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Feidhmeannacht na Seirbhísí Sláinte
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To: Chief Executive Officer
Each National Director
Each Assistant National Director HR
Each Assistant Chief Finance Officer
Each Hospital Group CEO
Each Hospital Group Director of HR
Each Chief Officer CHOs
Each Head of HR CHOs
Head of HR, PCRS
Each CEO Section 38 Agencies
Each HR Manager Section 38 Agencies
Each Employee Relations Manager
Each Group Director of Nursing & Midwifery
Each Group Director of Midwifery
Each Clinical Director
Director National Ambulance Service

From: Anne Marie Hoey, National Director of Human Resources

Date: 5th May 2021

Re: HR Circular 021 2021 Code of Practice for Employers and Employees on the Right to Disconnect

Dear Colleagues

Please find attached a copy of Department of Health Circular 6/2021 and the *Code of Practice for Employers and Employees on the Right to Disconnect* (the “**Code of Practice**”). The Workplace Relations Commission (WRC) has published this Code of Practice to give guidance on best practice to employers and employees on the “Right to Disconnect” and compliance with relevant employment legislation. The Code of Practice

came into effect on 1 April 2021 and applies to all employees and to all types of employment¹. The Code of Practice is available from the WRC website [here](#).

The HSE will be devising a Right to Disconnect Policy to reflect the requirements under the Code of Practice. In the meantime, all public health service employers and employees should be aware of and familiar with the provisions in the Code of Practice and understand their rights and obligations. Pending the issuing of a Right to Disconnect Policy at a future date, this Circular gives a brief overview of the key provisions in the Code of Practice. It also gives a summary of the legislative provisions underpinning the Code of Practice.

Overview of the Code of Practice

The Code of Practice states that the Right to Disconnect gives all employees the right to switch off from work outside of normal working hours, including the right to not respond immediately to emails, telephone calls or other messages. There are three rights enshrined in the Code:

- The right of an employee to not have to routinely² perform work outside their normal working hours (including refraining from engaging in work-related emails and telephone calls);
- The right not to be penalised for refusing to attend to work matters outside of normal working hours; and
- The duty to respect another person's right to disconnect (for example: by not routinely emailing or calling outside normal working hours).

The Code of Practice states that there is no formal Right to Disconnect under Irish or European law. It provides that an employer's failure to follow the Code is not an offence in and of itself but the Code will be admissible in evidence in any proceedings before a Court, the Labour Court or WRC if any of its provisions are deemed relevant to the issues in dispute.

The Code of Practice provides practical guidance for employers and employees to assist in meeting existing obligations under current employment legislation. Specifically, the Code complements and supports employers' and employees' rights and obligations under the Organisation of Working Time Act 1997 (the "OWT"), the Safety, Health and Welfare at Work Act 2005 (the "SHWWA"), and the Terms of Employment (Information) Act 1994³.

¹ This includes employees who are temporarily working from home (WFH) during COVID-19.

² The Code states that there are occasional legitimate situations when it may be necessary for an employer to contact employees outside of normal working hours.

³ This Act was amended by the Employment (Miscellaneous Provisions) Act 2018 [view here](#).

Employers' existing obligations include to:

- Provide information to employees on their working time, normal working hours and rest periods/breaks;
- Ensure that all employees receive their entitlement to rest periods/breaks and that they do not work in excess of the maximum weekly working hours;
- Ensure a safe workplace, maintain up to date risk assessments and ensure work activities are managed to prevent any improper conduct or behaviour likely to put safety, health and welfare at risk;
- Not to penalise an employee for actions taken in accordance with legislation.

Employees' existing obligations include to:

- Take reasonable care to protect their safety, health and welfare and the safety, health and welfare of any other person who may be affected by the employee's acts or omissions at work;
- Fully cooperate with any appropriate mechanism to record working time (including when working remotely);
- Be mindful of their colleagues' right to disconnect (for example, by not routinely emailing or calling outside normal working hours).
- Be conscious of their work pattern and aware of their work-related wellbeing.

