regulations. Workers who are interrupted whilst on call should be allowed to take a period of compensatory rest equivalent to the duration of the interruption at the earliest

practicable opportunity. Managers should ensure that appropriate arrangements are in place to allow this to happen.

If the worker is required by their employer to be at the place of work and sleeping-in they will be considered to be working. Therefore, time spent sleeping-in will count as working time for the purposes of the Regulations.

Managers must ensure that workers sleeping-in and/or on-call are compliant with the requirements of the Regulations in respect of rest periods and maximum working hours.

8. Worker Option to Work more than 48 Hours a Week.

A worker may choose to agree to work more than the 48 hours average weekly limit if they agree with the Line Manager in writing through the completion of an Opting-Out Agreement pro forma (Appendix 3). A decision to exercise this option is an individual, voluntary one and no pressure should be placed on a worker to take this option. Such an individual agreement may either relate to a specified period or apply indefinitely. To end any agreement a worker must give 1 month's written notice to the Trust. Records of such agreements must be kept by managers and be made available to locally recognised trade unions.

When considering an Opt-Out Agreement it is important that the following are taken into account and discussed with the worker:

- The impact that working excess hours may have on their health and therefore levels of sickness absence;
- The potential impact of fatigue on performance, safety and quality of service delivery;
- The impact of unsatisfactory performance, due to fatigue or otherwise and the possibility of disciplinary action;
- The impact on work life balance.

Where there are concerns regarding possible impact on a worker's health it may be advisable to seek advice from Occupational Health prior to agreeing an opt-out arrangement.

Opting out does not entitle the worker to be given more than their contractual hours of work. Therefore the Trust is only obliged to provide workers with their existing contractual working hours.

9. Entitlement to Annual Leave

Under the Regulations workers are entitled to a minimum of 5.6 weeks paid annual leave (including public and bank holidays) (referred to as "statutory minimum leave entitlement").

In relation to Bank Staff reference should be made to the Belfast Health & Social Care Trust Nurse & Midwifery Nurse Bank Operational Policy (also see overleaf section referring to Bank Staff).

10. Record Keeping

The Regulations state that relevant records made by Managers must be kept for 2 years from the date on which they were made and should be made available to the appropriate enforcing authorities. Also, in the interests of good industrial relations, these records should be made available to Trade Union representatives.

The following records must be kept by managers:

- (i) Records of hours worked and working patterns of workers (e.g. duty rosters/timesheets) to show compliance with weekly working time limits. Pay records may be adequate but Managers should keep records of any workers working in excess of the normal contractual hours to ensure they do not exceed the limits. Managers must request details of hours worked for another employer.
- (ii) Records of annual leave.
- (iii) Records of breaks.
- (iv) Records of compensatory rest.
- (v) Copies of any opt-out agreements and the exact hours that the worker has worked.
- (vi) Records in relation to compliance with night work limits.
- (vii) Records of Health Assessments for night workers must be retained by Occupational Health.

11. Bank Staff

The Trust engages Bank Staff and these staff are covered by the Regulations.

- (i) Permanent or temporary staff who hold a full time contract and also work on the Bank will already be entitled to at least statutory minimum leave entitlement and no additional leave should be accrued. Staff who are part-time and work additional hours on the Bank can accrue entitlement on a pro rata basis up to the 5.6 weeks entitlement to 37.5 hours.
- (ii) Staff who work solely on the Bank accrue annual leave on a pro rata basis. A 5.6 week entitlement would be one hour's leave for every 9 hours worked. There is a qualifying period of 13 weeks before entitlement to take accrued leave arises. Any week in which the worker has an employment relationship with the employer will count towards this. Annual leave accrues during the 13-week period.
- (iii) Record Keeping – Managers should keep the following records in respect of Bank workers:
 - a) Hours worked under Trust Bank Employment.
 - b) Hours worked for another employer (pro forma).
 - c) Written agreement to exceed limit (if appropriate).
 - d) Health Assessment details if night staff.
 - e) Compensatory rest accrued if applicable.

Enforcement

It is important to note that the Regulations are enforced by the Department of Enterprise, Trade and Investment through the Health and Safety Inspectorate. Workers can bring claims to

Industrial Tribunals in respect of entitlements relating to Daily Rest, Weekly Rest, Rest Breaks and Paid Annual Leave.

Governance

This guidance will be kept under review to ensure compliance with current and future legislative requirements. It will be reviewed normally on an annual basis and at appropriate period where legislative changes occur. The Co-Director for Governance, Equality and Improving Working Lives will ensure that checking to ensure compliance is carried out by:

- Seeking evidence from Service Groups that the Regulations have been applied in accordance with this guidance.
- Seeking evidence from Occupational Health that night workers assessments have been carried out.

