

## **Annex 28 – Guidance on frequently asked questions**

## **Guidance on frequently asked questions (FAQs) (England and Wales\*1)**

1. The Agenda for Change partners will make every effort to continue to support, encourage and promote a partnership approach to the operation of the pay system at local level.
2. The agreement to work in partnership to deliver an NHS pay system which supports NHS service modernisation and meets the reasonable aspirations of staff should, therefore, be replicated at local level.
3. This guidance has been jointly agreed in partnership by the NHS Staff Council Executive and is intended to help in situations where, locally, the joint partners have not so far been able to agree a suitable way forward.

These answers reflect the final Agenda for Change agreement. They were previously published on the Agenda for Change website.

4. Questions relating to the NHS job evaluation scheme are in the NHS Job Evaluation Handbook.

### **Part 2: Section 1 (England and Wales): Pay Structure**

#### **Paragraph 6**

##### **Footnote number 3**

**Where a post holder's role has been determined (based on one contract of employment) and it includes specialist responsibilities – is it permissible for an employee to be paid at the specialist pay band on days when they do specialist duties and at a lower pay band when they do not?**

No, the higher specialist pay band applies for all of their service. If you have any queries about specific circumstances, please contact the joint secretaries.

#### **Paragraph 7**

##### **Footnote number 4**

**Which senior managers in England and Wales are covered by Agenda for Change?**

The NHS Terms and Conditions of Service Handbook makes clear that there will be separate arrangements for senior managers working in the NHS. The Agenda for Change provisions will be available to all other managers.

**Paragraph 7**

**Footnote number 5**

**Flexibility on senior posts - how would staff above 630 job evaluation points be moved from Agenda for Change?**

Employers would need to do this in a way that is transparent and consistent with equal pay legislation, and in line with the Staff Council's guidance contained within the Job Evaluation Handbook.

**Paragraph 9**

**Footnote number 6**

**Can incremental progression be withheld in organisations where there is no system in place for development review/appraisal?**

No; appraisal/performance review arrangements would need to be in place.

**Paragraph 9**

**Footnote number 6**

**What happens to preceptorship as a concept? Is it still in place?**

Preceptorship remains in place but the provision for accelerated pay progression, two increments in year one, is removed.

**Paragraph 9**

**Footnote number 6**

**What happens if I start a programme of preceptorship before 31 March 2013 (before 1 January 2015 in Wales) and this programme continues after 31 March 2013 after 1 January 2015 in Wales)?**

The link between preceptorship and an additional incremental pay point, upon the successful completion of a preceptorship programme, is removed from amendment number 28 of the NHS terms and conditions of service handbook (from the 31 March 2013, 1 January 2015 in Wales). For those staff who started their preceptorship programme under amendment number 27 of the handbook (prior to the 31 March 2013; 1 January 2015 in Wales), the expectation is that upon successful completion they will be awarded an additional incremental pay point. This means that these staff will pass through pay spine points 16 and 17 in their preceptorship year.

## **Paragraph 12**

### **Footnote number 7**

#### **How do the annually earned incremental points work?**

This will affect staff approaching the top points of pay bands 8c, 8d and 9 who will have to annually earn the top two increments, meaning that an increment could be removed if they do not pass their appraisal. The pay points which will be annually earned in this way will be spine points: 45 and 46, 49 and 50 and 53 and 54.

## **Paragraph 12**

### **Footnote number 8**

#### **What about staff already on the top points of 8c, 8d and 9?**

These staff will not drop below their current pay point. Staff already (as at 31 March 2013, 1 January 2015 in Wales) on pay points 45 and 46, 49 and 50, 53 and 54, will be protected.

## **Part 2: Section 2 (England and Wales): Maintaining round the clock services**

## **Paragraph 4**

### **Footnote number 2**

#### **Do the provisions for unsocial hours payments in Annex 5 apply just to staff working on ambulances or to all staff?**

Paragraph 2.4 makes clear that the arrangements in Annex 5 should apply to ambulance staff (i.e. those who would have been subject to the provisions of the Ambulance Whitley Council had they been on national contracts).

