### Working Time Regulations Policy and Procedure

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<th>Planned Review Date</th>
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<tbody>
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<td>HR069</td>
<td>May 2006</td>
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<td>31/03/2011</td>
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<th>Responsible Officer</th>
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<th>Date Approved by Committee / Board / Group</th>
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<td>Human Resources Officers</td>
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*Bwrdd Iechyd Addysgu Powys yw enw gweithredol Bwrdd Iechyd Lleol Addysgu Powys*  
*Powys Teaching Health Board is the operational name of Powys Teaching Local Health Board*
CONTENTS

1. Introduction 3

2. Health & Safety 3

3. Coverage 4

4. Derogations 4

5. Workers’ rights under the Regulations 5 - 7
   5.1 Working time limits
   5.2 Rest Entitlements
      5.2.1 Rest Breaks
      5.2.2 Daily Rest
      5.2.3 Weekly Rest
   5.3 Annual Leave
   5.4 Night Workers
      5.4.1 Working Time Limit
      5.4.2 Young or Adolescent Workers
      5.4.3 Health Assessments
      5.4.4 Risk Assessments

6. Compensatory Test 8

7. Multiple Contracts / Other Employment 8

8. Bank Workers 9

9. Record Keeping 9

10. Review 9
POWYS TEACHING HEALTH BOARD

Working Time Regulations Policy

1.0 Introduction

The Working Time Regulations 1998 lay down minimum conditions relating to weekly working time, rest entitlements, annual leave and makes special provision for working hours and health assessments in relation to night workers.

The Regulations impose responsibilities on both managers and staff to ensure working time conditions and safe working arrangements are observed. The Regulations are complex and this Policy is only an overview of some the main subjects to help managers and employees with the implementation of the Regulations.

The Regulations also implement provisions of the Young Workers Directive, which relate to the working time of adolescents.

The Regulations apply to all employment sectors. A summary of the rights that are given to workers are:

- Maximum weekly working time - average 48 hours in each 7-day period (reference period 17 weeks)
- Rest breaks - after every 6 hours.
- Daily rest - 11 hours-consecutive rest in every 24-hour period.
- Weekly rest period - 24 hours in every 7 days (reference period 14 days) in addition to their daily rest.
- Annual leave – 4 weeks annual leave after 13 week qualifying period.
- Night work - average 8 hours in any 24-hour period (reference period 17 weeks)
- Health assessments for night workers.

These are detailed further within Section 5 below.

Please note that within the NHS, special arrangements have been made under the Regulations for Doctors in Training and Career Grade Doctors.

2.0 Health & Safety

There is a general responsibility for Powys Teaching Health Board under health and safety law to protect, as far as is practicable, the health and safety at work of all our staff. NHS employers also have a responsibility to protect the health and safety of patients and others receiving health care, and the general public.
Specific responsibilities in relation to the Working Time Regulations are:

- working time in general - monitor the hours of work of staff to identify and address any practices or patterns of work, which may be a risk to employees, patients or the public.

3.0 Coverage

A “worker” is defined as an individual who works under a contract of employment or any other contract where s/he is providing services to the Teaching Health Board.

All “workers” are covered by the Working Time Regulations. These include:

- Teaching Health Board Employees
- Bank Workers
- Agency and temporary workers, including locums
- Work experience Trainees

An adolescent worker (or young worker) is a worker above the minimum school leaving age but less than 18 years old.

The Human Resources Department can provide further advice on individual entitlements.

4.0 Derogations

Derogations are provisions which may be applied flexibly or watered down, or in some cases, excluded altogether. The main provision where a derogation may apply to the Teaching Health Board is:

Provided workers are afforded equivalent periods of compensatory rest or appropriate protection, derogations may be adopted by law or collective agreement for all provisions, except weekly working hours and annual leave for:

\[ \text{activities involving the need for continuity of service or production, particularly services relating to reception, treatment and care provided by hospitals or similar establishments.} \]

For shift workers, derogations can apply for the daily and weekly rest periods.
5.0 Workers’ Rights under the Regulations

5.1 Working Time Limits

Working Time is defined as ‘when a worker is working at their employer’s disposal and carrying out their activities or duties’.