Role of the manager

The Code of Practice highlights the key role of managers given their close interaction with staff. Managers should familiarise themselves with the provisions in the Code of Practice and engage proactively with their staff to ensure that measures are in place to raise awareness and ensure compliance. The topics that should be addressed in the context of promoting adherence to the Code of Practice in the workplace include, but are not limited to, the following:

- Scheduling and availing of annual leave entitlements during the leave year;
- Rest breaks and rest periods (including procedures to follow if an employee is unable to avail of a statutory rest break or period);
- Working hours and attendance arrangements;
- Arrangements for recording of working time;
- Maintaining work/life balance – employees' personal time must be respected and there is a general expectation that employees disconnect from work emails and communications outside of normal working hours and during any type of leave;
- Communications protocol including the very limited circumstances in which an employee may be contacted outside of their normal working hours due to urgent service needs or unforeseeable circumstances e.g. ascertaining availability for rosters arising from unexpected absences;
- Email etiquette including the timing and tone of any out-of-hours communications and the use of email 'out of office' and footers to indicate the employee's normal hours of work/availability;
- Employee health and wellbeing including accessing organisational supports e.g. Occupational Health, Employee Assistance Programme (EAP).

Managers should maintain open channels of communication about workload and time management and encourage appropriate behaviours around disconnecting from work. Managers are required to take action when an employee's inability or reluctance to disconnect appears to be linked to excessive workload, performance issues or organisational culture.

Communications

The Code of Practice states that the tone and sense of urgency in written communications should be proportionate, particularly those sent outside of normal working hours. Texts or emails sent outside of normal working hours may be easily misinterpreted by the recipient as to its urgency. Where appropriate, measures such as adding a footer to an email signature indicating the sender's normal hours of work may be used to indicate an employee's availability. The Code of Practice states that the sender's message is equally important and, when not urgent, the email should state that an immediate response is not expected, or the sender should utilise the "delay send" options and set it to a specified time on the next closest working day. Emergency communications outside of an employee's normal working hours/roster⁴ should be the exception rather than the norm.

Raising Concerns

The Code of Practice highlights that employees and employers should manage the Right to Disconnect in a manner that is respectful of everyone's rights and expectations and in the context of the relevant legislation and good workplace relations generally. The Code of Practice refers to the fact that circumstances may occasionally arise that necessitate that communications are sent and received outside of employee's normal working hours. This may be due to operational needs and other factors including the role of the employee, the agreed terms of employment and the unique requirement of critical services. When occasional contact outside normal working hours and scheduled rostering arrangements becomes the norm, however, this needs to be addressed.

In this regard, situations may arise where an employee may feel that their Right to Disconnect is not being respected or that their workload is such that they are not able to disconnect at the end of their normal working day/shift. Examples of such situations might include:

- Being contacted regularly outside of normal work hours;
- Being expected to regularly work through meal breaks;
- Feeling obligated to routinely work longer hours than those agreed in their terms and conditions of employment;
- Being subjected to less favourable treatment for not being available outside of normal working hours.

⁴ This does not refer to the contractual arrangements that apply to some categories of health service employees such as on-call.

In line with the Grievance Procedure, employees should be advised to raise any issues of concern relating to their employment, including matters encompassed by the Code of Practice⁵, directly with their line manager in the first instance. In circumstances where an employee feels that they cannot approach their line manager, they should contact another manager or seek advice/support from their local HR/Employee Relations Department. Employees should be informed that if issues/complaints cannot be resolved informally, they may invoke the formal stages of the Grievance Procedure. All employees should have a copy of the Grievance Procedure and understand how it operates within their organisation.

Overview of legislation underpinning the Code of Practice

This Circular gives an overview of the pre-existing legislative obligations which, inter alia, protect employees from working excessive hours and are reinforced in the Code of Practice. It is not intended as a legal interpretation of any of the Acts.

A. The Organisation of Working Time Act 1997 (the “OWT”)

The OWT has its genesis in protecting the safety, health and welfare of those at work. The Act does not explicitly refer to a ‘Right to Disconnect’ but provides for statutory entitlements with respect to working hours, rest provisions and annual leave.

