NHS
Executive

Headquarters

Department of
Health
Quarry House
Quarry Hill
Leeds LS2 7UE

Tel 0113 254 5000

ADVANCE LETTER (MD) 1/01

To:

Chief Executives/Directors of:

Health Authorities
Special Health Authorities
NHS Trusts
Public Health Laboratory Service Board
Dental Practice Board

cc: Regional Directors
RDsPH
RDsPM
HA Directors of Finance
NHS Trust Directors of Finance
HA Directors of Human Resources
NHS Trust Directors of Human Resources
Post Graduate Deans
Regional Action Team Chairman
Training Programme Directors

7 February 2001

Dear Colleague

PAY AND CONDITIONS OF SERVICE OF HOSPITAL MEDICAL AND DENTAL STAFF AND DOCTORS IN PUBLIC HEALTH MEDICINE AND THE COMMUNITY HEALTH SERVICE

Summary

1. This letter authorises changes with effect from 1 December 2000 to the national pay and conditions of service for hospital medical and dental staff and doctors in public health medicine and the community health service. Attached to this letter are details of amendments to the hospital terms and conditions of service (Annex B), along with a new model contract for junior doctors (Annex C). Details of amendments to the terms and conditions of service of doctors in public health medicine and the community health service will follow in further guidance.

Agreement

2. Following discussion in the Joint Negotiating Committee for Hospital Medical and Dental staff, the Secretary of State for Health has approved the attached amendments to the National Pay and Terms and Conditions of Service of Hospital Medical and Dental staff. The amendments should be incorporated in the relevant staff handbooks and registered as Amendment No 26 from 1 December 2000 (hospital staff).

Approval

3. A copy of the formal approval is attached.

New Pay Arrangement

4. From 1 December 2000, the Additional Duty Hours (ADH) pay system will be replaced with a pay banding system. The bands reflect whether the post is compliant with the hours controls and rest periods in the juniors New Deal, and also whether the doctor works up to 40, 48 or 56 hours a week, the type of working pattern, the frequency of extra duty and the unsocial nature of the working arrangements.

5. The agreement covers both full time doctors and dentists in training, and flexible trainees in posts and placements in the Hospital and Community Health Service (HCHS), including Public Health medicine trainees. These posts or placements are in the training grades of PRHO, HO, SHO, SpR (including Registrars and Senior Registrars).

How the system will work

6. Full time doctors whose entire working week consists of 40 hours between 8am and 7pm, Monday to Friday, will receive no additional supplement and their post will therefore not be allocated to one of the bands below.

7. For doctors contracted full time there are three bands in the new system:

- Band 3 will include all juniors whose posts are non-compliant with the hours limits and/or the rest requirements of the New Deal, as stipulated in HSC 1998/240, modified by agreement on weekend rest periods.

- Band 2 will include all juniors whose posts are compliant with the New Deal and who work over 48 hours and up to and including 56 hours of actual work per week.

- Band 1 will include all juniors whose posts are compliant with the New Deal and who work up to and including 48 hours of actual work per week.

8. Band 2 is split into Bands 2A and 2B, and Band 1 is split into Bands 1A, 1B and 1C:

- Bands 2A and 1A will include all juniors who, within their respective hours' limits, work the most frequently and at the most unsocial times, as defined by the banding criteria.

- Bands 2B and 1B will include all juniors who, within their respective hours' limit, work less frequently and at less unsocial times.

- Band 1C will include all juniors working on a low frequency on-call rota from home.

9. The total salary of junior doctors will comprise a *base salary* to which a *supplement*, calculated as a proportion of the base salary, will be added according to the band to which the doctor is allocated, as set out below. Figures in brackets show total salary expressed as a multiple of base salary:

Band/date	1 December 2000	1 December 2001	1 December 2002
Band 3	62% (1.62)	70% (1.7)	100% (2.0)
Band 2A	50% (1.5)	60% (1.6)	80% (1.8)

Band 2B	42% (1.42)	42% (1.42)	50% (1.5)
Band 1A	42% (1.42)	42% (1.42)	50% (1.5)
Band 1B	30% (1.3)	30% (1.3)	40% (1.4)
Band 1C	20% (1.2)	20% (1.2)	20% (1.2)

Pay banding arrangements for flexible trainees

10. Flexible trainees will no longer be paid on a simple pro rata equivalent of their full time colleagues. The exception will be those flexible trainees who perform *all* their duty between 8am and 7pm Monday to Friday, who will be paid in a pro rata system (see Band FC below).

