**Name of Policy:** Working Time Regulations Policy

**Effective From:** 24/08/2015

<table>
<thead>
<tr>
<th>Date Ratified</th>
<th>17/08/2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ratified</td>
<td>Human Resources Committee</td>
</tr>
<tr>
<td>Review Date</td>
<td>01/08/2017</td>
</tr>
<tr>
<td>Sponsor</td>
<td>Director of Strategy and Transformation</td>
</tr>
<tr>
<td>Expiry Date</td>
<td>16/08/2018</td>
</tr>
<tr>
<td>Withdrawn Date</td>
<td></td>
</tr>
</tbody>
</table>

Unless this copy has been taken directly from the Trust intranet site (Pandora) there is no assurance that this is the most up to date version

This policy supersedes all previous issues

*Working Time Regulations Policy v6*
## Version Control

<table>
<thead>
<tr>
<th>Version</th>
<th>Release</th>
<th>Author/Reviewer</th>
<th>Ratified by/Authorised by</th>
<th>Date</th>
<th>Changes (Please identify page no.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>1 July 2001</td>
<td></td>
<td>Trust Board</td>
<td>27/06/01</td>
<td></td>
</tr>
<tr>
<td>2.0</td>
<td>May 2004</td>
<td></td>
<td>Trust Board</td>
<td>May 2004</td>
<td></td>
</tr>
<tr>
<td>3.0</td>
<td>November 2007</td>
<td></td>
<td>Joint Consultative Committee</td>
<td>29 August 2007</td>
<td></td>
</tr>
<tr>
<td>4.0</td>
<td>11/10/2011</td>
<td></td>
<td>HR Committee</td>
<td>03/10/2011</td>
<td></td>
</tr>
<tr>
<td>5.0</td>
<td>05/07/2012</td>
<td>K Ward</td>
<td>HR Committee</td>
<td>11/06/2012</td>
<td></td>
</tr>
<tr>
<td>6.0</td>
<td>24/08/2015</td>
<td>G K Forsyth</td>
<td>HR Committee</td>
<td>17/08/2015</td>
<td></td>
</tr>
</tbody>
</table>
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>6.1</td>
<td>7</td>
</tr>
<tr>
<td>6.2</td>
<td>7</td>
</tr>
<tr>
<td>6.3</td>
<td>7</td>
</tr>
<tr>
<td>6.4</td>
<td>8</td>
</tr>
<tr>
<td>6.5</td>
<td>9</td>
</tr>
<tr>
<td>6.6</td>
<td>9</td>
</tr>
<tr>
<td>6.7</td>
<td>10</td>
</tr>
<tr>
<td>6.8</td>
<td>10</td>
</tr>
<tr>
<td>6.9</td>
<td>11</td>
</tr>
<tr>
<td>7</td>
<td>11</td>
</tr>
<tr>
<td>8</td>
<td>11</td>
</tr>
<tr>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>12</td>
<td>12</td>
</tr>
</tbody>
</table>

### Appendices

- Appendix 1: Working Time Regulations Compensatory Rest Related to On-Call Periods
- Appendix 2: Occupational Health Department Health Assessment For Night Time Workers
- Appendix 3: Health Assessment of Night Workers - The Procedure at a Glance
Working Time Regulations Policy

1 Introduction

1.1 Gateshead Health NHS Foundation Trust is committed to safeguarding the health, safety and welfare of their employees. Working Time is recognised by the Trust as being a Risk Management issue, and as such, this policy will complement the Trust’s existing Health, Safety and Welfare policies.

1.2 The purpose of this policy is to provide guidance on the implementation within the Trust of the Working Time Regulations 1998 and Section 27 of the Agenda for Change Terms and Conditions handbook. This policy sets out the average weekly working time limits for employees of the Trust, their entitlement to periods of rest, and rest breaks at work. Also included in the policies are the minimum statutory entitlements to paid annual leave, how these entitlements are to be monitored, and arrangements for record keeping.

1.3 Junior doctors’ working patterns were fully compliant from August 2009 and appropriate monitoring arrangements are in place to ensure that this continues.

