

Part 3: Terms and conditions of service

Section 10: Hours of the working week

Hours of the working week

10.1 The standard hours of all full-time NHS staff covered by this pay system will be 37.5 hours, excluding meal breaks. Working time will be calculated exclusive of meal breaks, except where individuals are required to work during meal breaks, in which case such time should be counted as working time.

10.2 The standard hours may be worked over any reference period, e.g. 150 hours over four weeks or annualised hours, with due regard for compliance with employment legislation, such as the Working Time Regulations.

Pay circular (AforC) 2/2013: amendment number 28

Section 11: Part-time employees and employees on fixed-term contracts

Part-time employees and employees on fixed-term contracts

Part-time employees

11.1 Part-time employees will receive the same entitlements on a pro-rata basis to full-time colleagues. (See paragraph 13.6 for the treatment of public holidays).

Employees on fixed-term contracts

11.2 Employees on fixed-term contracts will receive pay and conditions of service equivalent to that of a comparable, permanent employee.

Pay circular (AforC) 2/2013: amendment number 28

Section 12: Contractual continuity of service

Reckonable service

12.1 An employee's continuous previous service with any NHS employer counts as reckonable service in respect of NHS agreements on redundancy, maternity, sick pay and annual leave.

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. ¹

12.3 When employees who have been transferred out of NHS employment to a non-NHS provider return to NHS employment, their continuous service with a new non-NHS employer providing NHS funded services, will be counted as reckonable in respect of NHS agreements on sick pay, annual leave and incremental credit.

Re-appointment of previous NHS employees

12.4 On returning to NHS employment, a previous period or periods of NHS service will be counted towards the employee's entitlement to annual leave.²

12.5 On returning to NHS employment, a previous period or periods of NHS service will be counted towards the employee's entitlement to sickness absence, where there has been a break or breaks in service of 12 months or less.

¹See the question and answer guidance in Annex 28 (England and Wales) or Annex 28 (Scotland and Northern Ireland).

Information note number 1: amendment number 37

2See the question and answer guidance in Annex 28 (England and Wales) or Annex 28 (Scotland and Northern Ireland).

Information note number 2: amendment number 34

Section 13: Annual leave and general public holidays

Annual leave and general public holidays

13.1 Staff will receive the entitlement to annual leave and general public holidays as set out in Table 6 (see Section 12 for provisions on reckonable service).

Table 6: Leave entitlements

Length of service	Annual leave and general public holidays
On appointment	27 days + 8 days
After five years' service	29 days + 8 days
After ten years' service	33 days + 8 days

13.1.1 With effect from the 2021/2022 annual leave year, the annual leave entitlement for NHS Wales staff will be increased by one additional day on appointment.

13.2 Local arrangements to consolidate some or all of the general public holidays into annual leave may operate, subject to agreement at local level.

13.3 These leave entitlements include the two extra-statutory days available in England and Wales in the past. Therefore, any local arrangements to add days on account of extra-statutory days will no longer apply. In Scotland this entitlement includes the two additional days that could previously be designated as either statutory days or annual leave. In Northern Ireland this entitlement also contains the two extra statutory days, however there are ten general public holidays.

13.4 Staff required to work or to be on-call on a general public holiday are entitled to equivalent time to be taken off in lieu at plain time rates, in addition to the appropriate payment for the duties undertaken. See Section 2 (England and Wales) or Section 2 (Scotland and Northern Ireland) and Annex 292.

13.5 Where staff work standard shifts, other than 7½ 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 greater or less leave than colleagues on standard shifts.³

13.6 Part-time workers will be entitled to paid public holidays no less than pro-rata to the number of public holidays for a full-time worker, rounded up to the nearest half day.

13.7 Part-time workers' public holiday entitlement shall be added to their annual leave entitlement, and they shall take public holidays they would normally work as annual leave.

13.8 An existing part-time worker who, prior to 1 October 2004, was in receipt of a public holiday entitlement in excess of pro-rata to a full-time worker, shall have their excess entitlement protected for a period of five years from the date of assimilation onto this system.

13.9 Pay during annual leave will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. Pay is calculated on the basis of what the individual would have received had he/she been at work.

- For staff who have regular hours the reference period should be based on the previous three months at work or any other reference period that may be locally agreed.
- With effect from 06 April 2020, for staff who have irregular hours the reference period should be based on the last 52 weeks. When calculating the 52 full weeks of pay, employers are limited to referencing the previous 104 weeks from the date the leave begins.

¹ See the question and answer guidance in Annex 28 (England and Wales) or Annex 28 (Scotland and Northern Ireland).

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

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

Information note number 1: amendment number 34

Section 14: Sickness absence (England)

Sickness absence England

14.1 These arrangements are intended to supplement statutory sick pay to provide additional payment during absence due to illness, injury or other disability. This section is supplemented by annex 26, which sets out a framework to support employers and staff in the management of sickness absence and in managing the risk of premature and unnecessary ill health retirements. Annex 26 is reinforced by the Health, Safety and Wellbeing Group (HSWG) guidelines. These guidelines supplement and reinforce Annex 26. Under fast track schemes employees may gain earlier access to health services provided by the employer. More information about this policy and local fast track schemes already in place can be found on the NHS Employers website.

Scale of allowances

14.2 Employees absent from work owing to illness will be entitled, subject to the conditions of this agreement, to receive sick pay in accordance with the scale below (see Section 12 for provisions on reckonable service):

- during the first year of service – one month's full pay and two months' half pay
- during the second year of service – two months' full pay and two months' half pay

- during the third year of service – four months' full pay and four months' half pay
- during the fourth and fifth years of service – five months' full pay and five months' half pay
- after completing five years of service – six months' full pay and six months' half pay.

14.3 In the event of employment coming to an end, entitlement to sick pay ceases from the last day of employment.

14.4 For staff:

- who were employed under the terms of this Handbook as at 30 June 2018, and have a basic salary of £18,160 or less
- those staff who are absent due to injuries, diseases or other health conditions sustained or contracted in the discharge of their duties of employment which are wholly or mainly attributable to their NHS employment, whom the employer determines are eligible to receive injury allowance in line with paragraphs 22.3 and 22.4 (see paragraph 14.7 in this section).

Pay during sickness absence is calculated on the basis of what the individual would have received had they been at work. It will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. It will be based on the previous three months at work or any other reference period that may be locally agreed. Local partnerships can use virtual rotas showing what hours the employee would have worked in a reference period had he or she been at work

14.5 From 1 July 2018, for staff whose basic pay is above £18,160, and for new starters, full pay is pay which is in line with the appropriate pay point in the relevant pay circular, plus high cost area supplements and any locally agreed pay protection (if these are in payment on the day before the sickness absence begins).

14.6 Full pay needs to be inclusive of any statutory benefits (so as not to make sick pay greater than normal working pay). The combined addition of statutory sick pay to half pay must not exceed full pay.

Calculation of allowances

14.7 The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated, by deducting from the employee's entitlement on the first day of sickness, the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness the following absences will be disregarded:

- unpaid sick absence
- absence caused by injuries, diseases, or other health conditions that are wholly or mainly attributable to the employee's NHS employment and which have been sustained or contracted in the discharge of the employee's duties of employment, as defined in paragraph 22.3
- absence caused by injury resulting from a crime of violence, not sustained on duty but connected with or arising from the employee's employment, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority (England, Wales and Scotland), and the Compensation Agency (Northern Ireland)
- absence caused by injury resulting from a crime of violence as described in the bullet immediately above, but which has not attracted payment of an award as it has not met the loss of earnings criteria or was not one for which compensation above the minimum would arise.

14.8 Sick pay paid to an employee under this scheme when added to any statutory sickness, injuries or compensation benefits, including any allowances for adult or child dependants, must not exceed full pay (see paragraphs 14.4 and 14.5 in this section).

Conditions for contractual sick pay

14.9 Employees will not be entitled to an additional day off if sick on a statutory holiday.

14.10 Sick pay for those who have exhausted sick pay entitlements should be reinstated at half pay, after 12 months of continuous sickness absence, in the following circumstances:

- staff with more than five years reckonable service:- sick pay will be reinstated if sick pay entitlement is exhausted before a final review meeting for long term absence has taken place;
- staff with less than five years reckonable service:- sick pay will be reinstated if sick pay entitlement is exhausted and a final review does not take place within 12 months of the start of their sickness absence.

14.11 Reinstatement of sick pay should continue until the final review meeting has taken place. Reinstatement of sick pay is not retrospective for any period of zero pay in the preceding 12 months of continuous absence.

14.12 These arrangements will be in accordance with local sickness absence procedures, established in accordance with annex 26, and will only apply where the failure to undertake the final review meeting is due to delay by the employer. This provision will not apply where a review is delayed due to reasons other than those caused by the employer.

14.13 Employers will also have discretion to extend the period of sick pay on full or half pay beyond the scale set out in paragraph 14.2 in this Section:

- where there is the expectation of return to work in the short term and an extension would materially support a return and/or assist recovery, particular consideration should be given to those staff without full sick pay entitlements;
- in any other circumstance that the employer deems reasonable.

14.14 During the rehabilitation period employers should allow employees to return to work on reduced hours or, where possible, encourage employees to work from home without loss of pay. Any such arrangements need to be consistent with statutory sick pay rules.

14.15 Sick pay is not normally payable for an absence caused by an accident due to active participation in sport as a profession, or where contributable negligence is proved.

14.16 An employee who is absent as a result of an accident is not entitled to sick pay if damages are received from a third party. Employers will advance to an employee a sum not exceeding the amount of sick pay payable under this scheme, providing the employee repays the full amount of sickness allowance to the employer, when damages are received. Once received the absence shall not be taken into account for the purposes of the scale set out in paragraph 14.2 in this section.

14.17 Employers may, at any time, require an employee absent from work due to illness to attend an examination by a medical practitioner. Furthermore, staff do not need to be off sick to be referred by their employer for a medical. The employer will meet the cost of any medical examination.

14.18 After investigation, consultation and consideration of other alternative posts, and where there is no reasonable prospect of the employee returning to work, employers will have the option to terminate employment before the employee has reached the end of the contractual paid sick absence period, subject to the employers' agreed sickness absence policies and procedures.

14.19 Notification procedures and payment of sick absence pay when injuries are connected with other insured employment will be for local determination.

14.20 Staff who are on sickness absence due to a work related injury, disease or other health condition may also be entitled to payment of an injury allowance as defined in section 22.

Transitional arrangements

14.21 Staff who commenced an episode of sickness absence prior to 1 July 2018 will continue to be paid sickness absence under the terms they were employed upon when their period of sickness absence commenced. The

provisions for sickness absence for any subsequent periods of sickness absence from 1 July 2018 will be under the terms of this section.

Amendment number 39: NHS TCS Advisory Notice 01/2018

Section 14: Sickness absence (Wales)

Sickness absence (Wales)

14.1 These arrangements are intended to supplement statutory sick pay to provide additional payment during absence due to illness, injury or other disability. This section is supplemented by Annex 26, which sets out a framework to support employers and staff in the management of sickness absence and in managing the risk of premature and unnecessary ill health retirements. Annex 26 is reinforced by the Health, Safety and Wellbeing Group (HSWG) guidelines. These guidelines supplement and reinforce Annex 26. Under 'fast track' schemes employees may gain earlier access to health services provided by the employer. More information about this policy and local fast track schemes already in place can be found on the NHS Employers website.

Scale of allowances

14.2 Employees absent from work owing to illness will be entitled, subject to the conditions of this agreement, to receive sick pay in accordance with the scale below (see section 12 for provisions on reckonable service):

- during the first year of service – one month's full pay and two months' half pay
- during the second year of service – two months' full pay and two months' half pay
- during the third year of service – four months' full pay and four months' half pay

- during the fourth and fifth years of service – five months' full pay and five months' half pay
- after completing five years of service – six months' full pay and six months' half pay.

