

# Working Time Regulations Policy

This policy sets out the framework for the organisation's compliance with the Working Time Regulations 1998.

**Key words:** Working Hours, Rest Breaks, Health and Safety

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## Policy On A Page

### SUMMARY & AIM

What is this policy for?

The Trust is committed to the health and safety of its employees and recognises its obligations within the Regulations.

This policy provides information to management and staff on the provisions of the Working Times Regulations Act 1998 (WTR). This sets down staff entitlements in relation to maximum working hours, rest periods, rest breaks whilst at work, annual leave and working arrangements for night workers.

### KEY REQUIREMENTS

What do I need to follow?

#### **Staff:**

- To comply with the provisions of the WTR policy by ensuring staff are taking appropriate rest breaks with agreement of their manager.
- If staff choose to work more than the 48 hours average weekly limit;
  - to complete an opt out agreement for manager approval.
  - to declare any secondary employment if this results in working more than the 48 hours average weekly limit.

#### **Managers:**

- To ensure that the Regulations outlined in this policy are adhered to at all times and that staff are given the opportunity to take their entitled rest period.
- To monitor working hours of their staff to ensure they are not in breach of policy.
- To consider declaration of secondary employment and opt-out agreement requests from staff who want to work more than the 48 hours average weekly limit and undertake risk assessments to consider their suitability.

### TARGET AUDIENCE:

Who is involved with this policy?

The Working Times Regulations Policy applies to all employees and bank workers in the Trust but excluding Doctors in Training for whom separate arrangements apply.

### TRAINING

What training is there for this policy?

HR advisory team will support managers and staff in the application of the policy.

## 1.0 Quick look summary

Please note that this is designed to act as a quick reference guide only and is not intended to replace the need to read the full policy.

This policy outlines the provisions of the Working Time Regulations Act 1998 (WTR) that all staff are required to adhere to. Under the health and safety at work legislation there is a responsibility on all employers for the health, welfare and safety of their employees, as far as practicable. Management and control of working hours should be regarded as an integral element of promoting and managing the health and welfare of staff.

In summary, the Regulations provide the following basic level of protection for staff:

- Maximum average working time of 48 hours a week, averaged over a 17-week reference period.
- Entitlement to a minimum rest break of 20 minutes (unpaid) if the working time exceeds 6 hours.
- Entitlement to a minimum daily rest period of 11 consecutive hours between each duty period.
- Entitlement to a minimum weekly rest period of at least 24 hours or 48 hours in a two-week period
- Maximum average normal working hours of eight hours in each 24-hour period for night workers normally calculated over a 17-week reference period.
- Free annual health assessments both for existing night workers and those being assigned as a night worker.
- Entitlement to a minimum of 28 days paid leave for full time workers, pro rata for part time workers (this can include bank holidays).
- The policy also outlines the circumstances in which employees can “opt out” of the 48 hour average weekly working limit.

## 1.1 Version control and summary of changes

Version number	Date	Comments (description change and amendments)
1	13/08/2014	
2	16/09/2014	Layout revision and amendments from comments received 12 September 2014.
3	21/10/2014	Inclusions of requirement to undertake a risk assessment before opting out allowed (Staff side suggestion).
4	27/01/2015	Formatting issues corrected.
4.1	11/02/2015	6.5.2 Deletion of reference to bank workers holding substantive employment.
4.2	18/03/2015	Change of Headquarters postcode on forms.
5	16/11/2018	Layout revision and inclusions made as outlined in the Agenda for Change terms and conditions (2018).
6	27/10/2021	Layout revision.

Version number	Date	Comments (description change and amendments)
		WTR Risk Assessment template included as a tool for managers to use when considering opt out agreements.
7	24/09/2024	Layout revision and updates to contact details. Inclusion of current WTR provisions and Agenda for Change terms and conditions (2024). Opt out provisions updated to a maximum weekly hourly limit of 60 hours Compensatory Rest Break flowchart included.

For Further Information Contact:

**Human Resources Advisory Team – [lpt.hradvisoryteam@nhs.net](mailto:lpt.hradvisoryteam@nhs.net)**

## 1.2 Key individuals involved in developing and consulting on the document

Name	Designation
Kully Kaur	Senior HR Advisor
Wider Consultation	All LPT Staff Bands 7 and above Trust Policy Experts

## 1.3 Governance

Level 2 or 3 approving delivery group	Level 1 Committee to ratify policy
Workforce Development Group	People and Culture Committee

## 1.4 Equality Statement

Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the provisions of the Equality Act 2010 and promotes equal opportunities for all. This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

If you would like a copy of this document in any other format, please contact [lpt.corporateaffairs@nhs.net](mailto:lpt.corporateaffairs@nhs.net)

## 1.5 Due Regard

LPT will ensure that due regard for equality is taken and as such will undertake an analysis of equality (assessment of impact) on existing and new policies in line with the Equality Act 2010. This process will help to ensure that:

- Strategies, policies and procedures and services are free from discrimination.
- LPT complies with current equality legislation.
- Due regard is given to equality in decision making and subsequent processes.
- Opportunities for promoting equality are identified.

Please refer to due regard assessment (Appendix 8) of this policy.

