

Working Time Regulations Policy

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CONSULTATION AND DISTRIBUTION RECORD

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CHANGE RECORD

| Date | Author | Change | Version No. |
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| | Ann Marie Campbell, Elaine Anderson | Review of Policy. Minor changes to wording of policy for clarity. Appendix 2 update to current form. | 3 |
| April 2018 | Elaine Anderson | Review of Policy. Minor changes to wording. No material change | 4 |
| May '18 | Deputy HRD | General Data Protection Regulations statement added into section 3 and updated name of Data Protection Act | 4 |
| Dec 2021 | AM Campbell | Removal of appendix 2 WTR Recruitment form as now completed electronically on JobTrain | 5 |
| Oct 2024 | A Bevan | Review of policy. Removal of HR signature from opt out authorisation. Other minor changes to wording. | 6 |

1. INTRODUCTION

This policy sets out NHS Lanarkshire's position regarding working hours. The policy applies to all employees of NHS Lanarkshire including NHS Lanarkshire Staff Bank workers.

2. AIM, PURPOSE AND OUTCOMES

NHS Lanarkshire strives to provide a safe working environment and ensure the safety and wellbeing of all its employees. NHS Lanarkshire seeks to ensure that employees do not exceed reasonable working hours to provide for a satisfactory balance between work and personal life. NHS Lanarkshire is also committed to ensuring that workers' health is not compromised by the workplace.

3. SCOPE

3.1 Who is the Policy intended to Benefit or Affect?

This Policy applies to all directly employed staff, including bank/temporary staff and NHS Lanarkshire staff on secondment, irrespective of age, sex, disability, ethnicity/race, marital or civil partnership status, sexual orientation, religion or belief, pregnancy or maternity or gender re-assignment.

NHS Lanarkshire takes care to ensure your personal information is only accessible to authorised people. Our staff have a legal and contractual duty to keep personal health information secure, and confidential. In order to find out more about current data protection legislation and how we process your information, please visit the Data Protection Notice on our website at www.nhslanarkshire.scot.nhs.uk or ask a member of staff for a copy of our Data Protection Notice.

3.2 Who are the Stakeholders?

- Employees
- Line Managers
- Trade Union Representatives
- Human Resources Department
- NHS Lanarkshire Staff Bank
- Payroll Department
- Occupational Health Department

4. PRINCIPAL CONTENT

The Working Time Regulations came into force in October 1998, which is part of Health & Safety legislation, providing basic rights and protections to ensure that all workers receive appropriate daily and weekly rest breaks.

A Q&A has been developed to assist managers and staff to fully understand the implications of the Regulations, and is contained in [appendix 2](#) of this policy.

Entitlements under the Working Time Regulations

The basic rights and protections provided by the regulations are:

- A limit of an average of 48 hours per week;
- A limit of an average of 8 hours work in 24 hours for night workers;
- A right for night workers to receive free health assessments;
- A right to an uninterrupted 11 hours rest a day;
- A right to a day off each week (24 hours, or 48 hours per fortnight);
- A right to a 20 minute in-work rest break if the working day is longer than 6 hours;
- A right to 5.6 weeks (28 days) paid leave per year;
- A right to 90 hours of rest in a week (total of the daily and weekly rest periods).

This legislation was developed to protect the health & safety of workers and as an employer, NHS Lanarkshire has a duty of care under this legislation to monitor working hours and ensure all staff receive appropriate breaks, as detailed, as a minimum requirement.

NHS Lanarkshire recognises that breaks within the workplace are very often in line with local arrangements and subject to exigencies of the service, and while it does not seek to change these arrangements, it wishes to ensure that staff are receiving the appropriate breaks.

Young Workers

A young worker is someone who is above school leaving age, but under 18. Separate arrangements exist for young workers and they should not ordinarily work more than:

- 8 hours a day;

- 40 hours per week.

and they should receive:

- 12 hours uninterrupted break between shifts;
- 2 consecutive days off per week (48 hours);
- 30 minute break if they work more than 4.5 hours a day.

