

EXPLANATORY MEMORANDUM TO
THE WORKING TIME (AMENDMENT) REGULATIONS 2009

2009 No. 1567

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations amend the Working Time Regulations 1998 (“the Working Time Regulations”) to provide for an average 52 hour maximum working week for certain doctors in training from 1 August 2009. At present, an average 56 hour maximum working week applies to doctors in training until 31 July 2009, after which an average 48 hour week maximum would apply without these amendments. The amendments are necessary to enable the relevant parts of the National Health Service (NHS) to continue to deliver adequate health services and medical care.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 These Regulations apply the additional transitional period provided for in the third subparagraph (as read with the fifth subparagraph) of Article 17(5) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003, concerning certain aspects of the organisation of working time (“the Directive”). These subparagraphs permit Member States to derogate from the 48 hour working week limit laid down in Article 6 of the Directive, for an additional period of 2 years, in respect of doctors in training, where it is necessary to do so to take account of difficulties in meeting this provision of the Directive with respect to their responsibilities for the organisation and delivery of health services and medical care. A Transposition Note is annexed to this Memorandum at Annex A.

4.2 The Regulations amend regulation 25A (doctors in training) of the Working Time Regulations (as amended by SI 1998/1833) to provide for the 48 hour working time limit, which would otherwise apply from 1 August 2009, to be increased to 52 hours for certain doctors in training for a period of two years from 1 August 2009. A new Schedule 2A is also inserted into the Working Time Regulations, which lists those categories of doctors in training to whom this 52 hour working time limit is to apply.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

- 7.1 The object of Article 6 of the Directive is to reduce the maximum number of hours in the average working week to 48. Some doctors in training may however need to work longer than 48 hours to fulfil the needs of service delivery. Where there are difficulties in complying with the 48 hour week then it is possible for Member States to choose to apply an additional transitional period and apply an average 52 hour week to doctors in training instead. A small number of services, particularly 24 hour immediate care services, require further support post 1 August, which prompted notification of an intention to take advantage of the additional period to the European Commission in January of this year. This will initially allow a further two year transitional period before the 48 hour week limit can be applied to all doctors in training. A further additional period of one year may be required under the fourth sub-paragraph of article 17(5), in respect of “special difficulties” in complying with the 48-hour week, and was also included in the notification to the European Commission in January of this year. Where this is applicable, it will be the subject of separate legislation in due course.

The services requiring this additional transitional period are listed in these regulations. These are listed by reference to employer, specialist service and grade (and, where applicable, rota). A list of the relevant NHS grades for doctors in training is contained in Annex B to this Memorandum (together with an explanation of some of the abbreviations used to describe certain specialist services). The change made by these Regulations is legally necessary to ensure compliance with the Directive.

- *Consolidation*

- 7.2 These Regulations amend the Working Time Regulations, which apply to all persons in employment in Great Britain, only in respect of certain doctors in training. Policy responsibility for doctors in training rests with the Department of Health, but overall policy responsibility for the Working Time Regulations rests with the Department for Business, Innovation and Skills. The Department of Health therefore does not propose to consolidate the Working Time Regulations.