## **Part 2: Section 3: Overtime payments**

### **Paragraph 3**

#### **Footnote number 1**

**Under Agenda for Change when does overtime start for a part-time member of staff?**

For staff working a portion of the standard 37.5 hours, overtime starts when these staff work over 37.5 hours (paragraph 3.3).

## **Part 2: Section 4: Pay in high cost areas**

### **Paragraph 7**

#### **Footnote number 1**

**Where a member of staff is in receipt of a COLs based RRP (4.7) and is promoted within the same trust does he or she retain the RRP?**

Yes, providing the person is still in a staff group meeting the eligibility criteria.

## **Part 3: 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 judgements 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]; *Kobler* [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.

#### **Paragraph 4**

##### **Footnote number 2**

**When calculating entitlements to annual leave should I take account of a single period of previous service or should I aggregate several periods?**

An employer must include all reckonable service when calculating annual leave entitlement (12.1 and 12.4). Paragraph 12.2 gives discretion to employers to decide what previous (non-NHS) employment can count towards annual leave entitlement.

### **Part 3: Section 13: Annual leave and general public holidays**

#### **Paragraph 1, Table 6: Leave entitlements**

##### **Footnote number 1**

**What happens to my two public holiday days when Easter is in March and when, therefore, if Easter was in April the previous year, I have already had two days for Easter in the current twelve-month period?**

The Agenda for Change annual leave and general public holiday entitlements are set out in Section 13. In normal circumstances all staff are entitled to 8 general public holidays in a twelve-month period. Sometimes Easter will fall in March. This may mean that in some organisations there will, in effect, be two Easter holidays in the same twelve-month period. In such circumstances the local partners will need to decide on the appropriate action to take. Pragmatically, this might mean anticipating the two public holidays falling in the next twelvemonth period.

#### **Paragraph 4**

##### **Footnote number 2**

**Does paragraph 13.4 provide an entitlement to equivalent time off at plain time rates, plus the appropriate payment, on top of the standard entitlement to 8 general and public holidays (see Table 6)?**

No – paragraph 13.4 preserves the right to 8 general public holidays. It does not provide additional entitlements.

#### **Paragraph 4**

##### **Footnote number 2**

#### **How is pay and time off in lieu (TOIL) calculated when staff work on general public holidays?**

Staff required to work or to be on-call on a general public holiday are entitled to time off in lieu at plain time rate in addition to the appropriate payment for the duties undertaken (paragraph 13.4). Staff who are required to work more than 60 hours (8x7.5 hours) on general public holidays, in their personal leave year, will receive TOIL at plain time rate for all of the hours worked and the appropriate payment for all of the hours worked. The 60 hour threshold will be set on a pro-rata basis for part-time staff. E.g. if staff were required to work 70 hours per year on public holidays they would receive 70 hours TOIL, plus the appropriate payment. Staff who volunteer to work more than 60 hours in their personal leave year will receive TOIL at plain time rate up to the 60 hour threshold and the appropriate payment for the duties they undertake. For any time worked over the 60 hour threshold they will receive payment only. Guidance on what to do when Easter falls in March and entitlements to public holiday leave exceed 8 days in a leave year is in another question and answer.

#### **Paragraph 5**

##### **Footnote number 3**

#### **Which staff (working non-standard shifts), under 13.5, would require their annual leave to be calculated in hours?**

“Where staff work standard shifts other than 7.5 hours excluding meal breaks, annual leave and general public holiday entitlements should be calculated on an hourly basis to prevent staff on these shifts receiving more or less leave than colleagues on standard shifts.” This applies to all staff working standard shifts other than 7.5 hours, excluding meal breaks.

