Junior doctors contract amendment - frequently asked questions

Software related FAQs can be found on page 4.

Pay and transitional arrangement questions

Q. The deal brings a £90 million investment for junior doctors over the next four years, on what basis will this be distributed between trusts, when and how will they be informed, and via what mechanism will the funding be transferred in 2019 and subsequent years?

A. The Department of Health and Social Care is working with Health Education England (HEE) on the best way to get the additional funding out to employers.

Current funding for juniors is a mixture of the national service tariff and the salary support HEE provide to employers; the additional money is also likely to be a mixture of the two.

Q. Will the 2 per cent uplift be applied to the 2002 rates of pay for those on section 2 pay protection?

A. Yes, the pay uplift will apply to those on 2002 pay scales.

Q. Will the 'disco shift' allowance be in addition to the night duty premium currently paid?

A. No, there is currently a 37 per cent enhancement for night shifts, the eligibility for which is set out in schedule 2, paragraphs 14-16 of the terms and conditions of service. Disco shift allowance is an extension to this provision giving shifts ending after midnight and by 4am an enhancement of 37 per cent of the hourly basic rate for the entirety of the shift.

Q. Only some weekend frequency allowances have been updated. Will the other frequencies remain unchanged?

A. The current weekend frequency allowance percentages mean that some trainees are paid less per hour when working weekends. Specifically, this was shown to be the case for those who worked 1 in 2 weekends, 1 in 3 weekends, and 1 in 6 weekends. Therefore, the weekend frequency allowance rates for those working 1 in 2, 1 in 3, and 1 in 6 weekends will be uplifted from Dec 2019, to ensure these trainees are not paid less per hour than those working other weekend frequency patterns.

Safety limits and rest questions

Q. Will 48 hours rest still be required after 7 consecutive shifts and 4 long shifts?

A. Yes, the 48 hours rest requirements will apply.
Q. Will the 46 hours rest period apply to additional night shifts picked up to cover absence etc?

A. Yes, the rest period will apply. [Individual doctors have a professional responsibility for ensuring that their total hours of work, including any work undertaken for any other employer, comply with the contractual and regulatory limits].

Q. Can more than 1 in 3 weekends be worked if picked up as a locum shift?

A. Trainees that wish to work in excess of 1 in 3 weekends by undertaking additional work, for example as a locum, are able to agree to do so but must not work at a frequency of greater than the maximum 1 in 2 weekend limit.

Q. Is the maximum of 7 shifts over 7 consecutive days? (or 7 shifts over 8 consecutive days in the case of night shifts/on call which fall over 2 days?), and are non-resident on call duty counted towards the count of consecutive shifts?

A. The purposes of this rule are set out in the framework agreement. Where a shift, such as a night shift (or 24hr non-resident on call (NROC)), results in work occurring across two separate days as part of one shift, the work on each day is counted independently toward the maximum consecutive limit.

Less Than Full Time (LTFT) and equalities

Q. Is the payment of £1000 to LTFT trainees permanent and does it apply to future trainees who go LTFT or only current trainees?

The LTFT allowance is effective from December 2019 and will apply to all LTFT trainees for as long as they continue to train less than full time. This allowance is not payable to those already in receipt of the transitional £1500 pay premium, until their pay protection has ceased.

Q. If the champion of flexible training is to be a contractual requirement who is responsible for providing these for the numerous small host organisations e.g. GP practices, local authorities etc?

A. We are working with the British Medical Association (BMA) to clarify expectations for lead employers and small host organisations.

Code of practice

Q. Health Education England hit the 12 weeks but trusts then receive a number of iterations which causes issues with meeting the Code of Practice timescales will anything be done to support trusts with this?

A. Should HEE notify the employer of changes to the information provided at any stage within 12 weeks prior to the start of the placement, the employer will take reasonable
steps to provide the relevant information at 8 weeks and 6 weeks prior to commencement in post. Where this is not reasonably practicable, the employer will take reasonable steps to provide the doctor with the relevant information as soon as possible.

Q. What are the consequences of not meeting the 6-8-week deadline once made contractual?

A. If the reason for not meeting the notification deadlines is as a result of changes in the information provided by either HEE or the doctor, or as a result of the employer having to introduce changes to the post, generic work schedule and/or duty roster owing to service and/or commissioning requirements, there will be no consequences for the employer.

If the employer has received all the necessary information to allow them to meet the 8- and 6-week notification provisions and no changes have been requested, then the employer is contractually bound to meet them. Should the provisions not be met in these circumstances then the employer will be in breach of contract.