14.3 In the event of employment coming to an end, entitlement to sick pay ceases from the last day of employment.

14.4 Regularly paid supplements will not be paid for the first week of sickness absence.

For the following groups of staff pay during sickness absence is calculated on the basis of what the individual would have received had they been at work:

- staff who are absent for a period of continuous sickness absence exceeding 1 week, i.e. pay during continuing absence from the second week;
- who are absent due to injuries, diseases or other health conditions sustained or contracted in the discharge of their duties of employment which are wholly or mainly attributable to their NHS employment, whom the employer determines are eligible to receive injury allowance in line with paragraphs 22.3 and 22.4 (see paragraph 14.7 in this section);
- where an individual receives a diagnosis that they have a time specified terminal illness, any allowances or payments linked to working patterns will be back dated to the first day of sickness absence.

For these staff pay during sickness absence will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. It will be based on the previous three months at work or any other reference period that may be locally agreed. Local partnerships can use virtual rotas showing what hours the employee would have worked in a reference period had he or she been at work

14.5 In Wales:

- From 1 January 2015, for staff on pay spine points 9 to 54, full pay in this agreement is pay which is in line with the appropriate pay point in the relevant pay circular, plus high cost area supplements (if these are in payment on the day before the sickness absence begins).
- The pay of staff who begin a period of sickness absence before 1 January 2015, and who remain absent on this date will, from 1 January 2015 and for the remainder of the absence, be in line with this paragraph. Their pay during subsequent sickness absences will be in line with this paragraph.

14.6 Full pay needs to be inclusive of any statutory benefits (so as not to make sick pay greater than normal working pay). The combined addition of statutory sick pay to half pay must not exceed full pay.

Calculation of allowances

14.7 The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated, by deducting from the employee's entitlement on the first day of sickness, the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness the following absences will be disregarded:

- unpaid sick absence
- absence caused by injuries, diseases, or other health conditions that are wholly or mainly attributable to the employee's NHS employment and which have been sustained or contracted in the discharge of the employee's duties of employment, as defined in paragraph 22.3
- absence caused by injury resulting from a crime of violence, not sustained on duty but connected with or arising from the employee's employment, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority (England, Wales and Scotland), and the Compensation Agency (Northern Ireland)
- absence caused by injury resulting from a crime of violence as described in the bullet immediately above, but which has not attracted

payment of an award as it has not met the loss of earnings criteria or was not one for which compensation above the minimum would arise.

14.8 Sick pay paid to an employee under this scheme when added to any statutory sickness, injuries or compensation benefits, including any allowances for adult or child dependants, must not exceed full pay (see paragraphs 14.4 and 14.5 in this Section).

Conditions for contractual sick pay

14.9 Employees will not be entitled to an additional day off if sick on a statutory holiday.

14.10 Sick pay for those who have exhausted sick pay entitlements should be reinstated at half pay, after 12 months of continuous sickness absence, in the following circumstances:

- staff with more than five years reckonable service:- sick pay will be reinstated if sick pay entitlement is exhausted before a final review meeting for long term absence has taken place
- staff with less than five years reckonable service:- sick pay will be reinstated if sick pay entitlement is exhausted and a final review does not take place within 12 months of the start of their sickness absence.

14.11 Reinstatement of sick pay should continue until the final review meeting has taken place. Reinstatement of sick pay is not retrospective for any period of zero pay in the preceding 12 months of continuous absence.

14.12 These arrangements will be in accordance with local sickness absence procedures, established in accordance with Annex 26, and will only apply where the failure to undertake the final review meeting is due to delay by the employer. This provision will not apply where a review is delayed due to reasons other than those caused by the employer.

14.13 Employers will also have discretion to extend the period of sick pay on full or half pay beyond the scale set out in paragraph 14.2 in this Section:

- where there is the expectation of return to work in the short term and an extension would materially support a return and/or assist recovery, particular consideration should be given to those staff without full sick pay entitlements
- in any other circumstance that the employer deems reasonable.

14.14 During the rehabilitation period employers should allow employees to return to work on reduced hours or, where possible, encourage employees to work from home without loss of pay. Any such arrangements need to be consistent with statutory sick pay rules.

14.15 Sick pay is not normally payable for an absence caused by an accident due to active participation in sport as a profession, or where contributable negligence is proved.

14.16 An employee who is absent as a result of an accident is not entitled to sick pay if damages are received from a third party. Employers will advance to an employee a sum not exceeding the amount of sick pay payable under this scheme, providing the employee repays the full amount of sickness allowance to the employer, when damages are received. Once received the absence shall not be taken into account for the purposes of the scale set out in paragraph 14.2 in this section.

14.17 Employers may, at any time, require an employee absent from work due to illness to attend an examination by a medical practitioner. Furthermore, staff do not need to be off sick to be referred by their employer for a medical. The employer will meet the cost of any medical examination.

14.18 After investigation, consultation and consideration of other alternative posts, and where there is no reasonable prospect of the employee returning to work, employers will have the option to terminate employment before the employee has reached the end of the contractual paid sick absence period, subject to the employers' agreed sickness absence policies and procedures.

14.19 Notification procedures and payment of sick absence pay when injuries are connected with other insured employment will be for local determination.

14.20 Staff who are on sickness absence due to a work related injury, disease or other health condition may also be entitled to payment of an injury allowance as defined in Section 22.

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

2 See the question and answer guidance in Annex 28 (England and Wales).

3 See the question and answer guidance in Annex 28 (England and Wales).

4 See the question and answer guidance in Annex 28 (England and Wales).

5 See the question and answer guidance in Annex 28 (England and Wales).

6 See the question and answer guidance in Annex 28 (England and Wales).

Pay circular (AforC) 2/2016: amendment number 36

Amendment number 39: NHS TCS Advisory Notice 01/2018

Section 14: Sickness absence (Scotland and Northern Ireland)

Sickness absence (Scotland and Northern Ireland)

14.1 These arrangements are intended to supplement statutory sick pay to provide additional payment during absence due to illness, injury or other disability. This section is supplemented by Annex 26, which sets out a framework to support employers and staff in the management of sickness absence and in managing the risk of premature and unnecessary ill health retirements.

Scale of allowances

14.2 Employees absent from work owing to illness will be entitled, subject to the conditions of this agreement, to receive sick pay in accordance with the scale below (see Section 12 for provisions on reckonable service):

- during the first year of service – one month's full pay and two months' half pay;
- during the second year of service – two months' full pay and two months' half pay;
- during the third year of service – four months' full pay and four months' half pay;
- during the fourth and fifth years of service – five months' full pay and five months' half pay;
- after completing five years of service – six months' full pay and six months' half pay.

14.3 In the event of employment coming to an end, entitlement to sick pay ceases from the last day of employment.

14.4 The definition of full pay will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. Sick pay is calculated on the basis of what the individual would have received had he/she been at work.¹ This would be based on the previous three months at work or any other reference period that may be locally agreed.² Local partnerships can use virtual rotas showing what hours the employee would have worked in a reference period had he or she been at work.

14.5 Full pay needs to be inclusive of any statutory benefits (so as not to make sick pay greater than normal working pay). The combined addition of statutory sick pay to half pay must not exceed full pay.

Calculation of allowances

14.6 The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated, by deducting from the employee's entitlement on the first day of sickness, the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness the following absences will be disregarded:

- unpaid sick absence;
- absence caused by injuries, diseases, or other health conditions that are wholly or mainly attributable to the employee's NHS employment and which have been sustained or contracted in the discharge of the employee's duties of employment, as defined in paragraph 22.3;
- absence caused by injury resulting from a crime of violence, not sustained on duty but connected with or arising from the employee's employment, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority (England, Wales and Scotland) and the Compensation Agency (Northern Ireland);
- absence caused by injury resulting from a crime of violence as described in the bullet immediately above, but which has not attracted payment of an award as it has not met the loss of earnings criteria or was not one for which compensation above the minimum would arise.

14.7 Sick pay paid to an employee under this scheme when added to any statutory sickness, injuries or compensation benefits, including any allowances for adult or child dependants, must not exceed full pay (see paragraph 14.4 in this Section).

Conditions for contractual sick pay

14.8 Employees will not be entitled to an additional day off if sick on a statutory holiday.

14.9 Sick pay for those who have exhausted sick pay entitlements should be reinstated at half pay, after 12 months of continuous sickness absence, in the following circumstances:

- staff with more than 5 years reckonable service:- sick pay will be reinstated if sick pay entitlement is exhausted before a final review meeting for long term absence has taken place;
- staff with less than 5 years reckonable service:- sick pay will be reinstated if sick pay entitlement is exhausted and a final review does not take place within 12 months of the start of their sickness absence.

14.10 Reinstatement of sick pay should continue until the final review meeting has taken place. Reinstatement of sick pay is not retrospective for any period of zero pay in the preceding 12 months of continuous absence.

14.11 These arrangements will be in accordance with local sickness absence procedures, established in accordance with Annex 26, and will only apply where the failure to undertake the final review meeting is due to delay by the employer. This provision will not apply where a review is delayed due to reasons other than those caused by the employer.

14.12 Employers will also have discretion to extend the period of sick pay on full or half pay beyond the scale set out in paragraph 14.2 in this Section:

- where there is the expectation of return to work in the short term and an extension would materially support a return and/or assist recovery, particular consideration should be given to those staff without full sick pay entitlements;
- in any other circumstance that the employer deems reasonable.

14.13 During the rehabilitation period employers should allow employees to return to work on reduced hours or, where possible, encourage employees to work from home without loss of pay. Any such arrangements need to be consistent with statutory sick pay rules.

14.14 Sick pay is not normally payable for an absence caused by an accident due to active participation in sport as a profession, or where contributable negligence is proved.

14.15 An employee who is absent as a result of an accident is not entitled to sick pay if damages are received from a third party. Employers will

advance to an employee a sum not exceeding the amount of sick pay payable under this scheme, providing the employee repays the full amount of sickness allowance to the employer, when damages are received. Once received the absence shall not be taken into account for the purposes of the scale set out in paragraph 14.2 in this Section.

14.16 Employers may, at any time, require an employee absent from work due to illness to attend an examination by a medical practitioner. Furthermore, staff do not need to be off sick to be referred by their employer for a medical. The employer will meet the cost of any medical examination.

14.17 After investigation, consultation and consideration of other alternative posts, and where there is no reasonable prospect of the employee returning to work, employers will have the option to terminate employment before the employee has reached the end of the contractual paid sick absence period, subject to the employers' agreed sickness absence policies and procedures.

14.18 Notification procedures and payment of sick absence pay when injuries are connected with other insured employment will be for local determination.

14.19 Staff who are on sickness absence due to a work related injury, disease or other health condition may also be entitled to payment of an injury allowance as defined in Section 22.

1 See the question and answer guidance in Annex 28 (Scotland and Northern Ireland).

2 See the question and answer guidance in Annex 28 (Scotland and Northern Ireland).

Pay circular (AforC) 2/2016: amendment number 36

Section 15: Leave and pay for new parents

Introduction

15.1 All employees will have the right to take 52 weeks of maternity and / or adoption leave, or up to 52 weeks of shared parental leave (minus any maternity or adoption leave taken).

15.2 Employees can choose to end their maternity or adoption leave to access shared parental leave.

15.3 Paragraphs 15.14 to 15.17 of this section set out the eligibility requirements for maternity, adoption, and shared parental leave and pay for NHS employees under the NHS occupational scheme.

15.4 Paragraphs 15.18 to 15.43 of this section set out the maternity and adoption leave and pay entitlements of NHS employees under the NHS occupational scheme.

15.5 Paragraphs 15.44 to 15.64 of this section set out the shared parental leave and pay entitlements of NHS employees under the NHS occupational scheme.

15.6 Paragraphs 15.65 to 15.82 set out arrangements for Keeping in Touch days and shared parental leave in touch days, and arrangements for returning to work.

15.7 Paragraphs 15.83 to 15.98 detail miscellaneous provisions for maternity, adoption and shared parental leave situations.

15.8 Paragraphs 15.99 to 15.105 give information about the position of staff who are not covered by these schemes because they do not have the necessary service or do not intend to return to NHS employment.

15.9 Paragraphs 15.106 to 15.109 define the service that can be counted towards the 12-month continuous service qualification required for maternity, adoption and shared parental leave and pay and which breaks in service maybe disregarded for this purpose.