## 1.6 Definitions that apply to this policy

<b>Adult Worker</b>	Definition from Working Time Regulations 1998. A worker aged 18 or over. This would include both Trust employees and bank workers.
<b>Night Time</b>	Means a period: a. Which is not less than 7 hours and b. Which includes the period between 11 pm and 6 am.
<b>Night Work</b>	Means work during night time.
<b>Night Worker</b>	Definition from Working Time Regulations 1998. A worker who, as a normal course, regularly works at least 3 hours daily during night time. This would include both Trust employees and bank workers.
<b>On Call</b>	Counts as working time from when the employee or bank worker is called upon to undertake any work related activity up until the time the return home or the provision of advice is completed over the telephone. Where individuals are on- call but otherwise free to pursue time as their own, this will not count towards working time. This method of calculating working time will not affect on-call payments.
<b>Rest Break</b>	Means an uninterrupted break that is taken during the working day.
<b>Rest Period</b>	Means a period which is not working time, other than a break or leave to which the worker is entitled.
<b>Shift Work</b>	Means a method of organising work in shifts whereby workers succeed each other at the same workstations according to a certain pattern including a rota, entailing the workers to work at different times over a given period of days or weeks.
<b>Shift Worker</b>	An employee or bank worker whose work schedule is part of shift work.
<b>Staff</b>	This includes employees and bank workers.
<b>Worker</b>	Is defined within the Working Time Regulations as someone who has a contract of employment with the Trust, or any other contract, whether expressed or implied and whereby the individual undertakes to do or personally perform any work or services for the Trust.
<b>Working Time</b>	Means: a. any period during which a worker is working b. any period during which a worker is receiving relevant training c. travelling time whilst on Trust business d. time taken for civic and public duties, health and safety and trade union duties.  Working time excludes annual leave, sick leave, maternity / adoption leave as the worker is not required to carry out any duties during these times. It also does not include: <ul style="list-style-type: none"> <li>• Routine travel between home and work</li> <li>• Rest breaks and meal breaks when no work is done.</li> <li>• Stand by or on call, but otherwise free to pursue own activities and not interrupted (i.e. staff on call at home). This point is covered in more detail later in the guidance document.</li> <li>• Training such as non-job-related evening classes or day release courses. This list detailed is not exhaustive but is given as an example.</li> </ul>
<b>Young Worker</b>	Definition from the Working Time Regulations 1998. A worker over school leaving age but under the age of 18. This would include employees and bank workers.

## 2.0 Purpose and Introduction/Why we need this policy

- 2.1 The aim of this policy is to provide information to management and staff on the provisions of the Working Time Regulations Act 1998 (WTR). Staff will suffer no detriment for exercising any of their entitlements under the Regulations.
- 2.2 This Policy applies to all staff in the Trust including bank workers but excluding Doctors in Training for whom separate arrangements apply.
- 2.3 In the event of an infection outbreak, health pandemic or major incident, the Trust recognises that it may not be possible to adhere to all aspects of this document. In such circumstances, staff should take advice from their manager and all possible action must be taken to maintain ongoing patient and staff safety.
- 2.4 This document sets out the Trust's policy relating to the Working Time Regulations Act 1998 and its application to staff within the organisation. The Policy provides an overview of the main subjects to help managers and employees with the implementation of the policy.
- 2.5 The policy outlines the circumstances in which employees can "opt out" of the 48 hour average weekly working limit.

## 3.0 Policy Requirements

- 3.1 The Working Time Regulations Act 1998 (WTR) set down entitlements of employees to maximum working hours, rest periods, rest breaks whilst at work, annual leave and working arrangements for night workers.
- 3.2 The Leicestershire Partnership NHS Trust is committed to the health and safety of its employees and recognises its obligations within the Regulations.
- 3.3 Under the health and safety at work legislation there is a responsibility on all employers for the health, welfare and safety of their employees, as far as practicable. Management and control of working hours should be regarded as an integral element of promoting and managing the health and welfare of employees.
- 3.4 All staff should act in accordance with our Trust behaviours and be able to evidence adherence in situations that involve grievances and disputes. A fundamental approach to developing our behaviours is our ability to both give and receive feedback in a positive and insightful way. The feedback method is based on defining; Context, Understanding, Behaviour and Effect (CUBE).

## 4.0 Duties within the Organisation

### 4.1 Head of Service/Director Responsibility

Directors and Heads of Service are responsible for ensuring compliance to the WTR within their areas of responsibility.

### 4.2 The Duties of Managers and Supervisors

Manager and Team Leaders are responsible for:

- Ensuring that the Regulations outlined in this document are adhered to at all times and ensure their staffing rotas are WTR compliant.

- Ensuring staff are made aware of this policy and understand their responsibilities in relation to it
- Ensuring that the working hours of their staff are monitored to ensure that they are not in breach of the policy
- Keeping appropriate records pertaining to annual leave and bank holidays for their employees
- Ensuring that staff are given the opportunity to take their entitled rest period and breaks to reduce the risk of fatigue, loss of concentration and associated stress leading to poor patient care.

### **4.3 Responsibility of Staff**

- To ensure they take appropriate rest breaks in agreement with their line manager and in line with this policy
- To inform their line manager in writing of any additional employment and the hours they work, including bank and agency work
- To make their manager aware if they are working excessive hours or believe that their working pattern is in breach of this policy
- Where a member of staff is uncertain as to the application of any aspect of the Regulations, they should contact Human Resources for further clarification.

### **4.4 Human Resources Responsibilities**

- To ensure this policy is kept up to date in accordance with current employment legislation
- To provide advice and guidance to managers and employees on the appropriate implementation of the Working Time Regulations.

