

## Chronology of Academy participation towards implementation of the European Working Time Directive (EWTD) in the NHS

### **Background**

Together with its constituent Colleges and Faculties, its Trainee Doctors Group, and its Patient and Lay Group, the Academy of Medical Royal Colleges has a duty to safeguard the quality and safety of patient care in the NHS and a concern for the proper training of doctors.

The EWTD has the laudable aim of improving the health and well-being of workers and their families. However, it is important that the means by which it is implemented in the NHS do not compromise the care of patients or the training of doctors, either now or in the longer term.

For several years therefore the Academy has participated in vigorous and extensive discussion, with Ministers and officials in the Department of Health and elsewhere, about the implications of the EWTD and its implementation.

From August 2004 the EWTD limited the weekly working time of doctors in training to 58 hours, with entitlements to daily and weekly rest breaks. From August 2009 the permitted working hours are to be reduced still further, to 48 per week – and the European Parliament has decided that on-call time must be regarded as working time.

The impact of these changes has been widely recognised as presenting a major challenge to safeguard the quality of patient care and the training of doctors.

The foreseeable effects of compliance with EWTD differ between services and specialties. Individual Colleges have surveyed their members and Fellows, and have taken steps to ensure that any concerns are widely known.

A number of Colleges are concerned that compliance with the Directive will have a detrimental effect on patient care, with reduced cover for acutely-ill patients and impaired continuity of care. In addition, some Colleges report that compliance will seriously affect the training of future specialists, with a reduction in the time and opportunities for junior doctors to receive training and for consultants to deliver it.

However, some Colleges feel that with appropriate arrangements the Directive can be complied with satisfactorily in their specialties, and high-quality training maintained. These arrangements include fully exploiting new tools available for training, safe and well-constructed handovers, and increasing the number of consultants with a subsequent increase in consultant-delivered care.

This statement is a summary of actions taken by, or with participation of, the Academy to date, discussing the problems presented by the EWTD and possible solutions to them. The intention is that it should be updated as events unfold.

### **2004- 2006**

The Academy and its constituent Colleges and Faculties together with the Department of Health (DH), the British Medical Association (BMA), and the NHS Confederation worked to tackle the problems and to develop practical solutions. That work continued in preparation for the next and more demanding stage of implementation of the Working Time Directive in August 2009.

## **2007**

From 2007 the Academy also set up regular meetings with Department of Health MMC team to discuss concerns regarding training and service. These meetings were attended by College Presidents or senior officer deputies.

Meanwhile, in the light of a programme of pilot studies conducted by National Workforce Projects (NWP) the lead NHS organisation, sponsored by DH, and information contained in detailed modelling by Colleges, Trusts were adopting a wide range of approaches towards achieving compliance.

## **2008**

Studies conducted hitherto had provided little objective evidence of any effect of arrangements for implementation upon the quality of care or upon training. However, during 2008 a number of Colleges reported concerns that methods being used to achieve compliance with the Directive would have a detrimental effect on patient care. In addition there were reports from a number of specialties that a shift in the balance between service work and training, with a reduction in the time and opportunities for junior doctors to receive training and for consultants to deliver it, would seriously affect the training of future specialists, to the long-term detriment of patient care.

Foreseeable effects of some approaches to compliance differed between services and specialties. Individual Colleges identified concerns in their specialist domains and took steps to ensure that they were widely known.

### ***October 2008***

In the autumn of 2008 Colleges individually and collectively through the Academy sought urgent meetings with Ministers and officials to alert them to their concerns.

Subsequently meetings were set up with the Department of Health to address a wide range of concerns about implementation of EWTD. They were attended by senior DH officials from the Workforce Directorate and the MMC team.

### ***November 2008***

Particularly serious concerns about EWTD compliance were raised at a meeting on 5 November. There appeared to be discrepancies between SHA reports of progress towards compliance and the findings of College surveys and information obtained locally. The latter reported both gaps in rotas and a numerical compliance achieved only by reliance on locums and internal cover, a state of affairs that could not be sustained. More comprehensive data collected later [see below] confirmed these reports.

