WORKING TIME AGREEMENT

Please note there are a number of policies and procedures that require review. It was agreed at the Local Partnership Forum (LPF) on 29 October 2009 that this be delayed where possible until circulation of revised National PIN Guidelines before completing local updates to these policies and procedures. Revised National PIN Guides are anticipated to be circulated in the next 6 months. In the meantime, current local policies and procedures will remain in place and any updates in accordance legislation will continue to be highlighted and circulated via Local Partnership Forum. It was agreed that this arrangement be reviewed again April 2010.

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1. **Introduction**


These Regulations provide new rights for employees ensuring that they do not have to work excessive hours.

In broad terms, implementing the Regulations means:

- establishing minimum daily and weekly rest periods;
- granting four weeks paid annual leave (3 weeks prior to 23 November 1999);
- ensuring that the average working is limited to no more than 48 hours (although special arrangements can be made to allow individuals to voluntarily disapply this limit);
- limiting the hours of night workers;
- ensuring regular health assessments for night workers and if necessary transfer to day work.

2. **Responsibilities - Line Managers and Employees**

2.1 *Line Managers*

This document provides guidance on the limits on working time and the entitlements provided in the Working Time Regulations. It also provides information on the arrangements which have been made in order to implement the Regulations in Shetland NHS Board (The “Collective Agreement for Working Time Regulations”).

This guide seeks to answer commonly raised questions regarding the implementation of the Working Time Regulations. Please refer to the relevant sections in the Collective Agreement for definitions etc.

Line Managers are responsible for ensuring that these Regulations are implemented appropriately within their sphere of responsibility and that local arrangements/procedures are amended/developed as required. Further advice can be sought from the Personnel Department.
2.2 **Employees**

Employees have a responsibility to inform their Manager of all hours worked in all concurrent employment. This responsibility is incorporated into all Contracts of Employment as from 1 April 2001.

3. **Maximum Weekly Working Time**

Employees will normally not be expected to work more than 48 hours per each seven day period calculated over an averaging period of 17 weeks (this may be extended to 26 weeks but only through agreement in the Local Partnership Forum).

Working Time is any time when an employee is “working, at their employer’s disposal and carrying out activities or duties”.

For time to be classed as working time all three elements must be satisfied.

Working time excludes meal breaks.

Line Managers must keep adequate records of employees working times in order to demonstrate that the limits on maximum working weekly time have been complied with.

3.1 *Does working time include any other time?*

Working time will also include any time during which an employee is receiving any relevant training; undertaking civic and public duties; carrying out Health & Safety and/or trade union duties plus any additional time which is covered under the Collective Agreement.

Such time may or may not, happen to coincide with the time for which an employee receives pay or with the time during which the employee may be required to work under their contract or employment.

3.2 *Has the Board made any arrangements to add to the definition of Weekly Working Time with Staff Side Representatives?*

Yes. The following has been agreed:

i) Where individuals are required to work during meals this will be classed as working time. An example of this is that of a worker obliged to participate in a working lunch.

ii) Where an employee takes work home, time worked would only count as working time where work at home was performed on a basis previously agreed with the Line Manager.
iii) Time spent travelling to and from a place of work is not working time, unless the employee is engaged in travel that is required by their job (but note travel to work when responding to a call when on-call duty is classed as working time)

**Calculating Weekly Working Time**

Average weekly working time is calculated by dividing the number of hours worked by the worker by the number of weeks in the reference periods i.e. 17 weeks.

The calculation of average weekly working time must take account of periods where a worker is absent due to annual leave, sick leave, maternity leave or any working days that are covered by an agreement in which the worker has consented to work in excess of the weekly working time limits.

If any such time falls within a reference period, time is added to compensate for the absence.

To do this, the number of hours worked in the first working days after the reference period should be added to the total working hours. The number of working days taken into account should be the same as the number of days missed from the reference period. The additional days are counted in both the reference period in which the leave falls and the subsequent one.

The average weekly hours can be calculated using the following 2 examples:-

**Example One**

A worker has a standard working week of 37.5 hours and does overtime of 20 hours a week for the first 10 weeks of the 17 week reference period. No leave is taken during the reference period.

The total hours worked is:-

\[ (17 \times 37.5) + (10 \times 20) = 837.50 \]

Therefore the average is: \[ 837.50 \div 17 = 49.26 \text{ per week} \]

Therefore, the average limit of 48 hours has not been complied with.
Example Two

A worker has a standard working week of 37.5 hours and does overtime of 5 hours a week for the first 6 weeks of the 17 week period.