## **5.0 Provisions of the Working Time Regulations**

In summary, the Regulations provide the following basic level of protection for workers:

- Maximum average working time of 48 hours a week, averaged over a 17-week reference period.
- Entitlement to a minimum rest break of 20 minutes (unpaid) if the working time exceeds 6 hours.
- Entitlement to a minimum daily rest period of 11 consecutive hours between each duty period.
- Entitlement to a minimum weekly rest period of at least 24 hours or 48 hours in a two-week period
- Maximum average normal working hours of eight hours in each 24-hour period for night workers normally calculated over a 17-week reference period (refer to section 5.4 for further information on night workers)
- Free annual health assessments both for existing night workers and those being assigned as a night worker.
- Entitlement to a minimum of 28 days paid leave for full time workers, pro rata for part time workers (this can include bank holidays).

### **5.1 Maximum Weekly Working Time**

The Regulations provide that a worker's average working time, including overtime and time on call at the workplace (see definition) must not exceed 48 hours per week. Working time will be calculated exclusive of meal breaks, except where



individuals are required to work during meals, in which case such time should be counted as working time. To calculate average working time a 17 week “reference period” is used over a rolling period.

The Trust will **NOT** require any employee to work more than an average of 48 hours per week, over the reference period. This does not mean that an employee may not be required to work over 48 hours in any one week so long as the average of 48 hours over the reference period is not exceeded except with the employee’s agreement.

#### 5.1.1 *Opting Out of the Maximum Working Time Limit*

A member of staff over the age of 18 may choose to work more than the 48 hours average weekly limit by signing the Trust’s opt out agreement form (Appendix 3). Any opt out agreement can be terminated subject to at least 7 days’ notice on the appropriate form (see Appendix 3).

The Trust does not expect individuals to work more than 48-hour on average but is willing to increase this to a maximum of 60 hours per week subject to the following conditions:

- a) That the member of staff signs a written request (see Appendix 3)
- b) That a risk assessment is undertaken prior to additional hours being worked (see Appendix 3).
- c) That the member of staff undertakes not to work so long that they may impair their efficiency or expose colleagues, patients, the public or property to risk
- d) That the member of staff undertakes to adhere to the rest breaks and annual leave provisions under the Working Time Regulations.
- e) That the member of staff will **not** work over a maximum of 60 hours per week in total. This would include any assignment within the Trust and any employment outside the Trust.
- f) The opt out will cover all employment within the Trust and bank work.

Whether or not an agreement to opt out is in existence there is no guarantee of hours over and above the individual’s contracted hours.

A copy of the agreement to opt out should be provided to the manager of any assignment held by the member of staff. In the case of a bank assignment a copy should be sent to the Centralised Staffing Solutions department. A copy should be sent to the Employee Services team who will log this information on the Electronic Staff Records (ESR) system.

The Trust reserves the right to review the appropriateness of the agreement at any time. The agreement will be subject to cancellation if the member of staff:

- Fails to comply with the terms of the agreement
- Where the work in excess of 48 hours is or may be having a detrimental effect on the individual’s health and/or attendance
- If performance deteriorates (this includes in the case of bank workers non-attendance at booked shifts where action will be taken in conjunction with local Bank procedures).

### 5.1.2 *Secondary Employment where an opt out applies*

Employees working for more than one employer, hold more than one assignment in the Trust or who also undertake work through self-employment should still not exceed the 48-hour limit with regards to their total average weekly working time (or a maximum of 60 hours if an opt-out has been agreed). Secondary employment includes working on the bank or through an agency.

## 5.2 **Entitlements to Rest Periods and Breaks**

### 5.2.1 *In-Work Rest Breaks*

Employees are entitled to:

- An uninterrupted rest break of 20 minutes in one block where daily working time exceeds 6 hours, which must not be taken at the start or end of the shift.
- Young workers are entitled to an uninterrupted rest break of 30 minutes when daily working time exceeds 4.5 hours.
- Staff should be able to take this rest break away from their workstation without interruption unless in exceptional circumstances.

The Trust has agreed that all shifts in excess of 6 hours must include a minimum of 30 minutes unpaid break. In most cases this should be in one block to allow for a meal break but can be split in to a 20 minute and 10 minute break.

Any shifts of 12 hours or more have a minimum of 60 minutes unpaid break. This can either be in one block or split into smaller breaks throughout the shift. There should be at least one 20 minute break within the first six hours.

Breaks should **NOT** be taken at the start or end of the day or stored up and taken on a cumulative basis at a later date.

In exceptional circumstances, there may be times when it has been determined that activities require the need for continuity of service and staff are unable to take a rest break. In these circumstances:

- Where a member of staff has been unable to take a break, in line with the regulations, during their shift then they will be given the time back as Time of In Lieu (TOIL) where authorised by a manager.
- In exceptional circumstances the member of staff will be paid for the break where other options have been explored and are deemed to be not suitable.

Managers should always plan for their staff to take appropriate rest breaks and if there is any difficulty in making adequate provision for these, they should seek advice from Human Resources. Where a department is repeatedly short-staffed and this is impacting on the provision of rest breaks this should be reported using the Trust's Procedures e.g. Eirf.

### 5.2.2 *Daily Rest – A break between working days*

Employees are entitled to a minimum daily rest period of at least 11 consecutive hours in each 24 hour period. For young workers the daily rest period is 12 consecutive hours.

The majority of our staff will normally be able to take not less than 11 hours

consecutive rest within each 24 hour period. However, this may not always be possible for staff involved in the continuity of care of patients, such as nurses and health care assistants. In some areas, it will be necessary for such staff to work a mixture of shifts within a week to provide for optimum levels of patient care and, whilst managers should make every effort to ensure that the majority of staff are able to have 11 hours rest between shifts, there may be occasions when compensatory rest will have to be given (see paragraph 5.2.4). It is not acceptable for staff to have less than 11 hours rest either side of a night shift.