In November 2008 the Royal College of Physicians, London and the Royal College of Paediatrics and Child Health urged the Department of Health to conduct a survey of Medical Directors on the preparedness of their Trusts for WTD implementation.

### ***December 2008***

Early in December the Chairman wrote to the Secretary of State giving the Academy's support to concerns raised with the Department by a number of Colleges on the impact of the Directive.

In mid-December, at a meeting with the Department of Health EWTD team, the Academy reiterated its concerns, subsequently providing a portfolio of College evidence to the Director

of Workforce Capacity. There followed a number of initiatives between the Department and the Academy to triangulate different sources of data and seek to resolve differing views.

In December the Department commissioned Professor Nigel Bax, Professor of Medical Education, University of Sheffield, to examine data from three SHAs and to report on the impact of implementation of the EWTD upon service and training. There was College/Faculty input into the questionnaire being designed by Professor Bax.

## **2009**

### ***January 2009***

Colleges continued to survey clinicians, trainers and trainees. In January 2009 the Academy submitted further information to the Director of Workforce Capacity.

### **National European Working Time Directive Reference Group**

In mid-January there was a meeting of the Presidents of Colleges representing specialties that support acute services, the Medical Director of the NHS, the NHS Director General of Workforce, the Director of Medical Education (DME) and the Clinical lead for EWTD. Following this meeting the National European Working Time Directive Reference Group was set up. It is chaired jointly by Dr Patricia Hamilton (DME) and Dr Judith Hulf (Vice-chairman of the Academy) and its membership is drawn from a range of key stakeholders. The Group advises on implementation to support achievement of EWTD by August 2009, with particular attention to any impact on training and patient services.

On 19 January Professor Sir Bruce Keogh (NHS Medical Director), Professor Dame Carol Black (Chairman of the Academy), Professor Ian Gilmore (PRCP), Mr John Black (PRCS), Dr Hulf and Dr Fielden (Chairman, BMA Consultants Committee) met to discuss the Directive and the scope for derogation.

On 21 January the Reference Group held its first meeting. Its purposes were:

- i) to address concerns about patient safety that had been linked to the Working Time Directive;
- ii) to consider the options in respect of seeking derogation;
- iii) to agree advice on the way forward to achieve full WTD compliance by August 2009.

The Reference Group prepared a portfolio of evidence for Secretary of State. It was designed to inform a judgement on whether it was appropriate for HM Government to apply to the EU for derogation for the UK. The Reference Group emphasised that the derogation application did not mean that Trusts and services should not continue to work towards compliance.

That month HM Government submitted a *Notification of Derogation for Doctors in Training* to the European Commission. This is a two-stage approach to identify the exceptional cases and provide supporting information. It would allow rotas for trainee doctors to be based on a 52-hour week for up to three years where particular difficulties exist. The Commission would inform the UK of its opinion by the end of May 2009. At that time, based on scrutiny of evidence from the SHAs, a decision would be made on where and how derogation, if granted, might be applied.

### ***February 2009***

On 11 February, at its second meeting, the Reference Group agreed with a number of medical Royal Colleges that they should form liaison teams to work with DH and SHAs and Trusts. The aim was to provide professional support to Trusts. This support would comprise collection of data on service and training issues, advice on best practice, different ways of working and models of care, and the specific data required to support the (exceptional) cases for derogation. DH would provide up to £60k to the participating Colleges (RCP, RCPCH, RCOA, RCOG and possibly RCS) to undertake this work. This work would observe the

principle of partner co-production, signifying joint working of senior College representatives with DH and SHAs. The RCS subsequently declined the offer of funding although it agreed to review the surgically related data from the SHAs and respond to the DH.

### **Academy/Department of Health Liaison Meetings**

These regular meetings between the Academy and senior DH officials enable prompt scrutiny and discussion of data on Working Time Directive compliance now being collected through different routes, and of issues arising out the findings.

Meeting on 11 February 2009.

SHAs had been asked to submit their plans for EWTD compliance to DH. Meanwhile provisional findings of the survey by Professor Bax showed that Trusts varied in their state of preparedness, the main risks reported being gaps in rotas and dependency on locums and recruitment. These data would be triangulated with data provided by the Colleges.

