

Pay and Conditions Circular (M&D) 1/2018

Changes to Terms and Conditions of Service and Model Contract for Consultants: Clinical Excellence Awards

Summary

This pay circular notifies employers of changes to the following documents with effect from 1 April 2018:

Terms and Conditions of Service for Consultants – England (2003)
Consultant Model Contract

Agreement

1. The British Medical Association Consultant Committee and NHS Employers have approved amendments to the Terms and Conditions of Service for Consultants – England (2003) and the Consultant Model Contract, which are detailed below.

Clinical Excellence Awards

2. This circular informs employers of a new Schedule 30 in the Consultant Terms and Conditions of Service about Local Clinical Excellence Awards (LCEAs). This sets out that from 1 April 2018, trusts must run annual LCEA rounds. The Schedule also contains provisions around National Clinical Excellence Awards. Consequential changes are made to Schedules 13, 14 and 17.

Action

3. Employers are requested to make use of these new TCS and model contract from 1 April 2018.
4. Copies of the amended TCS and model contract can be downloaded from the NHS Employers website at the following web address: <http://www.nhsemployers.org>
5. NHS employing organisations need to take all reasonable steps to ensure that the effects of nationally negotiated collective agreements are incorporated into individual contracts of employment. It is good practice that where there is a change to national TCS employers should:
 - a. write to individuals in order to notify them of the revisions to their TCS; and

Pay and Conditions Circular (M&D) 1/2018

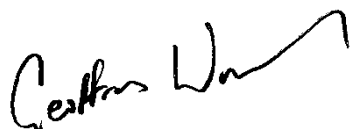
Changes to Terms and Conditions of Service and Model Contract for Consultants: Clinical Excellence Awards

- b. place a copy of the notification on each individual's HR record.

Enquiries

6. Employees must direct personal enquiries to their employer. NHS Employers cannot advise on individuals' personal circumstances.
7. Employers should direct enquiries to: doctorsanddentists@nhsemployers.org.
8. Copies of this circular can be downloaded from: www.nhsemployers.org.
9. Prior to the establishment of NHS Employers in November 2004, responsibility to inform the NHS of changes to pay and allowances rested with the Department of Health. Changes were published in Advance Letters. Copies of Advance Letters going back to 2000 may be obtained from the national archives:
<http://www.webarchive.org.uk/wayback/archive/20060506120000/http://www.dh.gov.uk/PublicationsAndStatistics/LettersAndCirculars/AdvancedLetters/fs/en.html>.
10. For Advance Letters prior to 2000, please contact the Ministerial Correspondence and Public Enquiries Unit, Department of Health and Social Care:
<http://www.info.doh.gov.uk/contactus.nsf/memo?openform>.

Issued by



Geoff Winnard
Assistant Director – Employment Relations
NHS Employers

Annex

Doctors employed under Terms and Conditions of Service – Consultant (England) 2003

Basic salary and payment for additional programmed activities for consultants appointed before 31 October 2003

Schedule 13 of the Consultant Terms and Conditions is changed.

Paragraphs 9 and 10 are:

9. Where a consultant holds discretionary points or a local clinical excellence award, there will be a pro rata increase in the payment for an additional Programmed Activity, compared with the rates referred to by Annex A, Note 1. Where a consultant holds a distinction award or a higher clinical excellence award, the pro rata increase in the payment for an additional Programmed Activity will be based on the maximum level of discretionary points or local clinical excellence awards as the case may be.
10. The annual rate for an additional Programmed Activity will be 10% of basic salary, where basic salary includes the pay thresholds and any discretionary points or local clinical excellence awards.