### 5.2.3 *Weekly Rest Periods*

All staff should receive an uninterrupted weekly rest period of 35 hours (including 11 hours of daily rest) in each 7 day period for which they work. Where this is not possible, they should receive equivalent rest over a 14 day period either as one 70 hour period or two 35 hour periods. Young workers should be allocated two days consecutive rest in each 7-day Period.

When a shift worker changes shift, it may not be possible for them to take their full rest entitlement before starting the new pattern of work. The Regulations state that in these circumstances, daily and weekly rest entitlements do not apply.

Where a member of staff is required to work during a time that is supposed to be a rest period due to the contingencies of the service, they will be entitled to take a period of compensatory rest (see paragraph 5.2.4) for the equivalent duration as soon as possible.

Staff may be exempt from the regulations regarding rest periods where staff's activities involve the need for continuity of service as may be the case in relation to treatment or care being provided by a hospital and considered to fall within a 'special case' category, however they would need to be given compensatory rest by careful management of working activity. Managers should seek advice from Human Resources before considering their staff group as being a 'special case'.

### 5.2.4 *Compensatory Rest*

Compensatory rest should be given where a member of staff is required to work during a period of time which is supposed to be rest time. Eligible staff must be permitted to take an equivalent period of time as compensatory rest equal to the number of hours or minutes that the rest was interrupted by.

Compensatory rest should be built into normal working patterns where possible. Most staff will have greater than 11 hours rest in each 24 hours and therefore it is likely that the compensatory rest can be taken within a 24 hour period. Refer to the Compensatory Rest flowchart in Appendix 6 to help assess what action needs to be taken. Compensatory rest should not be saved up; it should be taken within two weeks of the shift where the rest was accrued. There is no requirement for compensatory rest to be paid time; the basic principle is that an employee should not be paid twice for the work undertaken.

For example: If an employee only received a 9 hour daily rest break on a Wednesday evening, there would be 2 hours compensatory rest to be taken at another time. On the Thursday they work 9 am to 5 pm, and the Friday they also work 9 am to 5 pm. This means that on the Thursday night the member of staff had

16 hours rest which is an additional 5 hours rest over and above the 11 hour requirement. Therefore the two hours compensatory rest will have been given at that time i.e. there is 5 hours compensatory rest built into the rota each night when the member of staff is not on-call.

### **5.3 On Call**

Staff who are on-call, i.e. available to work if called upon, will be regarded as working from the time they are required to undertake any work related activity. Travelling time will be included within this calculation. The working time will start when the member of staff receives the call and end at the time they return home following the call. Where staff are on-call but otherwise free to use the time as their own, this will not count towards working time. This method for calculating working time on-call payments will not be affected.

### **5.4 Night Work**

The regulations contain provisions for night workers, which are in relation to the length of night work and health assessments for night workers.

#### **5.4.1 Night working**

- Night workers are defined as those who normally work at night (including regular rotating shifts but excluding those who only occasionally work at night).
- Night work is defined as at least three hours of work taking place between the hours of midnight and 0500 hours.
- Normal hours for night workers should not exceed an average of 8 hours in a 24 hour period (minus the entitlement of weekly rest days). This average is usually calculated over a 17 week reference period.
- Overtime is not considered as normal hours and is not included in this calculation. The calculation is not affected by absence from work, as normal hours of work would remain the same, regardless of the hours worked.

#### **5.4.2 Night health assessments**

All night workers are entitled to regular free and confidential health assessments. All staff are already monitored by the completion of a standard health questionnaire on appointment. This does not preclude the right of night workers to seek confidential advice from the Occupational Health Service at any time, if they feel that their circumstances have changed in such a way as to affect their ability to work at night. Managers may also refer night staff for a medical assessment where appropriate.

### **5.5 Annual Leave**

#### **5.5.1 Trust Employees**

All Trust employees, due to national NHS terms and conditions, have a contractual annual leave entitlement that is greater than required by the Working Time Regulations. Please refer to the Trust policies relating to annual leave for further guidance.

#### **5.5.2 Bank Workers**

Bank workers will accrue annual leave up to the maximum of 5.6 weeks paid leave in a year including bank holidays.

## **5.6 Young Workers**

Young workers are those employees over the school leaving age and under 18 years of age and may not ordinarily work more than 8 hours a day or 40 hours a week. There is no averaging or opt out available. The only exception is to maintain continuity of service, where there is no adult available to perform the task and the training needs of young people are not adversely affected.

The following provisions also apply to young workers:

- In work rest period of 30 minutes for shifts that are 4.5 hours or longer
- 12 hours' rest in any 24 hour period in which they work (for example, between one working day and the next)
- Weekly rest period of 48 hours per week
- Should not work between the hours of 22:00 hours and 06:00 hours.

## **5.7 Secondary Employment**

For all staff employed by the organisation who also have employment with other employers, it is the duty of both the organisation and its staff to recognise that all working time with all employers are relevant for the purposes of this policy.

New appointees are required to declare any secondary employment they may have to their manager which would take them over an average of 48 hours per week. The organisation may at any time, enquire if a member of staff if they have secondary employment.

