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| <b>Working Time Regulations</b> | <b>Policy</b><br><b>Register No: 04046</b><br><b>Status: Public</b> |
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| Human Resources                   | Nona Stevenson                              | May 2016    |
|                                   |   |             |
| <b>Professionally Approved By</b> | Bernard Scully, Director of Human Resources | May 2016    |

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| Author/Contact for Information                          | Jan Mumford                       |
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### Document Review History

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| 1.0               | Rob Jarvis  | October 2006               |
| 2.0               | John Foster   | March 2008                 |
| 2.1               | Colleen Hart WD practice unchanged – WD to May 2015               | November 2008              |
| 3.0               | Jan Mumford   | 7 <sup>th</sup> June 2016  |
| 5.1               | Nada Rogers – 6 month extension due to review & MSB harmonisation | 13 <sup>th</sup> June 2019 |

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## 1. Purpose

- 1.1 The Working Time Regulations ('the Regulations') implement the EC Working Time Directive (93/104/EC) and the EC Young Workers Directive (94/33/EC), which relates to the working time of adolescents. The Regulations were laid before Parliament on 31st July 1998 and came into force on 1st October 1998 and updated through the Working Time (Amendment) Regulations 2007.
- 1.2 The Regulations are an important addition to Health & Safety legislation. They protect workers from working excessive hours and give them a right to rest breaks, rest periods away from work area and paid annual leave. Government policy favours maximum flexibility in the implementation of the Regulations while ensuring that workers are protected from risks associated with working long hours.

## 2. Aims

- 2.1 Employees should suffer no detriment because they have exercised any of their entitlements under the Regulations. Arrangements that are currently in effect and are more favourable to staff should not be worsened as a result of implementing the Regulations and the local agreement detailed herein.
- 2.2 Mid Essex Hospitals is committed to the provision of a service that is fair, accessible and meets the needs of all individuals.

## 3. Scope

- 3.1 The Regulations apply to workers<sup>1</sup> over the minimum school-leaving age. There are some special provisions that relate to adolescent workers, ie. workers who are over the minimum school leaving age but under age 18.
- 3.2 The agreement set out below applies to all Trust staff. This includes Bank staff and temporary workers but excludes doctors in training, to whom special provisions within the Regulations apply (see below).

## 4. Equality and Diversity

- 4.1 Mid Essex Hospital Services NHS Trust is committed to a Policy embracing the Equality Act 2010 in all its employment practices and strives to eliminate all unfair discrimination, harassment, bullying and victimisation. Equality of opportunity is a high priority within Mid Essex Hospital Services NHS Trust and the Trust will not unlawfully, unfairly or unreasonably discriminate or treat individuals less favourably on the grounds of gender, marital status, sexual orientation, religion or belief, disability, age, race, nationality or ethnic origin.

## 5. Definitions

- 5.1 'Working time' is defined as any time when an employee is '*working, at his employer's disposal and carrying out his activities or duties*'. For time to be classed as working time all three of these elements must be satisfied. Working time includes:
- Any time that the employee is receiving training in connection with their job
  - Travel time during the working day (eg the journey between Trust sites)
  - Time spent waiting at the place of work for work to be allocated

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<sup>1</sup> The definition of 'worker' covers those with a contract of employment plus a wider group who undertake work under other forms of contract (eg. bank and temporary workers, freelancers) but it does not cover the self-employed.

- Time spent working away from home
- Time on call at the work place.

5.2 'Working time' does not include

- The journey to and from home
- 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.

5.3 Such time may or may not happen to coincide with the time for which an employee receives pay or with the time during which they may be required to work under a contract of employment. Working time also includes work undertaken for any other employer.

5.4 Working time will be calculated exclusive of meal breaks except where individuals are required to work during meals, in which case such time should be counted as working time.

5.5 Employees who are employed by or who work for more than one employer are required to notify the Trust of the hours and times that such work is carried out and also of any subsequent changes to these hours and times.