### **Part 3: Section 14 (England and Wales): Sickness absence**



#### **Paragraph 4**

##### **Footnote number 2**

#### **Who is exempt from changes to the unsocial hour's sickness absence payments?**

This agreement will not affect staff on pay spine points 1 – 8. This includes staff in pay bands 1 and 2 and up to the third pay point of pay band 3. Staff that are injured or contract a disease as a result of their work are also excluded.

#### **Paragraph 4**

##### **Footnote number 3**

#### **Are on-call allowances and on-call payments included in pay during sickness absence?**

Paragraph 14.4 allows on-call allowances and payments to be included in pay during sickness absence only for staff on pay spine points 1 to 8 and those absent due to a work related injury or disease, contracted in the actual discharge of their duties. This will include on-call allowances and on-call payments where these are normally paid at regular intervals. An allowance which is paid only occasionally will not count.

#### **Paragraph 4**

##### **Footnote number 4**

#### **How is the reference period for calculating sick pay for staff on pay spine points 1 to 8 determined under Section 14 (England and Wales)?**

This is the average pay for the three month period ending on the day before an employee commences sickness absence – or any other locally agreed reference period.

#### **Paragraph 5**

##### **Footnotes number 5 and 6**

#### **From what date will the change to sickness pay start?**

The changes to sickness pay will start from the 31 March 2013 (1 January 2015 in Wales). A sickness absence that straddles this implementation date will have sick pay paid at basic salary level, inclusive of any high cost

area supplement, for any absence post the implementation date. Employers have discretion to extend the period of sick pay on full or half pay (see paragraph 14.13 in Section 14 (England and Wales)).

### **Part 3: Section 19: Other terms and conditions**

#### **Paragraph 1**

##### **Footnote number 1**

#### **What happens to MUFTI allowances in Agenda for Change?**

There is no national provision for this within Agenda for Change. MUFTI is not part of the evaluation scheme and is, therefore, not an allowance replaced by the scheme. It is our view that any discussion on the provisions of MUFTI allowances are for local partnerships. The partners to any such discussion should give careful consideration to the equal pay implications of any MUFTI provisions that they might contemplate.

#### **Paragraph 1**

##### **Footnote number 1**

#### **What happens when local partnerships are not able to reach agreement on “other” terms and conditions of service not covered in the NHS Terms and Conditions of Service Handbook (see paragraph 19.1)?**

Paragraph 19.1 of the Handbook states “Other terms and conditions not covered in this Handbook will be determined locally following consultation with staff representatives with a view to reaching agreement on such terms and conditions or any changes to them (see Annex 15).” In the absence of a local agreement the previous contractual arrangements for those on national contracts will apply.

### **Part 3: Section 22: Injury allowance**

#### **Paragraph 4**

##### **Footnote number 2**

## **What guidance will be produced on how sickness and injury is judged to be work related?**

Section 22 of the NHS terms and conditions of service handbook says that the attribution of injury, illness or other health condition will be determined by the employer who should seek appropriate medical advice. Accompanying Section 22 the Staff Council has published Supporting guidance for the introduction of the new injury allowance.

## **Annexes: Annex 13: Lease vehicle policies**

### **Paragraph 3**

#### **Footnote number 1**

### **What happens if an employer's offer of a lease car is dependent on the employee also accepting a salary sacrifice scheme?**

The national agreement does not mention this situation in Annex 13. Local partnerships looking to link lease cars and salary sacrifice schemes should consider carefully the future implications for pay and tax. Salary sacrifice depends on remuneration being given up before it is treated as received for tax and NICs and it must be that the employee receives lower cash remuneration and a benefit. Salary sacrifice may impact on an employee's pay and conditions such as maternity and paternity pay as well as sickness entitlement and pensionable pay. It can also affect state benefits, including pension and tax credits. Whilst there may be mutual benefits to employers and employees in agreeing salary sacrifice, due to their impact it would not be reasonable to treat a refusal to accept a lease car on such terms as an unreasonable refusal. In these circumstances staff should be reimbursed to the standard rate for miles travelled. Information about salary sacrifice is on the [HMRC web site](#) including the advice that local partnerships of employers and employees ". . . would be well advised to obtain legal advice on whether their proposed arrangements achieve their desired result".