4 days annual leave entitlement are also taken in the reference period.

The total hours worked in the reference period is:-

16 weeks and 1 day (37.5 hours a week and 7.5 hours a day) and 6 weeks of 5 hours of overtime.

\[(16 \times 37.5) + (1 \times 7.5) + (6 \times 5) = 637.50\]

To this must be added the time worked for the 4 days annual leave entitlement. In the first 4 working days after the reference period the worker does no overtime, so 4 days of 7.5 hours work should be added to the total:

\[4 \times 7.5 = 30\]

Therefore the average is (total hours divided by number of weeks)

\[637.50 + 30 \div 17 = 39.26 \text{ hours per week}\]

and so the average limit of 48 hours has been complied with.

3.3 From which date does the reference period commence?

Reference periods can relate to any point in time.

3.4 What happens if I have an employee who was not in employment on the date the reference period commenced?

Where an employee has worked for an employer for less than the number of weeks in the reference period, the number of weeks actually worked should replace the number of weeks in the reference period.

4.0 On Call

The NHS Executive considers that time when an employee is “on-call” but otherwise free to pursue their own activities is not working time.

As described previously “Working Time” is defined as any time when an employee is “working, at their employer’s disposal and carrying out activities or duties”. For time to be classed as working time all three elements must be satisfied.
This means that although an employee who is “on call” can be contractually paid for being “on call” for the purposes of the Regulations “working time” does not start until they have received a call to go to work. Once the employee receives the call or the employer has contacted them by some other means, “working time” will commence from then on.

This also includes for example Nurse Managers who may be called to give advice over the telephone. The period they are on the telephone giving such advice can be counted as “working time”.

A distinction should be made between those employees who need to respond immediately and those who are warned in advance (e.g. theatre nurses who may be advised that they will be needed in a couple of hours). In the latter case “working time” should not start until the employee has left his/her residence.

In some cases, employees can be called out for long periods of time, at night. In these cases local arrangements must be considered, in order to take into account the intensity of work, which an employee may be required to do whilst “on call” and ensure that compensatory rest is taken.

Managers will require to keep records of the hours actually worked by employees on call.

5. **Compulsory Resident**

Where employees are required to be resident on NHS premises for the duration of a specified period, they are not free to pursue their time as their own and so are regarded as working for the purposes of this agreement.

In these cases, departmental arrangements should be considered, in order to ensure that hours worked and intensity of work are recorded to ensure that appropriate compensatory rest is taken.

Under normal circumstances, the Board does not require employees to be compulsory resident whilst performing on call duty. In exceptional circumstances (e.g. severe weather) or when an employee with an on call commitment lives outwith reasonable travelling distance of the place of work, the Board will provide the facility of on call accommodation near to the place of work.

6. **Individuals Opting to Work More Than 48 Hours Per week**

Employees may choose to work more than the 48 hour average weekly limit provided that they agree this with their employer in writing. An opt out form has been devised for use in these occasions. This form is shown in Appendix 2 of the Collective Agreement.
7. **Employees with More Than One Employer**

The Working Time Regulations require employers to take all reasonable steps to ensure that employees do not exceed an average of 48 hours of weekly working time.

Such steps would include advising all employees of their obligation to inform management of all hours worked in current or future employment outwith the Health Board.

Provided this advice has been given, the requirement has been carried out, irrespective of whether or not the employee is willing to provide information. Line Managers must decide how they wish to be notified of an employee getting other work. Appendix 2 of the Collective Agreement provides a proforma which employees would complete on a monthly basis with payroll duty sheets etc.

Each employer would be responsible for ensuring that they provide adequate rest breaks according to the hours worked which the employee works for them.

7.1 *Do the hours that an employee works for another employer have to be included in the calculation for weekly working time?*

Yes. However, if an employee is self-employed outside their employment, these hours do not have to be included.

7.2 *What do I do if I identify an employee is working more than 48 hours?*

You should ask staff to either sign the waiver for (Appendix 2 of the Collective Agreement) to disapply the 48 hour weekly working limit or to reduce their hours to below the 48 hours average weekly limit.

You will also have to take adequate steps to ensure that patient and staff well-being are not adversely affected as a result of employees working in excess of the maximum average weekly limit - it may be appropriate to seek advice from the Occupational Health Department in these circumstances.

7.3 *Can an employee be asked who they are working for and the type of work which they are doing?*

It is not necessary for the employee to give their line managers details of their other employer and the type of work which they are performing. However, in some cases there may be conflict of interest. If this is the case the onus is on the employee to discuss this with their Line Manager.
7.4  *Does this include any work that an employee may do on a bank?*

Yes.

