

An introduction to RotaGeek.com – Part 1

EWTD and the junior doctors' opt-out – what do they mean?

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Q What are the ideas behind the EWTD?

A The European Working Time Directive (EWTD) has two essential but separate elements: ensuring strict entitlements to rest (11h in every 24h, plus 24h every weekend or 48h every fortnight), and limiting an employee's work to an average 48 hours/week (h/w). The EWTD already covers virtually every employee in Europe, and doctors in training will be covered fully by this legislation from August 2009.^{1,2}

Q Why the emphasis on rest?

A. Recent studies prove that doctors who work in excess of 80h/w, with shifts in excess of 24h, make significantly more serious medical errors than doctors working less hours (around 60h/w) with a limited shift length (16h).³ Today, almost all British junior doctors

work less than 56h/w and meet the New Deal rest requirements. The real Health & Safety benefits from the Directive come from the mandatory daily rest requirements.

Q What's the concern about hours of work?

A The EWTD is health and safety legislation, but there is virtually no evidence that decreasing work from 56 to 48h/w results in increased health or safety.⁴ Perhaps this is why the European Council allowed every worker to opt-out of the working-hours limits, but not the rest requirements, under article 22 of the Directive.¹ If a worker has to work more than 13h in a shift, he or she must be compensated immediately, by taking compensatory rest before the next shift.

Q How does the opt-out work?

A Under the terms of the Directive, every trainee must be offered a post that meets all the EWTD limits; each should then consider their right to opt-out of the 48-h/w limit, while still being bound to the 56-h/w maximum of the New Deal.¹

Q Will doctors be forced to opt-out?

A Definitely, no. The opt-out is the individual doctor's choice, not imposed by the Government or employer. It empowers the individual, requires employer and employee to work together, and benefits the NHS. The opt-out builds on the foundation of a 48-h week. A junior doctor deciding in advance to utilise or reject the opt-out will decrease the chance of bullying, compared with an 'emergency' decision demanded at the time of a clinical staffing crisis.

Q Does opting-out decrease minimum rest?

A No. Absolutely all EWTD rest provisions remain unchanged – the real benefit of the Directive is unimpaired.

Q How many hours can doctors work, if they have opted-out?

A Trainees can extend their work from 48h to an average 56h/w. Consultants and all non-training grades can still work up to an average 78h/w (whilst still complying with the mandatory rest requirements), but are unlikely to reach this limit.

Q Does it take long to implement the opt-out?

A No. The opt-out can be implemented immediately and indefinitely; it does not require approval. It only needs the employee to exercise this right in writing, and for the employer to maintain a record of working hours.

Q Isn't the chance to opt-out threatened by Europe?

A Definitely no. In December 2008, the opt-out provision was challenged in the European Parliament, but the Commission and most Member States opposed its abolition. 'Conciliation' failed at the end of April 2009, and the opt-out will remain in place for years to come. An EU official speculated in July 2009 that most European member states would now apply for

the opt-out, to help staffing by medical trainees.

Q Why would junior doctors want to opt-out?

A They will benefit by attending training sessions that they would otherwise miss; they should enjoy the altruistic rewards of sustaining the NHS and learning through clinical experience; it provides the opportunity of working legally as an internal locum in their own hospital (a major immediate benefit to every Trust); finally, it may allow trainees to earn extra money, important to NHS employees who have suffered successive cuts in their recent take-home pay. But, because of pay banding, not every junior increasing hours from 48 to 56h/w will move up a pay band; locum work would be paid at an additional rate, negotiated between junior and the employer.

Q Why would senior doctors want to opt-out?

A Many Consultants and others are already working >48h/w, and their opt-out sustains the under-staffed NHS. The opt-out makes it clear that clinical work by Consultants outside the NHS is not illegal, in terms of

the EWTD, as long as the rest provisions are observed.

Consultants may, even though NHS employees, be considered 'autonomous' workers and may fall outside the Working Time Regulations – but this freedom does not apply to any other hospital medical staff.

Q Why would managers want to support the opt-out?

A The immediate benefit would be a pool of more able, less-expensive locums. But the extra 8h/w could not only support the clinical service, but prove a Trust's commitment to postgraduate medical training. Because most of the 'saved' 8h reduction in juniors' hours has come from the daytime, Monday to Friday, the 48-h rotas often mean that the normal ward work, clinics and procedures are now compromised by less medical staff being available; some juniors working extra clinical sessions should benefit both the trainees and the employers.

Q Is the opt-out the same as derogation?

A No, they are completely different.

Q Isn't the opt-out unnecessary, because the Government applied for the EWTD to be 'derogated'?

