Response to the European Commission Green Paper on Labour Law

The British Medical Association is the UK’s leading voluntary professional association and trade union of doctors with approximately 129,500 members which corresponds to around 70% of practising doctors in the UK.

The BMA welcomes the opportunity to contribute to the debate on labour law in the European Union. In our response we have focused on the issue that is most relevant to the work of the British medical profession – namely the organisation of working time.

The BMA is of the view that the European Working Time Directive (EWTD) is essential health and safety legislation and is necessary to protect both doctors and patients. Better rested doctors provide better patient care and the ability of doctors to learn is vastly improved when they are well rested.

For many years the links between excessive hours of work and risk to health and safety have been apparent. In recent years there has been a growing body of published research in this field, particularly in relation to the hours of work of resident doctors in training. There is now direct evidence that excessive hours of work in residents is associated with disrupted sleep patterns, increased incidence of attention failures\(^1\), increased incidence of motor vehicle accidents\(^2\) and increased numbers of serious medical errors\(^3\). Thus excessive hours of work for doctors in training are damaging to the individual doctors health, their individual safety and to patient safety.

At present, doctors in training are excluded from the full protection afforded by the Working Time Directive from which other EU workers benefit. Not until August 2009 will Europe’s junior doctors benefit from the same protection of their health and safety and the concept of a 48 hour working week. Current health care systems are too reliant on resident doctors in training working extended hours to deliver patient care. The EU must make concerted efforts to ensure the EWTD in full is implemented on schedule, with all doctors in training across the EU benefiting from the introduction of the 48 hour working week. The BMA also believes that medical students should be specifically included under the EWTD.

How could minimum requirements concerning the organisation of working time be modified in order to provide greater flexibility for both employers and employees, while ensuring a high standard of protection of workers’ health and safety?

The BMA believes that the opt-out should be retained for those workers who have real and effective individual control of their own working hours. Furthermore, the BMA considers that a number of conditions must be met if the opt-out is to remain part of the legislation: any opt-out must be truly voluntary with no undue pressure or coercion exerted on doctors to work outside the EWTD hours and rest requirements. Further, an opt-out should neither be a necessity for a post nor form part of any contract nor should it be presented at the point of appointment or signing of a contract. Furthermore those doctors that sign the opt-out must not receive preferential treatment when applying for future posts as this would result in undue pressure on all doctors to sign an opt-out.

The BMA believes that the calculation and timing of compensatory rest, and when it should be taken, must be clarified. If clarification is not given in the amended Directive, an agreement should be reached in each sector through formal collective bargaining processes as enshrined in Article 118 of the Treaty of Rome.

It is the BMA view that compensatory rest should ideally be taken so that 11 hours continuous rest is achieved and that the compensatory rest should be taken immediately after the period of work. Other work should not be permitted until the compensatory rest has been taken. This is a key issue of patient safety.

The BMA believes that the reference period for calculating working time should be no longer than six months, or the length of a post (whichever is the shorter). If this is deemed not practicable, then the BMA

\(^1\) Lockley et al, N Engl J Med 2004;351:1829-37
\(^3\) Landrigan et al, N Engl J Med 2004;351:1838-48
believes that any proposed extension of the reference period beyond 6 months (or the length of the post if it is shorter) should only take place by collective agreement.

**What aspects of the organisation of working time should be tackled as a matter of priority by the Community?**

The issue of on-call time is one which must be tackled urgently. The current rules on compensatory rest are unworkable because there is no clear guidance within the directive about how it should be taken. The BMA would like to see the directive either be more specific in how compensatory rest should be applied or it should direct Member States to collectively bargain a sensible method of implementation that is flexible and fair enough to allow compensatory rest to be taken in the most practical way.

The issue of the *inactive* part of on call time is also one of great importance to the BMA and one that we believe needs to be clarified as soon as possible at the EU or national level.

The European Court of Justice has ruled that all time spent by a doctor on-call, whether active or inactive, counts as working time. The BMA strongly agrees with these rulings and believes that all time present in the workplace, at the behest of the employer, must count as work under the EWTD. These rulings must be implemented in all EU Member states immediately.

Furthermore, inactive on-call time at the workplace must not be able to be counted as rest or as part of compensatory rest.

In conclusion, the BMA believes that the EWTD is an essential piece of health and safety legislation. Doctors are no different to other workers and thus deserve the same level of protection as afforded to other workers under the legislation. Not to do so would constitute a serious threat to patient safety.

**Key recommendations:**

- The EWTD should be **implemented** in full and to schedule with respect to the August 2009 deadline for its application to junior doctors
- The **individual opt-out** should be retained for those doctors who are able to determine their own working hours
- Compensatory rest should be taken as a matter of priority following a period of overwork
- The **reference period** for calculating working time should be no longer than six months
- All time spent **on-call** at the workplace, whether active or inactive, must be counted as working time

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