8.  **Rest Breaks**

Line Managers must make departmental arrangements in order for employees to take their breaks (at least 20 minutes where the working day is 6 hours or more). In circumstances where work is repetitive, continuous or requiring exceptional concentration, Line Managers must ensure the provision of adequate rest breaks as an integral part of their duty to protect the health and safety of the employee.

9.  **Minimum Daily Rest Periods**

Employees should normally have a rest period of not less than 11 hours in each 24 hour period.

In exceptional and occasional circumstances where, because of the needs of the service, this is not practicable daily rest may be less than 11 hours. In such cases, records should be kept by the line manager which will on request be made available to locally recognised trade unions.

Any proposed regular amendments to minimum daily rest periods must be agreed at department level in advance with Staff Representatives.

10  **Weekly Rest Periods**

Employees are entitled to receive an uninterrupted weekly rest period of not less than 24 hours. Taken in conjunction with the minimum daily rest period above, this amounts to one period of 35 hours consecutive rest per seven day period. Where it is not possible to provide this rest, employees should receive equivalent rest over a 14 day period, either as one 70 hour period or two 35 hour periods.

Line Managers need to ensure that all entitlements to rest are provided.

11  **Night Workers**

The Collective Agreement provides that a night worker is someone who normally works at least 3 hours per working day during the night time hours (11.00 pm - 6.00 am).

Line Managers must ensure that the normal hours of night workers do not exceed an average of 8 hours per night over a 17 week period.
Calculation is not affected by absence from work e.g. sickness, holidays etc. as the 17 week reference period must include hours the employee would have worked had they been at work.

**Calculation of Average Night Hours**

Average night hours can be calculated as follows:-

Average night hours = \( \frac{\text{total normal hours worked over 17 weeks (x hours)}}{\text{total days in reference period - statutory rest days}} \)

\[ = \frac{x \text{ hours}}{119 - 17} \]

\[ = \frac{x \text{ hours}}{102} \]

**Example:** A night worker works 4 x 10 hour shifts each week, therefore, total hours over 17 weeks = 680 hours.

Average night hours = \( \frac{680}{102} \) = 6.6 hours

This, therefore, falls below the average nightly 8 hour requirements for the reference period.

12. **Health Assessment for Night Workers**

All night workers are entitled to and will be offered a regular, free and confidential health assessment. The Board will advise all night workers of this entitlement and request that they contact the Occupational Health Service. This includes staff on rotational contracts who should be advised prior to the rotation to night duty. The health assessment is not mandatory if staff choose not to participate.

13. **Transfer of Night Workers to Day Work**

A night worker is entitled to be transferred, whenever possible, to other work which is not at night, where the Occupational Health Service has advised the employer that the employee is suffering from health problems connected with the fact that they work at night.

Where an employee's fitness for night work becomes affected by a disability, the employer has a duty under the Disability Discrimination Act 1995 to make reasonable adjustments, which might include changes to the employee's hours of work or pattern or work.
All transfers to day work will attract the terms and conditions appropriate to the new post.

14. **Annual Leave**

The Terms and Conditions offered to employees in relation to Annual Leave entitlement are already more favourable than those offered within the Working Time Regulations.

14.1 *Is there a qualifying period to the entitlement to annual leave? (see question 14.2 for bank staff entitlement)*

Under the Regulations an employee must have worked for the employer for 13 consecutive weeks before entitlement to leave arises. However, during this time annual leave is still accrued.

Employees are not required to adhere to this restriction, thus allowing employees to be able to take up their entitlement to annual leave from the first day of their employment.

14.2 *What about Bank Staff and Annual Leave?*

Employees with substantive full time contracts, who work additionally for the bank, will not be entitled to further leave.

Bank staff will only be entitled to annual leave if they do not receive contractual annual leave from any other employer. Calculation of annual leave entitlements will be:

1 hours annual leave for every 12 hours worked (approximately).

14.3 *When does Annual Leave Year commence?*

For the purposes of this agreement the leave year runs from 1 April until 31 March in each year, unless otherwise agreed within an employee’s contract of employment.

14.4 *Can annual leave be carried over?*

The Regulations do not allow the carry over of statutory entitlement to annual leave. Please refer to General Whitley Council Section 1 paragraphs 10-14 for contractual conditions.