They are changed to:

9. For consultants who hold discretionary points or a local clinical excellence award as at 31 March 2018, there will be a pro rata increase in the payment for an additional Programmed Activity, compared with the rates referred to by Annex A, Note 1. This will not apply to any local clinical excellence award points received on or after 1 April 2018.
10. Where a consultant holds a distinction award or a higher clinical excellence award under the current national clinical excellence award scheme as enforced from time to time, the pro rata increase in the payment for an additional Programmed Activity will be based on the maximum level of discretionary points or local clinical excellence awards as the case may be.
11. The annual rate for an additional Programmed Activity will be 10% of basic salary, where basic salary includes the pay thresholds and any local clinical excellence awards held as at 31 March 2018. This will not apply to local clinical excellence award points received on or after 1 April 2018.

Basic salary and payment for additional programmed activities for consultants appointed after 31 October 2003

Schedule 14 of the Consultant Terms and Conditions is changed.

Paragraph 7 is:

7. The annual rate for an additional Programmed Activity will be 10% of basic salary, where basic salary includes the pay thresholds and any local clinical excellence awards.

It is changed to:

7. The annual rate for an additional Programmed Activity will be 10% of basic salary, where basic salary includes the pay thresholds and any local clinical excellence awards held as at 31 March 2018. This will not apply to local clinical excellence award points received on or after 1 April 2018.

Paragraph 10 is:

10. Where a consultant holds a local clinical excellence award, there will be a pro rata increase in the payment for an additional Programmed Activity, compared with the rates referred to by Annex B, Note 1. Where a consultant holds a higher clinical excellence award, the pro rata increase in the payment for an additional Programmed Activity will be based on the maximum level of local clinical excellence awards.

It is changed to:

10. For consultants who hold discretionary points or a local clinical excellence award as at 31 March 2018, there will be a pro rata increase in the payment for an additional Programmed Activity, compared with the rates referred to by Annex B, Note 1. This will not apply to any local clinical excellence award points received on or after 1 April 2018.
11. Where a consultant holds a national clinical excellence award under any national clinical excellence award scheme as enforced from time to time, the pro rata increase in the payment for an additional Programmed Activity will be based on the maximum level of local clinical excellence awards.

Pension arrangements

Schedule 17 of the Consultant Terms and Conditions is changed.

Paragraph 2 is:

2. The following will be pensionable in the NHS Pension Scheme:
 - the consultant's basic salary (up to ten Programmed Activities), including pay thresholds;
 - enhancements to basic salary by way of any discretionary points, distinction awards or clinical excellence awards;

- any on-call availability supplement;
- any London Weighting Allowance; and
- fees for domiciliary visits not undertaken during Programmed Activities.

It is changed to:

2. The following will be pensionable in the NHS Pension Scheme:

- the consultant's basic salary (up to ten Programmed Activities), including pay thresholds;
- enhancements to basic salary by way of any discretionary points, distinction awards or clinical excellence awards held as at 31 March 2018. This will not apply to local clinical excellence award points received on or after 1 April 2018;
- any on-call availability supplement;
- any London Weighting Allowance; and
- fees for domiciliary visits not undertaken during Programmed Activities.

Paragraph 4 is:

4. If a distinction award or clinical excellence award is removed or downgraded, the consultant will normally continue to be paid the value of the award he or she received at the time this decision was made. This will be taken into account in the calculation of the consultant's pension in the normal way.

It is changed to:

4. If a distinction award or clinical excellence award is removed or downgraded, the consultant loses the value of the award or receives the value of the downgraded award from the point at which this decision was made. This will be taken into account in the calculation of the consultant's pension in the normal way, subject to the NHS Pension regulations.

Clinical Excellence Awards

The following new Schedule 30 is added to the Consultant Terms and Conditions:

Schedule 30 Clinical Excellence Awards

1. For the purposes of this schedule the following definitions will apply:

- **Existing LCEAs:** Local Clinical Excellence Awards granted prior to 1 April 2018 under existing Local Clinical Excellence Awards schemes in place as at 31 March 2018.
- **New LCEAs:** Local Clinical Excellence Awards granted between 1 April 2018 and 31 March 2021.

