

Scottish Terms and Conditions Committee

Chairs, NHS Boards and Special Health Boards
Chief Executives, NHS Boards and Special Health Boards
Directors of Finance, NHS Boards and Special Health Boards
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Members, Scottish Terms and Conditions Committee

3 September 2008

Dear Colleague

CHANGES TO THE WAY IN WHICH STAFF ARE PAID DURING PERIODS OF ANNUAL LEAVE

This letter is intended as an accompaniment to PCS(AFC)2008/12 and provides further information for Boards to assist in their implementation of the new arrangements.

Subsequent to the amendment to Section 2 of the Agenda for Change Handbook (effective from 1 April 2008) which introduced changes to the way staff should be paid during periods of annual leave, a technical sub group of the Scottish Terms and Conditions Committee was established with a remit to:

“Identify, consider and propose solutions to technical issues related to the new provisions on payment of annual leave and to act as a point of contact for subsequent enquiries”

The group have produced the guidance set out in the Annex of PCS(AFC)2008/12 and the attached Q&A. Health Boards are asked to ensure that this information is distributed as widely as possible within their area. **A contact for local queries should be identified and communicated to staff along with the guidance.**

The technical group will continue to meet and act as the point of reference for any enquiries. Further communications will be issued in due course.

In the meantime, should you have any enquiries on this issue please address these to Janis Millar at Janis.millar@scotland.gsi.gov.uk.

Yours sincerely

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Scottish Terms and
Conditions Committee

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CHANGES TO THE WAY IN WHICH STAFF ARE PAID DURING PERIODS OF ANNUAL LEAVE

Questions and Answers to support transition to new system

1. Introduction

1.1 New provisions have been introduced in respect of the way in which staff are paid during periods of annual leave. These no longer allow employers to pay staff an additional percentage in lieu of paid annual leave - staff will now be paid "as if at work" during annual leave periods.

1.2 A technical working group was established under the aegis of STAC to consider issues relating to this change and PCS(AFC)2008/12 was issued to inform managers and staff of the affects that this change will have on different staff groups.

1.3 The following Q&A is intended to support the transition from the current method of payment to the new system and will be updated as and when required.

2. Questions and Answers (Q&A)

Q.1 As a manager what do I need to do?

A.1 (a) Managers of substantive staff will roster as at present and notify payroll in the normal manner and as currently done for periods of sick leave.

(b) Managers of staff who work on an "as and when required" basis (e.g. bank workers) will need to record all basic and enhanced hours worked by these staff in order to facilitate the calculation of annual leave entitlement.

Records will also have to be kept of periods of annual leave taken by these workers to ensure that the minimum specified under the European Working Time Directive (EWTD) is taken in the annual leave year. The EWTD minimum was 4.8 weeks up until 31 March 2009 and from 1 April 2009 is 5.6 weeks. The annual leave year for these staff will be the same as for substantive, i.e. 1st April to 31st March.

Local arrangements will have to be put in place to manage the process to ensure that it is appropriately controlled and monitored.

Q.2 Who is affected by this change?

A.2 With the exception of ancillary, building and maintenance staff, whose current arrangements comply with the new provisions, the following will see a change:

- (a) full time substantive staff who work unsocial hours, contracted overtime or are paid an on-call allowance;
- (b) part time substantive staff who work unsocial hours, contracted overtime, are paid an on-call allowance or who undertake regular additional basic hours; and
- (c) "as and when required" (bank) workers.

Q.3 Why is this change necessary?

A.3 There has been a change in the Agenda for Change terms and conditions of service which is intended to ensure that all staff are appropriately paid during periods of annual leave.

Q.4 What will the new arrangements mean for me?

A.4 Substantive Staff – are not currently paid an unsocial hours supplement whilst on annual leave but receive an additional regular payment for working unsocial hours, regular additional basic hours (part time staff), contracted overtime and on any on-call allowance. This is recorded on payslips as annual leave payments. Under the new provisions substantive staff will be paid "as if at work" during periods of annual leave. This equates to what these staff are currently paid when on sick leave and will ensure that they receive the correct pay whilst on annual leave.