Should legal redress be sought by an individual there would be no loss of salary and therefore the main financial exposure for an employer would relate to any expenses incurred as a result of receiving the relevant information outside of the 8 and 6-week deadlines.

Q. The framework agreement refers to ‘employing organisation’, lead employers have almost no control over adherence to the Code of Practice or even any control over hosts actually providing work schedules at all. How can lead employers be contractually held accountable?

A. In response to the specific difficulties presented by lead employer arrangements it has been agreed that where the doctor is employed under this model, the lead employer organisation is required to take reasonable steps to ensure that upon any rotation the host organisation complies with relevant notification provisions in so far as applicable.

Q. How would the 8 and 6-weeks deadline work for LTFT trainees whose personalised work schedules are agreed between the trainee and the doctor, if this information is received after the 8 and 6-weeks would this still be a breach?

A. This would only be considered a breach if the employer had received the relevant information in enough time to meet the 8 and 6-week notification provisions but had failed to do so.

Q. Will the five days given to doctors to respond back to employers be included within the terms and conditions of service?

A. The terms and conditions state that in the event that the doctor fails to provide the
information or comply with the relevant provisions set out in the Code of Practice and/or notifies the employer of information which materially impacts upon the post, the generic work schedule or the duty roster, the employer will not be in breach of contract if the notification provisions are not met. In such circumstances the employer will only be required to take reasonable steps to provide the information to meet the 8 and 6-weeks notification provisions.

**Software related questions (responses from Allocate)**

**Q.** Will changes to the software be done in time for the work schedules to be sent out for October 2019 changeover?

**A.** Allocate: eRota will be updated on Thursday 5 September to accommodate the key changes required to support new work schedules.

**Q.** Will the changes to Allocate Software also be applied to HealthRoster as opposed to just eRota?

**A.** Allocate: Yes, we are currently scoping the work required to support the operationalisation of these changes. MedicOnDuty will be updated later this year/early 2020.

**Q.** Making copies of rotas is not a quick job - why is it not automated?

**A.** Allocate: Unfortunately, the timescales for implementation don’t enable us to develop a solution that would enable a quick copy of all rotas.

**Q.** When will live rostering systems reflect the new rules?

**A.** Allocate: We are currently scoping the work required to support the operationalisation of these changes. MedicOnDuty will be updated later this year/early 2020.

**Q.** The Allocate system does not allow us to close an exception report, even when the situation has been resolved, is there scope to build something in?

**A.** Allocate: The ability to close exception reports was released in May; either the Guardian or an administrator can click into an open exception and use the ‘close’ button. Closed exceptions can be reopened at any time and can be found under the ‘all exceptions’ metric on the dashboard.

**Q.** Will the system highlight issues on rotas, or do we need to manually check every rota?

**A.** Allocate: We don’t recalculate pre-live, live or archived rotas in order to preserve the integrity of previously agreed contractual arrangements. In order to test against the revised rules, a copy will need to be made.
Implementation questions

Q. In the implementation timetable it states that the safety limit ‘72 hrs in any consecutive 168 hr period’ is to be in place for October. Where we have already agreed and issued rotas/work schedules for October, is the expectation that these will need to be recalculated and reissued?

A. Subject to software updates, yes, the expectation is that these will be recalculated and reissued.

Q. The safety limits for ‘rest after nights’ and ‘max weekend frequency’ states ‘recommended for October 2019 and to be included for December 2019 rotations and all others by Feb 2020’. is the expectation that these will need to be recalculated and reissued for October?

A. No, these will not need to be re-issued if they have already been issued, the caveat allows rotas/work schedules that have already been issued for October to proceed. Employers may need to do a mid-placement review.

Q. Some October work schedules and offers have already been sent out as per the code of practice timeline, do these ones now need to be re-issued?

A. No, if these have already been sent then this would be at the trainees next scheduled rotation.

Q. When will the annual 2 per cent pay uplift be introduced? Will it be backdated, and if so what will happen to trainees who have rotated to new employers in August?

A. Yes, the annual pay uplift will be introduced in September 2019 and backdated to 1 April 2019 for the 2019/20 period. When the current or previous employer runs the retro process, the system will automatically generate the arrears for the doctors who have rotated. It will then be automatically paid to the doctor as a payment after leaving when the payroll has been processed by the current or previous trust. Employers should ensure trainees rotating out are made aware payment of arrears will be made by their previous trust, up to date of rotation, and confirm bank details will not be different to those held on ESR.

