Hours of work and EWTD
Summary
This chapter explains the contractual and legislative restrictions on the hours that junior doctors can work.

It covers the limits on hours and the requirements for rest laid out in the junior doctors contract (often referred to as the New Deal) and in the European Working Time Directive (EWTD) and explains what to do if posts breach either of the regulations.

Hours of work and EWTD

The EWTD and the New Deal impose different limits on working time and rest requirements for doctors so this section should be read in its entirety to understand the key provisions and how they apply to doctors in training. Information on the EWTD should always be read in conjunction with information on the New Deal.

EWTD
Background and history
The EWTD, which came into force in the UK on 1 October 1998 for consultants and other career grade hospital doctors, originally excluded junior doctors. Agreement was reached in May 2000 between the European Parliament and the Council of Ministers on the arrangements for doctors in training, and a timetable setting out how and when the Directive’s provisions would apply to junior doctors was included within the Directive (see below). The Directive has been applicable to juniors since August 2004 and has applied in full since August 2009.

The phased implementation of the EWTD

<table>
<thead>
<tr>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>August 2000</td>
<td>Timetable was set to incorporate juniors into the directive</td>
</tr>
<tr>
<td>August 2004</td>
<td>Interim limit of an average 58-hour maximum working week and EWTD rest requirements</td>
</tr>
<tr>
<td>August 2007</td>
<td>Interim limit of an average 56-hour maximum working week</td>
</tr>
<tr>
<td>August 2009</td>
<td>Deadline for the average 48-hour maximum working week*</td>
</tr>
</tbody>
</table>

* In 2009 some employers were granted an extension to this deadline and allowed an interim limit of an average 52-hour working week to apply to certain posts until August 2011, or exceptionally until August 2012 at the latest. More information is available later in this chapter.
EWTD provisions
The Directive was designed to protect the health and safety of workers by restricting the number of hours an individual can work and by imposing minimum rest requirements for all workers. It imposes a limit on doctors’ working hours of 48 per week on average, calculated over a maximum period of six months. The requirements for taking rest breaks are set out below. However, certain derogations apply to junior doctors (see ‘Derogations’ overleaf).

EWTD rest requirements
The rest requirements which came into effect in August 2004 are as follows (although derogations apply):
– a minimum of 11 hours’ continuous rest in every 24-hour period
– a minimum rest break of 20 continuous minutes after every six hours worked
– a minimum period of 24 hours’ continuous rest in each seven-day period (or 48 hours in a 14-day period)
– a minimum of 28 days or 5.6 weeks paid annual leave
– a maximum of eight hours’ work in each 24 hours for night workers.*

* A night worker is someone who works at least three hours of their daily working time during night time. Junior doctors are unlikely to be classified as night workers. However, this should not be assumed and where there is any doubt each case should be considered on an individual basis.

Opting out of the hours limit
The EWTD is enshrined in UK legislation and is therefore not optional for employees in the UK. However, an individual junior doctor can voluntarily sign a waiver and ‘opt out’ of the limit on working hours if they wish. This does not opt them out of the rest requirements. The JDC would urge caution where anyone is considering opting out of the hours limit. As a result of the additional contractual limits on working time (see ‘New Deal’ section later in this chapter for further information), junior doctors can only opt out to work a maximum of 56 hours in any case.

Employers must not pressurise workers to sign an opt out, and they must continue to keep accurate records of the working hours of all doctors, including those who have opted out. Further guidance for junior doctors on opting out is available on the BMA website.
Derogations
The Directive allows national governments to ‘derogue’ or deviate from its provisions in certain areas in order to ensure that implementation of the legislation is reasonably achievable by employers. Two key derogations apply to junior doctors.

Compensatory rest
In 1997 the Government and the BMA agreed that strict application of the EWTD rest requirements by hospital doctors could prevent the safe delivery of patient care in the UK. As a result, a derogation was agreed that meant that employers do not have to apply the rest requirements as prescribed. They must instead provide equivalent compensatory rest instead for every occasion that the employee does not achieve the rest. The planning of rotas must therefore take account of the requirement to provide compensatory rest when 11 hours of continuous rest each day, and/or an additional 24 hours of continuous rest per week (or 48 hours per fortnight), are not achieved.