2 Policy scope

The Regulations apply to “workers”, including all employees (full time and part time), temporary and casual workers, freelancers and trainees, including participants in New Deal etc. Agency or contract workers are also included but the responsibilities and liabilities under the Regulations lie with whoever actually pays them, i.e. (the Agency). The need to comply with the working time regulations must be included in the contract monitoring process. Only the genuinely self-employed are excluded.

3 Aim of policy

To ensure the Trust operates within the Working Time Regulations, that workers are aware of their entitlements and that a system of monitoring is maintained.

4 Duties (Roles and responsibilities)

Trust Board’s Responsibility

(a) To take all reasonable steps to ensure workers employed by the Trust do not work more than an average of 48 hours per week over the agreed reference period unless in exceptional circumstances.

(b) To ensure the workers who themselves wish to work in excess of the maximum average weekly limit, may do so providing this does not compromise Health and Safety and that the individual completes the appropriate form.
Manager’s Responsibility

a) To do all that is possible to ensure that their area of responsibility complies with the requirements of this policy.

b) To discuss opting out applications with worker and to ensure appropriate forms are completed and kept on file (see 6.3.2). Forward completed forms to Human Resources for central retention. To monitor opt-outs on an annual basis with the member of staff.

c) To discuss with workers the implications of secondary employment and how this may affect average weekly working limit.

d) To ensure a review mechanism exists for those workers whose working hours regularly exceed 48 hours work per week, to ensure that their health, safety and well being is not compromised.

e) To ensure that night workers (defined in 5.2) are aware that they are entitled to health assessments (see Appendix 2).

Individual’s Responsibility

a) To discuss with their Manager any application to opt out of the average weekly limit and sign appropriate forms. To review this opt-out on an annual basis.

b) To discuss with their manager the implications of a secondary employment or intended secondary employment in relation to the average weekly hours limit.

c) To discuss with their manager circumstances that do not comply with this policy.

HR Department’s Responsibility

a) To advise managers and members of staff on Working Time Regulations.

b) Store and monitor opt-out forms received.

5 Definitions

“Working time” For the purposes of this policy, “working time” is defined as any period in which a worker is:

- Working;
- At his or her employer’s disposal;
- Carrying out his or her activities or duties;
All three elements must be satisfied to constitute working time. If an employee is at the employer’s disposal but not actually working then this is not working time. Some examples of working time are shown below:

- Travelling to see patients or travelling between sites or meetings as part of duties;
- Time spent on a call during an on call period, at work premises including travelling from home and return home, or dealing with the matter from home via phone/computer;
- Time spent on standby whilst compulsory resident;
- Undertaking authorised training;
- Taking work home (but only if specifically agreed and documented with the employer);
- Trade Union/professional association duties undertaken by accredited representatives of recognised trade unions, and professional associations;
- Health and Safety duties undertaken by accredited Safety representatives of recognised trade unions;
- Public Duties as defined in Section 50, Part VI of the Employment Rights Act 1996.

The following would not be considered to be working time within the definition of the regulations:

- Travelling to and from “normal” place of work,
- Unpaid breaks, (unless you continue to work with your managers permission),
- Being on call but at home or pursuing own activities,
- Taking work home of your own accord, without specific advance agreement by the employer.

“Night workers” - A night worker is someone who works at least 3 hours between 11.00pm and 6.00am. To qualify as a night worker a worker must work during this period on the majority of the days they work, or on a regular basis, e.g. a rotating shift pattern which results in their working regularly during night-time as opposed to on an infrequent or ad hoc basis (at least 26 weeks per annum). Where a worker has a doubt about whether they are to be considered a night worker, they should discuss the matter with their manager.

Under the regulations normal hours of a night worker should not exceed an average of 8 hours in each 24-hour period over a 17-week rolling period. For the purpose of the limit on night work, it is night workers “normal” hours of work that are relevant. Therefore the calculation is not affected by absence from work (e.g. due to sickness) as the worker is assumed to have worked his or her normal hours. Overtime is also not taken into account for purposes of calculating the normal hours of a night work.

