



# WORKING TIME REGULATIONS

## DOCUMENT INFORMATION

<b>Author:</b>	Consultation & Approval: 07/12/10 Sent to PRG for comment 04/01/11 Amendments made 19/04/11 To JCC – SS hadn't read it 21/04/11 To PRG – last-minute changes 31/05/11 Back to JCC for sign-off 03/02/15 Updated by MS
<b>This document replaces:</b>	Working Time Regulations 1998
<b>Notification of Policy Release:</b>	"All Recipients" email Staff Notice Boards Intranet
<b>Equality Impact Assessment:</b>	June 2015
<b>Date of Issue:</b>	June 2011
<b>Reviewed:</b>	April 2019
<b>Next Review:</b>	April 2022
<b>Version:</b>	HR POLICIES & PROCEDURES (HR/C11) Final
<b>Amendments:</b>	15/11/11 Addition of reference to declaration of secondary employment (s5.2)

**Working Time Regulations  
Contents**

DOCUMENT INFORMATION ..... 2

1. INTRODUCTION ..... 1

2. PURPOSE ..... 1

3. SCOPE ..... 1

4. EQUALITY STATEMENT ..... 1

5. DEFINITIONS OF WORKING TIME ..... 2

6. WEEKLY WORK TIME ..... 3

7. NIGHT WORK AND NIGHT WORKERS ..... 3

8. REST PERIODS ..... 4

9. OTHER PROVISIONS ..... 6

10. RESPONSIBILITIES ..... 6

11. RELATED POLICIES ..... 7

12. MONITORING & REVIEW ..... 7

14. REFERENCES ..... 7

Appendix 1 – Collective Agreement ..... 8

Appendix 2 (1) - RE: Working Time Regulations 1998 ..... 10

Appendix 2 (2) - Working Time Regulations ..... 11

Equality Impact Assessment Form Section One – Screening ..... 12

Equality Impact Assessment Form Section Two – Full Assessment ..... 12



## **1. INTRODUCTION**

1.1 The Working Time Regulations 1998 (the Regulations) specify the rights of employees and the obligations of employers concerning working hours.

1.2 There is a general responsibility for employers and employees under health & safety law to protect as far as is practicable the health & safety of all employees at work.

1.3 The Trust therefore considers the control of the working hours of its employees is an integral and critical element of managing health & safety at work, reducing the risk of ill-health, fatigue, errors and omissions and incidents/accidents within the workplace.

## **2. PURPOSE**

2.1 To outline arrangements for the implementation of the Regulations within the Trust, which have been agreed between the managers and recognised trade union representatives through the JCC.

2.2 To outline the key provisions of the Regulations and the resulting impact on working practices and resource management.

## **3. SCOPE**

3.1 This policy applies to all Trust employees.

3.2 The Regulations also contain, however, the facility for certain workers and/or activities within the Ambulance Service to be exempt from some of the rights and obligations of the Regulations. Namely, Regulation 2 cites ambulance staff as falling within the definition of Civil Protection services due to the particular nature of the services we provide; ie, patient care, Accident and Emergency cover and where the individual has a high level of decisionmaking powers. Section 27.5 of the NHS Terms & Conditions Handbook (NHS Handbook) refers.

3.3 South Central Ambulance Service NHS Trust, hereinafter referred to as "the Trust", intends to apply the Regulations as far as it is able since, to do this is considered to be in the best interests of patients and staff.

## **4. EQUALITY STATEMENT**

4.1 The Trust is committed to promoting positive measures that eliminate all forms of unlawful or unfair discrimination on the grounds of age, marriage and civil partnership, disability, race, gender, religion/belief, sexual orientation, gender reassignment and pregnancy/maternity or any other basis not justified by law or relevant to the requirements of the post. The Trust will therefore take every possible step to ensure that this procedure is applied fairly to all employees regardless of the aforementioned protected characteristics, regardless of length of service or whether full or part-time or employed under a permanent or a fixed-term contract or any other irrelevant factor.

4.2 By committing to a policy encouraging equality of opportunity and diversity, the Trust values differences between members of the community and within its existing workforce, and actively seeks to benefit from their differing skills, knowledge, and experiences in order to provide an exemplary healthcare service. The Trust is committed to promoting equality and diversity best practice both within the workforce and in any other area where it has influence.