15.10 Paragraphs 15.110 to 15.116 outline the leave and pay available for partners of new parents (paternity leave).

15.11 Paragraph 15.117 explains how to get further information about employees' statutory entitlements.

15.12 Where, locally, staff and employer representatives agree arrangements which provide benefits to staff beyond those provided by this section, those local arrangements will apply.

15.13 Employers should have due regard to the need to eliminate discrimination and advance equality of opportunity under their public sector equality duty.

Eligibility for occupational maternity, adoption, and shared parental leave and pay

Maternity leave and pay:

15.14 An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the NHS occupational maternity pay scheme if:

- i) they have 12 months' continuous service (see paragraphs 15.106 to 15.109) with one or more NHS employers at the beginning of the 11th week before the expected week of childbirth;
- ii) they notify their employer in writing before the end of the 15th week before the expected date of childbirth (or if this is not possible, as soon as is reasonably practicable thereafter):
 - (a) of their intention to take maternity leave;
 - (b) of the date they wish to start their maternity leave – they can choose when to start their maternity leave – this can usually be any date from the beginning of the 11th week before the baby is born (but see paragraph 15.24);
 - (c) that they intend to return to work with the same or another NHS employer for a minimum period of three months after their maternity leave has ended;
 - (d) and provides a MATB1 form from their midwife or GP giving the expected date of childbirth.

Adoption leave and pay:

15.15 An employee working full-time or part-time will be entitled to paid and unpaid adoption leave under the NHS occupational adoption pay scheme if:

i) they are the primary carer in the adoption arrangement made by an official adoption agency, or they are the intended parent through a surrogacy arrangement and commit to applying for a parental or adoption order (see <https://www.gov.uk/legal-rights-when-using-surrogates-and-donors>); and

ii) they have 12 months' continuous service (see paragraphs 15.106 to 15.109) with one or more NHS employers by either:

a) the beginning of the week in which they are notified of being matched with a child for adoption; or

b) the 15th week before the baby's due date if applying via a surrogacy arrangement and where the employee is eligible and intends to apply for a parental order;

iii) they notify their employer in writing before the end of the week in which they are notified of being matched with a child for adoption, or by the 15th week before the baby's due date if applying via a surrogacy arrangement:

(a) of their intention to take adoption leave;

(b) of the date they wish to start their adoption leave

(c) that they intend to return to work with the same or another NHS employer for a minimum period of three months after their adoption leave has ended;

(d) and provide written confirmation from their placing authority of the matching decision or a parental statutory declaration that they intend to apply for a parental order in the case of a surrogacy arrangement.

Shared parental leave and pay:

15.16 Shared parental leave and pay can be taken at any time within one year from the birth or placement for adoption, providing two weeks' compulsory maternity or adoption leave has been taken first.

15.17 An employee working full-time or part-time will be entitled to paid and unpaid shared parental leave under the NHS occupational shared parental leave and pay scheme if:

i) they have 12 months' continuous service (see paragraphs 15.106 to 15.109) with one or more NHS employers at the beginning of the 11th week before the expected week of childbirth, or at the beginning of the week in which they are notified of being matched with a child for adoption, or by the 15th week before the baby's due date if applying via a surrogacy arrangement;

ii) they notify their employer of their wish to take shared parental leave and provide a minimum of eight weeks' notice, through the submission of a booking notification form or other local process, which will confirm:

- (a) their intention to take shared parental leave;
- (b) the date(s) they wish to access shared parental leave (noting that two weeks compulsory maternity or adoption leave must be taken by the mother or primary adopter before they can access shared parental leave);
- (c) that they intend to return to work with the same or another NHS employer for a minimum period of three months after their shared parental leave has ended;
- (d) that the mother or primary adopter has returned to work following maternity or adoption leave, or has provided the binding notice confirming that they intend to bring their maternity or adoption leave and pay entitlements to an early end.

iii) they confirm that the other parent meets the statutory "employment and earnings test" by being an employed or self-employed earner in the UK for a total of 26 weeks (not necessarily continuously) in the 66 weeks preceding the week the child is due to be born or matched for adoption. The individual must have earned at least an average of £30 (gross) a week in 13 of those 26 weeks (not necessarily continuously). This amount can be amended from time to time by the Secretary of State.

Maternity leave

Changing the maternity leave start date

15.18 If the employee subsequently wants to change the date from which they wish their leave to start, they should notify their employer at least 28 days beforehand (or, if this is not possible, as soon as is reasonably practicable beforehand).

Confirming maternity leave and pay

15.19 Following discussion with the employee, the employer should confirm in writing:

- i) the employee's paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);
- ii) unless an earlier return date has been given, by the employee, their expected return date, based on their 52 weeks paid and unpaid leave entitlement under this agreement;
- iii) the length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal maternity leave period (see paragraphs 15.93 and 15.94);
- iv) the need for the employee to give at least 28 days of notice if they wish to return to work before the expected return date.

Paid maternity leave: amount of pay

15.20 Where an employee intends to return to work the amount of occupational maternity pay receivable is as follows:

- i) for the first eight weeks of absence the employee will receive full pay, less any Statutory Maternity Pay or maternity allowance (including any dependants' allowances) receivable;
- ii) for the next 18 weeks the employee will receive half of full pay, plus any Statutory Maternity Pay or maternity allowance (including any dependants' allowances) receivable, providing the total receivable does not exceed full pay;
- iii) for the next 13 weeks, the employee will receive any Statutory Maternity Pay or maternity allowance that they are entitled to under the statutory scheme.

iv) for the final 13 weeks, the employee will receive no pay.

15.21 By prior agreement with the employer, occupational maternity pay may be paid in a different way, for example a combination of full pay and half pay, or a fixed amount spread equally over the maternity leave period. Where occupational maternity pay has been paid in a different way, and the employee subsequently chooses to access shared parental leave and pay, the employer may need to recalculate payments to ensure that there has not been any over or underpayment of entitlements.

Calculation of maternity pay

15.22 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Maternity Pay entitlements, subject to the following qualifications:

i) in the event of a pay award or move to a higher pay point being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or new pay point had effect throughout the entire Statutory Maternity Pay calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;

ii) in the event of a pay award or move to a higher pay point being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or new pay point should be increased accordingly. If such a pay award was agreed retrospectively the maternity pay should be re-calculated on the same basis;

iii) in the case of an employee on unpaid sick absence or on sick absence attracting half pay during the whole or part of the period used for calculating average weekly earnings, in accordance with the earnings rules for Statutory Maternity Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay as set out in the provisions at section 14.4 and 14.5 of this agreement.

iv) in the case of an employee currently on maternity leave who intends to take a second period of maternity leave, either concurrently, or in close succession to the first, who is in receipt of:

- half of full pay (plus any Statutory Maternity Pay, or
- Maternity Allowance (including any dependents' allowance) receivable)
- or
- no pay

during the whole or part of the period used for calculating average weekly earnings, in accordance with the earnings rules for Statutory Maternity Pay purposes, average weekly earnings for the second period of maternity leave shall be calculated on the basis on notional full pay.

Unpaid occupational leave

15.23 Employees are also entitled to take a further 13 weeks as unpaid leave to bring the total of leave to 52 weeks. However, this may be extended by local agreement in exceptional circumstances, for example, where employees have sick pre-term babies or multiple births.

Commencement and duration of maternity leave

15.24 An employee may begin their maternity leave at any time between 11 weeks before the expected week of childbirth and the expected week of childbirth, provided they give the required notice.

Sickness prior to childbirth

15.25 If an employee is off work ill, or becomes ill, with a pregnancy-related illness during the last four weeks before the expected week of childbirth, maternity leave will normally commence at the beginning of the 4th week before the expected week of childbirth or the beginning of the next week after the employee last worked, whichever is the later. Absence prior to the last four weeks before the expected week of childbirth, supported by a medical statement of incapacity for work, or a self-certificate, shall be treated as sickness absence in accordance with normal leave provisions.

15.26 Odd days of pregnancy-related illness during this period may be disregarded if the employee wishes to continue working till the maternity leave start date previously notified to the employer.

Pre-term birth

15.27 Where an employee's baby is born alive prematurely, the employee will be entitled to the same amount of maternity leave and pay as if their baby was born at full term.

15.28 Where an employee's baby is born before the 11th week before the expected week of childbirth and the employee has worked during the actual week of childbirth, maternity leave will start on the first day of the employee's absence.

15.29 Where an employee's baby is born before the 11th week before the expected week of childbirth and the employee has been absent from work on certified sickness absence during the actual week of childbirth, maternity leave will start the day after the day of birth.

15.30 Where an employee's baby is born before the 11th week before the expected week of childbirth and the baby is in hospital, the employee may split their maternity leave entitlement, taking a minimum period of two weeks' leave immediately after childbirth and the rest of their leave following their baby's discharge from hospital.

Still birth

15.31 In the event where an employee's baby is stillborn after the end of the 24th week of pregnancy, the employee will be entitled to the same amount of maternity leave and pay as if their baby was born alive.

Miscarriage

15.32 In the event where an employee has a miscarriage before the start of the 25th week of pregnancy, normal sickness absence provisions will apply as necessary.

Health and safety of employees pre and post birth

15.33 Where an employee is pregnant or has recently given birth or is breastfeeding, the employer must carry out a risk assessment of their working conditions. If it is found, or a medical practitioner considers, that an employee or the child would be at risk were they to continue with their normal duties, the employer should provide suitable alternative work for which the employee will receive their normal rate of pay. Where it is not

reasonably practicable to offer suitable alternative work, the employee should be suspended on full pay.

15.34 These provisions also apply to an employee who is breastfeeding if it is found that their normal duties would prevent them from successfully breastfeeding their child.

Adoption leave

Changing the adoption leave start date

15.35 If the employee subsequently needs to change the date from which they wish their leave to start, they should notify their employer at least 28 days beforehand (or, if this is not possible, as soon as is reasonably practicable beforehand).

Confirming adoption leave and pay

15.36 Following discussion with the employee, the employer should confirm in writing:

- i) the employee's paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);
- ii) unless an earlier return date has been given by the employee, their expected return date, based on their 52 weeks paid and unpaid leave entitlement under this agreement; and
- iii) the length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal adoption leave period (see paragraphs 15.93 and 15.94);
- iv) the need for the employee to give at least 28 days of notice if they wish to return to work before the expected return date.

Paid adoption leave: amount of pay

15.37 Where an employee intends to return to work the amount of occupational adoption pay receivable is as follows:

- i) for the first eight weeks of absence the employee will receive full pay, less any Statutory Adoption Pay receivable;
- ii) for the next 18 weeks the employee will receive half of full pay, plus any Statutory Adoption Pay receivable, providing the total receivable does not exceed full pay;
- iii) for the next 13 weeks, the employee will receive any Statutory Adoption Pay that they are entitled to under the statutory scheme;
- iv) for the final 13 weeks, the employee will receive no pay.

15.38 By prior agreement with the employer, occupational adoption pay may be paid in a different way, for example a combination of full pay and half pay, or a fixed amount spread equally over the adoption leave period. Where occupational adoption pay has been paid in a different way, and the employee subsequently chooses to access shared parental leave and pay, the employer may need to recalculate payments to ensure that there has not been any over or underpayment of entitlements.

Calculation of adoption pay

15.39 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Adoption Pay entitlements, subject to the following qualifications:

- i) in the event of a pay award or move to a higher pay point being implemented before the paid adoption leave period begins, the adoption pay should be calculated as though the pay award or new pay point had effect throughout the entire Statutory Adoption Pay calculation period. If such a pay award was agreed retrospectively, the adoption pay should be re-calculated on the same basis;
- ii) in the event of a pay award or move to a higher pay point being implemented during the paid adoption leave period, the adoption pay due from the date of the pay award or new pay point should be increased accordingly. If such a pay award was agreed retrospectively the adoption pay should be re-calculated on the same basis;
- iii) in the case of an employee on unpaid sick absence or on sick absence attracting half pay during the whole or part of the period used for

calculating average weekly earnings, in accordance with the earnings rules for Statutory Adoption Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay as set out in the provisions at section 14.4 and 14.5 of this agreement.

iv) in the case of an employee currently on adoption leave who intends to take a second period of adoption leave, either concurrently or in close succession to the first, who is in receipt of:

- half of full pay (plus any Statutory Adoption Pay receivable), or
- Statutory Adoption Pay, or
- no pay

during the whole or part of the period used for calculating average weekly earnings, in accordance with the earnings rules for Statutory Adoption Pay purposes, average weekly earnings for the second period of adoption leave shall be calculated on the basis of notional full pay.

