

**WHITLEY COUNCILS FOR THE HEALTH SERVICES  
(GREAT BRITAIN)**

**GENERAL COUNCIL**

**CONDITIONS OF SERVICE**

**OF EMPLOYEES WITHIN THE PURVIEW OF  
THE WHITLEY COUNCILS FOR  
THE HEALTH SERVICES (GREAT BRITAIN)**

**The Agreements of the Whitley Councils for  
the Health Services (Great Britain) are  
mandatory on Employing Authorities and  
Employees.**

**DISCLAIMER**

The General Whitley Council (GWC) Handbook has been out of print for some time now and is unavailable from the original source, The Department of Health (England). While its contents have been replaced by the Staff Council (Agenda for Change) Handbook for most NHS staff, a number of the Sections of the GWC Handbook remain extant, particularly for doctors and dentists in hospital posts. This document has been assembled from a variety of sources and is believed to represent the most recent versions of each of the sections included. Because it has been derived electronically from a number of poor quality original sources it is likely to contain typographical errors in addition to those in the original documents, which themselves contained many. Users intending to use the documents should take care to ensure that the particular sections to be used are still relevant to the staff group involved, and should seek to check the text with original source documents where possible in cases of ambiguity.

# GENERAL COUNCIL CONDITIONS OF SERVICE

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## INTRODUCTION

### **GENERAL COUNCIL**

1. The General Council deals with National Health Service staff conditions of service of general application and other than those allocated to functional councils. The General Council's scope and membership are set out in the Main Constitution for the Whitley Councils for the Health Services (Great Britain), which is reproduced as an Appendix to this Handbook

### **APPLICATION OF GENERAL COUNCIL AGREEMENTS**

2. General Council agreements apply to all employees within the purview of the Whitley Councils for the Health Services (Great Britain), except where provision is made to the contrary (see also paragraphs 3-6). NHS Works Maintenance Staff (Craftsmen and Assistants) are not within the purview of the Whitley Councils for the Health Services (Great Britain) but by agreement with the unions concerned the terms of a number of General Council agreements are applied to them. A list of the agreements which are applied to them is set out as an Appendix to their pay and Conditions of Service Handbook.
3. General Council agreements apply to hospital medical and dental staff only if the Staff Side Representatives of Committee B of the Medical and (Hospital) Dental Council on the General Council so agree. A list of the agreements which apply to hospital medical and dental staff, and in what way, is set out as an Appendix to the Hospital Medical and Dental Staff (England and Wales) Terms and Conditions of Service Handbook and the Hospital Medical and Dental Staff (Scotland) Terms and Conditions of Service Handbook. For doctors in community medicine and the community health services, and for administrative dental and community clinical dental officers, General Council agreements apply with the agreement of the Joint Negotiating Body for Doctors in Community Medicine and the Community Health Services, and the Joint Negotiating Forum for the Community Dental Services respectively. For ease of reference those General Council agreements which do not apply, or apply in part only, to medical and dental staff are indicated in the body of the General Council Handbook.
4. A small number of General Council agreements do not apply to staff covered by the Ancillary Staffs Council; they are indicated in the body of the Handbook.
5. General Council agreements apply equally to male and female employees, unless the context otherwise requires.
6. Unless otherwise stated, none of the agreements which has been made by the General Council applies to persons providing services under Part II of the National Health Services Act 1977, ie persons such as chemists and opticians who contract to provide services or goods under the National Health Service.

### **TAXATION OF ALLOWANCES**

7. Some allowances may be subject to tax and in these cases employing authorities are obliged to deduct tax under the PAYE system as directed by Inland Revenue and the local Tax Office concerned. This is a matter of tax law as it applies to everyone and neither the Whitley Council, Health Departments nor health authorities have any discretion in the matter.

## **NHS REORGANISATION 1974: PROTECTION CONDITIONS**

8. Staff who transferred to the National Health Service at the 1974 reorganisation may have been entitled to protection of packages of certain former terms and conditions as a result of section 19 of the National Health Service Reorganisation Act 1973. Where these rights still exist, the employees concerned should continue to receive their protected package(s) of conditions until the corresponding package of NHS terms and conditions is at least no less favourable. Alternatively, they may exercise their option to receive the appropriate NHS package of conditions at any time. Such an option, once exercised, is irrevocable.

### **DEFINITION OF AN EMPLOYING AUTHORITY**

9. For the purpose of the agreements set out in this handbook, unless the context otherwise requires, an "employing authority" is a body constituted under the National Health Service Act 1977 as amended, the Health Services Act 1980 as amended, and the National Health Service (Scotland) Acts 1972-1978 as amended.

### **DEFINITION OF A RECOGNISED STAFF ORGANISATION**

10. For the purpose of this Handbook, unless otherwise specified, a "recognised staff organisation" is an organisation listed in Appendix B to this Handbook.

### **GENERAL**

11. The Secretary of State for Health, The Secretary of State for Wales and the Secretary of State for Scotland have approved the General Council agreements incorporated in this Handbook under Regulation 3 of the National Health Service (Remuneration and Conditions of Service) Regulations, 1974 (S.I. 1974 No 296) and under paragraph 11 of Schedule 3 of the National Health Service Act 1977 and the corresponding Scottish Regulations (S.I. 1974 No 276) (S.S.18).
12. This edition of the Handbook contains all agreements of the General Council operative on [30 June 1993] as promulgated by Advance Letter up to and including Advance Letter [GC 2/93]. Further amendments will be notified by Advance Letters, which should be incorporated in this Handbook on receipt.

## SECTION 1

### **ANNUAL LEAVE ENTITLEMENT**

1. The provisions of this Section do not apply to employees within the purview of the Ancillary Staffs' Council who are, in this respect, subject to separate provisions which are set out in the Ancillary Staffs' Council Conditions of Service Handbook.

### **LEAVE YEAR**

2. The following arrangements apply in the case of those grades of employees whose conditions of service provide for a leave year, ie a fixed period of 12 months to which the annual-leave allowance is related and within which the allowance of leave must normally be taken.

### **YEAR OF FIRST ENTRY TO THE SERVICE**

3. New entrants to the Service shall be entitled in the leave year of entry to annual leave proportionate to the completed months of service during that year.

### **YEAR OF CHANGE OF EMPLOYING AUTHORITY**

4. Where employees leave the employment of a body constituted under the National Health Service and Health Service Acts to take up a post with another such body, their service shall be regarded as continuous for the purpose of entitlement to annual leave.

### **YEAR OF FINALLY LEAVING THE SERVICE**

5. Employees leaving the service of a body constituted under the National Health Service and Health Services Acts who are not covered by the arrangements set out in paragraph 4 above shall, except where their services are dispensed with for disciplinary reasons, be entitled in the leave year of cessation to annual leave proportionate to the number of completed months of service during that year.
6. The period of employment of employees to whom paragraph 5 applies shall if necessary be extended so as to permit them to take any balance of leave to which they are entitled on the proportionate basis, always excepting cases where the employment is terminated on disciplinary grounds.
7. Employees to whom paragraph 5 applies shall, where they are unable because of sickness to take any balance of leave to which they are entitled on the proportionate basis, receive payment in lieu of uneaten annual leave, always excepting cases where the employment is terminated on disciplinary grounds.
8. Employees shall be permitted to anticipate the annual leave due to them during the current leave year provided that if employees to whom paragraph 5 applies take leave in excess of the amount due to them on the proportionate basis an appropriate deduction in respect of the excess leave shall be made from their final payment of salary, ie the excess leave shall be treated as leave without pay.
9. Where an employee dies in service an allowance equivalent to that part of the annual leave entitlement, calculated on the proportionate

basis, not taken at the date of death shall be paid to the employee's personal representative. No deduction from the final salary payment should be made in respect of annual leave taken in excess of entitlement at the date of death.

#### **CARRY-OVER OF LEAVE GENERALLY**

10. Where employees are prevented by their employing authority from taking the full allowance of annual leave before the end of the leave year they shall be allowed to make up the deficiency during the ensuing leave year at a time to be mutually agreed.
11. Where employees are allocated leave at dates not of their own choosing and are prevented by sickness from taking it before the end of the leave year they shall be allowed to make up the deficiency during the ensuing leave year at a time to be mutually agreed. Where employees are allocated leave (i) on a rota or (ii) in the last three months of the leave year, the dates of leave shall be deemed to be not of their own choosing, notwithstanding that they might have a choice of dates limited to a prescribed period.
12. Subject to the exigencies of the service up to 5 days annual leave may be carried forward on application and taken in the ensuing leave year.
13. Where an officer is entitled to leave carried over from the previous leave year the leave first taken in a current year shall be deemed to be that carried over until the amount of carried over leave is exhausted.
14. Except in these and other circumstances for which special provision has been made annual leave not taken shall not be carried over to the following year. Payment in lieu of annual leave not taken shall be made only in accordance with paragraphs 7 and 9 above and in no other circumstances.

#### **SICKNESS OCCURRING DURING ANNUAL LEAVE**

15. If an employee falls sick during annual leave and produces at the time a statement, which may be a self-certificate, to that effect, the employee shall be regarded as being on sick leave from the date of the statement. Where the first statement is a self-certificate, that statement shall cover the first and any subsequent days up to and including the seventh calendar day of sickness. Medical statements shall be submitted to cover the eight and subsequent calendar days of sickness, where appropriate. Further annual leave shall be suspended from the date of the first statement.



## SECTION 2

### STATUTORY AND PUBLIC HOLIDAYS

1. Reference should be made to the agreement of the appropriate functional Council for detailed provisions in respect of pay and time off in lieu, where applicable, as varied by this agreement.

### ENGLAND AND WALES

#### STATUTORY AND PUBLIC HOLIDAYS: GENERAL

2. Whole-time employees shall be entitled to ten paid statutory and public holidays in each year. Christmas Day, 26 December\*\*, New Year's Day, Good Friday, Easter Monday, May Day, Spring Bank Holiday, Late Summer Holiday and the two additional days provided in paragraph 2.2 below should normally be paid holidays, subject to the provisions of paragraph 2.1 below.

- 2.1 Christmas and New Year holidays at weekends. There are three cases which shall be treated as follows:-

- 2.1.1 When 25 December and 1 January fall on a Saturday. In this case 25 December and 1 January shall be treated as normal Saturdays and 26 December shall be treated as a normal Sunday. Monday 27 December and Monday 3 January shall be treated as paid public holidays instead of 25 December and 1 January respectively. Tuesday 28 December shall be treated as a paid public holiday instead of 26 December.

- 2.1.2 When 25 December and 1 January fall on a Sunday. In this case 25 December and 1 January shall be treated as normal Sundays. Tuesday 27 December and Monday 2 January shall be treated as paid public holidays instead of 25 December and 1 January respectively.

- 2.1.3 When 26 December falls on a Saturday. In this case 26 December shall be treated as a normal Saturday. Monday 28 December shall be treated as a paid public holiday instead of 26 December.

- 2.2 The two additional days paid holiday referred to in paragraph 2 above shall be given to employees on days to be designated by the employing authority after consulting with representatives of the employees concerned. The designated days shall be the same for all groups of employees in each major unit of the employing authority.

- 2.3 As an alternative to this, the two additional days may be converted to a period of annual leave, after agreement between the employing authority and staff and local staff representatives, in any way which does not lead to a detrimental outcome overall for any individual member of staff.

## SCOTLAND

### STATUTORY AND PUBLIC HOLIDAYS: GENERAL

3. Whole-time employees shall be entitled to ten paid statutory and public holidays a year. Employing authorities should decide, in the light of local practice and in accordance with the needs of the Service after consultation with representatives of the employees concerned, on which days the holidays are to be taken. Christmas Day, New Year's Day and one other day occurring about that time should normally be paid holidays subject to the provisions of paragraph 3.1 below. The designated days shall be the same for all groups of employees in each major unit of the employing authority. As an alternative to this, the two additional days may be converted to a period of annual leave, after agreement between the employing authority and staff and local staff representatives in any way which does not lead to a detrimental outcome overall for any individual member of staff.

3.1 Christmas and New Year holidays at weekends. There are three cases which shall be treated as follows:-

3.1.1 When 25 December and 1 January fall on a Saturday. In this case 25 December and 1 January shall be treated as normal Saturdays. Monday 27 December and Monday 3 January shall be treated as paid public holidays instead of 25 December and 1 January respectively. Where an employing authority normally observes 26 December as a paid public holiday. Tuesday 28 December shall be treated as the public holiday instead of 26 December, and 26 December shall be treated as a normal Sunday. Likewise, where an employing authority normally observes 2 January as a paid public holiday, Tuesday 4 January shall be treated as the paid public holiday instead of 2 January, and 2 January shall be treated as a normal Sunday.

3.1.2 Where 25 December and 1 January fall on a Sunday. In this case 25 December and 1 January shall be treated as normal Sundays. Monday 26 December and Monday 2 January shall be treated as paid public holidays instead of 25 December and 1 January respectively. Where an employing authority normally observes 26 December as a paid public holiday, Tuesday 27 December shall be treated as a paid public holiday instead of 26 December. Likewise, when an employing authority normally observes 2 January as a paid public holiday, Tuesday 3 January shall be treated as the paid public holiday instead of 2 January.

3.1.3 Any case (not otherwise provided for in 3.1.1 and 3.1.2 above) in which a paid holiday other than 25 December or 1 January is taken at this period and the day on which it would normally be taken falls on a Saturday or a Sunday. In this case the paid public holiday will be taken instead on the first weekday thereafter which is not otherwise treated as a paid public holiday.

**SPECIAL PROVISIONS FOR EMPLOYEES WITHIN THE PURVIEW OF THE ANCILLARY STAFFS' COUNCIL AND CONTROL ASSISTANTS WITHIN THE PURVIEW OF THE AMBULANCE OFFICERS' JOINT NEGOTIATING COMMITTEE**

4. All employees required to work within their standard working week on a Saturday or a Sunday, either of which would have been treated as a paid public holiday, but for the provisions of paragraph 2.1 or 3.1 above, shall have that Saturday or Sunday treated as a paid public holiday, the provisions of paragraphs 2.1 and 3.1 notwithstanding. If such employees are also required to work on the corresponding alternative public holiday then payment shall be made at plain time rates for work done on the alternative day within the standard working week.
5. In the case of employees required to work on a Saturday or Sunday affected by the provisions of paragraph 2.1 or 3.1 above whose hours of work on the Saturday or Sunday fall entirely outside their standard working week the provisions of paragraphs 2.1 and 3.1 apply and that day will be treated as a normal Saturday or Sunday.
6. Employees who, by virtue of their normal working pattern, would be required to work within their standard working week on a Saturday or Sunday affected by the provisions of paragraph 2.1 or 3.1 above, but who are not required so to work by their employing authority, shall be paid at the rate which would have applied for working on that Saturday or Sunday. Since these employees will have a paid holiday on the Saturday or Sunday the corresponding alternative days shall not be regarded as paid public holidays.
7. In the case of employees who, by virtue of their normal working pattern, would be required to work outside their standard working week on a Saturday or Sunday affected by the provisions of paragraph 2.1 or 3.1 above, but who are not required so to work by their employing authority, no payment shall be made for hours outside the standard working week which would normally have been worked but which are not worked.
8. If an employee is required to be on-call or on standby duty on a Saturday or Sunday affected by the provisions of paragraph 2.1 or 3.1, payment shall be at the rate appropriate to a paid public holiday. If the same employee also undertakes on-call or standby duty on the corresponding alternative day, payment shall be made at the rate appropriate to Saturdays or Sundays.
9. If an employee's rest day, free day and/or off-duty period falls on a Saturday or a Sunday affected by the provisions of paragraph 2.1 or 3.1, it will remain a rest day, free day and/or off-duty period and the alternative day will be treated as a paid public holiday for this employee.

**SPECIAL PROVISIONS FOR EMPLOYEES WITHIN THE PURVIEW OF THE AMBULANCE COUNCIL AND AMBULANCE OFFICERS (AMBULANCE OFFICER AND ASSISTANT SENIOR AMBULANCE OFFICER RANKS)**

10. All employees required to work within their standard working week on a Saturday or a Sunday, either of which would have been treated as a paid public holiday, but for the provisions of paragraph 2.1 or 3.1 above, shall have that Saturday or Sunday treated as a paid public holiday, the provisions of paragraphs 2.1 and 3.1 notwithstanding. If such employees are also required to work on the corresponding alternative public holiday then they shall receive their normal pay

for that day.

11. In the case of employees required to work on a Saturday or Sunday affected by the provisions of paragraph 2.1 or 3.1 above whose hours of work on that day fall entirely outside their standard working week, that Saturday or Sunday shall be treated as a paid public holiday, the provisions of paragraphs 2.1 and 3.1 notwithstanding, provided that they are not also required to work within their standard working week on the corresponding alternative day. The corresponding alternative day shall not be regarded as a paid public holiday, and such employees shall receive their normal pay for that day in complete recompense.
12. In the case of the employees required to work on a Saturday or Sunday affected by the provisions of paragraph 2.1 or 3.1 above, whose hours of work on that day fall entirely outside their standard working week, and also required to work within their standard working week on the corresponding alternative day, the provisions of paragraphs 2.1 and 3.1 apply and that day will be treated as a normal Saturday or Sunday. The corresponding alternative day shall be treated as a paid public holiday.
13. In the case of employees who, by virtue of their normal working pattern, would be required to work within their standard working week on a Saturday or Sunday affected by the provisions of paragraph 2.1 or 3.1 above, but who are not required so to work by their employing authority, they shall receive their normal pay for that day, provided that they are also required to work on the corresponding alternative day, either within or outside their standard working week. For such employees the provisions of paragraphs 2.1 and 3.1 apply and the alternative day shall be treated as a paid public holiday. If such employees are not required to work on the corresponding alternative day the Saturday or Sunday shall be regarded as a paid public holiday.
14. In the case of employees who, by virtue of their normal working pattern would be required to work outside their standard working week on a Saturday or Sunday affected by the provisions of paragraph 2.1 or 3.1 above, but who are not required so to work by their employing authority, no payment shall be made for hours outside the standard working week which would normally have been worked but which are not worked.
15. If an employee is required to be on standby duty on a Saturday or Sunday affected by the provisions of paragraph 2.1 or 3.1, payment shall be at the rate appropriate to a paid public holiday. If the same employee also undertakes on-call or standby duty on the corresponding alternative day, payment shall be made at the rate appropriate to Saturdays or Sundays.
16. If an employee's rest day or free day falls on a Saturday or a Sunday affected by the provisions of paragraph 2.1 or 3.1 above, it will remain a rest day or free day and the alternative day will be treated as a paid public holiday for this employee unless, the employee is required to work on the Saturday or Sunday in which case the provisions of paragraph 11 or 12 above apply as appropriate.

**EXCEPTIONS TO PARAGRAPHS 2.1 AND 3.1 FOR EMPLOYEES OTHER THAN THOSE SPECIFIED IN PARAGRAPHS 4 TO 9**

17. Where the agreements of a functional Council provide for special duty, excess hours, overtime or emergency duty payments the rates of which differ between Saturday or Sundays and paid public holidays, then any payment due in respect of a Saturday or Sunday affected by the provisions of paragraph 2.1 or 3.1 above shall be paid at the rate appropriate to a paid public holiday. If an employee also undertakes special duty, excess hours, overtime or emergency duty on the corresponding alternative day, then payment shall be made at the rate appropriate to a Saturday or Sunday.
18. Where the agreements of a particular functional Council provide that an employee who carries out emergency duty (on-call or standby) on a paid public holiday should be granted a day off in lieu (for Nurses and Midwives equivalent time off in lieu), subject to such other conditions as are attached by those agreements, an employee carrying out emergency duties on a Saturday or a Sunday affected by the provisions of paragraph 2.1 or 3.1 above shall still be granted a day off in lieu (for Nurses and Midwives equivalent time off). Where such an employee is not required to work on the corresponding alternative day because their Department is being run on an emergency duty basis, then they shall receive their normal pay for that day at plain time rates, and their day off in lieu (for Nurses and Midwives their equivalent time off in lieu) in respect of the Saturday or the Sunday shall be available to be taken at another time.

**STAFFING ARRANGEMENTS**

19. After consultation with appropriate local staff interests, staffing arrangements for these holidays should be related to employing authorities' assessments of the needs of the service.

**PART-TIME EMPLOYEES**

20. Part-time employees shall be entitled to statutory and public holidays which fall under the arrangements set out in the paragraphs above on a day when they would normally work. If they are required to work on a holiday they shall be treated in accordance with their appropriate conditions of service relating to work on a paid public holiday.

**SESSIONAL WORKERS**

21. Sessional workers who are not entitled to paid leave and who are required to work on a statutory or public holiday should receive the normal sessional rate. Where sessional workers are prevented from working their normal sessions because leave arrangements for other staff result in the closure of their Departments, they should attend an alternative session where this has been arranged by the employing authority. If no alternative session is arranged by the employing authority the sessional workers should be paid for the session lost.

**PROTECTION OF FORMER ENTITLEMENTS TO LOCAL PUBLIC HOLIDAYS**

22. Employees who are employed on 26 July 1974 and who were entitled to paid leave on days regarded as local public holidays in excess of the nine paid statutory and public holidays then current had any excess over nine days converted to additional days of annual leave. Such additional annual leave is protected on a personal basis and is not

subject to abatement in respect of general increases in annual leave entitlements or paid statutory and public holiday leave entitlements.

### SECTION 3

#### **SPECIAL LEAVE**

1. Employing authorities shall make available special leave with pay to staff required to be absent from duty for essential civic and public duties of the kinds listed in Section 29 of the Employment Protection (Consolidation) Act 1978 and as required by other legislation. In determining the maximum amount of such paid leave employing authorities shall have regard to existing practice as informed by Section 29(4) of the Employment Protection (Consolidation) Act 1978. Examples of the duties listed in Section 29 of the Employment Protection (Consolidation) Act 1978 are attached in an Annex to this agreement.
2. In addition to these provisions, special leave with pay shall be made available in the following circumstances.
  - absence from duty following contact with a case of notifiable disease;
  - attendance at court as a witness;
  - training with the reserve and cadet forces;
  - attendance at Whitley Council meetings;
  - attendance as a witness at appeal hearings;
  - attendance at meetings of community health councils or, in Scotland, local health councils;
3. Special leave for any other circumstance may be granted (with or without pay) at the discretion of the employing authority.

#### Procedures

4. Each health authority should provide clear guidelines in consultation with staff and local staff representatives on the length of special leave which would normally be available, whether it should be paid or unpaid and on the procedures for applying for such leave. The application of these guidelines will have to take account of the particular needs and circumstances of each individual.

### SECTION 3 (ANNEX)

Examples of the public duties for which special paid leave shall be given, under the terms of Section 29 of the Employment Protection (Consolidation) 1978 (as amended):

- a: serving as a justice of the peace;
- b: membership of a local authority;
- c: membership of the Broads Authority;
- d: membership of any statutory tribunal;
- e: membership of a Board of Prison Visitors (England & Wales or a prison visiting committee (Scotland));
- f: membership of a National Health Service Trust, a Regional or, District Health Authority, or Family Health Services Authority or (in Scotland) a Health Board;
- g: membership of, in England and Wales, the managing or governing body of an educational establishment maintained by a local education authority or, in Scotland, a school or college council or the governing body of a designated or central institution;
- h: membership of the governing body of a grant-maintained school, further or higher education corporation or of a school board or board of management of a college of further education or self-governing school;
- i: membership of, in England and Wales, the National Rivers Authority or, in Scotland, a river purification board.

For further details please see the text of the Act.



SECTIONS 4 & 5 (UNALLOCATED)

## SECTION 6

### **MATERNITY LEAVE AND PAY**

#### **Introduction**

1. Part A of this Section sets out the maternity leave and pay entitlements of NHS employees under the NHS contractual maternity leave scheme.
2. Part B gives information about the position of staff who are not covered by this scheme because they do not have the necessary service or do not intend to return to NHS employment.
3. Part C defines the service that can be counted towards the twelve month continuous service qualification set out in paragraph 5.1 below and which breaks in service may be disregarded for this purpose.
4. Part D explains how to get further information about employees' statutory entitlements.

#### **PART A**

##### **Eligibility**

5. An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the NHS contractual maternity pay scheme if:
  - 5.1 she has twelve months continuous service (see Part C) with one or more NHS employers at the beginning of the eleventh week before the expected week of childbirth;
  - 5.2 she notifies her 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):
    - 5.2.1 of her intention to take maternity leave;
    - 5.2.2 of the date she wishes to start her maternity leave (but see paragraph 6 below);
    - 5.2.3 that she intends to return to work with the same or another NHS employer for a minimum period of three months after her maternity leave has ended;
    - 5.2.4 and provides a MATB1 form from her midwife or GP giving the expected date of childbirth.

##### **Changing the Maternity Leave Start Date**

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

### **Confirming Maternity Leave and Pay**

7. Following discussion with the employee, the employer should confirm in writing:
  - 7.1 the employee's paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);
  - 7.2 unless an earlier return date has been given by the employee, her expected return date based on her 52 weeks paid and unpaid leave entitlement under this agreement, and
  - 7.3 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 37 and 38 below);
  - 7.4 the need for the employee to give at least 28 days notice if she wishes to return to work before the expected return date.

### **Keeping in Touch**

8. 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 leave including:
  - 8.1 any voluntary arrangements that the employee may find helpful to help her keep in touch with developments at work and, nearer the time of her return, to help facilitate her return to work;
  - 8.2 keeping the employer in touch with any developments that may affect her intended date of return.

### **Paid Maternity Leave**

#### **Amount of Pay**

9. Where an employee intends to return to work the amount of contractual maternity pay receivable is as follows:
  - 9.1 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;
  - 9.2 for the next 14 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;
  - 9.3 for the next four weeks, the employee will receive the standard rate of Statutory Maternity Pay or Maternity Allowance.
10. By prior agreement with the employer this entitlement 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.

### **Calculation of Maternity Pay**

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

- 11.1 in the event of a pay award or annual increment being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or annual increment 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.
- 11.2 in the event of a pay award or annual increment being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or annual increment should be increased accordingly. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis.
- 11.3 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.

#### **Unpaid Contractual Maternity Leave**

12. Employees will also be entitled to 26 weeks unpaid leave.

#### **Commencement and Duration of Leave**

13. An employee may begin her maternity leave at any time between the eleventh week before the expected week of childbirth and the expected week of childbirth provided she gives the required notice.

#### **Sickness Prior to Childbirth**

14. 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 fourth 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 sick leave in accordance with normal sick leave provisions.
15. 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.

#### **Premature Birth**

16. 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 her baby was born at full term.
17. Where an employee's baby is born before the eleventh 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.
18. Where an employee's baby is born before the eleventh 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 at the beginning of the actual week of childbirth.

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

#### **Still Birth**

20. Where an employee's baby is born dead after the 24th week of pregnancy the employee will be entitled to the same amount of maternity leave and pay as if her baby was born alive.

#### **Miscarriage**

21. Where an employee has a miscarriage before the 25th week of pregnancy normal sick leave provisions will apply as necessary.

#### **Health and Safety of Employees Pre and Post Birth**

22. Where an employee is pregnant, has recently given birth or is breastfeeding, the employer should carry out a risk assessment of her working conditions. If it is found, or a medical practitioner considers, that an employee or her child would be at risk were she to continue with her normal duties the employer should provide suitable alternative work for which the employee will receive her normal rate of pay. Where it is not reasonably practicable to offer suitable alternative work the employee should be suspended on full pay.
23. These provisions also apply to an employee who is breastfeeding if it is found that her normal duties would prevent her from successfully breastfeeding her child.

#### **Return to Work**

24. An employee who intends to return to work at the end of her full maternity leave will not be required to give any further notification to the employer, although if she wishes to return early she must give at least 28 days notice.
25. An employee has the right to return to her job under her original contract and on no less favourable terms and conditions.

#### **Returning on Flexible Working Arrangements**

26. If at the end of maternity leave the employee wishes to return to work on different hours the NHS employer has a duty to facilitate this wherever possible, with the employee returning 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 grade and work of a similar nature and status to that which they held prior to their maternity absence.
27. 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 employees right to return to her job under her original contract at the end of the agreed period.

### **Sickness following the End of Maternity Leave**

28. In the event of illness following the date the employee was due to return to work normal sick leave provisions will apply as necessary.

### **Failure to Return to Work**

29. If an employee who has notified her employer of her intention to return to work for the same or a different NHS employer in accordance with paragraph 5.2.3 above fails to do so within 15 months of the beginning of her maternity leave she will be liable to refund the whole of her maternity pay, less any Statutory Maternity 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**

#### **Fixed -Term Contracts or Training Contracts**

30. Employees subject to fixed-term or training contracts which expire after the eleventh week before the expected week of childbirth, and who satisfy the conditions in paragraph 5.1, 5.2.1, 5.2.2 and 5.2.4, shall have their contracts extended so as to allow them to receive the 26 weeks paid contractual maternity leave set out in paragraph 9 above.
31. Absence on maternity leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service.
32. If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred the repayment provisions set out in paragraph 29 above will not apply.
33. Employees on fixed-term contracts who do not meet the twelve months continuous service condition set out in paragraph 5.1 above may still be entitled to Statutory Maternity Pay.

#### **Rotational Training Contracts**

34. Where an employee is on a planned rotation of appointments with one or more NHS employers as part of an agreed programme of training, she shall have the right to return to work in the same post or in the next planned post irrespective of whether the contract would otherwise have ended if pregnancy and childbirth had not occurred. In such circumstances the employee's contract will be extended to enable the practitioner to complete the agreed programme of training.

#### **Contractual Rights**

35. During maternity leave (both paid and unpaid) an employee retains all of her contractual rights except remuneration.

#### **Increments**

36. Maternity leave, whether paid or unpaid, shall count as service for annual increments and for the purposes of any service qualification period for additional annual leave.

### **Accrual of Annual Leave**

37. Annual leave will continue to accrue during maternity leave, whether paid or unpaid, provided for by this agreement.
38. Where the amount of accrued annual leave would exceed normal carry over provisions, it may be mutually beneficial to both the employer and employee for the employee to take annual leave before and/or after the formal (paid and unpaid) maternity leave period. The amount of annual leave to be taken in this way, or carried over, should be discussed and agreed between the employee and the employer.

### **Pensions**

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

### **Antenatal Care**

40. Pregnant employees have the right to paid time off for antenatal care. Antenatal care may include relaxation and parentcraft classes as well as appointments for antenatal care.

**PART B**

**Employees Not Returning to NHS Employment or with Less Than Twelve Months Continuous Service**

41. An employee who satisfies the conditions in paragraph 5, except that she does not intend to work with the same or another NHS employer for a minimum period of three months after her maternity leave is ended, will be entitled to pay equivalent to Statutory Maternity Pay, which is paid at 90% of her average weekly earnings for the first 6 weeks of her maternity leave and to a flat rate sum for the following 20 weeks.
42. If an employee does not satisfy the conditions in paragraph 5 for contractual maternity pay she may still be entitled to Statutory Maternity Pay. Statutory Maternity Pay will be paid regardless of whether she satisfies the conditions in paragraph 5. If her earnings are too low for her to qualify for Statutory Maternity Pay, or she does not qualify for another reason, she should be advised to claim Maternity Allowance from her local Job Centre Plus or social security office.
43. Employees who fall into the category set out in paragraph 42 will also qualify for twenty six weeks unpaid maternity leave. Part D contains further information on statutory maternity entitlements.



## PART C

### Continuous Service

44. For the purposes of calculating whether the employee meets the twelve months continuous service with one or more NHS employers qualification set out in paragraph 5.1 the following provisions shall apply:
- 44.1 NHS employers includes health authorities, NHS Boards, NHS Trusts, Primary Care Trusts and the Northern Ireland Health Service;
- 44.2 a break in service of three months or less will be disregarded (though not count as service);
- 44.3 the following breaks in service will also be disregarded (though not count as service):
- \* employment under the terms of an honorary contract;
  - \* employment as a locum with a general practitioner for a period not exceeding twelve months;
  - \* a period of up to twelve 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;
  - \* a period of voluntary service overseas with a recognised international relief organisation for a period of twelve months which may exceptionally be extended for twelve months at the discretion of the employer which recruits the employee on her return;
  - \* absence on a employment break scheme in accordance with the provisions of Section 7 of the General Council Handbook;
  - \* absence on maternity leave (paid or unpaid) as provided for under this agreement.
45. Employers may at their discretion extend the period specified in paragraphs 44.2 and 44.3.
46. Employment as a trainee with a General Medical Practitioner in accordance with the provisions of the Trainee Practitioner Scheme shall similarly be disregarded and count as service.
47. Employers have the discretion to count other previous NHS service or service with other employers.

**PART D**

**Information about Maternity Rights and Statutory Maternity Pay**

48. Information about all maternity rights is contained in the following Department of Trade and Industry (DTI) booklet:-

*Maternity Rights: a guide for employers and employees(URN 99/1191)*

Copies of the booklet can be obtained by telephoning 0870 1502 500.

