Annex 26: Managing sickness absences - developing local policies and procedures

Managing sickness absences - developing local policies and procedures

1. The management of ill health within the NHS is challenging, but provides opportunities to improve the overall health and wellbeing in the workplace, which will ultimately boost organisational productivity and support service improvements for patients.

2. The arrangements set out in this annex are intended to support employers and staff in the management of sickness absence and in managing the risk of premature and unnecessary ill health retirements. It is intended that employers will amend, in partnership with local staff sides, their local policies and procedures consistent with the provisions of this agreement.

3. This agreement details the responsibilities of both staff and employers in the management of ill health in the NHS.

4. This annex should be read in conjunction with:
   - Section 14: Sickness Absence
   - Section 30: General statement on Equality and Diversity
   - Section 32: Dignity at Work
   - Section 34: Flexible working arrangements

Local sickness absence procedures

5. Effective partnership working is crucial in achieving the effective management of sickness absences. Employers therefore, in partnership
with local staff side representatives, should ensure that their local sickness absence procedure and working arrangements incorporate the minimum standards set out below, to minimise the risk of premature and unnecessary ill health retirements. This will ensure that, where possible, staff are able to continue working despite experiencing periods of ill health or disability. The minimum standards are:

**Legal responsibilities,** including mutual responsibilities of employers and staff to comply with health and safety requirements, reporting of injuries and dangerous occurrences (RIDDOR), disability discrimination and other relevant legislation.

**Key employer responsibilities,** employers are expected to:

- communicate appropriately with absent staff
- manage absences under the locally agreed sickness absence procedure
- provide support and advice through the use of occupational health services where appropriate
- develop reporting arrangements, recognising that high levels of sickness absence are a financial risk to the organisation
- have appropriate management systems in place to collect good quality data on sickness absence
- in partnership with Trade Union representatives, regularly monitor and review arrangements to identify where and how policies can be improved.

**Key employee responsibilities,** employees are expected to:

- ensure regular attendance at work
- communicate appropriately with their employer when absent from work
- co-operate fully in the use of the locally agreed sickness absence procedures.
6. Partnership arrangements should also ensure the regular monitoring and review of local policies and procedures is undertaken, to identify where and how policies can be improved.

**Absence reporting**

7. Local policies should define how and when staff notify their employer of their sickness absence.

8. Early notification that the absence is work related will enable an employer to make a timely determination of future injury allowance entitlement, as defined in Section 22.

**A structured review process**

9. Regular reviews should be carried out to assess and monitor staff when they are off sick, and determine what action is needed at each stage.

Where a member of staff is unlikely to return to work this would culminate in a final review where a decision on the appropriate way forward is made i.e. return to substantive employment or redeployment or termination of contract. It is assumed that as part of this process, that reasonable adjustments have been considered. Medical evidence should be made available to support the review process and occupational health advice should be sought on the likelihood of:

- the prospects of a likely return to the previous employment with or without adjustments
- a phased return with or without a need for adjustments
- redeployment
- a successful ill health retirement application.

**Early interventions**
10. In order to avoid premature and unnecessary ill health retirements employers should also consider the following interventions as early as is practically possible and at the latest within one month of an employee going sick:

- rehabilitation – identifying appropriate ways of supporting staff to remain in work or return to work at the earliest opportunity, through intervention with appropriate treatment. This will mean providing staff with direct access through appropriate dedicated resources, such as physiotherapy and cognitive behavioural therapy

- phased return - enabling staff to work towards fulfilling all their duties and responsibilities within a defined and appropriate time period, through interim flexible working arrangements, whilst receiving their normal pay

- redeployment - enabling the retention of staff unable to do their own job through ill health or injury as an alternative to ill health retirement or termination. Staff should be made aware of the provisions within the NHS Pension scheme to assist this process through “step down and wind down” arrangements

- sick pay entitlements – review and decision dates should be determined taking account of the individual’s sick pay entitlements and there should be a review before their sick pay ends. Procedures should make reference to the injury allowance provisions as detailed in Section 22 and the amended NHS Injury Benefit Scheme regulations (2013);

- occupational health support – Occupational health services have a responsibility to provide advice and support to both the individual and the employer. Line managers should seek advice on long term sickness cases from their occupational health service as early as reasonably practical. Individuals may also self-refer for advice and support about the best way of seeking a return to work.

