



## **The Barbados Plan: A paper for consultation from Remedy UK Response from the Royal College of Surgeons of England**

### **Introduction**

The Royal College of Surgeons of England (RCS) welcomes the opportunity to comment on this consultation.

The progressive implementation of the Working Time Directive (WTD) has had a profound impact on the delivery of surgical services and surgical training. The College has repeatedly appealed to the Prime Minister and to successive Secretaries of State for Health for the WTD to be overturned.

The Directive has now been enacted into UK law as health and safety legislation. Full implementation for doctors in training has been delayed for several years to allow the NHS time to organise working patterns that protect patient safety and service delivery. In August 2004 the 58-hour average working week was introduced. Meeting this requirement was challenging for all surgical specialties and saw the widespread implementation of full-shift working which, on paper, made the NHS compliant with the Directive, but in reality created significant difficulties with training and continuity of care.

The efforts of the RCS since 2004 have been two-fold:

- we continue to press at the highest levels for a reconsideration of the Directive and for the surgical specialties in particular to be seen as a 'special case' because of the craft nature of our work;
- on the other hand, we are acutely aware that August 2009 is fast approaching and, in the event that the Directive is not amended, we have concentrated on trying to ensure that surgeons have the knowledge and skills to design rotas which protect patient safety, minimise disruption to training and provide the best levels of continuity of care. We accept that there may need to be some reconfiguration of surgical services.

Our response to Remedy UK's proposals is given in the context of these efforts.

### **RCS Response to Proposals**

<b>That the Government apply for an extension to full implementation of the WTD under Article 17.</b>
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The derogation would give member states two to three more years to comply with the WTD (ie. until August 2011/2012), to take account of difficulties in balancing the working time provisions with the need to deliver health services.

It is important to note that, within the context of this additional transitional period (2009-2011/12), the average weekly working hours must not exceed an average of **52 per week** and so derogation will provide a temporary reprieve and a smaller reduction in working hours. Although the impact of reduced hours is lessened, doctors in training will still lose 4 hours per week.

In order to facilitate the derogation, the member state must inform the European Commission of its intention to apply the derogation, stating clear reasons for this. Advice we have received on this matter indicates that a robust, evidence-based approach will be required.

The President has pressed the Secretary of State for Health for deferment of the full implementation of the WTD in surgery. It is clear that presenting a winning case for deferment will not be a simple task and will require collaboration and support across the profession. As we understand it, it is unlikely that the Commission will grant the derogation for all doctors in training. They may consider a derogation for a particular specialty, sub-specialty or type of unit. We would therefore advocate that the Government is selective in applying for the derogation for those specialties/units that will struggle significantly to achieve compliance. It is clear that some surgical specialties will be in this group.

The College will seek to obtain information and evidence to support an application for derogation where this is required while supporting those specialties/units who may achieve compliance within the specified timeframe. We have recently embarked upon a joint project with the Royal College of Anaesthetists to share learning from specialties and units that are either on track, or have already achieved compliance.

**That use is made of the individual opt-out to allow doctors to work up to 56 hrs/week (The Barbados Plan)**

We would fully support the use of the individual opt-out for doctors to work up to 56-hours/week. Opting out must be entirely voluntary on the part of the doctor,

**That the Government should actively oppose the removal of the opt-out and seek a resolution to the SiMAP and Jaeger Judgements**

The 48-hour/week requirement has been in place for all NHS staff (except doctors in training) since 1998. Consultants therefore should have been compliant with the Directive for ten years - we know that most are not. If the individual opt-out were to be removed, the NHS would be unable to function. It is for this reason that we believe the Government will continue to campaign to maintain the individual opt-out and we fully support this.

Similarly, there needs to be a resolution to the SiMAP and Jaeger judgements that allows active and inactive periods of on-call time. Sir John Tooke, in his report *Aspiring to Excellence*, recommended that the Government should examine a more flexible approach to WTD. His specific suggestion that training time should be discounted from working hours was felt to be unrealistic by Government, but, its response supported the use of legitimate flexibilities within the legal requirements of the WTD, and gave a guarantee that it would continue

to seek amendments to address the problems arising from SiMAP and Jaeger. Proposals to do this were submitted to the European Commission in 2005. As we understand it, a number of member states were unwilling to negotiate on these judgements due to their opposition to the UK's opt-out. It is therefore unlikely that this matter will be resolved in the near future and plans for 2009 will need to take full account of the SiMAP and Jaeger judgements.

It is clear from the joint RCS/RCOA project that most hospitals and surgical teams are not WTD compliant at present and many have no firm plans on how they will face the challenge.

Achieving compliance with the WTD, whether the deadline is August 2009 or August 2012 is one of the most urgent challenges facing secondary care. It is imperative that the Government, Trusts and surgeons begin to address this issue now because the changes required to achieve compliance (which may include service reconfiguration, cross cover with adjacent hospitals and the possible closure of certain services on different sites) will need time to bed-down. This College will do all it can to ensure that patient safety and the training of future surgeons is protected.

**Mr Bernard Ribeiro**  
**President**

**Professor Michael Horrocks**  
**Chairman, WTD Working Party**