The exact method of implementing compensatory rest is still unclear, but the BMA continues to lobby at EU and UK level for improved guidance in this area. The BMA strives to seek a solution that protects safety at work while protecting opportunities for training. If a junior doctor believes EWTD limits are being breached in their job, they should contact our team of advisers on 0300 123 1233 in the first instance. There is a right to complain to the Health and Safety Executive for all workers, who can issue enforcement notices and may fine and prosecute employers who do not comply.

Interim 52-hour limit
In the months leading up to the August 2009 deadline, it became clear that several employers were not going to be able to comply with the average 48-hour working week for all junior doctors in their employment. The Government decided to enact a provision of the Directive that allowed an interim average 52-hour working week to apply until August 2011, or exceptionally under August 2012, for specific rotas or posts that could not comply. This derogation has now ceased.
Medical academic doctors
Junior academic doctors with a substantive NHS contract should be covered by the working time directive where they undertake academic work on a day release basis. They have the same obligation to provide continuity of care for patients as their junior doctor colleagues.

The BMA believes that all time spent working either in the NHS or at the university (aggregated) should count towards the weekly hours limit and rest requirements. However, members should be aware that universities have been resistant to the local application of the EWTD for academic work.

EWTD definition of working time: the SiMAP and Jaeger European Court of Justice cases
The way in which working time is defined under the Directive has had important implications for junior doctors’ working arrangements in the UK. Two important European Court of Justice rulings (the ‘SiMAP’ and ‘Jaeger’ cases) have meant that currently working time includes all time spent at the place of work and available to the employer. This includes periods when the doctor is not actually working, for example resting during resident on-call periods.

Junior doctors should note that this definition differs from the contractual/New Deal classification of working time, which does not count all resident on-call hours as work, but makes a distinction between actual working hours and duty periods.

Further information
– See bma.org.uk/ewtd for extensive guidance including:
  – The individual opt out: guidance for juniors
  – Facing the challenges of the EWTD
  – The final countdown to the EWTD
  – The EWTD in practice: guidance for BMA members
  – Working patterns advice
The junior doctors contract and the ‘New Deal’
Background and history
The New Deal is a package of measures designed to improve the conditions under which junior doctors work. It dates from 1991 and formed an agreement between representatives of junior doctors, consultants, the medical royal colleges, NHS managers and the Government. The New Deal continues to be relevant today because it underpins the junior doctors’ terms and conditions of service and pay banding system (see chapter 9). As a result, the terms ‘New Deal’ and ‘junior doctors contract’ are often used synonymously.

One of the key aims of the New Deal was the limiting of junior doctors’ working hours. Further areas covered by the New Deal included improvements to facilities such as catering and accommodation, and an examination of working practices with a view to transferring from junior doctors work which might be better undertaken by other healthcare professionals.

The interface between the New Deal and the EWTD
Both the New Deal and the EWTD apply simultaneously, and this can sometimes cause confusion. Compliance with both regulations can be achieved by following the least number of working hours and the most rest required. To put it another way, where there is variation between the conditions, the most favourable will apply (ie fewer hours, longer rest periods).

Confusion also creeps in when considering the definition of working time. Under the New Deal:
- ‘duty’ is counted as all time working or on-call, including rest while available
- hours of actual work are defined as all time spent on duty carrying out tasks for the employer, including any periods of formal study leave/teaching. This includes natural breaks.

However, as set out above, under the EWTD (the ‘SiMAP’ and ‘Jaeger’ cases):
- hours of duty and hours of actual work are treated the same, with all hours spent ‘at the disposal of the employer’ whether working or resting counting as working time for the purpose of the working hours restrictions.
This confusion can be cleared up by remembering:
– for matters of pay and banding the New Deal definitions apply
– for compliance with the EWTD, the ‘SiMAP’/‘Jaeger’ definition applies.

**New Deal contracted hours**
The New Deal or junior doctors contract specifies the maximum number of duty hours for all junior doctors’ posts as:
– 72 hours a week on on-call rotas on average
– 64 hours a week on partial shifts on average
– 56 hours a week on full shifts on average.

However, as explained above, the EWTD definition of working time means that in effect, doctors can work no more than 48 hours on average at the hospital per week.

These New Deal limits are a contractual requirement. Contracted hours should take into account routine early starts and late finishes, time off during the working day (eg half days) and, where applicable, prospective cover for annual and study leave.