Termination

11. Where termination of the contract of employment on the grounds of incapacity is considered, all reasonable efforts should be made to obtain appropriate medical evidence via the occupational health service,
including occupational health advice on the likely outcome of a successful ill health retirement application. Before a decision to terminate is made all other options should meaningfully be considered, including:

- rehabilitation;
- phased return;
- a return to work with or without adjustments;
- redeployment with or without adjustments.

12. Contractual notice must be given to a member of staff whose contract is being terminated on grounds of ill-health.

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

**Annex 27: Principles and best practice of partnership working**

**Principles and best practice of partnership working**

1. To deliver partnership working successfully it is important to develop good formal and informal working relations that build trust and share responsibility, whilst respecting difference. To facilitate this, all parties commit to adopt the following principles in their dealings with each other:

- building trust and a mutual respect for each other’s roles and responsibilities;
- openness, honesty and transparency in communications;
- top level commitment;
- a positive and constructive approach;
- commitment to work with and learn from each other;
- early discussion of emerging issues and maintaining dialogue on policy and priorities;
- commitment to ensuring high quality outcomes;
- where appropriate, confidentiality and agreed external positions;
- making the best use of resources;
- ensuring a “no surprise” culture.

**Amendment number 43**

*TCS Advisory Notice (01/2021)*

**Annex 28: Guidance on frequently asked questions (FAQs) (England and Wales*1)**

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

1. The Agenda for Change partners will make every effort to continue to support, encourage and promote a partnership approach to the operation of the pay system at local level.

2. The agreement to work in partnership to deliver an NHS pay system which supports NHS service modernisation and meets the reasonable aspirations of staff should, therefore, be replicated at local level.

3. This guidance has been jointly agreed in partnership by the NHS Staff Council Executive and is intended to help in situations where, locally, the joint partners have not so far been able to agree a suitable way forward.

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

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

Paragraph 6
Footnote number 3

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

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

Paragraph 7
Footnote number 4

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

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

Paragraph 7
Footnote number 5

Flexibility on senior posts - how would staff above 630 job evaluation points be moved from Agenda for Change?
Employers would need to do this in a way that is transparent and consistent with equal pay legislation, and in line with the Staff Council’s guidance contained within the Job Evaluation Handbook.

**Paragraph 9**  
**Footnote number 6**

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

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

**Paragraph 9**  
**Footnote number 6**

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

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

**Paragraph 9**  
**Footnote number 6**

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

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

**Paragraph 12**
**Footnote number 7**

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

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

**Paragraph 12**
**Footnote number 8**

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

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

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

**Paragraph 4**
**Footnote number 2**

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

Paragraph 2.4 makes clear that the arrangements in Annex 5 should apply to ambulance staff (i.e. those who would have been subject to the provisions of the Ambulance Whitley Council had they been on national contracts).
Part 2: Section 3: Overtime payments

Paragraph 3
Footnote number 1

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

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

Part 2: Section 4: Pay in high cost areas

Paragraph 7
Footnote number 1

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

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

Part 3: Section 12: Contractual continuity of service

Paragraph 2
Footnote number 1

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

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

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

Relevant experience outside the NHS may include previous employment
abroad or in the health services of another Member State of the European
Union. It is important that this is included when employers consider
"service with employers outside the NHS" when deciding whether to
exercise the discretion to increase annual leave entitlement.

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

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

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

The views of the Commission regarding recognition of professional
experience and seniority are set out in the Commission Staff Working
Document "Free movement of workers in the public sector",
Paragraph 4

Footnote number 2

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

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

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

Paragraph 1, Table 6: Leave entitlements

Footnote number 1

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

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

Paragraph 4
Footnote number 2
Does paragraph 13.4 provide an entitlement to equivalent time off at plain time rates, plus the appropriate payment, on top of the standard entitlement to 8 general and public holidays (see Table 6)?