1. Rest provisions and maximum weekly working hours

1.1 The OWT provides that employers cannot permit employees to work more than a maximum of 48 hours per week on average over the relevant reference period (4, 6 or 12 months depending on the circumstances). Employers must also ensure that employees receive their statutory rest breaks, daily rest and weekly rest entitlements. As such, employers have a legal responsibility to maintain records of employees’ working hours which can be produced for inspection by the WRC if required. The duty to ensure compliance with the OWT rests with the employer and not the employee. However, employees have a responsibility to cooperate with any appropriate mechanism introduced by the employer for recording of working time. **Appendix 1** of this Circular provides an overview of the maximum weekly working hours and rest provisions under the OWT and related matters.

2. Annual Leave

2.1 Managers are required to monitor annual leave arrangements to ensure that employees avail of their full contractual annual leave entitlement to the greatest extent

⁵ The Code of Practice states that if an informal process has not been successful in resolving the issue, then the organisation’s formal grievance procedure may be utilised. Where there is a collective agreement, the parties should abide by those terms as it relates to raising grievances. If the matter is processed under the grievance procedure in the context of an alleged contravention of the Code of Practice on the Right to Disconnect and remains unresolved, the employee may refer a complaint to the WRC under the appropriate legislation and citing the Code. This does not affect an employee’s right to refer a complaint to the WRC at any point but it is preferable if disputes can be resolved internally.

possible during the current leave year. Where managers have been unable to facilitate an employee to avail of annual leave due to essential service needs, the untaken leave should be documented and carried forward to the following leave year⁶. Where a manager has given prior approval for the carryover of annual leave, they must then engage with the employee on a reasonable timeframe in which this leave will be taken.

2.2 Managers have a responsibility to ensure that their employees are facilitated to avail of their annual leave entitlements in accordance with the OWT. The OWT provides that the time at which annual leave is taken is determined by the employer taking into account the following provisions:

- The employer must consult with the employee or his/her representatives at least one month before the leave commences;
- The employer must have regard for the employee's opportunity for rest and recreation;
- The employer must take into account the need for the employee to reconcile work and any family responsibilities.

An employee who has worked eight or more months in a leave year is entitled to an unbroken period of two weeks' leave, which may include one or more public holidays.

2.3 The OWT provides that the onus is on the employer to ensure that employees avail of their statutory annual leave entitlement in the leave year to which it relates. The OWT provides that, in exceptional circumstances, due to service requirements, statutory annual leave may be carried forward into the first six months of the next annual leave year, subject to the employee's consent to the deferral. At a minimum, managers should ensure that staff avail of the statutory⁷ component of their annual leave entitlement within the current leave year and deferral only occurs in exceptional circumstances.

2.4 Please note that public health service employees are not entitled to receive payment in lieu of any outstanding annual leave unless the employment relationship is terminated.

B. The Safety, Health and Welfare at Work Act 2005 (the "SHWWA")

1. The SHWWA makes provision for the safety, health and welfare of persons at work and sets out the responsibilities of employers, employees and other parties. The Health and Safety Authority (HSA) has published Frequently Asked Questions to provide guidance on this legislation [view here](#).

⁶ HSE employees are required to complete HSE Application Form HR 108(r) [here](#).

⁷ The statutory entitlement to annual leave is set out under section 19 of The Organisation of Working Time Act 1997 [view here](#).

2. Under section 8(2)(b) of the SHWWA the employer’s duties extend to “managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health and welfare at work of his or her employees at risk”.

3. Employees have an obligation under section 13(1)(a) and 13(1)(e) of the SHWWA to take reasonable care to protect their safety, health and welfare at work and “not engage in improper conduct or behaviour that is likely to endanger his or her own safety, health and welfare at work or that of any other person”. This includes an obligation on employees to cooperate with any appropriate mechanism utilised by their employer for the recording of working time⁸. In line with the Code of Practice, employees should be aware of the requirement to consider others’ rights to disconnect by not routinely emailing/calling outside normal working hours and being mindful that the tone and urgency of any communications sent out of hours is proportionate.

