

Pay Circular (AforC) 3/2007

Pay and conditions for NHS staff covered by the Agenda for Change agreement

To: All NHS employers

Dear Colleague,

Summary

This pay circular formally incorporates the agreed redundancy arrangements which took effect from the 1 October 2006 for staff covered by the Agenda for Change agreement and sets out the changes to the NHS Terms and Conditions of Service handbook.

Agreement

- 1 The Department of Health has approved changes to the redundancy pay arrangements for the NHS, following joint recommendations from NHS Employers and the NHS Staff Council. These arrangements supersede the provisions set out in Section 16 of the terms and conditions of service handbook.

Action

- 2 Revised redundancy pay arrangements will apply in full with effect from 1 October 2006. Please implement, and where necessary, retrospectively apply the new arrangements as soon as is practicable.

Enquiries

- 3 Employees should direct personal enquiries to their employer.
- 4 Employers should direct enquiries to :agendaforchange@nhsemployers.org

Further copies

- 5 Copies of this circular can be downloaded from: www.nhsemployers.org
- 6 A copy of the NHS Terms and Conditions of Service handbook can be downloaded from the NHS Employers website at the following address:
www.nhsemployers.org/payandconditions/agendaforchange.asp

- 7 Prior to establishment of NHS Employers in November 2004 responsibility to inform the NHS of uplifts in pay and allowances payable to non-medical staff rested with the Department of Health and was published in Advance Letters; Copies of previous Advance Letters from 1995 onwards may be obtained from the Department of Health website at the following address: www.dh.gov.uk/letters

Issued by



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APPENDIX 1

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NHS TERMS AND CONDITIONS OF SERVICE HANDBOOK

The changes made effective by this circular are:

- Section 16 in this circular replaces Section 16 in the handbook

SECTION 16

REDUNDANCY PAY

Introduction

16.1 This section sets out the arrangements for redundancy pay for employees dismissed by reason of redundancy who, at the date of termination of their contract, have at least 104 weeks of continuous full-time or part-time service. These take effect from 1 October 2006. It also sets out the arrangements for early retirement on grounds of redundancy and in the interests of the service for those who are members of the NHS pension scheme and have at least two years continuous full time or part time service and two years qualifying membership in the NHS pension scheme. Pension changes take effect from 1 December 2006. It further sets out transitional arrangements from 1 December 2006 to 30 September 2011 for staff aged over 50 at the time of redundancy who are members of the NHS Pension scheme with at least five year's pensionable service¹.

Definition of Redundancy

16.2. The Employment Rights Act 1996 Section 139 states that redundancy arises when employees are dismissed in the following circumstances:

- "where the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed; or where the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed; or
- where the requirements of the business for employees to carry out work of a particular kind, in the place where they were so employed, have ceased or diminished or are expected to cease or diminish".

Qualification for a Redundancy Payment

16.3 To qualify for a redundancy payment, the member of staff must be an employee, working under a contract of employment for an NHS employer. 'NHS employer' means any of the organisations listed at Annex A in the handbook and any predecessor or successor body. Non executive directors of NHS organisations do not qualify. Contracts of employment may be written or verbal, and can be for a fixed period or be continuous. In law, employees have a contract as soon as they start work and in accepting and undertaking the work required they accept the terms and conditions offered by the employer. To qualify for a redundancy payment the employee must also have at least 104 weeks of continuous full time or part time service.

Definition of Continuous Service

¹ There is currently a consultation underway on the NHS Pension Scheme. It is expected that new pension arrangements will be in place effective from December 2007. Once final agreement has been reached the AfC redundancy arrangements will be amended to take into consideration the new arrangements.

16.4 "Continuous service" means full-time or part-time employment with the present or any previous NHS Employer. If with more than one NHS employer, there must not have been a break of more than a week (measured Sunday to Saturday) between employments.

Definition of Reckonable Service

16.5 "Reckonable service" for the purposes of an NHS redundancy payment, which is calculated on the basis of the service up to the date of termination of the contract, means continuous full-time or part-time employment with the present or any previous NHS employer but with the following additions:

- where there has been a break in service of 12 months or less the period of employment prior to the break will count as reckonable service;
- periods of employment as a trainee with a general medical practitioner in accordance with the provisions of the Trainee Practitioner Scheme will count as reckonable service;
- at employer discretion, any period or periods of employment with employers outside the NHS where these are judged to be relevant to NHS employment can be included in reckonable service – see Section 12 of the handbook.

16.6 The following employment will not count as reckonable service:

- employment that has been taken into account for the purposes of a previous redundancy, or loss of office payment by an NHS employer;
- where the employee has previously been given pension benefits, any employment that has been taken into account for the purposes of those pension benefits.