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

Paragraph 4
Footnote number 2

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

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

Paragraph 5
Footnote number 3

Which staff (working non-standard shifts), under 13.5, would require their annual leave to be calculated in hours?
“Where staff work standard shifts other than 75 hours excluding meal breaks, annual leave and general public holiday entitlements should be calculated on an hourly basis to prevent staff on these shifts receiving more or less leave than colleagues on standard shifts.” This applies to all staff working standard shifts other than 75 hours, excluding meal breaks.

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

Paragraph 4
Footnote number 2

Who is exempt from changes to the unsocial hour’s sickness absence payments?

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

Paragraph 4
Footnote number 3

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

Paragraph 144 allows on-call allowances and payments to be included in pay during sickness absence only for staff on pay spine points 1 to 8 and those absent due to a work related injury or disease, contracted in the actual discharge of their duties. This will include on-call allowances and on-call payments where these are normally paid at regular intervals. An allowance which is paid only occasionally will not count.

Paragraph 4
Footnote number 4
How is the reference period for calculating sick pay for staff on pay spine points 1 to 8 determined under Section 14 (England and Wales)?

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

**Paragraph 5**
**Footnotes number 5 and 6**

From what date will the change to sickness pay start?

The changes to sickness pay will start from the 31 March 2013 (1 January 2015 in Wales). A sickness absence that straddles this implementation date will have sick pay paid at basic salary level, inclusive of any high cost area supplement, for any absence post the implementation date. Employers have discretion to extend the period of sick pay on full or half pay (see paragraph 14.13 in Section 14 (England and Wales).

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

**Paragraph 1**
**Footnote number 1**

What happens to MUFTI allowances in Agenda for Change?

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

**Paragraph 1**
**Footnote number 1**
What happens when local partnerships are not able to reach agreement on "other" terms and conditions of service not covered in the NHS Terms and Conditions of Service Handbook (see paragraph 19.1)?

Paragraph 191 of the Handbook states "Other terms and conditions not covered in this Handbook will be determined locally following consultation with staff representatives with a view to reaching agreement on such terms and conditions or any changes to them (see Annex 15)." In the absence of a local agreement the previous contractual arrangements for those on national contracts will apply.

Part 3: Section 22: Injury allowance

Paragraph 4

Footnote number 2

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

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

Annexes: Annex 13: Lease vehicle policies

Paragraph 3

Footnote number 1

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

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

Implementation annexes: Annex 20: Development of professional roles

Paragraph 3
Footnote number 1

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

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

Paragraph 3
Footnote number 1

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

There are no plans for further guidance on Annex 20.
Paragraph 3
Footnote number 1

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

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

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

Main heading
Footnote number 2

What will local pay progression schemes contain?

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

Paragraph 1
Footnote number 3

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

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

Will quotas apply to incremental progression?

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

Paragraph 2(v)

What is considered when assessing performance at work?

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

Paragraph 2(viii)

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

Yes, your employer would have to tell you in plenty of time that you had not met the required performance standard and as a result that you were likely to have your incremental progression withheld. The employer would give you the chance not suffer any detriment as a result of the initial decision.
Paragraph 2(viii)
Footnote number 6

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

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

Secondary heading: Criteria for local schemes
Footnote number 7

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

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

Paragraph 3 (iii)
Footnote number 8

Will organisation-wide objectives be used to block progression?

While appraisal/performance systems may include team performance as one aspect of the annual review process, the assessment of performance for the purpose of incremental progression will continue to be on an individual basis.
Paragraph 4 (iii)
Footnote number 9

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

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

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

Interim regime
Paragraph 48
Footnote number 1

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

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

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

Interim regime
Paragraph 48
Footnote number 1
On what date does the period of protection of current on-call arrangements start?

It started from 1 October 2004

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

Pay circular (AforC) 1/2016: amendment number 36

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

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

1. The Agenda for Change partners will make every effort to continue to support, encourage and promote a partnership approach to the operation of the pay system at local level.