5.6 'Normal hours' are the hours of work stated in the employee's contract of employment. Calculation is not affected by a worker's absence from work since their normal hours of work remain the same regardless of the actual hours worked. However, for the purposes of calculating a night worker's normal working hours, overtime which is guaranteed or worked regularly will be included. Overtime which is ad hoc or worked in response to an emergency situation is not counted as normal work.

5.7 The reference period for calculating hours worked will usually be the previous 17 weeks. There is no reference period for rest entitlements other than the day or the week in relation to which they arise. For anyone who is involved in the reception, treatment or care of patients in hospitals (such staff are referred to as 'special case workers'), the reference period will be the previous 26 weeks. These reference periods will be extended by any holiday, sickness, or maternity, adoption, paternity, or parental leave provisions within, and taken in accordance with, the Regulations.

5.8 'Night time' is considered to be any period of at least 7 hours which includes the period from 11 pm to 6 am. A 'night worker' is defined as someone who normally (ie. at least one shift in three) works a minimum of 3 hours during night time.

## 6. On Call

6.1 Where the on call arrangement allows the employee to be off site and then called onto the premises as required, 'working time' will be considered to start from when they begin travelling to the Trust's premises and until they have returned home.

6.2 Where the employee is on call but is not required to be on Trust premises, this is not regarded as working time for the purposes of this agreement.

6.3 Where the employee is required to 'sleep in' on Trust premises for the duration of a specified period and is not free to pursue their time as their own, the whole period is regarded as working time for the purposes of this agreement.

6.4 The definition of working time set out above will not affect the calculation of on call payments.

## **7. Maximum Weekly Working Time**

7.1 Employees will not be required to work an average of more than 48 hours per week, calculated over the reference period.

7.2 Employees may work more than the 48 hour average weekly limit if both they and the Trust are willing for them to do so and their agreement to do so is confirmed in writing. A decision to exercise this option is an individual and voluntary one and no pressure should be placed on an employee to do – or not to do – so. A worker needs to give a minimum of 7 days notice that they wish to cancel their opt out.

## **8. Rest Breaks**

8.1 Employees are entitled to take an unpaid break of 20 minutes in any shift of more than six hours of working time.

8.2 Rest breaks must be taken at an agreed time during the period of work and should not be taken either at the start or the end of a period of working time. Employees should be able to take this rest break away from their work station. Existing arrangements which already provide for breaks of more than 20 minutes (eg. lunch breaks) will meet the requirements of this provision and no further action will be needed.

8.3 Special Case Workers may be required to forgo their rest break, in which case they are entitled to compensatory rest.

## **9. Minimum Daily Rest Periods**

9.1 Employees are entitled to have a daily rest period of eleven consecutive hours between each shift/working day in any twenty four hour period. They may be required to work during their daily rest period, in which case they are entitled to compensatory rest.

## **10. Weekly Rest Periods**

10.1 Employees are entitled to an uninterrupted weekly rest period of twenty four hours, in addition to the eleven hours of daily rest, in each seven day period. This gives a total weekly rest period of Thirty Five hours. They may be required to forgo their rest period, in which case they are entitled to compensatory rest.

## **11. Compensatory Rest**

11.1 The Regulations allow employers in limited circumstances to require certain workers to work during periods which would otherwise be a rest period or rest break. Typically this will arise with Special Case Workers, or shift workers who lose rest when they change from working night to days or *vice versa*.

11.2 In these circumstances, the Regulations provide that the worker '*shall wherever possible (be allowed)... to take an equivalent period of compensatory rest... (unless it is not possible, for objective reasons, to grant such a period of rest... (in which case)... his employer shall afford him such protection as maybe appropriate in order to safeguard the worker's health and safety.*'