11. If a flexible trainee works in a post that does not comply with the New Deal, they will meet the criteria for Band 3 and will receive the full base salary and supplement for that band with no pro rata reductions.

12. If a flexible trainee does 40 hours of actual work per week or more they will be treated exactly the same as a full time trainee. This means that they will be allocated to a band using the same criteria as full timers and will receive the full base salary and supplement for that band with no pro rata reduction.

13. An additional band (Band F) has been created to accommodate flexible training within the banded system. Band F will be for flexible trainees who do less than 40 hours of actual work per week.

14. Band F is split into Band FA, FB and FC, according to hours and patterns of work criteria.

- *Band FA* - flexible trainees with more than one third of duty hours outside the period 7am to 7pm Monday to Friday, or working 1 in 5 weekends or more frequently, or working an on-call rota frequency of 1 in 10 or more frequently with prospective cover, will receive a full base salary and supplement of 25% (= 1.25 x base salary).

- *Band FB* - all other flexible trainees with duty outside the period 8am to 7pm Monday to Friday, will receive a full base salary and supplement of 5% (= 1.05 x base salary).

- *Band FC* - flexible trainees with no duty at all outside the period 8am to 7pm Monday to Friday, will be paid a pro rata of the base pay, according to the following formula: *hours of duty/40 x base pay*. All duty hours will be taken into account, not just contracted 'sessions'.

Band	**1 Dec 2000 onwards**
FA	25% (1.25)
FB	5% (1.05)

- The supplement will be paid in full, not adjusted in any way according to a proportion of full time salary, (e.g. Band FB has a supplement of 5%, which means the salary will be 1.05 x full base salary for all flexible trainees in that band).

Mutual obligation to monitor hours

15. From 1 December 2000 there will be a contractual obligation on employers to monitor junior doctors' New Deal compliance and the application of the banding system, through robust local monitoring arrangements supported by national guidance, and on individual junior doctors to co-operate with those monitoring arrangements.

16. These arrangements will be subject to:
- review by regional improving junior doctors working lives action team (or equivalent); and
- for employers, the performance management systems.

17. In practice, if either the employer or the employee is not fulfilling their obligations, this could affect the means of determining pay banding and lead to financial and contractual uncertainty.

18. Trusts will need to ensure they collect and analyse data sufficient to implement the new pay banding and juniors' contract from 1 December 2000, and to build on this for the future for reassessing hours' compliance and/or resolving pay or contractual disputes. At the employers reasonable request, junior doctors, in turn, will be responsible for recording data on hours worked, and forwarding that data, in accordance with the guidance "Junior Doctors hours monitoring: principles and guidance" which accompanies HSC 2000/031.

19. Employing authorities must ensure that from 1 December 2000 posts in the PRHO, HO, SHO, SpR, R and SR grades comply with the contracted hours of duty detailed in paragraph 20 of the Terms and Conditions of Service. These are 72 hours for an on call rota (except under the English Clause where the maximum is 83 hours – English Clause posts must be New Deal compliant in all other respects); 64 hours for a partial shift and 56 hours for a full shift.

20. Employing authorities must ensure that practitioners in the HO and PRHO grades from 1 August 2001 and practitioners in the SR, SpR, R and SHO grades from 1 August 2003, comply with the controls on hours of actual work and rest detailed in paragraph 22.a of the Terms and Conditions of Service.

21. Junior doctors and their employers will work together to identify appropriate working arrangements or other organisational changes in working practice which move non-compliant posts to compliant and to comply with reasonable changes following such discussion.