There were known difficulties recruiting doctors to undertake service roles and middle grade posts.

DH indicated that it would challenge compliance plans that were overly dependent on recruitment and/or upon locum appointments.

DH agreed that SHAs would undertake a EWTD Quality Assurance process, with monthly detailed reporting, specialty by specialty, by grade of doctor in individual Trusts, including data on use of locums and internal additional duties. There would be RAG (Red/Amber/Green) rating of plans for compliance. Beginning with Green returns this would be supplemented by detailed work to assess the robustness of the solutions proposed.

Further work would collect service level data in surgery, to assess risks posed by EWTD compliance in the surgical specialties. The Surgical Royal Colleges had pressed for flexibility to allow up to a 65-hour working week and an opt-out from the EWTD for surgical specialties. It was recognised that increased hours worked in the surgical specialties would have an impact on support services.

In view of the approaching deadline it was emphasised that data provided by SHAs in March would be critical. For example, it would be difficult to achieve recruitment into consultant posts in time unless the process began promptly. Accordingly there was agreement that Colleges would process job descriptions for new consultant posts as quickly as possible, a process that would depend on receipt of relevant information from Trust HR Departments.

DH had allocated £310m of additional funding to SHAs (the funding actually passing to PCTs) to support compliance, with guidance on how it should be spent. This funding included £110m from 2008/2009, a further £150m through the tariff, and £50m specifically identified for trained doctor solutions in paediatrics and obstetrics.

In February Dr Wendy Reid was appointed to the DH Workforce Directorate as Clinical Advisor on EWTD, leading the EWTD programme team which would have links with MMC and MEE as well as the DH Workforce Directorate. The team would be accountable to Professor Sir Bruce Keogh. Dr Reid would act as professional link with Colleges and the Academy. [Dr Reid is an experienced Postgraduate Dean and practising Consultant in Obstetrics & Gynaecology. She previously led for *Hospital at Night*]. Through the Colleges she is now meeting training leads and senior officers, including Regional Advisors and Heads of School.

At this meeting Colleges and Faculties made additional points:

- In Emergency Medicine: difficulties recruiting into service posts; lack of resident out-of-hours surgical cover; was still a major issue. Emergency Medicine was moving towards 24 hour consultant cover but this was not yet in place.

- Reliance on locums to ensure compliant rotas should be quantifiable from SHA data.
- RCOG data showed that middle grade rotas which were compliant on paper varied from relying on a core of 4 doctors up to 24 doctors spread across a wide variety of grades.
- Although some Colleges had close links with training institutions overseas and IMGs could be recruited through the Medical Training Initiative this could only be part of a long term solution and would not ease current problems. DH was keen for Colleges to facilitate the recruitment of good quality IMGs. There are some Colleges with concerns about ethical issues raised by such recruitment.
- Concerns that unplanned consultant recruitment to meet EWTD requirements might be incompatible with service reconfigurations not yet decided.
- There should be means of monitoring training beyond 1 August 2009.
- In future it might be necessary to concentrate training in a smaller number of units.

The Chairman affirmed the wish to promote joint work between the Colleges and DH to ensure sustainable implementation of the EWTD. Accordingly a summary of information presented by the DH would be prepared for circulation to all Colleges. Dr Reid indicated that she would be in contact with the Colleges representing the acute specialties.

On 2 April the Academy and senior DH officials would discuss data on the EWTD provided by the SHAs (see below).

### **Academy Trainee Doctors Group (ATDG)**

Through ATDG, trainee doctors are also represented at the Academy/DH Liaison Meetings. On 26 February Dr Reid also attended a meeting of the ATDG, heard their concerns, and planned to attend subsequent meetings.

#### ***March 2009***

##### **Academy Chairman**

During March the Academy Chairman met Dr Reid to keep abreast of progress and to support and facilitate her work

##### **Academy/Department of Health Liaison**

It had been agreed that during this critical period liaison meetings between the Academy and senior DH officials should be held every 4-6 weeks

#### ***April 2009***

At the meeting of 2 April DH reported data supplied by 31 March from the Bax Survey and SHA reports. There was general appreciation of the more detailed data now available which allowed examination of services in individual hospitals. However, there were still gaps and possible contradictions between reports from different sources on compliance with the Directive. An interim report of the Bax survey showed that the data did reflect concerns raised previously by the Colleges.