14.5 *Can Annual Leave be replaced by a payment “in lieu”?*

Annual leave cannot be replaced by an “allowance in lieu” except where the employment relationship is terminated. Where an employee’s employment is terminated during the course of the leave
year and where the proportion of leave taken is less than the proportion of the leave year which has expired then the employee is entitled to a payment in lieu of untaken leave.

15. **Compensatory Rest**

Where it has not been possible to take the full entitlement to rest provision, employees are eligible to compensatory rest.

Line Managers are responsible for ensuring that compensatory rest is provided, within a reasonable time from when the entitlement to rest was modified. This is usually within two weeks from when the entitlement to rest was modified. Line Managers must assess the urgency of the timing of compensatory rest in terms of the health and welfare of both staff and patients/clients.

Compensatory rest does not necessarily mean providing an employee with time off in lieu.

It is believed that all employees are currently afforded equivalent periods of compensatory rest. It is argued that as an employee cannot, unless by derogation or individual agreement, work more than 48 hours per week and they are statutory entitled to 90 hours rest per week and there is 168 hours available per week then:

\[
168 \text{ (hours available per week)} - 90 \text{ (daily and weekly break hours)} = 78 \text{ hours}
- 48 \text{ hours (working time)} = 30 \text{ hours that could be used as compensatory rest.}
\]

So that if an employee works late shift one day then early shift the next they will only get 10½ hours rest rather than 11 hours. This employee however has two days off per week, where the Regulations state that they are entitled to 24 hours off. The additional 24 hours are compensatory rest. There will be exceptional circumstances where time off in lieu will be required to be given and departmental arrangements will be required to be made.

16. **Record Keeping**

Line Managers must keep records for each employee which are adequate to ensure that the limits specified in the following Regulations are being complied with:

- Weekly working time limits
- Night worker's average hours
- The requirements on Health Assessments and transfer of night workers to day work
Records must also be kept to ensure that the limits specified in the following Regulations are being complied with and that, where there is an entitlement, compensatory rest is provided.

- maximum working weekly time
- rest breaks
- daily rest
- weekly rest periods
- night work

These records must be kept for a period of 2 years from the date on which they were made (although they may be required for a longer period for other purposes e.g. audit).

There is no requirement to keep records of annual leave for the purposes of the Regulations.

Records kept in accordance with the Regulations should be made available to the appropriate enforcing authorities. Where appropriate, records may be made available to other interested parties including Trade Union representatives.

An employer may find a number of ways in which to meet this duty, for example, it may be sufficient for an employer with employees who keep regular hours (e.g. 9 am to 5 pm) for the employees to notify the employer that they are working in excess of the standard working hours, then the employer could monitor the hours worked by the worker more closely, or adjust the work that a worker is being asked to do, to ensure compliance.

It should be remembered that although an employer is not required to keep records of the average number of hours an employee has worked over the relevant reference period if they have agreed to disapply the 48 hour weekly working limit the employer has agreed to undertake this record keeping as good practice.

Each Line Manager is required to implement their own recording procedure under the guidance given.
17. **Records for Bank Staff**

Although bank employees conduct their work in particular circumstances it is imperative that the same record keeping practices are followed as those for permanent employees.

The areas for record keeping are listed below:

- hours worked under Board employment
- hours worked for another employer
- a written agreement to work in excess of the average 48 hour limit (if applicable)
- health assessment details in cases of night workers.
- compensatory rest accrued (if applicable)

18. **Review**

As case law and guidance emerge on the Working Time Regulations, this document will be amended as appropriate by the Partnership Forum.

1. **INTRODUCTION**

The driving force behind the working time regulations is E.U. health and safety law which seeks to protect workers from the effects of long working hours. This is to be achieved by placing obligations on the employer to ensure a maximum limit of weekly working hours and working patterns which allow for reasonable rest periods.

The regulations provide for:

- An average working week of 48 hours
- Uninterrupted rest break of 20 minutes when the working day is longer than 6 hours
- Minimum daily rest period of 11 consecutive uninterrupted hours between shifts
- A minimum of 24 hours rest in a seven day period = 35 hours including the daily rest break
- A limit of 8 hours night work on average (except when work involve special hazards or physical and mental strain where a night shift worker can not exceed 8 hours)
- Free health assessment for night workers
- Four weeks paid annual leave

The Whitley Council Agreement Section 44 (applying to all NHS staff except Medical and Dental) does allow some flexibility and derogation from the regulations where a local agreement has been reached with recognised staff side organisations. In reaching a local working time agreement, employers
and staff representatives of the Partnership Forum will ensure that arrangements do not discriminate against members of staff with family or other carer responsibilities.