4. Section 27 of the SHWWA provides that employers are prohibited from penalising (defined as dismissal, demotion, transfer, imposition of duties, coercion or intimidation) or threatening to penalise employees, who are performing any duty, exercising rights or who make any complaints relating to safety and health or who give evidence in enforcement proceedings.

5. The HSE National Health and Safety Function provides guidance and resources on safety, health and welfare at work at this link: <https://www.hse.ie/safetyandwellbeing>

6. The HSE Workplace Health and Wellbeing Unit provides information on guidance and support services at this link: <https://www.hse.ie/eng/staff/workplace-health-and-wellbeing-unit/>

C. The Terms of Employment (Information) Act 1994 (the “1994 Act”)

1. The Code of Practice outlines an employer’s obligations to notify new employees of any terms and conditions related to hours of work, including hours of work within a normal working day and normal working week. In the case of employees who do not have fixed times of attendance, managers should inform employees of how the roster operates and what their normal working hours are reasonably expected to be over a specified period. Employees should be informed that they are expected to take their allocated rest breaks and rest periods and must notify their manager if they were unable to avail of any statutory rest break or period to which they are entitled.

2. The Terms of Employment (Information) Act 1994 (the “1994 Act”) obliges employers to provide certain information in writing to employees. The Employment (Miscellaneous Provisions) Act 2018 (the “2018 Act”) adds to those obligations.

⁸ This includes employees who are WFH on a temporary basis during COVID-19

3. Under the 2018 Act, an employer must provide new employees with a written statement containing five core terms of employment within **five days** of commencement of their employment.

Those five core terms of employment are:-

- 1) The full names of the employer and the employee;
- 2) The address of the employer;
- 3) In the case of a temporary contract of employment, the expected duration of the contract;

In the case of a fixed term contract of employment, the date on which the contract expires;

- 4) The rate or method of calculation of the employee's remuneration and the pay reference period for the purposes of the National Minimum Wage Act, 2000;
- 5) The number of hours the employer reasonably expects the employee to work –
 - Per normal working day, and
 - Per normal working week.

4. In addition to the above, an employee is entitled to receive a written statement of the remaining terms and conditions of employment, as set out in the 1994 Act, within **two months** of his/her start date.

5. Health service employers should provide the contract of employment to candidates at the job offer stage and request signed confirmation of acceptance as a prerequisite for the candidate's appointment⁹. The contract of employment should contain all the terms and conditions that must be given under the 1994 Act (including the five core terms outlined above) thereby fulfilling the employer's legal obligations. This includes terms and conditions relating to hours of work including, if applicable, overtime, on-call, etc. Further details on all the terms and conditions that must be provided under the 1994 Act are set out [here](#). If the new role requires varying hours of attendance, managers can provide more specific information on rostering arrangements to new employees when they start work (including those already employed who transfer to take up a new role with the same employer).

6. An employer is required to notify an employee of the nature and date of any change to the particulars contained in the written statement not later than one month after the change comes into effect. The requirement to notify the employee of any

⁹ This will prevent disputes in relation to terms and conditions of employment arising after the person has commenced employment in the role. This applies to external candidates and existing employees who apply for a new post within the organisation.

change in the particulars set out in the written statement does not apply if the change results from a change in legislation, administrative provisions or collective agreements to which the employer has referred the employee in the written statement/contract of employment.

In accordance with Department of Health Circular 6/2021, the HSE will produce a Right to Disconnect Policy at a future date to reflect the provisions in the Code of Practice. In the interim, please ensure that this Circular and Code of Practice is brought to the attention of all managers and staff in your area of responsibility. Managers are required to engage with their staff with a view to ensuring that arrangements are in place to demonstrate adherence to the Code of Practice and relevant employment legislation.