## 5. DEFINITIONS OF WORKING TIME

- 5.1 The Regulations specify limits to individual working time. "Working Time" is defined by the Regulations as being any period during which the employee is working, at the employer's disposal and carrying out his/her duties. The definition also covers any period during which the employee is receiving relevant education and training authorised by the Trust.
- 5.2 The following activities will, therefore, be counted as working time:
- Paid hours of duty;
  - Overtime, including overruns;
  - Paid travel time in own vehicle or Service vehicle as per terms & conditions of employment (for example, employees who are called into work during a period of on-call or staff who receive travelling time as part of a disturbance package due to a relocation);
  - Whilst on relief excess travel time (average of 30 minutes each way) taken in travelling in the course of work is classified as unpaid working time and therefore needs to be taken into account when calculating the 11 hour break
  - Paid education and training, including lesson time and formal group work as part of an agreed event;
  - Working time in other employment, which must be declared by the worker using the declaration form in the Additional Employment Policy;
  - Necessary unpaid hours;
  - Civic/public duties;
  - Trade union duties; On-call (working).
- 5.3 The following activities do not count as working time:
- Leave due to sickness, annual leave, maternity leave, accrued leave;
  - Unpaid meal breaks;
  - Unpaid travel in own vehicle at start/end of a shift or working day (ie, home-to-base)
  - On-call (but not working).
- 5.4 In cases where an employee has more than one employer, the Trust will implement reasonable steps to ensure that workers are not working beyond the limits set out in the Regulations. The following information is, therefore, required to enable the Trust to comply with the Regulations.
- 5.5 All employees should inform the Trust if they have a job(s) (including voluntary work) outside the organisation together with the number of hours worked in that job(s) or activity. Refer to the Trust policy on Additional Employment. It is the employee's responsibility to ensure that he/she informs the Trust of any alterations to this information. Waiver clauses must be signed where the employee wishes to exceed

an average of 48 hours per week by working for another employer and/or by holding a second contract with the Trust.

## **6. WEEKLY WORK TIME**

- 6.1 Within the Trust, the working week will be taken to start and end at midnight each Sunday.
- 6.2 The purpose of the Regulations is to limit compulsory working time to an average of 48 hours per week, such that employees will normally not be expected to work more than 48 hours per week calculated over an agreed averaging period. The formula used to calculate average working time is as specified in Section 4(6) of the Regulations. The formula is attached as Appendix A of this policy.
- 6.3 In order to provide maximum flexibility, the reference period is 26 weeks, which will commence at 00.01 hours on 1 April. Each reference period will be 00.01 hours on the date of commencement to the end of the reference period.
- 6.4 In addition, managers, in conjunction with Planning / Scheduling Departments, can review actual working time every successive 17 weeks to ensure any necessary measures are actioned during the year to ensure compliance with the Regulations. Such measures may include bringing to the attention of an employee the average hours worked during the period and/or reducing overtime opportunities. When considering such measures professional advice and guidance must be sought from the HR Department.
- 6.5 **Voluntary Opt-out:** individual employees may choose at any time to agree in writing to work more than the 48 hours average weekly limit.
  - 6.5.1 This agreement should be registered by completing a Trust Waiver Form. The Waiver Agreement is attached as Appendix B (2). One copy of the Waiver Form will be retained by the manager (and forwarded to the HR department and put on the employee's personal file) and a further copy will be returned to the employee.
  - 6.5.2 Individual Waiver Forms may relate to a specific period or apply indefinitely. In either case, the employee or employer must give four weeks' notice to end the agreement.
  - 6.5.3 In circumstances in which the Trust consider that the existence and application of the Waiver Agreement is detrimental to health & safety, 7 days' notice will be given to terminate the Waiver Agreement. In such circumstances, the member of staff will have a right of appeal if he/she considered that this facility had been unreasonably withdrawn.
  - 6.5.4 Managers must draw employees' attention to the existence of the Waiver Agreement should the need arise but shall not exert pressure on the employee to take this option.