- **Future LCEAs:** Local performance awards granted from 1 April 2021.
- **Existing NCEAs:** National Clinical Excellence Awards granted under the Existing NCEA Scheme.
- **Existing NCEA Scheme:** The National Clinical Excellence Awards Scheme as at 31 March 2018.
- **Future NCEAs:** National performance awards granted following the introduction of a Future NCEA Scheme.
- **Future NCEA Scheme:** A reformed NCEA Scheme or schemes introduced by the Secretary of State for Health and Social Care on or after 1 April 2019 following changes to the Existing NCEA Scheme in accordance with paragraph 20 below.
- **Employers, employing organisations and employees to which this schedule applies:** This schedule applies to all consultants employed under the Terms and Conditions – Consultants (England) 2003 and their employers.
- **Award rounds:** An annually run process which considers evidence of an individual's performance prior to 1 April of the award round year.

Arrangements from 1 April 2018

2. Until 31 March 2021 Trusts must run annual Local Clinical Excellence Awards (LCEA) rounds with reference to amended 2012 ACCEA guidance on Employer-Based Awards¹. Existing LCEA schemes can be amended until 31 March 2021 where there is agreement with the Joint Local Negotiating Committee (JLNC)². Different provisions in regard to amendment and alteration of Future LCEA schemes or new performance pay schemes will apply from 1 April 2021 as set out at paragraph 11 below.
3. Existing LCEAs shall remain pensionable and consolidated. Awards under any 2017 LCEA award round that an employer may run and which concludes after 31 March 2018 should be granted in line with any existing LCEA arrangements in place prior to 1 April 2018. Such awards are treated as Existing LCEAs with payment backdated to 1 April 2017 (or other appropriate date in the period 1 April 2017 – 31 March 2018, as determined by the local arrangements). All payments made as part of the 2018 round will be made in line with paragraph 5.
4. From 1 April 2018, the value of Existing LCEAs and New LCEAs will be subject to uplift in line with recommendations made by the Doctors' and Dentists' Pay Review Body ("DDRb") that are implemented by the Department of Health and Social Care (DHSC). Where an individual in receipt of an Existing LCEA moves to another NHS organisation, and continues to work within the speciality for which the award was made, the award will continue to be paid by the new employer, subject to the provisions on change of circumstances as set out in part 9 of the 2012 ACCEA guidance on Employer-Based Awards.
5. From 1 April 2018 to 31 March 2021, the minimum investment ratio for New LCEAs will be set at 0.3 points per eligible consultant annually. For these purposes, 'eligible consultants'

¹ Amended 2012 ACCEA guidance on Employer-Based Awards will be finalised and agreed with the recognised trade unions.

² All references in this document to Joint Local Negotiating Committees (JLNCs) will also be considered to apply to any other appropriate consultant representative group where no JLNC exists

are those with at least one year's service at consultant level and who do not hold an Existing LCEA Level 9, an Existing NCEA a Future NCEA or a Distinction Award. If the Existing NCEA Scheme is reformed prior to 31 March 2021 and Future NCEAs are of lower value, then the costs associated with any additional payments made through employers' local performance pay schemes (as set out in paragraph 23) will be met by a reallocation of the previous NCEA funding stream to the New LCEA funding stream and will be met in addition to the cost of the 0.3 per eligible FTE ratio. This funding cannot be deferred and must be awarded in full each and every year, unless there is agreement with the JLNC that any uncommitted funds will be carried forward and spent on awards in the following year. For the avoidance of doubt at a minimum:

- Funding for New LCEAs awarded between 1 April 2018 and 31 March 2019 will be recurrent for two further years until 31 March 2021.
- Funding for New LCEAs awarded between 1 April 2019 and 31 March 2020 will be recurrent for one further year until 31 March 2021.
- Funding for New LCEAs awarded between 1 April 2020 and 31 March 2021 will be for one year until 31 March 2021.