Unpaid occupational leave

15.40 Employees are also entitled to take a further 13 weeks as unpaid leave to bring the total of leave to 52 weeks. However, this may be extended by local agreement in exceptional circumstances.

Fostering for adoption

15.41 Prospective adopters who have been approved by their adoption agency under a “concurrent” or “fostering for adoption” arrangement may choose to start their adoption leave when a fostering placement is made or when the child is matched with them for adoption. Only one set of adoption leave is payable per placement. Receipt of fostering allowances and payments during the fostering phase of placement will not affect any adoption pay payable under this agreement.

Adoption disruption

15.42 Should the adoption break down (“Be disrupted”) the employee will be entitled to continue their adoption leave and receive the appropriate payment for that time.

Overseas adoption

15.43 For an employee to qualify for adoption leave and or pay resulting from an overseas adoption, they must:

- i) tell their employer the date of the official notification (permission from a GB authority for an adoption abroad) and the estimated date that the child will arrive in GB. This must be done within 28 days of receipt of the official notification;
- ii) tell their employer the actual date the child arrives in GB within 28 days of this date;
- iii) provide their employer with a minimum of 28 days' notice of when they wish to commence their adoption leave and pay (noting that adoption leave can only commence after the child has entered GB and must start no later than 28 days after the child has entered GB);
- iv) provide appropriate documentation and proof of the adoption to the employer including but not limited to the official notification and evidence that the child has entered GB.

Shared parental leave

15.44 In order to access enhanced shared parental leave employees will be required to complete the appropriate forms produced by ACAS and available on the Government website (<https://www.gov.uk/shared-parental-leave-and-pay/applying-for-leave-and-pay>). As stated on the statutory forms, some employers may provide their own standard forms for employees to use. Employing organisations will need to be able to satisfy themselves that they have all the information necessary to offer this enhanced benefit.

15.45 Employing organisations may at their discretion require the individual to provide additional information on their circumstances where this is reasonable and necessary to determine entitlements.

15.46 It is the responsibility of the employee to ensure that all information provided is accurate. Where inaccurate information is provided that leads

to overpayment of statutory or occupational entitlements, the employing organisation will have a right to reclaim any overpayment. Providing deliberately inaccurate information may also lead to the employing organisation taking disciplinary or other action against the employee.

15.47 It is recommended that organisations develop their own local shared parental leave policy and processes in partnership with local staff sides to ensure application processes are consistent and to enable local audit procedures to be carried out where necessary, ensuring equality duties are met.

Booking and varying shared parental leave

15.48 Shared parental leave and pay must be taken within one year of the birth of the child, or the date the child was placed with the family in cases of adoption.

15.49 Following notification of their intention to take shared parental leave, an employee should provide notice to book a period of leave. The minimum period of notice to book or amend a period of leave shall be eight weeks.

15.50 An employee can provide up to three notices to book leave. This includes notices to vary a previously agreed pattern of leave.

15.51 Each of the three notices to book leave may include a single, continuous or discontinuous block of leave.

15.52 Requests for single blocks of leave cannot be refused.

15.53 Confirmed leave arrangements can be amended by the submission of a notice to vary the agreed period of leave. An employee can submit a notice to extend a period of leave, end it sooner than previously agreed or consolidate a number of discontinuous weeks in to a single block of leave using a variation notice. Eight weeks' notice must be given but flexibility should be provided in the event of early and late births.

15.54 In instances where discontinuous periods of leave are requested, employers are not bound to agree the requested pattern. A two-week discussion period between the employee and employer will commence on the date the employee submits the booking notice. The review will look

at the requested pattern of leave and discuss possible alternatives. In the limited circumstances where the employer refuses the requested pattern, they will explain the reason for the refusal. The employee cannot be prevented from taking the amount of leave they have requested within that notice, but the employer has authority over how and when it is taken.

15.55 In instances where a discontinuous period of leave has been refused and an alternative period has not been agreed during the discussion period, the total combined weeks' leave requested on that notice may be taken as a single continuous block. This should commence on a date specified by the employee but be no less than eight weeks from the date the original notice was provided to the employer. The employee has five days from the end of the two-week discussion period in which to confirm the date their leave will commence. In instances where the employee specifies no date, leave will commence on the start date of the first period of discontinuous leave that was originally applied for.

15.56 An employee is not entitled to withdraw a notice for a single continuous block of leave but may do so with the employer's express permission.

15.57 An employee may withdraw their notice to book discontinuous blocks of leave within 15 days of submitting their notice providing an agreement has not been reached with their employer about when they will be absent from work. Once the 15th day has passed any changes to a period of leave must be made by using a variation notice and a minimum of eight weeks' notice must be provided.

15.58 If a notice is withdrawn it will not count towards the three booking notifications cap.

Confirming shared parental leave and pay

15.59 Following discussion with the employee, the employer should confirm in writing:

i) the employee's paid and unpaid shared parental leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under the agreement);

- ii) the confirmed leave pattern, including start and end dates, for each block of shared parental leave the employee and employer have agreed will be taken;
- iii) confirmation of the notification process and the required notice periods for instances where agreed blocks of leave need to be amended; and
- iv) the length of any period of accrued annual leave which it has been agreed may be taken following the end of shared parental leave (see paragraphs 15.93 and 15.94).

Paid shared parental leave: amount of pay

15.60 Eligible employees will be entitled to claim up to 37 weeks of statutory shared parental leave pay (ShPP), less any weeks of statutory maternity pay, maternity allowance or statutory adoption pay that has already been claimed by either partner. ShPP can be claimed following the birth or placement of the child, but not at the same time as the compulsory two weeks of leave following the birth or placement of the child. ShPP is paid at a rate set by the government each year.

15.61 Where an employee intends to return to work after a period of shared parental leave, the maximum joint entitlement of an eligible couple to occupational shared parental pay will be as set out below. The maximum entitlement will only apply where either parent has not already received statutory or occupational maternity pay, maternity allowance or statutory or occupational adoption pay in respect of the child. Where such pay (excluding pay during the compulsory two-week maternity/adoption leave period) has been received by either parent, the maximum joint entitlement set out below will reduce proportionate to the amount of maternity or adoption pay which has either been taken and paid to either parent, or notified as intending to be taken by either parent.

- i) for the first six weeks of absence the employee will receive full pay. Full pay is inclusive of any ShPP. The total receivable cannot exceed full pay;
- ii) for the next 18 weeks of absence the employee will receive half of full pay plus any ShPP. The total receivable cannot exceed full pay;
- iii) for the next 13 weeks, the employee will receive any ShPP that they are entitled to under the statutory scheme.

iv) for the final 13 weeks, the employee will receive no pay.

15.62 An NHS employer (as defined at Annex 1) will not pay more than 26 weeks, 8 weeks' full pay (including the two weeks' compulsory leave) and 18 weeks' half pay, to employees accessing occupational maternity or adoption or shared parental pay in aggregate to an eligible couple. This is irrespective of whether one or both parents are NHS employees as shared parental leave and pay is a joint entitlement.

Calculation of shared parental leave pay

15.63 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Shared Parental Pay entitlements, subject to the following qualifications:

i) in the event of a pay award or move to a higher pay point being implemented before the paid shared parental leave period begins, the shared parental pay should be calculated as though the pay award or new pay point had effect throughout the entire Statutory Shared Parental Pay calculation period. If such a pay award was agreed retrospectively, the shared parental pay should be re-calculated on the same basis;

ii) in the event of a pay award or move to a higher pay point being implemented during the paid shared parental leave period, the shared parental pay due from the date of the pay award or new pay point should be increased accordingly. If such a pay award was agreed retrospectively the shared parental pay should be re-calculated on the same basis;

iii) in the case of an employee on unpaid sick absence or on sick absence attracting half pay during the whole or part of the period used for calculating average weekly earnings, in accordance with the earnings rules for Statutory Shared Parental Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay.

Unpaid occupational leave

15.64 Employees are also entitled to take a further 13 weeks as unpaid leave to bring the total for shared parental leave to 50 weeks. However,

this may be extended by local agreement in exceptional circumstances.

Keeping in touch during the maternity, adoption, or shared parental leave period

15.65 Before going on leave, the employer and the employee should also discuss and agree any voluntary arrangements for keeping in touch during the employee's maternity, adoption, or shared parental leave, including:

- i) any voluntary arrangements that may help them keep in touch with developments at work and, nearer the time of their return, to help facilitate their return to work;
- ii) keeping the employer in touch with any developments that may affect their intended date of return.

15.66 To facilitate the process of keeping in touch, it is important that the employer and employee have early discussions to plan and make arrangements for "keeping in touch days" (KIT days), or "shared parental leave in touch" (SPLiT) days, before the employee's maternity leave, adoption leave, or shared parental leave takes place.

15.67 To enable employees to take up the opportunity to work KIT and SPLiT days, employers should consider the scope for reimbursement of reasonable childcare costs or the provision of childcare facilities.

15.68 KIT / SPLiT days are intended to facilitate a smooth return to work for employees returning from maternity, adoption, or shared parental leave.

15.69 An employee may work for up to a maximum of ten KIT days without bringing their maternity or adoption leave to an end. Any days of work will not extend the maternity / adoption leave period.

15.70 An employee may work up to a maximum of twenty SPLiT days without bringing their shared parental leave to an end. Any days of work will not extend the shared parental leave period. This will enable employees on shared parental leave to work either continuously or on odd days without bringing an end to their shared parental leave and pay.

15.71 An employee may not work during the two weeks of compulsory maternity or adoption leave.

15.72 Work can be consecutive or not and can include training or other activities which enable the employee to keep in touch with the workplace.

15.73 Any such work must be by agreement and neither the employer nor the employee can insist upon it.

15.74 For KIT /SPLiT days worked the employee will be paid at their basic daily rate for the hours worked, less any occupational or statutory maternity / adoption / shared parental leave payments. If a KIT /SPLiT day is worked in the full pay period, the employer will make arrangements to ensure the employee receives a day of paid leave in lieu once the employee has returned to work. If a KIT /SPLiT day is worked on a day of leave in the half pay period, the employer will make arrangements to ensure the employee receives a half day of paid leave in lieu once the employee had returned to work.

15.75 Working for part of any day will count as one KIT / SPLiT day.

15.76 A risk assessment must be carried out for any employee who is breastfeeding and facilities must be provided in accordance with paragraph 15.33-15.34. To ensure compliance with Workplace (Health, Safety and Welfare) Regulations 1992 employers must provide suitable rest facilities for workers who are pregnant or breastfeeding. Facilities should be suitably located and where necessary should provide appropriate facilities for the new or expectant mother to lie down. The NHS Staff Council Health Safety and Wellbeing Partnership Group have published further guidance on workplace health and safety standards.

Return to work

15.77 An employee who intends to return to work at the end of their full maternity or adoption leave, or at the end of their shared parental leave, will not be required to give any further notification to the employer, although if they wish to return early, they must give at least 28 days' notice.

15.78 An employee has the right to return to their job under their original contract and on no less favourable terms and conditions.

Returning on flexible working arrangements

15.79 If, at the end of maternity, adoption, or shared parental leave, the employee wishes to return to work on different hours, the NHS employer has a duty to facilitate this, wherever possible. The employee will return to work on different hours, in the same job. If this is not possible, the employer must provide written, objectively justifiable reasons for this and the employee should return to the same pay band and work of a similar nature and status, to that which they held prior to their maternity / adoption / shared parental absence.

15.80 If it is agreed that the employee will return to work on a flexible basis, including changed or reduced hours, for an agreed temporary period, this will not affect the employee's right to return to their job under their original contract, at the end of the agreed period.

Sickness following the end of maternity, adoption, or shared parental leave

15.81 In the event of illness following the date the employee was due to return to work, normal sickness absence provisions will apply as necessary.