It is also available from the DTI web site at:-

<http://www.dti.gov.uk/er/individual/maternity.pdf>

49. Information on Statutory Maternity Pay and Maternity Allowance entitlements is contained in the following Department for Work and Pensions (DWP) booklet:-

*A Guide to Maternity Benefits (NI 17A)*

Copies of the booklet can be obtained from local benefits offices

Further information on Statutory Maternity Pay and Maternity Allowance entitlements is also available on the DWP website at:-

<http://www.dwp.gov.uk/lifeevent/famchild/index.htm>

## SECTION 7

### EQUAL OPPORTUNITIES AGREEMENT

#### **A: General Statement**

#### **Agreement on Equality and Diversity**

##### **1. Equality and Diversity**

- 1.1 The General Whitley Council (GWC) is committed to building a NHS workforce which is valued and whose diversity reflects the communities it serves, enabling it to deliver the best possible healthcare service to those communities.
- 1.2 The GWC is also committed to enabling everyone in the NHS to achieve his or her full potential in an environment characterised by dignity and mutual respect.
- 1.3 The GWC recognises the past effects of institutional discrimination and seeks to guarantee equality of opportunity for all.
- 1.4 Equality of opportunity means that an individual's diversity is viewed positively and, in recognising that everyone is different, valuing equally the unique contribution that individual experience, knowledge and skills can make.
- 1.5 Everyone who works in the NHS, or applies to work in the NHS, should be treated fairly and valued equally. All conditions of service and job requirements should fit with the needs of the service and those who work in it, regardless of age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, domestic circumstances, social and employment status, HIV status, gender reassignment or political affiliation or trade union membership.
- 1.6 The NHS should strive to be a place where people want to work, to be a leader in good employment practice. This agreement is about building on the current legal framework through the establishment of good practice.

##### **2. Making It Happen**

- 2.1 The aim of this agreement is to make equality and diversity part of everything that the NHS does. To make this happen:
  - \* Everyone who works in the NHS needs to know about the agreements which exist and what they say.
  - \* Everyone needs to know what their responsibilities are in relation to equality and diversity.
  - \* Steps taken to make equality and diversity are monitored.
  - \* Appropriate training should be provided.
  - \* There must be a willingness to recognise the need for investment to provide and spend such money as is necessary to achieve these aims.

- \* Trust and Health Authority Boards and senior managers must work for the aims of the agreements, and show that they are doing so in the decisions they take, their policies and actions.
- \* The NHS should encourage other organisations such as local authorities, education providers, contractors and recruitment agencies to work in partnership with the service to ensure that everyone working in, and with the NHS does so in the spirit of this agreement.

2.2 The GWC recognises that not everybody who works for the NHS is covered by this agreement. The GWC believes that this agreement should be a model for all employers within the service.

### 3. Monitoring and Review

3.1 The GWC will keep this agreement under review against best practice as it develops inside the NHS and elsewhere.

3.2 NHS employers and local trade union representatives should look together at what progress they are making towards the aims of the GWC agreement within their own local arrangements. They should start with an 'equality audit' to see where they are now and what they need to do. This should cover:

- \* Data on the make-up of the workforce by race, sex, age, disability and contract status (ie. part time).
- \* What equality policies and procedures they have.
- \* Pay and grading.
- \* Their current monitoring processes.
- \* Based upon the results of the audit, a plan should be agreed about what is to be done towards meeting the aims of the agreement over the coming year. The audit should then become an annual event. Guidance on the conduct of an equality audit will be developed separately. Where under-representation of particular racial groups or of a particular sex is identified, employers should take advantage of the positive action provisions in the discrimination legislation, assuming that the detailed conditions in the legislation are met. Guidance on positive action will be developed separately.

### 4. Complaints

4.1 An agreed complaints procedure should be available for any person who believes that this agreement is not being applied to them. All complaints will be taken seriously and dealt with quickly, and no one will be told about the complaint without appropriate permission. Agreed procedures should provide for the complaint being dealt with at local level.

5. Definitions

- 5.1 Where the term 'requires' is used in this agreement, this denotes a requirement set down in law.
- 5.2 Where 'should' is used, this denotes that the GWC has an agreement to that effect.
- 5.3 The agreement contained in the handbook should be taken as policy by participating NHS employers. Any advice on best practice should be taken as being recommended by the GWC.
- 5.4 Where it is recommended that employers and local trade union representatives agree arrangements, any advice on best practice is there for guidance.

6. Scope

- 6.1 Each of the key areas to be addressed through this agreement are attached as Sections B to G as follows:
  - B Recruitment, Promotion and Staff Development
  - C Dignity at Work
  - D Caring for Children and Adults
  - E Flexing Work Positively
  - F Balancing Work and Personal Life
  - G Employment Break Scheme
- 6.2 This Agreement including Sections B-G combine and replace the previous agreements as set out in the GWC Handbook - sections 7 to 13. They have been developed based on the legal minima and best practice and policy, thereby anticipating the need for change. The GWC recognises the boundary between areas for agreement at national and local level and there remains significant scope to develop local procedures to inform action.
- 6.3 Further joint guidance on implementation will be developed.
- 6.4 The General Whitley Council recognises that some NHS employers have established procedures, which have been agreed locally with recognised Trade Unions. Where such procedures are consistent with the principles outlined in this agreement, the General Whitley Council would not wish to see them disturbed. However, the Council would expect that such local agreements are reviewed and updated in light of legal and best practice.

## **B: Recruitment, Promotion and Staff Development**

### 1. General

- 1.1 The General Whitley Council (GWC) agrees that, consistent with the delivery of the highest quality healthcare, all NHS employers should have fair and non-discriminatory systems for recruiting, developing and promoting people. Fair and open recruitment procedures should be in place and those people with a responsibility for recruitment should be trained for their role.
- 1.2 Recruitment and promotion procedures should be regularly monitored to identify where and how they can be improved, and to enable the planning of potential positive action initiatives for under-represented groups.
- 1.3 Equality of access to opportunities for the development of skills should apply regardless of hours worked or any other non-standard term in the contract of employment.
- 1.4 Recruitment Agencies used for finding permanent or temporary staff should be informed of this agreement and expected to follow fair and objective selection procedures. They should also be informed that their performance will be monitored in line with local arrangements.

### 2. Job and Person Specifications

- 2.1 Before any decision is made to advertise a job, NHS employers should decide that a real vacancy exists and should be clear about requirements of the job. Opportunities for flexibility, as detailed in the Flexing Work Positively section of this agreement, should be assessed and acted upon so as to attract as talented a group of applicants as possible without needless conditions being applied.
- 2.2 Each job should have a written job description and person specification. These should be reviewed every time a vacancy occurs to ensure that they remain relevant and are flexible, including making reasonable adjustments should people with disabilities apply.
- 2.3 Person specifications should outline the genuine minimum requirement, and, where appropriate any Genuine Occupational Qualification (GOQ), necessary for the job to be done effectively. Emphasis should be placed on quality, rather than length of experience, and consideration should be given to experience gained outside paid employment.

### 3. Selection

- 3.1 Selection should always be a competitive process except where a member of staff is being redeployed to accommodate their disability, health needs, maternity, training or other similar situation.
- 3.2 All applicants, where they request it, should be entitled to know reasons why their application has been unsuccessful.

#### Seeking Applicants

- \* All jobs should be advertised except where there is a redundancy exercise in progress.

- \* Advertisements should be designed and placed to attract as wide a group of suitably qualified applicants as possible. Where recruitment agencies are involved they should be made aware of the requirements of this agreement and given clear instructions regarding the employer's policies.
- \* Advertisements should be expressed in clear language and available in a variety of formats. Further information should also be available in large print or on tape, and advice given to applicants should be measurably uniform.
- \* In Wales, all advertisements must be bilingual (Welsh and English) and applicants have the right to apply in either language.

#### Forms of Application

- \* Where application forms are used they should be simple and to the point, requesting only that information which is essential to making an informed decision.
- \* Where written applications would restrict the diversity of applicants, applications other than those in writing should be considered.
- \* Whichever type of application is adopted, a confidential means for monitoring applicants and the success of their application should be agreed at local level.

#### Selection Decision

- \* Everyone involved in selection should be trained in undertaking fair and objective recruitment.
- \* Selection decisions should be carried out by more than one person. Where a panel is appropriate, it should reflect the diversity of the workforce.
- \* Selection should be consistently applied and based upon clear criteria which are in
- \* line with the job description and person specification.
- \* A written record of all decisions should be kept for a minimum of one year.
- \* A means of monitoring the selection process should be agreed at local level.

#### Selection Processes and Tools

- \* Interviews are one means of selecting job applicants. Consideration should be given to the options available. In all cases the process should suit the requirements of the job and be designed to bring out the best in the applicants.
- \* All shortlisted applicants should be asked if they require any particular arrangements to be made in the selection process to enable ease of participation.

4. Promotion

- 4.1 Promotion is a competitive selection process for internal candidates.
- 4.2 Opportunities for promotion should be as widely publicised as possible and open to anyone with either the skills, or potential after training, to meet the requirements of the job description.
- 4.3 Selection processes should apply as above.
- 4.4 All applicants, where they request it, should be entitled to reasons why their promotion has been unsuccessful.

5. Positive Action

- 5.1 As set out in the General Statement, positive action measures are permitted where the conditions set down in legislation are met.
- 5.2 Statements in advertisements, and the appropriate placement of advertisements, can encourage people from under-represented groups to apply.

6. Training and Development

- 6.1 Every new employee should undergo a comprehensive induction programme, including training in equal opportunities policy and practice at work.
- 6.2 Every employee should have a personal training and development plan, which is reviewed annually.
- 6.3 Information on training and development opportunities should be widely publicised and the take up of such opportunities monitored as part of the auditing process.

7. Monitoring and Review

- 7.1 Recruitment policies and practices should be monitored in line with Codes of Practice published by both Statutory Bodies.
- 7.2 Action should be taken by employers to analyse data on recruitment, promotion and training in partnership with local trade unions.
- 7.3 Records on recruitment and promotion, including reasons for decisions to employ or not, should be kept for a minimum of twelve months.



## **C: Dignity at Work**

### 1. Policy

- 1.1 As part of its overall commitment to equality for a diverse workforce, the General Whitley Council (GWC) agrees that NHS employers should aim to create a culture in which all staff have the right to be treated with dignity and respect.
- 1.2 To achieve this, employers should, in partnership with local trade unions, draw up a policy on Dignity at Work, including a procedure for dealing effectively with cases of harassment.
- 1.3 The policy should apply to all staff, contractors and employees of other organisations who are on site, volunteers, visitors and patients at the point of service delivery.
- 1.4 It should be the responsibility of employers through publication and promotion to ensure that all concerned are aware of this policy and of sources of available support; that managers and staff are aware of the expectations which flow from the policy and what to do if these are not met.
- 1.5 There should be appropriate training undertaken to support the promotion of this policy.

### 2. Setting a culture to promote dignity at work

- 2.1 NHS employers and local trade unions should agree what actions will be taken to identify the main causes of harassment or bullying at work and what actions should be taken to remove these causes.
- 2.2 NHS employers have a duty to prevent harassment taking place. Managers have a responsibility to set the standards of acceptable behaviour expected of staff. They should ensure their own behaviour cannot be construed as personal harassment by acting with fairness and equity. This includes using their judgement to correct standards of conduct or behaviour which could be seen as harassment and to remind staff of these standards. Each member of staff carries responsibility for their own behaviour.

### 3. Dealing With Complaints

- 3.1 NHS employers and local trade unions should agree in partnership, a procedure designed to deal with cases where there has been a departure from the Dignity at Work Policy or where there has been an allegation of harassment or bullying.

#### Definitions

- 3.2 Harassment is defined as, 'any conduct based on age, sex, sexual orientation, gender reassignment, disability, HIV status, race, colour, language, religion, political, trade union or other opinion or belief, national or social origin, association with a minority, domestic circumstances, property, birth or other status which is unreciprocated or unwanted and which affects the dignity of men and women at work.'
- 3.3 Bullying is defined as, 'the unwanted behaviour, one to

another, which is based upon the unwarranted use of authority or power'.

- 3.4 In all cases it will be for the recipient to define what is inappropriate behaviour.
- 3.5 "At work" includes any place where the occasion can be identified with either the requirements of the employer, or with social events linked to the same employment. It includes any place where NHS care is delivered.

#### Process

- 3.6 The procedure for dealing with complaints against members of staff should be seen as separate, and different from the Grievance Procedure, and should recognise the difficulties being experienced by complainants.
- 3.7 Separate procedures dealing with complaints by members of staff against patients, visitors or employees of other organisations should be drawn up.
- 3.8 The procedures should advise complainants that they can, if they wish, deal with their complaint informally, by directly requesting the behaviour to stop (or with the assistance of a colleague).
- 3.9 All complaints should be taken seriously and investigated promptly and thoroughly.
- 3.10 For complaints against other staff members:
- \* There should be rights of representation in line with the Grievance Procedure and complainants should have access to trained advisors to help them to deal with the process of complaint
  - \* There should be specific provision within the procedure to deal with cases where the alleged harasser manages, or is managed by, the complainant.
  - \* An alleged harasser should have the right to be informed in writing of the complaint made against them.
- 3.11 A formal complaint should trigger an investigation, with the investigator(s) operating outside their normal area of responsibility.
- \* Investigators should be trained in the skills of objective investigation, interviewing and report writing.
  - \* The investigator(s) should produce a factual report in reasonable time for presentation to the relevant reporting manager.
  - \* It is the responsibility of the reporting manager to produce an outcome to a valid complaint which offers a remedy which may include mediation.

\* The reporting manager will decide whether the Disciplinary Procedure needs to be invoked for the alleged harasser.

3.12 Confidentiality should be maintained as far as is compatible with thorough investigation and the effective handling of each case, and steps should be taken to ensure that complainants and witnesses remain free from victimisation.

\* When a complaint turns out not to be made in good faith, the reporting manager should decide whether the Disciplinary Procedure be invoked for the complainant.

#### Appeals

3.13 The procedure should allow for either party to appeal.

3.14 The complainant may appeal if it is felt that the process of investigation and subsequent application, or not, of the Disciplinary Procedure has been unfairly or poorly carried out or agreed. There should be no appeal allowed to the complainant against the perceived severity or leniency of the disciplinary action taken.

3.15 The alleged harasser may appeal if it is felt that the process of investigation or subsequent application of the Disciplinary Procedure has been unfairly or poorly carried out or agreed. Appeal may also be allowed to the alleged harasser against the perceived severity of the disciplinary action taken.

#### 4. Monitoring and Review

4.1 Provision should be made for managers to monitor complaints and their outcomes in partnership with local trade union representatives.

4.2 Monitoring arrangements should be capable of seeking out the causes of harassment and bullying so as to remove them from the organisation.

**D: Caring for Children and Adults**

1. General

- 1.1 The General Whitley Council (GWC) agrees that all NHS employers should have a carer's policy to address the needs of people with caring responsibilities. See Employment Relations Act for definition of 'carer'.
- 1.2 The policy should seek to balance the requirements of delivering a first class service with the needs of employees: to find the most effective means of supporting those with carer responsibilities as part of a wider commitment by the NHS to improve the quality of working life.
- 1.3 The policy should also be seen as operating with Balancing Work and Personal Life, Employment Break Schemes and Flexing Work Positively covered in other sections of this agreement.

2. Childcare

- 2.1 Childcare covers a range of care choices for children from birth up to age 14 years.
- 2.2 Before deciding policy, employers should conduct a comprehensive cost-benefit analysis so that realistic policies can be agreed.
- 2.3 Policy should then be drawn up jointly between employers and local trade union representatives. This should cover:
  - \* The childcare needs of people relative to matters such as place of work, working patterns (including shift patterns) and hours worked.
  - \* Policy on childcare support particularly related to specific difficulties in recruiting and retaining people in certain job categories.
  - \* Equality of access to childcare and affordability respecting the diversity of personal domestic circumstances.
  - \* Guidelines on eligibility.
  - \* How the policy relates to other sections, in particular those covering leave arrangements and flexible working.
  - \* The range of options open to carers, ie. creche facilities, childminders, workplace nurseries, allowances, school and holiday playschemes, term time contracts etc. The policy should be clear as to why certain options are available.
  - \* Partnership options with other employers and trade unions.
- 2.4 Allocation of senior management responsibility for the operation and monitoring of the policy.
  - \* Monitoring should be done annually and should review rates of take-up of provisions set against the overall

potential needs of parents.

- \* Where a decision is taken not to offer particular forms of childcare, the policy should indicate where other arrangements are available to support people with childcare responsibilities, and what alternative ways of working exist.

### 3. Other Care

3.1 NHS employers should have clear policies for the recognition of other forms of care. These may include care for dependent adults or children from the extended family, or care for those with whom the employee has a close personal relationship.

3.2 Many of the policies related to childcare will have relevance to other forms of care. For example the planning process for checking out what would help, eligibility criteria and ensuring equality of access. These should be considered when drawing up a carer's policy.

### 4. Monitoring

4.1 Applications and take up of care facilities should be recorded and monitored by managers in partnership with local trade union representatives.

**E: Flexing Work Positively**

1. General

- 1.1 The General Whitley Council (GWC) agrees that NHS employers should develop positive flexible working arrangements which allow people to balance work responsibilities with other aspects of their lives.
- 1.2 Employers are required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff and job applicants under the Disability Discrimination Act and returning from maternity leave, (see section six of the GWC Handbook.)
- 1.3 New working arrangements should only be introduced by mutual agreement, whether sought by the employee or the employer.
- 1.4 Flexible working should be part of an integrated approach to the organisation of work and the healthy work / life balance of staff.
- 1.5 Policies for flexible working should be made clear to all employees.
- 1.6 Employers should develop policies on flexible working, which, as far as is practicable, should include:
  - \* Part time working, where a person works to a pattern and number of hours by mutual agreement.
  - \* Job sharing, where two or more people share the responsibilities of one or more full time job(s), dividing the hours, duties and pay between them.
  - \* Flexi-time, where employees can choose their own start and finish time around fixed core hours.
  - \* Annual hours contracts, where people work a specific number of hours each year, with the hours being unevenly distributed throughout the year.
  - \* Flexible rostering, using periods of work of differing lengths within an agreed overall period.
  - \* Term time working, where people work during the school term but not during school holidays.
  - \* School time contracts.
  - \* Teleworking, where people work from home for all or part of their hours with a computer or telecommunication link to their organisation.
  - \* Voluntary reduced working time, where people work reduced hours by agreement at a reduced salary.
  - \* Fixed work patterns, where, by agreement, days off can be irregular to enable, for example, access by separated parents to their children and flexible rostering.

- \* Flexible working arrangements should be available to all employees.
  - \* All jobs should be considered for flexible working unless there is a clear, demonstrable operational reason why this is not practicable.
  - \* There should be a clear procedure for application for flexible working, agreed by employers and local trade union representatives.
- 1.7 All people with flexible working arrangements should have access to standard terms and conditions of employment, on an equal or pro rata basis, unless different treatment can be justified for operational reasons.
- 1.8 Where a request for flexible working is refused, a written reason should be provided to the applicant.

2. Monitoring and Review

- 2.1 Applications and outcomes should be monitored annually, in partnership with local trade unions.
- 2.2 Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness.
- 2.3 Applications and outcomes, from both employer and employees, should be recorded and kept for a minimum of one year.

**F: Balancing Work and Personal Life**

1. General

- 1.1 NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments.
- 1.2 Leave arrangements should be part of an integrated policy of efficient and employee friendly employment practices, and this part of the agreement should be seen as operating in conjunction with other sections, particularly the Employment Break Scheme, Flexing Work Positively and Caring for Children and Adults sections.
- 1.3 Arrangements should be agreed between employers and local trade union representatives.
- 1.4 A dependant is someone who is an employee's parent, wife, husband, partner, child or is someone who relies on the employee in a particular emergency.

2. Forms of Leave

Parental Leave

- 2.1 This should be a separate provision from either maternity or paternity leave and should provide an untransferable individual right to at least 13 weeks leave (18 weeks if child is disabled). Leave is normally unpaid, but may be paid by local agreement.
- 2.2 Parental leave should be applicable to any employee with twelve months service in the NHS who has nominated caring responsibility for a child under age 14(18 in cases of adoption or disabled children).
- 2.3 Leave arrangements need to be as flexible as possible, so that leave may be taken in a variety of ways by local agreement. Parental leave can be added to periods of paternity or maternity leave.
- 2.4 Notice periods should not be unnecessarily lengthy and should reflect the period of leave required. Employers should only postpone leave in exceptional circumstances and give written reasons. Employees may also postpone or cancel leave that has been booked with local agreement.
- 2.5 During parental leave the employee retains all of his/her contractual rights, except remuneration, and should return to the same job after it. Pension rights and contributions shall be dealt with in accordance with NHS Superannuation Regulations. Periods of parental leave should be regarded as continuous service.
- 2.6 It is good practice for employers to maintain contact (within agreed protocols) with employees while they are on parental leave.



### Paternity Leave and Pay and Ante-Natal Leave

- 2.7 There will be an entitlement to two weeks paid paternity leave per birth.
- 2.8 This will apply to biological and adoptive fathers, nominated carers, and same sex partners.
- 2.9 Eligibility will be twelve months service. Those with less service will be entitled to unpaid leave subject to local agreement.
- 2.10 Local agreements should specify the period during which leave can be taken and whether it must be taken in a continuous block or may be split up over a specific period.
- 2.11 An employee must give his employer a completed form SC3 Becoming a parent at least 28 days before they want leave to start.
- 2.12 Reasonable paid time off to attend ante-natal classes will also be given.

### Adoption Leave and Pay

- 2.13 This will be available to people wishing to adopt a child and who have primary care responsibilities for that child.
- 2.14 The leave should cover official meetings in the adoption process as well as time after the adoption itself.
- 2.15 The agreement for time off after the adoption should cover circumstances where the child is initially unknown to the adoptive parents. If there is an established relationship with the child, such as fostering prior to adoption, time off for official meetings only should be considered.
- 2.16 Where the child is below age 18 adoption leave and pay will be in line with the maternity leave and pay provisions which are set out in Section 6 of the GWC Handbook.
- 2.17 If the same employer employs both parents the period of leave and pay may be shared. If one parent is identified as the primary carer, then s/he should be entitled to the majority of the leave with the other person being entitled to paternity leave and pay.

### Leave/Time Off for Domestic Reasons

- 2.18 This form of leave should cover a range of needs, from genuine domestic emergencies through to bereavement.
- 2.19 The agreement should cover all employees.
- 2.20 There will be no service qualification for this form of leave
- 2.21 Payment may be made by local agreement, but the expectation is that relatively short periods of leave for emergencies will be paid.

2.22 If the need for time off continues, other options may be considered, such as a career break.

2.23 Applicants for the above forms of leave should be entitled to a written explanation if the application is declined.

2.24 Appeals against decisions to decline an application for leave should be made through the Grievance Procedure.

3. Monitoring and Review

3.1 All applications and outcomes should be recorded, and each leave provision should be annually reviewed by employers in partnership with local staff side representatives.

**G: Employment Break Scheme**

1. General

- 1.1 The General Whitley Council (GWC) agrees that NHS employers should provide all staff with access to an Employment Break Scheme.
- 1.2 The scheme should be agreed between employers and local trade union representatives.
- 1.3 The scheme should be viewed with other sections in this agreement, particularly the Flexing Work Positively, Balancing Work and Personal Life and Carer sections, as part of the commitment to arrangements which enable employees to balance paid work with their other commitments and responsibilities.
- 1.4 The scheme should also enable employers to attract and retain the experience of staff consistent with the NHS commitment to the provision of high quality healthcare.
- 1.5 The scheme should provide for people to take a longer period away from work than provided for by the parental leave and other leave arrangements.

2. Scope

- 2.1 The scheme should explicitly cover the main reasons for which employment breaks can be used, including childcare, eldercare, care for another dependant, training, study leave or work abroad. It should also indicate that other reasons will be considered on their merits.
- 2.2 People on employment breaks will not normally be allowed to take up paid employment with another employer, except where, for example, work overseas or charitable work could broaden experience. In such circumstances written authority from the employer would be necessary.

3. Eligibility

- 3.1 The scheme should be open to all employees who have a minimum of 12 months service.
- 3.2 Applications should be submitted in writing and notice periods should be clearly stated in an agreement between the employee and employer.

4. Length of Break

- 4.1 The maximum length of break should be five years.
- 4.2 Breaks should be able to be taken either as a single period or as more than one period.
- 4.3 The minimum length of break should be three months.
- 4.4 The length of any break should balance the needs of the applicant with the needs of the service.
- 4.5 The scheme should have provision for breaks to be extended with

appropriate notice, or for early return from breaks.

4.6 All breaks should be subject to an agreement between the employer and applicant before the break begins. The agreement should cover:

- \* The effect of the break on various entitlements related to length of service.
- \* A guarantee that, if the applicant returns to work within one year, the same job will be available, as far as is reasonably practicable.
- \* If the break is longer than one year, the applicant may return to as similar a job as possible.
- \* Return to work at the equivalent salary level, reflecting increases awarded during the break.
- \* The notice period required before the return to work should be two months if the break is less than a year and six months if the break is more than a year.
- \* Arrangements for keeping in touch during the break.
- \* Requirements on the applicant to keep up to date with their relevant professional registration needs, including attendance at specified training courses and conferences, and any assistance the employer may give in the support of this.
- \* Training arrangements for re-induction to work.
- \* Any other conditions required either by the employer or the applicant.

## 5. Return to Work

5.1 Applicants should not have to resign to take an employment break, although there will be a change to the contract of employment.

5.2 The period of the break should count toward continuous employment for statutory purposes.

5.3 Other provisions depending upon length of service, ie. pensions, contractual redundancy payments, leave entitlements etc., should be suspended for the period of the break.

## 6. Appeals

6.1 Applicants should be entitled to a written reason for the refusal of any application.

6.2 Applicants may resort to the Grievance Procedure if a request for a break is refused.

## 7. Monitoring and Review

7.1 All records of applications and decisions should be kept for a minimum of 12 months.

7.2 The operation of the scheme should be monitored annually by employers in partnership with local trade union representatives.

SECTIONS 8 TO 11 (UNALLOCATED)

**SECTION 11**  
**JOB SHARING IN THE NHS**

**INTRODUCTION**

1. The General Whitley Council believes that all staff should be able to make a full contribution to the MHS at different stages of their working lives. Rigid adherence to patterns of full- time working may inadvertently discriminate against staff, women in particular, and so make it more difficult to retain staff and encourage women to return to work especially after a period of maternity leave. Accordingly the council recommends that each authority should establish, in consultation with staff and local staff representatives, a job-sharing scheme which would provide more flexible employment arrangements.

**DEFINITION**

2. The General Whitley Council defines job-sharing as a way of working where the duties and responsibilities of a post would normally be held by one individual are shared. The Council believes that a more positive approach to job- sharing will help to create a climate in which flexible employment practices can be agreed and be an important way of ensuring that the NHS is well placed to recruit and retain staff.
3. Whilst it will be for each employing authority, in consultation with staff and local staff representatives, to determine practice details, the General Whitley Council recommends that job- sharing schemes should take account of the points set out below. Where a scheme or alternative framework already exists, employing authorities should ensure that their arrangements address the issues below.

**SCOPE AND APPLICATION**

4. The scheme should state clearly the scope of its application, The general Whitley Council recommends that managers should consider the possibilities for job- sharing within their authority, with the presumption that any post is suitable for job- sharing unless it can be positively demonstrated otherwise. Advertisements, information packs and job descriptions should indicate where a post is open to job- sharers and procedures for making applications to job- share should be clearly stated. The GWC recommends that all employees should be able to apply to share their existing job. A "job-share register" listing employees and others willing to share a post should be compiled.

**GENERAL CONDITIONS**

5. The scheme should state clearly that each partner in a job- share has an individual statement of employment terms, covering salary increments, entitlement to additional payments, leave, long service leave, public and statutory holidays, sick pay entitlements, access to superannuation, cover arrangements and procedures which apply when one partner leaves. The allocation of hours will be agreed between the post holders and the authority and varied only by agreement of all parties. Employing authorities will want to ensure that they advise employees entering into a job- share partnership of any loss

of entitlements or statutory rights which depend on the number of hours worked.

i. Salary

Job- sharers should be paid the salary for the grade of the post pro- rata to the hours worked. Increments, allowances and other payments made under functional council agreements should be determined on an individual basis and also paid pro- rata.

ii. Circumstances when excess hours payments may be made

Payment for excess hours working should e determined in accordance with agreements of the appropriate functional council

iii. Cover for job- share partner

The scheme should make plain that Job- Sharers are not made to cover for their partner's absences.

iv. Overlap between Job- Share Partners

Job- Share schemes should cover arrangements for overlap between partners.

v. Leave, Public Holidays and Extra Statutory Days

Leave entitlement should be determined individually on a pro- rate basis in accordance with appropriate arrangements. Public and extra statutory holidays should also be divided by agreement between job- share partners and their employing authority.

vi. Position of Job- Share when Partner Leaves Post

The remaining partner may be offered the post on an individual basis. If the job- sharer does not wish to work the hours demanded by the post, the vacant job- share should be advertised in accordance with the normal procedure. The job- share register should also be consulted. If no job- sharer can be recruited within a reasonable period, the employing authority will need to consider the possibility of the existing job- sharer moving to a commensurate post or working part- time in the same post.

**TRAINING**

6. Employing authorities should ensure that job - sharers training arrangements and educational opportunities are no less favourable than those for full - time employment.

**PROMOTION**

7. Job- sharers should be able to apply, whether individually or jointly, for promotion on equal terms with full- time employees.



SECTION 12  
SPECIAL LEAVE FIOR DOMESTIC,  
PERSONAL AND FAMILY REASONS

1. The General Whitley Council attaches considerable importance to each health authority drawing up clear policies for the consideration and approval of special leave for domestic, personal and family matters. The objective of such leave is to help staff balance the demands of domestic and work responsibilities and times of urgent and unforeseen need through the provision of paid or unpaid leave according to circumstances. Leave granted under these arrangements is not intended for long term domestic and family needs which may be provided for example by the retainer scheme arrangements (Section 10)

Range of leave provision

2. Examples of special leave under this handling may be

Carer Leave

The aim of such leave, is to provide a compassionate response to immediate needs. The leave will be essentially short term and normally with pay. The needs covered will be arising from the many and varied domestic situations which from time to time arise e.g. bereavement; illness of a child, close relative or dependent; breakdown of normal career arrangements for longer term coping with a care problem.

Adoption Leave

The nature of this leave will largely be determined by 1) the requirements of the formal adoption procedures, 2) when the child first comes under the adoptive parents full time care and attention, 3) the age of the child and any special home care needs,. There may be other special and particular needs to be taken into account.

Paternity Leave

Such leave may be made available at the time of the birth, or if more helpful to the family, in the weeks following the birth e.g. when the mother and baby leave hospital

Procedure

3. Each health authority should provide clear guidelines in consultation with staff and local staff representatives on the length of special leave which would normally be available, whether it should be paid or unpaid and on the procedures for applying for such leave. The application of these guidelines will have to take account of the particular needs and circumstances of each individual.

Appeals

4. Any appeals arising from the application of this agreement will be for resolution through local grievance procedures, and shall not be appealable beyond employing authority level.

**SECTION 13**  
**EQUAL OPPORTUNITIES: AN ENABLING AGREEMENT ON**  
**RECRUITMENT AND SELECTION PROCEDURES**

1. The General Whitley Council reaffirms its commitment to promoting equality in NHS employment. It regards fair recruitment, selection and staff development policies and practices as an essential contribution in ensuring equal opportunities in employment. The General Whitley Council believes that it is in the interest of NHS Employers to recruit, retain and develop the potential of all staff, This requires them to ensure that all discriminatory barriers to employment and advancement are removed.
2. The General Whitley Council recommends NHS Employers to agree with staff and local staff representatives a recruitment, selection and monitoring policy which aims to ensure that no job applicant or employee is discriminated against either directly or indirectly. NHS employers may also need to consider how problems of under-representation of particular groups in its workforce at any or all levels can be addressed and where necessary take remedial action.
3. To obtain the commitment of all staff and management to equal opportunities, the local policy should be included in staff handbooks and widely promulgated to all employees. Staff should be kept informed of the progress towards implementation of the policy through house journals or other appropriate channels.

LEGISLATION AND GUIDANCE

4. The race Relations Act 1976 and the Sex Discrimination Acts 1975 and 1986 provide that it is unlawful for an employer to discriminate on the grounds of race, sex, or marriage in offering employment or in the terms of employment. The General Whitley Council urges employing authorities to take account of the Codes of practice relating to racial and sexual discrimination issued by the Commission for Racial Equality and Equal Opportunities Commission. (see Annex)

LOCAL POLICIES AND PRACTICES

5. The General Whitley Council believes that as a guiding principle, NHS employers should aim in their workforce to reflect, at all levels and in all staff groups, the local community that they serve. As a matter of good practice the Council suggests that the following issues be addressed:
  - a) Recruitment and Selection Procedures

The introduction and exact nature of local policies and practices should be for local determination. Employing authorities should consider taking positive action to encourage applications from women and people of particular racial or ethnic groups in areas where they been under-represented. The following positive action in the field of recruitment is recommended.

- (i) Advertising vacancies simultaneously both internally and externally.
- (ii) Placing job advertisements in ethnic minority papers and magazines
- (iii) Including an appropriate short equal opportunities statement in all

advertisements.