If during the course of their employment with the organisation, a member of staff commences employment with a secondary employer, the member of staff shall inform their manager in writing within 7 working days of the commencement of that employment (see Appendix 5). Staff should ensure that undertaking a secondary employment does not mean that they are working outside the Working Time Regulations.

## 6.0 Monitoring Compliance and Effectiveness

Reference	Minimum Requirements to monitor	Method for Monitoring	Responsible Individual /Group	Frequency of monitoring
Compliance with WTR where an opt out form applies	Rest Breaks, hours worked, night shifts	Monitoring via rotas, staff duty sheets	Line Manager / Centralised Staffing Solutions (for bank staff)	Ongoing
Compliance with WTR for staff on eRostering	Rest Breaks, hours worked, night shifts	Managers will be alerted about non-compliance when rostering. Reports can be run on a regular basis by Managers.	Line Manager/ Centralised Staffing Solutions (for bank staff)	Ongoing
Compliance with WTR for staff not on eRostering	Rest Breaks, hours worked, night shifts	Monitoring via rotas, staff duty sheets	Line Manager	Ongoing

## 7.0 Standards/Performance Indicators

Target/Standards	Key Performance Indicator
Care Quality Commission registration standards (outcome 12) Staffing (21) of the Health & Social Care Act (2008) (Regulated Activities Regulations 2010 <a href="#">CQC essential standards</a> )	That the trust maintains compliance with CQC registration standards, this policy supports outcome standards 12

## 8.0 Training Needs

There are no training requirements identified within this policy.

## 9.0 References and Bibliography

The policy was drafted with reference to the following:

- Working Time Regulations 1998
- NHS Terms and Conditions of Service Handbook – 02/2024
- <https://www.gov.uk/browse/employing-people/contracts>.

## **10.0 Fraud, Bribery and Corruption consideration**

The Trust has a zero-tolerance approach to fraud, bribery and corruption in all areas of our work and it is important that this is reflected through all policies and procedures to mitigate these risks.

Fraud relates to a dishonest representation, failure to disclose information or abuse of position in order to make a gain or cause a loss. Bribery involves the giving or receiving of gifts or money in return for improper performance. Corruption relates to dishonest or fraudulent conduct by those in power.

Any procedure incurring costs or fees or involving the procurement or provision of goods or service, may be susceptible to fraud, bribery, or corruption so provision should be made within the policy to safeguard against these.

If there is a potential that the policy being written, amended or updated controls a procedure for which there is a potential of fraud, bribery, or corruption to occur you should contact the Trusts Local Counter Fraud Specialist (LCFS) for assistance.

**WORKING TIME REGULATIONS OPT OUT AGREEMENT**

Title		Surname		Forename	
Directorate			Department		
Post			Assignment Number(s) Please quote all assignment numbers held		
Band			I am 18 years of age or over	Yes/No	
Address					

**Please ensure all boxes are completed as failing to do so may delay recognition of your opt out.**

This agreement is drawn up under the Working Time Regulations, and allows you to enter into agreement with Leicestershire Partnership NHS Trust to opt out from the 48 hour average weekly working limit

1. I agree that the 48 hour average weekly working limit, specified in the Working Time Regulations 1998, shall not apply in my case.
2. I understand that this agreement will apply with effect from .....
3. Notwithstanding my agreement to opt out from this limit, I am fully aware that I have a responsibility not to work hours so long that they may impair my efficiency or expose my colleagues, patients, the public or property to risk.
4. In signing this agreement I confirm that I will not work over a maximum of 60 hours per week in total. This would include any assignment within the Trust and any employment outside the Trust.
5. In opting-out of 48 hours working limit I confirm I will adhere to the rest breaks and annual leave provisions under the Working Time Regulations including the limits on night working.
6. I am aware that the Trust can bring this agreement to an end with a minimum of 7 working days' notice, and I agree to give not less than 7 working days' notice of my intention to end this agreement.
7. I agree that I have entered into this agreement voluntarily and understand I am under no obligation to sign this agreement and that it is illegal for me to be subject to any detriment if I decline to sign.



8. I am aware that there is no guarantee of work beyond my substantive hours.

Signature ..... Date .....

This should be discussed with your manager who should be given a copy. The Manager will undertake a risk assessment before the opt-out takes effect. This will be noted below.

Where you hold another assignment (for example a Bank assignment) a copy of the form should be sent to the manager including details of the risk assessment.

A copy should also be sent to Employment Services by email to [lpt.hrinputting@nhs.net](mailto:lpt.hrinputting@nhs.net)

For Completion by Manager

A risk assessment was carried out on .....

The opt-out agreement can commence on.....

Name ..... Signed .....

Date.....

### Guidance Notes

This risk assessment considers the suitability of employees who wish to opt out from the 48 hour average weekly working limit in accordance with the Working Time Regulations 1998 (WTR).

#### **Factors to consider when assessing the risks posed by the hazards of long hours with opt out of the WTR:**

1. Fatigue - excessive overtime may make employee tired. This may then pose a risk to themselves or others. Risk assessment to identify and take any necessary steps to eliminate or minimise them
2. Type of work activities being undertaken along with any “plant and equipment” being used e.g. manual handling activities due to patient acuity/healthcare needs
3. Current work patterns being adopted
4. Lone working - if working alone is necessary, manager must:
  - check the employee does not have a medical condition making it unsuitable for them to work alone
  - check the environment is safe
5. carry out a lone working risk assessment
6. Any special circumstances that may be on the site/area/ward e.g. emergency response – fire, patient safety, first aid, response to psychiatric alarm etc.
7. Impacts on other employees
8. Breaks - employees required to work for more than six continuous hours are entitled to an unpaid rest break of 20 minutes within those six hours. Staff under the age of 18 are entitled to take an unpaid 30 minute break if they work for more than 4.5 hours continuously.