2. The agreement to work in partnership to deliver an NHS pay system which supports NHS service modernisation and meets the reasonable aspirations of staff should, therefore, be replicated at local level.

3. This guidance has been jointly agreed in partnership by the NHS Staff Council Executive and is intended to help in situations where, locally, the joint partners have not so far been able to agree a suitable way forward. These answers reflect the final Agenda for Change agreement. They were previously published on the Agenda for Change website.

Part 2: Section 1: Pay Structure

Paragraph 6
Footnote number 2

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

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

Paragraph 7
Footnote number 3

Which senior managers are covered by Agenda for Change?

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

Part 2: Section 2: Maintaining round the clock services

Paragraph 4
Footnote number 1

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

Paragraph 2.4 makes clear that the arrangements in Annex 5 should apply to ambulance staff (i.e. those who would have been subject to the provisions of the Ambulance Whitley Council had they been on national contracts).
Part 2: Section 3: Overtime payments

Paragraph 3
Footnote number 1

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

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

Part 2: Section 4: Pay in high cost areas

Paragraph 7
Footnote number 1

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

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

Part 3: Section 12: Contractual continuity of service

Paragraph 2
Footnote number 1

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

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

Relevant experience outside the NHS may include previous employment abroad or in the health services of another Member State of the European Union. It is important that this is included when employers consider "service with employers outside the NHS" when deciding whether to exercise the discretion to increase annual leave entitlement.

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

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

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


**Paragraph 4**

**Footnote number 2**
When calculating entitlements to annual leave should I take account of a single period of previous service or should I aggregate several periods?

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

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

Paragraph 1, Table 6: Leave entitlements
Footnote number 1

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

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

Paragraph 4
Footnote number 2

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

No – paragraph 13.4 preserves the right to 8 general public holidays. It does not provide additional entitlements.
Paragraph 4
Footnote number 2

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

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

Staff who are required to work more than 60 hours (8x7½ hours) on general public holidays, in their personal leave year, will receive TOIL at plain time rate for all of the hours worked and the appropriate payment for all of the hours worked. The 60 hour threshold will be set on a pro-rata basis for part-time staff. E.g. if staff were required to work 70 hours per year on public holidays they would receive 70 hours TOIL, plus the appropriate payment.

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

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

Paragraph 5
Footnote number 3

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

“Where staff work standard shifts other than 75 hours excluding meal breaks, annual leave and general public holiday entitlements should be calculated on an hourly basis to prevent staff on these shifts receiving...
more or less leave than colleagues on standard shifts.” This applies to all staff working standard shifts other than 7.5 hours, excluding meal breaks.

Part 3: Section 14: Sickness absence

Paragraph 4
Footnote number 1

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

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

Paragraph 4
Footnote number 2

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

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

Part 3: Section 19: Other terms and conditions

Paragraph 1
Footnote number 1

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

**Paragraph 1**

**Footnote number 1**

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

Paragraph 191 of the Handbook states "Other terms and conditions not covered in this Handbook will be determined locally following consultation with staff representatives with a view to reaching agreement on such terms and conditions or any changes to them (see Annex 15).” In the absence of a local agreement the previous contractual arrangements for those on national contracts will apply.

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

**Paragraph 4**

**Footnote number 2**

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

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

**Annexes: Annex 13: Lease vehicle policies**
Paragraph 3
Footnote number 1

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

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

Implementation annexes: Annex 20: Development of professional roles

Paragraph 3
Footnote number 1

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

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

Footnote number 1

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

There are no plans for further guidance on Annex 20.

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

Paragraph 2 (iii)

Footnote number 1

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

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

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

Interim regime

Paragraph 48

Footnote number 1

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

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

**Interim regime**

**Paragraph 48**

**Footnote number 1**

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

It started from 1 October 2004.

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

**Annex 29: Principles for harmonised on-call arrangements**

**Principles for harmonised on-call arrangements**

1. From 1 April 2011, paragraph 2.25 in section 2 (Scotland and Northern Ireland) and paragraph 2.27 in section 2 (Wales), and from 1 July 2018 paragraph 2.27 in section 2 (England) confirms that payments for on-call will need to be agreed locally and consistent with the principles set out below.

