European Commission second phase consultation: Reviewing the European Working Time Directive Consultation response

Summary

The Royal College of Surgeons of England welcomes this second-phase consultation on the European Working Time Directive by the European Commission and the accompanying reports outlining the comprehensive set of issues faced in implementing the current Directive. The College continues to hear from our membership that the lack of flexibility within the Directive is making both the service and training elements unworkable and is failing to protect patient safety. The College would encourage any revision of the Directive to not only focus on issues of classification of on-call time and timing of compensatory rest but also the potential to exclude hospital doctors who work in 24 hour services.

Consultation questions

1. Should changes to EU working time rules be limited to the issues of on-call time and compensatory rest, or should they address a wider range of issues, such as some or all of those listed in section 5.2?

As highlighted in the December 2010 Deloitte Consulting report on behalf of DG Employment, published alongside the second phase consultation, the current situation in hospitals needs to be specifically addressed. We endorse the main issues for hospital care highlighted in the report, which includes issues around: the increased use of temporary staff; junior doctors training suffering; the impact on patient safety such as reduction in care quality and more intensive clinical work as a result of changed shift patterns. The College has also indentified these issues in surveys of our membership and believe that these need to be addressed urgently by giving sufficient flexibility within the Directive for hospital doctors and doctors in training who maintain a 24 hour service.

The College believes that some flexibility can be gained from changes to EU working time rules related to issues of on-call time and compensatory rest; however we remained concerned that this will not be sufficient to address the specific needs of hospital doctors outlined above. The variable implementation of the Directive for doctors in training across the EU that was highlighted in the Commission's supporting implementation report summarises the issue well. The College's evidence from our membership supports the finding that compliance in the United Kingdom is only on paper, and that almost three quarters of surgical trainees and two thirds of surgeons are routinely working more than 48 hours. This shows that the current arrangements are not working.

In addition to issues of on-call time and compensatory rest further consideration should be given to these specific sectoral problems for hospital doctors and doctors in training who maintain a 24 hour service and potential to exclude this group from the scope of the Directive.

2. Bearing in mind the requirements of Article 153 TFEU do you consider that:
a) the options set out in section 5.1 regarding on-call time and compensatory rest,
b) some or all of the options set out in section 5.2 regarding other issues raised by social partners and the current review,
could provide an acceptable overall framework for addressing the concerns set out in your replies to the first phase consultation?

In our response to the first phase consultation the College explained the drastic changes we had seen to how hospitals are staffed. We highlighted that there had been a move away from on-call rotas which provide a range of people with the right skills and experience to cover at nights and weekends. These on-call arrangements have been scrapped in favour of full-shift rotas. The nature of working a full shift pattern is more tiring when compared to an 'on-call' system because of doctors working irregular shift patterns which create a working environment that is impairing patient safety by reducing the number of doctors covering patients and increasing the number of patient handovers between staff, correspondingly reducing continuity of care. Shift working both for consultants and surgeons in training means that many are using up valuable day time working hours at certain times, usually out of hours, when demand for surgery is limited. We believe that proposals to classify on-call time differently and the requirements on the timing of compensatory rest will provide a framework to start to address these concerns for surgeons, but we would also encourage the Commission to look in detail at the sectoral problems for doctors in training with a view to allowing a solution of excluding this group of doctors from the scope of the Directive.

We welcome the Commission's commitment to maintaining the opt-out which should be made available to those workers that choose to use it. The basis of the EU working-time framework should support the continuing trend towards more flexible forms of work organisation and individualised working hours. However, hospital doctors and doctors in training who maintain a 24 hour service have different work patterns and training needs and which need to be recognised and supported accordingly.

3. Are the EU social partners, at cross-industry or sectoral level, willing to enter into negotiations on all or part of the issues raised in this communication with a view to concluding an agreement that would make it possible to amend the Directive by using the possibilities provided under Article 155 TFEU?

No response.

Mr John Black
President
February 2011