## **7. NIGHT WORK AND NIGHT WORKERS**

7.1 Within the NHS, night-time is a period of at least seven hours which includes the period from midnight to 05:00 hours, as outlined within the NHS Handbook

7.2 A night worker is someone who is classed as working for at least three hours daily during night-time hours under 'normal' circumstances.

7.3 The NHS Handbook requires employers to ensure that night workers do not exceed an average of 8 hours per shift over a 17-week period. As far as is reasonably practicable, the Trust will work with managers and staff representatives to ensure that Front-line and Out-of Hours services can comply with the spirit of the law in relation to this specific element of the Regulations and that, as far as possible, the 'normal' hours of night work do not exceed this guidance. The rota system (GRS) is set to be compliant with WTR and does not allow staff to breach.

7.4 The Trust will, in conjunction with our recognised unions, assess the implications of this element of the Regulations in respect of 10-hour shifts.

7.5 Where it is determined that a member of staff meets the criteria of a night worker, as laid out in 7.2 above, they will be entitled to a free health assessment upon their request or as requested by the Trust. The assessment will be in the form of a health questionnaire followed by an interview at the Occupational Health department where deemed necessary. This can be discussed at 1:1 meetings and as part of the annual appraisal.

7.5.1 The purpose of the health assessment is to determine whether an employee is fit to carry out the night work to which they are assigned.

7.5.2 Where a registered medical practitioner has advised the employer that the worker is suffering from health problems connected with the fact that they work at night, the employee will be referred to Occupational Health department. Occupational Health will then make an assessment and advise on whether the employee should, if possible, be offered the option of transfer to suitable day work or other suitable deployment. In the event an employee is deemed unfit for work at night, this process will be managed through the Trust's Attendance or Capability Policy as appropriate.

7.6 The line manager in conjunction with the Risk Department, will ensure that risk assessments are conducted, where appropriate, to make sure that, on balance, the hazards faced by night workers do or do not constitute special hazards or heavy physical or mental strain when compared to activities undertaken at other times.

7.7 The definition of a night worker and the interpretation of heavy physical and mental strain are likely to evolve as a result of Health & Safety Executive enforcement, advice and case law. OH assess night workers at the point of recruitment. If any concerns arise during employment an employee can be referred back to OH for a further assessment.

## **8. REST PERIODS**

8.1 Employees may not opt out of daily or weekly rest periods which are defined in detail, below.

## **8.2 Daily Rest Periods**

8.2.1 An employee is entitled to a rest period of not less than 11 consecutive hours in each 24-hour period. In circumstances where 11 consecutive hours is not practical because of contingencies of the Service (which may include “overruns”) daily rest may be less than 11 hours.

8.2.2 Where the employee has not been able to benefit from 11 consecutive hours’ rest, compensatory rest should be provided at the earliest possible opportunity. Overtime payment will not be payable when compensatory rest has been granted.

8.2.3 In accordance with the Regulations, in exceptional circumstances, not all staff will always benefit from this; in particular in the event of a major incident or other significant occurrence.

8.2.4 It should be noted that travelling time to and from your base location is an individual’s responsibility; is not included in weekly work-time and, as such, is included in the rest period of 11 consecutive hours.

## **8.3 Weekly Rest Periods**

8.3.1. Within the Trust, the definition of 7-day period/14-day period shall be taken to start at 00:01 each Monday or every other Monday.

8.3.2. In accordance with the NHS Handbook (s27, para 27.19), employees shall be entitled to:

One uninterrupted rest period of not less than 35 hours (including the 11 hours of daily rest) in each 7-day period. Where this is not possible, the equivalent rest period over a 14-day period, either as one 70-hour period or two 35-hour periods.

8.3.3 Where this is not possible, compensatory rest must be granted as soon as possible to protect a worker’s health & safety.

## **8.4 Compensatory Rest**

8.4.1 Where employees have been required, at the exigencies of the service, to work during either weekly or daily rest periods, an equivalent number of hours’ rest should be provided as soon as possible, bearing in mind the employee’s health and safety.