If the worker is exceeding this average of 8 hours, they should speak to their manager. The manager will assist in calculating average hours. If night-time work is considered to be of undue physical/mental strain, by either the employee or the manager, a referral must be made to the Occupational Health Department (see appendix 2).

“Shift work” is defined as any method of organising work in shifts whereby employees succeed each other at the same workstations according to a certain pattern, including a rotation pattern, and which may be continuous or discontinuous, entailing the need for employees to work at different time over a given period of days or weeks.
“Equivalent compensatory rest” is defined as the difference between the amount of rest actually taken and the amount of rest that ought to be taken to ensure compliance with the working time regulations.

“Young worker” is defined as an employee who is 15 years of age or over but under 18 years of age.

“Standard Reference Period” – The Standard Reference Period to be used for calculating the average weekly working time shall be a 17 week continuous period. In exceptional circumstances the Standard Reference Period may be extended to a maximum of 26 weeks by means of collective agreement.

6 Working Time Regulations

6.1 Summary of the Regulations
The regulations give workers an entitlement to:
• Limit on average weekly working time up to 48 hours, averaged over a 17 week period;
• Daily rest period of 11 consecutive hours rest in any 24 hour period (12 hours for young workers);
• Minimum rest period of 24 hours in each 7 day period (48 hours in each 7 day period for young workers);
• A minimum (unpaid) rest break of 20 minutes if an employee works longer than 6 hours (30 minutes for young workers working longer than 4.5 hours);
• A minimum of five weeks and three days paid annual leave (pro rata for part-time staff). This entitlement includes paid bank and statutory holidays;
• A limit on average normal daily working time to 8 hours for night workers if work causes undue physical or mental strain;
• Free regular health assessments for night workers.

6.2 Entitlement under other Provisions
Where a worker is entitled to a rest period, rest break or annual leave under the Regulations or under a separate provision (e.g. a contract of employment) he/she may not exercise the two rights separately but may take advantage of which ever right is the more favourable.

6.3 Weekly Working Time Limits

6.3.1 48-Hour week – The regulations place a limit of 48 hours on weekly working time. This is averaged over a 17-week period. The Trust will respect this entitlement and under no circumstances will a worker be forced against their will to exceed this limit.
• There is a joint responsibility on employer and worker to assess which activities are deemed to be “working time” under the Regulations.
• So far as is reasonably practicable all workers shall comply with the system used within their area to enable monitoring of working time.
• Where a worker works more than an average of 48 hours over a 17-week rolling period, or believes that they may do so they should discuss this with their manager. Their manager will assist in calculating average hours and consider appropriate adjustments in working arrangements.

Young workers (15 years of age or over but under 18 years of age) can work a maximum of 40 hours per week with a limit of 8 hours per day. There is no provision for averaging working weekly time over a reference period.

6.3.2 ‘Opt Outs’ To The 48 Hour Limit – this is an agreement to exceed the 48 hours working time weekly average which any employee is able to exercise by completing the appropriate form. This legal entitlement to opt out of the weekly hours limit is under review and the Trust policy will be revised in accordance with legislative changes.

Young workers have no entitlement to opt out.

6.4 Entitlement to Rest Breaks and Rest Periods

6.4.1 Unlike the working hours provisions, rest breaks and rest periods are not subject to a 17 week averaging process and workers must receive their rest breaks/periods on all occasions.

6.4.2 In-Work Rest Breaks - workers are entitled to a rest break away from their immediate work area of not less than 20 minutes where daily working time is more than 6 hours. It should be a break taken during working time and therefore should not be taken at the start or end of the shift, except in exceptional circumstances. The Trust considers a worker meal break entitlement to cover this requirement. Young workers are entitled to 30 minutes if working more than 4.5 hours. It is acknowledged that there may be circumstances that prevent a break being taken mid-shift. In such a situation a break may be taken at an appropriate time during the shift. If this becomes a regular issue the work pattern should be reviewed.

6.4.3 Daily Rest - Workers are entitled to daily rest period of 11 consecutive hours (not at work) in each 24-hour period. Young workers are entitled to 12 hours.