Queries

Queries from individual employees or managers should be referred to local HR Departments/ Employee Relations Departments. Please note that the National HR Helpdesk is also available to take queries from employees Tel: 1850 444 925 E: ask.hr@hse.ie

Queries from HR Departments in relation to this Circular may be referred to Anna Killilea, National Employee Relations, HR Directorate, 63-64 Adelaide Road, Dublin 2 Tel: 01 6626966 Email: anna.killilea@hse.ie

Yours sincerely,



Anne Marie Hoey
National Director of Human Resources



Need information and advice on COVID-19 Go to www.hse.ie/coronavirus

Appendix 1 The Organisation of Working Time Act 1997 – compliance with rest provisions and maximum weekly working hours

1. Introduction

The Organisation of Working Time Act 1997 (the “OWT”) provides, inter alia, for minimum rest periods and maximum weekly working hours¹⁰. In summary, the key provisions of the OWT in relation to minimum rest and maximum working time are as follows:

- Rest breaks while at work.
- A daily rest period of 11 consecutive hours in each period of 24 hours during which the employee works for the employer.
- A weekly rest period of 24 consecutive hours in each 7-day period. This reference period can be averaged over 14 days. If the weekly rest day is preceded by a working day then the employee must first receive his/her daily rest entitlement of 11 hours consecutive rest. This effectively means that the employee concerned is entitled to 35 hours consecutive rest.
- Maximum average net weekly working time of 48 hours.

Health service employers are required to ensure that employees are granted their statutory entitlements, at a minimum, and to demonstrate compliance by maintaining accurate records that can be produced for inspection if required. The employer’s obligations under the OWT apply in respect of all health service employees regardless of whether they are required to attend the work premises or are working from home (WFH) on a temporary basis during COVID-19.

2. Rest Provisions

2.1 The OWT provides for daily rest periods, rest breaks at work, and weekly rest periods as set out in the summary below. Appropriate rest breaks and rest periods are vital to the health and safety of employees and are of importance in the efficient and effective operation of the workplace¹¹. Managers should notify employees of their entitlements in relation to daily and weekly rest periods and rest breaks and the manner in which these will be granted. Payment in lieu of statutory rest provisions is not permitted.

2.2 Daily Rest Period (section 11)

The OWT provides that an employee is entitled to 11 consecutive hours rest in each 24 hour period during which the employee works for the employer.

¹⁰ The OWT does not preclude employers from granting entitlements in excess of the statutory provisions.

¹¹ This includes employees who are temporarily working from home during COVID-19.

2.3 Rests and intervals at work (section 12)¹²

The OWT provides that an employee is entitled to daily breaks as follows:

- Break of at least 15 minutes duration after working for a period of more than 4 hours 30 minutes.
- Break of at least 30 minutes duration after working for a period of more than 6 hours. This break may include the 15-minute break referred to above.

Breaks must be taken during the working day/shift and not at the end of the employee's working day/shift.

2.4 Weekly Rest Periods (section 13)

The OWT provides that an employee is entitled to a weekly rest period of 24 consecutive hours per each seven day period. The reference period may be averaged over 14 days. A weekly rest period must follow a daily rest period of 11 hours.

Accordingly, in practical terms an employee is entitled to weekly/fortnightly rest as follows:

- 35 hours rest (11 hour rest period followed by 24 hour rest) once a week, or
- 35 hours rest (11 hour rest period followed by 24 hours rest) twice a fortnight, or
- 59 hours rest (11 hour rest period followed by 48 hours rest) once a fortnight.

2.5 Exemption or variation of entitlements

The circumstances in which the rest breaks, daily and weekly rest periods set out in sections 11, 12 and 13 may be varied are set out in Section 6(1) and Section 6(2) of the OWT. The following is a brief summary.

2.6. Section 6(1) of the OWT applies to the following circumstances:

- The *Organisation of Working Time (General Exemptions) Regulations, 1998* exempt certain activities from the rest breaks, daily and weekly rest periods set out in sections 11, 12 and 13 of the OWT. Health service employees who are directly involved in ensuring continuity of the provision of services, particularly relating to the reception, treatment or care of persons in hospitals, other health service residential institutions and the ambulance service come within the scope of the 1998 Regulations and therefore are covered by the exemption view here. An employee must be "engaged wholly or mainly in carrying on or performing the duties of the activity concerned" to come within the scope of this derogation. It is a matter for the employer relying upon the derogation to demonstrate it applies in respect of an employee¹³. There is no blanket exemption in respect of health service employees.