Definition of a Month's Pay

16.7 "Months pay" means whichever is the more beneficial of the following calculations:

- 4.35 times a week's pay calculated in accordance with the provisions of Section 221 to 229 of the Employment Rights Act 1996;
- an amount equal to $1/12^{\text{th}}$ of the annual salary in payment at the date of termination of employment.

Calculation of Redundancy Payment

16.8 The redundancy payment will take the form of a lump sum, dependent on the employee's reckonable service at the date of termination of employment. The lump sum will be calculated on the basis of one month's pay for each complete year of reckonable service subject to a minimum of two years (104 weeks) continuous service and a maximum of 24 year's reckonable service being counted.

16.9 Fractions of a year of reckonable service will not be taken into account.

Early Retirement on Grounds of Redundancy for Employees entitled to pension benefits**Qualification Criteria**

16.10 Members of the NHS Pension Scheme who are made redundant and meet the conditions set out above in paragraphs 3 to 6, may choose to retire early without reduction in the value of pension benefits as an alternative to receiving the full lump sum benefit set out in paragraph 8. To qualify for early retirement the member of staff must:

- Be a member of the NHS Pension Scheme;
- Have at least two years' continuous service and two years' qualifying membership;
- Have reached the minimum pension age. The Finance Act 2004 allows for protection of a minimum pension age of 50 for members who had the right to take reduced benefits at that age on 5 April 2006. This protection may continue as long as members retiring early after 6 April 2010 take all their benefits payable under scheme rules. In the NHS Scheme, for those without this protection, members who first joined and some who returned to the scheme after 6 April 2006, minimum pension age will change from 50 to 55 from 6 April 2010².

Definition of Qualifying Membership

16.11 'Qualifying membership' is membership that counts towards entitlement for benefits. Pensionable membership is membership that counts when benefits are calculated. This may be different from reckonable service for the purposes of a redundancy payment as it can include pensionable service from previous periods of employment with the NHS or another employer and periods of part time working.

Use of Redundancy Payment to pay for Early Retirement

16.12 If the redundant member of staff chooses to take early retirement with an unreduced pension under these arrangements, they will receive immediately the full value of their qualifying pension benefits at the point of redundancy without the actuarial reduction that would occur with voluntary early retirement. Their employer will pay the relevant NHS pension scheme a sum equivalent to the capitalised cost of paying the pension and lump sum early; either as one payment or in five instalments³.

16.13 This sum will be paid from the lump sum redundancy payment that otherwise would have been paid to the employee. If the cost to the employer of paying by single payment for early retirement is less than the value of the redundancy

² Subject to consultation, for those who are in the new pension scheme (with a normal pension age of 65), minimum pension age will be 55 from when the scheme is set up.

³ It is open to qualifying members to take early retirement under the normal scheme arrangements for voluntary early retirement or normal age retirement.

payment that the member would have received under paragraph 8 then the redundant employee will also receive from the employer a redundancy payment equivalent to the difference between the two sums. The cost to the employer would therefore normally be the same as if the employee had chosen to take a redundancy payment without unreduced early retirement. However, if the cost of early retirement is more than the redundancy payment due, the employer will pay the additional cost. If the employer chooses to pay in five instalments, the employer is responsible for the additional interest charge.

Treatment of Concurrent Pensionable Employment

16.14 Where there is concurrent pensionable employment, members may choose between:

- Ceasing all pensionable employment and taking early retirement on the terms set out below in respect of each employment in which case they cannot be pensionable again in the current scheme (normal pension age of 60). (An employment may continue if it is not more than 16 hours a week, without affecting the payment of enhanced benefits, but it will not be pensionable in the scheme) and:
- Taking benefits only in respect of the employment that is being terminated, in which case they can continue being pensionable in other employments. After 6 April 2010, this will not apply if taking benefits under the age of 55.
- Members with concurrent practitioner and non-practitioner employments, who choose to cease all pensionable employments, will receive only their non-practitioner benefits on redundancy grounds. Where appropriate, benefits for practitioner membership may be taken on an early retirement basis with an actuarial reduction or preserved for payment at age 60⁴⁵.

16.15 The employer who authorises early retirement will be responsible for the pension costs accruing from other terminating employment. If a member returns to work after taking their pension, their pension will be abated, if the combined value of their pension and salary is greater than they earned prior to retirement. This will continue until they reach their normal pension age.

Exclusion from eligibility

16.16 Employees shall not be entitled to redundancy payments or early retirement on grounds of redundancy if:

- they are dismissed for reasons of misconduct, with or without notice; or

⁴ Where practitioner membership ended 12 months or more before the date of non-practitioner retirement on redundancy, and all other posts have ceased, practitioner benefits will be paid at the same time as the redundancy benefits and associated pension costs will be met by the NHS employer authorising retirement.

