

EXPLANATORY MEMORANDUM TO

The Working Time (Amendment) Regulations (Northern Ireland) 2009

2009 No. 266

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health, Social Services and Public Safety to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under The Working Time Regulations (Northern Ireland) 1998 and is subject to the negative resolution procedure.

2. Purpose

- 2.1. These regulations amend the Working Time Regulations 1998 (“the Working Time Regulations”) to provide for an average 52 hour maximum working week for certain doctors in training from 1 August 2009. At present, an average 56 hour maximum working week applies to doctors in training until 31 July 2009, after which an average 48 hour week maximum would apply without these amendments. The amendments are necessary to enable the relevant parts of the Health and Social Care (HSC) to continue to deliver safe and effective health services and medical care.

3. Background

- 3.1. These regulations apply the additional transitional period provided for in the third subparagraph (as read with the fifth subparagraph) of Article 17(5) of Directive 2003/88/EC concerning certain aspects of the organisation of working time (“the Directive”). This subparagraph permits Member States to derogate from the 48 hour working week limit laid down in Article 6 of the Directive, for an additional period of 2 years, in respect of doctors in training, where it is necessary to do so to take account of difficulties in meeting this provision of the Directive.
- 3.2. The regulations amend regulation 25A (doctors in training) of the Working Time Regulations 1998 (as amended by SR 2003/330) to provide for the 48 hour working time limit, which would otherwise apply on 1 August 2009, to be increased to 52 hours for certain doctors in training for a period of 2 years from 1 August 2009. A new Schedule 2A is also inserted into the Working Time Regulations, which lists those categories of doctors in training to whom this 52 hour working time limit is to apply
- 3.3. The object of Article 6 of the Directive is to reduce the maximum number of hours in the average working week to 48. Some doctors in training may however need to work longer than 48 hours to fulfil the needs of service delivery. Where there are difficulties in complying with the 48 hour week then it is possible for member states to choose to apply an additional transitional period and apply an average 52 hour week to doctors in training instead. A small number of services, particularly 24 hour immediate care services, as well as some regional specialist services, some

small rural units, and some services being reconfigured, may require further support post 1 August. This prompted notification of an intention to take advantage of the additional period in respect of such services to the European Commission in January of this year. The notification to the European Commission was submitted by the Department of Health (England) on behalf of the devolved administrations. This will initially allow a further 2 year transitional period before the 48 hour week limit can be applied to all doctors in training. A further additional period of 1 year may be applied under the fourth sub-paragraph of article 17 (5), in respect of 'special difficulties' in complying with the 48 hour week, and was also included in the notification to the European Commission in January of this year. Where this is applicable, it will be the subject of separate legislation in due course.

- 3.4. The services requiring this additional transitional period will be listed in the regulations. The change made by the regulations is legally necessary to ensure compliance with the Directive.
- 3.5. These Regulations amend the Working Time Regulations, which apply to all persons in employment in Northern Ireland, only in respect of certain doctors in training. Policy responsibilities for doctors in training rests with the Department of Health, Social Services and Public Safety (DHSSPS), but overall policy responsibility for the Working Time Regulations rests with the Department for Employment and Learning. The Department for Employment and Learning has been consulted.

4. Consultation

- 4.1. Stakeholders have been engaged on the changes that may be necessary in the legislation over the past eight months. This has been led by the Department of Health (England). These included the medical profession, the medical Royal Colleges, the medical deaneries, the professional bodies, the British Medical Association, Strategic Health Authorities, Local Health Boards, hospital trusts and trainee doctors. The European Commission were notified of the intention to take advantage of the additional transitional period, in relation to the 48 hour working week requirement, in January of this year. This process was carried out by the Department of Health (England) on behalf of all the four UK countries.
- 4.2. Applications from services that have been identified as needing to take advantage of this additional period have been scrutinised by an independent panel representing stakeholders. The panel assessed the applicants against the criteria laid down in Article 17(5) of the Directive and against the notice of intention sent to the European Commission in January of this year. The services listed in this legislation have been recommended by the independent scrutiny panel.

5. Equality Impact

- 5.1. The impact on the public sector is to enable the HSC to apply a 52 hour average working week to certain doctors in training to enable it to continue to deliver hospital services. Equality screening is underway.

6. Regulatory Impact

- 6.1. The draft statutory rule does not impose costs or savings on businesses, charities, social economy enterprises or the voluntary sector. For that reason, a separate Regulatory Impact Assessment is not considered necessary.

7. Financial Implications

- 7.1. Additional funding has been made available over the past number of years to help Trusts achieve EWTB compliance and further additional funding will be made available over the next two years.

8. Section 24 of the Northern Ireland Act 1998

- 8.1. The draft statutory rule does not breach section 24 of the Northern Ireland Act 1998, as it is not incompatible with any of the convention rights or community law, and it does not discriminate against a person on the grounds of religious belief or political opinion. Nor does this draft statutory rule modify or amend any of the enactments stated in section 7 of the Northern Ireland Act 1998.

9. EU Implications

- 9.1. The regulations apply an additional transitional period provided for by Article 17(5) of EC Directive (2003/88/EC).

10. Parity or Replicatory Measure

- 10.1. The measure is required to maintain parity with legislation being introduced in the UK.

11. Additional Information

- 11.1. Not applicable