Young workers can not opt out of the 48 hour working week.

Monitoring & Reporting Arrangements

To ensure compliance with the regulations the following actions will take place:

- a. Regular monitoring exercises via the payroll system to be undertaken which should monitor breaches in the 48 hour working week.
- b. Managers must ensure that staff receive breaks and where appropriate compensatory rest.
- c. Template rotas that confirm WTR compliance for junior medical staff are held within HR.

Although the regulations refer to a 17 week reference period for averaging weekly hours, it has been agreed that within NHS Lanarkshire a 26 week reference period is more realistic and will allow for peaks and troughs in the service, particularly during winter periods and extenuating circumstances e.g. Pandemic Flu.

Junior Doctors are not subject to the above monitoring and reporting arrangements and have a separate process in place which allows for formal monitoring on a bi-annual basis.

Opt-out of 48 hour working week

Under the current regulations staff wishing to work in excess of the 48 hour week need to have their employers agreement and must complete an opt-out form (Appendix 1).

Whilst the Regulation allows such an agreement, within NHS Lanarkshire these agreements should be reviewed annually. Staff can bring the agreement to an end at any time provided that 1 month's notice is given in writing. In addition, where a manager feels that the hours worked in excess of 48 hours is having a detrimental effect on the individual's health or ability to perform the duties of their role, this can be brought to an end at any time giving 1 month's notice.

In order to opt out of the regulations an employee must complete and submit an application (see Appendix 1). This should be agreed by the manager and submitted to the relevant Service Manager for approval. If approved, the opt out would be valid for 1 year, thereafter it would become void. If a request for opt out is refused, the employee has the right to appeal this decision. Grounds for appeal should be submitted to the relevant General Manager/Site Director. Any worker who has not signed an opt-out or whose opt-out agreement has expired will not be permitted to work more than 48 hours per week.

NHS Lanarkshire will not offer a contract employment that would breach the Working Time Regulations.

A separate Opt-out form exists for Medical and Dental staff. Should you require this, please contact a member of the HR Medical and Dental Team for assistance.

Work Undertaken Outside NHS Lanarkshire

All employees are required to inform their manager of any other work that they are doing and inform them of the hours which they are working within another job. All new employees will be required to complete and sign an electronic form via JobTrain prior to commencement with NHS Lanarkshire. Employees have a responsibility to inform their manager of any additional work undertaken.

5. ROLES AND RESPONSIBILITIES

Employees will:

- Understand the policy and their responsibilities;
- Work with managers to ensure that they are working within the limits of the policy;
- Agree to comply with any monitoring mechanisms put in place;
- Ensure that the hours worked do not have an adverse impact on their ability to perform at work;
- Inform their managers if they are undertaking additional work, within or out with NHS Lanarkshire.

Managers will:

- Understand the policy and their responsibilities;
- Work with employees to ensure that they are working within the limits of the policy;
- Agree to comply with any monitoring mechanisms put in place;
- Ensure that shift patterns are compliant with the Working Time Regulations;
- Seek advice from HR where an employee advises they are undertaking additional work, which breaches the regulations.

Trade Union Representatives will:

- Understand the policy and their responsibilities;
- Make sure their members are aware of their rights and responsibilities;
- Advise their members on the relevant policies.

Human Resources will:

- Advise manager on the correct implementation of the policy;
- Provide advice in relation to implementation and monitoring of the policy;
- Support employees and managers by providing advice on policy and process;
- Work with managers and HR staff to produce reports showing compliance with the regulations.

NHS Lanarkshire Staff Bank will:

- Understand the policy and their responsibilities;
- Work with employees and workers to ensure they are working within the limits of the policy;
- Agree to comply with any monitoring mechanisms put in place.

Payroll will:

- Understand the policy and their responsibilities;
- Highlight any excessive overtime or excess hours worked by employees.