#### **Does the individual have any particular risks?**

- Younger or older employee
- New and expectant mother
- Pre-existing health conditions
- Taking time-dependent medication (such as insulin)
- Secondary employment.

#### **Other factors to consider:**

- Excessive hours can lead to fatigue and strokes or heart attacks. Good awareness and information for employee on the health & safety risks and lifestyle choices should be included on risk assessment and discussion with employee, as well as signposting to wellbeing support and resources (available on StaffNet)
- Manager to agree regular one-to-one meetings with employee to review
- Manager to monitor employee is in date with required training
- Manager to monitor any complaints, incidents, injury and illness records where employee involved.

<b>LPT - Health &amp; Safety Risk Assessment Form Training template</b>				<b>Title of risk - Work activity (Brief description)</b>			To consider the suitability of <b>[INSERT STAFF MEMBER NAME]</b> to opt out from the 48 hour average weekly working limit.					
<b>Management/Escalation Level</b>				<b>Source – How was the risk identified?</b>		<b>Statute/Law</b>			<b>Date</b>			
C = consequence of harm, L = Likelihood, R = Risk												
<b>Detailed Description</b>				<b>Current Risk Score</b>				<b>Action</b>		<b>Residual Risk Score</b>		
<b>Activity breakdown</b>	<b>Hazard (Causes)</b>	<b>Harm (Consequence)</b>	<b>Who / What</b>	<b>Consequence</b>	<b>Controls (Existing) (Safe System of Work)</b>	<b>Likelihood</b>	<b>S x L = RISK</b>	<b>Further controls to be implemented (Additional factors to be added to the Safe System of Work)</b>		<b>Consequence</b>	<b>Likelihood</b>	<b>S x L = RISK</b>


Assessors:

Review date:

## Appendix 3

### LETTER TEMPLATE TO CONFIRM THE APPLICATION OF THE OPT OUT AGREEMENT

NOTE – PLEASE USE APPROPRIATE LPT LETTER HEADED PAPER

(Date)

**PRIVATE & CONFIDENTIAL  
FOR THE ADDRESSEE ONLY**

(Name)

(Address)

(Address)

(Address)

(Address)

Dear (Name)

I am in receipt of your agreement to opt out of the 48 hour average weekly working limit and to limit your working hours to a maximum of 60 hours per week. This has now been recorded and the opt out will apply from (insert date on form).

May I remind you that this opt out applies to weekly working hours only. You cannot opt out of the rest breaks provisions of the Working Time Regulations or those relating to night time work. These are:

**(a) In-Work Rest Breaks**

Uninterrupted rest break of 20 minutes (unpaid) in one block where daily working time exceeds 6 hours which cannot be taken at the start or end of the shift. In its commitment to healthy working the Trust expects that staff working over 6 hours will take a rest break of at least 30 minutes (unpaid).

**(b) Daily Rest**

This is an uninterrupted rest period of at least 11 consecutive hours in each 24 hour period.

**(c) Weekly Rest Periods**

This is an uninterrupted rest period of 35 hours (including the 11 hour daily rest) or the equivalent rest over 2 weeks.

**(d) Night Shifts**

You should not exceed an average of 8 hours for each 24 hours over a 17 week reference period.

It is your responsibility to ensure that you work within these Regulations.

For further information on the Working Time Regulations please refer to the Working Time Regulations Policy or seek advice from Human Resources.

If you wish to end this opt out, you should complete the appropriate form and return it to me.

As you are aware I may wish to review this working arrangement with you in accordance with the policy. If this becomes the case, I will arrange to review it with you.

Yours sincerely,

(Manager)

Copy together with Opt Out Form to:

- Employment Services Department  
Email – [lpt.hrinputting@nhs.net](mailto:lpt.hrinputting@nhs.net)
  
- Centralised Staffing Solutions – Temporary Workforce Department (where appropriate)  
Email – [lpt.bankpayandcompliance@nhs.net](mailto:lpt.bankpayandcompliance@nhs.net)
  
- Other Manager (where appropriate)
- Personal File

**WORKING TIME REGULATIONS CANCELLATION OF OPT OUT AGREEMENT**

Title		Surname		Forename	
Directorate			Department		
Post			Assignment Number(s) Please quote all assignment numbers held		
Band			I am 18 years of age or over		Yes/No

**Please ensure all boxes are completed**

I wish to withdraw my agreement to opt out of the 48 hour weekly average hours with effect from.....(Please give at least 7 working days' notice).

Signature ..... Date .....

Copy to:

- Manager(s)
- Employment Services Department - Email: [lpt.hrinputting@nhs.net](mailto:lpt.hrinputting@nhs.net)
- Centralised Staffing Solutions - Email: [lpt.bankpayandcompliance@nhs.net](mailto:lpt.bankpayandcompliance@nhs.net)
- Personal File

**WORKING TIME REGULATIONS NOTIFICATION OF SECONDARY EMPLOYMENT**

Note: All staff are required to declare secondary employment to their line manager and ensure that their total working time does not take them over an average of 48 hours per week or a maximum of 60 hours per week where an opt out is place. Total working time would include any assignment within the Trust and any employment outside the Trust.

Title		Surname		Forename	
Directorate			Department		
Post			Assignment Number(s) Please quote all assignment numbers held		
Band					

**Please ensure all boxes are completed**

I confirm that I have secondary employment with effect from (date).....