Failure to return to work

15.82 If an employee who has notified their employer of their intention to return to work for the same or a different NHS employer, in accordance with paragraph 15.14, 15.15 or 15.17 fails to do so within:

- i) 15 months of the beginning of their maternity / adoption leave, or
- ii) three months of the end of their shared parental leave,

they will be liable to refund the whole of their maternity, adoption, or shared parental pay, less any Statutory Maternity, Adoption or Shared Parental Pay, received. In cases where the employer considers that to enforce this provision would cause undue hardship or distress, the employer will have the discretion to waive their rights to recovery.

Miscellaneous provisions for maternity, adoption and shared parental leave

Fixed-term contracts or training contracts

15.83 Employees subject to fixed-term or training contracts which expire after the 11th week before the expected week of childbirth, or the date of matching, or the 15th week before the baby's due date if applying via a surrogacy arrangement, and who satisfy the relevant conditions in paragraphs 15.14, 15.15 or 15.17 shall have their contracts extended so as to allow them to receive the 52 weeks, which includes paid occupational and statutory maternity / adoption / shared parental pay, and the remaining 13 weeks of unpaid maternity / adoption / shared parental leave.

15.84 Absence on maternity / adoption / shared parental leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service.

15.85 If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth / adoption / shared parental leave had not occurred or been taken, the repayment provisions set out in paragraph 15.82 will not apply.

15.86 Employees on fixed-term contracts who do not meet the 12 months' continuous service condition set out in paragraph 15.105 or 15.108, may still be entitled to Statutory Maternity / Adoption / Shared Parental Pay.

Rotational training contracts

15.87 Where an employee is on a planned rotation of appointments with one or more NHS employers, as part of an agreed programme of training, they shall have the right to return to work after a period of maternity, adoption or shared parental leave in the same post or in the next planned

post, irrespective of whether the contract would otherwise have ended if pregnancy and childbirth/adoption/shared parental leave had not occurred. In such circumstances the employee's contract will be extended to enable the practitioner to complete the agreed programme of training.

15.88 To ensure equality of access to the provisions in this Section:

- a. where an employee changes employer because their training programme has required them to do so, and
- b. this means they do not have enough statutory continuous service with their current employer to access statutory maternity pay, statutory adoption pay, or statutory shared parental pay, but
- c. they would have had sufficient statutory continuous service to access statutory maternity pay, statutory adoption pay, or statutory shared parental pay had they not been required to change employer because of the training programme

the employee shall be paid, by their current employer, the value of statutory maternity / adoption / shared parental pay they would have otherwise received if their statutory continuity had not been broken by their change of employer.

15.89 Where an employee does not have enough statutory continuity of service to access statutory maternity /adoption / shared parental pay as a result of being required as part of their training programme to work in a Crown Dependency, and they would have had sufficient statutory continuous service to access statutory maternity pay, statutory adoption pay, or statutory shared parental pay had they not been required to work in a Crown Dependency, the employee shall be paid, by their current employer, the value of statutory maternity / adoption / shared parental pay they would have otherwise received if their statutory continuity had not been broken by working in a Crown Dependency.

Contractual rights

15.90 During maternity leave (both paid and unpaid) an employee retains all of their contractual rights, except remuneration.

Pay progression

15.91 An employee on maternity / adoption / shared parental leave will progress through their pay step on the date the pay step is due unless a pay-step review meeting has taken place prior to the commencement of leave which confirmed that the required standards for pay progression would not be met. If a pay-step review cannot be conducted prior to the pay-step date the pay-step point should be automatically applied in the individual's absence. Refer to Annex 23 (England) for further information.¹

15.92 For staff on medical or dental contracts that are covered by this section the general principle will apply that there should be no detriment to pay progression or annual leave accrual as a result of taking maternity/adoption/shared parental leave.

Annual leave and public holidays

15.93 Employees on paid and unpaid maternity / adoption / shared parental leave retain their right to the annual leave and public holidays provided by Section 13 or such other terms and conditions as such be applicable to the employee.

15.94 Where unused annual leave and public holidays exceed local provisions for carry over to the next leave year it may be beneficial to the employer and employee for the employee to take the unused annual leave and public holidays before and/or after the agreed (paid and unpaid) maternity / adoption / shared parental leave period. The amount of annual leave and public holidays to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Payment in lieu may be considered as an option where accrual of annual leave and public holidays exceeds normal carry over provisions, providing this would not cause a breach in the Working Time Regulations 1998.

Pensions

15.95 Pension rights and contributions shall be dealt with in accordance with the provisions of the NHS Pension Scheme Regulations.

Antenatal care

15.96 Pregnant employees have the right to paid time off for antenatal care. Antenatal care includes relaxation and parent-craft classes as well as appointments for antenatal care.

15.97 The pregnant employee's partner will be entitled to unpaid leave to attend two ante natal appointments. Unpaid leave, up to a maximum of six and a half hours per appointment can be accessed. The pregnant employee's partner includes a spouse, civil partner (of either sex) or a person with whom she is in a long-term relationship. Further information can be found on the government website <https://www.gov.uk/working-when-pregnant-your-rights>.

Pre-adoption meetings

15.98 Employees being assessed for adoption have the right to reasonable paid time off for essential meetings

Employees not returning to NHS employment

15.99 An employee who satisfies the conditions in paragraph 15.14, 15.15 or 15.17, except that they do not intend to work with the same or another NHS employer for a minimum period of three months after their maternity, adoption, or shared parental leave has ended, will be entitled to pay equivalent to Statutory Maternity / Adoption / Shared Parental Pay.

15.100 Statutory Maternity Pay (SMP) and Statutory Adoption Pay (SAP) is paid at 90 per cent of their average weekly earnings for the first six weeks of the maternity / adoption leave and to the statutory flat rate sum or 90 per cent of the average weekly earnings (whichever is lower) for the following 33 weeks.

15.101 Shared Parental Leave Pay (ShPP) is paid at a statutory flat rate sum or 90 per cent of an employee's average weekly earnings, whichever is the lower.

Employees with less than 12 months' continuous service

15.102 If an employee does not satisfy the conditions in paragraph 15.14 or 15.15 or 15.17 for occupational maternity / adoption / shared parental pay, they may be entitled to Statutory Maternity, Adoption or Shared Parental Pay. Statutory Maternity, Adoption or Shared Parental pay will be paid regardless of whether they satisfy the conditions in paragraph 15.14, 15.15 or 15.17.

15.103 If an employee's earnings are too low for them to qualify for Statutory Maternity / Adoption / Shared Parental Pay, or they do not qualify for another reason, they should be advised to claim maternity allowance (if applicable) or any other possible benefits from their local Job Centre Plus. Information on maternity allowance is available on the government website <https://www.gov.uk/maternity-allowance>.

15.104 All employees will have a right to take 52 weeks of maternity / adoption / shared parental leave whether or not they return to NHS employment.

15.105 Paragraph 15.117 contains further information on statutory entitlements.

Continuous service

15.106 For the purposes of calculating whether the employee meets the qualification set out in paragraph 15.14, 15.15 or 15.17 to have had 12 months of continuous service with one or more NHS employers, NHS employers include health authorities, NHS boards, NHS trusts, and the Northern Ireland Health Service and are set out in Annex 1. The following breaks in service will be disregarded (but do not count as service)

For the avoidance of doubt, absence on maternity leave, adoption leave, or shared parental leave (paid or unpaid) as provided for under this agreement counts as continuous service.

- i) a break in service of three months or less will be disregarded
- ii) employment under the terms of an honorary contract;
- iii) employment as a locum in a general practice setting for a period not exceeding 12 months;
- iv) a period of up to 12 months spent abroad as part of a definite programme of postgraduate training on the advice of the postgraduate dean or college or faculty advisor in the speciality concerned;
- v) a period of voluntary service overseas with a recognised international relief organisation for a period of 12 months, which may exceptionally be extended for 12 months at the discretion of the employer which recruits the employee on their return;

vi) absence on an employment break scheme in accordance with the provisions of Section 34 of this Handbook;

vii) for doctors and dentists in training, time spent outside of NHS employment (employers not listed at Annex 1) in an Out of Programme (OOP) placement approved by the Postgraduate Dean;

viii) for doctors and dentists in training, time spent employed in the health service of a UK Crown Dependency as part of an approved training programme.

15.107 Employers may at their discretion extend the period specified in paragraph 15.106.

15.108 Employment as a doctor in training in a general practice setting in accordance with the provisions of the Trainee Practitioner Scheme, shall not be regarded as a break in service and shall count as service.

15.109 Employers have the discretion to count other previous NHS service or service with other employers.

New parent support leave and pay (paternity leave)

15.110 This provision builds on statutory paternity leave and pay and applies to the father of the child (including adoptive fathers), the mother's spouse or partner (whether opposite or same sex) or nominated carer.

15.111 NHS organisations have scope locally to agree more favourable arrangements where they consider it necessary, or further periods of unpaid leave on an individual basis.

15.112 All eligible employees are entitled to two weeks of new parent support leave which as a minimum can be split into two one-week blocks and can be taken at any time during the first year of the birth or the placement of the child for adoption.

15.113 Employees granted new parent support leave will receive full pay during this period if they have 12 months' continuous service with their or any other NHS employer before they take their leave.

15.114 Full pay will be calculated on the basis of the average weekly earnings rules used for calculating occupational maternity / adoption pay

entitlements. The employee will receive full pay less any statutory paternity pay receivable.

15.115 Only one period of new parent support pay is ordinarily available when there is a multiple birth.

15.116 Employees who are not eligible for the two weeks of pay during their new parent support leave may still be entitled to statutory paternity pay subject to meeting the qualifying conditions described in the relevant legislation. Details of the qualifying conditions can be found on www.gov.uk

Further information

15.117 There are occasions when employees are entitled to other statutory benefits / allowances and information about these and all statutory maternity, adoption, shared parental leave and paternity rights can be found on the [Gov.uk website](http://Gov.uk). Information about health and safety for new and expectant mothers at work can be found [on the government website](#).

Amendment number 43: NHS TCS Advisory Notice 01/2021

1 Scotland has its own established pay progression arrangements which will continue to operate until the revised approach negotiated through the Scottish terms and conditions committee is put in place. The service will receive further communication about these in due course.

2 This section, agreed by the UK Staff Council for application from 1 April 2019 includes provisions already put in place in Scotland on 2 April 2015 by DL(2015)5, and subsequently included in the Supporting the Work-Live Balance Partnership Information Network (PIN) policy. In Scotland, this section should be read in conjunction with the most up to date PIN policies which can be found at www.staffgovernance.scot.nhs.uk.

Section 16: Redundancy pay (England)

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 2 years of continuous full-time or part-time service. These take effect from 1 April 2015. 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 of continuous full-time or part-time service and two years of qualifying membership in the NHS Pension Scheme. NHS contractual redundancy is an enhancement to an employee's statutory redundancy entitlement, the statutory payment being offset against any contractual payment.

Definition of redundancy

16.2 A dismissal will be by reason of redundancy if it is mainly or wholly attributable to:

- the fact that the employer has ceased, or intends to cease to carry on the business for the purposes of which the employee was employed; or to carry on the business in the place where the employee was so employed; or
- the fact that the requirements of the business for employees to carry out work of a particular kind; or 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 1 in this

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 2 years of continuous full-time or part-time service. A redundancy payment will only be paid where the employee is dismissed by reason of redundancy.

Definition of continuous service

16.4 “Continuous service” is calculated in accordance with Part XIV, Chapter 1, of the Employment Rights Act 1996, “Continuous Employment.” For the purpose of determining whether service has been continuous it does not matter whether an employee works on a full-time or part-time basis. For the purpose of determining eligibility for redundancy pay, previous continuous employment with different NHS employers may be counted as long as there has not been a break of a week or more (measured Sunday to Saturday) between any periods of employment.

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:

- subject to paragraph 16.6 below, 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 NHS 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 “Month’s 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 Sections 221 to 224 of the Employment Rights Act 1996;
- an amount equal to 1/12th 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’ continuous service and a maximum of 24 years’ reckonable service being counted.