Employers will normally open awards rounds in April every year which will cover work undertaken prior to 31 March of that year.

6. New LCEA points made from 1 April 2018 will be non-consolidated and non-pensionable, payable for a period of up to three years, paid annually by lump sum and will not include an uplift for those undertaking Additional Programmed Activities.
7. Where an individual in receipt of a New LCEA paid over multiple years leaves the awarding organisation before the full value of the award is paid, the individual's new employing organisation, to which this schedule applies, will undertake to pay the remaining value of the award. The payment of the remaining value of this award will be met from within the new employing organisation's awards funding for the relevant years. The money within the former employing organisation freed up by the departure of the multiple-year award holder will be reinvested into the award funding of future years. If the multiple-year award holder ceases to work for any employer to which this schedule applies, they will no longer receive any award value from the date that they leave that employer.
8. Until 31 March 2021 new local variations to the existing LCEA schemes may be introduced by agreement with the JLNC. During this period the following provisions shall continue to apply and cannot be varied locally.
 - i. Any LCEA schemes must retain an internal appeals mechanism in line with existing processes or, where these do not exist, in line with the process set out in the amended 2012 ACCEA Employer-Based Award guidance;
 - ii. A requirement that any individual who has been awarded an Existing NCEA (i.e. Bronze, Silver, Gold, or Platinum award), and whose renewal application is unsuccessful, will revert to either a Level 7 or 8 Existing LCEA or will not receive an award as determined by the following Existing NCEA renewal scores:

Score	Outcome
≥ 27	Revert to level 8 LCEA
14 - 26	Revert to level 7 LCEA
< 14	Full loss of award payment

These Level 7 or 8 awards will be in the form of consolidated and pensionable Existing LCEAs. In circumstances where the individual's score is <14, the value of the award will cease to be paid. This reversion will apply to all consultants who are in receipt of Existing NCEAs awarded under the national scheme as it existed on 1 April 2018 including all those who are awarded an Existing NCEA subsequently until such time as the scheme has been nationally reformed.

- iii. The funding for such reversions from Existing NCEAs to Existing LCEAs will be funded from outside the 0.3 funding ratio for New LCEAs.
- iv. Other than in exceptional circumstances, such as an extended period of ill-health absence, if an Existing NCEA holder does not submit a renewal application, there will be no reversion to LCEAs and the value of the award will be lost.

9. Any LCEA scheme and any local variation must comply with the Equality Act 2010. To the extent that any terms are unlawfully discriminatory, and no corrective local variation to the LCEA scheme can be agreed with the JLNC within six months of the date at which the issue was raised with the JLNC that removes the discriminatory effect, the employer may modify the scheme or delete the term to the minimum extent necessary to remove such discriminatory effect. Any modification to or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of the LCEA scheme.

Arrangements from 1 April 2021

- 10. The following arrangements will apply to Existing LCEAs, New LCEAs, and Future LCEAs:
- 11. Local variations to any LCEA schemes or new performance pay schemes (for Future LCEAs) may be introduced by the employer in consultation with the JLNC. However, the provisions in paragraphs 12 – 18 shall continue to apply and cannot be varied locally:
- 12. Any Future LCEA scheme must include an appeals mechanism.
- 13. Future LCEAs will be non-consolidated and non-pensionable and will be payable for a period of up to three years, paid annually by lump sum and will not include an uplift for those undertaking Additional Programmed Activities.
- 14. The minimum amount invested and paid annually in Future LCEAs per eligible Full Time Equivalent (FTE) consultant within each employing organisation will be no less than the level spent on Existing LCEAs in 2016/17 (circa £7900 per FTE not including employer