- (iv) Recruiting drives to involve job- centres, schools, colleges, careers offices or local community groups located in areas where under-represented groups are concentrated.
- (v) Producing recruitment literature in ethnic minority languages, and where illustrations are used, including people from ethnic minorities, women and the disabled.
- (vi) Establishing pre- reemployment training schemes to prepare people for particular work and so increase the number of well- qualified candidates to which an employer can turn.
- (vii) Indicating in advertisements facilities for job sharing, flexible working arrangements and child care provision.

b) Shortlisting and Interviewing

- i) Staff involved in the recruitment process should receive the required training in equal opportunities, interviewing skills and where necessary, refresher training. It is also suggested that, in order to enlarge the pool of trained interviewers, women and those from ethnic minorities should be encouraged to undergo such training.
- ii) Employers are urged to ensure that job descriptions and person specifications are drawn up and made available to all applicants. These should include the specific duties, skills, qualifications and personal qualities necessary for the post. All decisions concerned with Shortlisting and appointment, including those questions asked at interview, should be according to the recorded criteria; the reasons for decisions to select or reject candidates should be recorded and made available to candidate, if requested. Questions at the interview should not relate to domestic circumstances of the applicant.
- iii) It is recommended that clear and simple application forms are used for recruitment to all posts.
- iv) Where it is practically possible, more than one person should be involved in the Shortlisting and interviewing process which would normally include women and members from ethnic minorities.

c) Promotion, Training and Staff Development

- i) Equality of access to training has an important role in promoting and developing the potential of all staff. Training and staff development opportunities should be made known and available to all eligible employees, including part time staff and those with carer responsibilities, in a way which does not exclude or disproportionately reduce the numbers of applicants from a particular group.
- ii) Where particular groups of staff are under- represented in certain jobs, employing authorities should consider providing training or educational courses to encourage people from these work groups to take advantage of opportunities for particular work or to prepare them for promotion.

## MONITORING AND EVALUATION OF EQUAL OPPORTUNITIES PAY

6. To be effective, local policies should be reviewed and evaluated periodically to ensure that progress is being made and that further necessary action can be identified. Employing authorities should use ethnic monitoring information of their workforce (which is required under EL(93) 7 and NHS MEL (1992) :81 in Scotland) in comparison with their local population profile, as the foundation for the development of local equal opportunities policies and recommends that similar information is collected on the basis of gender. In addition, it is suggested that employing authorities also keep data on applicants for jobs, shortlisted aspirants, and those put forward for training, indicating their ethnic origin, gender, marital status and whether they have any disability. All information collected must be held and used on a strictly confidential basis.

7. Employing authorities can use the data produced to ensure that their workforce, at all levels, reflected the local community of working age. An ongoing comparison of the make up of the workforce with the local population profile is the only way of knowing whether equal opportunities are being effectively implemented. This information could be used to show, for example, whether there is evidence that individuals from particular groups are:

- Recruited and promoted in appropriate numbers;
- Under represented in particular grades or posts in the organisation structure and over represented in others; or
- Under represented on training courses or programmes.

If evidence suggests that the policy is ineffective, appropriate action should be taken.

8. The reason for collection of information on the ethnic composition of the workforce can be misunderstood. In order to avoid this, the chosen method should be discussed and agreed with staff and their local representatives.

ANNEX

RELEVANT LEGISLATION and GUIDANCE

Race Relations Act 1976

Sex Discrimination Acts 1975 and 1986

Equal Pay Acts 1970 and 1983

Commission for Racial Equality: Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment.

Equal Opportunities Commission: Code of practice for The Elimination of Discrimination on the Grounds of Sex and Marriage and the Equality of Opportunity in Employment.

Useful addresses

Commission for Racial Equality

Elliot House  
10-12 Allington Street  
London SW1E 5EH Telephone: 071 828 7022

Equal Opportunities Commission

Overseas House  
Quay Street  
Manchester M3 3HN Telephone: 061 833 9244

King Edward's Hospital Fund for London

14 palace Court  
London WC2 4HT Telephone 071 727 0581

Documents issued by the National Health Service Management Executive

EL (93) 7 Ethnic Monitoring of NHS Staff issued on 28 February 1993  
Non- Medical Workforce Census - September 1993, (Guidance on Changes)  
issued 14 May 1993

Document Issued by the Management Executive, in Scotland

NHS MEL (1992):81 Ethnic Monitoring and Staff Development issued on 30  
December 1992.

SECTIONS 14 TO 21 (UNALLOCATED)

## SECTION 22

### SUBSISTANCE ALLOWANCES

#### Part I: GENERAL PROVISIONS

1. The primary purpose of travel and subsistence allowances is to reimburse 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.

#### EXCLUSIONS

2. The provisions of this Part do not apply to certain staff employed in Regional Blood Transfusion Services. Such staff may be governed by the provisions of Part II.
3. The provisions of paragraph 11 do not apply to employees within the purview of the Ancillary Staffs Council who are, in this respect, subject to separate provisions which are set out in the Ancillary Staffs Council Handbook. The application of this section to Hospital Medical and Dental staff, or doctors in community medicine and the community health service, is subject to modifications set out in their respective Terms and Conditions of Service Handbooks.

#### GENERAL CONDITIONS OF NIGHT SUBSISTENCE

4. Short Overnight Stays in Hotels, Guest Houses and Commercial Accommodation
  - 4.1 When an employee stays overnight in a hotel, guest house or other commercial accommodation with the agreement of his/her line manager, the overnight costs will be reimbursed as follows:-
    - (a) the actual, receipted cost of bed and breakfast up to a normal maximum limit of £55: plus
    - (b) a meals allowance of £20 to cover the cost of a main evening meal and one other day time meal.
  - 4.2 In exceptional cases where the maximum limit is exceeded for genuine business reasons (eg. the choice of hotel was not within the claimant's control or cheaper hotels were fully booked) additional assistance may be granted at the discretion of the employing authority.
5. Short Overnight Stays in Non-Commercial Accommodation
  - 5.1 Where an employee stays for short overnight periods with friends or relatives or in caravan accommodation, a flat rate of £25 is payable. This includes an allowance for meals. No receipts will be required.
  - 5.2 Employees staying in accommodation provided by the employing authority or host organization shall be entitled to an allowance to cover meals which are not provided free of charge (up to a total of £20)

5.3 Where accommodation and meals are provided without charge to employees eg. on a residential training course, an incidental expenses allowance of £4.20 will be payable. All payments of this allowance are subject to the deduction of appropriate tax and national insurance contributions via the payroll system.

6. Travelling Overnight in a Sleeping Berth (Rail or Boat)

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

7. Short Term Temporary Absence Travel Costs

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

8. Long Term Overnight Stays

8.1. After the first thirty nights stay in the same location, the entitlement to night subsistence shall be reduced to the maximum rates set out in paragraph 4 of Appendix A. Meals allowances are not payable to these employees. Those who continue to stay in non-commercial accommodation will continue to be entitled to the rates set out in paragraph 3 of Appendix A.

**CONDITIONS FOR DAY MEALS SUBSISTENCE**

9.1. A meal allowance is payable when an employee is necessarily absent from home and more than five miles from headquarters by the shortest practical route, on the business of the employing authority. Day meals allowance rates are set out in paragraph 5 of Appendix A. These allowances are not paid where meals are provided free at the temporary place of work.

9.2. A day meals allowance is payable only when an employee necessarily spends more on a meal/meals than would have been spent at the employee's headquarters. An employee shall certify accordingly on each occasion for which day meals allowance is claimed but a receipt is not required.

9.3. 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 1200 hours to 1400 hours. 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 19.00 hours 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 exception to the rules may be met at the discretion of the employing authority.

9.4. The scope and level of any other payments will be determined by the employing authority according to local needs on a vouched basis.



### Late Night Duties Allowance

10. An employee who is registered to work late at night in addition to a day duty may be paid an evening meal allowance of £3.25. It will be for the employing authority to determine who will be entitled and in what circumstances.

10.1 Late Night Duties Allowance will be subject to deduction of appropriate tax and national insurance contributions via the pay-roll system.

**PART II: SPECIAL INTERIM PROVISIONS FOR BTS STAFF WHO ARE REGULARLY ENGAGED IN ATTENDANCE AT BLOOD DONOR SESSIONS**

9. The provisions of this Part apply to staff employed in Regional Blood Transfusion Services who:
- i. are regularly engaged in attendance at blood donor sessions
  - ii. were appointed on or before 31 May 1989
  - iii. have not opted out of these provisions under the terms of paragraph 7.2.6 of Part I.
10. The classification of employees for the purpose of paying subsistence allowances will be as follows:

Class I. Employees in grades with national salary scale maximum above that of the senior Administrative grade.

Class II. Employees in all other grades.

Initially the position of a grade should be determined as at 31 March 1966 and the classification of that grade should not be altered as a result of changes in the maximum of the Senior Administrative salary scale or of the grade unless the General Council so determine because a new enduring relativity of the grade to the Senior Administrative grade has been established<sup>1</sup>. The position of a new grade should be determined by comparison of the salary scale maximum at the date of its introduction with the salary maximum current in the Senior Administrative grade.

**GENERAL CONDITIONS**

11. Subject to the conditions in paragraph 15 below, subsistence allowances should be payable as follows:-

11.1 Night allowances

11.1.1 A night subsistence allowance shall be payable in respect of each night when employees are necessarily absent from their home and headquarters on the business of the employing authority. When it is necessary for an employee to work or stay overnight in London within a 4-mile radius of King Charles I's statue at Charing Cross, special allowances shall be payable.

11.1.2 For the first 30 nights' stay in the same place the maximum allowances payable shall be as set out in paragraph 1 of Appendix B to this Section.

11.1.3 After the first 30 nights' stay the allowances shall be reduced to those set out in paragraph 2 of Appendix B to this Section.

11.1.4 A night allowance shall be deemed to cover a single period of absence of 24 hours.

11.2 Day allowances. A day allowance in respect of duties not

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<sup>1</sup> The General Council has determined that under this provision Class I includes Registrars and Group Engineers with 24½ or more points.

involving a night's absence shall be payable at the rates met out in paragraph 3 of Appendix 3 to this Section when employees are necessarily absent from their home and headquarters

#### **TRAIN MEAL ALLOWANCES**

12. The following arrangements shall apply when an employee has a main meal on a train or boat during a period for which there is an entitlement to day subsistence:
  - 12.1 The cost of the meal (including VAT) will be reimbursed in full subject to the production of vouchers. In addition gratuities of up to 10% of the actual cost of the bill (not 10% of the total including VAT), or a service charge included in the bill, may be reimbursed.
  - 12.2 The number of main meals in respect of which the cost may be reimbursed in full during any period of day absence, and the day subsistence allowances payable, if any, are:
    - 12.2.1 For an absence of more than 5 hours but not more than 8 hours: 1 main meal on train or boat;
    - 12.2.2 for an absence of over 8 hours: 1 main meal on train or boat plus the normal 5-8 hour rate of day subsistence, or 2 main meals on train or boat.
  - 12.3 For the purpose of this paragraph a "main meal" is defined as a full breakfast, lunch, high tea or dinner, but excludes alcoholic beverages.

#### **VERY LONG ABSENCES**

13. Where employees are absent for more than 12 hours and it is not reasonable for them to have breakfast at home before travelling a special supplement of the amount of the appropriate 5-8 hour allowance may be paid in addition to the over 8 hour allowance. If the breakfast is taken on a train or boat it may be counted as a main meal for the purposes of paragraph 12 above. In this case the total of the allowance for the day shall be subject to the limit of the vouched actual cost of two train meals plus the normal day subsistence allowance for an absence of more than 5 but not more than 8 hours.

#### **ABNORMALLY HIGH EXPENSES**

14. Exceptionally, an employee may necessarily incur abnormally high expenses which are not covered by the standard night allowance. Such instances may arise, for example, when an employee accompanies a member of a health authority on NHS business and necessarily stays in the same hotel; or because of an unusually high local demand for hotel accommodation. In such cases, a health authority shall pay the total amount of the expenditure provided that the employee produces satisfactory evidence of the amount necessarily and reasonably spent on accommodation and main meals during the period for which night subsistence is payable. Service charges and VAT which are included in bills may be admitted.

## CONDITIONS OF PAYMENT

15. Subsistence allowances shall be subject to the following conditions:-

### 15.1 Night allowances.

- 15.1.1 No allowances shall be payable in respect of any period during which accommodation and subsistence are provided without charge at a hospital which is being visited.
- 15.1.2 Where free accommodation is provided at a hospital visited but meals are charged for (or vice versa) a suitably adjusted allowance shall be payable.
- 15.1.3 Where accommodation and subsistence are provided without charge to employers on a residential training course, such incidental expenses as laundry costs, telephone calls home, etc, shall be met by the payment of an allowance as set out in paragraph 4 of Appendix B to this Section, per twenty four hour period for the duration of the course.
- 15.1.4 Reduction in allowance by one half where sleeping- car accommodation is engaged.

### 15.2 Day allowances.

- 15.2.1 Day allowances are payable only when employees necessarily spend more on meals than they had been at their permanent station. Employees should certify accordingly on each occasion for which day subsistence allowance is claimed. Employees claiming subsistence allowance for a period of more than eight hours should certify that they have necessarily incurred expenditure on an additional meal.
  - 15.2.2 No allowance shall be payable where the place visited is within three miles of the employee's normal place of duty by the shortest practicable route.
  - 15.2.3 No allowance shall be payable where employees, while on a visit, take their meals at home.
  - 15.2.4 When employees are operating for a period at any one place they shall be eligible for only half the standard rates after the first week at that place.
  - 15.2.5 Employees in grades entitled to Class II allowances are entitled to claim Class I day allowances when they accompany health authority members or employees who are entitled to Class I allowances.
- 15.3 Vouchers. Vouchers are required to be produced in support of the train meal allowances as met out in paragraph 12 and in support of claims for very long day absences and abnormally high expenses as provided for in paragraph 13 and 14 respectively.

## LATE NIGHT DUTIES

16. Employees who are required to work late at night in addition to an ordinary day duty may be paid an evening meal allowance at the rate set out in paragraph 5 of Appendix B to this Section if they certify that they have purchased an evening meal which they would otherwise have taken at home. Exceptionally, where an employee necessarily has to spend more than this on a deal the health authority may, at its discretion, reimburse actual vouched expenditure provided it is satisfied that the expenditure was reasonable in the circumstances.

### 16.1 The allowance is not payable to:

16.1.1 Employees whose conditions of service envisage it as normal for them to work or to be an call at night, eg medical, dental and nursing staff and grades such as radiographers and engineers.

16.1.2 Employees whose late duties begin or end at a time when they could reasonably be expected to take a main meal at home.

## SECTION 23

### **TRAVELLING EXPENSES**

1. The provisions of this section apply to all employees except that:-
  - 1.1 The terms of paragraph 2 do not apply to employees within the purview of the Ancillary Staffs Council who are, in this respect, subject to separate provisions which are set out in the Ancillary Staffs Council Handbook.
  - 1.2 The application of this Section to hospital medical and dental staff, or doctors in community medicine and the community health services, is subject to modifications set out in their respective Terms and Conditions of Service Handbooks.

### **REIMBURSEMENT OF TRAVELLING EXPENSES ON OFFICIAL JOURNEYS**

2. Reimbursement of travelling expenses on official journeys, other than journeys for which employees use their private motor vehicles, shall be governed by the following rules:-
  - 2.1 Payment shall be made in respect of expenses necessarily incurred by an employee travelling on business approved by the employing authority.
  - 2.2 The sum paid shall not exceed the amount disbursed by the employee, eg if an employee is entitled to travel first class but in fact taken a second class ticket, only the second class fare can be claimed.
  - 2.3 Expenses incurred in travelling from holiday leave to duty, or vice versa, shall not be allowed unless the employee was recalled for special reasons.
  - 2.4 The cost of journeys or parts of journeys between home and headquarters of base is not allowable. When an employee travels direct from home to the place visited, or vice versa, the actual cost of the journey (subject, however, to an appropriate abatement where part of the journey lies over the normal route between home and headquarters or base) may be reimbursed up to an amount not exceeding the expense of travelling between the employee's headquarters or base and the place visited.
  - 2.5 First class fares shall be payable to employees entitled to Class I subsistence or protected rates of subsistence. Second class fares shall be payable to other employees except when travelling with a member of the employing authority or with another employee who is entitled to travel first class. All employees shall take the fullest possible advantage of any available cheap fares.
  - 2.6 The sum paid may include the amount of extra expenditure necessarily incurred on Pullman Car or similar supplements, reservation of seats, and deposit or portage of luggage.
  - 2.7 Where employees make an overnight journey by rail and engage sleeping-car accommodation the arrangements set out in paragraph 7.1.6 of Section 22 apply, except in the case of staff employed in Regional Blood Transfusion Services where the

arrangements set out in paragraph 15.1.4 of Section 22 apply.

- 2.8 Taxi or cab fares and any reasonable gratuity shall be payable only in cases of urgency or in other cases in which transport is reasonably required and an adequate public service is not available, but where these conditions are not fulfilled employees using a taxi or cab shall be entitled to claim the sum they would have paid had they travelled by public service vehicle.
- 2.9 Payment for travel by a hired motor vehicle other than a taxi or cab shall not exceed the mileage allowance which would have been payable had the vehicle belonged to the employee who hired it; provided that where the employing authority so approves, payment may be increased to an amount not exceeding the actual cost of the hiring.
- 2.10 Payment of travel by air shall not exceed the cost of travel by appropriate alternative means of transport together with an allowance equivalent to the amount of any saving in subsistence expenses consequent on travel by air; provided that where the employing authority decides that the saving in time is so substantial as to justify payment of the fare for travel by air, there may be paid an amount not exceeding:-
- 2.10.1 the ordinary, or any available cheap fare for travel by regular air service; or
- 2.10.2 where no such service is available or in case of urgency, the fare actually paid by the employee.
- 2.11 "Public Service" means any service provided for travel by the public by railway, ship, vessel, hovercraft, omnibus etc and, as an alternative to those modes of transport, and subject to the conditions laid down in 2.10 above, travel by air.
3. For journeys for which employees use their private motor vehicles or Crown cars see Section 24.

#### **ATTENDANCE AT PLACE OF EMPLOYMENT OUTSIDE NORMAL WORKING HOURS**

4. Employees who are required to return to or to attend at their place of employment outside their normal hours of duty in circumstances where they would be entitled to overtime or time off in lieu or to count the time towards qualifying for a long hours gratuity shall be reimbursed any expenses which are in excess of those incurred as a result of their normal attendance at work and which are actually and necessarily incurred in travelling to and from home, on the basis of bus fare or second class rail fare or, if the employee travels by private motor vehicle, on the basis of the public transport mileage (Appendix A to Section 24 refers).? Claims for expenses should not be met when no additional expenditure is incurred, eg when the employees concerned have a season ticket, or where the time lapse between the two periods is sufficiently short for it to be considered reasonable for the employees to remain at or near their offices.

#### **TEMPORARY TRANSFER**

5. Employees (whether single or married) who are required by their employing authority to carry out temporary duties at a place other than their permanent place of employment, and who travel daily to

their temporary headquarters whilst continuing to live near their permanent headquarters, may be reimbursed their excess travelling expenses under the conditions of Section 26.

**CHANGE OF HEADQUARTERS RESULTING FROM AMALGAMATION OF AUTHORITIES OR CONCENTRATION OF AN AUTHORITY'S SERVICES OR FROM ACCEPTANCE OF ANOTHER POST IN CONSEQUENCE OF REDUNDANCY AT PREVIOUS PLACE OF EMPLOYMENT**

6. Employees who are required to change their headquarters as a result of the amalgamation of health authorities or a reorganisation of an authority's services or of their acceptance of another post in consequence of redundancy at their previous place of employment may be reimbursed the whole of their extra daily travelling expenses for a period of 4 years from the date of transfer to the new headquarters. The excess shall be calculated on the basis of bus fares or second class rail fares or, if the employee travels by a private vehicle, on the basis of the public transport mileage rate. (Appendix A of Section 24 refers).



## CROWN CARS, MILEAGE ALLOWANCES AND ASSOCIATED PROVISIONS

1. The provisions of this Section do not apply to hospital medical and dental staff who are, in this respect, subject to separate provisions which are set out in their Terms and Conditions of Service Handbook. Paragraph 305.d of their conditions carries no rights established under this agreement.

### **PART I: CROWN CARS**

2. Employing authorities may offer Crown cars to employees whom they require to be mobile and where they deem it in the interest of the service to do so.
3. The base vehicle (ie the employing authority's assessment of the particular size or type of vehicle appropriate to the post or its financial equivalent) should have an engine capacity no larger than 1800cc. However, this shall not prevent an employee who is willing to pay the excess costs (eg of a large engine capacity or a better equipped car), from choosing a car other than the base vehicle, where the option of private use (see Part IV below) is exercised.
4. Employing authorities shall ensure that proper arrangements are made for the economic servicing, repair, maintenance in a roadworthy condition and replacement of Crown cars.

### **EXISTING EMPLOYEES**

5. Employees who, on the date on which this agreement comes into operation, are required to travel on NHS business and have been classified by the employing authority as 'Regular Car User' (see paragraph 12 below) may continue to receive the regular user lump sum payments and allowances set out in paragraph 2 of Appendix A to this Section for so long as they remain in the same post or until they voluntarily accept a Crown car.

### **NEW EMPLOYEES**

6. New employees (including a first time employee, an existing employee who voluntarily moves to a different post in the same employing authority and an existing employee who moves to another employing authority) who are required to travel on NHS business who prefer to use their own car rather than accept the employing authority's offer of a Crown car, shall not receive the sums described in paragraph 5 above but shall be reimbursed at the rate of mileage allowance in paragraph 1 of Appendix A to this Section.
7. New employees (as defined in paragraph 6 above) who are required by their employing authority to travel on NHS business but to whom the employing authority decides not to offer a Crown car, or where, after joint consideration of the alternative options and the implications for the employee the employing authority decides to withdraw the offer, shall be entitled to the current regular user lump sum and mileage allowances as in paragraph 5 above, provided the qualifications set out in paragraph 12 below apply, or to the Standard Rate of mileage allowances (see paragraph 3, Appendix A of this Section).

#### **WITHDRAWAL OF OFFER OF CROWN CAR TO CURRENT USERS**

8. where after -joint consideration of the current options, including the alternative means of mobility, the employing authority decides not to continue to offer the use of a Crown car to a Crown car user, the employee shall be entitled to the regular use lump sums and mileage allowances set out in paragraph 2 of Appendix A to this Section, provided the qualifications set out in paragraph 12 below apply, or to the standard rate of mileage allowance (see paragraph 3 of Appendix A.

#### **CROWN CARS - REIMBURSEMENT OF COSTS NECESSARILY ONCURRED ON NHS BUSINESS**

9. Costs necessarily incurred by Crown car employees users while on official business shall be reimbursed as follows:
  - 9.1 Petrol: at a rate determined as in paragraph 7 of Appendix A to this Section
  - 9.2 Parking, overnight garaging, tolls and ferries: reasonable parking and garaging expenses (but only when entitled to night subsistence allowance for overnight absence) and actual charges for tolls and ferries necessarily incurred subject in all cases to the production of vouchers or where these cannot be provided an explanation of the reason for the costs.

**PART II: MILEAGE AND OTHER ALLOWANCES**

10. For the purposes of this agreement the term "motor cycles" includes motor cycle combinations, motor scooters and motor assisted bicycles.

**PUBLIC TRANSPORT MILEAGE RATE**

11. Standard or regular user rates of mileage allowance shall not apply if an employee uses a private motor vehicle in circumstances where travel by a public service (eg rail, steamer, bus) would be appropriate. For such journeys the public transport rate at paragraph 1 of Appendix A to this Section shall be paid unless this is higher than the standard or regular user rate for the appropriate engine band, when that lower rate should be paid.

**REGULAR USER ALLOWANCES**

12. The allowances at paragraph 2 of Appendix A to this Section shall be paid to those employees who, on the date on which this agreement comes into operation, are classified by their employing authority as "Regular Car Users" and who choose not, or are unable to, avail themselves of a crown car facility as described in Part I above, or who are new employees as described in paragraph 6 above, and for whom their employing authority has deemed it uneconomic, or is unable, to offer them a Crown car as described in paragraph 7 above, even though they are required by their employing authority to travel on NHS business and, in so doing, either:

12.1 travel an average of more than 3,500 miles a year, or

12.2 travel an average of at least 1,250 miles a year, and

12.21 necessarily use their car an average of three days a week, or

12.2.2 spend an average of at least 50 per cent of their time on such travel including the duties performed during the visits, or

12.3 travel an average of at least 1000 miles a year and spend an average of at least 4 days per week on such travel including the duties performed during the visits.

13. If there is a change in an employee's duties or if the annual official mileage falls below that on which a regular user classification was based, the continued application to the employee of the Regular User agreement shall be reconsidered. Any decreases in the annual official mileage or the frequency of travel which is attributable to either prolonged sick leave or the temporary closure of one place of duty should be ignored for this purpose.

14. Payments of the annual lump sum allowance shall be made in equal monthly instalments over a period from 1 April in any year to 31 March in the succeeding year;

14.1 In the case of employees who talon up an appointment with an employing authority or leave the employment of their employing authority after 1 April in any year the total allowance payable should be so calculated that the amount payable is directly proportionate to a full year's allowance. The calculation of the mileage allowance should thus be in accordance with the

following procedure:

- 14.1.1 the mileage allowance to be paid at the higher rate would, at 9,000 miles per annum, be equivalent to 750 miles per month of service. The excess over 9,000 miles per month of service would be paid at the reduced rate. For example, where the total service in the period 1 April in any year to 31 March in the succeeding year is five months, then up to 3,750 miles would be paid at the higher rate and any excess at the lower rate. Similarly the lump sum should be divided into twelve monthly payments.
  - 14.1.2 when employees leave the employment of their employing authority a calculation shall be made in respect of their entitlement for the portion of the year served with the authority and any adjustments made thereafter.
15. Part months of service shall be regarded as complete months for the purposes of paragraph 14 above. However, a Regular User who leaves the service of one authority and enters the employment of another authority during the same month shall receive only one lump sum instalment for that month, payable by the former employing authority.
16. Where employees entitled to the regular user allowance do not use their car:
- 16.1 As a result of mechanical defect or absence through illness;
    - 16.1.1 the lump sum payment should be paid for the remainder of the months in which the car was out of use and for a further 3 months thereafter. For the following 3 months, payment should be made at the rate of 50% of the lump sum payment. No further payments should be made if the car is out of use for 6 months or longer.
    - 16.1.2 during a period when the car is "off the road" for repairs, out of pocket expenses in respect of travel by other forms of transport should be borne by the employing authority in accordance with the provisions of paragraph 2 of Section 23.
  - 16.2 where maternity leave is granted under section 6 the lump sum payment should be paid for the remainder of the month in which the car was out of use and for a further 3 months thereafter. Payment should be made at the rate of 50% of the lump sum payment for a further 3 months or until the end of maternity leave, whichever is the less. No further payment should be made if the car is out of use for 6 months or longer. Employees not intending to return to work should have payment limited to the period of paid maternity leave granted under paragraph 10 of Section 6.
  - 16.3 As a result of attendance on an approved training course;
    - 16.3.1 the lump sum payment shall continue to be paid throughout the period of attendance on the approved training course.

#### PROTECTION OF EXISTING STANDARD RATES

17. Employees referred to in paragraph 12.1, 12.2 or 12.3 above who prior to 30 May 1975 received mileage allowances calculated by reference to the standard rate of allowance, on the basis provided for in paragraph 18 below, may continue to claim payment of their expenses in accordance with those arrangements but at the following rates, for so long as they remain in the same grade and in the employment of the same employing authority as on 30 May 1975:

	Up to 1000 cc	1001 to 1750 cc	Over 1750 cc
Rate per mile	14.2p	16.5p	18.8p.

- 17.1 In addition, where employees transferred under the National Health Service Reorganisation Act 1973 of the National Health Service (Scotland) 1972 and in post on 30 May 1975, other than in a training post, subsequently take up their first substantive post in the reorganised National Health Service similar protection shall last for so long as they remain in the grade appropriate to that post and in the employment of the authority making that substantive appointment.

#### STANDARD MILEAGE RATES

18. The allowances at paragraph 3 of Appendix A to this Section shall be paid to employees who use their own vehicles for official journeys other than in the circumstances described at paragraphs 11, 12 and 17.

#### PASSENGERS

19. With the exception of Crown car users, where other employees or members of an employing authority are conveyed in the same vehicle on the business of the National Health Service and their fares by a public service would otherwise be payable by the authority, allowances at the rates in paragraph 4 of Appendix A to this section shall be paid.

#### JOURNEYS BETWEEN HOME AND HEADQUARTERS OR PLACES VISITED

20. The following sub-paragraphs do not apply to Crown car users:
- 20.1 Employees who are based at a designated headquarters shall be paid the Regular User, Standard Rate or Public Transport Rate as appropriate, limited to the distance which would have been travelled if the journey had started and finished at the designated headquarters, or the distance actually travelled if less.
- 20.2 Employees who are based at home for mileage purposes shall be paid the Regular User, Standard Rate or Public Transport Rate as appropriate for all journeys by the most direct route from their home to all places necessarily visited on duty and back to their home.

#### OTHER ALLOWANCES

21. 21.1 Subject to the production of vouchers wherever possible,

employees using their private motor vehicles on an official journey at the standard or regular user rates of mileage allowances shall be refunded reasonable garage and parking expenses and charges for tolls and ferries necessarily incurred, except that charges for overnight garaging or parking shall not be reimbursed unless the employee is entitled to night subsistence allowance for overnight absence. Similar expenses may also be refunded to employees only entitled to the 'public transport' rate of mileage allowance, provided that the total reimbursement for an official journey does not exceed the cost which would otherwise have been incurred on public transport, including the fares of any official passengers.

21.2 Employees using pedal cycles for official journeys may be reimbursed at the rate in paragraph 3(c) of Appendix A to this Section.

21.3 Where, at the requirement of the employing authority, an employee carries heavy or bulk equipment in a private car an allowance at half the passenger rate set out in Appendix A of this Section shall be paid for journeys on which the equipment is carried provided that either:-

21.3.1 the equipment exceeds a weight which could reasonably be carried by hand;

21.3.2 the equipment cannot be carried in the boot of the car and is so bulky as to reduce the seating capacity of the vehicle.

### **PART III: LOANS FOR CAR PURCHASE**

#### **ELIGIBILITY**

22. The provisions of paragraph 22.1 apply to employees who are, after 9 October 1980 classified for the first time as a "Regular Car User" in the NHS, or who prior to 1 April 1980 were paid the rates of mileage allowances which are protected under the provisions of paragraph 17.

22.1 Such employees are entitled to a loan at 2.5% flat rate of interest, provided that the request for the loan is made within three months of such classification or taking up appointment whichever is the later and subject to the other provisions of this agreement.

#### **MAXIMUM AMOUNT OF LOAN**

23. Loans shall not exceed the amount show at paragraph 5 of Appendix A to this Section or, if less, the cost of the car including delivery charge, seat belts, number plates and wing mirrors less the net amount realised by the sale or part-exchange of any vehicle used by the employee on NHS business within the preceding 12 months.

24. Maximum of 5 years or the estimated life of the car whichever is the less.

#### **LOAN AGREEMENTS**

25. Agreements for loans should be made in the form set out at Appendix B to this section; one copy should be retained by the employee.

#### **INSURANCE**

26. Vehicles must be comprehensively insured.

#### **ADMINISTRATIVE CHARGES**

27. There are no administrative charges but where the loan application is for the purchase of a second-hand vehicle, it must be accompanied by a certificate from a qualified independent automobile engineer as to the reasonableness of the price, the roadworthiness and estimated future life of the vehicle. The cost of this certificate may be included in the loan, up to the maximum.

#### **TRANSFER BETWEEN HEALTH AUTHORITIES**

28. If a borrower transfers to another health authority during the repayment period, the new employing authority shall purchase the loan from the former employer.

## **PART IV: PRIVATE USE OF CROWN CARS**

### **ARRANGEMENTS FOR PRIVATE USE**

29. Employees have the right, on application to the employing authority, to private use of a Crown car allocated to them subject to:
- 29.1 withdrawal if the facility is abused.
  - 29.2 their providing an undertaking drawn up by the employing authority after taking appropriate legal advice; this undertaking should be retained by the employing authority and a copy given to the employee.
  - 29.3 the payment of an annual sum within the range set out in paragraph 6 of Appendix A to this Section, in monthly instalments by deduction from salary. Employing authorities should consult staff and local staff representatives regarding the general arrangements for charging for private use, within this range.
30. Authorities may use their discretion to allow another person to use the Crown car privately. In this event the authority must ensure that the insurance provisions cover the private use of the vehicle by the other person.
31. In the event of the employee's death in service or on early termination of the employee's employment contract on the grounds of ill health there shall be no financial penalty to the employee or the employee's estate on account of the early termination of the contract for private use of the Crown car.
32. In the event that the employee is absent from work for an extended period on account of maternity leave, sickness or approved training an employee who has contracted for private use of a Crown car may choose to continue the private use at the contracted charge or to return the vehicle to the employer on account of early termination of the contract where the absence is for a period in excess of 4 months.

### **JOURNEYS FROM HOME TO WORK**

33. Journeys from home to work and back home are private mileage journeys, except in the circumstances described below:
- 33.1 Employees based at home
    - 33.1.1 The first daily journey from home to work, and the last daily journey back home, should be considered as official travel for the purpose of exemption from road fund licence and private insurance. Reimbursement shall be at the rate specified in paragraph 7 of Appendix A to this Section.
  - 33.2 Employees not based at home
    - 33.2.1 Employees not based at home may be asked by employing authorities to take their allocated vehicle home for an official purpose, eq in order to respond to emergency calls. These journeys are considered as official journeys for tax and insurance purposes and employees



will be reimbursed at the rate specified in paragraph 7 of Appendix A to this Section.