⁵ Practitioners are general medical and general dental practitioners.

- at the date of the termination of the contract have obtained without a break, or with a break not exceeding four weeks, suitable alternative employment with the same or another NHS employer; or
- unreasonably refuse to accept or apply for suitable alternative employment with the same or another NHS employer; or
- leave their employment before expiry of notice, except if they are being released early (see paragraphs 20 to 21 below); or
- are offered a renewal of contract (with the substitution of the new employer for the previous NHS one);
- where their employment is transferred to another public service employer who is not an NHS employer.

Suitable alternative employment

16.17 Employers have a responsibility before making a member of staff redundant or agreeing early retirement on grounds of redundancy to seek suitable alternative employment for that person, either in their own organisation or through arrangements with another NHS employer. Employers should avoid the loss of staff through redundancy wherever possible to retain valuable skills and experience where appropriate within the local health economy.

16.18 ‘Suitable alternative employment’, for the purposes of paragraph 17, should be determined by reference to Sections 138 and 141 of the Employment Rights Act 1996. In considering whether a post is suitable alternative employment, regard should be had to the personal circumstances of the employee. Employees will, however, be expected to show some flexibility.

16.19 For the purposes of this scheme any suitable alternative employment must be brought to the employee’s notice in writing or by electronic means agreed with the employee before the date of termination of contract and with reasonable time for the employee to consider it. The employment should be available not later than four weeks from that date. Where this is done, but the employee fails to make any necessary application, the employee shall be deemed to have refused suitable alternative employment. Where an employee accepts suitable alternative employment the ‘trial period’ provisions in Section 138 (3) of the Employment Rights Act 1996 will apply.

Early release of redundant employees

16.20 Employees who have been notified of the termination of their employment on grounds of redundancy, and for whom no suitable alternative employment in the NHS is available, may, during the period of notice, obtain other employment outside the NHS.

16.21 If they wish to take this up before the period of notice of redundancy expires the employer will, unless there are compelling reasons to the contrary, release such employees at their request on a mutually agreeable date. That date will become the revised date of redundancy for the purpose of calculating any entitlement to a redundancy payment under this agreement.

Claim for redundancy payment

16.22 Claims for redundancy payment or retirement on grounds of redundancy must be submitted within six months of date of termination of employment. Before payment is made the employee will certify that:

- they had not obtained, been offered or unreasonably refused to apply for or accept suitable alternative Health Service employment within four weeks of the termination date;
- they understand that payment is made only on this condition and undertake to refund it if this condition is not satisfied.

Retrospective Pay Awards

16.23 If a retrospective pay award is notified after the date of termination of employment then the redundancy payment and/or pension will be recalculated, and any arrears due paid,

Disputes

16.24 An employee who disagrees with the employer's calculation of the amount of redundancy payment or the rejection of a claim for redundancy payment should make representations to the employer via local grievance procedures. See also paragraph 22 about making a claim for a redundancy payment.

Early Retirement in the Interests of the Efficiency of the Service

16.25 Members of the NHS Pension Scheme will receive payment of benefits without reduction if they retire early in the interests of the efficiency of the service, and they satisfy the qualifying conditions set out in paragraph 10. Retiring early in the interests of the service is a flexibility available at employer discretion. In these cases, no redundancy payment is due. In agreeing to retirement in the interests of the service, the employer undertakes to pay the costs of paying the pension and lump sum early. Employers will need to ensure that they exercise this discretion appropriately and will be conscious of the implications of any potential discrimination on grounds of age, sex, race, religion or disability

16.26 These arrangements are aimed at employees who have given valuable NHS service in the past but are no longer capable of doing so. This might be because of new or expanded duties or a decline in the ability to perform existing duties efficiently but not so as to qualify them for ill health retirement. Employers would be expected to consider alternatives before agreeing to early retirement.

16.27 The relevant NHS pension scheme certifies the grounds on which early retirement is taking place. The scheme does so on the basis of the information provided by the employer. In each case, therefore, an appropriate senior manager should authorise the early retirement, ensuring that the relevant criteria have been met.

Employer Responsibilities

16.28 Employer contributions to the NHS pension scheme do not cover the costs of early retirement benefits. There is a requirement for NHS employers to pay these costs if they retire staff early on grounds of redundancy or in the interests of the service.

Transitional Arrangements: 1 October 2006 to 30 September 2011

16.29 There will be transitional arrangements in place from 1 December 2006 to 30 September 2011. These transitional arrangements apply to staff:

- whose continuous NHS service and/or pension scheme membership began before 1 October 2006
- who are aged over 50 on 30 September 2006 or who reach 50 during the transition period: 1 October until 30 September 2011; (after 6 April 2010 subject to the rules on minimum pension age set out in paragraph 10)
- who are members of the NHS Pension scheme and have at least five years qualifying membership in the scheme at the date of redundancy.