Occupational Health will:

- Understand the policy and their responsibilities;
- Arrange for all night workers to be offered an annual health review in line with the regulations;
- Provide advice to managers and staff where they feel that an individual's working hours are impacting on their health and/or ability to perform at work.

6. RESOURCE IMPLICATIONS

None

7. COMMUNICATIONS PLAN

A communication will be placed in the weekly staff briefing and the policy will be available on the NHS Lanarkshire Corporate Website.

The policy will also be discussed at the appropriate management team meetings and local partnership fora.

Staff within HR will be briefed on the content of the policy.

8. QUALITY IMPROVEMENT – Monitoring and Review

This policy will be reviewed in line with any changes to legislation which change the scope or process for monitoring working hours within NHS Lanarkshire.

HR and Partnership Staff will observe and pass back any issues that they see or asked about, particularly when users have issues or concerns about the policy.

9. EQUALITY AND DIVERSITY IMPACT ASSESSMENT

This policy meets NHS Lanarkshire's EDIA.



10. SUMMARY

This policy provides advice and guidance in relation to the Working Time Regulations and the responsibilities of all parties.

11. REFERENCES

Employment Rights Act 1996
Working Time Regulations 1998 (SI 1999/1833)
Working Time Regulations 1999 (SI 1999/3372)
Working Time (Amendment) Regulations 2003 (SI 2003/1684)
Working Time (Amendment) Regulations 2006 (SI 2006/99)
Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)
Health and Safety (Young Persons) Regulations 1997 (SI 1997/135)

Appendix 1 – 48 Hour working week opt out agreement

Section A –To be completed by the applicant.

This form should be completed and sent to your line manager who will pass it on to the authorising manager. Please ensure that you read NHS Lanarkshire's Working Time Regulations Policy, prior to completing this form.

Opt Out Agreement

1. I hereby agree that I wish to exercise the right to Opt Out of the Working Time Regulations which limits my working week to an average of 48 hours per week.
2. This agreement may be withdrawn, provided I give/are given by NHS Lanarkshire 1 month's written notice of intention to withdraw.
3. I understand that this opt out will be valid for a period of 1 year from the date of approval and if I wish to continue with the opt out beyond that date will need to make a further application under the policy.

Name

Payroll Number

Post

Department/Ward

Location

I confirm that I have read and understood the NHS Lanarkshire Working Time Regulations Policy.

Signed..... Date.....

Section B – To be completed by **Service Manager** or the appropriate manager for Corporate Services and returned to applicant and line manager for holding in their personal file.

☐ Application approved

☐ Application refused and reasons:

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Signed: _____ Date: _____

Job Title: _____

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Appendix 2 – Q&A on the Working Time Regulations

This question and answer section has been developed to assist managers and employees to fully understand the implications of the Regulations. This document should be read in conjunction with the policy and forms part of the policy.

What counts as working time under the Regulations?

Working Time is defined as time an employee is working at their employer's disposal and is carrying out the activities and duties of their job. Time spent on Trade Union duties is also defined as working time.

Time when a worker is "on call" (is available to be called in to work from outside the premises) but otherwise free to pursue his/her own activities, is not working time. "Working Time" is defined by the regulations as when a worker is "working at his employer's disposal and carrying out his activity or duties".

Unless all three elements of this definition are satisfied, it is not considered to be working time, therefore an employee who is on-call would not be deemed to be working until they receive a call.

For workers who are deemed to be on-call, working time will commence:

- At the time the call/contact if an immediate response is required, or
- At the time of leaving home/place of residence/personal activities if the response is not required to be immediate or if required for a later specified time, or until their return to home.

Existing arrangements for on-call payments will not be affected by this definition.

Where a worker takes work home, time worked will only count as working time where work is performed on a basis previously agreed with the individual's manager.

A lunch break spent at leisure is not working time. If a worker is obliged to participate in a working lunch as part of their work, then it is classed as working time.

Time spent travelling to and from a place of work is not working time, unless the individual is engaged in travel that is required by the job.

Can I work more than 48 hours per week?