22. The objective of the contract is, over time, to reduce the hours worked by junior doctors. The changes in contractual terms must not be used as a justification to increase hours worked in any post. On and following implementation, any substantive change to the working pattern of any existing post which may lead to an increase in the hours worked can only be introduced with the assent of the postholder and the approval of the regional improving junior doctors working lives action team (or equivalent). The nature of the approval system is contained in the implementation guidance "A general guide to the new pay system" which accompanies HSC 2000/031.

Mechanism for the allocation of banding

23. All junior doctors will complete the banding questionnaire. All junior doctors sharing the same rota, shift or partial shift will be assigned the same banding. Where junior

doctors do not have identical duties and responsibilities as the others on the rota or shift system, however, they should be assessed separately.

24. At this first phase, regional improving junior doctors working lives action teams (or equivalent) could be involved to help resolve difficulties and to ensure consistency.

25. Where agreement is reached on banding, the employer should notify the outcome in writing to the junior doctors concerned and any relevant consultants and clinical directors. Copies of all documentation should be available to the regional improving junior doctors working lives action team (or equivalent) which will give its opinion in any case where there is a dispute or in other cases at its discretion. Where agreement cannot be reached during the initial phase, the parties will record the issues to be resolved.

26. If either party does not accept the regional improving junior doctors working lives action team's (or equivalent) opinion, there will be a right of appeal – on the grounds of fact – which will be the responsibility of the employer to operate fairly and transparently. Appeals will be heard by a local trust committee which should be convened as soon as possible and trusts are expected to do so while the doctors remain in post. The appeal panel should be constituted of two representatives of the trust nominated by the chief executive or the medical director (one of whom will chair the panel), a junior doctor representative from the trust (agreed with the junior doctor appellant) conversant with the working patterns involved, a junior doctor from a regional list supplied by the UK JDC and an independent external assessor nominated by the regional improving junior doctors working lives action team (or equivalent). No member of the panel should have been involved in the original banding allocation decision. The decision of the panel is final. The effect of the decision will be backdated to the date of the change, or to 1 December 2000, whichever is applicable.

Clinical academics and other junior doctors who work for more than one employer

27. Academics and other junior doctors who work for more than one employer will normally receive their base salary from their main employer and previously received ADHs for out of hours work, either paid directly or recharged by the main employer. Under the new pay arrangements, where an academic or other junior doctor is working the same frequency of rota and/or length of hours as other junior doctors in the rota, the same system will operate, and these academic or other staff will receive the pay band supplement applicable to the rota or speciality in which they perform their out of hours duties. Where such doctors do not have identical duties and responsibilities to the rest of the doctors on the rota/shift system, they should be assessed separately taking into account the overall number of hours worked per week.

Protection of intensity payments

28. On 1 December 2000, where a post attracts a higher rate of ADH payment in recognition of excessive intensity under EL(96)10 or HSC 1998/027 (in England), then the post will attract the same overall salary for so long as it is more favourable than the national pay band allocation, until the intensity problem has been shown to be resolved. This will also apply where a claim with full supporting evidence has been lodged by 30 November 2000 in accordance with these circulars, which is later agreed.

Pay protection arrangements at transition

29. Pay protection in compliant posts will apply from 1 December 2000 to a junior doctor whose total pay under the ADH system in the post they are occupying on 1 December

2000, or in any post in a rotation accepted before 1 December 2000 where a formal ADH assessment has been made, would be higher than that due under the new arrangements. Until 1 December 2003, pay protection will also apply to any post or placement in a rotation accepted before 1 December 2000 where no formal assessment was made but where the post, at the time the junior doctor accepted the rotation, was paid at a higher rate under the ADH system than under the new arrangements when the junior doctor takes up post. For these purposes a rotation is a series of posts or placements forming part of a training programme which might be at PRHO, SHO or SpR level. Such a rotation may involve the trainee having a series of different employing trusts and contracts but will not involve a new appointment panel.