A The Department of Health notified the European Commission of *"its intention to take a limited derogation (to the Working Time Directive) for up to three years, that can be applied to doctors in training who have duties in services that are delivering 24-h immediate patient care, in some supra specialist areas or in small, remote or rural units"*.⁵ This derogation allowed some trainees to work up to a maximum of 52h/w until 2011 (extendable to 2012) after which the 48-h limit will apply. Very few Trusts applied to the DoH for derogation, and in the end only 200 rotas in England will be allowed the 52-h working week (about 5% of all rotas). No additional derogations are available. In contrast, the opt-out is neither time-limited nor does it require Government permission, plus it generates an additional 8h/w per doctor.

Q Are there disadvantages of the opt-out?

A No. It is argued that it will be subject to abuse, with trainees

pressured or coerced into working more than 48h/w. Such a situation would be unacceptable, breaching both the EWTD and employment law. The practical difficulties come from the added complexity of rota design, requiring the ability to handle a series of parallel, interconnected rotas not only for those doctors who have opted-out, but also for those working within the 48-h week, plus part-time trainees and non-training grades on the same roster. The challenge is to create a software solution that simplifies this rota design and allows monitoring, not only for New Deal requirements, but also for those who have opted-out. RotaGeek.com is an on-line rostering solution that makes it easy to plan and manage such complex rotas.

Q Isn't the opt-out giving an unfair disadvantage to those who do not take it?

A Every junior doctor is different, and their experiences are already very different: quiet takes / busy takes; broad firms / focussed firms; some rotations better / some worse; part-time training / full-time. Some have basic science degrees, others do not; some have

doctorates / others do not; some read textbooks at home / others do not. Some may choose to work longer hours – frankly, it is a choice available to every other British worker. Slow learners may appreciate the opportunity to keep-up by extra clinical experience and training. Finally, progress is no longer by serving time, but by proven acquisition of skills – so progress is now, by definition, not related to time worked.

Q Do you think that Trusts will want to implement the opt-out?

A Full compliance with the 48-h limit will be challenging for most rotas and clinical teams; many Trusts, aside from large-scale service reconfiguration, may find compliance to be impossible for some clinical services. In either situation, the individual opt-out offers a cost-effective strategy to not only comply with the EWTD, but also to sustain training and service delivery.

Q Can you give a quick summary of RotaGeek’s potential for on-line rostering?

A Every rota or roster is made-up of a group of junior doctors of similar

experience and skill, such that they are inter-changeable. There then follows a sequence of steps performed on-line to RotaGeek.com, in order to construct a rota:

1. The number of doctors in the rota is specified [or they can be named, even at this stage].

2. The working hours of the normal shifts are specified – the on-call ‘long day’ and ‘night’ shifts, the normal day shift, and then additional shifts – for example, morning or afternoon only, or afternoon and evening.

3. The basic on-call rota is then constructed – with an average 48-h maximum working week – by dragging and dropping shifts into a matrix of the rota.

4. At a click of a button, the ‘new rota’ is then tested in about 5 seconds against all the rules of the EWTD and New Deal; a calculation is displayed, and it either confirms compliance or identifies the problems. The rota is then rapidly adjusted and retested, to demonstrate full compliance.

5. This is the basic 48-h rota, which can then be circulated by email to all the relevant juniors, Consultants and administrators for discussion

and approval. All juniors work the same basic 48-h on-call rota, and all opt-outs are built upon this foundation.

6. Junior doctors may then exercise their right to opt-out of the hours limit of the Working Time Regulations, and then may individually either remain on the basic rota and be available for internal locums that comply with the EWTD and New Deal limits, or may add or adjust their sessions using RotaGeek.com to take account of training and service needs – again, in consultation with their Consultant and/or management.

7. Thus a roster is constructed that is available on-line for all the named doctors in a 'cell', which indicates those on-call, those on duty in the daytime, those off-duty and those on leave. It can be interrogated to identify those who are available [in terms of 'spare' time and compliance with the regulations] for a particular session as an internal locum; those available can be invited automatically by text message and email.

8. RotaGeek.com provides all the 'back-office' management tools required to log the hours of those who have opted-out, to prepare Ministerial returns, and to perform regular 'log-book' audits of juniors' working hours, using a system that is extremely easy to use for the junior.

References

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3. Landrigan, C. P., Rothschild, J. M., Cronin, J. W., Kaushal, R., Burdick, E., Katz, J. T. et al. Effect of reducing interns' work hours on serious medical errors in intensive care units. *N Engl J Med.* 2004; 351(18):1838-48.
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5. The European Working Time Directive - UK notification of Derogation for doctors in training. http://www.dh.gov.uk/en/PublicationsPolicyAndGuidance/DH_093940

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