- For those earning less than £23,000 per year (full time equivalent), the redundancy payment will be calculated using notional full-time annual earnings of £23,000, pro-rated for employees working less than full time.
- For those earning over £80,000 per year (full time equivalent) the redundancy payment will be calculated using notional full-time annual earnings of £80,000, pro-rated for employees working less than full time. No redundancy payment will exceed £160,000 (pro-rata).

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 below may choose to retire early and use the redundancy payment, set out in paragraphs 16.12 to 16.15 to buy out all or part of the pension benefits reduction. To qualify for early retirement the member of staff must:

- be an active member of the NHS Pension Scheme in respect of the employment that is being terminated;
- have at least two years' continuous service and two years' qualifying membership of the NHS Pension Scheme;
- 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 Pension Scheme, for those without this protection, members who first joined and some who returned to the scheme after 6 April 2006, minimum pension age is 55.

Definition of qualifying membership

16.11 'Qualifying membership' is membership that counts towards establishing entitlement for benefits. Pensionable membership is service that counts when calculating the value of pension benefits. 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 Pension benefits that are paid earlier than a member's normal pension age are usually reduced to cover the cost of paying the pension early. The amount of reduction is calculated by the scheme actuary and depends on how early the pension has been taken.

16.13 Subject to meeting eligibility criteria, the redundant member of staff can choose to exchange their redundancy lump sum payment in return for immediate payment of their qualifying pension benefits at the point of redundancy, with such actuarial reduction applied that has not been bought-out. The employer will use the employee redundancy lump sum payment to pay a contribution to the relevant NHS pension scheme in order to buy-out as much of the actuarial reduction as the value of the redundancy lump sum payment permits.

16.14 If the value of the redundancy lump sum payment that would otherwise have been payable under paragraph 16.8 exceeds the cost of buying out the reduction, the redundant individual will receive a redundancy lump sum payment that is equivalent to the difference between the two amounts. If the value of the redundancy lump sum payment is not sufficient to buy-out the full reduction, the pension benefits are proportionally reduced by the remainder. Where this is the case, members have the further option to make an additional contribution to the relevant NHS pension scheme in order to buy-out the remaining reduction using their own personal funds. The additional contribution option may only be exercised before the pension is paid.

16.15 If the redundant member of staff does not wish to take unreduced or partly reduced pensions benefits early, they can opt to keep their redundancy lump sum payment and either preserve their pension benefits for payment at a later date or take those benefits immediately but with a

reduction applied in the same way as if the member had opted to take voluntary early retirement.

Repayment

16.16 If, before the date of termination, an employee is offered suitable alternative employment with their own employer or with another NHS employer and that employment starts within 4 weeks of the termination date, they will not be entitled to a redundancy payment.

Treatment of concurrent pensionable employment

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

- ceasing all pensionable employment and taking all pension benefits. For members of the 1995 section of the NHS Pension Scheme, this means that they cannot be pensionable again in the scheme. (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 on redundancy grounds, in which case they can continue being pensionable in other employments.

16.18 Members with concurrent practitioner and non-practitioner employments (as defined by the relevant NHS pension scheme), 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 normal pension¹ age².

16.19 The member can exchange their redundancy lump payment and use other personal funds (if required) to buy-out the cost of paying benefits early, including the pension costs accruing from other terminating employment.

Exclusion from eligibility

16.20 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
- 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
- they are offered a renewal of contract (with the substitution of the new employer for the previous NHS one); or
- where their employment is transferred to another public service employer who is not an NHS employer.

Suitable alternative employment

16.21 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.

16.22 'Suitable alternative employment', for the purposes of paragraph 16.20, 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.

16.23 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

16.24 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.

16.25 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

16.26 Claims for redundancy payment or retirement on grounds of redundancy must be submitted within six months of the 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 and they understand that payment is made only on this condition and undertake to refund it if this condition is not satisfied.

Retrospective pay awards

16.27 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

16.28 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 16.25 about making a claim for a redundancy payment.

Early retirement in the interests of the efficiency of the service

16.29 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 16.10. 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, gender, gender identity or gender expression, pregnancy or maternity, marriage or civil partnership, race, religion or belief, disability, or sexual orientation.

16.30 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, including reasonable adjustments to an existing role or potential suitable alternatives.

16.31 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

16.32 The cost of redundancy early retirement to the employer is limited to the value of the redundancy lump sum payment. However, employer contributions to the NHS Pension Scheme do not cover the costs of early retirement benefits in the interests of the service. There is a requirement for NHS employers to pay these costs if they retire staff early in the interests of the service.

Transitional arrangements

16.33 Employees subject to formal redundancy consultation which commenced prior to 1 April 2015, the redundancy provisions in force **prior to 1 April 2015** will apply.

16.34 Employees subject to formal redundancy consultation which commences **after 31 March 2015**, the new redundancy provisions will apply.

1 Where practitioner membership ended 12 months or more before the date of non-practitioner retirement on redundancy grounds, and all other posts have ceased, pension benefits accruing from practitioner service will be paid at the same time, reduced to the extent that the actuarial reduction which would otherwise apply is bought out in accordance with paragraphs [16.12 to 16.15].

2 Practitioners are general medical and general dental practitioners.

To note:

Section 16

***16.18** (England) Where practitioner membership ended 12 months or more before the date of non-practitioner retirement on redundancy grounds, and all other posts have ceased, pension benefits accruing from practitioner service will be paid at the same time, reduced to the extent that the actuarial reduction which would otherwise apply is bought out in accordance with paragraphs [16.12 to 16.15].*

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

***16.15** 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.*

Practitioners are general medical and general dental practitioners.

Pay circular (AforC) 2/2015: amendment number 35

Section 16: Redundancy pay (Scotland, Wales and Northern Ireland)

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 of continuous full-time or part-time service and two years of qualifying membership in the NHS Pension Scheme. Pension changes take effect from 1 December 2006.

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 1 in this 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

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 “Month’s 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 Sections 221 to 229 of the Employment Rights Act 1996;
- an amount equal to 1/12th 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 years' 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 Pension 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 2010.

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 instalments.¹

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 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 installments, 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.

16.15 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 60.2 3

16.16 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

16.17 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
- 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
- they offered a renewal of contract (with the substitution of the new employer for the previous NHS one); or
- where their employment is transferred to another public service employer who is not an NHS employer.

Suitable alternative employment

16.18 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.

16.19 ‘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.

16.20 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

16.21 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.

16.22 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

16.23 Claims for redundancy payment or retirement on grounds of redundancy must be submitted within six months of the 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

16.24 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

16.25 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

16.26 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, gender, gender identity or gender expression, pregnancy or maternity, marriage or civil partnership, race, religion or belief, disability, or sexual orientation.

16.27 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, including reasonable adjustments to an existing role or potential suitable alternatives.

16.28 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

16.29 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.

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

2 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.

3 Practitioners are general medical and general dental practitioners.

Pay circular (AforC) 1/2012: amendment number 25

Section 17: Reimbursement of travel costs

Reimbursement of travel costs

17.1 This section deals with the reimbursement of costs incurred by employees who, with the agreement of their employer, use their own vehicles or pedal cycles, to make journeys in the performance of their duties. A summary of motoring costs which are taken into account is in annex 12.

17.2 Principles underpinning lease vehicle policies are in annex 13. If the employer withdraws the offer of a lease vehicle in line with the provisions of annex 13 the employee is entitled to the appropriate rates of reimbursement in table 7.

17.3 The reimbursement of travelling costs when employees are required to change their base of work as a result of a reorganisation or merger of NHS employers or when employees accept another post as an alternative to redundancy, will be for local partnerships to determine in line with Section 19 and Annex 15, subject to a maximum period of reimbursement of four years from the date of transfer (see paragraph 17.17 for compulsory change of base).

17.4 **This section is effective from 1 July 2013.** It replaces the previous section 17 and all existing national agreements on protection. It applies to all employees on the terms and conditions of service in this Handbook who have been in receipt of the nationally agreed mileage payments. Where local partnerships of employers and trades unions have agreed alternative arrangements which may take account of local travel policies, e.g. approved mileage allowance payments (AMAP rates), it will be for the local parties to decide if they wish to maintain the local agreement or implement the new national system.

17.5 When using their vehicles in the performance of their duties employees must ensure they possess a valid driving licence, Ministry of Transport test (MOT) certificate and motor insurance which covers business travel, that he or she is fit to drive and drives safely and that they obey the relevant laws e.g. speed limits. The employee must inform the employer if there is a change in status.

17.6 When authorising the use of a vehicle, the employer must ensure that the driver has a valid driving licence and MOT certificate and has motor insurance which covers business travel.

17.7 The employer and employee will agree the most suitable means of transport for the routine journeys which employees have to make in the performance of their duties. If a particular journey is unusual, in terms of distance or purpose, the mode of travel will be agreed between the employer and employee, before it starts.

17.8 There may be circumstances where newly appointed or lower paid employees need assistance to obtain a vehicle to undertake business travel. Where the use of a vehicle is essential to the job the organisation may wish to assist by providing a lease or pool vehicle or a salary advance (see annex 13).

Rates of reimbursement

17.9 Employees who use their vehicles to make journeys in the performance of their duties e.g. to provide care in the patient's home, will be reimbursed their motoring costs at the appropriate rates shown in table 7. These rates of reimbursement apply to journeys undertaken on and after 1 January 2023.

17.10 The rates of reimbursement shown in table 7 and implemented on 1 January 2023 are the result of the review which took place in October 2022, in line with paragraph 17.14 (see also annex 12, paragraph 14). These rates apply to all journeys undertaken on and after 1 January 2023.

17.11 The rates of reimbursement in table 7 are obtained by referring to costs for the average private vehicle user included in the AA guides to motoring costs (see annex 12).

17.12 The rate of reimbursement for motorcyclists in column 4 in table 7 and the reserve rate in column 4 will move in line with the rate for car users in column 2 (see annex 12).

Table 7

Amended rates of reimbursement from 1 January 2023

Column 1	Column 2	Column 3	Column 4
Type of vehicle/allowance	Annual mileage up to 3,500 miles (standard rate)	Annual mileage over 3,500 miles (standard rate)	All eligible miles travelled (see paragraph 17.15 and Table 8)
Car (all types of fuel)	59 pence per mile	24 pence per mile	
Motor cycle			30 pence per mile

Pedal cycle			20 pence per mile
Passenger allowance			5 pence per mile
Reserve rate			30 pence per mile
Carrying heavy or bulky equipment			3 pence per mile

Review

17:13 After 1 January 2023 the NHS Staff Council will continue to review the standard rate of reimbursement in column 2 in table 7 each year, soon after the new AA guides to Motoring Costs are published, normally in April or May. Any changes to the standard rate of reimbursement, the reserve rate and the rate for motorcycle users in Table 7, resulting from this review, will apply to all miles travelled from the following 1 July, in line with the provisions in this Section (see also Annex 12).

17:14 A second review will be conducted in October each year to ensure the rate in Column 2 in table 7 (the standard rate) continues to reimburse employees in line with motoring costs. Any changes to the standard rate of reimbursement, the reserve rate and the rate for motorcycle users in table 7, resulting from this review, will apply to all miles travelled from the following 1 January, in line with the provisions in this Section (see also annex 12).

Eligible mileage

17:15 Employees will be reimbursed for miles travelled in the performance of their duties which are in excess of the home to agreed work base return journey. Normally, the miles eligible for reimbursement are those travelled from the agreed work base and back. However, when the journey being reimbursed starts at a location other than the agreed work base, for example home, the mileage eligible for reimbursement will be as set out in the example in Table 8.

Table 8 - Eligible mileage

Eligible mileage - illustrative example		
In this example the distance from the employee's home to the agreed base is 15 miles		
Journey (outward)	Distance	Eligible miles
Home to base	15 miles	None
Home to first call	Less than 15 miles	Eligible mileage starts after 15 miles have been travelled
Home to first call	More than 15 miles	Eligible mileage starts from home, less 15 miles
Journey (return)		
Last call to base	Eligible mileage ends at base	
Last call to home	Less than 15 miles	Eligible mileage ends 15 miles from home
Last call to home	More than 15 miles	Eligible mileage ends 15 miles from home

Passenger rate

17.16 With the exception of lease, pool or hire vehicle users, where other employees or members of an NHS organisation are conveyed in the same vehicle on NHS business and their fares would otherwise be payable by the employer, the passenger allowance in table 7 will be payable to the vehicle driver.