6.4.4 Weekly Rest - Workers are entitled to a weekly rest period of not less than 24 hours in each 7-day period. Employers can choose if this is:
• One period of 24 hours rest in 7 days
• Two uninterrupted rest periods each of at least 24 hours in each 14 day period (Young workers have entitlement to a rest period of not less than 48 hours in a seven-day period and this cannot be aggregated over a 14 day period); or
• One uninterrupted rest period of at least 48 hours, in each 14 day period.

This entitlement to weekly rest is in addition to the daily rest entitlement.
6.5 **Compensatory Rest**

6.5.1 Where an employee is required to work during any time which is supposed to be rest time (e.g. daily or weekly rest periods) then the worker must be allowed to take ‘equivalent periods (the same number of hours lost) of compensatory rest’.

6.5.2 This compensatory rest should be taken as soon as possible, ideally within 24 hours if service needs permit.

6.5.3 **Shift Workers** - If a shift worker changes shift, and it is not possible for them to take their full daily rest entitlement between the end of one and the beginning of a new shift, the worker must be given the opportunity to take an equivalent period of compensatory rest. All shift patterns will be designed in such a manner that a worker’s entitlement to rest breaks is not infringed by the shift pattern on a regular basis. It is recognised that there may be exceptional circumstances where rest breaks are infringed but this should not be the norm.

Workers who are concerned that they are not receiving their entitlement to breaks/rest periods should discuss this with their manager.

6.6 **Minimum Paid Annual Leave**

6.6.1 Workers are entitled to annual leave, including all public holidays and extra statutory days, in accordance with their terms and conditions of employment. Public holidays and extra statutory days count as conventional leave days for the purposes of this agreement.

6.6.2 For the purposes of this policy the leave year will be 1 April until 31 March.

6.6.3 Definitions of Public Holidays for Trust staff will continue to operate as previously agreed within the Trust.

6.6.4 Under the provisions of the Working Time Regulations, a full time worker is entitled to five weeks and three days paid annual leave (pro rata for part-time staff). This entitlement includes paid bank and statutory holidays. Whilst clearly the Trust already gives in excess of this entitlement for permanent and temporary employees, the Regulations are specific in that this minimum entitlement MUST be taken and cannot be opted out of. Payment cannot be made in lieu (except where the employment terminates during the holiday year) neither can it be carried forward to the next holiday year except in very specific circumstances as detailed in PP11 Managing Attendance at Work Procedure. Annual leave entitlements and responsibilities are detailed in PP9 Authorisation of Leave Policy.

6.6.5 Managers need to ensure that employees are aware that where they do not take the minimum leave entitlement within the leave year, this will be lost.
The Trust will only allow employees in exceptional circumstances to carry over any proportion of the minimum entitlements not taken.

### 6.7 Health Assessments for Night Workers

**6.7.1** Under the Working Time Regulations there is a legal requirement to provide night workers with a regular health assessment, however, although this is an entitlement members of staff are not obliged to undergo this process. The Trust does encourage night workers to have regular assessments. (See appendix 3.)

**6.7.2** For the purpose of night worker health assessments, a night worker will be classified as an employee who works any night shifts (i.e. at least 3 hours between the hours of 11pm - 6am). Attached at Appendix (2) is the Occupational Health Department procedure for health assessments for night-time workers. The Trust offers health assessment to its night workers and to anyone who is becoming a night worker.

**6.7.3** Where a medical referral highlights that an individual is not fit for night work, the Trust is required wherever possible, to provide day work and will consider alterations to the worker shift pattern and working environment.

### 6.8 Secondary Employment

**6.8.1** For staff employed by the Trust who also have employment with other employers or within the Trust e.g. bank staff, it is the duty of both the Trust and its staff to recognise that all working time with all employers is relevant for the purposes of this agreement.

**6.8.2** Trust’s Responsibilities:

- The Trust shall take all reasonable steps to enquire of its staff if they have secondary employment.
- For all new staff this enquiry shall take place during the selection and recruitment process.
- The Trust may at any time enquire of a member of staff if they have secondary employment. If a member of staff fails to declare secondary employment or hours worked with a secondary employer in response to an enquiry from the Trust, then the Trust may consider taking disciplinary action against that member of staff.