16.30 Employees who are made redundant and qualify for transitional protection can choose between a redundancy payment under the new arrangements and payment under transitional protection. The transitional arrangements for early retirement (but not the redundancy payment) will also apply to staff given early retirement in the interests of the service and who meet the qualifying conditions in paragraph 29.

16.31 Transitional protection has two phases. The first phase applies from 1 December 2006 to 30 June 2007. During this phase, the maximum pension that an employee can receive on taking redundancy retirement is that to which they would have been entitled had they been made redundant under the old agreement on 30 September 2006.

16.32 The second phase is from 1 July 2007 to 30 September 2011. During this phase, as well as freezing the maximum enhanced pension at that which would have been available on 30 September 2006, there will be a further reduction so that all enhancements are removed by 30 September 2011.

16.33 The date used to calculate the level of both final pensionable pay and of salary for redundancy payment under the transition will be set by reference to the actual date of redundancy.

Calculation of Baseline Entitlement During Transition

16.34 For employees taking advantage of the transitional arrangements, and subject to a maximum of 20 years' reckonable service being counted, the lump sum redundancy payment will be calculated based on the arrangements in place before 1 October 2006 as follows. Based on service at 30 September 2006:

- 1 1/2 week's pay for each complete year of reckonable service at age 41 or over
- one week's pay for each complete year of reckonable service at age 22 or over but under 41
- 1/2 week's pay for each complete year of reckonable service at age 18 or over but under 22
- overall maximum 30 week's pay.

16.35 Fractions of a year of reckonable service will not be taken into account except that they may be aggregated under paragraph 34 above to make complete years. The lowest weeks' pay multiplier relevant to the employee's calculation will apply to the complete year aggregated.

Reduction to Baseline Entitlement

16.36 Redundant employees who are entitled to an enhancement of their pension benefits on ceasing to be employed will, if the enhancement of service if they had been made redundant on 30 September 2006 is less than 10 years, be entitled to receive a redundancy payment. Where the enhancement of service does not exceed 6 2/3 years they will be paid in full; where the enhancement of service exceeds 6 2/3 years they will be reduced by 30 per cent in respect of each year of enhanced service over 6 2/3 years with pro-rata reduction for part years.

16.37 The redundancy payment made under these transitional arrangements will be based on the number of week's service applicable for a redundancy on 30 September 2006 along with the reduction for enhancement greater than 6 2/3 years that would have been made had the redundancy taken place on that date. If there has been a break in continuous service between 1 October 2006 and the date of redundancy, then the payment would be based on the number of years continuous service at the date of redundancy.

16.38 As a baseline calculation for transitional protection all employees eligible for premature payment of pension and compensation benefits under the terms of this agreement on transition shall have their reckonable years in the NHS scheme at 30 September 2006 doubled subject to a maximum enhancement of ten added years. Total reckonable years (including enhancements) will in all cases be limited to the lesser of:

- the total reckonable service that would have been attained by continuing in service to retirement age; or
- 40 years; provided that:
- the enhancement of reckonable service for employees with relevant optant service shall be based on the aggregate of their reckonable NHS service and their relevant optant service.

Transition Phase One: 1 October 2006 to 30 June 2007

16.39 For redundancies from 1 October 2006 until 1 December 2006, when the regulations to give effect to the transition are introduced, employees will

receive enhanced pension based on the pre 1 October arrangements including the calculation of redundancy payment.

16.40 From 1 December 2006 to 30 June 2007, the enhancement that the employee will be eligible to receive will be the enhancement on which the pension would have been based had they been made redundant on 30 September 2006, less the number of days since 30 September 2006. For those who have any part time membership, the reduction in enhancement will be scaled down according to the scaling factor applicable at 30 September 2006.

Transition Phase Two: 1 July 2007 to 30 September 2011.

16.41 During this phase, maximum enhancement available to the employee made redundant will continue to be the enhancement available on 30 September 2006 less the number of days since 30 September 2006. There will be a further reduction in entitlement to enhancement. For those whose enhancement on 30 September 2006 would have been greater than five years, the additional amount of service enhancement over five years should be reduced by 1/60th for each whole month that has elapsed between 30 September 2006 and the date of redundancy. The effect of the two transition elements together is that after each year of transition, the maximum enhancement would be reduced by two years until no enhancement is available from 1 October 2011.

16.42 Paragraphs 29 to 42 will be removed from this agreement on 1 October 2011.