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To: SHA Medical Directors  
Trust Medical Director  
Trust CEs  
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Cc: SHA Directors of Workforce  
SHA Directors of Performance  
SHA Directors of Finance  
Trust Directors of Finance  
SHA EWTD Leads

Dear Colleague

**EUROPEAN WORKFORCE DIRECTIVE (EWTD)**

The EWTD is now fully implemented across the NHS with the inclusion of junior doctors in training in the 48-hour working week. There are some exceptions, a very small number of services, which under the agreed derogation have a 52-hour week giving additional time to 2011 to meet the 48-hour requirement.

Moving to 48-hours has been a very challenging time. Achieving compliance has been the result of excellent clinical leadership and partnership with the Academy and medical Royal Colleges, SHAs, NHS Employers, the BMA and Skills for Health, and close co-operation and teamwork between SHAs, PCTs and providers. As we know, there has also been significant investment and increase in doctor numbers and there are more doctors than ever working in the NHS.

We all still have work to do as the Directive becomes embedded. SHAs will continue to review the challenging areas and Medical Education England is leading an inquiry into the impact of EWTD on medical training. We should also all ensure our junior doctors are supported, informed and understand their position regarding indemnities, that it is in their interests to check they accurately record the hours they work, and that opting out is wholly voluntary.

For these reasons it may be helpful to clarify key points around some of the questions arising for their reassurance.

### **Indemnity and hours**

All staff, junior doctors included, are indemnified by their employing organisation for *all* contracted clinical activities undertaken on behalf of the NHS. This includes those in additional hours (including any hours worked under an “opt out” agreed between the doctor and their employer).

The NHSLA circulated their paper ***European Working Time Directive (EWTD): CNST Indemnity for clinicians working in excess of EWTD limits*** some time ago. This is still relevant and says:

“Any activity carried out by clinicians which would be the subject of an indemnity if carried out during “allotted” hours will be treated no differently under our schemes because that work was being done outside those hours.”

You can also link to the full circular at [Healthcare Workforce Portal](#)

### **Junior doctor’s working hours are referenced over six months**

There is no strict rule about the hours worked in one day or week under the EWTD or the New Deal contract of employment, should a patient need a doctor’s input or in the event of an emergency, as hours are averaged over six months. However, as EWTD rest requirements might mean compensatory rest is due, or the doctor’s pay and banding may be affected, employers will have local procedures for authorising and recording additional hours. This is usually through the HR department, clinical manager or supervisor.

### **Opting out**

No-one can force an individual to opt out. Opt out of the 48-hour week must be an individual choice. It must be agreed in writing and there is no ability to opt out from EWTD rest breaks or annual leave. Further guidance and model forms can be found at [www.nhsemployers.org](http://www.nhsemployers.org) and [www.bma.org.uk](http://www.bma.org.uk)

An opt out is only needed if a doctor wants to be able to work over the EWTD 48-hour working week (or 52-hours in a derogated rota), for example, to support the NHS through the flu pandemic or to provide extra cover for a short-term vacancy. Extra hours that can be provided within EWTD limits do not need an opt-out.

### **Doctor’s contractual hours limit**

The contracts for junior doctors in training make clear that overall hours **must not exceed 56-hours in a week** across all their employments and any locum work they do.

## Training

All junior doctor's training must be planned and possible within the 48-hours working week (52-hours for derogated services). The construction of rotas and training programmes should allow for this. Doctors should not need to opt-out in order to access adequate training.

## Websites

Further helpful information can be found by visiting the following websites.

British Medical Association [www.bma.org.uk](http://www.bma.org.uk)


- JDC 5 2009-10 - Individual opt out: Guidance for Junior Doctors
- JDC 6 2009-10 - Rota Gaps: Guidance for Junior Doctors

NHS Employers [www.nhsemployers.org](http://www.nhsemployers.org)

Skills for Health-Workforce Projects Team [www.healthcareworkforce.nhs.uk](http://www.healthcareworkforce.nhs.uk)

Academy of Medical Royal Colleges [www.aomrc.org.uk](http://www.aomrc.org.uk)

Yours faithfully



**FLORA GOLDHILL**