National Insurance contributions)³. The minimum amount invested in Future LCEAs per eligible FTE will be published in the relevant pay circular. If the Existing NCEA Scheme is reformed and Future NCEAs are of a lower value, then the costs associated with any additional payments made through employers' local performance pay schemes (as set out in paragraph 23) will be met by reallocation of the previous NCEA funding stream to the Future LCEA funding stream. These costs will be met in addition to the money spent on Existing LCEAs in 2016/17 (e.g. by increasing the circa £7.9k per FTE). Award values will be subject to uplift in line with recommendations made by the DDRB that are implemented by the DHSC. For these purposes 'eligible' will be defined as substantively employed consultants with at least one year's service (on 1 April of the award year) at consultant level who do not hold a NCEA or a Distinction Award. Spend on local performance pay from this sum will include monies expended on:

- i. The continued payment of consolidated Existing LCEAs set out in paragraph 15
- ii. Any New LCEAs of greater than one year's duration that are paid beyond April 2021
- iii. From 1 April 2022, costs associated with the reversion mechanism for Existing and Future NCEA holders set out in paragraph 8(ii)
- iv. Future LCEAs

15. Existing LCEAs will be retained for Existing LCEA award holders and these awards shall remain pensionable and consolidated but subject to the review process set out in paragraph 16. Existing LCEA holders will continue to receive uplifts when undertaking APAs. Award values will be subject to uplift in line with recommendations made by the DDRB that are implemented by the DHSC. Where an individual in receipt of an Existing LCEA moves to another employer to which this schedule applies and continues to work within the speciality for which the award was made, the award will continue to be paid by the new employer, subject to the provisions on change of circumstances as set out in the amended 2012 ACCEA guidance on Employer-Based Awards. If the award holder ceases to work for any employer to which this schedule applies, they will no longer receive any award value from the date that they leave that employer.

16. Existing LCEAs will be subject to a process of review, meeting the following key features:

- i. For Existing LCEAs 1-8, the first review will take place five years after the date of the award of a consultant's last Existing LCEA point (but no earlier than 1 April 2021).
- ii. Existing LCEAs will be reviewed by Employer Based Awards Committees or their successor using the existing (i.e. pre- 1st April 2018) 10, 6, 2, 0 ratings and according to the pre-existing (i.e. pre- 1st April 2018) five scoring domains (service delivery, service development, leadership and management, research and innovation, and teaching and training). The following scoring system will apply:

Score	Outcome
≥ 20	Retain award(s) at current level and will not be reviewed again for five years
16 – 19	Retain award(s) at current level and will not be reviewed again for three years
11 – 15	Lose 1 LCEA point (and its associated cash value) and reviewed

³ The per FTE minimum will be based on eligible FTE and Local CEA Scheme spend as at 1 April 2016 using data derived from the Electronic Staff Record.

	again after three years
≤ 10	Lose 2 LCEA points (and their associated cash value) and reviewed again after two years

iii. The duration of any review period will exclude time taken for maternity/paternity/adoption leave or an extended period of absence such as ill-health absence, subject to the arrangements outlined in the amended 2012 ACCEA Employer-Based Award guidance.

17. Level 9 Existing LCEAs will continue to be subject to existing renewal arrangements, including their anticipated five-yearly review, until April 2021. From April 2021, level 9 Existing LCEAs will be subject to the same scoring mechanism as all other Existing LCEAs, set out in paragraph 16.
18. Reversion to Existing LCEAs for Existing NCEA holders who are unsuccessful in their applications for renewal, as set out in paragraph 8(ii) above, will continue to apply. Existing NCEA holders who have reverted to an Existing LCEA will have these awards reviewed three years after the date of the reversion, but no earlier than April 2021. Following their reversion to an Existing LCEA, the scoring system set out in paragraph 16 will apply.

National Clinical Excellence Awards (NCEAs)

The provisions below apply solely to the Existing NCEA Scheme and any Future NCEA Scheme in England.