2. Paragraph 2.24 in section 2 (Scotland and Northern Ireland), paragraph 2.26 in section 2 (England) and paragraph 2.26 in section 2 (Wales) define on-call as part of arrangements to provide appropriate service cover across the NHS. A member of staff is on-call when, as part of an
established arrangement with their employer, they are available outside their normal working hours, either at the workplace, at home or elsewhere, to work as and when required.

**Table 22 Principles for harmonised on-call arrangements**

<table>
<thead>
<tr>
<th>Issues</th>
<th>Principles</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Equal pay</td>
<td>The guiding principle should be that the harmonised arrangements should be consistent with the principles of equal pay for work of equal value. The effect of this should be that’ schemes agreed by local partnerships should provide consistent payments to staff at the same pay band available at the same on-call frequency. All employing organisations will need to undertake an equality assessment of their proposals.</td>
</tr>
<tr>
<td>2. Commitment or availability</td>
<td>There needs to be a payment to reflect the availability for being called. There are three distinct types of on-call availability:</td>
</tr>
<tr>
<td></td>
<td>1. At home ready to be called out or to undertake work at the work place.</td>
</tr>
<tr>
<td></td>
<td>2. At work ready to undertake work.</td>
</tr>
<tr>
<td></td>
<td>3. Sleeping in at a work place.</td>
</tr>
<tr>
<td></td>
<td>Payment for these different types of availability— options include:</td>
</tr>
<tr>
<td></td>
<td>• flat rate available for all staff</td>
</tr>
<tr>
<td></td>
<td>• flat rate by band</td>
</tr>
<tr>
<td></td>
<td>• percentage of salary.</td>
</tr>
</tbody>
</table>
This payment will reflect the frequency of commitment. If the partnership decides to use a flat rate they will need to agree arrangements for uprating this payment when pay increases. In setting the availability payment, local partnerships will need to take account of the commitment to work weekends and public holidays.

Where tiered on-call systems are required, there should be no distinction between levels of commitment when setting the availability / commitment payment.

Reference paragraphs 2.19 to 2.20 in section 2 (Scotland and Northern Ireland, paragraphs 2.21 to 2.22 in Section 2 (England) and paragraphs 2.21 to 2.22 in Section 2 (Wales), to allow the option of prospective calculation of the payments.

<table>
<thead>
<tr>
<th>3. Frequency</th>
<th>That part of the week covered by on-call arrangements should be divided up into appropriate periods for the purposes of calculating the frequency of on-call availability. The Agenda for Change interim regime may provide a useful model.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Work done</td>
<td>Payment for work done, including work done at home, should be made at the appropriate hourly rate with reference to this Handbook.</td>
</tr>
<tr>
<td></td>
<td>Local partnerships may agree an appropriate minimum payment period for work done.</td>
</tr>
<tr>
<td>5. Time off in Lieu (TOIL)</td>
<td>Staff should have the option to take TOIL rather than payment for work done in line with paragraph 3.5.</td>
</tr>
<tr>
<td>6. Compensatory rest</td>
<td>Individuals will receive compensatory rest for work done, in accordance with section 27.</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
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<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>7. Travel to work</td>
<td>As per current arrangements. Travel time should be paid at the rate agreed for on-call work done and local partnerships will need to identify if there is a minimum and/or maximum time claim identified.</td>
</tr>
<tr>
<td>8. Public holidays (PH)</td>
<td>Covering a PH will attract a day in lieu in accordance with paragraph 13.4, irrespective of work done. Work done on public holidays would attract payment at the appropriate rates as identified in paragraph 13.4.</td>
</tr>
<tr>
<td>9. Sleeping in</td>
<td>A sleeping-in session will often incorporate the following elements:</td>
</tr>
<tr>
<td></td>
<td>- hours of wakefulness</td>
</tr>
<tr>
<td></td>
<td>- sleep</td>
</tr>
<tr>
<td></td>
<td>- work done</td>
</tr>
<tr>
<td></td>
<td>The term 'sleeping-in' does not refer to individuals who are on-call from the workplace and are able to sleep between periods of work.</td>
</tr>
<tr>
<td></td>
<td>Under the working time regulations if an individual is required to sleep in at a work place this counts as working time. However, time asleep does not count for the purposes of the minimum wage.</td>
</tr>
<tr>
<td>If asleep, this working time does not count for the purposes of the minimum wage.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Under the Minimum Wage Regulations, the availability payment should be at least the same as</td>
</tr>
</tbody>
</table>
(hours of expected wakefulness minimum wage). Local partnerships will need to consider if it is more appropriate to base this calculation on the bottom point of the Agenda for Change pay scales, as described in Annex 2.