30. Where a junior doctor would have been entitled to claim for extra payment for over-intensive working under the ADH system according to EL(96)10 or HSC 1998/027 (and equivalents in Scotland, Wales and Northern Ireland), and where this payment would have resulted in a higher salary than that given by Band 3, the doctor will be entitled to a total supplement of 80% for as long as the working arrangement continues. This mechanism will continue until 1 December 2002 when Band 3 will give a supplement of 100%.

Pay protection arrangements for compliant posts after transition

31. For compliant posts/placements which are rebanded to a lower band, postholders shall have salary protected at the rate of the original band applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.

32. For rotations, future posts/placements which have been accepted by the appointee at a compliant band that are rebanded to a lower band shall have salary protected at the rate of the original band applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.

Pay protection arrangements for non-compliant posts after transition

33. All posts which are non-compliant will be paid at the Band 3 rates applicable at the time.

34. For posts/placements which become compliant before 1 December 2002 postholders shall have salary protected at the Band 3 rate applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.

35. For posts/placements which become compliant on or after 1 December 2002 postholders shall have salary protected at the Band 2A rate applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.

36. For rotations, future posts/placements which have been accepted by the appointee at Band 3 that become compliant before 1 December 2002 shall have salary protected at the Band 3 rate applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.

37. For rotations, future posts/placements which have been accepted by the appointee at Band 3 that become compliant on or after 1 December 2002 shall have salary protected at the Band 2A rate applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.

38. A joint review by the NHS Executive and BMA of continuing non-compliance and pay protection arrangements will start in August 2002.

Mechanism for rebanding

39. *Stage one* – Institute change in working practice

To institute a change in working practice, the employer must:

- Consult the postholders and obtain the agreement of the majority participating in the rota;
- Obtain agreement from the clinical tutor for education purposes;
- Submit details of the new rota to the regional action team (or equivalent) for information and invited comment.

Stage two – Monitoring of working pattern
Such monitoring must comply with the principles set out in HSC 2000/031 and be subject to validation by local junior doctor representatives and the regional action team (or equivalent).

Stage three – Written notification of monitoring outcome

Stage four – Approval mechanism to change band

The following information must be sent to the regional action team (or equivalent):

- Details of the change in working practice;
- Monitoring data;
- Agreement of postholder;
- Agreement of clinical tutor.

Stage five – Appeals mechanism (see above **Mechanism for allocation of banding**)

Calculation of maternity pay

40. In accordance with paragraph 18 of General Whitley Council Section 6, transition to and changes in the salary supplements under the new banding system will be treated in the same way as annual increments and pay awards for the purposes of calculating maternity pay.

Pension arrangements

Pensionable pay

41. When assessing pensionable pay for NHS Scheme purposes, under the new arrangements effective from 1 December 2000, only **basic** pay **(1.0)** for a maximum of 40 hours duty per week counts (1.0 being the basic whole time pay before any supplement is added). Pay supplements over and above basic pay **(1.0)** are non pensionable.

42. For doctors contracted to work 40 or more hours of duty per week, pensionable pay for both contributions and benefits purposes must be based on their actual whole-time basic pay **(1.0)** only.

43. For doctors contracted to work **less** than 40 hours of duty per week, pensionable pay for contributions purposes will be the appropriate proportion of actual whole-time basic pay **(1.0)**. However, contributions must also be paid on any additional hours of duty a doctor works between their contracted hours and a maximum of 40 hours per week **and employers must make arrangements to track and record these additional hours for pension purposes.** For benefits purposes, a notional whole-time equivalent figure equal to the whole-time basic pay for 40 hours of duty per week **(1.0)** must always be used.

Membership

44. When assessing the hours of duty worked for NHS Scheme reckonable membership purposes, up to 40 hours per week will count.

45. Doctors contracted to work 40 or more hours of duty per week must be classified as whole-time in their NHS Scheme pension records, irrespective of their actual weekly total.