"As and when required" (Bank) Workers – staff who work on this basis currently receive an additional regular payment on all hours worked to reflect their statutory annual leave entitlement. This is recorded on payslips as annual leave payments. This payment will no longer be made, but these staff will be paid during periods of annual leave based on the hours worked prior to the leave being taken.

Q.5 Is it possible for me to elect to retain the current arrangements?

A.5 Unfortunately it is not. Employers have a duty to ensure that the new arrangements for paying staff while on annual leave are put into place.

Q.6 When will this change take effect?

A.6 The new system came into operation on 1 April 2008 but organisations required time to put necessary systems in place to manage this change. It was therefore agreed in Scotland that the change would take effect from 1 October 2008 but that any staff disadvantaged by the delay would be appropriately rewarded (see Q 7 below).

Q.7 Are there any issues arising as a result of the delay in putting the new arrangements into place?

A.7 The only issue relates to some substantive staff who might have been disadvantaged by the delay in implementation, particularly if they have long service and are entitled to more than the minimum annual leave under Agenda for Change. In such cases, a one off payment will be made in recognition of any loss during the period 1 April 2008 to 30 September 2008. ***This will be done automatically on your behalf by referring to relevant hours worked during the six months period in question.***

Q.8 When will I first see changes in my weekly/monthly pay?

A.8 Unsocial hours will continue to be paid in arrears.

Monthly paid staff will see changes in their November 2008 payslip.

Weekly paid staff will see a change from week 27, paid on Thursday 9th October 2008 or Friday 10th October 2008.

Q.9 How can I be sure that I am being paid the appropriate amount when off on leave?

A.9 Substantive staff - Your manager will roster you as if at work and report appropriate hours to Payroll for payment.

Bank workers – Your manager will have accrued your annual leave payment allowance and this will be recorded for payroll purposes. When taking leave you will be paid a maximum of the full time hours of your staff group for one week's leave for each week taken. The actual amount will depend on the accrued annual leave based on basic and unsocial hours worked.

Q.10 Do I need to apply to take annual leave?

A.10 Substantive staff will simply apply for annual leave as they currently do and, managers will ensure that the appropriate hours are notified to payroll whilst on annual leave.

"As and When Required" workers will have to advise their intention to take a period of annual leave in advance to ensure that the appropriate amount of pay and leave is allocated. Managers will ensure that hours worked are carefully recorded and collated including how many hours are unsocial hours and this will ensure accurate payment. Detailed guidance will be notified to all "as and when required" workers by each Health Board.

Q.11 When I am on annual leave from my substantive post can I work on a bank on an “as and when required” basis?

A.11 From 1 April 2009, you must have 5.6 weeks where you do not work in either post but you can elect to work on a bank during any remaining leave over and above 5.6 weeks.

Q. 12 How much annual leave are “as and when required” (bank) workers entitled to?

A.12 These workers are entitled to the statutory leave entitlement of 4.8 weeks (24 days based on a five day working week). This entitlement increases to 5.6 weeks (28 days based on a 5 day working week) on 1st April 2009.

Q.13 Has there been a change to the number of hours that an “as and when required” worker has to work before being awarded an annual pay increment?

A.13 No – there has been no change to this. Under Agenda for Change, these workers must complete 391 hours before receiving a pay increment. This figure includes any hours paid in respect of annual leave.

Q.14 Are payments made for work done as the result of on-call included in the annual leave calculation as well as on call allowances?

A.14 Yes, payments for work done as the result of being called out are included. These payments should be paid to all staff called out regardless of whether they are on an Agenda for Change on-call arrangement or a protected on-call arrangement.

Q.15 Is there an easy way of calculating payments due?