The SHA data were more comprehensive than those available hitherto and most had been signed off by Clinical and Medical Directors. Though not yet complete they could be broken down between individual specialties and the individual surgical specialties.

Red ratings, indicating the highest levels of risk, were more prevalent in the acute, 24 hour specialties, particularly the surgical specialties.

The data would be collected monthly from this point and made available to Colleges who were working with the SHAs.

### Training post vacancies and recruitment

SHAs had been asked to identify training vacancies by specialty in the March return. These data were as yet incomplete. There were approximately 1,600 vacancies in training posts though this total included vacancies arising from trainees on maternity leave and/or in out-of-programme experience. They should be measured more precisely and DH would ensure this was done. Most vacancies were in Anaesthetics, Paediatrics and Child Health and Acute Medical Specialties. There was concern about a low fill rate (less than 85%) in the current round of recruitment in some specialties. An 85% fill rate would leave approximately 1,000 vacancies. A second round of recruitment would be progressed quickly to ensure that trainees were in post for 1 August.

Given the numbers of vacancies, there was agreement on the need to ensure wider candidature for specialty training posts and to draw in IMGs alongside doctors who had trained in the UK. This would be helped by a national, centrally coordinated process for recruiting IMGs.

It appeared that Foundation trainee doctors did not always receive or act on advice about choice of region and/or specialty when applying for specialty training posts.

### Service post vacancies and recruitment

Although data were incomplete there were evident difficulties recruiting to service posts, in some regions.

An updated workforce census affirmed the recent expansion in the medical workforce, a factor that exacerbated difficulties in recruitment.

### College reports.

Colleges and Faculties reported on matters specific to the specialties they represent, including their work with SHAs.

The point was made that service reconfiguration must reflect the requirement for sustainable solutions to the implementation of a 48 hour working week.

There was particular concern about consultant compliance with statutory rest periods in specialties where intense on-call rotas would be required to provide a 24/7 service, and the need to find ways of ensuring the most effective use of available resources to provide comprehensive services across regions.

DH reported that efforts were being made to challenge the rest periods set out in the EWTD. However, the European Parliament had not yet been willing to approve any of the concessions proposed.

DH also indicated a May deadline to identify units and services where derogation might be needed.

### Communications

Data presented by DH would be supplied electronically.

## **National European Working Time Directive Reference Group**

Meeting 7 April 2009

The minutes from this meeting are as yet unconfirmed. Agenda items included Opt-out from the 48-hour restriction.

The Reference Group had not discussed this topic hitherto and the Chairman invited views. Opt-out was currently available to individuals though anyone electing to opt out remained bound by the restrictions of the New Deal (UK legislation) rest period constraints, and the SiMAP and Jaeger rulings. Although MEPs had voted to recommend that the restrictions be removed their vote had not yet been upheld.

- NHS Employers noted that the Opt-out should not be relied upon when planning rotas or service,

As reported from the 2 April Academy/DH Liaison Meeting, the Bax survey findings were consistent with findings of Colleges. SHA returns and recruitment data were as presented to the 2 April Academy/DH Liaison meeting. The meeting noted that data collection seems to have intensified and focused attention to the matter.

#### Communications

- Each College would receive a detailed report on their specialty data.
- A QA forum would be set up on the website.
- DH would prepare documents giving
  - the process for allocation of EWTD funding, and provide an EWTD funding budget balance sheet at each meeting
  - a summary of National EWTD Reference Group views on the Opt-out
  - SHA Return Data for targeted distribution.
- BMA would share with the Reference Group a Q&A developed by the Association.
- Opt-out views of the Reference Group would be brought into the Q&A

A further meeting would take place in mid May once the next SHA returns were available. The joint work being undertaken by the Colleges and SHAs would be discussed again at the next meeting.

An Academy update will follow meetings held in May.

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