

European Commission survey on the Working Time Directive

Practical implementation of the Working Time Directive concerning aspects of the organisation of working time

The Royal College of Surgeons is a professional body representing approximately 21,000 surgeons and dentists, committed to advancing surgical standards and improving care for patients. The College is not a trade union and we do not comment on the terms and conditions of doctors' employment. The European Working Time Directive (EWTD) and the associated European Court of Justice judgments (SiMAP and Jaegar) have affected the training of junior staff and the working lives of consultants. The reduction in hours to an average of 48 per week has arguably helped to reduce fatigue for doctors and contributed to improvements in patient safety. However, its application within the health service has led to a reduction in time available for training doctors, with priority going to service delivery. The College also has some concern with the Directive's impact on patients, particularly regarding a reduced ability for the medical team to provide adequate continuity of care.

In 2013 Professor Norman Williams, then President of the Royal College of Surgeons, was asked by the UK Government to chair an independent taskforce on the implementation of the Working Time Directive and its impact on the National Health Service (NHS) and health professionals. This taskforce included representation from across the medical profession. The evidence collected illustrated that, while some medical specialties have been able to adapt the requirements of the directive, others, and particularly the "craft" specialties such as surgery, are faced with specific challenges due to 'hands-on' nature of training.

For the purposes of this survey the College is best able to respond to the questions on Evaluation and Outlook. Our comments relate to healthcare in the UK; we are not able to comment on other sectors.

Evaluation

Impact on surgery

The Directive and its associated court judgments have reduced the risk of overworked and tired doctors on hospital wards. However, we remain concerned about a number of issues:

- A reduction in time for training is a particular concern of our members; the EWTD does not permit sufficient training time for doctors within a health service that still relies heavily on doctors in training to deliver service. The reduction in available training time has reduced the number of procedures available to deliver the required level of competence. It is possible to reach such a level but not the levels of experience and confidence of pre EWTD trainees.
- Compliance with the EWTD means doctors beginning their surgical training today will have 3,000 fewer hours to learn and gain experience. It already takes around 15 years for a trainee doctor to become a consultant surgeon so it is difficult to add on further years to compensate for this loss of training time. The Directive's effect on training is further

evidenced by a 2013 survey by the Association of Surgeons in Training, which found that 71% of trainee surgeons felt that the WTR had impacted on their training.

- The requirement to adhere to working time directive compliant doctor rotas and shift patterns of working has also caused significant problems including: a reduced ability for the same members of a medical team to provide continuous care to patients; increased handovers between shifts; and the loss of the ability for trainees to train with their trainers.
- While an individual doctor can choose to opt out from the requirements of the Directive, hospital managers must still plan and organise rotas that are EWTD-compliant. In other words, relying on individual doctors to opt-out of working time rules is not sufficient to tackle the problems the Directive is causing in the NHS.
- The Directive has been successful in limiting doctors' hours and has generally reduced tiredness it can still contribute to fatigue and hamper doctors' work/life balance. For example, full shift rotas can be exhausting for staff, and we know from our members^{1 2} and academic research³ that shift working, as opposed to an on-call system, is significantly more intense in terms of work load. Furthermore, work to cover nights disrupts sleep patterns and further exacerbates exhaustion to a greater extent than on-call cover.⁴
- The European Court SiMAP and Jaeger judgments have further confounded the way the directive is interpreted in UK law. One decision affects the amount of time doctors may spend on call (SiMAP) while the other concerns the interpretation of when compensatory rest must be taken (Jaeger). These judgments have contributed to the lack of flexibility in managing junior doctors' working hours as they specify both that time spent on call (even when not working) contributes to the total number of hours worked and that compensatory rest must be taken immediately and can't be deferred to a later time (i.e. the next day).

Independent Taskforce

The Independent Working Time Directive Taskforce, chaired by then RCS President Professor Norman Williams, was tasked by the Secretary of State to review the impact and implementation of the EWTD on the National Health Service. The taskforce brought together a wide range of medical and managerial bodies, trade unions, and patient representatives who concluded:

- The EWTD regulations have caused greater problems for some specialties than others. For example, the "craft" specialties of surgery and acute medicine have suffered while others, such as paediatrics, have adapted.

¹ Association of Surgeons in Training (2009) Optimising working hours to provide quality in training and patient safety

² British Orthopaedic Trainees Association (2009) BOTA position statement on EQTD and training in trauma & orthopaedic surgery

³ Richter A, Kostova P, Baur X, Wegner R. (2013) Less work: more burnout? A comparison of working conditions and the risk of burnout by German physicians before and after the implementation of the EU Working Time Directive. Int Arch Occup Environ Health.

⁴ GMC (2012) The impact of the Working Time Regulations on Medical Education and Training

- Local NHS organisations have had mixed success in addressing the challenges associated with managing rotas, although larger hospitals have been better prepared to withstand the changes.
- Training and education in acute specialties, such as surgery, has been very difficult to implement within the constraints of the directive.
- More thought should be given to how practitioners could exercise their right to opt-out.
- The impact of the European Court SiMAP and Jaeger on top of the EWTd has led to a lack of flexibility that hampers the health services' ability to deliver specialist training and ensure continuity of care for patients.

A full copy of the taskforce report and its findings and recommendations is available on the RCS website.

Outlook

We do not want to return to a time when doctors worked excessively long working hours, but without changes to allow flexibility in the healthcare sector the directive will continue to undermine training and impact on service delivery.

Urgent consideration needs to be given to health-specific negotiations and changes. Health sector legislation already exists at an EU level in the form of the EU Council Directive 2010/32/EU on the prevention of sharps injuries in the hospital and healthcare sector so there is already a precedent for focusing on the health sector exclusively. Any negotiations should also address the lack of flexibility brought about by the SiMAP and Jaeger court judgments.

Recommendations for improving the transposition of the Directive

The Independent Taskforce Report made a number of recommendations for the NHS setting out how the implementation of the directive could be improved. These were:

- The NHS should review best practice in the design of working practices, and share examples of the successful delivery of patient care and the training of junior doctors.
- The specific challenges faced by some specialties should be addressed in further work.
- The lack of flexibility brought about by the SiMAP and Jaeger court judgments is tackled, whilst ensuring doctors don't suffer undue fatigue.
- The possibility of creating protected education and training time for junior doctors should be explored.
- The findings of the report should be taken into account in on-going contract negotiations with trade unions.
- More consideration should be given to encourage wider use of the right for individual doctors to opt out of the current restricted hours.

The RCS fully supports these proposals and believes that the Government and European Commission should consider the feasibility of their implementation in a future renegotiation of the directive.

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