A.15 This is somewhat complex given that the percentage is not only based on basic hours but also on unsocial hours, contracted overtime, on-call allowances etc. The responsibility of bank managers is to record the hours worked, the relevant equivalent annual leave entitlement accrued noting how many are basic, unsocial etc and notify the payroll department who will then process these figures and apply the relevant enhancement factors as appropriate thus paying the relevant amount to be paid.

Q.16 Are “as and when required” workers entitled to a day off in lieu of working on a public holiday?

A.16 There is no entitlement to public holidays over and above the statutory annual leave entitlement referred to above. Staff are entitled to the appropriate public holiday enhancements when worked.

Q.17 If, as an “as and when required” worker I take my entitlement to annual leave at the beginning of the annual leave year and then accrue further hours, how and when will this be paid?

A.17 The maximum hours of annual leave payable to an “as and when required” worker from 1 April 2009 is 210 which equates to the statutory entitlement - 5.6 weeks (28 days) x 7.5 hours per day. If you take your statutory leave during the year but have only accrued, for example, 100 hours, you will be paid for that 100 hours when you take your leave. However, if you then accrue a further 20 hours, but do not take any period of leave, the relevant amount will be paid to you in March of each year. Your hours will be automatically recorded by your manager who will hold these hours in an annual leave account until you take a period of leave. There is no facility to carry over any leave from one year to the next so any balance due will be paid at the end of each year.

Q.18 How is payment calculated for call outs that would have been worked if the employee had been at work?

A.18 This should be agreed locally in partnership but can be done by using an agreed reference period prior to the period of leave and paying an average of payments made during that reference period.

3. Conclusion

3.1 Further questions from staff and managers should be referred in the first instance to the nominated local contact for each Health Board. The named contact may, if required, refer further questions to the group for consideration.

3.2 This Q&A, and any subsequent updating, will be available on the Scottish Terms and Conditions Committee website at www.stac.scot.nhs.uk.

STAC Technical Working Group
As updated on 29 June 2009

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PAYMENT OF ANNUAL LEAVE AND UNSOCIAL HOURS TO BANK WORKERS

The information below provides a worked example of the accrual of leave and payment for periods of annual leave taken by a bank worker. The following table records the hours worked and the accrual of annual leave/basic/ unsocial hours on the basis of the original percentage entitlement of 11.59%. This changed with effect from 1 April 2009 in line with the Working Time Regulations which increased the basic leave due in respect of the Working Time Directive to 5.6 weeks per year (12.07%).

This information should be considered along with NHS Circular PCS (AFC) 2008/12 and the FAQs which accompany this circular.

