

# Recognition of equivalent service in member states of the European Union

## Pay and Conditions Circular (AforC) 3/2016

### Purpose

Following latest advice from the Department of Health, this pay and conditions circular informs employers of the latest guidance on the recognition of equivalent service in member states of the European Union.

The amendments to the handbook, detailed in this circular, will be published in amendment number 37.

### Details

1. Agenda for Change allows employers to take account of previous service inside and outside the NHS when calculating an employee's entitlement to annual leave (paragraph 12.2). Relevant experience outside the NHS may include previous employment abroad including in the health services of other member states of the European Union.
2. In exercising this discretion employers should be able to demonstrate that consideration of equivalent service in other member states of the European Union was part of the process in deciding whether or not to award additional annual leave.
3. The NHS Staff Council has agreed updated guidance which is incorporated into Section 12 of Annex 28: Guidance on frequently asked questions (FAQs) (England and Wales) and Annex 28: Guidance on frequently asked questions (FAQs) (Scotland and Northern Ireland).

### List of amendments

4. Details of amendments to the NHS Terms and Conditions of Service Handbook are in the Annex to this circular.

5 December 2016

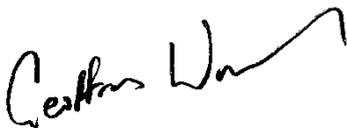
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## Enquiries

5. Employees must put their questions on pay and conditions of service to their employer.
6. Employers should direct their questions to: [AgendaForChange@nhsemployers.org](mailto:AgendaForChange@nhsemployers.org)
7. Copies of this circular can be downloaded from: [www.nhsemployers.org](http://www.nhsemployers.org)
8. A copy of the NHS terms and conditions of service handbook can be downloaded from the [NHS Employers website](#).
9. Before November 2004, when NHS Employers was established, the Department of Health was responsible for issuing Advance Letters containing details of changes to pay and conditions of service. Copies of Advance Letters going back to 2000 may be obtained from the [national archives website](#).
10. For Advance Letters issued before 2000, please contact the Ministerial Correspondence and [Public Enquiries Unit](#), Department of Health.

Issued by:



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NHS Employers

## Annex

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#### NHS Terms and Conditions of Service Handbook, amendment number 37

The textual changes to the handbook are set out below.

Title Page:

Amendment number 36 is deleted and replaced by **Amendment number 37**.

Pay and Conditions Circulars (AforC) number 1/2016, number 2/2016 is changed to **Pay and Conditions Circular (AforC) number 3/2016**.

Section 12: Contractual Continuity of Service

A new footnote number 1 is added, linking paragraph 12.2 with Annex 28: Guidance on frequently asked questions (FAQs) (England and Wales) and Annex 28: Guidance on frequently asked questions (FAQs) (Scotland and Northern Ireland).

**New footnote:**

*See the question and answer guidance in Annex 28 (England and Wales) or Annex 28 (Scotland and Northern Ireland).*

The existing footnote number 1 becomes footnote number 2.

**New FAQ:**

Part 3: Terms and conditions

Section 12: Contractual continuity of service

Paragraph 2

Footnote number 1

**Is previous health care service abroad, including service in the health services of the member states of the European Union, relevant?**

Employers are required to implement Agenda for Change and their own policies in a way that complies with EU law and which is not discriminatory. Agenda for Change allows for previous NHS service with a different employer to be taken into account for the purpose of calculating annual leave. It also contains (at paragraph 12.2) a discretion to take relevant non-NHS experience into account.

*12.2 Employers have discretion to take into account any period or periods of employment with employers outside the NHS, where these are judged to be relevant to NHS employment.*

Relevant experience outside the NHS may include previous employment abroad or in the health services of another member state of the European Union. It is important that this is

included when employers consider '*service with employers outside the NHS*' when deciding whether to exercise the discretion to increase annual leave entitlement.

The exercise of discretion in paragraph 12.2 is a local matter. However it is important that any decision is made in a fair, transparent and non-discriminatory way. An employer should be able to demonstrate that it has given due consideration to any equivalent service in another country and that such consideration was part of the process in deciding whether or not to award additional annual leave in each case, as set out under Section 12.2 of the NHS Terms and Conditions of Service Handbook.

Employers are required to exercise their discretion in accordance with the legal framework, as required by the Equality Act 2010; and by Article 45 of the Treaty on the Functioning of the European Union and Article 7, paragraph 1, of the Regulation (EU) No 492/2011 on freedom of movement for workers within the Union, which prohibit discrimination between EU workers as regards conditions of employment and work.

A number of judgments from the Court of Justice of the European Union (CJEU) have addressed the issue of recognition of experience and seniority gained in the public service of another Member State, for example: *Commission v. Italy* [Case C-371/04, ECLI:EU:C:2006:668]; *Köbler* [Case C-224/01, ECLI:EU:C:2003:513].

The views of the Commission regarding recognition of professional experience and seniority are set out in the Commission Staff Working Document 'Free movement of workers in the public sector', SEC(2010)1609, of 14 December 2010.