- 32.2.2 When employees who have taken their allocated vehicle home at the end of their normal working period are asked to go out again in response to emergency calls all mileage in these circumstances shall count as official, and reimbursement shall be at the rate specified in paragraph 7 of Appendix A to this Section.

#### **CARRIAGE OF PASSENGERS**

33. Liability for compensation of authorised official passengers injured while being carried in Crown vehicles will be borne by the Crown. It is for each employing authority to determine and issue advice to employees about the carriage of official passengers.
34. A Crown car user when on official business shall not carry an unofficial passenger unless the taxation and insurance provisions for private use noted in sub-paragraph 29.3 are complied with.

APPENDIX A TO SECTION 24

**SCHEDULE OF ALLOWANCES**

**MILEAGE ALLOWANCES**

1. Public Transport Rate with effect from 1 July 1993.

23p per mile.

2. Regular User Allowances with effect from 1 July 1993  
(Motor cars with 3 or 4 wheels)

Engine capacity:	501 to 1000 cc	1001 to 1500 cc	Over 1500 cc
Lump sum	£508	£626	£760
Up to 9000 miles	24.1p	29.0p	35.3p
Thereafter	14.1p	15.5p	17.9p

NOTE: An employee using a 4-wheeled car under 501 cc shall be paid the allowances for cars of 501 to 1000 cc engine capacity.

3. Standard Rates, with effect from 1 July 1993

a. Motor cars with 3 or 4 wheels:-

Engine capacity:	501 to 1000 cc	1001 to 1500 cc	Over 1500 cc
Up to 3500 miles	32.1p	39.8p	49.3p
Thereafter	14.1p	15.5p	17.9p

NOTE: An employee using a 4-wheeled motor car under 501 cc shall be paid at the rates for cars of 501 to 1000 cc engine capacity.

b. Other motor vehicles:-

Engine capacity:-	125 cc or less	Over 125 cc
Rate per mile with effect from 1 July 1993		
Up to 5000 miles	16.2p	25.3p
Over 5000 miles	6.1p	9.0p

c. Pedal cycles:-

6.2p per mile with effect from 1 July 1993.

4. Passenger Allowances with effect from 1 July 1984.

Each passenger - 2p per mile

**LOANS FOR CAR PURCHASE**

5. Maximum Loan £3,500 with effect from 1 October 1983.

**CHARGES FOR PRIVATE USE OF ALLOCATED CROWN CARS WITH EFFECT FROM THE DATE OF WHICH THIS AGREEMENT COMES INTO OPERATION**

6. (i) Maximum Charge

a. Annual sum

The current rates of:

Road Fund Licence	eq. £125
Appropriate Insurance For Private Use	
Handling Charge	£95

b. Fixed Annual Charge per 1000 private miles (for each year of the contract or notional contract eq. 3 years) shall be determined as follows:-

Cost of Contract Hire at Maximum Quoted Mileage (a)	-	Cost of Contract Hire at Minimum Quoted Mileage (b)
<hr/>		
Maximum quoted mileage (c)	-	Minimum quoted mileage (d)
<hr/>		
1000		

ii. Minimum Charge

a. The authority will meet the cost of the first 6000 miles (minimum less costs) or the amount of official mileage if that is greater, determined by reference to the lease company charge for that particular number of miles.

b. The employee will pay the difference between the amount in (a) and the total cost of combined official and private mileage. In addition the employee will pay the current rate of Road Fund Licence, Insurance for Private Use and Handling Charge.

iii. All excess costs for a non-base vehicle should be included where appropriate, regardless of whether either the maximum or minimum charge is made. VAT must be levied on the total charge to the employee ( (a) + (b) + (c) )

NB. Where the cost to the employing authority of hiring the car includes Road Fund Licence and/or insurance then these items should be extracted and the nett cost used in calculating the charge per thousand miles.

**REIMBURSEMENT TO EMPLOYEES OF PETROL COSTS INCURRED ON NHS BUSINESS**

7. (i) Minimum rate of reimbursement per mile =

Cost of 1 Gallon of 4 Star Petrol\*

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Base vehicle's mileage on Urban Cycle\*  
(In pence to one decimal place)

(ii) When required by local conditions (such as terrain or the brevity of journeys made by staff on official calls), authorities may make additional reimbursement to staff. The form which this additional reimbursement takes should be decided after due consultation with staff and local staff representatives.

\* The price of petrol as notified from time to time by the Institute of Petroleum, changes in prices of less than 5 whole pence being ignored. Where the average price per gallon varies locally from the national average by more than 5 whole pence, the local price may be used after due consultation with staff and local staff representatives. Mileage on the urban cycle should be the figure quoted by the manufacturer following officially approved tests under the Passenger Car Fuel Consumption Order 1977.

N.B. When the employee chooses a car with a larger engine capacity than the base vehicle, reimbursement shall remain at the rate appropriate to the base vehicle.

**LOAN AGREEMENT IN ACCORDANCE WITH PARAGRAPH 24 TO SECTION 24 OF THE GWC HANDBOOK.**

1. The parties to this Agreement are:
  - a. (Name and address of employing authority] hereinafter known as the lender.
  - b. (Name and address of the employees] hereinafter known as the borrower.
2. The lender agrees to make available to the borrower on [date of election] the sum of [amount of loan] on loan. The borrower shall repay within a period [number of months or years] by [number of repayments] consecutive monthly repayments of [amount of instalment including interest].
3. The borrower agrees to purchase a motor vehicle [details of the vehicle] and during the whole period of repayment shall, except for any period when the vehicle requires repair, make the vehicle available for the performance of his/her official duties as required by the [employing authority].
4. The borrower may at any time within the period of the loan apply to terminate this agreement by repayment of the full balance of capital outstanding with any accrued interest at the date of repayment. The amount of this balance due shall be calculated in accordance with Tables attached to this Agreement.
5. The interest charged for the loan shall be calculated at the rate of 2½% flat rate of interest. Provided that repayments are properly made the interest payable for the whole period of the loan shall amount to [£ total amount for the period of loan], and the total of interest and capital repaid during the period of loan shall be [£ total sum repaid].
6. Where both parties agree, the period of the loan may be reduced by means of an increase in the amount of the monthly instalments. Where in circumstances of financial hardship the borrower requests an extensions to the loan repayment period, this may be granted at the discretion of the lender within the maximum of 5 years or the estimated life of the car whichever is the less.
7. The borrower agrees that the lender shall deduct from the salary of the borrower the amounts of instalments specified in paragraph 2 above, beginning in [month, year].
8. The borrower further agrees that:
  - a. In the event of his/her contract of service with the lender terminating before completion of the repayment of the loan, he/she will repay immediately upon request the balance outstanding with accrued interest to the date of repayment.
  - b. Be/she will not dispose of the vehicle in respect of which the loan has been granted without prior consent of the lender; should disposal be authorised, the borrower will repay the lender the balance of the principal sum still owing immediately upon disposing of the vehicle, together with any interest accrued up to the date of this repayment.

- c. He/she will maintain a comprehensive policy of insurance in respect of the vehicle, in which the lender's interest is recognised by the insuring company.
- d. He/she will forward, at the request of the Treasurer of the [Employing Authority] proof of purchase, together with his/her driving licence and the aforementioned insurance policy, for inspection.
- e. Should the borrower fail to fulfil any of his/her obligations under this agreement, then it will be at the discretion of the lender whether or not to terminate the Agreement and request immediate repayment of any outstanding principal sums and accrued interest.

9. This Agreement is signed by:-

- a. [Signature of borrower] on [Date]
- b. [Signature of lender] [Position] of the [lending] Health Authority on [Date].

## SECTION 25

### EXPENSES OF CANDIDATES FOR APPOINTMENT

1. The provisions of this Section do not apply to hospital medical and dental staff who are, in this respect, subject to separate provisions which are set out in their Terms and Conditions of Service Handbook. The application of paragraph 5 of this Section to doctors in community medicine and the community health services, is subject to the modifications set out in their Terms and Conditions of Service Handbook.
2. Employees who apply for a new post with their own employing authority or with another NHS authority, and are summoned to appear before a selection board, are entitled to travelling expenses and subsistence allowances at the rates appropriate to the post they already hold.
3. Employees who are summoned for interview while on holiday shall be allowed expenses as follows:-
  - 3.1 Travelling expenses from the holiday address (but limited in the case of travel from abroad to expenses from the port of entry into Great Britain), provided the employee in fact returns to the holiday address after the interview. For this purpose, travel from Northern Ireland, the Isle of Man or the Channel Islands shall not be regarded as travel from abroad.
  - 3.2 Subsistence allowances at the usual rates, except in cases where employees are able to stay at their own home and it is reasonable to expect them to do so. (This would permit payment to married employees who are being interviewed in their home town but have to stay in a hotel because their home is shut up).
4. Expenses due under paragraph 2-3 above are payable by the prospective employing authority.
5. Reimbursement of expenses shall not be made to employees who withdraw their application or refuse an offer of appointment on grounds which in the opinion of the prospective employing authority are inadequate, but an employee who is aggrieved by an adverse decision of the authority shall have the right to submit the facts in writing to the Regional Appeals Committee (or Scottish Appeals Committee or Welsh Appeals Committee) and the authority shall be given the opportunity to reply in writing, a decision on the appeal being reached on consideration of such written representatives.

## SECTION 26

### **REMOVAL EXPENSES AND ASSOCIATED PROVISIONS**

1. The application of this Section to hospital medical and dental staff, or doctors in community medicine and the community health service, or dentists working in the Community Dental Service and Dental Public Health is subject to modifications set out in their respective Terms and Conditions of Service.

### **CIRCUMSTANCES IN WHICH REMOVAL EXPENSES ARE PAYABLE AND GENERAL CONDITIONS**

2. Assistance with removal and other expenses shall be granted to employees who need to move their home or incur extra daily travelling expenses as a result of being required by their employing authority to transfer to a new headquarters or on taking up a post which is regarded as suitable employment as an alternative to redundancy.
3. Assistance shall also be granted to employees who are required to change employing authority, or who otherwise have to move home or incur extra daily travelling expenses, in order to satisfy the requirements of their normal professional training.
4. Assistance may also be granted, at the discretion of the employing authority, to employees who as a result of taking up employment with the authority either need to move their home or incur extra daily travelling expenses. In exercising their discretion, employing authorities shall apply the principles of the General Whitley Council Equal Opportunities statement (Section 7).
5. The scope and level of financial assistance to be provided should be determined by the authority, in agreement with the prospective employee, prior to the post being accepted. In providing assistance, authorities should ensure equity between one category of staff and another, while balancing their own interests with the needs of prospective employees.
6. In agreeing the assistance to be provided, the employing authority shall have regard to all the individual employee's circumstances, including the need to re-house dependents and the comparability of new and previous accommodation.
7. Authorities may require employees to repay all or part of the reimbursements and grants paid if they leave the employing authority within two years of the appointment which gave rise to the expenses.

### **ASSISTANCE WHICH MAY BE MADE AVAILABLE**

8. The employing authority may meet any reasonable cost incurred in relocation, including: reasonable expenses incurred in the search for accommodation in the new area; reasonable vouched expenditure incurred in the purchase and sale of property; the removal of furniture and effects and continuing commitments in the old area; grants to cover general and miscellaneous removal costs; assistance with additional housing costs in the new area, etc., (for examples see Annex).
9. The employing authority shall clearly indicate to the employee the level of assistance that will be provided, the aspects of removal costs that will be reimbursed and, where applicable, the upper limit



of payment in all usual circumstances.

10. The authority shall stipulate in the agreement reached with the employee the procedure to be followed and the costs that will be reimbursed in circumstances where an authority has entered into an agreement with solicitors or others to provide house purchase/conveyancing services, private structural surveys, estate agency services and/or a removal service at preferential cost.

**EXAMPLES OF ASSISTANCE AVAILABLE**Search for Accommodation

1. In applying these examples, employing authorities are reminded of the requirements in paragraphs 9 and 10 of the agreement. Expenses payable during the search for accommodation (eg excess travelling expenses and/or subsistence) should normally be in line with the rates set out in Section 22 to 24.

Legal and Other Expenses Connected with the Sale and/or Purchase of Accommodation or any unsuccessful bona fide attempt to purchase.

2. Employees may be reimbursed any reasonable vouched legal and other expenses (eg house agents or auctioneers fees, mortgage redemption fees, survey fees, stamp duty etc).

Removal and Storage of Furniture

3. Employees may be reimbursed any reasonable cost connected with:
  - 3.1 Removal of furniture and effects from the old to the new home, including insurance of goods in transit;
  - 3.2 Storage of furniture and effects for a reasonable period;
  - 3.3 Travelling and subsistence expenses for the employee, spouse and children, if any.

Bridging Loans

4. Interest charges (net after income tax relief where available) on a bridging loan not exceeding the estimated selling price of the old property may be reimbursed.

Advance of Salary

5. Employing authorities may make an advance, recoverable from salary, to assist with house purchase or with the initial vouched cost of legal and other expenses, including VAT, associated with the purchase or renting of privately furnished or unfurnished accommodation.

Continuing Expenses in the Old Area

6. Employing authorities may reimburse any reasonable continuing commitments in the old area.

Miscellaneous Expenses

7. The employing authority may take in relation to the particular circumstances of each individual employee and of the expenditure actually incurred, a single payment for additional expenses arising as a result of the move.

Additional Housing Costs

8. The employing authority may make an allowance towards additional housing costs, where employers move to an area where the cost of accommodation (whether rented or purchased) is higher than before.

9. The allowance may be limited to the extent by which ongoing costs (eg rent, mortgage interest etc) in the new area exceed those in the old area. However, where there has been a demonstrable improvement in the standard of accommodation the authority may restrict the allowance by reference to the price or rent of accommodation in the new area roughly equivalent to that previously owned or rented.

## SECTION 27

### REIMBURSEMENT OF TELEPHONE EXPENSES

1. The provisions of this Section do not apply to hospital medical and dental staff, or doctors in community medicine and the community health service, who are subject to separate agreements negotiated by their respective Joint Negotiating Committees.

#### **ELIGIBILITY**

- 2.1 Installation and Rental Costs. Employing authorities should reimburse the costs of installation and rental of a telephone where the authority considers that it is essential for the efficiency of the service that the employee should be on call outside normal working hours and the telephone is the only practicable method of communication in these circumstances.
- 2.2 Extensions and Bells. Authorities should reimburse the installation and rental costs of a telephone extension and/or bell where they consider these to be justified, and subject to confirmation that they would not have been installed but for the employee's obligations to the NHS.
- 2.3 Telephone Calls. Authorities should reimburse the cost of all outgoing calls made on official NHS business by an employee.

#### **CONTRACTUAL COMMITMENT**

3. Employees who are reimbursed their expenses under sub-paragraphs 2.1 to 2.2 above should be required to accept a contractual commitment to possess a telephone and to use it as required on NHS business.

## SECTION 28

### LECTURE FEES

1. The provisions of this Section do not apply to employees within the purview of the Joint Negotiating Committee for Hospital Medical and Dental Staff, the Joint Negotiating Body for Doctors in Community Medicine and the Community Health Service and the Joint Negotiating Forum for Community Dentists.

#### **GENERAL**

2. A fee in accordance with Appendix A may be paid for a lecture of not less than 45 minutes (including question and discussion time) given:
  - 2.1 in the case of lectures by the Professions Allied to Medicine and related grades, Speech Therapists or Chaplains, to an audience composed of NHS staff;
  - 2.2 in all other cases, to an audience composed of NHS staff of whom at least 50% are in professions or occupations other than that of the lecturer.

#### **OTHER CONDITIONS**

3. Payment will also be subject to the following conditions:
  - 3.1 the lecture is not one given in accordance with the lecturer's specific conditions of service, or as part of the normal duties, or which could reasonably be regarded as falling within the normal duties of the lecturer's post;
  - 3.2 the lecture is not given as part of general staff training provided to improve the general background knowledge of staff in the content and development of the health services;
  - 3.3 the lecture has been prepared substantially in the lecturer's own time;
  - 3.4 if given in the lecturer's normal working hours, the lecture is given with the agreement of local management, satisfactory arrangements are made for the lecturer's normal work to be maintained in his absence, and the time taken is made up later to the extent necessary to maintain the work concerned at its normal level;
  - 3.5 no fee is being paid to the lecturer by some other body in respect of the same lecture.

ANNEX A TO SECTION 28

LECTURER'S STAFF GROUP (rates as operative from 1 October 1990)	FEE PER LECTURE
1. Administrative and Clerical	)
2. Ambulance	)
3. Ancillaries	)
4. Professional & Technical 'B'	)
5. Nurses and Midwives	)
6. Professional Allied to Medicine	)
7. Scientific and Professional	)
a) Speech Therapists	)
b) Hospital Chaplains	)
c) Pharmacists - Grades B, C, D, E	) £15.20
d) Clinical Scientists           ) Grades A and B	)
Hospital Optometrists       )	)
Clinical Psychologists - Grade A	)
8. Scientific and Professional	
a) Pharmacists - Grade F, G, H	)
b) Clinical Scientists           )	) £18.70
Hospital Optometrists       ) Grade C	)
Clinical Psychologists - Grade B	)

SECTIONS 29 TO 31 UNALLOCATED

## SECTION 32

### PROCEDURE FOR SETTLING DIFFERENCES IN REGARD TO CONDITIONS OF SERVICE

#### 1. AGREED PROCEDURE

The agreed procedure for settling differences between employing authorities and individual employees within the purview of the Whitley Councils for the Health Services (Great Britain), where the difference relates to a matter affecting the employees' conditions of service, including questions of grading, is as follows:-

- 1.1 Employees who are aggrieved in any matter affecting their condition of service (other than dismissal or any disciplinary action) shall have the right to appeal to their employing authority (ie the authority by whom they were appointed) and of appearing personally before the authority, either alone, or with a representative of their professional organisation or trade union, or with a friend not appearing in a professional capacity. Without prejudice to the right to appeal to the authority thus conferred, the employee may first bring the subject of the appeal before any authority committee or sub-committee of the authority, or joint committee of the authority with their employees, appointed either generally or specially for the purpose of dealing with appeals.
- 1.2 Where, following such an appeal, an appeal remains aggrieved, it shall be open to his or her professional organisation or trade union (being represented on the Whitley Councils for the Health Services (Great Britain) or otherwise a nationally recognised negotiating body) to appeal on his or her behalf to a Regional Appeals Committee<sup>2</sup>, and no appeal received from any other body or direct from an individual employee shall be entertained.

#### 2. REGIONAL APPEALS COMMITTEES

The agreed terms of reference, constitution and procedure of Regional Appeals Committees are as follows:-

- 2.1 Terms of referenceThe function of a Regional Appeals Committee is to decide appeals on the local application of national conditions of service and of Whitley Council decisions, and in particular, on questions of grading, in cases where there is an unresolved dispute between an employing authority and any of their employees whose conditions of service are within the scope of the Whitley Councils for the Health Services (Great Britain). Regional Appeals Committees are not local Whitley Councils and are not competent to consider any appeals outside the scope of their terms of reference. Regional Appeals Committees have no power to deal with appeals against dismissal or any disciplinary action.
- 2.2 ConstitutionThe committee shall consist of not more than 6 members (8 members when appeals relating to employees within the purview of the Ancillary Staffs Council are being heard)

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<sup>2</sup> Any reference to 'Regional Appeals Committees' in this Section shall be deemed to include the 'Scottish Appeals Committee' and the 'Welsh Appeals Committee'.



appointed in equal numbers by the Management Side and the Staff Side. The members shall be chosen ad hoc for each meeting of the Committee in accordance with the procedure set out in 2.3 below, and shall appoint a chairman from among their number.

- 2.3 The Management Side members shall be selected from a panel representative of the Regional Health Authority, the District Health Authorities in the area of the Regional Health Authority, Special Health Authorities, Family Practitioner Committees, the Department of Health and Social Security, the Scottish Home and Health Department, the Welsh Office, Health Boards and, where appropriate, the Common Services Agency, Scotland, the Welsh Health Technical Services Organisation, the Dental Estimates Board or the Prescription Pricing Authority.

The Staff Side members shall be selected from representatives of the professional organisations and trade unions represented on the Whitley Councils for the Health Services (Great Britain) and having members employed by the authorities concerned, in such a manner as the Staff Side of the General Council of the Whitley Councils for the Health Services (Great Britain) may determine.

The members selected shall in neither case include any member or employee of the authority directly concerned in the appeal.

#### **PROCEDURE ON RECEIPT OF APPEALS**

3. An appeal to the Regional Appeals Committee shall be lodged with the Management Side Secretary of the Committee within 3 months of the receipt by the employee of notice of the decision on the appeal made to the employing authority, and any appeal lodged after the expiry of the period shall not be considered unless the Management Side Secretary of the Regional Appeals Committee and the Staff Side Secretary of the appropriate Council of the Whitley Councils for the Health Services (Great Britain) so agree. If, however, the employing authority, having notified its decision, thereupon continues in discussion or negotiation in the matter with the employee or the employee's trade union or professional organisation, the period of months shall not commence to run until a final decision has been communicated.
4. All appeals shall on receipt be reported forthwith by the Management Side Secretary of the Regional Appeals Committee to the appropriate Council through the Joint Secretaries of the Council.
5. The appropriate Council shall decide whether a particular appeal shall be dealt with by the Council as a matter of principle instead of by the Regional Appeals Committee.
6. Whenever the question of the competence of the Regional Appeals Committee to hear an appeal arises and cannot be resolved by the Management Side Secretary of the Regional Appeals Committee and the Staff Side Secretary of the Council concerned, the matter shall be referred to that Council.
7. If the two sides of a council are unable to agree on a question of competence the appeal itself shall not be referred to the Regional Appeals Committee. It will be for the appellant organisation to take whatever steps it deems appropriate.
8. On receiving notice of an appeal, the Management Side Secretary of

the Committee acting also on behalf of the Staff Side, shall invite both parties to the dispute to submit as soon as possible a written statement of case.

9. When both statements have been received, a copy of each statement shall be sent to each member of the Committee and to the Staff Side Secretary of the appropriate Whitley Council. Three copies of each statement shall also be sent to the two parties to the dispute together with a notification of the date and place of the hearing. At least 7 days' notice of the hearing shall be given.

#### **HEARING OF APPEALS**

10. An appeal shall be heard by the Regional Appeals Committee as soon as possible, and shall in any event be heard within a period of 2 months from the date on which the appeal is received by the Management Side Secretary of the Committee unless an extension of this period is agreed upon by the Staff Side Secretary of the appropriate Council and the Management Side Secretary of the Committee.
11. The case for the employee shall be presented by a representative of the appellant organisation and the case for the employing authority shall be presented by a representative of the authority, but neither party shall be represented by a barrister or solicitor appearing in a professional capacity.
12. The two parties to the dispute shall be entitled to bring before the Committee such witnesses as they deem necessary to support their case.
13. If either party to the dispute fails to send a representative to the hearing, the Committee shall consider the appeal in the absence of that party, except where there is an adjournment by consent or the Committee in their discretion decide that in all the circumstances it would be reasonable to adjourn the appeal. In the event of any such adjournment, the Committee in setting a new date should as far as practicable have regard to the convenience of the party who appeared for the original hearing.

#### **PROCEDURE AT HEARING**

14. At the hearing of an appeal before the Committee, the following procedure shall be observed:-
  - 14.1 The representative of the appellant organisation shall state the case for the employee and call any witnesses.
  - 14.2 The members of the Committee and the representative of the employing authority shall be entitled to question any witnesses called.
  - 14.3 The representative of the appellant organisation may re-examine his or her witnesses on any matters referred to in their examination by members of the Committee or the representative of the employing authority.
  - 14.4 The representative of the employing shall state the case for the authority and call any witnesses.
  - 14.5 The members of the Committee and the representative of the appellant organisation shall be entitled to question any

witnesses called.

- 14.6 The representative of the employing authority may re-examine his or her witnesses on any matters referred to in their examination by members of the Committee or the representative of the appellant organisation.
- 14.7 The representative of the appellant organisation shall be entitled to reply to the employing authority's case.
- 14.8 Nothing in the foregoing procedure shall prevent the members of the committee from inviting the representative of either party to elucidate or amplify any statement he or she may have made; or from asking the representative such questions as may be necessary to ascertain whether or not they propose to call any evidence in respect of any part of the statements, or, alternatively, whether they are in fact claiming that the matters are within their own knowledge, in which case they will be subject to examination as witnesses under 14.2 or 14.5 above.
- 14.9 The Committee may at their discretion adjourn an appeal in order that further evidence may be produced by either party to the dispute.
- 14.10 The Regional Appeals Committee shall fully consider the appeal in the light of any relevant condition of service determined by the Whitley Councils for the Health Services (Great Britain). It shall be open to the Committee to seek guidance from the appropriate Council of the Whitley Councils for the Health Services (Great Britain) on any question of interpretation of the Councils' recommendations.
- 14.11 The Committee shall consider their decision in private and reach it by agreement of both sides. If an immediate decision cannot be given it shall be communicated in writing by both parties within 7 days of the hearing by the Management Side Secretary of the Committee acting also on behalf of the Staff Side. If the Commissioner fail to reach a decision, the fact shall be communicated to both parties in the same manner.
- 14.12 In the event of the Committee failing to reach a decision, it shall be open to either party to the dispute to refer the matter for consideration by the appropriate Council of the Whitley Councils for the Health Services (Great Britain).

**PROCEDURE WHEN NO DECISION IS REACHED BY THE REGIONAL APPEALS COMMITTEE**

15. A reference to the appropriate Whitley Council shall be made, within 3 months of the receipt by the parties of notice of the failure of the Regional Appeals Committee to reach a decision on the appeal, and any reference made after the expiry of that period shall not be considered unless the Joint Secretaries of the Council so agree.
16. An appeal referred to the appropriate Whitley Council shall be heard as soon as possible, and shall in any event be heard within a period of 2 months from the date on which the reference is received by the Joint Secretaries of the Council unless an extension of this period is agreed upon by the Joint Secretaries.
17. The appropriate Council of the Whitley Councils for the Health

Services (Great Britain), or any Committee of the Council which the Council may designate for the purpose, shall fully consider an appeal referred to the Council under these provisions. In the event of a failure to reach a decision on the appeal, it shall be open to either party to the dispute to refer the matter to arbitration in accordance with the terms of any arbitration agreement which may be made by the General Council of the Whitley Council for the Health Services (Great Britain).

**EXPENSES OF APPEAL**

18. The two parties to the dispute shall be responsible for meeting their own expenses and those of their witnesses.

## SECTION 33

### DISPUTES PROCEDURES

#### **DEFINITIONS**

1. For the purposes of this Section "employing authority" means any authority listed in Group 1 of Appendix B to Section 26 of the General Council Handbook.

#### **GENERAL**

2. The General Whitley Council attaches great importance to the establishment of clear procedures for settling disputes between employing authorities and employees and which cannot be resolved through the existing Whitley appeals machinery which is designed to deal with the local application of national Whitley agreements. In determining the content of local procedures, employing authorities and recognised staff organisations should take account of the following provisions.

#### **DISPUTE PROCEDURES**

3. The levels to which a dispute should be referred should be spelt out clearly in agreements and the General Whitley Council confirms the principle that disputes should be settled at the lowest possible operational level. The General Council recommends the following stages:-
  - 3.1 referral to the immediate local manager responsible for the staff who are in dispute;
  - 3.2 referral to the next-in-line manager (ie the officer to whom the immediate local manager is responsible);
  - 3.3 referral to the responsible Chief Officer to the employing authority who should, as necessary, consult other members of the management team (Executive Group in Scotland);
  - 3.4 referral to the employing authority.

#### **APPEALS PROCEDURE**

4. If the procedure outlined in paragraph 3 have been exhausted, it shall be open to either party to refer the dispute to a locally convened panel. The location of the panel should be settled by agreement between representatives of staff and management.
5. The panel should consist of an independent person in the Chair acceptable to both Sides and two members of each Side, appointed by the employing authority and the recognised staff organisation(s) concerned. In the case of a dispute involving more than two recognised staff organisations, not more than four members should be appointed from each Side. Only one on each Side may be drawn from members or employees of the authority concerned in the dispute. Persons directly involved in the dispute should not be members of the appeals panel.
6. The role of the independent person in the Chair would be that of a

conciliator. He or she would be expected, with the assistance of other members of the panel, to explore the various issues given rise to the dispute with a view to an agreed settlement. Recommendations would be made as a result of an agreement of both Sides of the panel.

7. Should the panel be unable to resolve the dispute, it may be referred to ACAS:

7.1 by either party to the dispute for conciliation or

7.2 by joint agreement of the Parties to the dispute for arbitration.

#### **STATUS QUO WORKING**

8. The status quo (ie the working and management arrangements which applied before the dispute) should operate until the agreed disputes procedures have been exhausted. If the dispute arises from the suspension or dismissal of an employee, the disciplinary procedures should apply.

#### **TIME LIMITS**

9. It is in the interest of both employing authorities and employees that disputes should be resolved quickly. The General Council believes that a dispute should be resolved within two months of the date when it was first brought to the attention of the employee's immediate local manager.

#### **IMPLEMENTATION OF AGREEMENT**

10. The General Council recognises that some employing authorities have established procedures which have been agreed locally with recognised staff organisations. Where such procedures are consistent with the principles outlined in this agreement and continue to command the support of the parties to the local agreement, the General Council would not wish to see them disturbed.

## SECTION 34

### ORGANISATIONAL CHANGE - APPEALS

#### **SCOPE AND APPEALABILITY**

1. Provision shall be made under this agreement for interpretation and appeals in respect of the following:-
  - 1.1 paragraphs 16-18 of Section 47
  - 1.2 questions arising from the 1974 reorganisation of the health service and transferred to this appeals machinery by virtue of SI 1987 No 1428;

#### **APPEALABILITY**

2. Questions of appealability may be referred by either side to the Joint Secretaries of the General Whitley Council for resolution. Should the Joint Secretaries be unable to reach a common view within a reasonable time the question shall be resolved by the General Purposes Committee of the General Whitley Council.
3. Issues which may be the subject of appeal under the terms of this agreement may not be the subject of appeal in any other NHS forum. However nothing in this agreement affects either the existing right of employees to make representations to their employing authority or the rights of appeal enjoyed by any individual under the NHS Reorganisation Act 1973 or the NHS (Scotland) Act 1972.

#### **INTERPRETATION**

4. Questions of interpretation, including those arising out of this agreement, may be referred by either side to the Joint Secretaries of the General Whitley Council for resolution. Should the Joint Secretaries be unable to reach a common view within a reasonable time the question shall be referred for resolution to the General Purposes Committee of the General Whitley Council.

#### **CONSTITUTION OF ORGANISATIONAL APPEALS PANELS**

5. Organisational Appeals panels shall be established at regional level (in Wales and in Scotland at an 'all-Wales' and 'all-Scotland' level) and shall in each case consist of an independent member in the Chair plus not more than two representatives each from Management and Staff Side. The independent member, who shall be either drawn from a national list agreed by the Joint Secretaries of the General Whitley Council or otherwise jointly selected, shall in each case be acceptable to both parties to the appeal. The representatives shall be selected in accordance with Section 32, paragraph 2.3 of this Handbook.
6. The independent member shall have a casting vote. Decisions which shall be binding and not open to further appeal (except as provided in paragraph 9 below), shall be reached on all appeals.

#### **APPEALS**

7. An employee may, through a professional, organisation or trade union (being represented on the Whitley Councils for the Health Services

(Great Britain) or otherwise a nationally recognised negotiating body), appeal to an organisational appeals panel) on any matter within the scope of paragraph 1 above which, if it is referred to them under paragraph 2 above, is agreed to be appealable by the Joint Secretaries of the General Whitley Council or of the General Purposes Committee of that Council.

8. Appeals will normally be allowable only if made within four weeks of written notification to the employee of the proposals or decisions being appealed against. However, where there are good reasons for delay, the Joint Secretaries of the General Whitley Council may exceptionally allow a late appeal.

#### **PROCEDURES**

9. Within a reasonable time of an appeal being lodged each party shall send a written submission to the clerk to the organisational appeals panel who, on receipt of both submissions, shall copy the opposing submission to each party concerned. The clerk may be consulted by either side about sources and authorities but shall not be a member of the panel or be entitled to participate directly in the appeal proceedings. The procedures to be adopted at any hearing shall follow those outlined for Regional Appeals Committee hearings in Section 32 of this Handbook. These procedures are designed to safeguard the interests of the appellant and either party to the appeal has the right to insist on the precise application of the procedures. There is nonetheless room for a certain amount of latitude in the conduct of the proceedings so long as the appellant authority is then invited to reply, and the appellant organisation makes the final statement. Decisions shall be given in writing to both parties to the appeal within seven days of the hearing.
10. The independent member shall be entitled to a fee payable by the Regional Health Authority<sup>3</sup> in the case of organisational appeals and by the appropriate Health Department in the case of all-Wales or all-Scotland appeals.