2. **WHO IS COVERED BY THE AGREEMENT?**

Worker (Employee)

For the purposes of this agreement a worker (referred to as an employee within this agreement), means an individual who has entered into or works under (or, where the employment has ceased, worked under):

- A contract of employment; or
- Any other contract, whether expressed or implied and (if it is expressed) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract, whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

Agency Employees

Agency employees working within the Board are covered under the scope of the Regulations and have a right to all the health and safety entitlements provided. However, the responsibility for ensuring compliance with the Working Time Regulations lies with the Agency and not the Board. Although the Agency will be recognised as the employer in terms of the Regulations, the Board must comply with the requirement for in-work rest breaks.

Non-Employed Trainees

For the purposes of these Regulations, a person receiving training, other than under a contract of employment, shall be regarded as an employee, and the person who is providing the training shall be regarded as the employer.

3. **RECORD KEEPING**

Records must be maintained which are adequate to ensure compliance with the various time limits specified in the agreement. These records must be kept for a period of 2 years from the date on which they are made for the purposes of inspection by the appropriate enforcing authorities (but they may be required for a longer period for other purposes e.g. audit). Records kept in accordance with Regulations must be made available to the appropriate enforcing authorities on request and also in the interests of good employee relations, to staff side representatives.

There is no requirement under the Regulations to keep records regarding annual leave or rest periods, unless compensatory rest is required.
Where employees work less than an average of 48 hours per week (over a 17 weeks reference period), a copy of the contract of employment and any relevant duty and overtime sheets would be sufficient evidence that the 48 hour week is not being exceeded. Records, in accordance with the Regulations, do not require to be kept for those staff who opt out of a 48 hour week. An individual timesheet which will allow identification of hours worked per week, in work rest break, weekly rest and daily rest is attached as Appendix 1 but is not mandatory if individual departments maintain records which allow monitoring of maximum weekly working time rest breaks, daily rest, weekly rest and night work.

4. **MAXIMUM WEEKLY WORKING TIME**

The definition of weekly maximum weekly working time laid out within the General Whitley Council agreement is as follows:

- Working time is any time when an employee is working, at their employer’s disposal and carrying out activities or duties’. For time to be classed as working time all of the above three elements must be satisfied. Such time may or may not, happen to coincide with the time for which an employee receives pay or with the time during which the employee may be required to work under their contract of employment.
- Working time will also include any time taken for any relevant training; civic and public duties; health and safety; and trade union duties plus any additional time which may be covered by this collective agreement.

Employees will not normally be expected to work more than 48 hours in any seven day period calculated over an averaging period of 17 weeks. This reference period may be extended to up to 26 weeks by agreement of the Partnership Forum.

Working time is calculated exclusive of meal breaks, except when, with the prior agreement of their manager, an employee is required to work during meal times. An example of this would be where an employee is obliged to participate in a working lunch. Where an employee takes work home, time worked will only count as working time if the work undertaken was previously agreed with their manager. Time spent travelling to and from a place of work is not working time, unless the employee is engaged in travel during the course of their duties.

5. **ON CALL**

Employees who are required to be “on-call”, i.e. participating in an on call rota and available to work if called upon, will be regarded as working from the point at which they are required to undertake any work related activity including travelling time. Where employees are on-call but otherwise free to pursue their own interests this will not count towards working time. This method of calculating working time does not affect on-call payments.
In some of the Board’s services, employees can be called out for long periods of time, at night. In such cases managers must consider implementing local agreements, which take account of the intensity of work an employee is required to do whilst “on-call” in order to ensure that compensatory rest is taken. This may take the form of, for example, a delayed start time on the working day following an on-call commitment if the employee has failed to achieve 11 hours daily rest.

6. **COMPULSORY RESIDENT ON-CALL**

Under normal circumstances, the Board does not require employees to be compulsory resident in their premises whilst performing on-call duty. In general it is agreed that is an individual’s personal responsibility to ensure that they are contactable and available whilst on-call to reach the workplace in time to meet clinical commitments.

In exceptional circumstances (e.g. severe weather), or where an employee whose duties involve on-call commitment lives outwith reasonable travelling distance of the place of work, the Board will provide the facility of on-call accommodation near to the place of work. In such cases the employee can choose to avail themselves of the on-call accommodation in Board premises.