8. Consultation outcome

- 8.1 Stakeholders have been consulted on the changes contained in the legislation over the past eight months. These included the medical profession, the medical Royal Colleges, the medical Deaneries, the professional bodies, the British Medical Association, Strategic Health Authorities (SHAs), Local Health Boards, hospital trusts and trainee doctors.
- 8.2 The Department of Health established a national Reference Group co-chaired by Dr Judith Hulf CBE, President of the Royal College of Anaesthetists and Dr Patricia Hamilton CBE, Director of Medical Education (England), to bring together stakeholder representatives from the SHAs, medical Royal Colleges, the British Medical Association and NHS Employers. These organisations represent the interests of health service providers, employers, and doctors working and training in the UK. The Reference Group enabled the concerns of clinicians and health service providers to advise on the implementation of the Directive and the approach to the additional transitional period for doctors in training. The Reference Group has taken oversight of the assurance process set up to support services to be compliant with the Directive and to identify those services that require more time to ensure that safe patient care could be maintained.
- 8.3 The European Commission were notified of the intention to take advantage of the additional transitional period, in relation to the 48 hour working week requirement, in January of this year. The Department for Business, Innovation and Skills has been consulted. The criteria used in assessing whether there were relevant “difficulties in meeting the working time provisions with respect to ... responsibilities for the organisation and delivery of health services and medical care”, under the third subparagraph 3 of Article 17(5) of the Directive, justifying the need for use of the extended transitional period, were based on the need for service provision to ensure safe patient care. These criteria are:
- (a) where a hospital/service/specialty/rota/post would not be compliant on 1 August, but would be compliant if an additional transitional period permitting up to 52 hours was granted, such a period could be sought with an agreed action plan for 48 hour compliance by a specified date before 1 August 2011. Alternatively,
 - (b) where there would not be compliance within the 52 hours, an additional transitional period could be applied for if, first, there were agreed further actions to ensure safe patient care would be provided from 1 August within the 52 hours, and, secondly, there is an action plan for further changes to be made to ensure safe patient care is provided within 48 hours by 1 August 2011.
- 8.4 Applications in respect of the services that have been identified as needing to take advantage of the additional transitional period have been endorsed by the Chief Executive, Medical Director and Workforce Director in each organisation. These applications were then reviewed by the relevant SHA. An independent Scrutiny Panel (representing all the stakeholders), chaired by the President of the Royal College of Anaesthetists, and with members from the Colleges, British Medical Association, SHAs and the Department of

Health, reviewed the applications for the additional transitional period and made recommendations to the Secretary of State for Health. As recommended by this Panel a review process for those trusts recommended for the additional transitional period has been established, building on joint working between SHAs and the Royal Colleges that has supported the performance assurance process over the last few months. This review process will ensure that those services most at risk are the focus for further targeted action and the Department of Health will continue to engage with stakeholders, including the Colleges, in a constructive process for tackling problem areas. The Department will keep this legislation under review and where appropriate may bring forward amendments to it.

9. Guidance

- 9.1 No guidance will be needed for this legislation. There has been close collaboration with the relevant stakeholders to work out the best way of implementing the requirements of the Directive in relation to the maximum average working time and they are already familiar with the changes and what they need to do.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is to enable the NHS to apply a 52 hour average working week to certain doctors in training to enable it to continue to meet its responsibilities for the organisation and delivery of health services and medical care.
- 10.3 An Equality Impact Assessment screening exercise has been carried out in relation to this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 The changes in the maximum average working time for those doctors in training, who are affected, aim to ensure service delivery in hospitals over the next two years. The need for a 52 hours working week for those doctors in training who are affected will continue to be monitored and reviewed, as set out in paragraph 8 above, and the legislation may be amended accordingly.

13. Contact

Wendy Bilton at the Department of Health. Tel: 0113 254 5721 or email: wendy.bilton@dh.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX A

TRANSPOSITION NOTE FOR THE WORKING TIME (DOCTORS IN TRAINING) (AMENDMENT) REGULATIONS 2009

Directive			
Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).			
Article	Objectives	Implementation	Responsibility
17(5), third, fifth subparagraphs	To allow Member States an additional transitional period for applying Article 6 (maximum weekly working time) to doctors in training. An additional two year period is available, if necessary, to take account of difficulties in applying Article 6 with respect to a Member State's responsibilities for the organisation and delivery of health services and medical care.	Regulation 25A(1) and (1A) of, and Schedule 2A to, the Working Time Regulations 1998.	The Secretary of State for Health.

ANNEX B

RELEVANT NHS GRADES AND ABBREVIATIONS

Relevant NHS Grades:

“F”	“Foundation”, and the number equates to the year of training (e.g. F1 means 1 st year of Foundation training)
“CT”	“Core Training”, and the number equates to the year of training
“ST”	“Specialty Training”, and the number equates to the year of training
“FTSTA”	“Fixed Term Specialty Training Appointment”, and the number equates to the year of training
“CST”	“Core Surgical training”, and the number equates to the year of training
“SpR	“Specialist Registrar”

Abbreviations used to define certain specialist services:

“ACCS”	Acute Common Care Stem
“ENT”	Ear, Nose and Throat
“ITU”	Intensive Treatment Unit
“MAU”	Medical Assessment Unit
“OMFS”	Oral Maxillo Facial Surgery