The number of hours per week I will be working for the secondary employer is .....

I confirm that the additional hours are still compliant with the Working Time Regulations, and I will not work more that an average of 48 hours per week or a maximum of 60 hours per week where an opt out is place.

Signed ..... Date.....

To be given to your line manager.

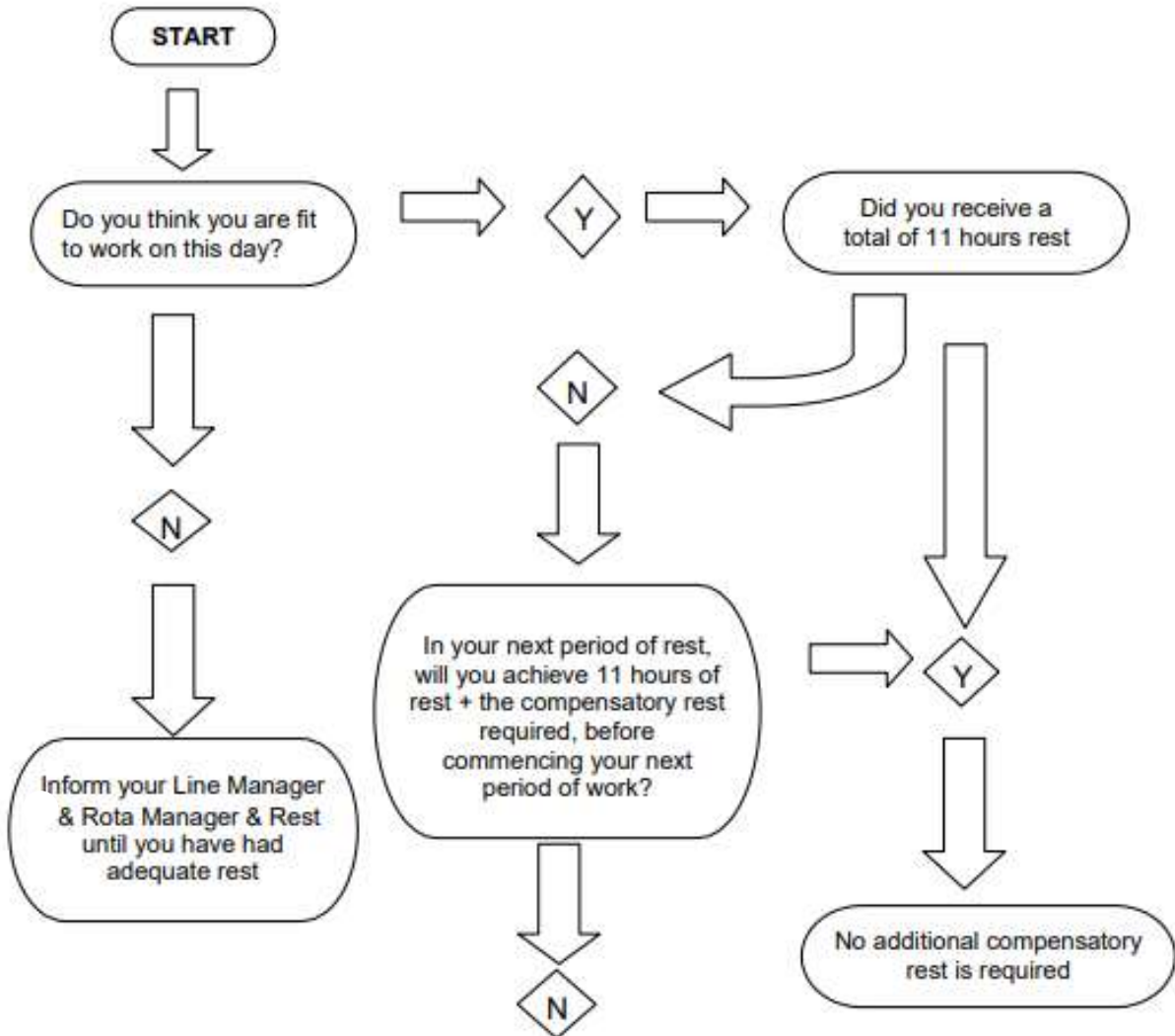
Copy to be retained on personal file.



## Appendix 6 Compensatory Rest Flowchart

### Compensatory Rest Flowchart

Use this flowchart to assess what action needs to be taken if you have not received adequate rest to work on the following day and/or require compensatory rest.



You should liaise with your line manager to arrange for compensatory rest to be given. It should be taken within two weeks of the shift where the rest was accrued. Refer to Section 5.2.4 for further guidance.

## Appendix 7 The NHS Constitution

- The NHS will provide a universal service for all based on clinical need, not ability to pay.
- The NHS will provide a comprehensive range of services.