In those situations where a sleeping-in session includes what the National Minimum Wage Regulations would classify as work, or when the individual is woken during a sleeping-in duty, this should be paid as work done at the appropriate hourly rate.

Local partnerships may agree a minimum payment period for work done.

### 10. Pensions

Local partnerships should always seek advice from the NHS Pensions on any questions relating to the NHS pensions Scheme and on-call payments. It is the responsibility of the employer to determine which payments are pensionable, according to the criteria provided by NHS Pensions. Guidance on "pensionable pay" can be found on NHS Pensions websites at:

- England and Wales
- Northern Ireland
- Scotland.

### 11. Agenda for Change interim regime

The arrangements in the Agenda for Change interim regime were consistent with these principles.

### 12. Transition

There are currently a range of payments for on-call, which form a regular part of income for some individuals. Local partnerships will therefore need to agree transitional arrangements for the movement of staff from current to future on-call payment systems. This includes all on-call arrangements within the scope of the review of on-call.

Such transitional arrangements could include one or more of the...
<table>
<thead>
<tr>
<th>following elements:</th>
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</thead>
<tbody>
<tr>
<td>- introduction of increased payments in one or more stages over a fixed period of time</td>
</tr>
<tr>
<td>- postponement of increased and/or reduced payments for a fixed period</td>
</tr>
<tr>
<td>- movement to reduced payments over a period on a mark time basis</td>
</tr>
<tr>
<td>- payment of a one-off lump sum to staff if their on-call payments are reduced.</td>
</tr>
</tbody>
</table>

The transitional arrangements which were agreed as part of the new, harmonised unsocial hours payments were an example of this sort of approach. New lower and higher levels of payments were introduced in stages over three years.

Where service changes are linked to the harmonisation of on-call payments local partnerships may also wish to consider the use of agreements reached under Annex 15.

3. Below is the text of the 'interim regime' as it appeared in the handbook in amendment number 27. It is available, together with section 46 and other deleted Sections and Annexes, in amendment number 27 and earlier copies of the Handbook which are archived on the web site of the NHS Employers organisation. Go to [www.nhsemployers.org](http://www.nhsemployers.org)

**Interim regime**

2.35 Employees who are required to be available to provide on-call cover outside their normal working hours will be entitled to receive a pay enhancement. This enhancement recognises both their availability to provide cover and any advice given by telephone during periods of on-call availability.

2.36 Subject to the provision for retention of current on-call provisions under the protection arrangements set out in paragraph 2.48, this
enhancement will be based on the proportion of on-call periods in the rota when on-call cover is required. The on-call period in each week should be divided into nine periods of at least 12 hours. The enhancement for an individual staff member will be based on the proportion of these periods in which they are required to be on-call, as set out in paragraphs 2.37 to 2.42 below.

Pay enhancements for on-call cover

2.37 An enhancement of 95 per cent will be paid to staff who are required to be on-call an average of one in three of the defined periods or more frequently.

2.38 An enhancement of 45 per cent will be paid to staff who are required to be on-call an average of between one in six and less than one in three of the defined periods.

2.39 An enhancement of 3 per cent will be paid to staff who are required to be on-call an average of between one in nine and less than one in six of the defined periods.