- 11.3 Compensatory rest is equal to the length of the actual interruption to the rest break/period and no longer. Department of Business Enterprise and Regulatory Reform (BERR) Guidance makes clear that *'compensatory rest is a period of rest the same length as the period of rest, or part period of rest, that a worker has missed.'*
- 11.4 Whilst there is no legal obligation on staff or the Trust to record the amount of time staff spend working during periods which would otherwise constitute a rest break/period, it is recognised that it may be prudent to keep records to ensure that there is sufficient time available for staff to take compensatory rest.
- 11.5 The Regulations do not specify whether compensatory rest is to be taken out of working time or out of 'other time', ie. any time left over once all working time and statutory rest entitlements have been accounted for. The BERR Guidance states that *'the principle is that everyone gets his or her entitlement of 90 hours rest a week on average, although some rest may come slightly later than normal.'*

## **12. Night Workers**

- 12.1 Managers should ensure that night workers' normal hours of work, including regular overtime, do not exceed 8 hours per night on average, calculated over the reference period. For these purposes the normal hours of work are deemed to have been worked over 6 nights per week<sup>2</sup>. This limit does not apply to Special Case workers.
- 12.2 All staff who work nights are entitled to a free and confidential health assessment on starting night work and annually thereafter. They are also entitled to an assessment if a work-related problem is identified; this should determine whether the worker is fit to undertake the night work to which they are assigned. The manager is responsible for ensure these take place.
- 12.3 Employees identified by an Occupational Health practitioner as having health problems related to night work should be offered the option of transfer to suitable day work on the standard pay and conditions of service for that work.

## **13. Special Hazards or Heavy Physical or Mental Strain**

- 13.1 If a risk assessment undertaken in accordance with the Management of Health and Safety at Work Regulations identifies particular night work as involving heavy physical or mental strain to the extent that it poses a significant risk to workers' health or safety (after mitigating measures have been taken to reduce such risks), the shift cannot exceed 8 hours' duration. This limit does not apply to Special Case Workers.

## **14. Junior Doctor Exemptions**

- 14.1 Since 1 August 2004 the Working Time Regulations 1998 relating to paid leave and daily and weekly rest breaks have applied to Junior doctors. The provisions regarding the average 48 hour working week also apply to them following the transitional phasing in period up until 1 August 2009.

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<sup>2</sup> Under the regulations this average is calculated on the basis that the total number of 'normal' hours worked over the reference period is added up and divided by the total number of days in that period, less those days which an employee is entitled to take as a rest day (one per week). This results in the normal hours being spread across a six day week rather than a five day week

## **15. Young Workers**

- 15.1 Young workers may not ordinarily work more than 8 hours a day or 40 hours a week. These hours cannot be averaged out. Young workers in hospitals may perform night work.

## **16. Breaches of Policy**

- 16.1 Where there is a significant breach of this policy, the HR Operations Team must consider whether that breach should be reported under the Trust's Datix reporting procedure.

## **17. Audit and Monitoring**

- 17.1 The policy will be monitored annually by the Human Resources Operations Team with areas of exception being highlighted.
- 17.2 A yearly audit of all breaches of this Policy will be carried out and submitted to JCNC. This will be completed by the Human Resources Operations Team.
- 17.3 Managers are responsible for maintaining – and staff are responsible for supplying – accurate and timely records of working times sufficient to calculate that the entitlements as set out below have been met. These records will normally be those required by Payroll for administration of weekly or monthly pay.
- 17.4 Records must be retained for a minimum of six years and are not required to be kept where a worker has 'opted out', other than a record of the 'opt out' agreement

## **18. Communication and Implementation**

- 18.1 Staff will be made aware of this policy through reference at Corporate Induction and dissemination via Staff Focus. The document will be stored for access to all on the MEHT Intranet under HR Policies and will be available also on the Trust website.

## **19. Pensions Auto Enrolment**

- 19.1 Since 1<sup>st</sup> July 2013 the Trust has an obligation to assess all workers and their individual position within the organisation. This being the case, staff need to be aware that any changes to pay under this policy may affect their Pensions Auto Enrolment Status.

## **20. Review**

- 20.1 This policy and procedure will be reviewed within 24 months of its agreement and bi-annually thereafter. Any additional amendments will be made in accordance with any changes in legislation.