¹² While the OWT specifies minimum rest breaks employers may stipulate longer breaks.

¹³ The Labour Court considered the application of this provision in Determination No. DWT1917: "The Court applies to the word 'mainly' the normal meaning of the word being 'chiefly' or 'principally' or 'for the most

- Where collective agreements providing for a similar exemption have been concluded by the parties and approved by the Labour Court.

Where either of the above circumstances exempt the employer from the obligation to provide statutory rest periods as regards a particular employee, the employer must ensure that equivalent compensatory rest is made available to the employee.

2.7 Section 6(2) of the OWT applies to the following circumstances:

- Where shift workers who change shifts and cannot avail themselves of the rest period are exempted in respect of daily (section 11) and weekly (section 13) rest periods as provided for in section 4(1) of the OWT;
- Where persons employed in activities consisting of periods of work spread out over the day are exempted e.g. split shifts in respect of the daily (section 11) and weekly (section 13) rest periods as provided for in section 4(2) of the OWT;
- Where employers are exempted from the obligation to provide daily and weekly rest periods and breaks as provided for in sections 11, 12 and 13 of the OWT due to exceptional circumstances or an emergency, including an accident or the imminent risk of an accident, or otherwise the occurrence of unusual and unforeseeable circumstances beyond the employer's control as provided for in section 5 of the OWT.

Where any of the above three circumstances exempt the employer from the obligation to provide statutory rest periods as regards a particular employee, the employer must ensure that the employee is afforded:

- (i) Equivalent compensatory rest, or
- (ii) Where, for objective reasons, (i) is not possible, appropriate protection.

2.8 Compensatory Rest Periods

Please refer to the Workplace Relations Commission (WRC) *Code of Practice on Compensatory Rest Periods* [at this link](#). This Code sets out the general principles of and arrangements for equivalent compensatory rest and appropriate protection and contains some examples. An employer is obliged to inform employees of the procedure to follow if they miss out on their statutory rest break or rest period and to keep a written record of any such notifications in the workplace. The onus is on the employer to ensure that employees avail of their equivalent rest break or rest period. It is not sufficient to show that employees were told what they could take. There is a positive duty on managers to ensure that employees take their compensatory rest in order to ensure that the employer

part'. At the very least, to meet the definition requires that these activities constitute more than 50% of the work concerned. The burden of establishing that this is the case falls to the employer. If an employer cannot establish that an employee's work consists of more than 50% of an exempted activity then, logically, the employee is entitled to the protections of the Act." [view here](#).

is compliant with the OWT. Exempt employees who miss out on their statutory rest entitlements should receive equivalent compensatory rest as soon as possible after the statutory rest period has been missed out on.

2.9 The WRC Code of Practice provides that exempt employees, as provided for in section 6(1) and section 6(2) of the OWT, who miss out on their statutory rest entitlements should receive equivalent compensatory rest as soon as possible after the statutory rest has been missed out on. The Code states that it is most important for employers to make rest time available to employees to allow them to recuperate from long periods of work without adequate rest. The OWT does not specify any timeframes within which compensatory rest must be made available. However, when determining when compensatory rest is to be given, an employer should always have regard to the circumstances pertaining in the individual place of employment and to the health and safety requirements for adequate rest. In this context, it is important that the compensatory rest for rest breaks at work and for daily rest periods, in particular, be provided as soon as possible and, generally, in an adjacent time frame. The employer should be in a position to demonstrate that the equivalent compensatory rest period can reasonably be regarded as equivalent.

2.10 In the case of employees who fall under any of the three exempt categories under Section 6(2) of the OWT, as outlined in section 2.7 above, the following provision also applies. If for reasons that can be objectively justified, it is not possible for an employer to ensure that an employee has available to himself or herself the equivalent rest period or break, the employer must make such arrangements as respects the employee's conditions of employment as will compensate the employee – otherwise referred to as **“appropriate protection”**. The WRC Code of Practice states that while neither “arrangements as respects the employee's conditions of employment as will compensate the employee” nor “appropriate protection” are defined, the Act specifies that these concepts do not include:

- i) the granting of monetary compensation to the employee, or
- ii) the provision of any other material benefit to the employee, other than the provision of such a benefit as will improve the physical conditions under which the employee works or the amenities or services available to the employee while he or she is at work.