46. Doctors contracted to work less than 40 hours of duty per week, must be classified as part-time at the appropriate fraction, e.g. 32/40. However, any additional hours of duty a doctor works between their contracted hours and a maximum of 40 hours per week, must also be made pensionable **and employers must make arrangements to track and record these additional hours for pension purposes.**

Questions

47. If employers have any questions about the impact of the new pay system on NHS Pension Scheme members and record keeping, please contact Mark Anderton, at the NHS Pensions Agency, on 01253 774423.

Implementation

48. Employers in NHS Trusts and Health Authorities need to make immediate arrangements to transfer existing doctors in post from their current contracts, expressed in terms of base salary plus ADHs, to the new structure comprising base salary plus banding supplements where applicable.

49. The new rates came into effect on 1 December 2000 and the accompanying direction allows authorities to make retrospective payment at the new rates from that date.

50. Full guidance on action required and background information can be found on the NHS Website at: http://www.doh.nhsweb.nhs.uk/nhs/hr/juniordoctors.htm and on the internet at: www.doh.gov.uk/juniordoctors/index.htm

This covers:

- *Junior doctors' hours monitoring: principles and guidance*
- *Pay banding criteria*
- *Implementation Guidance*
  - *A general guide to the new pay system*
  - *Definitions*
  - *Hours of work and rest requirements*
  - *Calculating actual hours of work*
- *Pay Banding Questionnaire*

Model Contract

51. The attached model contract has been revised to reflect the changes to the Terms and Conditions of Service.

Locums

52. The arrangements for calculating locum pay under the banding system, with effect from 1 December 2000, have been agreed and are attached at Annex A.

Distribution

53. Copies of this letter will be sent to Directors of Finance and Human Resources. Employers should provide locally any further copies they require.

Action

54. Chief Executives must ensure the new contract and pay structure is implemented immediately. Copies of this letter will be sent to Directors of Human Resources. A copy can also be obtained at the Department of Health website at http://www.open.gov.uk/doh/coinh.htm

Enquiries

55. Doctors in training should direct all enquiries to their employing authorities and NHS Trusts. Any enquires which cannot be resolved locally should be directed by the employer to the NHS Executive Pay Policy Branch on (0113) 2545710 or email Enquiry-Box@doh.gsi.gov.uk

Yours sincerely

Steve Barnett
Deputy Director of Human Resources

PAY AND CONDITIONS OF SERVICE OF HOSPITAL MEDICAL AND DENTAL STAFF AND DOCTORS IN PUBLIC HEALTH MEDICINE AND THE COMMUNITY HEALTH SERVICE

The Secretary of State for Health in exercise of the powers under regulations 2 and 3 of the National Health Service (Remuneration and Conditions of Service) Regulations 1991 (SI 1991 No 481) and under paragraph 11 of Schedule 3 to the National Health Service Act 1977, hereby approves the agreement of the Joint Negotiating Committee for Hospital Medical and Dental Staff and the Joint Negotiating Body for Doctors in Public Health Medicine and Community Health Service, as set out in HSC 2000/031 – "Modernising Pay and Contracts for Hospital Doctors and Dentists in Training" with effect from 1 December 2000.

Signed by authority of the
Secretary of State for Health

Steve Barnett
Deputy Director of Human Resources

7 February 2001

Annex A

LOCUM PAY

Band LA

Hourly rate for locum hours outside Monday to Friday 9am to 5 pm, for shift working patterns
=1.62 x basic hourly rate*

Band LB

Hourly rate for locum hours outside Monday to Friday, 9am to 5 pm, for on-call working patterns
=1.42 x basic hourly rate*

Band LC

Hourly rate for locum hours Monday to Friday, 9am to 5 pm, for all working patterns
=1.2 x basic hourly rate*

Band LL

Weekly rate for locum covering a post for one week or more
=1.2 x total salary (basic salary* + banding supplement) of the post being covered.

Mid-point of the grade salary scale (for SHOs this is the average between the third and fourth points)*

Junior doctors in Locum Appointment for Training (LAT) are excluded from this arrangement.

Junior doctors in Locum Appointment for Service (LAS) posts are to be paid under the banding system above, subject to review in August 2001.