Q. The implementation timeline states that some changes will be introduced in August 2019. How will this work in practice?

A. Employers may not have had the opportunity to introduce some of the changes yet as stated in the implementation timeline. We are aware that the August changes such as leave for life changing events and additional breaks for night shifts will likely require further support after the go-live date, therefore employing organisations should raise any areas of concern to NHS Employers at the earliest possibility so that discussions
can take place at local level to assist with implementation and to work on mitigating/resolving any issues at the earliest possibility.

**Other**

**Q.** If the national locum rates are removed from the terms and conditions and pay circular, what rate would be used to determine fines or exception reports as per schedule 2 paragraph 68 of the terms and conditions of service?

**A.** The reference to the national locum rates will be removed from the terms and conditions, however for the purposes of fines the NHS Improvement rates in 2018/3 circular will remain and will freeze with no automatic annual uplifts. These will be reviewed via the J uniors Negotiations Committee (J uniors).

**Q.** Are the GP home to work expenses as per the 2002 contract and only paid for days when the car is actually used for a home visits or is it every day the car could potentially be used?

**A.** Reimbursement for the cost of mileage and associated costs will apply on days the GP trainee is required to use their personal vehicle on the possibility of a home visit being required.

**Q.** Who covers the cost for accommodation following night shift where trainee too tired to drive home?

**A.** The cost should be covered by HEE’s relocation expenses in most circumstances.

**Q.** Do fines for 5 hrs and 8-hour rest breaches occur in the case of one single breach or will they be dependent on averages? The introduction of these fines will in many cases mean that on call rotas can no longer be sustained for most specialties. Are the Royal Colleges aware of this?

**A.** The fine is applied to a breach of the core rest limit on the occasion which it happens, the provisions in schedule 3 para 31-33 concerns arrangements around safe working in the shift immediately following the NROC where the rest breach occurs - it’s a measure to ensure doctor and patient safety are not compromised. These breaches shouldn’t be happening on a regular basis and if they are, that’s an indicator that reviewal of the pattern is needed to look at the root causes and to put measures in place to avoid recurrent breaches.

**Q.** Will the trust have the authority to allocate time off in lieu (TOIL) in the event that agreement cannot be reached between doctor and trust within 4 weeks.

**A.** If TOIL has been agreed as the compensatory outcome of an exception report by both parties, it should be done so under the expectation that the TOIL can be reasonably taken. Where this does not occur, the TOIL should automatically be converted to pay
after that 4-week period. At the end of a placement, any untaken TOIL will be converted into pay.

Q. Are there any guidelines of how much admin support the guardian should be allocated?

A. As outlined in the framework agreement this provision is not effective from December 2019. Both NHS Employers and the BMA have committed to produce guidance to support employers with the implementation of this provisions.

Q. Can you please explain the prospective cover for study leave in February 2020 and how this will impact the cover that the trainees have to provide?

A. This will depend on how this is determined locally and the processes for how study leave is managed and taken. Where trainees are required to provide internal cover for colleagues on the rota when they take study leave or if shifts attracting an enhanced rate of pay or an allowance are required to be swapped for study leave, prospective cover is in operation. This must be factored into the calculation of the average weekly hours of work and pay for that rota. Where employing organisations have alternative arrangements for covering study leave where internal cover or swaps are not required, prospective cover does not apply.

Q. The framework agreement sets out that doctors can exception report for professional activities such as e-portfolio. How will this work in practice?

A. The clarification regarding what trainees can exception report contains reference to all professional activities that doctors are required to fulfil by their employer, such as e-portfolio. Where these activities are a requirement they should be factored into working time and outlined in the work schedule. It is expected that these activities should not be undertaken outside of working time, unless agreed, and should instances arise where exception reports are submitted for these out-of-hours it is recommended that the employer or doctor initiate a work schedule review to rectify this.

Q. Are employing organisations required to cover the cost of too tired to drive home provisions every time they are requested?

A. The arrangements for trainees that declare they are too tired to drive home remain mostly the same as when introduced in 2016, except for the added inclusion of reasonable expenses to allow the doctor return to work where necessary. The provision is designed to protect any doctor that feels their tiredness would impact their personal safety as a result of travelling home following the conclusion of a shift. It can be enacted any time that these concerns are raised. However regular use may be an indicator that there are other issues that require reviewal or intervention by the employer and/or guardian of safe working.