Under the current regulations, individuals wishing to work in excess of the 48 hour week need to have their employer's agreement and must complete an opt-out form (Appendix 1).

Whilst the Regulation allows such an agreement, within NHS Lanarkshire these agreements should be reviewed annually. Staff can bring the agreement to an end at any time provided that 1 month's notice is given in writing. In addition, where a manager finds that the hours worked in excess of 48 hours is having a detrimental affect on the individual's health, attendance or ability to perform the duties of their role, this can be brought to an end at any time giving 1 month's notice. Where appropriate, HR advice should be sought. Any worker who has not signed an opt-out or whose opt-out agreement has expired will not be permitted to work more than 48 hours per week.

How do I calculate my average weekly working hours?

The average weekly working time is calculated by dividing the number of hours worked by the number of weeks over which the working week is being calculated i.e. 26 weeks.

When calculating the average weekly working time, if the worker is away during the 26 week reference period, because they are taking annual leave, maternity etc, or is off sick, these hours should be included in the calculation.

Whose responsibility is it to ensure that nightshift workers undertake an annual health assessment?

An annual confidential occupational health questionnaire will automatically be sent to night workers identified in liaison with the Line Manager. Staff are recommended to co-operate with this system, which has been adopted by NHS Lanarkshire to ensure the health, safety and wellbeing of both staff and patients. This system does not remove the responsibility of the employee or their Manager to contact Salus Occupational Health Services for advice and guidance if issues or problems occur out with the assessment date.

If an employee's health is deemed to be suffering due to the fact that they are a night worker, NHS Lanarkshire will take all reasonable steps to redeploy the individual on health grounds to a job involving more suitable hours.

Additionally, managers must ensure that the Recruitment Team is informed of any post that is a designated night worker post. The job analysis form will identify if a new employee is a night worker and will collect information on potential health problems associated with night work to ensure that the employee is fit to undertake night work.

What happens if I fail to attend my health assessment?

The purpose of the health assessment is to ensure the health and safety of NHS Lanarkshire staff and patients. This is not mandatory however NHS Lanarkshire would encourage all night workers to undertake the annual assessment, if they have any concerns that night working may be affecting their health.

What happens if I don't get my 11 hours rest break between shifts?

NHS Lanarkshire recognises that some shift patterns in place do not allow for 11 hours rest break in between shifts. However, in these cases employees should receive the appropriate compensatory rest.

Does my unpaid "lunch" break count towards my break entitlement?

Yes, your "lunch" breaks counts towards your daily rest break entitlement.

I currently receive a morning "tea break" and a "lunch" break, does this mean I am no longer entitled to my morning tea break?

NHS Lanarkshire recognises that breaks within the workplace are very often in line with local arrangements and while it does not seek to change these arrangements, it wishes to ensure that staff are receiving the appropriate breaks.

Where additional/local courtesy breaks are in place NHS Lanarkshire does not unilaterally intend to remove these, however, asks staff to recognise that these are a benefit and not an entitlement. These breaks should be short in nature and allow the individual time to have a drink and/or have a short rest. These breaks should not be for any "meal" breaks.

What happens if I am too busy for a break?

NHS Lanarkshire has a responsibility to ensure that all staff have the opportunity for a break within working hours and arrangements should be put in place to ensure that

all staff receive a break. However, it is recognised that there may be exceptional circumstances where breaks are not taken. In this case staff should receive compensatory rest.

What is compensatory rest?

Compensatory rest is a period of rest the same length as the period or rest, or part of rest that a worker has missed. An employee may be entitled to compensatory rest if (examples are not limited to):

- They're a shift worker and can't take daily or weekly rest breaks between ending one shift and starting another;
- They need to work because there's an exceptional event, an accident or a risk that an accident is about to happen;
- The job needs round-the-clock staffing so there aren't interruptions to any services or production (e.g. hospital work).

The Regulations give workers a right to 90 hours rest in a week, although some make come slightly later than normal. This is the total of your entitlement to daily and weekly rest periods, it doesn't include breaks at work which are additional. The exceptions allow you to take rest in a different pattern to that set out in the regulations.