**6.8.3** Worker Responsibilities:

- New staff are asked to declare secondary employment on the starter form.
- If, during the course of their employment with the Trust, a worker commences employment with a secondary employer, the worker must inform their manager in writing within 7 days of the commencement of that employment. If a worker fails to do so, the Trust may consider taking disciplinary action.
6.9 Records

6.9.1 Records must be kept which demonstrate that workers and the Trust comply with the requirements of the regulations.

6.9.1.1 There is no requirement to keep a running calculation of each employee’s weekly working time. Records, which are kept for the purpose of this agreement, will be of time already worked rather than of current or prospective working time. This information will be captured via the Smart Time and Attendance system and until this is implemented Trust-wide by timesheets, variation reports and flexitime records.

6.9.1.2 All working time records including Health Assessments for Night Workers must be kept for two years from the date on which they were made. NB Occupational Health records are retained for 10 years after an employee leaves the Trust.

7 Training

Awareness of the regulations and this policy will be raised with new staff as part of their local induction. There will be six-monthly reminders to all staff via the Chief Executive’s bulletin. Details will also be published on the Trust intranet so they can be easily referenced.

8 Equality and diversity

The Trust is committed to ensuring that, as far as is reasonably practicable, the way we treat staff reflects their individual needs and does not discriminate against individuals or groups on any grounds. This scheme has been appropriately assessed.

9 Monitoring compliance with the policy

<table>
<thead>
<tr>
<th>Standard / process / issue</th>
<th>Monitoring and audit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monitor opt-out forms</td>
<td>Audit</td>
</tr>
<tr>
<td>Monitor junior doctors hours</td>
<td>Monitoring diaries analysed with electronic system.</td>
</tr>
<tr>
<td></td>
<td>By HR Department</td>
</tr>
<tr>
<td></td>
<td>Committee HRC</td>
</tr>
<tr>
<td></td>
<td>Frequency Annually</td>
</tr>
<tr>
<td></td>
<td>Frequency Six-monthly</td>
</tr>
</tbody>
</table>

10 Consultation and review

This scheme has been reviewed in consultation with the JCC Policy Sub-Group.
11 Implementation of policy (including raising awareness)

This scheme will be circulated by the Trust Secretary as detailed in OP27 Policy for the development, management and authorisation of policies.

12 References

PP9 Authorisation of Leave Policy
PP11 Managing Attendance at Work Procedure
OP27 Policy for the development, management and authorisation of policies
Working Time Regulations
NHS Staff Council Handbook
Appendix 1

**Working Time Regulations**

**Compensatory Rest Related to On-Call Periods**

1  Introduction

1.1 The Working Time Directive (which is concerned with Health and Safety at Work) – states that a worker should have, on average, 11 Hours of continuous rest in a 24 hour period. Where staff are unable to receive this minimum period of rest, they should be provided with equivalent compensatory rest.

1.2 In order to fulfil this requirement, there must be a distinction between time which is regarded as “working time” i.e. time spent on a call during an on-call period, including travelling to and from home, rather than being on-call from home. The latter is regarded as rest time under the Working Time Regulations.

2  Core Principles

2.1 In order to comply with the requirements of the Working Time Regulations in relation to minimum periods of rest, the Trust has established the following core principles which managers are required to work towards locally:

- For each on-call system in operation, the manager should determine an appropriate threshold within which compensatory rest will apply e.g. on-call rota commences 5pm – 8am = 15 hour period. A worker’s entitlement equated to 11 hours daily rest, therefore for application of compensatory rest = 9pm (i.e. 11 hours prior to commencement of next period of duty);

- Compensatory rest will be provided against documentation of rest disturbance, which may be as a result of either Provision of telephone advice or recall to work.

- The amount of compensatory rest provided will be equivalent to the period of time spent on the call. NB. When recalled to work this should include travelling to and from home.