19. Consultants will continue to have access to a national reward scheme that recognises excellence at a national or regional level.
20. Apart from the arrangements set out in paragraphs 21, 22, 23 and 24 below, the Secretary of State for Health and Social Care and the DHSC will have the right, after engaging in consultation, to introduce amendments and changes to the Existing NCEA Scheme from and after 1st April 2019.
21. Consultants who hold an Existing NCEA at any date up to 31 March 2019 will retain their Existing NCEA and the associated payment will be consolidated and pensionable, subject to the 2018 ACCEA review processes and paragraph 23 below.

Arrangements under a Future NCEA Scheme

22. Until the NCEA scheme is reformed, the provisions set out in paragraph 8(ii) will apply to consultants who are unsuccessful in their Existing NCEA renewal application.
23. The following arrangements will apply to consultants who hold Existing NCEAs and submit their first renewal application or application for a Future NCEA under a Future NCEA Scheme:

For unsuccessful applicants:

- a. If their Existing NCEA is due for renewal and their application has been unsuccessful, the consultant will revert to a Local CEA in line with a reversion process equivalent to that outlined in 8(ii).
- b. If their Existing NCEA is not due for renewal but the consultant has submitted an application for a Future NCEA which has been unsuccessful, they retain their Existing NCEA until the next renewal is due or it lapses.

For successful applicants:

- c. If a Future NCEA Scheme is introduced after 31 March 2019 with lower value awards than those currently paid under the Existing NCEA Scheme, the following principles will also apply to those with Existing NCEAs:
 - i. A consultant who successfully receives an award under the Future NCEA Scheme for an equivalent or higher level of performance but attracting a lower value of award will receive an additional payment so that they are paid no less overall than the cash value of their Existing NCEA.
 - ii. A consultant who receives an award under the Future NCEA Scheme for a lower level of performance will receive an additional payment so that they are paid no less overall than the cash value of the equivalent lower award in the Existing NCEA Scheme.
 - iii. If the additional payment provided for by paragraph 23(c)(i) or (ii) above is made through an employers' local performance pay scheme, it will be met by reallocation of the previous NCEA funding stream to the Future LCEA funding stream. In these circumstances, the consultant will revert to an Existing LCEA (as awarded prior to 1 April 2018) of the nearest monetary value to the payment. This will not change the amount of the overall payment received.
 - iv. Beyond 1 April 2021, the Existing LCEA component will be subject to the review mechanism outlined in paragraph 16 of this schedule. If a consultant loses one or more Existing LCEA points after a review the payment will be reduced to the value of the relevant Existing LCEA award.
 - v. The overall payment for consultants who hold an Existing NCEA will be pensionable up to the value of the consultant's award in the Existing NCEA Scheme.

24. Where a consultant submits an unsuccessful application for a Future NCEA subsequent to their first application (as outlined in paragraph 23) the consultant will revert to an Existing LCEA in line with a reversion process equivalent to that outlined in 8(ii). However, any local CEA points that have been removed through the local review process outlined in paragraph 16 will be deducted from the level to which they revert. The timing of the next local review will not be affected by the new reversion.

Doctors employed under the Consultant Model Contract

Distinction Awards And Discretionary Points

Paragraph 22 is:

22. Where the Advisory Committee on Distinction Awards or the Advisory Committee on Clinical Excellence Awards has recommended that you receive a Distinction Award or Clinical Excellence Award, or we have decided that you should receive one or more Discretionary Points or a Clinical Excellence Award, these will be paid at the rates set out in the latest Pay Circular from NHS Employers.

It is changed to:

22. Where the Advisory Committee on Distinction Awards or the Advisory Committee on Clinical Excellence Awards has recommended that you receive a Distinction Award or Clinical Excellence Award, or we have decided that you should receive one or more Discretionary Points or a Clinical Excellence Award, these will be paid at the rates set out in the latest Pay Circular from NHS Employers. The provisions in the 'Schedule 30 Clinical Excellence Awards' regarding CEAs being an incorporated schedule to the Terms and Conditions for Consultants (England) 2003 shall apply to and are expressly incorporated into this contract.