**New Deal controls on duty periods and rest requirements**
In addition to the limits on contracted hours and hours worked, the New Deal lays down maximum periods of continuous duty, minimum periods of off duty between duty periods and minimum periods of continuous off duty for each type of working arrangement. These are as follows:

<table>
<thead>
<tr>
<th>Working arrangement</th>
<th>Maximum continuous duty (hours)*</th>
<th>Minimum period off duty between duty periods (hours)*</th>
<th>Minimum continuous period off duty (hours)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full shift</td>
<td>14</td>
<td>8</td>
<td>48 + 62 in 28 days</td>
</tr>
<tr>
<td>Partial shift</td>
<td>16</td>
<td>8</td>
<td>48 + 62 in 28 days</td>
</tr>
<tr>
<td>On-call rota</td>
<td>32 (56 at weekends)</td>
<td>12</td>
<td>48 + 62 in 21 days</td>
</tr>
</tbody>
</table>

* Except when two shifts are worked consecutively.
There is a limit on the maximum continuous duty days for all working arrangements of 13 days.

Where the maximum periods of continuous duty, minimum periods of off duty between duty periods and minimum periods of continuous off duty differ to those set out in the EWTD the shorter of the duty hours and the longer of the periods between duty periods will prevail.

**New Deal rest periods**
The New Deal lays down the following periods of rest during duty periods:

**On-call rotas:** at least eight hours’ rest during a period of 32 hours on duty, principally within the on-call period. Most of this should be continuous if possible.

**Partial shifts:** at least four hours of rest during every duty period of 16 hours.

**Full shifts:** all of the duty period, except for natural breaks, should be spent working or available for work.

Below is a table setting out the rest requirements for each working pattern as laid down in HSC 1998/240 (MEL(1999)40 in Scotland). The rest requirements apply equally to LTFT (less than full time) or flexible trainees as to full-time juniors; the hours’ limits should be adjusted pro rata. LTFT trainees should not be disadvantaged in terms of rest periods or work intensity.

The following factors should also be taken into account when assessing whether a working pattern fulfils the rest requirements:

- total rest within duty periods must not be made up of short interrupted periods of rest
- natural breaks must be provided during the normal working day for doctors on on-call rotas or partial shifts, as well as full shifts, and should be in addition to their rest periods
- at weekends, all duty periods are out of hours
- out-of-hours rest targets should be met during at least three-quarters of all duty periods.
Summary

<table>
<thead>
<tr>
<th>Working pattern</th>
<th>Natural breaks</th>
<th>Minimum rest during the whole of each duty period</th>
<th>Minimum continuous rest guide</th>
<th>Timing of continuous rest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full shift</td>
<td>Yes</td>
<td>Natural breaks</td>
<td>At least a 30-minute continuous break after approximately 4 hours continuous duty</td>
<td>At least a 30-minute continuous break after approximately 4 hours continuous duty</td>
</tr>
<tr>
<td>Partial shift</td>
<td>Yes</td>
<td>Natural breaks if no out-of-hours duty. Otherwise one quarter of the out-of-hours duty period*</td>
<td>Frequent short periods of rest are not acceptable</td>
<td>At any time during the duty period</td>
</tr>
<tr>
<td>24-hour partial shift</td>
<td>Yes</td>
<td>6 hours</td>
<td>4 hours</td>
<td>Between 10pm and 8am</td>
</tr>
<tr>
<td>On-call rotas</td>
<td>Yes</td>
<td>One half of the out-of-hours period**</td>
<td>Minimum 5 hours</td>
<td>Between 10pm and 8am</td>
</tr>
</tbody>
</table>

* eg 5pm–9am (Mon–Fri) = 4 hours or 9am–9pm (Sat/Sun) = 3 hours  
** eg 5pm–9am (Mon–Fri) = 8 hours or 9am–9am (Sat/Sun) = 12 hours

Support for implementing the New Deal across the UK

England
In England, regional improving junior doctors’ working lives action teams or RATs (regional action teams) were established to be responsible for overseeing and monitoring the implementation of the New Deal at a local level and the allocation of posts into pay bands in accordance with the pay banding system. However, because of consecutive restructuring within the NHS, many regions now do not have RATs.

Scotland
In Scotland a Senior New Deal/WTR Adviser supports employers and employees on all aspects of the New Deal and Working Time Regulations (see the website www.newdealsupport-wp.scot.nhs.uk/). New Deal issues and current compliance levels are also discussed at regular meetings between representatives from the Scottish JDC, the Scottish Government and NHS Scotland employers.