Where employees are required by the Health Board to sleep over on NHS premises for the duration of a specified period, and are not free to pursue their own interests, they are regarded as working for the purposes of this agreement. In some cases employees will work more than the average maximum number of hours stated within the Regulations. In such cases managers must consider implementing local agreements, which take account of the intensity of work an employee is required to do whilst sleeping over, in order to ensure that compensatory rest is taken.

7. **EMPLOYEES OPTING TO WORK MORE THAN 48 HOURS PER WEEK**

Employees may choose to agree to work more than the 48 hour average weekly limit. However, this must be in agreement with their Head of Department. Exercising this option is an individual, voluntary choice and no pressure should be placed on an employee to take such a decision. However, if an employee chooses to work more than 48 hours per week a written agreement will be required (see Appendix 2).

Such an agreement must:-

(a) identify the employee by name and job title and show their normal contracted working hours;

(b) if it is to be for a specific period, clearly state the relevant dates and give the reason for the increased hours, e.g. the absence of a colleague or an increase in workload;
(c) if it is to be for an indefinite period, clearly state this and if appropriate, include a date for review;

(d) state if it is for the purpose of allowing an employee to maintain more than one job;

(e) state the notice period under which the agreement may be terminated.

If an employee is also working for another employer, the agreement must state the regularity and basis upon which the employee will inform the employer of the hours they are working within another job.

To allow for individual flexibility, notice periods to amend the agreement should be negotiated between the employee and their manager at the time the agreement is made. Notice must be given in writing. In accordance with the Working Time Regulations the notice period to terminate an agreement should not be more than 3 months.

8. **EMPLOYEES WITH MORE THAN ONE EMPLOYER**

The Working Time Regulations require employers to take all reasonable steps to ensure that employees do not exceed an average of 48 hours of weekly working time. Such steps include enquiring whether an employee is working elsewhere or requesting that they be informed of an employee getting other work.

Employees have a responsibility to notify Line Managers of other work for a different employer. Existing staff will be required to state on the individual monthly timesheet if they regularly work for any other employer. In such circumstances they will be informed of the Board’s position and of their responsibilities relating to multiple employments and the Working Time Regulations. If total working hours from all employments exceed 48 hours on average per week, the employee will be asked to confirm that this is a voluntary individual choice.

Job applicants will be asked to provide information about total hours of work in all posts. The interview panel will be responsible for considering the impact on patients, services, colleagues and the individual if total hours to be worked are in excess of the 48 hour limit.

It may be the case that an employee may have more than one contract of employment with the Board. Under such circumstances the Board will take all reasonable steps to ensure that these employees work no more than 48 hours on average per week.
9. **IN WORK REST BREAK**

Where the working day is longer than six hours, all staff are entitled to take a break of at least 20 minutes. Rest breaks must be taken 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 also be able to take this rest break away from their work station. In exceptional circumstances, if it is agreed by the employee and their line manager that an employee is unable to take a rest break, the unused entitlement should be claimed as a period of equivalent compensatory rest. However, the Regulations do not require for rest breaks to be paid.

There is recognition that, on occasions, an employee may not be able to take the rest break away from their workstation. Only in exceptional circumstances (and where the employee's activities involve the need for continuity of service in relation to reception, treatment or care of patients) should an employee be required to work through their in work rest break. Compensatory rest must be available within a reasonable period, probably two weeks.

Arrangements for employees to take their breaks will be agreed at department level. Existing department arrangements which already provide for breaks of more than 20 minutes will meet the requirements of this provision and no further action is necessary.

In circumstances where work is repetitive, continuous or requiring exceptional concentration managers must ensure the provision of adequate rest breaks as an integral part of their duty to protect the health and safety of employees. In such circumstances the advice of the Occupational Health Service should be sought.

10. **MINIMUM DAILY REST PERIODS**

Employees should normally have a rest break of not less than 11 hours in each 24 hour period. In exceptional circumstances, due to the needs of the service, the daily rest given is less than 11 hours, compensatory rest (see Section 15) must be provided.

Any proposed regular amendment to the minimum daily rest period must be agreed at department level in advance with staff side representatives.

The Board believes working patterns should allow for sufficient time off between periods of working time for rest. It is recognised that in some areas current working practice may not allow for a minimum of 11 hours between periods of duty but it may not be practicable to offer meaningful compensatory rest. In these exceptional circumstances employees must receive other appropriate protection.

Failure to achieve 11 hours daily rest normally occurs in two circumstances:
(a) Where hospital nurses work a late shift followed by an early shift. The gap between the end of the late shift and the commencement of the early shift is 10½ hours. If this working pattern occurs more than twice in a seven day period compensatory rest may not be practicable.