## **Implementation annexes: Annex 20: Development of professional roles**

### **Paragraph 3**

#### **Footnote number 1**

**Does the provision for movement into pay band 6 apply to staff groups other than midwives?**

This provision is not restricted to midwives. Annex 20 applies to all staff groups meeting the criteria in paragraph 3. In the circumstances described, job size should be reviewed no earlier than one year and no later than two years from the date of qualification, using the NHS Job Evaluation Scheme.

### **Paragraph 3**

#### **Footnote number 1**

**Will guidance be provided (in partnership) in respect of the application of paragraph 3 other than that which is already described?**

There are no plans for further guidance on Annex 20.

### **Paragraph 3**

#### **Footnote number 1**

**Do the provisions for incremental pay point progression in Section 1 (England and Wales) change the arrangements for progression from pay band 5 to pay band 6 in Annex 20?**

No, the provisions for incremental pay point progression in Section 1 (England and Wales) do not relate to the development of professional roles in Annex 20 and would not, for example, change the way that groups of staff such as midwives can progress to band 6 after their first year of supervised practise.

**Implementation annexes: Annex 23 (England and Wales): Pay progression**

### **Main heading**

#### **Footnote number 2**

**What will local pay progression schemes contain?**

The new Annex 23 (England and Wales) on pay progression will set out the principles for locally agreed appraisal objectives and criteria.

**Paragraph 1**

**Footnote number 3**

**From what date will the changes to incremental progression take place?**

Employers will be able to start updating their appraisal and pay progression policies, in line with Annex 23, from 31 March 2013 and from 1 January 2015 in Wales.

**Paragraph 1**

**Footnote number 4**

**Will quotas apply to incremental progression?**

No; the expectation would be that staff progress through their pay band if they meet their performance standards set out by their employer.

**Paragraph 2(v)**

**Footnote number 5**

**What is considered when assessing performance at work?**

In assessing an individual's performance, an organisation may consider not just whether the objectives have been achieved (or not) but also how they are achieved. This should be undertaken in a transparent manner with a right to appeal a decision that results in a pay increment being withheld or removed. Annex 23, paragraph 1 is clear, that expectations around standards and performance, and how these will be measured, should be made clear.

**Paragraph 2(viii)**

**Footnote number 6**

**Would I be able to challenge a decision that I had not met the required standard of performance?**

Yes, your employer would have to tell you in plenty of time that you had not met the required performance standard and as a result that you were

likely to have your incremental progression withheld. The employer would give you the chance not suffer any detriment as a result of the initial decision.

**Paragraph 2(viii)**

**Footnote number 6**

**What happens if I do not accept that my performance is unsatisfactory?**

Your local policy will set out how the appeal system will work.

**Secondary heading: Criteria for local schemes**

**Footnote number 7**

**How will pay progression under Annex 23 (England and Wales) work?**

Once a trust has updated their current appraisal and pay progression processes, in line with Annex 23 (England and Wales), individuals will progress on the basis of demonstrating and applying the required levels of performance and delivery consistently during the performance review period and they will benefit from incremental pay progression. Where an individual has not met their performance criteria then they will not be entitled to progress up the pay band for that given year.

**Paragraph 3 (iii)**

**Footnote number 8**

**Will organisation-wide objectives be used to block progression?**

While appraisal/performance systems may include team performance as one aspect of the annual review process, the assessment of performance for the purpose of incremental progression will continue to be on an individual basis.

**Paragraph 4 (iii)**

**Footnote number 9**

**What do employers have to do to assess the equality impact of their changes?**

Employers should review the national equality assessment (available on the NHS Employers web site) and undertake their own assessments in line with the public sector equality duty, in partnership with trades unions, before implementing changes to pay and conditions. Employers will need to identify the data that needs to be collected going forward in order to monitor the equality impact and take any remedial action as may be necessary.