8.4.2 Compensatory rest will not be provided in the event of voluntary overtime.

## **8.5 Rest Breaks**

8.5.1 When an employee’s daily working time is more than six hours he/she is entitled to a 20-minute uninterrupted rest break, in accordance with the Working Time Regulations. Where staff are on centrally managed shifts, rest breaks will be allocated in accordance with the provision of the Trust’s Meal Break Policy.

8.5.2 Employees under the age of 18 are entitled to one 30 minute rest break if working over 4.5 hours.

8.5.3 Rest breaks must not be allocated at the start or end of a shift.

8.5.4 Neither the Regulations nor NHS terms & conditions provide for rest breaks to be paid; therefore, all meal breaks will be unpaid.

8.5.5 Every effort must be made to ensure a rest break is taken during the shift. Where an employee is unable to take a rest break, or where a rest break is interrupted (in exceptional circumstances, due to the need to maintain standards of patient care), compensatory rest will be granted at the earliest possible opportunity.

8.5.6 Further details regarding the daily allocation of rest/meal breaks for operational staff can be found with the Trust's Meal Break Policy. The allocation and timing of meal breaks for all other staff will be in accordance with the spirit of this agreement and the NHS Handbook.

## **9. OTHER PROVISIONS**

9.1 The Trust will maintain the records necessary to comply with the Regulations. Records will be retained for a minimum of two years from the date they were made. All employees must keep and assist managers to keep accurate records of working time in order to support this process and notify immediately they become aware of any errors.

9.2 Individual records are confidential and will be retained in accordance with the provisions of the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679)

9.3 The Trust's leave year runs from 1 April to 31 March. The Trust will comply with annual leave entitlements and relevant provisions as specified in the Regulations and in accordance with the NHS Handbook. There is an entitlement to the equivalent of 5.6 weeks (210 hours) annual leave (28 days including bank holidays) and is based on your contracted hours, so part time staff will be pro rata.

## **10. RESPONSIBILITIES**

### **10.1 Managers**

To ensure that all employees are aware of and understand this policy;

To ensure that all working time data is collected and recorded in accordance with this policy and record-keeping requirements;

To be aware at all times of how close any employee may be to breaching working time requirements.

### **10.2 Employees**

To be familiar with the provisions of this policy and the Working Time Directive;

To be responsible and accountable for all data relating to their own working time being up-to-date and accurate.

Staff undertaking additional employment while absent from the Trust must ensure compliance with the Additional Employment Policy.

## **11. RELATED POLICIES**

This policy should be read in conjunction with the following:

- Overtime Policy
- Additional Employment Policy
- Bank Policy
- Meal Break Policy
- Relief Policy
- Flexible Working Policy
- Annual Leave Policy

## **12 MONITORING & REVIEW**

12.1 The Scheduling / Planning Department can monitor any staff regularly exceeding 48 hours per week and compliance with rest breaks in accordance with WTR. These will include the names of the people involved, dates, the nature and frequency of the incidents, actions taken and follow-up information. Storage and handling of – and access to – this information will meet the confidentiality requirements of the GDPR.

12.2 The effectiveness of this policy will be monitored regularly by HR who will provide data on the use of the policy as and when required. Annual report will be provided to the trust board at the end of each financial year. The results of the annual staff survey will also provide a valuable indicator of any problems.

12.3 In advance of the review date, the HR team will review and produce recommendations which will be shared via the recognised policy approval process (HR Policy Review Group) in time for the policy review date. An early review can be triggered by the trust board, HR or joint staff side if they have serious concerns about the policy or its implementation. The policy will normally be reviewed on a 3-yearly cycle but will take place sooner in the event of legislative change or change to NHS terms and conditions.

## **14. REFERENCES**

- Direct.gov Working Hours information and advice:  
<http://www.direct.gov.uk/en/Employment/Employees/WorkingHoursAndTimeOff/index.htm>
- ACAS Working Hours information and advice:  
<http://www.acas.org.uk/index.aspx?articleid=1373>