(b) Where an employee performs on-call duty and is called to work thereby interrupting 11 hours of continuous rest before their return to duty for the normal working day. This can occur for employees who are part of an on-call rota or for single handed specialists (e.g. Community Nurses on Non Doctor Islands etc) who are effectively on-call at all times outwith the normal working day.

It is therefore proposed that working patterns are reviewed and where they fall outwith the terms of the Working Time Regulations alternate approaches are considered. The review involving all relevant parties and led by the Partnership Forum should address areas of non compliance within a period of one year from the implementation of this agreement.

11. WEEKLY REST PERIODS

Employees are entitled to receive an uninterrupted weekly rest period of not less than 24 hours. Taken in conjunction with the minimum daily rest period indicated above this amounts to one period of 35 hours consecutive rest per seven day period.

Where it is not possible to provide this rest, employees should receive equivalent rest over a 14 day period, either as one 70 hour period or two 35 hour periods.

12. SHIFT WORKERS

Where an employee changes shift, it may not be possible for them to take their full rest entitlement prior to starting their new pattern of work. Similarly, employees who work split shifts, for example, staff on morning and evening shifts, may not be able to take their full rest entitlement between shifts. The Regulations indicate that in these circumstances, daily and weekly rest entitlements do not apply. However, within the Board where the full daily and weekly rest periods cannot be taken, arrangements should be made to allow equivalent compensatory rest as soon as possible.

13. NIGHT WORKERS

For the purposes of this section an employee who works during night time is referred to as a Night Worker with night time being defined as the hours between 11pm and 6am. A night worker is someone who normally works for at least three hours a day during night time hours. Normal hours are those which are regularly worked and/or fixed by a contract of employment.

Managers must ensure that the normal hours of night workers do not exceed an average of 8 hours per night over a 17 week period. Calculation is not
affected by absence from work, as a worker’s normal hours of work would remain the same regardless of the actual hours worked. Time worked as overtime is not classed as normal hours.

13.1 Special Hazards and Heavy Physical or Mental Strain

In accordance with the General Whitley Council, employers must identify, using risk assessment tools, any special hazards faced by night workers which pose a significant risk to health and safety in accordance with the Management of Health and Safety at Work Regulations 1992. Employers must ensure that night workers, whose work does involve special hazards or heavy physical or mental strain, do not actually work for more than 8 hours at night in any 24 hour period.

However, for the purposes of this agreement, the Board has taken the view, that there are no employees within the Board whose work involves special hazards or heavy physical or mental strain.

13.2 Health Assessments

All night workers are entitled to and will be offered a regular, free and confidential health assessment. The Board will advise all night workers of this entitlement and request that they contact the Occupational Health Service. Staff on rotational shifts should be advised of the assessment prior to a rotation to night duty. When a work related problem is identified as a result of the health assessment or otherwise, managers must determine whether the worker is fit to undertake the night work to which they have been assigned. Paid time off will be given to employees to attend for a health assessment.

Within the Board the health assessments will be undertaken by the Occupational Health Service. Periodic reassessments which are required by these Regulations will be agreed on an individual basis between the employee and the Occupational Health Service. The assessment is not mandatory for staff who choose not to participate.

The requirements of these Regulations do not remove the responsibility of the employee or their manager to contact the Occupational Health Service for advice and guidance if problems occur outside the assessment date.

Employees identified by the Occupational Health Service as having health problems related to night work should be offered wherever possible the option of transfer to suitable day work with the appropriate pay and conditions of service.
14. **ANNUAL LEAVE**

Employees are entitled to four weeks paid annual leave pro-rata (three weeks from October 1998-November 1999). Entitlement to this annual leave is not in addition to existing contractual entitlements (i.e. contracted annual leave, bank, public or statutory holidays). Taking contractual paid leave in a particular leave year therefore counts against an employee’s entitlement under the Regulations. This means that those employees with substantive full time contracts, who work additionally for the bank, will not be entitled to further leave. There is no statutory entitlement to bank or public holidays. These are simply days where an employee receives paid leave under the terms of their contract.

An employee who commences employment part way through a leave year is entitled to leave proportionate to that period of the leave year remaining. If the period of leave includes a proportion of a week, this shall be calculated in days with any part days being treated as whole days. Under the Regulations an employee must have worked for the employer for 13 consecutive calendar weeks before entitlement to leave arises. However, during this time annual leave is still accrued. Employers are not required to adhere to this restriction, thus allowing employees within the Board to be able to take up their entitlement to annual leave from the first day of their employment as is currently the practice.