## **Implementation annexes: Annex 29: Principles for harmonised on-call arrangements**

### **Interim regime**

#### **Paragraph 48**

##### **Footnote number 1**

**Does the protection for on-call arrangements include protection for the “rate of pay”? For example, if the local protected agreement says that Sunday is double time is this protected under 2.48?**

Yes, all current on-call arrangements may be protected for groups of employees irrespective of whether they were nationally or locally agreed (paragraph 2.48).

It is the totality of the local national on-call agreement that is protected. Pay circular (AforC) 1/2009 announced that where flat rate on-call allowances continue to be paid in accordance with the former interim regime in Annex 29 these should be increased by 2.4 per cent. This protection does not prevent local agreements on alterations to working patterns to meet changing service needs.

### **Interim regime**

#### **Paragraph 48**

##### **Footnote number 1**

**On what date does the period of protection of current on-call arrangements start?**

It started from 1 October 2004

1 In Wales this Section is part of a three year agreement. It applies there until 31 December 2017.

*Pay circular (AfC) 1/2016: amendment number 36*

## **Annex 28: Guidance on frequently asked questions (FAQs) (Scotland and Northern Ireland)**

### **Guidance on frequently asked questions (FAQs) (Scotland and Northern Ireland)**

1. The Agenda for Change partners will make every effort to continue to support, encourage and promote a partnership approach to the operation of the pay system at local level.
2. The agreement to work in partnership to deliver an NHS pay system which supports NHS service modernisation and meets the reasonable aspirations of staff should, therefore, be replicated at local level.
3. This guidance has been jointly agreed in partnership by the NHS Staff Council Executive and is intended to help in situations where, locally, the joint partners have not so far been able to agree a suitable way forward. These answers reflect the final Agenda for Change agreement. They were previously published on the Agenda for Change website.
4. Questions relating to the NHS job evaluation scheme are in the NHS Job Evaluation Handbook.

### **Part 2: Section 1: Pay Structure**

#### **Paragraph 6**

#### **Footnote number 2**



**Where a post holder's role has been determined (based on one contract of employment) and it includes specialist responsibilities – is it permissible for an employee to be paid at the specialist pay band on days when they do specialist duties and at a lower pay band when they do not?**

No, the higher specialist pay band applies for all of their service. If you have any queries about specific circumstances, please contact the joint secretaries.

**Paragraph 7**

**Footnote number 3**

**Which senior managers are covered by Agenda for Change?**

The NHS Terms and Conditions of Service Handbook makes clear that there will be separate arrangements for senior managers working in the NHS. The Agenda for Change provisions will be available to all other managers.

**Part 2: Section 2: Maintaining round the clock services**

**Paragraph 4**

**Footnote number 1**

**Do the provisions for unsocial hours payments in Annex 5 apply just to staff working on ambulances or to all staff?**

Paragraph 2.4 makes clear that the arrangements in Annex 5 should apply to ambulance staff (i.e. those who would have been subject to the provisions of the Ambulance Whitley Council had they been on national contracts).

**Part 2: Section 3: Overtime payments**

**Paragraph 3**

**Footnote number 1**

**Under Agenda for Change when does overtime start for a part-time member of staff?**

For staff working a portion of the standard 37.5 hours, overtime starts when these staff work over 37.5 hours (paragraph 3.3).

**Part 2: Section 4: Pay in high cost areas**

**Paragraph 7**

**Footnote number 1**

**Where a member of staff is in receipt of a COLs based RRP (4.7) and is promoted within the same Trust does he or she retain the RRP?**

Yes, providing the person is still in a staff group meeting the eligibility criteria.

**Part 3: 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 judgements 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]; *Kobler* [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.

#### **Paragraph 4**

##### **Footnote number 2**

#### **When calculating entitlements to annual leave should I take account of a single period of previous service or should I aggregate several periods?**

An employer must include all reckonable NHS service when calculating annual leave entitlement (12.3). Paragraph 12.2 gives discretion to employers to decide what previous (non-NHS) employment can count towards annual leave entitlement.