<b>Shape its services around the needs and preferences of individual patients, their families and their carers</b>	<input type="checkbox"/>
<b>Respond to different needs of different sectors of the population</b>	<input type="checkbox"/>
<b>Work continuously to improve quality services and to minimise errors</b>	<input type="checkbox"/>
<b>Support and value its staff</b>	X
<b>Work together with others to ensure a seamless service for patients</b>	<input type="checkbox"/>
<b>Help keep people healthy and work to reduce health inequalities</b>	X
<b>Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance</b>	<input type="checkbox"/>

## Appendix 8 Due Regard Screening Template

Section 1	
Name of activity/proposal	Working Time Regulations Policy
Date Screening commenced	24 September 2024
Directorate / Service carrying out the Assessment	Workforce and Organisational Development / Human Resources
Name and role of person undertaking this Due Regard (Equality Analysis)	Kully Kaur, Senior HR Advisor
Give an overview of the aims, objectives and purpose of the proposal:	
<p>AIMS: The aim of this policy is to provide information to management and staff on the provisions of the Working Times Regulations Act 1998 (WTR).</p> <p>Leicestershire Partnership NHS Trust is committed to the health and safety of its employees and recognises its obligations within the Regulations.</p> <p>Under the health and safety at work legislation there is a responsibility on all employers for the health, welfare and safety of their employees, as far as practicable. Management and control of working hours should be regarded as an integral element of promoting and managing the health and welfare of employees.</p>	
<p>OBJECTIVES:</p> <ul style="list-style-type: none"> <li>- To ensure that the Regulations outlined in this document are adhered to at all times and ensure their staffing rotas are WTR compliant.</li> <li>- Ensuring that staff take their entitled rest period and breaks to reduce the risk of fatigue, loss of concentration and associated stress leading to poor patient care.</li> <li>- Ensure that the working hours of their staff are monitored to ensure that they are not in breach of the policy</li> <li>- For staff to inform their line manager in writing of any additional employment and the hours they work, including bank and agency work.</li> </ul>	
Section 2	
Protected Characteristic	If the proposal/s have a positive or negative impact please give brief details
Age	<p>This policy and procedure are supportive of staff who fall within the remit of the Equality Act 2010 protected characteristics including disabled employees and makes adjustments to ensure the process is fair.</p> <p>The policy will ensure managers adopt a consistent approach to dealing with applications made to opt out from the 48 hour average weekly working limit regardless of protected characteristics.</p>
Disability	
Gender reassignment	
Marriage & Civil Partnership	
Pregnancy & Maternity	
Race	
Religion and Belief	
Sex	
Sexual Orientation	
Other equality groups?	
Section 3	
Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please <u>tick</u> appropriate box below.	
Yes	No
High risk: Complete a full EIA starting click <a href="#">here</a> to proceed to Part B	Low risk: Go to Section 4. ✓
Section 4	
If this proposal is low risk please give evidence or justification for how you reached this decision:	
All staff within LPT can apply to opt out of from the 48 hour average weekly working limit, on the condition that staff adhere to the rest breaks and annual leave provisions under the Working Time Regulations including the limits on night working.	

The Trust is also happy to associate itself with the new Workforce Race Equality Standard which came into effect from the 1 April 2015. Embedded within the standard are a number of workforce metrics which will help to identify and reduce any evidence of adverse impact towards black employees compared to other groups and actions will be agreed to address these accordingly.

Equality monitoring has been incorporated in the overall policy compliance process which aims to provide assurance that any potential adverse impact on any protected group during the implementation of the policy and associated procedures are identified and removed at the earliest opportunity.

Signed by reviewer/assessor	Kully Kaur	Date	24.09.2024
<i>Sign off that this proposal is low risk and does not require a full Equality Analysis</i>			
Head of Service Signed	<i>Clayton</i>	Date	24.09.2024

## Appendix 9 Data Privacy Impact Assessment Screening

<p>Data Privacy impact assessment (DPIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet Individual's expectations of privacy.</p> <p>The following screening questions will help the Trust determine if there are any privacy issues associated with the implementation of the Policy. Answering 'yes' to any of these questions is an indication that a DPIA may be a useful exercise. An explanation for the answers will assist with the determination as to whether a full DPIA is required which will require senior management support, at this stage the Head of Data Privacy must be involved.</p>		
<b>Name of Document:</b>	<b>Working Time Regulations Policy</b>	
<b>Completed by:</b>	<b>Kully Kaur</b>	
<b>Job title</b>	<b>Senior HR Advisor</b>	<b>Date: 24.09.2024</b>
<b>Screening Questions</b>	<b>Yes / No</b>	<b>Explanatory Note</b>
1. Will the process described in the document involve the collection of new information about individuals? This is information in excess of what is required to carry out the process described within the document.	Yes	Information on staff personal circumstances, secondary employment or health conditions may be referred to as part of any risk assessment carried out
2. Will the process described in the document compel individuals to provide information about them? This is information in excess of what is required to carry out the process described within the document.	Yes	Yes – as above
3. Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information as part of the process described in this document?	No	
4. Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?	No	
5. Does the process outlined in this document involve the use of new technology which might be perceived as being privacy intrusive? For example, the use of biometrics.	No	
6. Will the process outlined in this document result in decisions being made or action taken against individuals in ways which can have a significant impact on them?	No	
7. As part of the process outlined in this document, is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For examples, health records, criminal records or other information that people would consider to be particularly private.	Yes	Yes – details of any health conditions may be included on the risk assessment template.
8. Will the process require you to contact individuals in ways which they may find intrusive?	No	
<p><b>If the answer to any of these questions is 'Yes' please contact the Data Privacy Team via <a href="mailto:Lpt-dataprivacy@leicspart.secure.nhs.uk">Lpt-dataprivacy@leicspart.secure.nhs.uk</a></b>  <b>In this case, ratification of a procedural document will not take place until review by the Head of Data Privacy.</b></p>		
<b>Data Privacy approval name:</b>	<b>Sarah Ratcliffe</b>	
<b>Date of approval</b>	<b>25/10/2024</b>	

Acknowledgement: This is based on the work of Princess Alexandra Hospital NHS Trust