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<sup>3</sup> see DA (87) 39



SECTIONS 35 TO 37 UNALLOCATED

## SECTION 38

### FACILITIES FOR STAFF ORGANISATIONS

#### **SCOPE**

1. The provisions of paragraphs 2-9 and 11-15 below are not applicable to employees within the purview of the Ancillary Staffs Council and Ambulance Whitley Council; they are covered in this respect by agreements of those Councils. This agreement is also without prejudice to the provisions of any local agreement which in the opinion of the employing authority and representatives of the employees concerned is more favourable than the terms of this agreement. No employing authority shall operate provisions which are less favourable than those in this agreement.

#### **GENERAL**

2. It is in the interest of both employing authorities and employees that accredited representatives of recognised staff organisations should be suitably trained and competent in their duties, and that their rights and responsibilities should be clearly understood. The grant of facilities to recognised staff organisations participating in the work of the Whitley Councils shall be the subject of consultation between representatives of the staff organisations and the employing authorities. However employing authorities and staff organisation in considering the question of facilities must have regard to the minimum provisions of this agreement.

#### **ACCREDITED REPRESENTATIVES**

3. A recognised staff organisation shall establish with the employing authority the number of its representatives in each unit of the employing authority having regard to the national rules of the organisation concerned, the size of its membership within each unit of the authority and the number and location of workgroups for which each representative will be responsible. Staff organisations shall notify management promptly in writing when local authorities of their deputies are appointed and when changes are made.
4. Staff organisations shall provide their representatives with written credentials (which may be agreed and signed jointly by management) stating inter alia the period of office of the representative and which work group(s) he or she represents in units of the employing authority.
5. The functions of an accredited representative for the purpose of this agreement, shall be to represent the members of the staff organisation concerned who are employed by the employing authority; to investigate any complaint or difficulty raised by those members; to make representation on such matters to the management of the authority and to co-operate with management to ensure that the agreements of the Whitley Councils are observed. In this respect accredited representatives shall have due regard to the rules of their organisation.
6. The employing authority shall as far as possible provide accredited representatives of recognised staff organisations with reasonable facilities for exercising their functions (including reasonable office facilities where the amount of the representative's work

justifies this) and the representatives shall ensure the proper use of such facilities.

7. Accredited representatives may with permission from the management of the authority leave their work to conduct such business as is necessary and relevant both to those employees in that part of the authority which they represent and also to the functions referred to in paragraph 6 above. Permission for the accredited representative to conduct such business shall not be unreasonable withheld by management. In the absence on leave of the accredited representative such business may be conducted by his or her deputy provided the deputy's appointment has first been notified to management. An accredited representative before undertaking such business in any workplace other than the one in which he or she is normally employed should as a matter of courtesy make prior arrangements with the management of that workplace and should inform them of his or her arrival at the workplace.
8. In the event of any difficulty arising which cannot be resolved between the management and the accredited representative the latter shall immediately report the circumstances to his or her staff organisation in order that the matter can be dealt with under any agreed procedure for settling differences.
9. Accredited representatives shall be subject to all the provisions of the Whitley Councils' agreements in the same way as any other employee, but no recognised accredited representatives shall be dismissed or disciplined in any way whatsoever for carrying out their functions as representatives in accordance with the provisions of this agreement, or for any omission in the performance of their duties whilst absent from their workplace with permission from management (see paragraph 8 above).
10. Accredited representatives of recognised staff organisations shall have reasonable access to all documents including copies of Whitley Council agreements which set out the terms and conditions of service of the staff they represent and such other matters as affect employees as individuals of departmental memoranda on training etc.

#### **TRAINING FOR ACCREDITED REPRESENTATIVES**

11. While recognising that it is the responsibility of staff organisations to ensure that their representatives are appropriately briefed on and trained in their duties, the rules and practice of the staff organisation, the appropriate Whitley agreements and procedures, and the practice of industrial relations generally, employing authorities shall, as far as is reasonably practicable and always with full regard to the exigencies of the Service, assist recognised staff organisations to discharge their responsibility by allowing reasonable time of with pay (which should be calculated in the same manner as holiday pay) for accredited representatives to take part in relevant training activities which have been approved by the employing authority whether organised by staff organisations or others. Responsibility for fees and expenses for such training rests with the staff organisations.
12. It is to the advantage of both management and employees that accredited representatives be included by their employed authority on approved training schemes which are likely to assist them in the proper discharge of their duties; eg courses wholly or mainly concerned with work study and incentive schemes, communications, NHS

organisation and consultation procedures. In such cases, employing authorities shall meet expenses and fees in accordance with the employee's terms and conditions of service, such training being clearly to the benefit of the health service.

#### **ACCESS**

13. Full time officers of recognised staff organisations visiting health authority premises (wherever possible by prior arrangement with management) in the performance of functions outlined in paragraph 6 above shall be granted reasonable access to the workplace for the purpose of exercising those functions.

#### **MEETINGS IN WORKING HOURS**

14. The prior permission of management must be received before any meeting of employees is held during working hours, but permission shall not be unreasonably withheld.

#### **ACCOMMODATION AND FACILITIES**

15. Wherever possible employing authorities shall provide suitable accommodation and facilities to be used for branch meetings, educational or professional purposes provided that these are held at reasonable times.

#### **USE OF NOTICE BOARDS**

16. Recognised staff organisations may exhibit any notice of general interest to employees on notice boards provided for this purpose but no notice may be exhibited elsewhere on health authority premises without the previous consent of management. In exceptional circumstances management may challenge the propriety of any notice exhibited by a staff organisation on giving reasons may secure its withdrawal.

## SECTION 39

### JOINT CONSULTATION MACHINERY

1. The General Council re-affirm that joint consultation between management and the representatives of recognised Staff organisations is of benefit to both management and employees and is essential to the smooth working of the National Health Service. They have accordingly agreed that joint consultative machinery shall be set up at all appropriate levels in the NHS.
2. It is recognised that in many places joint consultative machinery already exists, and where management and representatives of recognised staff organisation agree that existing arrangements are satisfactory, these should not be changed.
3. Joint consultative machinery should provide an opportunity for the representatives of all NHS employees who are members of recognised staff organisations to meet with representatives of management to discuss all matters affecting the interests of employees. Nothing in this agreement shall prejudice the right of any recognised staff organisation to negotiate directly on any appropriate subject.
4. Because of the great variety in sizes, types and location of units the General Council do not consider it practicable to prescribe any standard pattern for joint consultative machinery nor to specify in any detail the subjects which are suitable for discussion. At each level, therefore, arrangements for joint consultation should be agreed between management and representatives of the recognised staff organisations, and the matters appropriate for joint discussion should also be agreed.
5. Joint Consultative Committees are not local Whitley Councils and are not empowered to make recommendations that conflict with or override any decision of a Whitley Council, nor may their recommendations cover matters which are properly the subject of national negotiations.
6. Attention is drawn to the general principles outlined in recommendations 46 and 47 in chapter 11 of Lord McCarthy's Report 'Making Whitley Work':-
  - 6.1 It should be accepted that the mere passage of information is not consultation. Consultation involves an opportunity to influence decisions and their application. It is best conducted when some attention has been given to alternatives, but they have not taken their final form.
  - 6.2 Management should consult about any significant decision that is likely to affect the well-being of employees. In particular, consultation should cover:
    - 6.2.1 strategic planning decisions, including the allocation of resources which have manpower implications;
    - 6.2.2 consequential administrative operational decisions, especially those likely to affect the job prospects or job security of particular groups or occupations;
    - 6.2.3 all aspects of the immediate job environment, plus those

parts of the individual employment relationship not  
subject to collective bargaining.

## SECTION 40

### DISCIPLINARY PROCEDURES

1. Nothing in this agreement affects the rights of those doctors and dentists referred to in paragraph 190, of the Terms and Conditions of Service for Hospital Medical and Dental staff, paragraph 190 of the Terms and Conditions of Service for Doctors in Community Medicine and the Community Health Service, paragraph 190 of the Terms and Conditions of Service for Administrative Dental Officers and Community Clinical Dental Officers, paragraph 190 of the Terms and Conditions of Service for Hospital Medical and Dental Staff (Scotland) and paragraph 190 of the Terms and Conditions of Service for Doctors in Community Medicine and the Community Health Services (Scotland). Nor does this agreement affect the arrangements set out in EC(82)13, SM(61)112 and SHM/49/1968 concerning the professional conduct and professional competence of medical and dental staff or any statutory right of appeal of any employee including a right of appeal or right to make representations under the National Health Service Reorganisation Act 1973, or National Health Service (Scotland) Acts, or a right of appeal made under the arrangements set out in HSR(74)C8 (this Circular is applicable to employees in Scotland only).
2. In serious matters likely to involve disciplinary action the disciplinary procedures of an authority shall provide that, except in cases justifying immediate suspension from duty or, exceptionally, summary dismissal, employees shall, subject to any further enquiries that may be required, first be reprimanded and given a formal warning in writing signed by a senior officer of the employing authority that any repetition by the employee might result in dismissal.
3. In the case of employees whose employment can be terminated only by a decision of the full employing authority, power of dismissal shall not be delegated to any officer or committee of officers. These employees will include the authority's more senior grades, e.g. senior professional administrative or technical staff. Employees should be informed in writing on appointment or as soon as possible thereafter whether they can be dismissed only by a decision of the full employing authority or by an officer or committee of officers. In those cases where an employee can be dismissed by an officer or committee of officers the employee should also be informed which officer(s) have the power of dismissal delegated to them by the employing authority.
4. Employees of an authority who are aggrieved by disciplinary action, which results in the issue of a reprimand and formal warning in writing referred to in paragraph 2 above or in their dismissal, shall have the right of appeal against such action to their employing authority. Employing authorities should set up appeals committees consisting or not less than 3 members of the authority to hear appeals. If possible at least one member of the committee should have a special knowledge of the field of work of the employee. Where this is not possible in cases of an appeal against dismissal the committee shall at the request of the employee or the employee's representative appoint an assessor, who is experienced in the particular discipline of the employee, and who has not been directly involved in the circumstances leading to disciplinary action. The assessor may only advise the committee on any matter arising during the course of the hearing which the assessor feels may be related to the professional

conduct or professional competence of the employee.

5. Employees should have the right of appearing personally before the appeal committee either alone or accompanied by a representative of their trade union, professional organisation or staff association. Appellants may elect to be legally represented but if so they shall be responsible for such costs as they may incur, and in these circumstances the employing authority may also elect to be legally represented.
6. The members of the appeal committee shall not include any member of the authority or committee or sub-committee of the authority who has been directly involved in the circumstances leading to disciplinary action. No officer of the authority who has been directly involved in the circumstances that appeared to indicate the need for disciplinary action at an earlier stage of the disciplinary procedure shall be present at the appeal hearing as Secretary of the appeals committee or in any other capacity except as a witness or as the representative of the employing authority. The report of the appeal committee should be submitted to the full employing authority who should thereupon reach a decision on the case.
7. It is important that the appeals should be made and heard quickly. Employees who are the subject of any disciplinary action, including dismissal, should be provided if practicable within 7 days with a notice in writing stating the nature of the disciplinary action, the reasons for the disciplinary action together with a summary of the alleged facts on which the disciplinary action is based and the employee's right of appeal. It is recommended that any appeal by the employee should be lodged within 3 weeks of the receipt of the written notice. The hearing of the appeal by the appeal committee should take place within 5 weeks of the receipt of the appeal by the employing authority although employing authorities may in exceptional circumstances be entitled to extend this period. The employee shall be given at least 14 days notice of the date of the hearing.
8. At the hearing of an appeal before the appeal committee the following procedure shall be observed:-
  - 8.1 The authority's representative shall state that authority's case in the presence of the appellant and the appellant's representative and may call witnesses.
  - 8.2 The appellant or the appellant's representative shall have the opportunity to ask questions of the authority's representative and witnesses.
  - 8.3 The members of the appeal committee shall have the opportunity to ask questions of the authority's representative and witnesses.
  - 8.4 The authority's representative shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the appeal committee, the appellant or the appellant's representative.
  - 8.5 The appellant or the appellant's representative shall put his or her case in the presence of the authority's representative and may call witnesses.
  - 8.6 The authority's representative shall have the opportunity to



ask questions of the appellant and the appellant's representative and witnesses.

- 8.7 The members of the appeal committee shall have the opportunity to ask questions of the appellant, and the appellant's representative and witnesses.
  - 8.8 The appellant or the appellant's representative shall have the opportunity to re-examine his or her witnesses on any matter referred to in their examination by members of the appeal committee or the authority's representative.
  - 8.9 The authority's representative and the appellant or the appellant's representative shall have the opportunity to sum up their cases if they so wish. The appellant or the appellant's representative shall have the right to speak last. In their summing-up neither party may introduce any new matter.
  - 8.10 Nothing in the foregoing procedure shall prevent the members or the committee from inviting either party or a representative to elucidate or amplify any statement they may have made, or from asking them such questions as may be necessary to ascertain whether or not they propose to call any evidence in respect of any part their statement, or, alternatively, whether they are in fact claiming that the matters are within their own knowledge, in which case they will subject to examination as witnesses under 8.2 or 8.6 above.
  - 8.11 The Committee may at its discretion adjourn the appeal in order that further evidence may be produced by either party in the dispute or for any other reason.
  - 8.12 The authority's representative, the appellant, the appellant's representative and witnesses shall withdraw.
  - 8.13 The committee with the officer appointed as Secretary to the committee and where appropriate the assessor shall deliberate in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary with the point giving rise to doubt.
  - 8.14 No statement of previous acts of misconduct by the employee or the issue of a formal warning or warnings unrelated to the alleged offence(s) on which the disciplinary action is based shall be made until after the committee has reached a decision on the appeal.
9. An employee shall only be summarily dismissed in exceptional circumstances and only by an officer who has been delegated power of dismissal by the employing authority in accordance with the provisions of paragraph 3 and where the action has been approved by the Senior Officer responsible for the function in which the employee is engaged or in his or her absence the Senior Officer who is deputising.
  10. If an aggrieved employee after exhausting the appeal procedures within his or her employing authority seeks to appeal to a higher authority, namely the appropriate Secretary of State or, in the case of District Health Authority employees in England, the Regional Health Authority, it shall be at the discretion of the Secretary of State or Regional Health Authority what action they shall take in

respect of the application. Further consideration would depend upon the merits of each case; it would be for the Secretary of State or the Regional Health Authority to decide and their intervention cannot be claim4d as a matter of right by the individual employee. In exercising its discretion in such circumstances a Regional Health Authority should ensure that any application be considered by persons who have not taken part in the original decision against which the appeal is made. In the event that the Regional Health Authority agrees to a hearing the relevant provisions of paragraphs 5-8 shall apply.

## SECTION 41

### HEALTH AWARENESS FOR NHS STAFF

1. The General Whitley Council believes that effective policies and strategies for promoting health awareness and the prevention of risks among staff in every workplace in the National Health Service will contribute to better management of staff and to improved patient care. The council recommends to NHS employers that their Occupational Health Services (OHS) should play a major role, in association with others, in ensuring that their "Health at Work" strategies are effective.
2. The General Whitley Council supports all initiatives aimed at creating a healthy workplace and wishes to encourage management, staff and local staff representatives to join together in identifying and achieving targets. In so doing, the council recognises the valuable contribution which Occupational Health Services can make.
3. The General Whitley Council commends those NHS employers who have introduced OHS and wishes to encourage their further development. In recognition of the importance of OHS to the implementation of Health at Work" strategies, the council recommends that provisions for occupational health should be kept under review and suggests that they should reflect the aims and functions set out in the Appendix. Such reviews should take account of all specialist advice available, in particular the guidance issued from time to time by the Health and Safety Executive, the Health Education Authority and (in Scotland) the Health Education Board.
4. The Council recommends that the reviews and consequent developments of the OHS should be undertaken in consultation with staff and local staff representatives, Health Promotion and Health and Safety specialists and other relevant personnel.

### **Occupational Health Services: Suggested Aims and Functions**

1. The promotion, maintenance and improvement of the physical and mental well-being of all employees, whether directly or through taking a leading role in healthy workplace initiatives;
2. The promotion of health awareness (e.g. healthy eating campaigns, stress counselling, exercise promotion) in furtherance of healthy workplace initiatives;
3. The giving of advice to both staff and management on the protection of employees against physical or environmental health hazards (e.g. the teaching of lifting skills, advice on skin care for domestic staff);
4. To advise management on their responsibilities under existing and impending legislation e.g. the Health and Safety at Work Act, COSHH Regulations, Manual Handling Regulations and Visual Display Unit Regulations;
5. To advise on known risks and any factors about work which give rise to risks, taking into account mental as well as physical health problems;
6. To recommend solutions for the removal or control of risks;
7. To advise management and employees on appropriate remedial action on individual sickness cases which have given rise to concern;
8. To advise management and employees on issues of rehabilitation and redeployment, for example after extended sick leave;
9. To gather and hold information, in strict confidence and in an appropriate form, in the OHS records e.g. health status, accident and immunisation records;
10. To provide staff training and education in health promotion and accident avoidance;
11. To provide counselling and support to employees, especially when dealing with reportable and notifiable illness;
12. To advise on the relationship between health and work;
13. To advise on all aspects of first aid arrangements, including acceptable alternatives equivalent to those described in the Approved Code of Practice attached to the First Aid at Work Regulations 1981;
14. To advise management on staff immunisation policy and, where required, to take responsibility for its implementation.

## SECTION 42

### THE RESOLUTION OF DISCIPLINARY MATTERS AND THE SETTLEMENT OF DISPUTES IN THE NHS

#### INTRODUCTION AND GENERAL PRINCIPLES

1. The General Whitley Council has decided that the following protocols shall govern the handling of disciplinary matters and disputes for those staff in the NHS who are covered by Whitley Terms and Conditions of Service.
2. The protocols shall not apply:
  - a. retrospectively i.e. to individual cases or other circumstances in the process of settlement at the date of the promulgation of the protocols;
  - b. to any matter affecting rights referred to in paragraph 190 of the separate Terms and Conditions of Service for Hospital Medical and Dental Staff, Doctors in Public Health Medicine and the Community Health Service, Administrative Dental Officers and Community Clinical Dental Officers, Hospital Medical and Dental Staff (Scotland), Doctors in Community Medicine and the Community Health Service (Scotland);
  - c. to any matter covered by arrangements set out in HM 61(112), HC(82)13, HC(90)9 and (in Scotland) in NHS Circular No. 1990 (PCS) 8, as amended by NHS Circular No. 1990(PCS) 32, concerning the professional conduct and professional competence of medical and dental staff or any statutory right of appeal of any employee. This includes a right of appeal or right to make representations under the National Health Service Reorganisation Act 1973 or National Health Service (Scotland) Acts, or a right of appeal made in Scotland under arrangements described in NHS Circular 1976 (GEN) 66.
3. In the case of hospital community medical and dental staff, employing authorities should also have regard to the guidance on the suspension of staff set out in HSG(94) 49.
4. The General Whitley Council believes that effective counselling arrangements, while not an alternative to formal disciplinary procedures, may reduce the need to resort to them.
5. The General Whitley Council believes that good industrial relations practice requires action to be taken to resolve serious matters while memories of incidents are still fresh. In support of this, the Council suggests that an employee should have the right to be represented, other than at the purely investigative stage. Employing authorities should therefore ensure that procedures are in place for the prompt and effective handling of disciplinary matters and disputes. The procedures should be:
  - (i) introduced following consultation with staff and local staff representatives, taking account both of statutory requirements (particularly important for disciplinary matters) and also recommendations by ACAS and the Institute of Personnel and Development;

- (ii) designed to facilitate the speedy resolution of matters as close as possible to their source;
- (iii) be brought to the attention of all employees and specified in each employee's written particulars of terms of employment (or, alternatively, employees should be advised where a copy may be obtained).

#### **PROTOCOL FOR DISCIPLINARY PROCEDURES**

- A. The General Whitley Council (The Council) believes it is most important for the effective conduct of industrial relations that employing authorities ensure that all employees know the identity of the person to whom they can apply if they are dissatisfied with any disciplinary action relating to them. The disciplinary procedures should give a clear indication of the arrangements to be followed when an employee is dissatisfied with any action taken against him/her and at any subsequent formal hearing,
- B. The Council recommends that each employing authority's disciplinary procedures should contain a code of conduct which, though not exclusive nor exhaustive, should make plain the forms of misconduct which would normally attract warnings and serious misconduct which would be likely to result in dismissal for a first offence.
- C. In most disciplinary cases, a single act of misconduct should not justify dismissal. Warnings should be given (normally, at least 2 occasions of warning, with appropriate time limits for improvement) and other sanctions considered before an employee is dismissed. The disciplinary procedures should make plain where a further offence will lead to dismissal and should make the grounds for summary dismissal as clear as possible.
- D. The Council recommends that the powers of suspension, dismissal and summary dismissal should be delegated to the appropriate level of line management but that it may be retained by the full Authority for certain categories of staff, if deemed appropriate. Individual employees and their local staff representatives should be informed which Managers have such delegated powers.
- E. During suspension from duty while investigations are being made into allegations of gross misconduct, the employee should receive full pay until a disciplinary hearing takes place, There will be no right of appeal by an employee or his/her representative against suspension, which is not itself a form of disciplinary action nor is it to be used as such. No record should be kept of any suspension which does not lead to disciplinary action. In order to protect both management and staff, the council suggests that disciplinary procedures should give indicative timescales within which investigations should normally be completed and a disciplinary hearing held.
- F. Employees should be given reasonable advance notice in writing of the date and time of a disciplinary hearing. Confirmation of the outcome of the hearing, with details of disciplinary action taken, if any, should be given in writing to the employee concerned.
- G. An employing authority's disciplinary procedures should describe the mechanism by which an individual may appeal against warnings or dismissal. In cases of dismissal, employees with the appropriate qualifying service may have grounds for making a statutory claim for unfair dismissal to an Industrial Tribunal. Unless contractual

arrangements provide otherwise, there is no obligation provide for any other right of appeal outside an employing authority.

**PROTOCOL FOR DISPUTES PROCEDURES**

- A. The General Whitley Council considers that locally determined procedures for hearing and resolving all collective disputes should be based on the following principles. Where, exceptionally, an outside body is so involved, its role should be clearly defined beforehand.
  - i. Disputes should be resolved at the lowest possible level of management and as close as possible to the source of the dispute;
  - ii. As far as possible, disputes should be settled locally without formal reference to a person or body outside the employing authority;
  - iii. Disputes should be settled as speedily as possible.
- B. Where disputes are related to Whitley Council agreements, local management and staff sides may wish to seek the advice of the Joint Secretaries of the appropriate Whitley Council.

## SECTION 43

### A NATIONAL STATEMENT ON THE PARTICIPATION OF NHS EMPLOYERS IN THE NEW DEAL "WELFARE TO WORK" PROGRAMME

1. The General Whitley Council recognises the NHS as being well placed to make a significant contribution to the success of the New Deal by providing job opportunities as part of the New Deal Employment option. Both Management and Staff Sides are committed to the objectives of the New Deal and wish to facilitate its successful operation within the framework provided by this statement.
2. In accordance with the Government's advice (Design of the New Deal, October 1997, (DfEE), and in the interests of equity, effectiveness and efficiency, the GWC offers the following guidance on the employment conditions for participants working in the NHS:
  - \* New Deal trainees are employees and are entitled by law to contracts of employment.
  - \* All contractual employment provisions, including rates of pay, normally accorded to employees should be applied to New Deal employees.
  - \* Existing employees must not be made redundant or otherwise dismissed to make way for New Deal employees. Employing bodies should apply the same performance requirements to New Deal employees as to other employees, including disciplinary and grievance procedures.
  - \* The training content of the programmes should be of high quality, focused on skills and knowledge relevant to continuing employability, leading to an approved qualification. New Deal employees are entitled to one day a week, or equivalent, training for a nationally recognised qualification of at least NVQ/SVQ Level 2 Standard. Provision of training opportunities for New Deal staff should not adversely affect training opportunities and commitments made for existing staff.
  - \* New Deal employees should be encouraged to join the NHS Pension Scheme and will be covered by the NHS Injury Benefit Scheme.
  - \* Local recruitment and selection procedures must be consistent with the requirements of equal opportunities legislation and good employment practice.
3. Local Staff Side representatives should be consulted on all aspects of the implementation of the New Deal programmes within employing bodies.
4. The General Whitley Council believes that training enhances opportunities for secure employment and development and believes employing bodies should develop, where practicable, local training schemes for New Deal employees alongside those of current employees.



## SECTION 44

### IMPLEMENTATION OF THE WORKING TIME REGULATIONS

1. The GWC has reached agreement in accordance with Regulation 23 of the Working Time Regulations 1998 in relation to workers within the purview of the Whitley Councils.
2. There is a general responsibility for employers and employees under health and safety law to protect as far as is practicable the health and safety at work of all employees. Control on working hours should be regarded as an integral element of managing health and safety at work and promoting health at work. It is therefore appropriate that health service employers, when organising work, should take account of the general principle of adapting work to the worker.
3. In reaching local arrangements to implement this Agreement, employers or employees are expected to ensure that no arrangements are reached which discriminate against members of staff with family or other carer responsibilities.

#### **Exceptions**

4. Doctors in training are excluded from the provisions of this agreement. Arrangements for career grade doctors are the subject of a separate agreement.
5. Regulation 18 of the Working Time Regulations states:

"Regulations 4(1) and (2), 6(1), (2) and (7), 7(1), and (6), 8, 10(1), 11(1) and (2), 12(1), 13 and 16 do not apply- .....

(c) where characteristics peculiar to certain specified services such as the armed forces or the police, or to certain specific activities in the civil protection services, inevitably conflict with provisions of these Regulations."

Regulation 2 cites ambulance services within the definition of civil protection services. In the case of employees unable to benefit from the protection of the Working Time Regulations, Ambulance services employers are expected to apply the principles of the Regulations and this Agreement as far as the exigencies of the service permit.

#### **Protection**

6. Employees must suffer no detriment because they have exercised any of their entitlements under the Regulations. The provisions of the Working Time Regulations are not maximum standards and conditions which are currently in place and more favourable to staff should not be worsened.

#### **Records**

7. Employers must keep records, which will be available to locally recognised unions, which are adequate to ensure that the limits specified in paragraphs 8 (maximum working weekly time), 14 (rest breaks), 16 (daily rest), 18 (weekly rest periods), 19 (night work) are complied with and that where there is an entitlement to compensatory rest this is provided for.

### **Maximum Weekly Working Time**

8. Working time is any time when an employee is "working, at his employer's disposal and carrying out activities or duties". For time to be classed as working time all three elements must be satisfied. Such time may or may not, happen to coincide with the time for which a worker receives pay or with the time during which he/she may be required to work under a contract of employment. Working time will include time taken for training purposes, civic and public duties, health and safety and trades union duties.
9. Employees will normally not be expected to work more than 48 hours per each seven day period calculated over an averaging period of 17 weeks. In exceptional circumstances for those health professionals involved in the need for continuous care related to reception, treatment or care of patients, the reference period may be extended by agreement with locally recognised unions to a maximum of 26 weeks.
10. Unless it is agreed with locally recognised unions to the contrary the averaging reference period (as per paragraph 8) is the 17 weeks immediately preceding each day in the course of a worker's employment.
11. Working time will be calculated exclusive of meal breaks except where individuals are required to work during meals in which case such time should be counted as working time.

### **Individual Option to Work More Than 48 Hours per Week**

12. Individuals may choose to agree to work more than the 48 hours average weekly limit if they agree with their employer in writing. A decision to exercise this option is an individual, voluntary one and no pressure should be placed on an employee to take this option. Such an individual agreement may either relate to a specified period or apply indefinitely. To end any agreement a worker must give written notice to his/her employer. This can take the form of a previously specified notice period of up to three months written in any agreement or if no notice period is specified only seven days notice would be required. Records of such agreements must be kept and be made available to locally recognised unions.

### **Staff "On Call"**

13. Staff who have to be "on -call", (being called in to work from outside the premises), and so are available to work if called upon, will be regarded as working from when they are required to undertake any work related activity. Where staff are "on call" but otherwise free to pursue time as their own this will not count towards working time. This method of calculating working time will not affect "on-call" payments (see also para 8).
14. Where staff are required to "sleep in" on NHS premises for the duration of a specified period, they are not free to pursue their time as their own and so are regarded as working for the purposes of this agreement. Local agreements should be made for compensatory rest taking account of intensity of work.

### **Rest Breaks**

15. Where the working day is longer than six hours, all staff are entitled to take a break of at least 20 minutes. Rest breaks must be

taken during the period of work and should not be taken either at the start or the end of a period of working time. Employees should be able to take this rest break away from their work station. In exceptional circumstances and by agreement with the worker, where a rest break cannot be taken the unused entitlement should be claimed as a period of equivalent compensatory rest. Line managers should ensure that provision is made to allow compensatory rest to be taken, this should normally be within two weeks. Existing local arrangements which already provide for breaks of more than 20 minutes (eg lunch breaks) will meet the requirements of this provision and no further action will be needed.

16. In circumstances where work is repetitive, continuous or requiring exceptional concentration employers must ensure the provision of adequate rest breaks as an integral part of their duty to protect health and safety of their employee. In such circumstances the advice of local Occupational Health Services should be sought.

#### **Minimum Daily Rest Periods**

17. Employees should normally have a rest period of not less than 11 hours in each 24 hour period. In exceptional circumstances where this is not practicable because of the contingencies of the service daily rest may be less than 11 hours. In these circumstances records should be kept by the employer which will be available to locally recognised unions. Local arrangements should be agreed to ensure that a period of equivalent compensatory rest is provided. Compensatory rest should be provided within a reasonable time from when the entitlement to rest was modified usually within two weeks. Any proposed regular amendment to the minimum daily rest period must be agreed with locally recognised unions. It is recognised that in some emergency situations compensatory rest may not always be possible.
18. Where full daily rest can not be taken because a worker is changing shifts the employer should make arrangements to allow equivalent compensatory rest as soon as is practicable.

#### **Weekly Rest Periods**

19. All employees should receive an uninterrupted weekly rest period of 35 hours (including the 11 hours of daily rest) in each seven day period for which they work for their employer. Where this is not possible they should receive equivalent rest over a 14 day period, either as one 70 hour period or two 35 hour periods.

#### **Night Work**

20. Night time is a period of at least 7 hours which includes the period from midnight to 5 am. A night worker is someone who is classed as working for at least three hours daily working time during night time hours as a "normal course". Employers should ensure that the "normal" hours of their night workers does not exceed an average of 8 hours over a seventeen week period.
21. "Normal hours" are those which are regularly worked and/or fixed by contract of employment. Calculation is not affected by absence from work, as a workers normal hours of work would remain the same regardless of the "actual" hours worked. Time worked as overtime is not normal work unless an employees' contract fixes a minimum number of hours.

### **Special Hazards or Heavy Physical or Mental Strain**

22. Employers must identify special hazards faced by night workers by identifying them in risk assessments as involving a significant risk to health and safety undertaken in accordance with the Management of Health and Safety at Work Regulations 1992.
23. Employers should ensure that night workers, whose work does involve special hazards or heavy physical or mental strain, do not actually work for more than 8 hours in any 24 hour period during which the night worker performs night work.

### **Health Assessment for Night Workers\Transfer to day work**

24. All night workers are entitled to a regular free and confidential health assessment and additionally when a work related problem is identified to determine whether the worker is fit to undertake the night work to which he/she is assigned. The format and content of the assessment of the health assessment should be agreed by locally recognised unions in accordance with the advice on Occupational Health Services issued by the NHS Executive and the Health and Safety Commission's Health Services Advisory Committee<sup>4</sup>. Paid time off should be given to employees to attend health assessments.
25. Employees identified by a medical practitioner as having health problems related to night work should be offered wherever possible the option of transfer to suitable day work with appropriate pay and conditions of service.

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<sup>4</sup> The Management of Health Safety and Welfare Issues for NHS Staff (NHS Executive 1997) The Management of Occupational Health Services for Healthcare Staff (Health Services Advisory Committee 1993)

## SECTION 45

### ARRANGEMENTS FOR REDUNDANCY PAYMENTS

#### **SCOPE**

1. These arrangements apply to employees who, having been employed for the minimum qualifying period of reckonable service (as defined in paragraph 3.2) in the National Health Service in Great Britain (or previously in Northern Ireland), are dismissed by reason of redundancy, which expression includes events described in section 81(2) of the Employment Protection (Consolidation) Act 1978, and premature retirement on organisational change under paragraphs 1(iii), 6, 7 and 8 of the agreement on Premature Payment of Superannuation and Compensation Benefits (Section 46). The minimum qualifying period is 104 weeks continuous service whole-time or part-time.
2. When considering redundancies, regard should be had to good employment practice, such as that outlined in the ACAS booklet on handling redundancies.

#### **DEFINITIONS**

3. For the purposes of these arrangements, the following expressions have the meanings assigned below:
  - 3.1 "Health Service Authority, means a Regional Health Authority, a District Health Authority, the Dental Practice Board, a Special Health Authority, a Family Health Service Authority, the Public Health Laboratory Service Board, a Health Board and the Common Services Agency in Scotland, the Northern Ireland Health and Social Services Board and its Central Services Agency, and any predecessor or successor authority.
  - 3.2 "Reckonable service", which shall be calculated up to the date on which the termination of the contract takes effect, means continuous employment as defined in 1 above with the present or any previous Health Service authority, after attaining age 18 years.