## **Part 3: Section 13: Annual leave and general public holidays**

### **Paragraph 1, Table 6: Leave entitlements**

#### **Footnote number 1**

**What happens to my two public holiday days when Easter is in March and when, therefore, if Easter was in April the previous year, I have already had two days for Easter in the current twelve-month period?**

The Agenda for Change annual leave and general public holiday entitlements are set out in Section 13. In normal circumstances all staff are entitled to 8 general public holidays in a twelve-month period. Sometimes Easter will fall in March. This may mean that in some organisations there will, in effect, be two Easter holidays in the same twelve-month period. In such circumstances the local partners will need to decide on the appropriate action to take. Pragmatically, this might mean anticipating the two public holidays falling in the next 12-month period.

### **Paragraph 4**

#### **Footnote number 2**

**Does paragraph 13.4 provide an entitlement to equivalent time off at plain time rates, plus the appropriate payment, on top of the standard entitlement to 8 general and public holidays (see table 6)?**

No – paragraph 13.4 preserves the right to 8 general public holidays. It does not provide additional entitlements.

### **Paragraph 4**

#### **Footnote number 2**

**How is pay and time off in lieu (TOIL) calculated when staff work on general public holidays?**

Staff required to work or to be on-call on a general public holiday are entitled to time off in lieu at plain time rate in addition to the appropriate payment for the duties undertaken (paragraph 13.4).

Staff who are required to work more than 60 hours (8x7½ hours) on general public holidays, in their personal leave year, will receive TOIL at

plain time rate for all of the hours worked and the appropriate payment for all of the hours worked. The 60 hour threshold will be set on a pro-rata basis for part-time staff. E.g. if staff were required to work 70 hours per year on public holidays they would receive 70 hours TOIL, plus the appropriate payment.

Staff who volunteer to work more than 60 hours in their personal leave year will receive TOIL at plain time rate up to the 60 hour threshold and the appropriate payment for the duties they undertake. For any time worked over the 60 hour threshold they will receive payment only.

Guidance on what to do when Easter falls in March and entitlements to public holiday leave exceed 8 days in a leave year is in another question and answer.

## **Paragraph 5**

### **Footnote number 3**

**Which staff (working non-standard shifts), under 13.5, would require their annual leave to be calculated in hours?**

*“Where staff work standard shifts other than 7.5 hours excluding meal breaks, annual leave and general public holiday entitlements should be calculated on an hourly basis to prevent staff on these shifts receiving more or less leave than colleagues on standard shifts.”* This applies to all staff working standard shifts other than 7.5 hours, excluding meal breaks.

## **Part 3: Section 14: Sickness absence**

## **Paragraph 4**

### **Footnote number 1**

**Are on-call allowances and on-call payments included in pay during sickness absence?**

Paragraph 14.4 allows regularly paid supplements to be included in pay during sickness absence. This will include on-call allowances and on-call payments where these are normally paid at regular intervals. An allowance which is paid only occasionally will not count.

#### **Paragraph 4**

#### **Footnote number 2**

#### **How is the reference period for calculating sick pay determined under Section 14?**

This is the average pay for the three month period ending on the day before an employee commences sickness absence – or any other locally agreed reference period.

### **Part 3: Section 19: Other terms and conditions**

#### **Paragraph 1**

#### **Footnote number 1**

#### **What happens to MUFTI allowances in Agenda for Change?**

There is no national provision for this within Agenda for Change. MUFTI is not part of the evaluation scheme and is, therefore, not an allowance replaced by the scheme. It is our view that any discussion on the provisions of MUFTI allowances are for local partnerships. The partners to any such discussion should give careful consideration to the equal pay implications of any MUFTI provisions that they might contemplate.