There is a general responsibility for employers and workers under health and safety law to protect as far as reasonably practicable the health and safety at work of all workers. Control of working time should be regarded as an integral element of managing health and safety at work and promoting health at work.

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Appendix 1

Managers Check List

Key Component	Action/Key Tasks Required	By Whom
WTR 2008 Survey Action Plan	<ul style="list-style-type: none">• All required actions are implemented and reviewed	Manager
Communication	<ul style="list-style-type: none">• Staff to be advised of entitlements and requirements in relation to this Guidance via Team Brief and other staff management arrangements	Manager
Record keeping	<ul style="list-style-type: none">• Records of all working time must be kept for all members of staff.• Hours must be monitored over each 17 week reference period by asking staff to keep a record of any additional hours – overtime, additional hours etc, so that this can be assessed by the Manager.• Copies of all completed Dual Employment Forms should be retained• Copies of all completed Opt Out Agreement Forms should be retained• Records to be retained for a minimum of two years.	Manager
Secondary Employment	<ul style="list-style-type: none">• All staff should be asked at monthly team meetings if they have any secondary employment – either with this or another Trust or another employer.• Dual Employment form (Appendix 2) should be completed.• Staff who do not have secondary employment must be advised that they should inform their Manager if their situation changes.	Manager

Key Component	Action/Key Tasks Required	By Whom
Opting Out	<ul style="list-style-type: none"> • Staff may decide to exercise their option to work above the 48 - hour per week limit (provided the health and safety of the worker and the safe delivery of service will not be adversely affected). • Opt-Out Agreement Form (Appendix 3) to be completed by all staff wishing to opt out. A copy of the form should be retained by the Manager. • If the staff member has secondary employment and it results in the working time limits being exceeded, the member of staff can decide to opt out of the Regulations and should complete the Opting Out Agreement Form 	Manager
Night Working	<ul style="list-style-type: none"> • Occupational Health will write to all Managers on a two yearly basis to offer Health Assessments to all Night Workers. Managers to ensure that all Night Workers are offered a Health Assessment. • Risk Assessments must be carried out on Night Duty Jobs within the areas identified. Advice/Guidance can be obtained from the Health & Safety Managers. 	Manager / Occupational Health/ Health and Safety

Appendix 2

Belfast Health and Social Care Trust

The Working Time Regulations

Dual Employment Form

In accordance with the Regulations, the Trust must ascertain the number of hours per week worked by staff. This includes hours worked in other jobs and for other employers.

The Trust does not wish to debar you from additional employment; the information is required to ensure compliance with the Regulations.

Please complete the following details and return them to your Line Manager.

Information in relation to employment(s) with Belfast Health & Social Care Trust.

Name: _____

Grade: _____

Location: _____

Staff Number: _____

Hours per week: _____

Secondary Employment details.

Employer Name
& Address: _____

Grade: _____

Hours per week: _____

Signature: _____

Date: _____

It is important to advise your Manager if you take up additional employment after this date.

Appendix 3

Belfast Health and Social Care Trust

The Regulations

Opting Out Agreement Form

I wish to advise that I may work above an average of 48 hours per week over a 17 week reference period, if required and suitable to me, in the Belfast Trust or other employment.

I understand that the Trust will review this arrangement in the event of any adverse impact on my health and safety or the safe delivery of services. I also understand that there is no guarantee of any additional hours being allocated to me over and above contractual hours of work.

I also agree to give one months notice, in writing to terminate this agreement.

Name: _____

Grade: _____

Staff Number: _____

Location: _____

Signature: _____

Date: _____

Please return to: **Your Line Manager**

Appendix 4

Overview: Basic Entitlements and Protections

The basic entitlements and protections that the Regulations provide are:

1. A limit of an average of 48 hours per week including working time including overtime, over a 17-week reference period.
2. A limit of an average of 8 hours night work in 24 hours over a 17-week reference period.
3. A limit of an absolute 8 hours work in 24 hours for night workers where the work has been risk assessed to identify special hazards.
4. A right for night workers to receive free health assessments.
5. An entitlement to 11 consecutive hours uninterrupted rest in each 24 hour period.
6. Young workers have a right to 12 hours consecutive uninterrupted rest in a 24 hour period.
7. An entitlement to an uninterrupted rest period of not less than 24 consecutive hours in each 7 day period or 48 hours in a 14 day period.
8. Young workers entitled to an uninterrupted rest period of not less than 48 hours in each 7 day period.
9. A right to a rest break of at least 20 minutes if the working period is longer than 6 hours.
10. Young workers are entitled to a rest break of at least 30 minutes if the working period is longer than 4.5 hours.

11.A right to a minimum of 5.6 weeks paid leave per annum
(including bank and public holidays).