Northern Ireland
In Northern Ireland the New Deal and EWTD is monitored by the NI HSC BLG (Health and Social Care Board) (formerly the Implementation Support Group (NI ISG)). The latter Group was set
up by the DHSSPS (Department of Health Social Services & Public Safety) in August 2001 to facilitate the implementation of the New Deal and the EWTD. NIJDC have been and continue to be actively involved in the work of the group and its subcommittees. The NIJDC Chairman meets regularly with the Medical Project Officer to scrutinise monitoring data and rotas to approve rebandings – no posts are rebanded without input with NIJDC.

Wales
In Wales, the New Deal and EWTD are monitored by the Welsh Government. A Monitoring Scrutiny Group has been established to scrutinise monitoring data and rotas and has produced all-Wales monitoring guidance. A member of WJDC and BMA Cymru Wales staff are members of the Group.

Posts which breach New Deal and/or EWTD limits
There are, unfortunately, posts in which doctors work in excess of New Deal and EWTD limits. Special provision within the pay banding system (see chapter 9) has been made to ensure that juniors currently working the longest hours and/or the most frequent out-of-hours cover are remunerated the most. Nevertheless, junior doctors and their employers are contractually required to work together to identify appropriate working arrangements or other organisational changes in working practice which move non-compliant posts to compliant (for the purposes of both the New Deal and the EWTD), and juniors are required to comply with reasonable changes following such discussion.

More commonly, many junior doctors are unable to get the amount of rest they require for their working pattern and thus work excess hours each week. If adequate rest is routinely not received during particular working periods, the employer should be informed and monitoring should be requested (see chapter 9 for further information).

Taking action to resolve New Deal and EWTD problems
Junior doctors should seek advice from their medical staffing department and contact our team of advisers on 0300 123 1233 in order to try to resolve problems with hours and/or rest. Ultimately, there are contractual penalties where posts breach New Deal limits. Enforcement of the EWTD for doctors is split between two main authorities.
The Health and Safety Executive have responsibility for dealing with complaints about hours limit breaches, while the employment tribunal system enforces the rest break and leave provisions. For more information see the BMA guidance at bma.org.uk/ewtd

**Tips for resolving non-compliant rotas**

While formal enforcement processes are available, the following should also be considered in any effort to resolve New Deal/EWTD problems:

**Total hours**
- It might be possible to reduce hours by redistributing workload.

**Frequency of out-of-hours work**
- The first step should be to identify what work is being done out of hours.

In both problem areas, the following might assist:

**Bleep policies**
- For example, filtering of calls by other practitioners, eg senior ward nurse; additional channelling through juniors on full shift; no juniors to be bleeped during organised training session.

**Organisational changes**
- Bringing more work back into daylight hours, eg emergency theatre lists, emergency admissions unit.
- Encouraging moves towards a consultant-delivered service. For example, evening ward rounds by consultants on-call can resolve many acute problems which might otherwise disturb juniors at night. Consultants working in an identified admissions unit can provide an instant focus for clinical input.
- Avoiding duplication of tasks, eg multiple clerking of patients by different grades.
- Use of bed bureau to locate beds.

**Skill mix initiatives**
- Ensuring adequate staffing levels in support services, both daytime and out of hours.
- Sharing of tasks with other suitably trained staff, eg nurse practitioners.
Working to identify which tasks can be appropriately delivered by other staff. Possible examples include administration of IV drugs, carrying out requested investigations (bloods, ECGs, arranging X-rays etc), and catheterisation. There must also be mechanisms in place to ensure that, in the event of staffing pressures, these jobs do not default back to juniors.

Reorganisation
- Increasing cross-cover of working patterns where appropriate so that, for example, doctors on a night shift may be able to relieve on-call doctors’ workload.
- More team working.
- Possible merging of services between smaller units.
- Introduction of the 'Hospital at Night' model.

New working patterns
- When all the above have been implemented, and as long as there is an appropriate number of doctors on the rota to facilitate a working pattern change, some alternative form of working pattern may be investigated.

The JDC has produced detailed guidance on working patterns jointly with the Departments of Health and NHS Confederation. There is also JDC guidance on designing rotas and detailed BMA guidance on the practical implications of the EWTD. All EWTD guidance is available on the BMA website at bma.org.uk/ewtd

Further information
- HDL(2003)10 (Scot) Guidance on natural breaks
- HDL(2005)21 (Scot) Managing New Deal non-compliance