#### **Paragraph 1**

#### **Footnote number 1**

#### **What happens when local partnerships are not able to reach agreement on other terms and conditions of service not covered in the NHS Terms and Conditions of Service Handbook (see paragraph 19.1)?**

Paragraph 19.1 of the Handbook states “Other terms and conditions not covered in this Handbook will be determined locally following consultation with staff representatives with a view to reaching agreement on such terms and conditions or any changes to them (see Annex 15).” In the absence of a local agreement the previous contractual arrangements for those on national contracts will apply.

### **Part 3: Section 22: Injury allowance**

## **Paragraph 4**

### **Footnote number 2**

#### **What guidance will be produced on how sickness and injury is judged to be work related?**

Section 22 of the NHS terms and conditions of service handbook sets out: *The attribution of injury, illness or other health condition will be determined by the employer who should seek appropriate medical advice.* Accompanying Section 22 the Staff Council has published supporting guidance for the introduction of the new injury allowance.

### **Annexes: Annex 13: Lease vehicle policies**

## **Paragraph 3**

### **Footnote number 1**

#### **What happens if an employer's offer of a lease car is dependent on the employee also accepting a salary sacrifice scheme?**

The national agreement does not mention this situation in Annex 13. Local partnerships looking to link lease cars and salary sacrifice schemes should consider carefully the future implications for pay and tax. Salary sacrifice depends on remuneration being given up before it is treated as received for tax and national insurance contributions and it must be that the employee receives lower cash remuneration and a benefit. Salary sacrifice may impact on an employee's pay and conditions such as maternity and paternity pay as well as sickness entitlement and pensionable pay. It can also affect state benefits, including pension and tax credits. Whilst there may be mutual benefits to employers and employees in agreeing salary sacrifice, due to their impact it would not be reasonable to treat a refusal to accept a lease car on such terms as an unreasonable refusal. In these circumstances staff should be reimbursed to the standard rate for miles travelled. Information about salary sacrifice is on the [HMRC](#) web site including the advice that local partnerships of employers and employees ". . . would be well advised to obtain legal advice on whether their proposed arrangements achieve their desired result".

## **Implementation annexes: Annex 20: Development of professional roles**

### **Paragraph 3**

#### **Footnote number 1**

**Does the provision for movement into pay band 6 apply to staff groups other than midwives?**

This provision is not restricted to midwives. Annex 20 applies to all staff groups meeting the criteria in paragraph 3. In the circumstances described, job size should be reviewed no earlier than one year and no later than two years from the date of qualification, using the NHS Job Evaluation Scheme.

### **Paragraph 3**

#### **Footnote number 1**

**Will guidance be provided (in partnership) in respect of the application of paragraph 3 other than that which is already described?**

There are no plans for further guidance on Annex 20.

## **Implementation annexes: Annex 21: Arrangements for pay and banding of trainees**

### **Paragraph 2 (iii)**

#### **Footnote number 1**

**Are trainees who are covered by Annex 21 (paragraph 2 (iii)) subject to the foundation and second gateway?**

There are no agreed pay bands or pay scales for trainees under 2 (iii). It follows that there is no point identified in their pay where there is an agreed second gateway. All staff who have served less than one year in their post are subject to the foundation gateway.

## **Implementation annexes: Annex 29: Principles for harmonised on-call arrangements**



**Interim regime****Paragraph 48****Footnote number 1**

**Does the protection for on-call arrangements include protection for the “rate of pay”? For example, if the local protected agreement says that Sunday is double time is this protected under 2.48?**

Yes, all current on-call arrangements may be protected for groups of employees irrespective of whether they were nationally or locally agreed (paragraph 2.48). It is the totality of the local national on-call agreement that is protected. Pay circular (AforC) 1/2009 announced that where flat rate on-call allowances continue to be paid in accordance with the former interim regime in Annex 29 these should be increased by 2.4 per cent. This protection does not prevent local agreements on alterations to working patterns to meet changing service needs.

**Interim regime****Paragraph 48****Footnote number 1**

**On what date does the period of protection of current on-call arrangements start?**

It started from 1 October 2004.

*Pay circular (AfC) 2/2016: amendment number 36*