Reserve rate of reimbursement

17.17 A reserve rate of reimbursement, as in Table 7, will apply to employees using their own vehicles for business purposes in the following situations:

- if an employee unreasonably declines the employers' offer of a lease vehicle:

- in determining reasonableness the employer and employee should seek to reach a joint agreement as to whether a lease vehicle is appropriate and the timeframe by which the new arrangements will apply. All the relevant circumstances of the employee and employer will be considered including an employees' personal need for a particular type of car and the employers' need to provide a cost effective option for business travel;
- if the employee's circumstances subsequently change the original decision will be reviewed. The agreed principles underlying local lease vehicle policies are in annex 13;
- when employees are required to return to work or work overtime in line with section 3 on any day, and incur additional travel to work expenses on that day. This provision will apply if the employee chooses to be paid for the extra hours or takes time off in lieu (TOIL – see section 3);
- when a claim for excess mileage is made in situations where there is a compulsory change of base, either permanent or temporary, resulting in extra daily travelling expenses. The period of payment will be for local partnerships to determine, subject to a maximum period of 4 years from the date of transfer. (For those employees using public transport see paragraph 17.25);
- if an employee uses his or her own vehicle when suitable public transport is available and appropriate in the circumstances, subject to a maximum of the public transport cost which would have been incurred (see paragraph 17.7) and the rules on eligible miles in paragraph 17.15 and table 8.

Attendance on training courses

17.18 Additional travel costs incurred when attending courses, conferences or events at the employer's instigation will be reimbursed at the standard rates in table 7 when the employer agrees that travel costs should be reimbursed.

17.19 Subject to the prior agreement of the employer, travel costs incurred when staff attend training courses or conferences and events, in circumstances when the attendance is not required by the employer, will be reimbursed at the reserve rate in table 7, in line with the rules on eligible mileage in paragraph 17.15 and table 8.

“Out of pocket” expenses in respect of business travel

17.20 This paragraph applies to employees for whom regular travel in a motor vehicle is an essential part of their duties. During a period when the employee’s vehicle is temporarily “off the road” for repairs, “out of pocket” expenses in respect of business travel by other appropriate forms of transport, should be borne by the employer. Reimbursement of these expenses will be subject to the rule on eligible mileage in paragraph 17.15 and table 8.

Other allowances

17.21 Employees who necessarily incur charges in the performance of their duties, in relation to parking, garage costs, tolls and ferries shall be refunded these expenses on production of receipts, whenever these are available. Charges for overnight garaging or parking, however, shall not be reimbursed unless the employee is entitled to night subsistence. This does not include reimbursement of parking charges incurred as a result of attendance at the employee’s normal place of work.

Transporting equipment

17.22 Employees who use their vehicles in the performance of their duties may be required to take equipment with them. Employers have a duty of care under the Health and Safety at Work Act 1974 and related legislation, to ensure that this does not cause a risk to the health and safety of the employee. Employees should not be allowed to carry equipment which is heavy or bulky, unless a risk assessment has been carried out beforehand. When, after the necessary assessment has demonstrated it is safe to

carry equipment, an allowance (see table 7) shall be paid for all eligible miles (see paragraph 17.15 and table 8) for which the equipment is carried, provided that either:

- the equipment exceeds a weight which could reasonably be carried by hand; or
- the equipment cannot be carried in the boot of the vehicle and is so bulky as to reduce the seating capacity of the vehicle.

Pedal cyclists

17.23 Employees who use pedal cycles to make journeys in the performance of their duties will be reimbursed for eligible miles travelled at the rate in table 7 (see paragraph 17.15 and Table 8 for eligible miles).

Public transport

17.24 If an employee uses public transport for business purposes, the cost of bus fares and standard rail fares should be reimbursed.

17.25 Where there is a compulsory change of base, either permanent or temporary, resulting in extra public transport costs for the employee, these extra costs will be reimbursed, subject to a maximum period of four years from the date of transfer. (For those employees using their own vehicles for business purposes and incurring additional costs see paragraph 17.17).

To note:

From 1 January 2015 a local agreement for the reimbursement of travel costs, linked to HMRC “Approved Mileage Allowance Payments” (AMAP) is in place in NHS Wales. Therefore this section does not apply in NHS Wales and employers there should refer to the revised Section 17 published by the Welsh Government.

Section 18: Subsistence allowances

Subsistence allowances

18.1 Where locally, staff and employer representatives agree arrangements which are more appropriate to local operational circumstances or which provide benefits to staff beyond those provided by this section, or are agreed as operationally preferable, those local arrangements will apply.

18.2 The purpose of this section is to reimburse staff for the necessary extra costs of meals, accommodation and travel arising as a result of official duties away from home. Business expenses which may arise, such as the cost of a fax or official telephone calls, may be reimbursed with certificated proof of expenditure.

Night subsistence

Short overnight stays in hotels, guesthouses and commercial accommodation

18.3 When an employee stays overnight in a hotel, guesthouse, or other commercial accommodation with the agreement of the employer, the overnight costs will be reimbursed as follows:

- the actual, receipted cost of bed and breakfast, up to the normal maximum limit set out in Annex 14; plus
- a meals allowance, to cover the cost of a main evening meal and one other day-time meal, at the rate set out in Annex 14.

18.4 Where the maximum limit is exceeded for genuine business reasons (e.g. the choice of hotel was not within the employee's control or cheaper

hotels were fully booked) additional assistance may be granted at the discretion of the employer.

Short overnight stays in non-commercial accommodation

18.5 Where an employee stays for short overnight periods with friends or relatives or in a caravan or other non-commercial accommodation, the flat rate sum set out in paragraph 3 of Annex 14 is payable. This includes an allowance for meals. No receipts will be required.

18.6 Employees staying in accommodation provided by the employer or host organisation shall be entitled to an allowance to cover meals which are not provided free of charge, up to the total set out in paragraph 2 of Annex 14.

18.7 Where accommodation and meals are provided without charge to employees, e.g. on residential training courses, an incidental expenses allowance at the rate set out in paragraph 6 of Annex 14 will be payable. All payments of this allowance are subject to the deductions of appropriate tax and National Insurance contributions via the payroll system.

Travelling overnight in a sleeping berth (rail or boat)

18.8 The cost of a sleeping berth (rail or boat) and meals, excluding alcoholic drinks, will be reimbursed subject to the production of vouchers.

Short-term temporary absence travel costs.

18.9 Travel costs between the hotel and temporary place of work will be separately reimbursed on an actual cost basis.

Long-term overnight stays

18.10 After the first 30 nights' stay in the same location the entitlement to night subsistence shall be reduced to the maximum rates set out in

paragraph 4 of Annex 14. Meals allowances are not payable to these employees. Those who continue to stay in non-commercial accommodation will continue to be entitled to the rate set out in paragraph 3 of Annex 14.

Day subsistence

18.11 A meal allowance is payable when an employee is necessarily absent from home on official business and more than five miles from their base, by the shortest practicable route, on official business. Day meals allowance rates are set out in paragraph 5 of Annex 14. These allowances are not paid where meals are provided free at the temporary place of work.

18.12 A day meals allowance is payable only when an employee necessarily spends more on a meal/meals than would have been spent at their place of work. An employee shall certify accordingly, on each occasion for which day meals allowance is claimed but a receipt is not required.

18.13 Normally, an employee claiming a lunch meal allowance would be expected to be away from his/her base for a period of more than five hours and covering the normal lunch time period of 12:00 pm to 2:00 pm. To claim an evening meals allowance an employee would normally be expected to be away from base for more than ten hours and unable to return to base or home before 7:00 pm and as a result of the late return is required to have an evening meal. Employees may qualify for both lunch and evening meal allowance in some circumstances. There will be occasions where, due to the time of departure, there will be the necessity to take a meal but the conditions relating to the time absent from the base are not met. This, and any other exceptions to the rules, may be allowed at the discretion of the employer.

18.14 The scope and level of any other payments will be determined by the employer, according to local needs, on a vouched basis.

Late night duties allowance

18.15 An employee who is required to work late at night, in addition to a day duty, may be paid an evening meal allowance at the rate set out in paragraph 7 of Annex 14. It will be for the employer to determine who will be entitled and in what circumstances.

18.16 Late night duties allowance will be subject to deduction of appropriate tax and National Insurance contributions, via the payroll system.

Section 19: Other terms and conditions

Other terms and conditions

19.1 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)¹.

19.2 The same terms and conditions should apply to all staff groups, unless there are significant reasons why this is not appropriate and these reasons are justifiable in relation to the principles of equal pay for work of equal value.

¹See the question and answer guidance in Annex 28 (England and Wales) or Annex 28 (Scotland and Northern Ireland).

Information note number 1: amendment number 34

Section 20: Mutually agreed resignation schemes – principles

Introduction

20.1 A Mutually Agreed Resignation Scheme (MARS) is a form of voluntary severance and has been developed with the aim of increasing the flexibility to organisations as they address periods of change and service redesign, in light of the financial circumstances in which they operate. The following set of principles have been developed and agreed by the NHS Staff Council in partnership to support the service in England in operating the scheme. Local partners are asked to use these principles in developing local schemes.

20.2 MAR schemes support employers by creating job vacancies which can be filled by redeployment of staff from other jobs or as a suitable alternative job for those facing redundancy.

20.3 The NHS Staff Council feels that the following good practice principles will support NHS employers in developing local MARS which will help to minimise the need for any future redundancies during periods of change and service redesign.

20.4 These guidelines refer to England only and further details of any arrangements in Scotland, Wales and Northern Ireland can be obtained from the respective Health Departments/Directorates.

Definition

20.5 Mutually Agreed Resignation (MAR) is a scheme under which an individual employee, in agreement with their employer, chooses to leave employment in return for a severance payment. MAR is not a redundancy¹ or a voluntary redundancy, which would currently be covered by Section 16 or Section 16(a) (England). Severance payments should not be made where the circumstances entitle an employee to a contractual redundancy payment or redundancy benefits under the NHS Pension Scheme Regulations.

20.6 There may be a risk of a future redundancy claim if an employee is paid under MARS when their post is in fact redundant.

20.7 A MAR is viewed as being a voluntary resignation on the part of the individual employee, in return for a severance payment. As there may be significant financial implications for the employee, employers can support the decision making process by assisting individuals with understanding these implications. Employees may wish to augment this by seeking advice from a regulated financial advisor.

20.8 Some of the implications for employees to consider when resigning would include, for example:

- the possible loss of entitlements to welfare benefits
- mortgage protection insurance policies not covering resignations
- any possible impact on pensions
- lease car penalties
- multi-post contracts.

Eligibility criteria

20.9 It would be for an employer working in partnership with local staff side to determine the eligibility criteria for a MARS.

20.10 Careful consideration will need to be given to the eligibility criteria and these should be drawn up in a way that closely link to the business case for the scheme. Criteria must not give rise to unlawful discrimination.

20.11 MARS is entirely voluntary from the employer's and employee's perspective and there is no legal obligation on the part of the employing NHS organisation to accept any individual application. Often a MAR is not an option, either because it does not suit individuals' personal circumstances or because it is important to retain a member of staff in the organisation. However, in some situations a MAR may be a useful opportunity for both the organisation and the individual, dependant upon the time specific savings that can be achieved and the employee's personal circumstances.

20.12 The final decision as to whether to accept an employee's application would be at the employer's discretion, depending upon their organisational needs, and there is no guarantee that an application to be considered under a MARS will be automatically approved. When making a decision regarding an application, an organisation will need to be able to demonstrate that there is a sound business case for the MAR and that it has acted fairly, in line with its own equal opportunities policy.

20.13 Application periods for a MARS should be time limited and not be an open ended exercise overlapping with a redundancy consultation. It would be expected that an organisation's application process would incorporate the values of confidentiality as embodied in the relevant organisation's policies.

20.14 It is important that an employee's proposed leaving date will be subject to mutual agreement between the employer and employee.