Can I leave my place of work during my in-work rest break?

Under the regulations, you are entitled to a minimum of an uninterrupted 20 minute break (30 minutes for young workers) away from your workstation.

Can I forgo my daily rest break and start later or finish earlier?

No, the purpose of the daily rest break is to give you an uninterrupted break away from your workstation. Anyone who works more than 6 hours in any given shift must have a break during the working day.

Can I work during my annual leave?

Under the regulations all staff have a right to 5.6 weeks (28 days) paid leave (pro rata) per year. For NHS employees their contractual entitlement is greater than this, taking into consideration the public holiday entitlements.

Annual leave is to ensure that staff get a break from work and as such staff should take a minimum of 5.6 (28 days) weeks leave per year where they do not undertake any additional work, including NHS Lanarkshire Staff Bank.

What if I have been unable to take my statutory annual leave entitlement due to sickness?

All employees are entitled to 28 days (5.6 weeks) paid leave per year (pro rata for parttime employees). If an employee is on sick leave and does not return before the end of the leave year (31st March) and has not had 28 days leave (pro rata for part-time employees) then they will be entitled to carry forward the deficit.

Is the 5.6 weeks (28 days) annual leave inclusive of public holidays?

Yes.

What happens if due to adverse weather or an emergency, I don't get any breaks?

While the Regulations are in place to ensure that employees receive the appropriate rest periods, recognition needs to be taken into account of exceptional circumstances. Where a case of exceptional circumstances occurs, staff may be asked to work to ensure the service provision and care is not compromised.

At this time, managers should ensure that arrangements are put in place to ensure staff receive breaks and where appropriate compensatory rest and employees should highlight to the appropriate manager if they need a break.

I am a senior manager am I excluded from the 48 hour working week?

Although within the Working Time Regulations there are some exceptions to the 48 hour working week, including staff whose working time is deemed to be 'unmeasured', this derogation does not apply to any level of management or staff within NHS Lanarkshire.

Managers have a responsibility to monitor and control both their own and their staff's working hours to avoid any breach of the Regulations. Equally, each individual has a

responsibility to control their own working hours both within and out with the organisation.

What happens if a member of my staff have another job out with NHS Lanarkshire?

It is important to note that if an employee has more than one job both employers are responsible for enforcing the Working Time Regulations.

As part of NHS Lanarkshire's recruitment process all applicants are asked if they have any additional jobs. All new employees will be requested to complete and sign an electronic form prior to commencement with NHS Lanarkshire. There is also a specific section in the contract of employment reminding them of their obligations in this regard.

All staff are required to inform their Manager of any other work that they are doing and inform them of the hours which they are working within another job. Managers must ensure that staff are regularly reminded of their responsibilities to declare any additional jobs held, both within NHS Lanarkshire and external to the organisation.

Employees have a responsibility for informing their manager of any additional work undertaken.

How can I ensure my staff comply with the regulations when I am not aware of any additional work undertaken out with the department?

As a manager you have responsibility to ensure full compliance with the provisions of the Regulations and to ensure that the work you are asking staff to complete does not cause them to breach the regulations.

However, employees also have a responsibility to provide their manager with details of any work undertaken out with NHS Lanarkshire and to ensure that they do not undertake any work which would cause them to breach the regulations.

Reports will identify from SSTS records those staff who have worked hours in excess of the 48-hour weekly average. In the event of such breaches being identified, the relevant line manager will be required to take appropriate steps to remedy the situation and prevent recurrence.

What is a night worker?

Night time is the period between 11pm and 6am. You will be a night worker if your daily working time includes at least 3 hours of night time working:

- On most days you work;
- On a proportion of the days you work which is specified in a collective or workforce agreement;
- Often enough for it to be said that you work such hours “as a normal course” i.e. on a regular basis.

If workers work less than 48 hours a week on average, they will not exceed the night work limits.

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