- Within the spirit of the regulations, compensatory rest should be taken as soon as possible following the disturbance to the rest period and indeed it is envisaged that the compensatory rest will be taken within 24 hours of the disturbance. Staff need to identify and confirm when they wish to take this time with their manager.

- **Under no circumstances should compensatory rest be regarded as lieu time and be allowed to accrue.**

2.2 Managers must review existing/proposed on-call working arrangements, to ensure that the provisions of compensatory rest can be accommodated for all staff within a 24 hour period.
Appendix 2

**Occupational Health Department**

**Health Assessment for Night Time Workers**

**Introduction**

The Working Time Directive regulations introduced in October 1998 entitles “Night Workers” to a free health check at regular intervals. The purpose of this assessment is to determine an employee’s suitability to undertake night work and to identify health issues, which could be affected by such work. It is also to ensure that the Trust (so far, as is reasonably practicable) ensures the Health, Safety and Welfare of its employees who work night duty.

**Frequency of Health Checks**

Health checks will be available to night workers at the request of managers or employees. It is expected that managers will discuss this with employees annually. Staff or managers who feel that night work may be impacting on an employee’s health between these discussions can contact the Occupational Health Department for advice at any time.

**The Procedure**

**Manager responsibility:** On an annual basis (e.g. as part of the CONTACT process) staff who work night shift should be asked if they would like to have a night worker health assessment and document the fact that this has been offered and the employee’s decision. If required, the manager is to contact a member of the occupational health nursing team to arrange this. On receipt of a report from the Occupational Health Department, the manager will need to consider any recommendations made as below.

**Occupational Health Nurses responsibility:** On being advised that an employee requires a night worker health assessment, he occupational health nurse will send out the relevant questionnaire to the employee and on receiving the completed form will carry out the screening. This will in most cases consist of a review of the answers given followed by telephone contact if needed to obtain further information (employees should be offered opportunity to attend the department if they would prefer). If needed, a referral to or discussion with the Occupational Health Physician will be arranged. On completion of the screening, the questionnaire and any documentation will be recorded in the employee’s occupational health records. The manager will be issued with a report regarding the employee’s fitness to continue with night work. The employee will also be offered a copy of this report.

**Transfer of Night Workers to Alternative Duties**

Where the employee is found suffering from health problems related to night work, the Trust will wherever possible consider alterations to shift patterns, the working environment and transfer to alternative duties. Following this, the employee will be managed as per the Trust’s Sickness Absence Policy.
**Confidentiality**

All medical information will be confidential to the Occupational Health Department and will not be disclosed to any other party without the employee’s consent. The Occupational Health Department will however advise managers of any potential health and safety risks for the employee or employer are identified as part of the assessment and any adjustments or restriction in duty that are felt necessary to reduce the risks.

**Risk Assessments**

All departments conduct risk assessments under the Trust’s Risk Management Strategy, thereby identifying Health and Safety risks and reducing them to their lowest level possible. While workplace hazards are not likely to change with night work, it is recognised that the identified risks may be greater at night, particularly where individuals are suffering from, or are susceptible to certain medical conditions. Therefore, the Trust not only deems health assessments as necessary under the Working Time Regulations, but essential as an overall approach to risk management.
Health Assessment of Night Workers
The Procedure at a Glance

Manager to offer employees who work night shift a health assessment via occupational health on an annual basis and to document offer and employee’s decision in personal file

Assessment wanted

Yes

Manager to contact Occupational Health Nurses to arrange.

Occupational Health Nurse to send employee questionnaire, carry out screening, liaise, arrange any necessary referral to Occupational Health Physician and inform manager of outcome. If questionnaire not received it will be assumed employee no longer requires this

Occupational Health Nurse to enter questionnaire and any documentation into occupational health records, to send manager report and to send copy of this to employee.

No

No further action unless manager has concerns re employee’s health in relation to night work. If so manager via normal process can make referral to occupational health.

Manager to consider any recommendations regarding adjustments or restrictions on duties advised by Occupational Health.

Julie Orr Occupational Health Nurse Manager 19.10.2010