## Appendix 1 – Collective Agreement

### 1. CALCULATION OF MAXIMUM WEEKLY WORKING TIME

- 1.1 The Regulations set a 48-hour limit on average weekly working time. However, a worker may exceed this limit providing a Waiver Agreement has been signed.
- 1.2 The Trust has a responsibility to keep records which are adequate to show whether the time limits specified in the Regulations are being complied with.
- 1.3 The records cover time actually worked. This means that the calculation **must** include:
- Paid hours of duty
  - Overtime including over-runs
  - Paid travel time in own vehicle or Service vehicle as per terms and conditions of employment
  - Paid education and training including lesson time and formal group work as part of an agreed event
  - Working time in other employment (as advised by the worker)
  - Necessary unpaid hours
  - Civic/public duties
  - Trade Union activities
  - Actual work arising from on-call (eg call-out)
- 1.4 The calculation must **exclude**:
- Leave due to sickness, annual leave, maternity leave, accrued leave
  - Unpaid meal breaks
  - Unpaid travel in own vehicle at start/end of a shift
  - Unpaid travel time in a Service vehicle at start/end of a shift
  - On-call (not working)
  - Any period during which a signed Waiver Agreement in the format attached as Appendix B is in operation
- 1.5 The average working week shall be calculated by applying the following formula

$$\frac{A + B}{C}$$

In principle, the formula can be explained as follows:

**A** (Total working hours during the reference period)

+

**B** (Total working hours in the subsequent days which equal the excluded days during the reference period)

Divided by

**C** (The number of weeks in the reference period)

Examples of the calculations are therefore as follows:

### EXAMPLE 1

Where the worker works a total of 2142 hours and has 22 days annual leave and no sickness:

A = the total working hours during the 52-week reference period = 2142

B = the total working hours in the (22) subsequent working days equal the excluded days during the 52-week reference period = 165

C = the number of weeks in the reference period = 52 weeks

$$\underline{A+B} = \underline{2142 + 165} = 44.37 \text{ hours} \quad C \ 52$$

This means that the worker has worked an average of 44.37 hours per week over a 52-week reference period.

### EXAMPLE 2

Where the worker works a total of 1902 hours and has 22 days annual leave and 6 weeks of sickness:

A = the total working hours during the 52-week reference period = 1902

B = the total working hours in the 52 (ie 22 A/L + 30 sickness) subsequent working days equal the excluded days during the 52-week reference period = 390

C = the number of weeks in the reference period = 52 weeks

$$\underline{A+B} = \underline{1902 + 390} = 44.08 \text{ hours} \quad C \ 52$$

This means that the worker has worked an average of 44.08 hours per week over a 52 week reference period.

## **Appendix 2 (1) - RE: Working Time Regulations 1998**

A template letter and waiver agreement form for staff is available for Internal use by SCAS Staff. It can be accessed internally via our [Staff Intranet](#).

## Appendix 2 (2) - Working Time Regulations

# WORKING TIME REGULATIONS DO YOU KNOW YOUR OBLIGATIONS?

If you have other employment, including some voluntary work, you need to understand your obligations under the Working Time Regulations. These regulations are in place to ensure the health, safety and wellbeing of workers by ensuring that you have sufficient rest breaks and do not work excessive hours. There is an entitlement to the equivalent of 5.6 weeks (210 hours) annual leave (28 days including bank holidays) and is based on your contracted hours, so part time staff will be pro rata. If you undertake additional work, which includes some voluntary work, you must ensure that you:

Have a rest break of at least 11 hours in every 24 hour period

Have one uninterrupted rest period of not less than 35 hours (including the 11 hours of daily rest) in each 7-day period. Or, the equivalent rest period over a 14-day period either as one 70 hour period or two 35-hour periods

Opt out of the maximum 48 hour working week if you intend to work more than this in all roles combined (including overtime with this Trust)

Have notified the Trust of any paid or unpaid (voluntary) work in accordance with the Additional Employment Policy

Have due regard for your own health and safety and ensure you do not work excessive hours which could result in a negative impact on your health, wellbeing or performance at work.

### **Equality Impact Assessment Form Section One – Screening**

Employees exercising their rights and entitlements under the regulations will suffer no detriment as a result.

The Screening element of the 'Equality Impact Assessment' is available on request.

### **Equality Impact Assessment Form Section Two – Full Assessment**

Employees exercising their rights and entitlements under the regulations will suffer no detriment as a result.

A full 'Equality Impact Assessment' is available on request.