	Holiday	Hours Worked / AL Taken						Accrued Annual Leave Hrs					
		Basic	Sat	Sun	ND	Uns	PH	Basic	Sat	Sun	ND	Uns	PH
Week 1		30.00						3.48					
Week 2		20.00	8.00	8.00				5.80	0.93	0.93			
Week 3		37.50			20.00	6.00		10.15	0.93	0.93	2.32	0.70	
Week 4		10.00	5.00	5.00				11.31	1.51	1.51	2.32	0.70	
Week 5								11.31	1.51	1.51	2.32	0.70	
Week 6		8.00						12.24	1.51	1.51	2.32	0.70	
Week 7		16.00	8.00	8.00				14.09	2.44	2.44	2.32	0.70	
Week 8		20.00	4.00	4.00	8.00			16.41	2.90	2.90	3.25	0.70	
Week 9		6.00						17.11	2.90	2.90	3.25	0.70	
Week 10		9.00			9.00			18.15	2.90	2.90	4.29	0.70	
Week 11	AL - 1 day	7.50	1.20	1.20	1.77	0.29		10.65	1.70	1.70	2.52	0.41	
Week 12		10.00	8.00		2.00			11.81	2.63	1.70	2.75	0.41	
Week 13		15.00						13.55	2.63	1.70	2.75	0.41	
Week 14		23.00	8.00	8.00				16.22	3.56	2.63	2.75	0.41	
Week 15		10.00			10.00			17.38	3.56	2.63	3.91	0.41	
Week 16		37.50	7.50	7.50				21.73	4.43	3.50	3.91	0.41	
Week 17								21.73	4.43	3.50	3.91	0.41	
Week 18		20.00				8.00		24.05	4.43	3.50	3.91	1.34	
Week 19		37.50						28.40	4.43	3.50	3.91	1.34	
Week 20		37.00	8.00	8.00				32.69	5.36	4.43	3.91	1.34	
Week 21		10.00						33.85	5.36	4.43	3.91	1.34	
Week 22		12.00						35.24	5.36	4.43	3.91	1.34	
Week 23		15.00						36.98	5.36	4.43	3.91	1.34	
Week 24		25.00						39.88	5.36	4.43	3.91	1.34	
Week 25		25.00						42.78	5.36	4.43	3.91	1.34	
Week 26		25.00						45.68	5.36	4.43	3.91	1.34	
Week 27	AL- 1 wk	37.50	4.40	3.64	3.21	1.10		8.18	0.96	0.79	0.70	0.24	
Week 28		16.00						10.03	0.96	0.79	0.70	0.24	
Week 29		30.00			7.50			13.51	0.96	0.79	1.57	0.24	
Week 30		20.00						15.83	0.96	0.79	1.57	0.24	
Week 31		20.00						18.15	0.96	0.79	1.57	0.24	
Week 32		20.00						20.47	0.96	0.79	1.57	0.24	
Week 33		25.00	8.00	8.00				23.37	1.89	1.72	1.57	0.24	
Week 34		25.00			25.00			26.27	1.89	1.72	4.47	0.24	
Week 35		30.00	8.00	8.00		6.00		29.75	2.82	2.65	4.47	0.94	

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Week 36		35.00			35.00			33.81	2.82	2.65	8.53	0.94	
Week 37		30.00	6.00	6.00				37.29	3.52	3.35	8.53	0.94	
Week 38		35.00	7.00	7.00		10.00		41.35	4.33	4.16	8.53	2.10	
Week 39	AL - 1 wk	37.50	3.93	3.77	7.74	1.90		3.85	0.40	0.39	0.79	0.20	
Week 40	AL - 1 wk	3.85	0.40	0.39	0.79	0.20		0.00			0.00	0.00	
Week 41	AL - 1 wk							0.00			0.00	0.00	
Week 42	AL - 3 days							0.00			0.00	0.00	
Week 43		20.00	5.00	5.00				2.32	0.58	0.58	0.00	0.00	
Week 44		20.00	5.00	5.00				4.64	1.16	1.16	0.00	0.00	
Week 45		20.00	5.00	5.00				6.96	1.74	1.74	0.00	0.00	
Week 46		20.00	5.00	5.00				9.28	2.32	2.32	0.00	0.00	
Week 47		20.00	5.00	5.00				11.60	2.90	2.90	0.00	0.00	
Week 48		20.00	5.00	5.00				13.92	3.48	3.48	0.00	0.00	
Week 49		20.00	5.00	5.00				16.24	4.06	4.06	0.00	0.00	
Week 50		20.00	5.00	5.00				18.56	4.64	4.64	0.00	0.00	
Week 51		20.00	5.00	5.00				20.88	5.22	5.22	0.00	0.00	
Week 52		20.00	5.00	5.00				23.20	5.80	5.80	0.00	0.00	

- NB: (1) The basic hours payable for leave in week 11 are 7.5 basic and in addition unsocial hours are derived on the basis of $7.5 / 18.15$ (i.e. the accrued basic hours to week 10).
- (2) Week 27 shows that only a maximum of 37.5 hours are payable for any single week of leave.
- (3) Weeks 39 to 42 again display that only a maximum 37.5 hours are payable for any single week of leave.
- (4) The balance of accrued hours at year end in this example are all payable and should be paid in full as the total accrued hours of leave paid totals less than 180 basic hours. If the total accrued hours were more than 180 hours, then any final payment would be restricted to the maximum of 180 hours basic.