Briefing for MPs on EU working time regulation and the NHS - Westminster Hall debate, 26th April 2012

Who we are:
The NHS Employers Organisation (NHSE) is the representative organisation for employers in the NHS. NHSE is active in all matters relating to employment in the NHS. Our key work areas are: pay and negotiations, recruitment and planning the workforce, healthy and productive workplaces and employment policy and practice. We work with the HR community and the whole range of Board level members to ensure we arrive at a position based on the views of employers. NHSE is part of the NHS Confederation which represents all the organisations that make up the NHS.

Introduction
We support the need for controls on working hours for all doctors, including doctors in training. This helps ensure safe working, a decent work-life balance and improved patient care.

However, implementation of the European Working Time Directive (EWTD) has been a major undertaking for the NHS that has required substantial organisational changes. While compliance may have been achieved, there are still significant challenges to ensuring that service delivery and standards of training are maintained. Below we have detailed our views on behalf of employers in the NHS.

Key points:
- The implementation of the 48-hour working week has, for the most part, been successful. However, there remain challenges to ensuring that service delivery and standards of training are maintained.
- Employers have achieved positive results without needing to have excessive working hours. They have done this by improved handovers, better team working at night, more involvement by doctors in designing their own working patterns, less reliance on junior doctors and more involvement of consultants during the out-of-hours periods.
- The EWTD is currently being reviewed at European level. Negotiations are ongoing between employers’ organisations and trade unions with the aim of agreeing revised legislation. We are actively involved in supporting these negotiations.
- We would like the European Commission to reinterpret the European Court of Justice rulings on on-call hours and compensatory rest (whereby currently time spent asleep on-call at the workplace counts towards the 48-hour working week). This would help ease pressure on rotas and reduce the resulting impact on continuity of care, time available for training and the presence of appropriate clinical expertise.
- Individual doctors in training can and do already choose to opt out of the 48-hour working week.
- In the UK a revised contract for doctors in training would help address many of the issues often associated with the application of the EWTD. Like the EWTD, the UK-wide doctors in training contract, limits the hour’s doctors can spend working. We would like a revised contract that focuses more on training and patient needs and less on working hour’s targets and financial incentives for non-compliance.

For more information please contact Andrew Mabey on 0207 074 3287 or Andrew.mabey@nhseqmployers.org
Next steps:

• The current European level negotiations are expected to last till autumn 2012. If there is no agreement between the employers’ organisations and trade unions on the revision of the Directive, the European Commission is likely to propose new legislation. This will pass through the EU's usual legislative procedure involving the European Parliament and the Council of Ministers.

• The current contract for doctors in training, the "New Deal" contract, includes detailed restrictions on doctors' work and duty hours. In many cases these go beyond or cut across the requirements of the EWTD. Doctors are currently subject to both the New Deal and EWTD restrictions. This interaction causes significant difficulties. A revised contract for doctors in training is being investigated. NHS Employers review of the current contract has been submitted and the Government is now considering the recommendations.

Supporting information:

• In 2010, the outgoing Secretary of State for Health commissioned independent chair, Professor Sir John Temple, on behalf of NHS Medical Education England (MEE), to examine the impact of compliance with the EWTD on the quality of training. Professor Temple’s 2010 report concluded that quality medical training can be delivered within a 48-hour working week. The report highlighted some challenges to be addressed on round-the-clock team working. But where implemented effectively, positive impacts had been realised including:
  - an improved work–life balance;
  - reduction in sleep deprivation;
  - appropriately experienced doctors more involved in acute care situations;
  - enhanced supervision of trainees out of hours leading to safer patient care;
  - a reduction in the loss of daytime training opportunities and increased training opportunities.

• The General Medical Council’s (GMC) State of Medical Education and Training Report (2011) noted studies showing a significant reduction in patient errors where the working hours of training grade doctors are restricted. However it also found “that the loss of training opportunities continues to be an issue.” (GMC survey p 57).

• Certain services where workload can be highly unpredictable, such as transplant services, have more difficulty conforming to the New Deal and EWTD restrictions.

Background on the existing contractual arrangements for doctors in training:

• The 1990 New Deal contract was the first national attempt to control the working hours of doctors in training. Until then, 100-hour working weeks were not uncommon. The New Deal established that full shift working should not exceed 56 hours. Through the 1990s compliance with the New Deal was poor so a new contract was introduced in 2000. This provided a mechanism for rewarding junior doctors appropriately for the hours they work over and above a basic 40 hours per week. This effectively introduced a financial incentive to NHS trusts to secure compliance with the New Deal and to reduce hours and intensity of work. Doctors working in posts that are non compliant with the hours limits and rest requirements could attract up to a 100 per cent supplement to basic pay. Since March 2010, at least 99 per cent of doctors have been fully compliant with the New Deal. However, the contract is complex and it places additional monitoring demands on employers.

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