2.11 The WRC Code of Practice provides that a common sense approach should be adopted by employers and employees in such situations which takes account of the circumstances existing in the employment and has regard to the safety, health and well-being of employees. While it is not feasible to define such appropriate protection/conditions of employment measures, the concept might include measures which, in addition to normal health and safety requirements, provide for enhanced environmental conditions to accommodate regular long periods of attendance at work, refreshment facilities, appropriate facilities/amenities and other measures. These examples are not exhaustive and other measures may be considered by an employer as

relevant to the particular circumstances. An employee cannot be paid in lieu of statutory compensatory rest¹⁴.

3. Provision of information in relation to working time

3.1 The *Terms of Employment (Additional Information) Order 1998* provides that an employer must provide an employee with a statement in writing containing particulars of the times and duration of their rest periods and breaks, as referred to in sections 11, 12 and 13 of the OWT, and of any other terms and conditions relating to those periods and breaks, within two months of commencing employment [view here](#).

3.2 Section 17 of the OWT¹⁵ provides that if an employee's contract of employment or other relevant agreement does not already specify their starting and finishing times, the employee must be given at least 24 hours' notice of the times and dates on which the employee will be required to start and finish work. Section 17 of the OWT also provides as follows:

- (i) Where employees are required to work variable additional hours they are entitled to notice of that requirement 24 hours before the day or days on which they are required to work such additional hours.
- (ii) If the employee is not working on the day in which the 24-hour notice falls to be given, that notice must be given on the day prior to the employee's last working day.
- (iii) In order to comply with the notice requirements, it is sufficient for an employer to post a notice in a conspicuous place in the employee's workplace.
- (iv) Where unforeseeable circumstances arise as a result of which an employer needs the services of an employee without giving the requisite notice an employer may require an employee to work as necessary.

4. Maximum weekly working time

4.1 Section 15 of the OWT provides that an employer shall not permit an employee to work for more than 48 hours (net) per week calculated over a period of time (the "reference period"). The 48-hour net maximum working week can be averaged according to the following rules:

¹⁴ Consultant Contracts include specific provisions regarding compensatory rest and the circumstances and timeframes within which rest days may be availed of or claimed as payment in lieu. Specific provisions for Consultants regarding compensatory rest accruing to a Consultant arising from the provision of service while on-call and circumstances where payment may apply are set out in the document titled *'Provision of compensatory rest for Consultants'* (16 April 2014).

¹⁵ Section 17(1) of the OWT is subject to the exemptions and exclusions as per ss 4(3) and 5 of the OWT.

- For health service employees generally – a reference period of **4 months**.
- For health service employees where employees are directly involved in ensuring continuity of service particularly relating to the reception, treatment or care of persons in hospitals, other health service residential institutions and the ambulance service ¹⁶ - a reference period of **6 months**.

Managers should identify the appropriate averaging period for an employee's weekly working hours based on the nature of the work performed and ensure that the 48-hour limit is not exceeded.

4.2 In the case of NCHDs, the HSE's guidance document on EWTD compliance provides that the reference period for average weekly working hours may be extended up to the doctor's term of employment or 12 months – whichever is the shorter. Please refer to HSE HR Circular 28/2017 *Reporting of extent of compliance with the requirements of the European Working Time Directive in relation to Non-Consultant Hospital Doctors and Social Care staff* [here](#).

4.3 A "reference period" is a consecutive period of time that does not include the following:

- (i) Any period of statutory annual leave
- (ii) Any period of sick leave
- (iii) Any period of statutory leave granted under the following:
 - Maternity Protection Act, 1994
 - Adoptive Leave Act, 1995
 - Parental Leave Act 1998
 - Carer's Leave Act 2001
 - Paternity Leave and Benefit Act 2016
 - Parent's Leave and Benefit Act 2019

5. Definition of Working Time

5.1 The OWT defines working time as any time that the employee is:-

- a) at his or her place of work or at his or her employer's disposal and
- b) is carrying on or performing the activities or duties of his or her work.