A period (which may include the aggregate or shorter periods) not exceeding 12 months beginning on or after 1 April 1985 spent as a GP trainee in the employment of a Principal GP trainer under the Trainee Practitioner scheme shall, notwithstanding that it is not employment with a Health Service authority, also count as "reckonable service".

Periods of employment prior to a break of more than 12 months at any one time in employment with a Health Service authority shall not count as "reckonable service", except that any period of employment as a GP trainee counted as "reckonable service" shall not count as part of any period of more than 12 months constituting a break in employment with a Health Service authority.

Service which qualifies under Section 58 of this Handbook shall also count as reckonable service. The following previous employment shall not so count:

- 3.2.1 employment which has been the subject of terminal payments under HM (60)47 or HM(62)12 (in Scotland, SHM(60)38 or SHM(62)14;
- 3.2.2 employment which has been the subject of a redundancy payment under this agreement or under any similar redundancy arrangements in Northern Ireland,
- 3.2.3 employment which has been the subject of compensation for loss of office under the National Health Service (Transfer of Officers and Compensation) Regulations 1948 and 1960, the National Health Service (Transfer and Compensation) (Scotland) Regulations 1948 and 1960, the Local Government (Executive Councils) (Compensation) Regulations 1964 and 1966, the National Health Service (Compensation) Regulations 1971, the National Health Service (Compensation) (Scotland) Regulations 1971, or Regulations made under section 24 of the Superannuation Act 1972, or any orders made under sections 11(9) or 31(5) of the National Health Service Act 1946 or sections 11(10) or 32(5) or the National Health Service (Scotland) Act 1947 or sections 13(3) or 19(6) of the National Health Service (Scotland) Act 1972, or under sections 28(6) or 60 of the Health Service Act (Northern Ireland) 1948 or Article 78 of the Health and Personal Social Services (Northern Ireland) Order 1972 or Regulations made under section 44 of the National Health Service Reorganisation Act 1973, or section 34A of the National Health Service (Scotland) Act 1972.
- 3.2.4 employment in respect of which the employee was awarded superannuation benefits.
- 3.3 "Superannuation benefits" means the benefits, or part of the benefits (other than a return or contribution) payable under a superannuation scheme in respect of the period of the employee's reckonable service.
- 3.4 "Week's pay"\* means either:
  - 3.4.1 an amount calculated in accordance with the provisions of Schedule 14, Part II of the Employment Protection (Consolidation) Act 1978 except that paragraph 8 of Schedule 14, Part II shall not apply or
  - 3.4.2 an amount equal to 7/365ths of the annual salary in payment at the date of termination of employment, or
  - 3.4.3 the weekly wage calculated as at the date of termination of employment, to which the employee would be entitled under the agreements of the Ancillary Staffs Council or the Ambulance Council of the Whitley Councils for the Health Services (Great Britain) during absence on annual leave,whichever is more beneficial to the employee.

## BENEFITS

4. The redundancy payment<sup>5</sup> shall take the form of a lump sum dependent on the employee's age and reckonable service at the date of ceasing to be employed. This shall be:
  - 4.1 for all employees aged 41 or over who are not immediately after that date entitled to receive payment or benefits provided under the NHS Superannuation Scheme, the lump sum shall be assessed as follows:
    - 4.1.1 2 weeks' pay for each complete year of reckonable service at age 18 or over with a maximum of 50 weeks' pay, PLUS
    - 4.1.2 an additional 2 weeks' pay for each complete year of reckonable service at age 41 or over with a maximum of 16 weeks' pay.

(Overall maximum, 66 weeks' pay)
  - 4.2 For other employees, a maximum of 20 years reckonable service may be counted, assessed as follows:
    - 4.2.1 For each complete year of reckonable service at age 41 or over - 1½ weeks' pay;
    - 4.2.2 For each complete year of reckonable service at age 22 or over but under 41 - 1 week's pay;
    - 4.2.3 For each complete year of reckonable service at age 18 or over but under 22 - ½ week's pay.

(Overall maximum, 30 weeks' pay)
5. Fractions or a year cannot count except that they may be aggregated under 4.2.1, 4.2.2 and 4.2.3 to make complete years. These must be paid for at the lower appropriate rate for each complete year aggregated.
6. If the 64th birthday has been passed, the sum calculated under paragraph 4 above shall be reduced by one twelfth for each complete month between the date of the 64th birthday and the last day of service.
7. Redundant employees who are entitled to an enhancement of their superannuation benefits on ceasing to be employed will, if the enhancement of service is less than 10 years, be entitled to receive redundancy, payments. Where the enhancement of service does not exceed 6 2/3 years they will be paid in full; where the enhancement of service exceeds 6 2/3 years they will be reduced by 30% in respect of each year of enhanced service over 6 2/3 years with pro rata reduction for part years.

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<sup>5</sup> In all cases the redundancy payment will need to be recalculated, and any arrears due paid, if a retroactive pay award is notified after the date of cessation of employment.

#### **EXCLUSION FROM ELIGIBILITY**

8. Employees otherwise eligible shall not be entitled to redundancy payments under these arrangements if they:
  - 8.1 are dismissed for reasons of misconduct, with or without notice; or
  - 8.2 are age 65 or over; or
  - 8.3 have reached the normal retiring age in cases where there is a normal retiring age of less than 65 for employees holding the position which they held and the age is the same for men and women; or
  - 8.4 at the date of the termination of the contract have obtained without a break or with a break not exceeding 4 weeks suitable alternative employment with the same or another Health Service authority in Great Britain or NHS trust in Great Britain; or
  - 8.5 unreasonably refuse to accept or apply for suitable alternative employment with the same or another Health Service authority in Great Britain or NHS trust in Great Britain; or
  - 8.6 leave their employment before expiry of notice except as described at paragraph 11; or
  - 8.7 are offered a renewal of contract (with the substitution of the new employer for the previous one) where the employment is transferred to another public service employer not being a Health Service authority.

#### **SUITABLE ALTERNATIVE EMPLOYMENT**

9. "Suitable alternative employment", for the purposes of paragraph 8, should be determined by reference to sections 82(3) and 82(5) of the Employment Protection (Consolidation) Act 1978. 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 by adapting their domestic arrangements where possible.
10. For the purposes of this scheme any suitable alternative employment must be brought to the employee's notice in writing 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 4 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 84(3) to (7) of the Employment Protection (Consolidation) Act 1978 shall apply.

#### **EARLY RELEASE OF REDUNDANT EMPLOYEES**

11. Employees who have been notified of their cessation of employment on account 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 and wish to take this up before the period of notice of redundancy expires. In these circumstances the employing authority shall, unless there are compelling reasons to the contrary, release such employees at their



request on a mutually agreeable date and that date shall become the revised date of redundancy for the purpose of calculating any entitlement to a redundancy payment under the other terms of this agreement.

**CLAIM FOR REDUNDANCY PAYMENT**

12. Subject to the employee submitting a claim which satisfies the conditions and is made either before or within 6 months after cessation of employment, the redundancy payment shall be paid by the employing authority. Before payment is made, employees shall provide a certificate that at the date of termination of the contract they had not obtained or been offered or unreasonably refused to apply for or accept suitable alternative Health service employment commencing without a break or with a break not exceeding 4 weeks from the date of termination and that they understand that the payment is made only on this condition and they undertake to refund it if this condition is not satisfied.

**DISPUTES**

13. Employees who disagree with the employing authority's calculation of the amount of redundancy payment or rejection of a claim for such payment should in the first instance make representation to the employing authority via the local grievance procedures.

## SECTION 46

### PAYMENT OF SUPERANNUATION AND COMPENSATION BENEFITS ON PREMATURE RETIREMENT

#### **SCOPE**

1. Existing arrangements provide for premature retirement with immediate payment of superannuation benefits and compensation for eligible employees:
  - (i) on redundancy<sup>6</sup>
  - (ii) in the interests of the efficiency of the service<sup>7</sup>

This agreement provides additionally for premature retirement:-

- (iii) on organisational change - where, in contemplation of furtherance of organisational change (statutory or managerial, the premature retirement would be in the interests of the service.
2. The terms of this agreement shall apply equally to premature retirement with immediate payment of superannuation and compensation benefits in any of the circumstances outlined at (i) - (iii) above.
3. The GWC NHS Reorganisation Committee has agreed that employing authorities should not, save by local agreement, introduce or vary conditions of employment relating to retirement age in a way which might adversely affect any existing member of staff.

#### **DEFINITIONS**

4. In this agreement:-

"Retirement age" means the age at which, under any written condition of employment, an employee may be required to retire; or if there is no such condition, age 65.

"Relevant optant service" means, for any former member of an FSSN or similar scheme, service in that scheme occurring:-

- during NHS employment and within the 12 months period immediately before the beginning of their reckonable service in the NHS superannuation scheme: plus
- any such service occurring during the local government employment of any employee who, on entering the NHS, was covered by a Transfer Order<sup>8</sup>.

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<sup>6</sup> See HK(66)9 as amended by SD Letter (76)15 (England and Wales); SPN(HS) 11/1976 and SHM 62/45 (Scotland)

<sup>7</sup> See HM(62)49 as amended by SD Letter (76)15 (England and Wales); SPN(HS) 11/1976 and SHM 62/45 (Scotland)

<sup>8</sup> This definition includes any employee who left local authority employment and entered NHS employment before 1 April 1974 in circumstances in which, if he had remained in local authority employment until immediately before that date, he would have been transferred to NHS employment on that date.

#### **AGE AND SERVICE QUALIFICATION**

5. In all cases the employee must be aged between 50 and retirement age and have at least 5 years' service (including any relevant optant service) within the NHS superannuation scheme.

#### **ELIGIBILITY FOR PREMATURE RETIREMENT ON ORGANISATIONAL CHANGE**

6. In England, criteria for the selection of volunteers for premature retirement on organisational change shall be agreed at regional level between Management and Staff Side or recognised staff organisation(s). In addition, each premature retirement must be approved by the regional health authority in consultation with and on the recommendation of the employing authority. In giving such approval the regional health authority must be satisfied that the employee has consented in writing to being prematurely retired and that the premature retirement will contribute to the avoidance of redundancy and be in the general interests of the service in the region.
7. In Wales, criteria for the selection of volunteers for premature retirement on organisational change shall be agreed at Area level (after 1 April 1982 at district level). The expression "agreed at Area level" shall have the meaning assigned to it in Advance Letter (GC)(W) 9/81: NHS Reorganisation, Staffing Arrangements (Wales). A copy of the agreed criteria shall be sent to the Welsh Office. In addition, when giving approval to the premature retirement of individual employees, the employing authority must be satisfied that the employee has consented in writing to being prematurely retired and that the premature retirement will contribute to the avoidance of redundancy and be in the general interests of the service.
8. In Scotland the selection of volunteers for premature retirement on organisational change shall be approved by the Scottish Home and Health Department in consultation with and on the recommendation of the employing authority. The Department has undertaken to give each case sympathetic consideration and to notify recognised staff organisations in Scotland of all the applications received under the scheme. In giving such approval the Scottish Home and Health Department will need to be satisfied that the employee has consented in writing to being prematurely retired and that the premature retirement will contribute to the avoidance of redundancy and be in the general interests of the service in the area.
9. The terms for premature retirement on redundancy or in the interests of the efficiency of the service (paragraphs 1(i) and (ii) of this agreement) shall in no way be affected by failure to meet any of the conditions set out in paragraphs 6-8 above.

#### **ENHANCEMENTS**

10. All employees eligible for premature payment of superannuation and compensation benefits under the terms of this agreement shall have their reckonable years in the NHS scheme doubled subject to a maximum enhancement of 10 added years. Total reckonable years (including enhancements) will in all cases be limited to the lesser of:
  - the total reckonable service that would have been attained by continuing in service to retirement ageor

- 40 years.

Provided that:-

- (i) the enhancement of reckonable service for employees with relevant optant service shall be based on the aggregate of their reckonable NHS service and their relevant optant service;
- (ii) any employee in the NHS superannuation scheme on the day immediately preceding the coming into operation of this agreement shall be entitled to enhancements calculated on the basis of the terms set out in SD(76)15 (SPN(HS) 11/1976 in Scotland) if this results in a higher number of added years.

#### **GENERAL**

- 11. The existing rules and conditions for the premature payment of superannuation and compensation benefits will, except where modified by this agreement, continue to apply.

#### **IMPLEMENTATION**

- 12. The terms of this agreement will be implemented with effect from 4 November 1980 by regulations made under the Superannuation Act 1972 supplemented, as necessary, by guidance issued by Departments.

#### **NOTE ON ELIGIBILITY FOR REDUNDANCY PAYMENTS**

- 13. Employees retiring prematurely under the terms of this agreement on
  - redundancy (paragraph 1(i))
  - organisational change (paragraph 1(iii))

will, where eligible under Section 45 on the GWC Handbook, be additionally entitled to a lump sum redundancy payment under the terms of that Whitley agreement. The lump sum redundancy payment will be abated at the rate of 30% for each year by which enhancement of reckonable service exceeds 6 2/3 years, with pro rata reduction for part years.

## SECTION 47

### PROTECTION OF PAY AND CONDITIONS OF SERVICE

#### **SCOPE**

1. This agreement applies to any employee who, as a consequence of organisational change, is required by management to move to a new post or suffers a reduction in basic hours worked within the standard working week. It provides -
  - a. short-term protection of earnings, whether or not down grading is involved
  - b. long-term protection of basic wage or salary where downgrading is involved
  - c. protection of certain other conditions of service.

#### **PRESCRIBED PERIOD**

2. The period during which this agreement shall operate is 1 April 1986 to 31 March 1995 inclusive. The agreement shall be reviewed by the General Whitley Council not later than 31 March 1994 and it shall be open to the General Whitley Council either to extend the prescribed period or to negotiate alternative protection provisions.

#### **DEFINITIONS**

3. The following expressions in this agreement have the meanings ascribed to them below -

##### Organisational Change

\* means any structural or managerial change in the organisation of health service provision.

##### Basic wage or salary

\* basic wage or salary is the weekly or monthly sum due in respect of basic hours worked by the individual concerned within the standard working week as defined in the appropriate functional Council agreements, plus any responsibility or qualification allowances, proficiency payments, pharmaceutical officers personal allowance or distinction award<sup>9</sup> reckoned on the day immediately preceding the first of employment in the new post, but excluding any payments made in respect of acting-up, London Weighting, clinical membership of a DMT, appointment as a Unit Medical Representative, stand-by and on-call duty. Also excluded are payments listed as additional earnings at Appendix A.

##### Protectable earnings

- are basic wage or salary (as defined above) plus -

either

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<sup>9</sup> The monetary value of a distinction award is protected rather than the award itself.

in the case of employees within the purview of the Ambulance Council, the Ambulance Officers' Negotiating Committee and the Ancillary Staffs Council, any payments or allowances which would be a part of the payment during annual leave if annual leave commenced on the day immediately preceding the first day of employment in the new post

or

in the case of all other employees, the weekly or monthly average over the four months immediately preceding the first day of employment in the new post of the additional earnings listed in Appendix A.

Earnings in the new post

- mean the sum of the basic wage or salary in the new post and of any remuneration in respect of overtime, shift work and other additional duties.

Downgrading

- occurs when the new post, irrespective of its grade title, carries an hourly rate, or a salary scale with a maximum point, lower than that applying to the post held previously, or lower than that of the personal grade held in the previous post.

A more senior post

- is a post which carries an hourly rate, or a salary scale with a maximum point, higher than that applying to the new post or any subsequent post to which an employee may have moved.

Reckonable service

- is total NHS service (aggregated if discontinuous) but excluding service which has been the subject of a redundancy payment under Section 45 of this Handbook or any other compensatory or terminal payment specified in Section 45, paragraphs 2.2.1-4 inclusive.

**SHORT-TERM PROTECTION OF EARNINGS**

4. An employee to whom this agreement applies is entitled to have certain earnings ("protectable earnings")<sup>10</sup> in the former post protected on a mark-time basis in accordance with the following table -

Reckonable Service	Protection Period (Months)
4 - 12 months	2
1 - 2 years	4
2 - 3 years	6
3 - 4 years	8
4 - 5 years	10
5 + years	12

5. Earnings in the new post will be offset against protectable earnings.

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<sup>10</sup> "Protectable earnings" will need to be recalculated, and any arrears due paid, if a retroactive pay award is subsequently notified.

If for any particular pay period the earnings in the new post exceed the protectable earnings, protection of earnings is extinguished and earnings in the new post are paid in full for that particular pay period.

6. When calculating earnings in the new post, the rates used for calculating payments in respect of overtime, shift work and other additional duties shall be those applicable to the new post.

**LONG-TERM PROTECTION OF BASIC WAGE OR SALARY WHERE DOWNGRADING IS INVOLVED**

7. An employee<sup>11</sup> to whom this agreement applies who is moved from one post to another and who is downgraded as a result of the move is entitled to full protection of basic wage or salary, with benefit of any subsequent improvements or increments applying to the scale, until -
  - a. the period of years specified in Appendix B expires, or
  - b. the employee is appointed to a post in which the normal basic wage or salary is equal to or exceeds the protected basic wage or salary, or
  - c. the employee moves on his or her own application to a post with another authority with a basic wage or salary which is equal to that of the existing post, or
  - d. the employee moves on his or her own application to a post with a basic wage or salary which is lower than that of the existing post, or
  - e. the employee retires, or
  - f. the basic wage or salary of the post is equal to or exceeds the protected basic wage or salary.
8. If the period of full protection specified in Appendix B expires before (b), (c), (d), (e) or (f) above, protection continues on a mark-time basis until -
  - a. the employee is appointed to a post in which the normal basic wage or salary is equal to or exceeds the protected basic wage or salary, or
  - b. the employee moves on his or her own application to a post with another authority with a basic wage or salary which is equal to that of the existing post, or
  - c. the employee moves on his or her own application to a post with a basic wage or salary which is lower than that of the existing post, or

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<sup>11</sup> When a part-time employee is moved to a new post and downgraded and the hours in the new post are the same or fewer than before, long-term protection entitlement is assessed on the basis of actual hours worked in the new post paid at the hourly rate applicable to the previous post. If the hours in the new post exceed hours worked previously, long-term protection entitlement is based on (hours worked previously x rate applicable previously). The additional hours in the new post are paid at the rate applicable to the new post.

- d. the employee retires. or
  - e. the basic wage or salary of the post is equal to or exceeds the protected basic wage or salary.
9. Long-term protection of basic wage or salary is transferable between employing authorities in cases where an employee enjoying protection moves to a more senior full-time post with another employing authority which attracts a basic wage or salary lower than the protected basic wage or salary. Exceptionally, 7(c) and 8(b) above notwithstanding, protection may be transferred when an employee moves on his or her own application to a post with another employing authority with a basic wage or salary which is equal to that of the existing post, but only at the discretion of the authority which would have to meet the cost of protection after such a move and only where that authority can justify the continuation of protection as being in the interest of the service.
10. Any additional earnings derived from work in the new post will be remunerated at the rate appropriate to the new post.

**INTERACTION BETWEEN SHORT-TERM AND LONG-TERM PROTECTION**

11. An employee with a right to long-term protection under paragraphs 7 - 10 above will also have initially a concurrent right to short-term mark-time earnings protection. Until the short-term protection expires, the employee shall be paid on the basis and according to the conditions of whichever right is the more favourable to the employee. Thereafter payment is on the basis of the ongoing entitlement to long-term protection.

**PROTECTION OF CONDITIONS OF SERVICE : SUBSISTENCE AND TRAVEL**

12. An employee to whom this agreement applies, and who is downgraded as a result of the move, is entitled to the subsistence rates set out in Section 22 and to the travelling expenses set out in Section 23 appropriate to the former post, with benefit of subsequent improvements, until the period of full protection specified in paragraph 7 above expires. Thereafter subsistence and travelling expenses are maintained on a mark-time basis.

**PROTECTION OF CONDITIONS OF SERVICE : PERIOD OF NOTICE**

13. Employees required to move to a new post are entitled to protection of the period of notice appropriate to the former post, except that the period of notice may not be less than that provided for under Section 49 of the Employment Protection (Consolidation) Act 1978.

**PROTECTION OF CONDITIONS OF SERVICE : HOURS AND ANNUAL LEAVE**

14. Employees required to move to a new post will acquire the conditioned hours appropriate to the new post. Annual leave allowances will be protected with subsequent improvements while basic pay is fully protected and on a mark-time basis thereafter.

**ENTITLEMENT TO OPT FOR TERMS AND CONDITIONS OF THE NEW (OR ANY SUBSEQUENT) POST**

15. Employees with an entitlement to long-term protection in accordance with paragraphs 7 - 10 above may at any time opt for the complete



package of remuneration and conditions of service applicable to the new (or any subsequent) post. This option, once exercised, cannot be cancelled.

#### **CONDITIONS**

16. Short-term protection of earnings is conditional on the employee undertaking any overtime, shift work or other additional duties which may be required up to the level at which earnings in the new post equal the protected earnings.
17. Short-term protection of earnings is also conditional on the employee accepting any subsequent offer of another suitable post with the same authority which attracts a basic wage or salary in excess of the basic wage or salary applying to the new post.
18. Long-term protection of basic wage or salary where downgrading is involved is also conditional on the employee giving an undertaking to move to a more senior post with the employing authority, or where this would be reasonable, with another employing authority. If an employee fails to give such an undertaking within 4 weeks of the day on which the downgrading takes effect, or if he initially or subsequently unreasonably refuses to apply for or to accept a more senior post, protection continues on a mark-time basis only.

#### **PRESERVATION OF RIGHTS**

19. Subject to the savings in paragraph 20(1), nothing in this Agreement shall apply in respect of or affect the validity of any terms and conditions of service or any protection or variation arrangements applicable to or enjoyed by an employee or by virtue of any statutory provision.

#### **REVOCATION AND SAVING**

- 20.1 The provisions of the previous GVC protection agreement and the functional Council provisions set out in paragraph 20(2) are replaced by this Agreement except that:
  - a. Employees already receiving protection under the provisions of the previous GVC agreement or the provisions set out in paragraph 20(2) shall continue to be protected under those provisions until the protection expires;
  - b. Employees who were in post on 1 April 1986 and who subsequently between 1 April 1986 and 31 March 1993 are affected by an organisational change which attracted protection under this agreement and which would also have attracted protection under one of the functional Council provisions set out in paragraph 20(2), may elect once and for all to be protected either under the provisions of this agreement or under the provisions of the relevant functional Council.

20.2

- Administrative and Clerical - paragraphs 328 to 331 and Ambulance Officers paragraph 74
- Professional and Technical 'A' - paragraphs 8400 to 8404
- Pharmaceutical Council - Advance letter (PH)1/79 Appendix 8
- Professional and Technical 'B' - paragraphs 5104 to 5108
- Nurses and Midwives - paragraphs 6.11 to 6.13 in so far as it relates to organisational change.

#### **CONTINUITY OF EMPLOYMENT**

21. All employees required as a result of organisational change to move by transfer or in competition to a post with another or a newly created health authority shall, in respect of all terms and conditions of service determined by Whitley agreement, be regarded as being in continuous employment; and no employing was other than continuous for the purposes of the Employment Protection (Consolidation) Act 1978.

#### **SUBSEQUENT CHANGES OF POST**

22. Each subsequent change of post due to an organisational change covered by this agreement shall attract protection in its own right.

#### **APPEALS**

23. Appeals arising out of the application of this agreement shall be dealt with according to provisions of Section 32 of this Handbook, except for appeals arising out of the application of paragraph 16-18 which shall be dealt with according to the provisions of Section 34.

APPENDIX A TO SECTION 47

**PAYMENTS ELIGIBLE FOR PROTECTION**

(The following payments should be included in the computation of the 4-month average only if they are a regular requirement of the job).

Overtime

Incentive bonus payments (including lead-in payments and bonus allowance)

Special duty payments

Excess hours payments

Lead payments to nurses of psychiatric and geriatric patients

Radiological Officers safety allowance

Regional Secure Unit payments

VD payments

Domiciliary fee income

allowances for

Shift duty

Night duty

Split duty

Unsocial hours

Stand-by and on-call duty



ANNEX B TO SECTION 47 (b)

**YEARS OF FULL WAGE RATE OR SALARY PROTECTION**

8	9	10	11	12	13	14	15	14	13	12	11	10	9	8	7	6	5	4	3	2	1	0
7	8	9	10	11	12	13	14	14	13	12	11	10	9	8	7	6	5	4	3	2	1	0
6	7	8	9	10	11	12	13	14	13	12	11	10	9	8	7	6	5	4	3	2	1	0
5	6	7	8	9	10	11	12	13	13	12	11	10	9	8	7	6	5	4	3	2	1	0
5	5	6	7	8	9	10	11	12	13	12	11	10	9	8	7	6	5	4	3	2	1	0
5	5	5	6	7	8	9	10	11	12	12	11	10	9	8	7	6	5	4	3	2	1	0
5	5	5	5	6	7	8	9	10	11	12	11	10	9	8	7	6	5	4	3	2	1	0
5	5	5	5	5	6	7	8	9	10	11	11	10	9	8	7	6	5	4	3	2	1	0
5	5	5	5	5	5	6	7	8	9	10	10	9	8	7	6	5	4	3	2	1	0	0
5	5	5	5	5	5	5	6	7	8	9	9	8	7	6	5	4	3	2	1	0	0	0
5	5	5	5	5	5	5	5	5	6	7	8	8	7	6	5	4	3	2	1	0	0	0
5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4	4
3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3
2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65

## SECTION 48

### PROTECTION OF PAY AND CONDITIONS OF SERVICE

#### **GENERAL STATEMENT OF PRINCIPLES**

1. The General Whitley Council believes that an integral feature of any successful organisation is its ability to identify the need for change and to manage that change, taking into account management objectives as well as the aspirations and wellbeing of its employees.
2. It is of the essence of good management practice for employing authorities to introduce arrangements for safeguarding the pay and conditions of service of individual staff adversely affected by organisational change, as an alternative to redundancy and early retirement.
3. The Council considers that the detail of such arrangements should be determined by local management following consultation with staff and local staff representatives.

#### **TRANSITIONAL PROVISIONS**

4. The previous agreement on the protection of pay and conditions of service (in force until 31 March 1995) shall continue to remain in force until it is replaced by the new arrangements or until 30 September 1995, whichever occurs first. Individual employees on protected conditions under the provisions of the previous General Whitley Council agreements, or functional council agreements, shall continue to be protected under those provisions until the protection expires.

#### **REVOCATION**

5. Subject to paragraph 4 above, this agreement supersedes all previous General Whitley Council agreements.

#### **EXAMPLES OF ELEMENTS TO BE INCLUDED IN LOCALLY-DETERMINED PROTECTION ARRANGEMENTS**

When considering new procedures employing authorities will wish to establish their own rules on when to protect pay and conditions of service and the definition of terms to be used. Authorities may wish to consider the following points when making their arrangements:

1. The scope of the arrangements e.g. the circumstances in which they will or will not apply;
2. The length of protection of basic wage or salary when downgrading is involved;
3. The length of protection of earnings whether or not downgrading is involved;
4. Whether certain other conditions of service should be protected e.g. annual leave;
5. Which payments, in addition to basic wage or salary, are eligible for protection.

**NOTE: DEFINITIONS**

The following definitions may be useful:

Organisational Change

- means any structural or managerial change in the organisation of health service provision.

Basic Wage or Salary

- basic wage or salary is exclusively the weekly or monthly sum due in respect of basic hours worked by the individual concerned, within the standard working week as defined in the appropriate functional council agreements, plus any responsibility or qualification allowances, proficiency payments or distinction award, reckoned on the day immediately preceding the first day of employment in the new post.

Earnings in the New Post

- mean the sum of the basic wage or salary in the new post and of any remuneration in respect of overtime, shift work and other additional duties.

Downgrading

- occurs when the new post, irrespective of its grade title, carries an hourly rate lower than that for the previous post or a salary scale with a maximum point lower than the maximum point for the previous post, or lower than that of the grade held in the previous post.

SECTIONS 49-51 UNALLOCATED



## SECTION 52

### POSITION OF EMPLOYEES ELECTED TO PARLIAMENT

1. No special facilities shall be accorded to employers who become Members of Parliament. Such employees are not by reason of their office rendered incapable of being elected to Parliament or of sitting and voting as a Member of the House of Commons, and their position in regard to remaining in Health Service employment will therefore be governed by their ability or inability to continue to render the services appropriate to their posts.
2. It is recognised that full-time employees who are elected to Parliament will inevitably have to resign their health service appointments. In such cases the resignation must be unconditional and the employers, if they should seek re-employment on ceasing to be a Member of Parliament, shall have no claim to reinstatement either in their old posts or in any other post in the National Health Service.
3. See Section 3 for the provision governing leave for Parliamentary candidature.

## SECTION 53

### MEMBERSHIP OF LOCAL AUTHORITIES

1. As the bodies constituted under the National Health Service and Health Services Act are not in direct relationship with local authorities, there need be no objection as a general rule to National Health Service employees contesting local elections or taking part in local government activities, provided always that in the discharge of any local authority functions which impinge on the functions for which their Health Service employing authorities are responsible, due regard is had by the employees to the circumstances of their dual position.
2. Employees should seek the consent of their employing authorities before standing for election, but this consent should not be withheld except in cases where circumstances make membership of the local authority undesirable.
3. See Section 3 as to special leave facilities for an employee who is elected to a local authority.

SECTION 54

PAYMENT OF ANNUAL SALARIES

1. The provisions of this Section do not apply to employees within the purview of the Ancillary Staffs council.
2. The annual salaries of full-time employees who are paid monthly or weekly shall be apportioned as follows:-

2.1 Annual Salary paid monthly	For each calendar month: one-twelfth of the annual salary	For each odd day (including Sundays): the monthly sum divided by the number of days in the particular month
2.2 Annual Salary paid weekly	For each week: 7/365ths of the annual salary	For each odd day (including Sundays): the weekly sum divided by 7

**PART-TIME AND SESSIONAL STAFF IN MONTH OF JOINING OR LEAVING**

3. The annual salaries of part-time or sessional staff who are paid monthly or weekly should be apportioned as above except in the months or weeks in which employment commences or terminates when they should be paid for the hours or sessions worked.

**FULL-TIME EMPLOYEES LEAVING ONE EMPLOYING AUTHORITY TO JOIN ANOTHER**

4. Where full-time salaried employees terminate their employment immediately before a weekend and/or a public holiday, and take up a new salaried post with another NHS employing authority immediately after that weekend and/or that public holiday, payment for the intervening day or days, ie the Saturday (in the case of a 5 day working week) and/or the Sunday and/or the public holiday, shall be made by the first employing authority.

## SECTION 55

### PREPARATION FOR RETIREMENT

1. Employing authorities are recommended to provide reasonable facilities to enable all employees with a minimum of 12 months' service with an NHS employing authority and who are within 2 years of their expected date of retirement to make proper preparation for their retirement from the Service. They should also draw to the attention of all employees the facilities offered and the benefits to be gained from seeking membership of the nearest branch of the NHS Retirement Fellowship.
2. Wherever possible such employees should be given special leave with pay to attend a pre-retirement course organised by the employing authority or by a local education authority, or by any other body where these courses are available locally.
3. An employee who attends a pre-retirement course approved by the employing authority either on a full-time, part-time, day or evening basis shall be entitled to reimbursement of any fees for the course and excess travelling expenses at the rates appropriate to the post held.
4. Where pre-retirement courses are not available locally, employing authorities are recommended where resources permit to arrange such courses using their own facilities, and to prepare written guidance in booklet form which can be distributed to the employees concerned. Authorities may wish to consider holding joint courses where this is geographically convenient.
5. It is recommended that the facilities described above should be supplemented by the provisions of individual counselling where this is required.

SECTION 56

LONDON WEIGHTING

**INNER LONDON ZONE**

1. The London Weighting allowance payable to employees within the purview of:

the Administrative and Clerical Staff Whitley Council (excluding those within the scope of the Ambulance Officers Negotiating Committee);

the PTA (Scientific and Professional) Staffs Whitley Council;  
the Professional and Technical Whitley Council 'B';  
Committees A and B of the Optical Whitley Council  
and Committee A of the Pharmaceutical Whitley Council

and based in the following Health Districts

Riverside

The part of Parkside which prior to 1 April 1988 was Paddington and North Kensington

Hampstead

Bloomsbury

Islington

City and Hackney

Tower Hamlets

Lewisham and North Southwark

Camberwell

West Lambeth

Wandsworth

That part of Richmond, Twickenham and Roehampton within the London Borough of Wandsworth

That part of Merton and Sutton which, prior to 1 April 1982, was part of Wandsworth and East Merton Health District

shall be at the rate shown in paragraph 1.1 of Appendix A to this Section.

2. The London Weighting allowances payable to employees within the purview of the Professions Allied to Medicine and Related Grades of Staff (PTA) Council and based in the health Districts listed in paragraph 1 above shall be at the rate shown in paragraph 1.2 of Appendix A to this Section.

**OUTER LONDON ZONE**

3. The London Weighting allowance payable to employees within the purview of the Whitley Councils specified in paragraph 1 above and based in the following Health Districts.