20.15 MARS should not be seen as a substitute for addressing poor performance, disciplinary matters, unwelcome publicity or reputational damage. Where appropriate, poor performance and conduct issues should be addressed via the organisation's relevant policies and procedures.

Re-employment

20.16 Employees who leave an employer under the MARS would not be re-employed under normal circumstances by the same employer, in the same or a different post, before a period of time has elapsed. This is to ensure that public monies are spent appropriately and due consideration is given to all the alternatives available to an organisation when assessing the business case for any application under a MARS.

20.17 An employee, who secures another job within the NHS within a short period of time, may be required to repay a proportion of their compensation to the employer that made the payment. If the job is at a lower salary then the repayment would be reduced accordingly. The settlement agreement should specify the requirements for repayment in such circumstances.

20.18 Any severance payment made will be offset against any subsequent payment made for the purposes of any future calculation of redundancy payments in subsequent employment, where the period of employment covered by the severance payment is taken into account in calculating the redundancy payment.

Financial case

20.19 The employer is responsible for the costs associated with any severance payment agreed under a MARS.

20.20 When deciding on a MARS, the employer will need to have a clear financial rationale that can justify a severance payment using public monies. In line with current good practice, consideration will need to be given to whether an employer is able to demonstrate:

- a) why the severance payment is in the public interest;
- b) why it represents value for money;
- c) how it represents the best use of public funds.

20.21 It is recommended that appropriate good practice corporate governance principles² are in place and followed when undertaking the process of approving severance payments.

20.22 Any locally agreed MARS will require approval from HM Treasury and the appropriate oversight organisation for the purposes of MARS (NHS Improvement, NHS England or the Department of Health and Social Care).

20.23 Severance payments will require certification from the Accountable Officer stating:

- a) the scheme is affordable and within control totals
- b) there are no staff leaving under the scheme who should otherwise be managed under the organisation's performance/capability procedures
- c) the time limits applied to the scheme.

Settlement agreement

20.24 It is advised that any severance payment under the MAR scheme will be formalised by means of a settlement agreement. This would set out the financial and all other terms on which the employment relationship will end.

20.25 The NHS organisation will meet reasonable costs for the independent legal advice taken by an employee who signs a settlement agreement.

Payment rate

20.26 The payment rate must reflect value for money for the public sector with a clear rationale for sustainable cost savings (see paragraphs 20.19 to 20.23 – Financial Case). When determining payment rates employers should take into consideration the relative costs of alternatives to a MAR. The amount should be sufficiently attractive to incentivise applications for the scheme, taking into account the level at which the minimum rate is set. Payments will need to be consistent and transparent and reflect the needs and objectives of the organisation.

20.27 Taxation in regard to severance payments is complex. Changes as part of the Finance Act came in to force from 1 April 2018, and further changes come in to force from 1 April 2019. Professional advice on the individual circumstances of each case will need to be considered by both parties.

Equality principles

20.28 In line with good practice, any local MAR scheme will need to operate in line with the equal opportunities principles as set out in equality legislation.

20.29 No employee should receive less favourable treatment on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation, or on the grounds of trade union membership.

20.30 Employers will need to undertake an equality assessment of their MAR scheme and put into place the appropriate monitoring, in line with their relevant policies, as developed in partnership with their local staff organisations.

- The definition of redundancy¹ given by Section 139 of the Employment Rights Act 1996 states:

"... an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to:

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

For NHS employers in England:

- For NHS

Trusts: <http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Managingyourorganisation>

- For NHS Foundation

Trusts: <https://www.gov.uk/government/publications/nhs-foundation-trusts-code-of-governance>

- NHS Financial Manual: <http://webarchive.nationalarchives.gov.uk/>

Amendment number 39: NHS TCS Advisory Notice 01/2018

Section 21: Right to raise concerns in the public interest (whistleblowing)

Right to raise concerns in the public interest (whistleblowing)

21.1 All employees working in the NHS have a contractual right and a duty to raise genuine concerns they have with their employer about malpractice, patient safety, financial impropriety or any other serious risks they consider to be in the public interest.

21.2 NHS organisations must have local policies that emphasise that it is safe and acceptable for staff to raise concerns and set out clear arrangements for doing so. Such policies are often referred to as ‘whistleblowing’ or ‘open practice’ policies.

21.3 The NHS Staff Council recommends that local policies should include the following points:

- the organisation takes malpractice or wrongdoing seriously, giving examples of the types of concerns that should be raised;
- employees have the option to raise concerns outside of line management, including ultimately with the Secretary of State or relevant Minister in the Devolved Administrations, or with any body they designate for these purposes;
- employees are able to access confidential advice from their trades union or their professional organisation. They may in addition seek confidential advice from an independent body e.g. Public Concern at Work;
- the organisation will handle all concerns sensitively with, respect to the confidentiality of a member of staff raising a concern;
- when and how concerns may properly be raised outside the organisation (e.g. with a regulator);
- it is a disciplinary matter either to victimise a genuine “whistleblower” or for someone to maliciously make a false allegation. However, every concern should be treated as made in good faith, unless it is subsequently found out not to be;
- the policy covers all staff, not just clinical professionals.

21.4 Local policies should be developed and signed off in partnership with local staff representatives. Policies should be reviewed on a regular basis and use of the policy monitored.

21.5 Local policies should be easily accessible to all staff and promoted across the organisation. It is recommended that local staff side organisations should be involved in any agreed communications strategy.

21.6 The specific arrangements for applying these principles in Scotland, Wales and Northern Ireland will be agreed in partnership within the Devolved Administrations.

Pay circular (AforC) 4/2010: amendment number 19

Section 22: Injury allowance

Injury allowance

22.1 This section contains provision for an injury allowance to be paid to eligible employees¹ who, due to a work related injury, illness or other health conditions are on authorised sickness absence or phased return to work with reduced pay or no pay. It also makes provision for the protection of pay in certain circumstances.

22.2 This section should be read in conjunction with section 14 (England), section 14 (Wales) or section 14 (Scotland and Northern Ireland) and annex 26. It does not confer an additional period of sickness absence entitlement to eligible employees.

Eligibility

22.3 Eligible employees who have injuries, diseases or other health conditions that are wholly or mainly attributable to their NHS employment, will be entitled to an injury allowance, subject to the conditions set out in this section. The injury, disease, or other health condition must have been sustained or contracted in the discharge of the employee's duties of

employment or an injury that is not sustained on duty but is connected with or arising from the employee's employment.

22.4 The attribution of injury, illness or other health condition will be determined by the employer who should seek appropriate medical advice. In all cases the employer should use the civil burden of proof - "on the balance of probability" (more likely to than not) - to determine the outcome. Where the employee disagrees with the employer's decision then they are entitled to appeal the decision through local grievance procedures (see paragraph 22.16).

22.5 Employees claiming injury allowance are required to provide all relevant information, including medical evidence, that is in their possession or that can reasonably be obtained, to enable the employer to determine the claim.

22.6 Payment of injury allowance is not dependent on length of service.

22.7 The following circumstances will not qualify for consideration of injury allowance:

- injury whilst on a normal journey travelling to and from work, except where the journey is part of their contractual NHS duties
- sickness absence as a result of disputes relating to employment matters, conduct or job applications
- injury, disease or other health condition due to or seriously aggravated by the employee's own negligence or misconduct.

Scale of injury allowance

22.8 Injury allowance will be paid to eligible employees as a top up to their sick pay or earnings when on reduced pay, including when on phased return. This calculation will include any contributory state benefits received by the employee to 85 per cent of pay as defined in paragraph 14.4 in Section 14 (Scotland and Northern Ireland), paragraph 14.4 in Section 14 (England) and paragraph 14.4 in Section 14 (Wales).

22.9 The injury allowance payment is subject to National Insurance Contributions and income tax but is not subject to pensions contribution deductions.

2.10 Contributory state benefits received for loss of earnings will be offset at the rate at which they are actually received by the employee. All other benefits or payments received should be ignored.

22.11 Eligible employees are required to claim any contributory state benefits they may be entitled to and to declare receipt of such benefit(s) to their employer. Timely notification will ensure that overpayments of injury allowance are not made. Employers will require repayment when an overpayment is made.

Payment period

22.12 The allowance will be restricted to a period of up to 12 months per episode, subject to local absence management, return to work and rehabilitation policies.

Using injury allowance to support return to work

22.13 Eligible employees who make a phased return to work can receive the injury allowance as a pay top up to 85 per cent of pay as defined in paragraph 14.4 (Scotland and Northern Ireland), paragraph 14.4 in Section 14 (England) and paragraph 14.4 in Section 14 (Wales), if their pay is reduced during an employer approved period of rehabilitation, subject to the timescales set out in paragraph 22.12. (See also Annex 26 for details of phased return arrangements).

Pay protection

22.14 Eligible employees who have to change jobs permanently to a position on lower pay due to a work related injury, illness and/or other health condition, will receive a period of protected pay that is the same as local provision for pay protection during organisational change.

Recovery of overpayment of injury allowance

22.15 An employer can seek to recover any overpayments made to an employee. Where recovery is necessary employers should take into account the period of time the overpayment was in place when agreeing the programme of repayments.

Dispute resolution

22.16 Any disputes that arise due to the local application of injury allowance provisions should be handled via local grievance procedures.

To note:

To note:

For employees not covered by the NHS Terms and Conditions of Service Handbook or who are no longer working for an NHS employer, the provisions in this Section will apply as specified in individuals' contracts of employment and should be read alongside the relevant contractual documents.

Amendment number 39: NHS TCS Advisory Notice 01/2018

Section 23: Child bereavement leave

Child bereavement leave

1. The NHS Staff Council is aware that employers in the NHS show compassion in circumstances where staff, who are parents, experience the death of a child. The provisions below are designed to set out a minimum national standard of leave and pay in these circumstances. These provisions do not prevent employers from exercising their local flexibility to provide leave and pay beyond these provisions.

2. For the purpose of this Section, a bereaved parent is anyone who had responsibility as one of the primary carers for a child who is now deceased. This includes adoptive parents, legal guardians, individuals who are fostering to adopt, and any other parent/child relationship that the employing organisation deems to be reasonable. For example, this may include grandparents who have had caring responsibilities for a child, or instances where someone other than the biological parent is the primary carer (this could be the case where the parents of the child have separated).

3. For this agreement, there is no requirement for the child to be under 18 years of age.

4. All bereaved parents will be eligible for a minimum of two weeks of child bereavement leave. A bereaved parent will not be required to demonstrate any eligibility criteria in order to access bereavement leave or pay.

5. All bereaved parents will be entitled to two weeks' occupational child bereavement pay which will include any entitlement to statutory parental bereavement pay. Pay is calculated on the basis of what the individual would have received had he/she been at work. This would normally be based on the previous three months at work or any other reference period that may be locally agreed.

6. Where both parents of a deceased child work in the same NHS organisation, the entitlements in this Section will apply to both members of staff.

7. Parents who experience a still birth from the 24th week of pregnancy will be eligible for these provisions, and will subsequently still be eligible for the provisions set out in this Handbook at Section 15. Bereavement leave and pay may be extended to members of staff, by local arrangement, in these circumstances where they were hoping to become parents under surrogacy arrangements.

8. Bereaved parents do not have to take the two weeks of leave in a continuous block. The employee should agree with their employer the leave they wish to take. Taking child bereavement leave is an individual choice, it is not compulsory for the employee to take child bereavement leave.

9. Bereaved parents may request to take child bereavement leave at any point up to 56 weeks following the death of the child. Should the parent wish to take child bereavement leave immediately following the death of a child they shall be able to do so upon informing their employer that they will be absent from work for this purpose. Should the parent wish to take child bereavement leave at another time, after the initial period following the death, they should give their employer reasonable notice of their intention to take the leave at this time.

10. The method for informing the employer of a child bereavement should follow locally agreed processes. Bereaved parents will at no point be required to produce the child's Death Certificate, or any other official documents, in order to access child bereavement leave or pay. The employer may ask for a written declaration from the employee, within a reasonable timeframe, in order to satisfy statutory requirements.¹

¹ In Scotland, this section should be read in conjunction with the most up to date PIN policies which can be found at www.staffgovernance.scot.nhs.uk.

Section 24: (Unallocated)

Unallocated

Unallocated