The Act defines a rest period as any time that is not working time.

Working time is defined as net working time i.e. exclusive of rest breaks, standby periods and on-call periods (that occur away from the work premises).

¹⁶ Employees who come within the scope of Section 15(1)(b)(i) of the Organisation of Working Time Act 1997 as amended.

Note: Please refer to HSE HR Circular 28/2017 for specific guidance in relation to NCHDs and Social Care Staff [view here](#).

6. Records

6.1 Health service employers are obliged to keep records to show compliance with the OWT and to demonstrate that employees have received their statutory entitlements. The employer's obligations to maintain records applies to all employees regardless of their place of work. Employees are obliged to cooperate fully with any appropriate mechanism utilised by an employer to record working time.

6.2 The WRC Inspections Service may carry out inspections at employers' workplaces to check compliance with the OWT. These records must be readily available for inspection by the WRC if required.

6.3 Records required to be kept by the employer are prescribed by S.I. No. 473 of 2001 - *Organisation of Working Time (Records) (Prescribed Form and Exemptions) Regulations, 2001*. Employers are required to keep:

- (i) The name, address, PRSI number and a brief job description;
- (ii) A copy of the statement of main terms of employment as required by the Terms of Employment (Information) Act 1994;
- (iii) A record of the days and number of hours worked by employees (excluding meals and rest breaks) on a weekly basis;
- (iv) A record of leave granted to employees in each week by way of annual leave or in respect of a public holiday and any payment made in respect of that leave, and;
- (v) A copy of any records of notification issued to employees in relation to their starting and finishing times as required by section 17 of the OWT (this includes a copy of a notice posted in the workplace).

The records must be in such a form "as will enable an inspector to understand the particulars contained in them without difficulty". The Regulations incorporate statutory form OWT1 for recording employees' hours of work [view here](#). Records must be retained by the employer for at least 3 years.

6.4 If there is no method of electronically recording employees' hours of work (e.g. flexi-time or clocking-in facilities, designated IT systems), the employer must record the days and hours worked each week using an OWT1 Form or a similar paper format¹⁷.

¹⁷ In accordance with European Court of Justice case law, employers are required to put in place an "objective, reliable and accessible system enabling the duration of working time worked each day by each worker to be measured" [view here](#).

6.5 Regulation 5(1) provides for an exemption in relation to the recording of rest breaks where an employer has:

- Electronic recording-keeping facilities such as flexi-time or clocking-in facilities; or
- Manual recording-keeping facilities and completes a Form OWT1 or a similar form in respect of all employees.

The exemption from recording rest breaks only applies if the employer:

- (i) Notifies each employee in writing of their statutory rest periods and breaks; and
- (ii) Puts in place procedures whereby an employee may notify their employer in writing of any missed statutory rest period or break to which they are entitled; and
- (iii) Notifies each employee in writing of this procedure; and
- (iv) Keeps a record of having notified each employee of the right to statutory rest breaks and rest periods and the procedures to follow if a rest break/period is not availed of; and
- (v) Keeps a record of all such notifications made by any employee under these procedures.

6.6 Regulation 5(3) of the 2001 Regulations provides that, in such circumstances, employees must give notice within one week of the day on which the rest period or break to which they were entitled was not availed of on that occasion and the reason. The employer must then make an equivalent rest period or break available as soon as possible, having regard to the employee's health and safety and the circumstances pertaining to their work. If an employee does not avail of the equivalent rest period or break offered, this is not considered a breach on the part of the employer.

6.7 Records relating to NCHDs are not required to be in the form outlined in section 6.3 but must meet the standard prescribed by S.I. 494 of 2004 – *European Communities (Organisation of Working Time) (Activities of Doctors in Training) Regulations 2004* [here](#). The details to be made available to a WRC Inspector are as per Regulation 11. These records must be held for a period of at least three years from the date of their making. A copy of these records must be made available to an NCHD who requests such records or to the Minister for Health.