Annual leave cannot be replaced by an “allowance in lieu” except where the employment relationship is terminated. Where an employee’s contract is terminated during the course of the leave year and where the proportion of leave taken is less than the employee is due, then the employee is entitled to a payment in lieu of untaken leave. Where an employee has taken more leave than that to which they are entitled at the date of termination, the Board should be compensated by way of a payment or by the employee undertaking additional work.

Mere absence from work during what would otherwise be time when the employee would be engaged on normal work tasks does not necessarily constitute leave. For example, an employee might be carrying out representative duties for which time off work was allowed by the employer. The Regulations set out conditions in respect of notice of intent to take annual leave and notice of the requirement to take or not to take the leave at certain dates or times. Arrangements should be made at department level in this regard.

Payment of annual leave is calculated in accordance with Appendix 3 which reflects the guidance from the Scottish Partnership Forum Working Group.

15. **BANK NURSES AND CASUAL STAFF**

Bank or casual staff employed on an “as and when required” basis will be entitled to annual leave if they do not already receive contractual annual leave from other Health Board employment or from any other employer. Calculation
of annual leave payments will be in accordance with the formulae devised by
the Scottish Payroll Manager's Working Group.

16. **COMPENSATORY REST**

The principle underpinning compensatory rest is that it is a meaningful alternative to being able to take rest (i.e. in work rest break or the daily rest break) at the appropriate time. It is acceptable only when rest has not been taken and where the worker’s activities involve the need for continuity of service in relation to reception, treatment or care of patients. In order to be meaningful or relevant compensatory rest must be available as soon as possible after the missed rest period but it is recognised that this will require a flexible approach to provide cover.

In circumstances where an employee’s entitlement to an in work rest break or daily rest break either does not apply or is modified, the employee must be permitted to take an equivalent period of compensatory rest or in exceptional cases, where providing equivalent compensatory rest is not possible, be given other appropriate protection. Line Managers are responsible for ensuring that compensatory rest is provided, within a reasonable time, usually within two weeks or that appropriate protection is afforded in exceptional circumstances.

Compensatory rest for failure to achieve 11 hours daily rest does not necessarily mean providing an employee with time off in lieu. Employees can currently be afforded opportunities for compensatory rest throughout the course of their working week. An employee cannot, unless by individual agreement, work more than an average of 48 hours per week. They are entitled under the Regulations to 90 hours rest per week (6 x 11 hours of daily rest plus 1 x 24 hours of weekly rest). There are 168 hours available per week, so therefore:

- \( 168 \text{ (hours available per week)} - 90 \text{(daily and weekly break hours)} = 78 \text{ hours} \)
- less 48 hours (working time) = 30 hours available for compensatory rest.

Therefore, in most circumstances there is adequate opportunity for compensatory rest to be given.

However, there will be exceptional circumstances where time off in lieu must be given. In these circumstances, department arrangements must be made.

17. **REVIEW**

This agreement will be reviewed no later than one year after its implementation. However, if difficulties arise in the implementation of any section of this agreement a review earlier will be considered.
* Please delete as appropriate

* I confirm that this is my only regular employment

or

* I confirm that I have other regular employment with another employer(s) but that my average hours of work do not exceed 48 per week.

or

* I confirm that I have other regular employment and my total hours of work with all multiple employers exceed in average of 48 per week. I confirm that this is of my own voluntary individual choice. I believe that I am fit to undertake these hours of work and I am not overtired.

Signed:………………………………

Name:………………………………

Date:………………………………
APPENDIX 2

INDIVIDUAL OPTION TO WORK MORE THAN 48 HOURS PER WEEK

Employees may choose to work more than the 48 hour average weekly limit provided that they agree this with their Head of Department in writing.

This form is intended for this purpose and should be completed by both the employee and their Head of Department and kept with the employee’s personal file.

Name ........................................................................................................................................

Job Title ....................................................................................................................................

Contracted Hours ........................................................................................................................

Period of the Agreement ................................................ to .................................................

Reason for the Agreement .................................................................
(if applicable)
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................

If the employee is working for another employer the terms on which the employee is to provide their Head of Department with details of the additional hours they are working within another job, must be stated below:-

........................................................................................................................................
........................................................................................................................................
........................................................................................................................................

Period of notice terminate .................................................................
this agreement

Signed (Employee) ........................................................................................................

Date of signing ...............................................................................................................

Signed (HOD) ............................................................................................................

Date of signing ............................................................................................................