Hounslow and Spelthorne

Ealing

Newham

Merton and Sutton excluding that part which, prior to 1 April 1982, was part of Wandsworth and East Merton Health District

Barnet

Parkside, excluding that part which prior to 1 April 1988 was Paddington and North Kensington

Harrow

Hillingdon

That part of Barking, Havering and Brentwood within the former Greater London Council's Boundary

Enfield

Haringey

Redbridge

Waltham Forest

Greenwich

Bexley

Bromley

Croydon

That part of Richmond Twickenham and Roehampton within the London Borough of Richmond

Kingston and Esher

shall be at the rate shown in paragraph 2.1 of Appendix A to this Section.

4. The London Weighting allowance payable to employees within the purview of

the Joint Negotiating Committee for Hospital Medical and Dental Staff;

the Joint Negotiating Body for Doctors in Community Medicine and the Community Health Services;

the Joint Negotiating Forum for the Community Dental Services

and based in the Health Districts listed in paragraphs 1 and 3 above shall be at the rate shown in paragraph 3.1 of Appendix A to this Section.

6. The London Weighting allowance payable to employees within the purview of the Nursing and Midwifery Staffs negotiating Council and based in the Health Districts listed in paragraph 1 and 3 above shall be at the rate shown in paragraph 3.2 of Appendix A to this Section.

7. The London Weighting allowance payable to employees within the purview of the Ancillary Staffs Council and based in the Health Districts listed in paragraphs 1 and 3 above shall be at the rate shown in paragraph 3.3 of Appendix A to this Section. Of the rate shown £2.40 shall be an enhanceable addition to basic pay.

#### **AMBULANCE STAFF AND AMBULANCE OFFICERS**

8. The London Weighting allowance payable to employees of the London Ambulance Service within the purview of the Ambulance Whitley Council or the Ambulance Officer's negotiating committee shall be at the rate shown in paragraph 4 of Appendix A to this Section regardless of their place of employment.

9. The London Weighting allowance payable to employees of the Surra Ambulance Service within the purview of the Ambulance Whitley Council or the Ambulance Officer's Negotiating Committee who are based at a unit in the London zone shall be at the rate shown in paragraph 4 of Appendix A to this Section.

#### **EXTRA TERRITORIALLY MANAGED (ETM) AND CONTIGUOUS UNITS**

10. The London Weighting allowance payable to employees based at the units listed below shall be at the rate shown in paragraph 5 of Appendix A.

East Hertfordshire HA:	Cuffley Physiotherapy Clinic*
Enfield HA:	Chestnut Cottage Hospital
Barking, Havering and Brentwood HA:	Brentwood District Hospital Brentwood blood Transfusion Unit* HighWood Hospital* with the NE Thames Regional Press Office Little High Wood Hospital* St Faith's Hospital* and Regional Management Services Unit Warley Hospital*
Bexley HA:	Bexley Hospital
Croydon HA:	Warlingham Park Hospital St Lawrence Hospital (Caterham)
Merton and Sutton HA:	St Ebbe's Hospital
Kingston and Esher HA:	Long Grove Hospital
Riverside HA:	Norton Hospital
Parkside HA:	Shenley Hospital
Barnet HA:	Napsbury Hospital* Potters Bar Hospital
South West Hertfordshire SA:	the former Barnet overlap area

The following ambulance stations:

London Ambulance Service:	Buckhurst Hill
Mid Essex HA:	Brentwood
East Hertfordshire HA:	Potters Bar Chestnut
Mid Surrey HA:	Banstead Epsom
East Surrey BA: ,	Warlingham

The following hospitals:

West Park Hospital  
Manor Hospital  
Epsom District Hospital  
Epsom and Ewell Cottage Hospital  
Harperbury Hospital

11. Any employee based at an ETM who is seconded to work in the Inner, Outer or London Zones for a continuous period of four weeks or more during any year beginning 1 July shall receive for that year the London Weighting allowance appropriate to that zone. Any employee seconded from the Inner, Outer or London Zones to work at an ETM shall continue to receive the appropriate London allowance in full.

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\* ASC staff at these hospitals receive London Weighting as a flat-rate sum

## **THE FRINGE ZONE**

12. The London Weighting allowance payable to employees based in the following Health Districts.

North West Hertfordshire  
South West Hertfordshire  
East Hertfordshire  
West Essex (excluding the area in Uttlesford Local Authority District)  
Basildon and Thurrock  
Dartford and Gravesham  
West Surrey and North East Hampshire  
North West Surrey  
East Surrey  
South West Surrey  
Mid Surrey  
East Berkshire

shall be at the rate shown in paragraph 6 of Appendix A to this Section.

## **RESIDENT STAFF**

13. The provisions of paragraph 14 to 16 below apply to resident staff who pay a lodging charge (which may be nationally agreed). They do not apply to staff who occupy accommodation for which a rental is paid.
14. Resident staff within the purview of the PTA (Scientific and Professional) Staffs Whitley Council (with the exception of those referred to in paragraph 16), and resident medical and dental practitioners (with the exception of those covered by the provisions of HC(PC)(77)9), who are based in the Inner or Outer London Zone as defined in paragraphs 1 and 3 above shall be paid the rate of allowance shown in paragraph 7.1 of Appendix A to this Section. Those who are based at ETM or contiguous units shall be paid the rate of allowance shown in paragraph 7.3 of Appendix A to this Section. In the Fringe the allowance payable shall be as shown in paragraph 7.4 of Appendix A to this Section.
15. Resident staff within the purview of the Nursing and Midwifery Staffs negotiating Council and the Professions Allied to Medicine and Related Grades of Staff (PTA) Council, who are based in the Inner or Outer London Zone as defined in paragraphs 1 and 3 above shall be paid the rate of allowance shown in paragraph 7.2 of Appendix A to this Section. Those who are based at ETM or contiguous units shall be paid the rate of allowance shown in paragraph 7.3 of Appendix A to this Section. in the Fringe the allowance payable shall be as shown in paragraph 7.4 of Appendix A to this Section.
16. A London Weighting allowance shall not be paid to staff within the purview of the Administrative and Clerical Staffs Council, the Ambulance Council and Ambulance Officer's Joint negotiating Committee, Committees A and B of the Optical Whitley Council and Committee A of the Pharmaceutical Council, who are resident and subject to a national charge for residence.
17. Resident staff within the purview of the Ancillary Staffs Council, who are based in the London Zone as defined in paragraph 7 above shall be paid the rate of allowance shown in paragraph 7.5 of



Appendix A to this Section. Those based at extra territorially managed or contiguous units shall be paid the rate of allowance shown in paragraph 7.6 and those based in the Prime the rate of allowance shown in paragraph 7.7.

**SESSIONAL AND LOCUM TENENS EMPLOYEES**

18. The London Weighting allowance payable to sessional and locum tenens employees shall be assessed as follows:

<u>Staff Group</u>		<u>Proportion of Weekly Rates</u>
Biochemists, Child psychotherapists, Clinical Psychologists, Pharmacists, Physicists, Other Scientists, and Psychological Technicians	Rates per session	1/10
Chiropodists and Opticians	Rates per session	1/11
Locum medical and Dental staff	Rates per UMT	1/10
	Rates per notional half-day	1/11

**PART-TIME EMPLOYEES**

19. The London Weighting allowance payable to part-time staff shall be in direct proportion to that payable to full-time staff.

**PROTECTION**

20. Any employee whose entitlement to a London Weighting allowance is affected by changes in the criteria for determining the rate of that allowance, where that change arises as a consequence of NHS restructuring or the Review of London Weighting, shall be afforded personal protection of that allowance on the terms set out below provided the place of work which previously entitled him to a higher rate of allowance is unchanged or, if changed, is within the area which previously attracted the higher allowance, provided he continues to hold a contract of employment with the same employing authority or its statutory successor.

Employee aged 50 or over at time of change	-	the existing rate of allowance and subsequent improvements thereto retained on a personal basis until retirement.
Employee aged under 50 at time of change	-	as for employees aged 50 or over, but with improvements paid for a limited period only commencing with the first day of employment after the new criteria becomes effective, in accordance with the sliding scale below, with protected London Weighting allowance continuing thereafter on a mark time basis.

Years of full  
allowance protection

Employee aged under 41	5
Employee aged 41-49(inclusive)	
With 10 or less full years' service*	5
With 11 years full service	5½
" 12   "   "   "	6
" 13   "   "   "	6½
" 14   "   "   "	7
" 15   "   "   "	7½
" 16   "   "   "	8
" 17   "   "   "	8½
" 18   "   "   "	9
" 19   "   "   "	9½
With 20 or more years full service	10

21. The rates shown in Appendix A to this Section are not applicable to those employees in receipt of London Weighting on a personal protected basis under the provisions of:

Advance Letter (AC) 14/74  
 Section I Part 3 paragraph 2.1-2.2 of the Ambulance Handbook  
 Paragraph 34.2 and 34.2.1 of the ASC Handbook  
 Part III Table IV paragraph 1(c) of the N&M Handbook  
 Appendix B of Advance Letter (PH)1/79  
 Paragraphs 8005-8006 of the PTA Handbook  
 Paragraph 4502 of the PTB Handbook  
 NHS Reorganisation Act 1973

APPENDIX A TO SECTION 56

**LONDON WEIGHTING RATES**

**1. INNER LONDON ZONE**

1.1 £1580.00 per annum with affect from 1 April 1989.

1.2 £1267.00 per annum with effect from 1 July 1987.

**2. OUTER LONDON ZONE**

2.1 £940.00 per annum with effect from 1 April 1989.

2.2 £757.00 per annum with effect from 1 July 1987.

**3. LONDON ZONE**

3.1 £1,200.00 per annum with affect from 1 April 1989.

3.2 £981.00 per annum with effect from 1 July 1987.

3.3 £22.74 per week with affect from 1 April 1989.

**4. AMBULANCE AND AMBULANCE OFFICERS**

£981.00 per annum with effect from 1 July 1987.

**5. EXTRA TERRITORIALLY MANAGED AND CONTIGUOUS UNITS**

£527.00 per annum with effect from 1 July 1979.

**6. FRINGE ZONE**

£149.00 per annum with effect from 1 July 1981.

**7. RESIDENT STAFF**

7.1 £333.00 per annum with effect from 1 April 1989.

7.2 £272.00 per annum with effect from 1 July 1987.

7.3 £147.00 per annum with effect from 1 July 1979.

7.4 £38.00 per week with effect from 1 July 1981.

7.5 £22.74 per week with effect from the beginning of the pay week in which 1 April 1989 fell.

7.6 £9.99 per week with effect from the beginning of the pay week in which 1 July 1979 fell.

7.7 £2.86 per week with effect from the beginning of the pay week in which 1 March 1982 fell.

## SESSIONAL RATES

1. With effect from 2 April 1989 the sessional rates payable to the staff groups below shall be as follows:

	Per Session	
	Inner Zone	Outer Zone
Biochemists		
Child Psychotherapists		
Clinical Psychologists		
Pharmacists, Other Scientists and Psychological Technicians	£3.03	£1.80
Opticians	£2.75	£1.64
Chiropodists	£2.21	£1.32

2. With effect from 1 July 1979, the sessional rates payable to the staff groups below based at extra territorially managed and contiguous units shall be as follows:

Biochemists	
Child Psychotherapists	
Clinical Psychologists	
Pharmacists, Other scientists and Psychological Technicians	£0.92
Chiropodists	£0.82
Opticians	£0.78

3. With effect from 1 July 1981 the sessional rates payable to the staff groups below based in the Fringe shall be as follows:

Biochemists	
Child Psychotherapists	
Clinical Psychologists	
Pharmacists, Other Scientists and Psychological Technicians	£0.26
Chiropodists	£0.23
Opticians	£0.22

4. With effect from 1 April 1989 the weekly rates payable to locums within the purview of the PTA (scientific and Professional) Staffs Whitley Council and Committee A of the Pharmaceutical Whitley Council shall be as follows:

Inner Zone	Outer Zone
£30.30	£18.03

5. With effect from 1 July 1987 the weekly rates payable to locums within the purview of the Professions Allied to medicine and Related Grades of Staff (PTA) Council shall be as follows:

Inner Zone	Outer Zone
£24.30	£14.52

6. With effect from 1 July 1979 the weekly rate payable to the staff groups described in paragraph 4 and 5 above based at extra territorially managed and contiguous units shall be £10.11

7. With effect from 1 July 1981 the weekly rate payable to the staff groups described in paragraph 4 and 5 above based in the Fringe shall be £2.86.

8. With effect from 1 April 1989 the rates for Locums within the purview of the Joint negotiating body for Doctors in Community Medicine and the Community Health Service based in the London Zone shall be as follows:

Per	Non-resident staff	Resident staff
Week	£23.00	£6.38
Unit of Medical Time	£2.30	£0.63
Notional half-day	£2.09	£0.57

9. With effect from 1 July 1979 the rates payable to the staff groups described in paragraph 8 above based at extra territorially managed and contiguous units shall be as follows:

Per	Non-resident staff	Resident staff
Week	£10.11	£2.82
Unit of Medical Time	£1.01	£0.28
Notional half-day	£0.92	£0.26

10. With effect from 1 July 1981 the rates payable to the staff groups described in paragraph 8 above based in the Fringe shall be as follows:

Per	Non-resident staff
Week	£2.86
Unit of Medical Time	£0.28
Notional half-day	£0.26

SECTION 57

STATUTORY SICK PAY: QUALIFYING DATE

1. This agreement applies to all employed under a contract by health authorities constituted under the National Health Service and Health Services Acts and the National Health Service (Scotland) Acts.
2. For the purposes of the Social Security and Housing Benefits Acts 1982, the days of the week agreed in accordance with section 4(2) of the Act to be qualifying days for the payment of statutory sick pay shall be those days for which occupational sick pay is due.
3. Where no entitlement to occupational sick pay exists, the days of the week deemed to be qualifying days for the payment of statutory sick pay shall be those days for which occupational sick pay would have been due if the necessary conditions had been fulfilled.

## SECTION 58

### NHS REORGANISATION 1974 - CONTINUITY OF EMPLOYMENT

1. This agreement shall apply to any employee of a health authority constituted under the National Health Service Reorganisation Act 1973 or the National Health Service (Scotland) Act 1972 who:
  - 1.1 is transferred to that authority under an order made under section 18 of the former or in accordance with the provisions of sections 29-34 of the latter Act;
  - 1.2 before 1 April 1974 obtains a post with such an authority provided that the employee would otherwise have been transferred under those Acts; or
  - 1.3 is transferred to another authority under an order made under sections 54(2) and 56(3) of the National Health Service Reorganisation Act 1973.
2. For the purpose of any agreement of the Whitley Councils for the Health Services (Great Britain) service by an employee with any employer prior to 1 April 1974 shall be reckonable service provided that it would have been reckonable at the time for the purposes of either the appropriate agreement (see paragraph 3 below) or any of the provisions of the Contracts of Employment Act 1972 in respect of periods of notice or the Redundancy Payments Act 1965 in respect of the qualifying period for redundancy payments which applied to the employee or for the purposes of the equivalent Whitley agreement applying to redundancy or contracts of employment.
3. For the purposes of paragraph 2 the 'appropriate agreement' which applied to the employee shall be the agreement corresponding to that under which the employee is entitled after transfer or on taking up his employment with the authority before 1 April 1974.

### **FORMER STAFF OF THE FAMILY PLANNING ASSOCIATION**

4. This agreement shall apply to any employee of a health authority constituted under the National Health Service Reorganisation Act 1973 or the National Health Service (Scotland) Act 1972 who is transferred to that authority from the employment of the Family Planning Association under the arrangements set out in the Department of Health and Social Security's circular HSC(IS)32 as regards England, in the Scottish Home and Health Department's Dear Secretary Letter (74)92 as regards Scotland and in the Walsh Office's circular WHSC(IS)22 as regards Wales.
5. For the purpose of any agreement of the Whitley Councils for the Health Services (Great Britain) service by an employee with any employer prior to transfer to an NHS employing authority shall be reckonable service provided that it would have been reckonable at the time of transfer for the purposes of either the appropriate agreement (see paragraph 6 below) or any of the provisions of the Contracts of Employment Act 1972 in respect of periods of notice or the Redundancy Payments Act 1965 in respect of the qualifying period of service for redundancy payments which applied to the employee.
6. For the purposes of paragraph 5 the 'appropriate agreement' which applied to the employee shall be the agreement or conditions of service which the employee enjoyed under the terms of his or her

contract with the Family Planning Association corresponding to that under which the employee is entitled after transfer.



SECTION 59

NHS TRUSTS - CONTINUITY OF SERVICE

An employee's previous service with a National Health Service Trust constituted under the National Health Service and Community Care Act 1990, shall count as reckonable service with an employing authority in respect of each appropriate agreement made by negotiating bodies and Whitley Councils for the Health Services (Great Britain).

## SECTION 60

### MINIMUM PERIODS OF NOTICE

1. The following arrangements for determining minimum periods of notice to terminate employment shall apply to staff who have been continuously employed for 4 weeks or more. Those arrangements shall not prejudice existing arrangements or practices on notice to be given by or to employees when longer periods are or would normally be provided for.
2. An employing authority shall give as the minimum period of notice to terminate an employee's employment:
  - 2.1 not less than one week's notice if the period of continuous employment is less than two years;
  - 2.2 not less than one weeks's notice for each year of continuous employment if the period of continuous employment is two years or more but less than twelve years; and
  - 2.3 not less than twelve week's notice if the period of continuous employment is twelve years or more.
3. For the purposes of paragraph 2 the period of continuous employment shall be computed in accordance with Schedule 13 to the Employment Protection (Consolidation) Act 1978, except that breaks in service of less than three months shall be disregarded in the calculation of continuous employment, and that employment with more than one employing authority shall count towards a period of continuous service unless such posts are held concurrently.
4. The minimum period of notice required to be given by an employee who has been continuously employed for four weeks or more shall be not less than one week.
5. These arrangement shall not prevent:
  - 5.1 an employing authority or an employee from giving, or agreeing to give, a longer period of notice than the minimum;
  - 5.2 either party waiving his/her right to notice on any occasion, or accepting payment in lieu of it; or
  - 5.3 either party treating the contract as terminable without notice by reason of such conduct by the other party as entitles him/her so to treat it under common law.
6. For the minimum period of notice appropriate to his/her case set out in paragraph 2 or 4 above an employee who has been continuously employed for four weeks or more shall have such rights to pay as are provided for employees in Schedule 3 of the Employment Protection (Consolidation) Act 1978, if he/she satisfies the conditions of entitlement set out in that Schedule. This applies if the employing authority gives notice to the employee or if the employee gives notice to the employing authority.

## SECTION 61

### ANNUAL LEAVE AND SICK PAY ENTITLEMENTS ON RE-ENTRY AND ENTRY INTO NHS EMPLOYMENT

1. The purpose of this agreement is to give employing authorities discretion to take account of previous NHS service and service in other employment when calculating annual leave and sick pay entitlements for employees returning to or taking up work in the NHS employment.
2. Arrangements made under this agreement shall not prejudice existing arrangements or practices in respect of annual leave and sick pay, set out in the agreements of the appropriate functional Whitley Council or Negotiating Body.
3. Annual leave and sick pay entitlements determined under the provisions of this section shall not exceed the maximum entitlement for the grade as specified in the appropriate functional Whitley Council or Negotiating Body agreement.

### **RE-APPOINTMENT OF PREVIOUS NHS EMPLOYEES**

4. On returning to NES employment, previous NHS service (aggregated if discontinuous) may be counted towards the employee's entitlement to annual leave and sick pay. Employing authorities may also take account of any period of intervening employment with other employers where this is judged to be relevant to NHS employment.

### **FIRST TIME APPOINTMENTS**

5. Employing authorities may count towards entitlement to annual leave and sick pay any period of employment with other employers where this is judged to be relevant to the NHS employment.

### **APPEALS**

6. Matters arising from the application of this agreement shall not be appealable beyond the employing authority level.

## SECTION 62

### NHS REORGANISATION - STAFFING ARRANGEMENTS (ENGLAND)

#### SCOPE

1. Procedures for the filling of posts resulting from and the requirements for reorganisation set out in CH(80)8 shall not be negotiated and agreed in each region on the basis of the principles described below. Management and Staff Side meeting in a joint region-wide body, or management and recognised staff organisation(s) regionally, shall determine in respect of any discipline and grade of post:
  - \* whether agreement should be sought on a regional, area or district basis; and
  - \* the Management and Staff Side or recognised staff organisation(s) representatives appropriate to the negotiations.

The expression 'agreed regionally' in this agreement is to be interpreted accordingly.

#### PROCEDURES

2. Once the number and content of any particular discipline and grade of District Health Authority post is known, it shall be for agreement regionally and determination in accordance with paragraphs 3 and 4 whether and to what extent each discipline and grade of post should be filled by 'slotting in' or by competition.
3. "Slotting in" shall apply to all posts where the job remains virtually unchanged, the potholder continues to undertake substantially the same duties, and none of the criteria in paragraph 4 below are met. The individual shall continue in post; the post shall not be opened to competition; and the potholder shall be debarred from competing for other posts until unrestricted competition occurs.
4. Competition shall normally apply where either:
  - 4.1 a post is clearly new in content and/or carries a substantially increased weight of responsibility, or
  - 4.2 more than one employee who could be regarded as a suitable candidate is available within the geographical area agreed for competition (see paragraph 5.2), or
  - 4.3 the direct transfer of an individual employee would involve substantial promotion. The Administrative and Clericals Staffs Council, the Nurses and Midwives Council, the Joint Negotiating Body for Doctors in Community Medicine and the Community Health Service, the Joint Negotiating Forum for the Community Dental Services, the Professional and Technical Staffs A Council, the Professional and Technical Staffs B Council and the Pharmaceutical Council have agreed definitions of "substantial promotion" to be used in applying the terms of this paragraph to employees within the purview of these Councils. These

definitions are set out in Appendix A to this Section.

#### COMPETITION RULES

5. The following rules shall apply to all competitions covered by this agreement:
  - 5.1 Competition for any post shall be confined to employees of an equivalent or higher substantive grade than that of the post to be filled. The substantive grade of any employee on a protected personal grade or in receipt of a protected basic wage or salary shall be the protected grade rather than the grade of the post occupied. The Councils listed at paragraph 4.3 have agreed definitions of "equivalent grade" to be used in applying the terms of this paragraph to employees within the purview of those Councils. These definitions are set out in Appendix A to this Section.
  - 5.2 The geographical area of competition for any post shall be agreed regionally. Should the post remain unfilled after the first competition round a further round, covering an agreed wider geographical area, should be held within the agreed timetable.
  - 5.3 Employees of a Regional Health Authority, the Dental Estimates Board, the Prescription Pricing Authority, the Supply Council or the Public Health Laboratory Service shall be debarred from competition for DHA posts until national competitions have been held for displaced area and district employees. However former area or district based employees who, as a consequence of reorganisation, are temporarily 'latched on' to an RHA shall not be regarded as RHA employees for this purpose. Where the work of an RHA etc post is abolished or transferred wholly or substantially to DHA Level, however, the existing potholder may compete or be slotted in on the same basis as other affected employees.
  - 5.4 All trainees, whether employed at regional or sub-regional level, shall be treated alike in accordance with whatever principles may be agreed regionally for trainees in the discipline concerned.
  - 5.5 Community Health Council employees whose posts are at risk shall be eligible to compete for DHA posts or be 'slotted in' on the same basis as other NHS employees in the same area.
  - 5.6 Employees of the Boards of Governors of London post-graduate teaching hospitals and employees of Family Practitioner Committees shall, if the posts at their particular Board/Committee are:
    - \* at risk, compete or be slotted in on the same basis as other affected employees;
    - \* not at risk, be debarred initially from competition as in 5.3 above.

Further details of the application of this paragraph to employees of the Boards of Governors of London post-graduate teaching hospitals are set out in Appendix C to this Section.

Paragraphs 5.5 and 5.6 to be reviewed when the future of the organisations concerned is clarified.

- 5.7 If the location of consultants contracts is transferred from Regional Health Authorities/Area Health Authorities (Teaching), employees employed in the administration of such contracts may compete for or be slotted into posts on the same basis as other affected employees.
- 5.8 Any post remaining unfilled after restricted region-wide competition may, subject to 8 below, be made available for competition throughout England/Great Britain. Such competitions may be limited initially to displace area and district employees, and other competing on the same basis under 5.3, 5.4, 5.5, 5.6 and 5.7 above, in the NHS in England/Great Britain. Thereafter unrestricted competition may take place. Whether national competition once agreements have been reached on staffing arrangements for Scotland and Wales.
- 5.9 Where a regional boundary is changed on restructuring, affected employees employed in an Area wholly or partly transferred from one region to another may compete for posts in the regional concerned. Such employees shall be subject to the normal competition rules applying in those regions.
- 5.10 Employees who do not in the early stages obtain posts in the reorganised service may, at the discretion of the Regional Health Authority, be held in supernumerary positions.
- 5.11 Vacancies arising during reorganisation at regional level in posts where the potholder is directly responsible to the Regional Health Authority shall be filled by normal procedures. Arrangements for the filling of other vacancies arising at regional level or in the authorities mentioned in 5.3 above shall be agreed regionally.

#### **TIMETABLES**

6. Agreed "slotting in" and competition proposals for any discipline and grade of post at any level shall be individually notified in writing to each affected employee and at least 2 weeks shall be allowed for representations before arrangements are confirmed. Any proposal under appeal shall not be confirmed until the appeal has been resolved.
7. In respect of all competition posts falling within the same discipline and grade, the area of competition shall not be widened except to a common region-wide timetable.
8. No region shall, in respect of any discipline and grade of post, proceed beyond region-wide competition or ease the grade restrictions governing eligibility for competition without prior agreement of the Joint Secretaries of the General Whitley Council given in consultation with the Joint Secretaries of the appropriate functional Council(s). The Joint Secretaries may, in respect of any post remaining unfilled after region-wide competition, authorise either limited England/Great Britain or unrestricted competition (see paragraph 5.8).

**APPEALS**

9. The application of this agreement shall be subject to appeal as provided in Section 63.

## APPENDIX A TO SECTION 62

### DEFINITIONS OF EQUIVALENT GRADE AND SUBSTANTIAL PROMOTION

#### **ADMINISTRATIVE AND CLERICAL COUNCIL**

1. The principles defining "equivalent grade" and "substantial promotion" shall be common, and, except when the provisions of paragraph 6 below apply, "substantial promotion" will not occur if a move takes place between posts of an "equivalent grade" as defined in this agreement.
2. Posts currently attracting the Council's lettered scales (A to P) and numbered Scales 30 and above shall be regarded as equivalent to all DHA Administrator and Treasurer posts.
3. Posts currently attracting the Council's number scales shall be regarded as equivalent to all DHA posts of equal grade and to those graded up to and including one mainscale (1, 4, 9, 14, 18, 23, 27 and 29) higher (eg Scale 9 officers may apply for Scale 14 posts and be eligible for slotting in to such posts). For the purpose of this paragraph, posts attracting non mainscale numbered scales shall be regarded as being on the nearest mainscale (eg Scale 10 to be regarded as Scale 9, Scale 13 to be regarded as Scale 14). Non mainscale numbered scales falling halfway between mainscales shall be regarded as the higher scale (eg Scale 16 to be regarded as Scale 18). Executive Officer I shall be regarded as Scale 1, Executive Officer II as Scale 4.
4. Additionally, posts attracting Scale 29 shall be regarded as equivalent to all DHA Administrator and Treasurer posts on whatever is agreed by the A&C Whitley Council as the lowest respective grade of these points.
5. Definitions to apply to the general grades (except Senior Administrative Assistant, General Administrative Assistant and Executive Officer I and II) shall be agreed regionally (as defined in paragraph 1 of Section 62 of this Handbook) having regard to the principles of paragraph 3 above.
6. Notwithstanding paragraphs 2-5 above, any officer may apply for a post which it is agreed regionally (as detailed in paragraph 1 of Section 62 of this Handbook) is the direct successor to his/her existing post.



## **NURSES AND MIDWIVES COUNCIL**

### **1. SUBSTANTIAL PROMOTION**

For the purpose of this agreement, substantial promotion shall be deemed to occur if a new post attracts a salary maximum more than 10 per cent above that of an officer's existing post.

### **2. EQUIVALENT GRADE**

For the purpose of this agreement, all Area Nursing Officers and District Nursing Officers shall be regarded as being of an equivalent or higher grade to any which are agreed for DHA Chief Officer Nursing Posts.

### **3. For the purpose of this agreement staff who hold the following substantive grades shall be regarded as being graded on an equivalent or higher level to posts which fall at the second level in a DHA's structure:**

3.1 Area Nursing Officers and District Nursing Officers.

3.2 Area Nurses.

3.3 Divisional Nursing Officers Grade I-IV and those Senior Nursing Officer post-holders who are currently in charge of a functional area and directly accountable to the District Nursing Officer.

3.4 The top nursing post-holders at the Post-Graduate Boards of Governors' Hospitals which are not to be re-constituted as Special' Health Authorities with effect from 1 April 1982.

3.5 Senior nursing staff who are protected on salaries in the following grades which applied to the Health Services structure prior to 31 March 1974:

RHA Regional Nursing Officer;  
Chief Nursing Officer;  
Scales 104-109 inclusive;  
Director of Nursing Services (Community);  
Principal Nursing Officer;  
Principal Nursing Officer (T);  
Divisional Nursing Officer (Community).

### **4. For the purpose of this agreement, all nurses in the grades eligible to apply for posts at DHA or the second level within the restructures Service, all Senior Nursing Officers and all Nursing Officers shall be regarded as being of an equivalent or higher grade to any which are agreed for the Intermediate Levels of management within a DHA's management structure.**

### **5. For the purposes of this agreement any nurse not qualified by the foregoing definitions may apply for a post which it is agreed Regionally is the direct successor to his or her existing post.**

**THE JOINT NEGOTIATING BODY FOR DOCTORS IN COMMUNITY MEDICINE AND THE  
COMMUNITY HEALTH SERVICE**

**1. SUBSTANTIAL PROMOTION**

Direct transfer of an officer to one of the career grades listed under the definition of equivalence from some other grade not so listed.

**2. EQUIVALENCE**

The following grades are equivalent. Area Medical Officer, District Medical Officer, District Community Physician, Specialist in Community Medicine.

**THE JOINT NEGOTIATING FORUM FOR THE COMMUNITY DENTAL SERVICES**

**1. SUBSTANTIAL PROMOTION**

Direct transfer of an officer to one of the career grades listed under the definition of equivalence from some other grade (for example, senior dental officer and dental officer) not so listed.

**2. EQUIVALENCE**

Equivalent grades are Area Dental Officers and District Dental Officers.

**PROFESSIONAL AND TECHNICAL STAFFS B COUNCIL - TOP WORKS POSTS**

**1. SCOPE**

The provisions in paragraph 2 and 3 below apply to arrangements for filling the top works post in District Health Authorities.

**2. SUBSTANTIAL PROMOTION**

A promotion shall be regarded as substantial only if it involves a move from a grade not defined in paragraph 3 as equivalent.

**3. EQUIVALENT GRADE**

The grades of Area Works Officer, Area Engineer, Area Building Officer and District Works Officer shall be regarded as equivalent grades for the purposes of filling the top Works post in District Health Authorities.

**PHARMACEUTICAL WHITLEY COUNCIL - DHA POSTS**

**1. EQUIVALENT**

1.1 Where a full-time officer is appointed: Area Pharmaceutical officer. Area Pharmacist (an officer in senior Grade IV or Grade V who generally carries out the functions of an Area Pharmacist as defined in the Noel Hall Report, 1970)

1.2 Where other management arrangements apply: Equivalent grades shall be agreed regionally.

2. **SUBSTANTIAL PROMOTION**

Promotion from any grade not considered to be equivalent to that of the post being filled.

**PROFESSIONAL AND TECHNICAL 'B' WHITLEY COUNCIL - WORKS SUPPORT POSTS**

**1. SCOPE**

The provisions of paragraphs 2 and 3 below apply to arrangements for filling works posts in District Health Authorities below the top Works post and above the supervisory posts held under Advance Letter (PTB) 9/78.

**2. SUBSTANTIAL PROMOTION**

A promotion shall be regarded as substantial only if it involves a salary increase, taken at the maxima of respective scales, in excess of 10 per cent.

**3. EQUIVALENT GRADE**

The grades of Area Works Officer, Area Engineer, Area Building Officer, District Works Officer, District Engineer/Building Officer, Assistant Area Engineer/Building Officer and Sector Engineer/Building Officer shall be regarded as equivalent grades for the purposes of filling posts defined in paragraph 1 above.

**PROFESSIONAL AND TECHNICAL 'A' WHITLEY COUNCIL - DHA POSTS**

**1. DIETITIANS**

Equivalent - existing District Dietitians  
Substantial Promotion - promotion from any grade other than a District post into a post of District Dietitian

**2. PHYSIOTHERAPISTS**

Equivalent - District Physiotherapist I; II; III.  
Substantial Promotion - promotion from any grade other than a District post into a District post.

**3. OCCUPATIONAL THERAPISTS**

Equivalent - District Occupational Therapist I; II; III and any post in receipt of a Designated District OT allowance.  
Substantial Promotion - promotion from any grade other than those referred to above into one of the above grades or into a post which attracts the Designated District OT allowance.

**4. REMEDIAL GYMNASTS**

Equivalent - District Remedial Gymnast I, III III and any post in receipt of a Designated District Remedial Gymnast allowance.  
Substantial Promotion - promotion from any grade other than those referred to above, into one of the above grades, or into a post which attracts the Designated District Remedial Gymnast allowance.