2.40 An enhancement of 2 per cent will be paid to staff who are required to be on-call an average of between one in twelve and less than one in 9 of the defined periods.

2.41 For these purposes, the average availability required will be measured over a full rota, or over a 13-week period if no standard pattern is applicable. The reference period will not include any periods when the employee is absent from work on either annual leave or sickness absence.

2.42 Where on-call cover is limited or very irregular (averaging less than one in 12) pay enhancements will be agreed locally. These may be fixed or variable, and based on actual or estimated frequencies of on-call work worked, subject to local agreement. To ensure fairness to all staff qualifying under the national rules set out above, locally agreed payments may not exceed the minimum percentage in the national provisions.

Table 3

<table>
<thead>
<tr>
<th>Frequency of on-call</th>
<th>Value of enhancements as a</th>
</tr>
</thead>
</table>

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<table>
<thead>
<tr>
<th>Frequency</th>
<th>Percentage of basic pay</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 in 3 or more frequent</td>
<td>95 per cent</td>
</tr>
<tr>
<td>1 in 6 or more but less than 1 in 3</td>
<td>45 per cent</td>
</tr>
<tr>
<td>1 in 9 or more but less than 1 in 6</td>
<td>3 per cent</td>
</tr>
<tr>
<td>1 in 12 or more but less than 1 in 9</td>
<td>2 per cent</td>
</tr>
<tr>
<td>Less frequent than 1 in 12</td>
<td>By local agreement</td>
</tr>
</tbody>
</table>

**On–call payments for part-time staff or other staff working non-standard hours**

2.43 For part-time staff and other staff working other than 37.5 hours a week excluding meal breaks, the percentage added to basic pay on account of on–call availability will be adjusted to ensure that they are paid a fair percentage enhancement of salary for on–call working. This will be done by adjusting the payment in proportion to their part–time salary so that they receive the same payment for the same length of availability on–call as full–time staff.

**Employees called into work during an on–call period**

2.44 Employees who are called into work during a period of on–call will receive payment for the period they are required to attend, including any travel time. Alternatively, staff may choose to take time off in lieu. However, if for operational reasons time off in lieu cannot be taken within three months, the hours worked must be paid for.

2.45 For work (including travel time) as a result of being called out the employee will receive a payment at time and a half, with the exception of work on general public holidays which will be at double time. Time off in lieu should be at plain time. There is no disqualification from this payment for bands 8 and 9, as a result of being called out.
2.46 By agreement between employers and staff, there may be local arrangements whereby the payment for hours worked during a given period of on-call is subject to a fixed minimum level, in place of separately recognising travel time.

2.47 In addition, where employers and staff agree it is appropriate, the amount paid for work and travel time during periods of on-call may be decided on a prospective basis (e.g. for a forward period of three months) based on the average work carried out during a prior reference period (e.g. of three months). Where these arrangements are agreed, the actual work carried out during a given period would be monitored and, if the average amount assumed in the calculation of the payment is significantly different, the level of payment should be adjusted for the next period; there should be no retrospective adjustment to the amount paid in the previous period.

2.48 Unless locally, it is agreed otherwise, all current on-call arrangements will be protected for groups of employees up to 31 March 2011 irrespective of whether they were nationally or locally agreed. This extended protection will apply to existing staff and new staff during the period of protection.

2.49 On-call payments made under such arrangements should be excluded from the pre and post assimilation pay used in the calculation of any protected level of pay (see Section 46).

**Other arrangements to provide extended service cover**

2.50 Some staff are required to be on the premises to provide emergency cover but are allowed to rest, except for the times when they are required to carry out emergency work. Where employers consider this an essential arrangement to provide service cover, there should be an agreed local arrangement, at least equivalent to on-call payments, to recognise the type of cover provided.

2.51 A further group of staff, often in community services such as learning disabilities, have “sleeping-in arrangements” where they sleep on work premises but are seldom required to attend an incident during the night. In these circumstances, appropriate arrangements should be
agreed locally.

1See the question and answer guidance in Annex A2 (England and Wales) or Annex A2 (Scotland and Northern Ireland).

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