The time when a worker is required to be ‘on-call’ will not be regarded as working time except for the time when they are required to undertake any work related activity. Once the worker has received the call and starts their journey in, this is classed as working time.

The Regulations set a working limit of an average of 48 hours per week. The standard averaging period is 17 weeks. For employees that fall under the category of ‘special case workers’ (this is where the workers activities involve the need for continuity of service or production, particularly services relating to reception, treatment and care provided by hospitals or similar establishments) it has been agreed with the Trade Unions that the reference period will be extended to 26 weeks.

For reasons of health, safety and welfare of staff and our clients, and for family friendly reasons, the position of the THB is that we will discourage any individual from working above the maximum weekly working limit. The Teaching Health Board is required to take all reasonable steps to ensure that employees do not work more than an average of 48 hours per week over a 17 week period (or 26 week period if applicable). This should also take into account time worked in additional posts or for another employer (see Section 7).

5.2 Rest Entitlements

5.2.1 Rest Breaks

All workers are entitled to have a 20 minute unpaid rest break for each 6 hours they work. A young worker is entitled to have a 30 minute unpaid rest break where the daily working time is more than 4 ½ hours. This break should be taken during the course of the period of working and if possible, away from their workstation. Therefore, adding 20 minutes to the beginning or end of the work period is not sufficient. This could be accommodated by:

- existing lunch or other break arrangements for staff provided the break is at least 20 minutes – the Teaching Health Board encourages a lunch break of at least 30 minutes
- where exceptionally a break after 6 hours is not possible, 20 minutes should be provided as soon as possible and should not be at the beginning or end of the working day
• in exceptional circumstances, where a break cannot be taken at any time in the day, with the individual’s agreement, equivalent compensatory rest (see Section 6) must be given

Workers, who have completed a full day/night’s work and are asked to attend an evening/day meeting or to work overtime, should be requested to take a further 30-minute (unpaid) break before starting the evening/day work.

5.2.2 Daily Rest

Workers are entitled to an 11 hour consecutive rest break in every 24 hour period. A young worker is entitled to a break of 12 consecutive hours. Rotas should be structured to accommodate this. If this is not practicable due to the contingencies of the service e.g. the need to provide 24 hour continuous care, managers should ensure that a period of equivalent compensatory rest (see Section 6) is provided and records are kept.

Daily rest cannot be part of the weekly rest or include rest breaks.

5.2.3 Weekly Rest

Workers are entitled to an uninterrupted rest period of not less than 24 hours in each 7 day period, or 48 hours over a 14 day period. If due to rotas or service needs, this is not possible, the employee must be provided with equivalent compensatory rest (see Section 6). A young worker is entitled to 48 hours rest in each 7 day period. This cannot be averaged over a 14 day period.

5.3 Annual Leave

This statute entitles workers to a minimum of 4 weeks paid annual leave.

Annual Leave should be taken in accordance with the Teaching Health Boards policy and the workers terms and conditions of employment. Employees should not do extra work, such as bank work during 4 weeks of their annual leave entitlement, when they have taken annual leave. The Regulations state that bank holidays count towards the 4 week period. Annual leave cannot be replaced by payment in lieu unless the employment relationship is terminated.

Under the Working Time Directive Regulations, staff are entitled to four weeks annual leave paid at a rate based on an average of the twelve weeks preceding the period of annual leave period. Included in the average pay calculation are the following:

• All contractual enhancements (e.g. night and weekend enhancements, unsocial hours).
• All contractual leads and allowances (e.g. cost of living, psychiatric lead, mufti).
• All contractual overtime.

5.4 Night Workers

5.4.1 Working Time Limit

Managers need to identify if any of their staff are night workers. A night worker is defined as a "worker whose working time includes at least 3 hours of night time (a period of 7 hours which includes the period from midnight to 5am) as a normal course". However, it has been agreed that “night time” should be regarded as the period of 10pm to 8am. The Regulations state "as a normal course" which will include staff who are not exclusively night workers.