5. **CHIROPODISTS**

Equivalent Grade - existing District and Area Chiroprudists.

Substantial Promotion - promotion from any grade other than a District or Area post into a District post.

6. **SPEECH THERAPISTS**

Equivalent Grade - existing Area Speech Therapist

Substantial Promotion - promotion from any grade other than an Area post into a District post.

6.1 For the purposes of this agreement any Speech Therapist not qualified by the foregoing definition may apply for a post which it is agreed regionally is the direct successor to his or her existing post.

## APPENDIX B TO SECTION 62

### NHS REORGANISATION - SUPPLEMENT JOINT SECRETARIAL AGREEMENTS

1. **NATIONAL DATES FOR COMPETITION POSTS** (Issued on 23 December 1981)

Unfilled District Team posts in England and Wales within the purview of the Administrative and Clerical Staffs Council may be advertised nationally with effect from 4 January 1982 with a closing date for applications not earlier than 20 January 1982. The same definition of equivalent grades will apply as in Appendix A to Section 62 but only officers in England and Wales who have not already obtained posts will be eligible to compete.

The next round at competition will be open to all affected officers at risk serving in the NHS in England and Wales who have not already obtained a District Team Post from a date to be agreed by the Joint Secretaries of the General Whitley Council.

2. **NATIONAL DATES FOR COMPETITION: NURSING POSTS** (Issued on 12 January 1982)

In order to ensure that DHAs have the benefit of expert nursing advice at team level at the earliest possible moment, it has been agreed that unfilled District Team posts in England and Wales within the purview of the Nurses and Midwives Council may be advertised nationally with effect from 12 January 1982 with a closing date for applications not earlier than 31 January 1982. Competition for these posts will be restricted to serving officers in the NHS in England and Wales who have not already obtained posts and who fall within any of the grades listed in paragraph 3 of the Nurses and Midwives Section of Appendix A to Section 62.

To accord with the principle of minimum disruption advocated by Ministers, chairman are urged to give favourable consideration to the short listing of those Area and District Nursing Officer who have not yet obtained posts.

3. **NATIONAL COMPETITION OF DISTRICT MEDICAL OFFICER POSTS** (Issued on 18 January 1982)

It has been agreed that unfilled District Medical Officer posts may be advertised nationally with effect from 22 January 1982 with a closing date for applications not earlier than 8 February 1982. Completion for these posts shall be open to any suitably qualified and experienced doctor currently employed by the NHS in England and Wales including those who have already obtained DMO posts. Existing Area Medical Officers who have not yet obtained posts shall have the right to be short-listed for any vacancy for which they may apply under these arrangements.

4. **NATIONAL COMPETITION FOR DISTRICT TEAM POSTS** (Issued on 16 February 1982)

It has been agreed that unfilled District Administrator and Treasurer posts may be advertised with effect from 22 February 1982 to officers of all grades within the purview of the Administrative and Clerical Staffs Council who have not already obtained District Team posts and who are currently employed in the NHS England or Wales at an Area Health Authority, Health District, Community Health Council or one of

the Boards of Governors listed at para 2 of Appendix C of section 62.

If any authority fails to appoint, the details of the vacancy should be referred immediately to the Joint Secretaries of the General Whitley Council for release for open competition without restriction. Chairmen are however urged to give prior consideration to candidates from within the NHS.

5. **NATIONAL DATES FOR COMPETITION: NURSING POSTS** (Issued on 16 March 1982)

It has been agreed that unfilled District Team posts in England and Wales within the purview of the Nurses and Midwives Council may be advertised nationally with effect from 16 March 1982. These posts will be open to all serving officers in the NHS in England and Wales who have not already obtained posts. Any posts which cannot be filled in accordance with this agreement should be referred immediately to the Joint Secretaries.

6. **ADVERTISEMENT OF DISTRICT MEDICAL OFFICER POSTS** (Issued on 1 April 1982).

The Joint Secretaries of the General Whitley Council have agreed that, with effect from 1 April 1982 any unfilled District Medical Officer posts may be advertised openly and without restriction.

7. **RELAXATION OF GRADING RESTRICTIONS FOR SCM POSTS** (Issued on 19 May 1982)

The Joint Secretaries of the General Whitley Council have agreed that, during the Regional rounds of competition, vacancies for Specialists in Community Medicine shall be open to suitably qualified and experienced doctors currently employed by the NHS in that Region and to fully accredited Senior Registers in Community Medicine Working full-time in Community Medicine Departments within the Regions but out with the NHS.

8. **RELAXATION OF GRADING RESTRICTIONS FOR SCM POSTS** (Issued on 25 May 1982)

The Joint Secretaries of the General Whitley Council have agreed that with effect from 1 July 1982, remaining vacancies for Specialists in Community Medicine may be advertised nationally to suitably qualified and experienced doctors currently employed by the NHS in Great Britain and to fully accredited Senior Registers in Community Medicine Departments out with the NHS in Great Britain.

9. **FILLING SUPPORT POSTS IN THE RESTRUCTURED HEALTH SERVICE** (Issued on 3 August 1982)

Administrative and Clerical Posts

In Regions where there is a shortfall of eligible officers within the agreed equivalence criteria set out in Appendix A to Section 62 for Administrative and Clerical Staff the grading restrictions may be relaxed by the agreement with the Staff Side regionally so as to provide that officers may apply for posts graded up to and including 2 mainscale points above the substantive grade held at the time of competition (eg Scale 18 officers may apply for Scale 27 posts) during the Regional round of competition. Vacancies which remain unfilled after completion of the Regional round of competition may,

with the agreement of the Staff Side regionally, be advertised nationally without restriction to all officers employed within the purview of the Administrative and Clerical Staffs Council in Great Britain as follows:-

Post graded Scale 18 and above from 15 September 1982

Post graded Scale 9 to 14 from 1 November 1982.

Director of Nursing Services Posts

Vacancies for Director of Nursing Services posts which remain after the first Regional round of competition shall be readvertised regionally. During the second round of competition Senior Nursing Officers I and II shall be eligible for these posts.

10. **NHS REORGANISATION: FILLING OF POSTS** (Issued on 11 October 1982)

District Works Officer Posts

From 15 October 1982 District Works Officer posts which have not been filled during regional rounds of competition or by means of slotting in may be advertised nationally to all former Area Works Officers, Area Engineers, Area Building Officers and District Works Officers employed in the NHS in England and Wales.

Filling of Team Officer Posts

Any vacancy for a team officer post in England and Wales which has been filled once under the procedures laid down in Section 62 shall in the first instance be available to candidates who are serving NHS officers. If no candidate is appointed from within the NHS then normal procedures shall apply. This procedure shall lapse on 1 April 1983.

11. **FILLING OF DNS AND SN (STAFF SUPPORT) POSTS** (Issued on 14 October 1982)

With effect from the date of this letter and following the completion of a region's rounds of competition (in Wales the All-Wales stage of competition) remaining vacancies for Director of Nursing Services or Senior Nurse (Staff Support) posts in England and Wales may be advertised as follows:-

11.1 to nurses "at risk" who have not already obtained a DNS or SN (Staff Support) post who are eligible by virtue of Appendix A to Section 62 or who are graded SNO I or SNO II;

11.2 If following a competition as in 11.1 above there remain vacancies these may be advertised to all nurses employed in the NHS in Great Britain.

12. **RELAXATION OF RESTRICTIONS FOR SCM POSTS** (Issued on 2 December 1982)

As from the date of this letter any remaining vacancies for specialists in Community Medicine in England and Wales may be advertised without restriction.



13. **FILLING OF DISTRICT PHARMACEUTICAL OFFICER POSTS** (Issued on 17 December 1982)

With effect from 1 January 1983 any vacancies for District Pharmaceutical Officer remaining after completion of a region's rounds of competition and/or slotting in, in accordance with Section 62 and Appendix A to that Section may be advertised to officers currently employed in the NHS in Great Britain within the purview of the Pharmaceutical Whitley Council.

14. **DISTRICT DENTAL OFFICER POSTS** (Issued on 11 February 1983)

On completion of a region's rounds of competition any remaining vacancies for District Dental Officer posts should be notified to the Management Side Secretary of the Joint Negotiating Forum for Community Dental Services at Hannibal Rouse, Elephant and Castle, London SE1 6TE who, with the Staff Side Secretary, will, once they are satisfied that the requirements for limited competitions within the Region have been met, agree to the advertisement of the post of posts for competition without restriction.

15. **FILLING OF INTERMEDIATE NURSING POSTS** (Issued on 8 March 1983)

With effect from the date of this letter on completion of restricted region-wide competition and subject to agreement with Staff Side regionally any intermediate posts remaining unfilled may be advertised for competition nationally within the NHS limited to staff graded Nursing Officer 2 and above.

16. **FILLING OF WORKS SUPPORT POSTS (AS DEFINED BY PTB 4/82)** (Issued on 15 April 1983)

With effect from 25 May 1983 on completion of all rounds of regional competition (as agreed with the Staff Sides regionally in accordance with the procedures set out in Section 62, posts remaining unfilled may, with the agreement of Staff Sides regionally, be opened to national competition within the NHS restricted to staff within the eligible grades (as defined in Appendix A to Section 62).

17. **FILLING OF REMAINING POSTS AND DISCIPLINES** (Issued on 26 April 1983)

With the exception of posts in the disciplines and grades specified in the Annex to this agreement, all posts in the new District Health Authorities which remain unfilled after region-wide completion (in Wales, the all-Wales stage of competition) may be advertised to all staff currently employed within the purview of the appropriate functional Council in the NHS in Great Britain.

#### Annex

Posts and disciplines excluded from the foregoing agreement:

1. Administrative and Clerical
2. Nursing
3. Work Support posts (as defined by PTB 4/82)
4. District Dental Officers

18. **ADMINISTRATIVE AND CLERICAL POSTS: SCALE 4 AND BELOW** (Issued on 28 April 1983)

Subject to agreement with Staff Side regionally, regions which have completed all rounds of regional completion may advertise any remaining vacancies arising from reorganisation for open competition forthwith without any restriction save that lists of all such vacant posts should be submitted by Regional Appointment Units to all adjacent regions so that details of the vacant posts can be made available to all unplaced officers in those regions. Prior consideration should be given to applications from unplaced officers.

APPENDIX C TO SECTION 62

APPLICATION TO EMPLOYEES OF THE BOARDS OF GOVERNORS OF  
LONDON POST-GRADUATE TEACHING HOSPITALS

1. **BOARDS OF GOVERNORS TO BE RE-CONSTITUTED AS SPECIAL HEALTH  
AUTHORITIES ON 1 APRIL 1982**

Employees of the six Board of Governors Hospitals which are to be reconstituted as Special Health Authorities on 1 April 1982 are not at risk, because, although the new authorities will be required to review their management structures after they have been appointed, they will not be subject to the requirements of HC(80)8 which DHAs will have to take into account. It has therefore been agreed that these employees should not be eligible to compete for posts in the reorganised Service. The Joint Secretaries have agreed to review this situation, once the SHAs have been re-constituted, to ensure consistency of treatment for NHS employees. Arrangements for filling vacancies in the SHAs during the reorganisation period shall be agreed Regionally in the joint Region-wide body covering the geographical area in which the hospitals concerned are located.

2. **EMPLOYEES REGARDED AS "AT RISK"**

Employees at the following hospitals shall be regarded as at risk:

St John's;  
St Peter's;  
Royal National Throat Nose and Ear;  
Royal National Orthopaedic;  
Eastman Dental;  
Queen Charlotte's

Employees at these hospitals should compete or be slotted in as if they were employees of an AHA, except that they shall be free to choose to compete in any one of the Thames Regions because of the uncertainty which still surrounds the future location of some of these hospitals. Having selected the Region in which they wish to compete, employees will be subject to the arrangements which have been Regionally negotiated for their grade and discipline.

3. **THE HAMMERSMITH HOSPITAL**

Although the Hammersmith Hospital is not a Board of Governors Hospital, it is to be re-constituted as a Special Health Authority. It has been agreed that employees of the existing Hammersmith Health District should be eligible to compete for posts in the North West Thames Region on the same basis as employees of area health authorities in that Region.

SECTIONS 63 TO 73 (UNALLOCATED)

## SECTION 74

### NHS REORGANISATION - PROTECTION OF PAY AND TERMS AND CONDITIONS OF SERVICE

#### **SCOPE**

1. These terms cover any employee who is required by management, as a consequence of organisational change during the period prescribed below, to move by transfer or in competition to a new post.
2. Whitley and other national or local protection arrangements or variation orders current on 4 November 1980 shall, where more favourable to any individual employee, continue to apply.

#### **PRESCRIBED PERIOD**

3. The period during which this agreement will operate is hereby prescribed as 4 November 1980 to 31 March 1985 inclusive. This period shall, however, be reviewed by the Joint Secretaries of the General Whitley Council, if and when it becomes clear either:
  - 3.1 that statutory change will not be completed in all English regions and Wales by 1 April 1982, or
  - 3.2 that, judging from progress by 1 April 1982, changes in management arrangements for the Health Service in Scotland or Wales are unlikely to be completed by 31 March 1985
4. The prescribed period shall in any event be reviewed by the Joint Secretaries of the General Whitley Council not later than 31 March 1984 and thereafter as necessary.
5. In consequence of the reviews referred to in paragraphs 3 and 4 above, the General Whitley Council may extend the prescribed period either nationally, regionally, or locally (as appropriate) beyond March 31 1985. (In December 1984, following a review in accordance with paragraphs 3 and 4 above, the prescribed period was extended to 31 March 1986).
6. If and when proposals for the reorganisation of NHS regions are forthcoming (as a result of the review referred to in paragraph 39 of HC(80)9, it shall be open to the General Whitley Council either to extend to that organisation the provisions of this agreement or to negotiate appropriate terms no less favourable.

#### **REGISTRATION SYSTEM**

7. As well as the reviews referred to in paragraphs 3 and 4 above, it shall be open to any regional, area, or district health authority or health board and the appropriate Staff Side or individual recognised staff organisation acting jointly or, if there is no agreement on a joint approach, by any health authority, Staff Side or individual recognised staff organisation separately, to register with the Joint Secretaries for consideration by the General Whitley Council a claim for an extension of the prescribed period in specified circumstances. Such a claim should be registered before the end of the prescribed period, though the Joint Secretaries may exercise discretion on behalf of the Council to accept a claim after the expiry of the prescribed period.

8. Only claims relating to reorganisations resulting directly from the main Patients First reorganisation (or its Scottish or Welsh equivalents) shall be registered by the General Council under the procedure outlined in paragraph 7 above.

#### **DEFINITIONS**

9. The following expressions in this agreement have the meanings ascribed to them below:
  - 9.1 "Organisational change" - is any change in the organisation of health service provision taking place during the prescribed period.
  - 9.2 "Total remuneration" - comprises basic wage or salary plus any Regular Additional Earnings.
  - 9.3 "Downgrading" -occurs when the new post, irrespective of its grade title, carries a wage or salary scale with a maximum point-lower than that applying to the post held previously or, where appropriate, lower than that of the personal grade enjoyed in the previous post.
  - 9.4 "Basic wage or salary" - comprises the basic pay plus any responsibility or qualification allowances or proficiency payments or pharmaceutical officers personal allowance in payment on the day immediately preceding the first day of employment in the new post, but excludes any payments made in respect of acting up, London weighting, or clinical membership of a District Management Team.
  - 9.5 "Regular additional earnings" - in respect of any employee whose conditions of service provide for regular overtime to be taken into account in the calculation of annual leave payments, shall be those additional earnings (including overtime) for which payment would be made during a period of annual leave commencing on the day immediately preceding the first day of employment in the new post.
    - 9.5.1 In respect of all other employees, the average over the four months immediately preceding the first day of employment in the new post of any additional earnings listed at Appendix A to this Section.

#### **BASIC WAGE OR SALARY PROTECTION**

10. An employee downgraded as a consequence of organisational change will be entitled to the basic wage or salary protection below:
  - 10.1 Employee aged 50 or over at time of downgrading. Higher grade wage or salary scale and subsequent improvements thereto retained on a personal basis until retirement.
  - 10.2 Employee aged under 50 at time of downgrading. As above, but improvements paid for limited period only commencing with the first day of employment in the new post in accordance with sliding scale below, with protected basic wage or salary continuing thereafter on a mark time basis. Employees must give undertakings that they are prepared to accept a reasonable offer of a more senior post as near as possible to their former grade. Undertaking lapses when age 50 is attained, but duration

of full protection remains limited in accordance with the sliding scale below.

10.3 Duration of full wage or salary protection for staff aged under 50

	Years of full wage or salary protection
Employees aged under 41	5
Employee aged 41-49 (inclusive):	
With 10 or less full years' service*	5
With 11 years' full service*	5 ½
With 12 years' full service*	6
With 13 years' full service*	6 ½
With 14 years' full service*	7
With 15 years' full service*	7 ½
With 16 years' full service*	8
With 17 years' full service*	8 ½
With 18 years' full service*	9
With 19 years' full service*	9 ½
With 20 or more years' full service*	10

\* Service is total NHS service (aggregated if discontinuous) and includes, for any employee who entered the NHS under a transfer order (or who would have done so but for a prior appointment to an NHS post), service with predecessor authorities.

11. Any additional earnings deriving from work performed in the new post will, to the extent that they are not covered by regular additional earnings protection (paragraphs 12-13 below), be remunerated at the rates appropriate to that post, in addition to the protected basic salary or wage.

## **REGULAR ADDITIONAL EARNINGS PROTECTION**

12. All employees, whether downgraded or not, who are obliged in the prescribed period to move to a new post will be entitled to full protection of regular additional earnings on a mark time basis as per the scale below. Where however such regular additional earnings protection (eg of Acting-Up Allowance) would result in the total remuneration in the new post exceeding that total for the old post, protection should be limited to that necessary to maintain the original earnings level only (but see 11 and 13).

Total NHS Service	Protection Period (Months)
4 - 12 months	2
1 - 2 years	4
2 - 3 years	6
3 - 4 years	8
4 - 5 years	10
+5 years	12

13. As a condition of continuing protection of regular additional earnings an employee will be expected to perform the normal overtime, shift work or other duties attached to the new post. Any overtime hours worked in the new post in excess of those taken into account in calculation of the protected regular additional earnings shall be remunerated, at the rates applying to the new post, in addition to the protected regular additional earnings.

## **HOURS**

14. Employees obliged to move to a new post will acquire the conditions hours of that post.

## **ANNUAL LEAVE**

15. Annual leave allowances will be protected - with subsequent improvements while basic pay is fully protected and on a mark time basis thereafter.

## **TRAVEL AND SUBSISTENCE ALLOWANCES**

16. Travel and subsistence allowance rates will be protected - with subsequent improvements while basic pay is fully protected and on a mark time basis thereafter.

## **ENTITLEMENT TO OPT FOR TERMS AND CONDITIONS OF LOWER GRADES**

17. Employees entitled to protection of a higher grade may at any time opt for the complete package of terms and conditions of service applicable to the post to which they have been downgraded.

## **CONTINUITY OF EMPLOYMENT**

18. All employees obliged as a result of organisational change to move by transfer or in competition to a post with another or a newly created employing authority shall, in respect of all terms and conditions of service determined by Whitley agreement, be regarded as being in continuous employment; and no employing authority shall seek to show that the employment of any such employee was other than continuous for the purposes of the Employment Protection (Consolidation) Act 1978.



For the purposes of this paragraph only, any employees who, having, reasonable grounds for believing that as a consequence of reorganisation they are unlikely to secure a commensurate post with a health authority within the area of their present employing authority, accept such a post in the area of another employing authority, shall be deemed to have been obliged to move as a result of organisational change.

#### **PRECEDENCE**

19. The terms and conditions of service applying by virtue of either, (a) section 19 of the National Health Service Reorganisation Act 1973 (in Scotland section 35 of the National Health Service (Scotland) act 1972) and orders made thereunder, or (b) any current protection or variation arrangements, to any employees falling within the scope of this agreement shall, where more favourable, take precedence over the terms of this agreement. Where as a consequence of organisational change employees enjoying protection under (a) above are appointed to a post in which the duties are not reasonably comparable to the duties in which they were engaged immediately before such appointment, the provisions of this agreement shall apply to their remuneration, but protection of their other terms and conditions of service shall continue unchanged.

#### **SUBSEQUENT CHANGES OF POST**

20. Each subsequent change of post due to an organisational change covered by this agreement shall attract protection in its own right and shall also attract all the provisions set out in paragraphs 18 and 19 above.

ANNEX A TO SECTION 74

PAYMENTS TO BE REGARDED AS REGULAR ADDITIONAL EARNINGS FOR PROTECTION

Regular overtime

Incentive bonus payments (including lead-in payments)

Instructional pay

Payments to clinical members of District Management Teams

Special Duty Payments (staff within the purview of the Professional and Technical 'A' and the Nurses and Midwives Whitley Council only)

Extra Duty Payments (staff within the purview of the Nurses and Midwives Whitley Council only)

Lead payments payable to nurses of psychiatric or geriatric patients

Radiological Officers safety allowance

Regional Secure Units payments

VD payments

Allowances for:

Acting up

Shift duty

Night duty

Split duty

Unsocial hours

Weekend work within the standard working week

Stand by/on call duty

Involvement in incentive bonus schemes

London Weighting

SECTION 75 (UNALLOCATED)

APPENDIX A

WHITLEY COUNCILS FOR THE HEALTH SERVICES (GREAT BRITAIN)

MAIN CONSTITUTION (REVISED 1 JANUARY 1984)

1. **MACHINERY**

The Councils shall comprise:-

1.1 A General Council

1.2 10 functional councils, dealing with particular groups of persons engaged in the health services, namely:-

1.2.1 Administrative and Clerical

1.2.2 Ancillary Staffs

1.2.3 Dental (Local Authorities)

1.2.4 Medical and (Hospital) Dental

1.2.5 Nurses and Midwives

1.2.6 Optical

1.2.7 Pharmaceutical

1.2.8 Professional and Technical A

1.2.9 Professional and Technical B

1.2.10 Ambulancemen

1.3 A Scottish Advisory Committee

2. **MEMBERSHIP**

**A. GENERAL COUNCIL**

2.1 The Council shall consist of 56 members, plus any additional members appointed in order to conform with the requirements of subparagraph 2.2 of this clause, of whom a maximum of 27 shall be appointed to represent the Authorities responsible for the administration of the Health Services (hereinafter termed the Management) and 29 shall represent the employees of those Authorities, and persons in contractual arrangement with Family Practitioner Committee or Health Boards (hereinafter referred to as the Staff).

2.2 The representatives of the Management shall be:

The chairmen for the time being of the Management Sides of the following functional Councils:-

Administrative and Clerical

Ancillary Staffs

Ambulancemen

Nurses and Midwives

Professional and Technical Staff A and

Professional and Technical Staff B;

the Chairman for the time being of the Management Side of Committee A of the Optical Council;

the Chairman for the time being of the Management Side of Committee A of the Pharmaceutical Council

plus a maximum additional number of members as follows:-

Regional Health Authorities and District  
Health Authorities in England 14

Scottish Health Authorities 5

Welsh Health Authorities 3

Department of Health and Social Security 3

Scottish Home and Health Department 1

Welsh Office 1

2.3 The 29 representatives of the Staff shall be appointed by the Staff Sides of the functional Councils as follows:-

Administrative and Clerical 4

Ambulancemen 2

Ancillary Staffs - 4

Medical and (Hospital) Dental 4

Nurses and Midwives 4

Optical 1

Pharmaceutical 3

Professional and Technical Staff A 3

Professional and Technical Staff B 3

Dental (Local Authorities) 1

B. **FUNCTIONAL COUNCILS AND SCOTTISH ADVISORY COMMITTEE**

The membership of the functional Councils and of the Scottish Advisory Committee shall be as provided by their Constitutions.

3. **RETIREMENT OF MEMBERS**

Members shall retire from the Councils on ceasing to be members of or to hold office under the authority, organisation, department or body by which they were appointed. The members of the Councils shall retire on the 31 July of each year and shall be eligible for re-appointment, provided that any Staff Side member due so to retire shall remain in office, if otherwise eligible, until the appointment of a successor shall have been notified to the Staff Side Secretary. Casual vacancies shall be filled by the original appointing body, which shall appoint a member to sit until the end of the current period.

4. **CHAIRPERSON**

Each Council shall appoint annually a person to act as Chairperson and Vice-Chairperson. The Chairperson shall be appointed alternately from Management and Staff Sides. If the Chairperson is a representative of the Management, the Vice-Chairperson shall be a representative of the Staff and vice versa.

5. **SECRETARIES**

Each Council shall appoint Joint Secretaries (one from Management and one from Staff) and such other officers as the Council may think fit. The persons so appointed may or may not be members of the Council.

6. **QUORUM**

The quorum of a Council shall consist of not less than one third of the appointed members entitled to be present on each Side. In the absence of a quorum the Chairperson shall vacate the chair, and the business then under consideration shall be the first business to be discussed either at the next ordinary meeting or at a special meeting to be held within 14 days after the date fixed for the first meeting. The quorum of any Committee of a Council shall, subject to any directions given by the Council, be determined by the Committee. The proceedings of a Council or a Committee of a Council shall not be invalidated by any vacancy in their numbers or by any defect in the appointment of any member of the Council or the Committee.

7. **DEPUTIES**

Where a member of the Council or a Committee is unable to attend any meeting, the organisation or body responsible for the appointment may send a deputy. Deputies shall have the right to speak and to vote as if they were a substantive member.

8. **AREA**

The sphere of operation of the Councils shall be in England, Scotland and Wales.

9. **FUNCTIONS OF THE COUNCIL**

The functions of the Council shall be:-

- 9.1 To secure the greatest possible measure of co-operation between the management and staff of the health services with a view to increasing efficiency and ensuring the well-being of those employed in the services.
- 9.2 To provide machinery for the consideration of remuneration and conditions of service of persons within the ambit of paragraph 10 of Schedule 5 to the National Health Service act 1977 as amended, Section 66 of the National Health Service Act 1946 as amended and having effect pursuant to the provisions of Section 15 of the National Health Service Reorganisation Act 1973 or paragraphs 7 and 8 of Schedule 5 to the National Health Service (Scotland) Act 1978 as amended.
- 9.3 To provide machinery for the consideration of the remuneration of persons with whom arrangements may be made pursuant to Part II of the National Health Service Act 1977 or Part II of the National Health Service (Scotland) Act 1978.
- 9.4 To provide machinery also for the consideration of the remuneration and conditions of employment of any persons whom the General Council may from time to time decide to at within its scope.

10. **SCOPE**

- 10.1 Subject to 10.2 and 10.3 below, each of the functional Councils specified in Clause 1.2 above shall determine remuneration and all conditions of service requiring national decision affecting directly only those persons comprised within its group.
- 10.2 Where conditions of service other than remuneration affect more than one functional Council and less than ten, those conditions of service may be determined by the functional Councils concerned acting together.
- 10.3 Where conditions of service and remuneration are of general application they shall be determined by the General Councils.

11. **CO-OPTION**

Each Council may co-opt for any of its meetings representatives of organisations having a special interest in a particular matter or persons not being members of the Council, as may serve the purposes of the Council.

Each Council may appoint on any of its Committees, or allow any Committee to co-opt for any of its meetings, representatives of organisations having a special interest in a particular matter, or persons not being members of the Council, as may serve the special purposes of the Council.

Provided that persons thus co-opted shall serve only in a consultative capacity.

12. **COMMITTEES**

Each Council may appoint such standing, special or sectional committee or sub-committees as may be considered necessary, and may delegate to such committees or sub-committees such powers as may be

agreed. The management and the Staff Side of committees and sub-committees of functional Councils and of the General Council may include representatives of authorities, organisations, departments or bodies not represented on the Council.

13. **REFERENCES TO THE SCOTTISH ADVISORY COMMITTEE**

13.1 If a Council decides that any matter before it falls to be considered in the light of special Scottish conditions, the matter shall be referred to the Scottish Advisory Committee.

13.2 If any two representatives on a Council claim that a matter before the Council should be considered by the Scottish Advisory Committee by reason of the existence of special Scottish conditions, the claim shall be referred to the Scottish Advisory Committee, and if the Scottish Advisory Committee is agreed that the matter is appropriate to be considered by that body it shall make its recommendations thereon to the appropriate Council.

13.3 If any claim in respect of special Scottish conditions is laid before the Scottish Advisory Committee without first having been laid before the appropriate Council, the Scottish Advisory Committee shall forthwith notify such Council of the substance of the claim, and shall then treat the claim as though it were submitted under the terms of paragraph 13.2 of this Clause.

13.4 If any matter is referred to the Scottish Advisory Committee for consideration under paragraph 13.1, 13.2 or 13.3 of this Clause, and that Committee does not agree that the matter falls to be so considered, it shall advise the appropriate Council accordingly.

13.5 The Scottish Advisory Committee may delegate to any standing or other sub-committee any or all of its advisory functions in relation to such field or interest as it may from time to time specify as the scope of the sub-committee.

13.6 All recommendations of the Scottish Advisory Committee or of any sub-committee acting on its behalf shall be reported to the appropriate Council which shall take such recommendation into account in making its decision, provided always that a Council shall be under no obligation to defer its decision pending receipt of the recommendation from the Scottish Advisory Committee if in its opinion either the matter is one of urgency, or the Scottish Advisory Committee has not submitted its recommendations within a reasonable time.

14. **MEETINGS**

Meetings of the Councils and of the Scottish Advisory Committee shall be held as often as required. The Chairman, or in his absence the Vice-Chairman, of a Council shall call a special meeting upon a requisition from one third of the appointed members entitled to be present on either Side. The requisition and also the notice summoning the meeting shall take place within 21 days after the receipt of the requisition by the Chairman or Vice-Chairman, as appropriate, and no business shall be transacted at any special meeting other than that specified in the notice summoning the meeting.



15. **FINANCE**

The cost of any activity undertaken by a Council shall be divided equally between the two Sides, unless otherwise determined by the Council.

16. **MINUTES**

Minutes agreed by the Joint Secretaries shall be made for each Council or Committee meeting. The minutes of each General Council meeting shall be circulated to every member of the Council and to the Joint Secretaries of each Functional Council. The minutes of each functional Council meeting shall be circulated to each member of that functional Council and to the Joint Secretaries of each other Council. The minutes of each Committee meeting shall be circulated to each member of the Committee and the Council by which it was set up, unless that Council shall otherwise decide. The minutes of the Scottish Advisory Committee shall be circulated to each member of the Committee and to the Joint Secretaries of each Council.

17. **DECISIONS**

Decisions of a Council or the Committee of a Council shall be reached by the concurrence of both Sides. The decision of any Committee of a Council shall require the approval of that Council of which it forms part unless power to decide has been formally delegated to that Committee by the Council.

The decisions of the General Council or of a functional Council shall be transmitted to the Secretary of State for Social Services, the Secretary of State for Scotland, the Secretary of State for Wales.

18. **AMENDMENT OF CONSTITUTION**

18.1 The main constitution may be varied by the General Council provided that not less than 3 calendar months' notice of the terms of the proposed amendment has been circulated to each member of the General Council and to each of the functional Councils.

18.2 Subject to the provisions of Clause 19 the constitution of any functional Council may be varied at any meeting of the Council concerned, provided that notice of the terms of the proposed amendment has been circulated to each member of the Council at least 28 days before the meeting.

19. **APPLICATION**

19.1 The provisions of this constitution, other than Clause 2A, shall apply to each functional Council, and, so far as appropriate, to the Scottish Advisory Committee, except as may be determined by such functional Council or the Committee with the consent of the General Council.

19.2 Each functional Council and the Scottish Advisory Committee may include in its own constitution such additional provisions as may seem necessary, provided that they do not conflict with the provisions of this constitution.

20. **INTERPRETATION**

Any question of the interpretation of a decision of a functional Council or the General Council may be referred to that Council.

21. **ARBITRATION**

Every effort shall be made to accommodate differences of opinion between the two Sides of a Council in order to reach an agreed decision. Where it is impossible to accomplish this, it shall be open to the Management or the Staff organisations concerned to seek arbitration in accordance with the terms of an arbitration agreement to be determined by the General Council

APPENDIX B

LIST OF RECOGNISED STAFF ORGANISATIONS

Amalgamated Union of Engineering Workers  
Association of Clinical Biochemists  
Association of British Dispensing Opticians  
Association of NHS Officers  
Association of Supervisors of Midwives

British Association of Occupational Therapists  
British Dental Association  
British Dietetic Association  
British Medical Association  
British Orthoptic Society

Chartered Society of Physiotherapy  
Company Chemists Association Ltd  
Confederation of Health Service Employees

Electrical, Electronic, Telecommunication and Plumbing Trades Union

General, Municipal, Boilermakers and Allied Trades Union

Health Visitors Association  
Hospital Physicists' Association

Manufacturing, Science, Finance

National and Local Government Officers Association  
National Pharmaceutical Union  
National Union of Public Employees

Pharmaceutical Standing Committee (Scotland)

Royal College of Midwives  
Royal college of Nursing of the United Kingdom

Scottish Health Visitors Association  
Scottish Committee of Optometrists  
Socialist Health Association  
Society of Administrators of Family Practitioners Services Society of  
Chiropodists  
Society of Opticians  
Society of Radiographers

Transport and General Workers Union

Union of Construction, Allied Trades and Technicians  
Union of Shop, Distributive and Allied Workers