Night workers should not work more than 8 hours per 24 hours over a reference period of 26 weeks unless compensatory rest periods are provided (see Section 6).

5.4.2 Young or Adolescent Workers

The Teaching Health Board shall not employ young workers (i.e. under 18 year olds) for night work.

5.4.3 Health Assessments

All night workers are entitled to a health assessment before they commence. This will be done through the Occupational Health Department. Appointing Officers should identify if the post applies to a day or night worker. This information is sent through to Occupational Health on the applicants health assessment form.

Night workers will also have the opportunity to have regular assessments during their employment. These assessments will be done on an annual basis. This period could be more frequent depending on the circumstances of the worker.

5.4.4 Risk Assessments

Risks assessments need to be completed on these posts to identify special hazards or physical or mental strain. Where this is identified, ensure that the workers do not work more than 8 hours at any time. Further guidance can be sought from Occupational Health and/or Risk Management.
6.0 Compensatory Rest

The Regulations provide that compensatory rest must be given when the daily/weekly rest requirements cannot be met. Compensatory rest will most likely be necessary when staff are either:

- working a shift pattern and the shift extends beyond thirteen hours due to an unforeseen situation or emergency, or
- working on-call from home and are called upon to work during the period of duty, or
- whenever staff are rostered to be resident on call for more than 13 hours continuously.

As identified in Section 4, some derogations to the Regulations may apply and this is when compensatory rest can be granted. Compensatory rest is an equivalent period of rest, which is as long as that to which they were entitled, but were not able to.

Where the application of any provision of these Regulations is excluded or modified e.g. an employee does not receive the minimum daily rest break after a late shift which is followed by an early shift, the Teaching Health Board shall provide compensatory rest.

Compensatory rest for a *daily rest break* should be given within two weeks wherever possible and compensatory rest for a *weekly rest break* should be given within two months wherever possible.

7.0 Multiple Contracts / Other Employment

The Teaching Health Board has a responsibility to ensure that workers do not work on average more than 48 hours per week. The Teaching Health Board expects their managers to know which workers have more than one contract of employment with the Teaching Health Board and monitor the total hours being worked by those workers each week.

The Teaching Health Board also has a duty of care, in respect of working hours, to safeguard the health and safety of any of its workers who may have other work outside the Teaching Health Board. In order to meet its responsibilities, the Teaching Health Board will inform all workers of the limitation on working hours and their responsibility to inform their manager if they take up an additional job (paid or unpaid) within the Teaching Health Board or an outside organisation (see also Section 9).
8.0 Bank Workers

Bank workers are workers within the meaning of the Working Time Regulations and therefore these regulations apply to them.

Workers who work solely on the bank are entitled to paid annual leave. The hours worked each period are accumulated and the entitlement is calculated by dividing this cumulative figure by twelve.

Staff who work substantively for the Teaching Health Board and do bank work, do not receive any additional annual leave as they already enjoy these rights under their substantive post.

9.0 Record Keeping

Both the Teaching Health Board and the worker has responsibilities under the Regulations to keep accurate records that are adequate to show that weekly working time limits have been complied with.

All workers shall be required to keep weekly records of their working hours and provide their line manager with copies of these records every four weeks. These records are open to inspection from the Health & Safety Executive.

The Teaching Health Board shall monitor all working hours, including the hours of workers with multiple contracts, and calculate the average working hours at the end of each reference period.

The Teaching Health Board shall also keep a copy of:

- health assessment details in cases of night workers
- compensatory rest accrued (if applicable)

The Regulations state that all the records detailed above must be kept for two years from the date on which they were made.

10.0 Review

This Policy will be reviewed by the Teaching Health Board’s Partnership Board in three years, unless an earlier review is required e.g. due to changes in legislation, NHS directions or in the Teaching Health Boards.