

Scottish Terms and Conditions Committee

Ref: STAC(TCS01)2015

7 May 2015

To: Chief Executives,
Directors of Finance,
Directors of Human Resources -
NHS Boards and Special Health Boards,
NHS National Services Scotland (Common Services Agency) and
Healthcare Improvement Scotland

CC: Members, Scottish Partnership Forum
Members, Scottish Terms and Conditions Committee
Members, Scottish Workforce and Governance Committee

Dear Colleague

TEXTUAL CHANGES TO THE AGENDA FOR CHANGE HANDBOOK AND INTRODUCTION OF SHARED PARENTAL LEAVE PROVISIONS

There have been a number of changes made by the UK Staff Council recently to the text of the Agenda for Change Handbook which either do not apply in Scotland or have been addressed through other specific Scottish guidance.

The approach STAC has taken in such circumstances is to maintain one UK text for the Handbook, but annotate this for a Scottish context, making clear what does and does not apply in this country and, where appropriate, directing readers to any other guidance which takes precedent. This master Scottish version of the Handbook is hosted on the Management Steering Group website – www.msg.scot.nhs.uk.

We are firstly writing to confirm, for information, that the following changes which do not apply in Scotland are now reflected in the Scottish Handbook:

- revisions associated with the Welsh adoption of formerly English only provisions;
- revisions associated with the new English redundancy provisions at Section 16(a)(England).

As was previously agreed by STAC, these sections of the text are greyed out in the Scottish Handbook.

Secondly, we write to confirm that changes associated with the recent introduction of Shared Parental Leave have also been made to the Scottish Handbook. These were brought about by a legislative change and this policy revision, it should be emphasised, does apply in NHSScotland. However, as with a number of Staff Governance issues, it is Scotland's Partnership Information Network (PIN) policies which take precedence, and this latest change has been dealt with as part of the

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larger revision of the Supporting Work-Life Balance PIN. A Director's Letter – DL(2015)5 - was issued on 2 April providing a model policy and this should be regarded as the relevant reference document on Shared Parental Leave in NHSScotland. The approach set out in that letter will be reflected in the revised Supporting Work-Life Balance PIN in due course.

For completeness, a list of all the revisions brought about by the above changes is attached as an Annex to this letter.

Yours sincerely



Robert Calderwood
Chief Executive
NHS Greater Glasgow & Clyde
STAC Management Side Co-Chair



Colin Poolman
Senior Officer, Grampian, Fife & Shetland
Royal College of Nursing
STAC Staff Side Co-Chair

1. Revisions associated with the Welsh adoption of formerly English only provisions

Contents

The entry "Section 1(a) (England): Pay structure" is changed to "**Section 1(a) (England and Wales)**"

The entry "Section 2(a) (England): Maintaining round the clock services" is changed to "**Section 2(a) (England and Wales): Maintaining round the clock services**"

The entry "Section 6(a) (England): Career progression" is changed to "**Section 6(a) (England and Wales): Career progression**"

The entry "Section 14(a) (England): Sickness absence" is changed to "**Section 14(a) (England and Wales): Sickness absence**"

The entry "Annex W (England): Pay progression" is changed to "**Annex W (England and Wales): Pay progression**"

The entry "Annex X (England): Guidance on workforce re-profiling" is changed to "**Annex X (England and Wales): Guidance on workforce re-profiling**"

The entry "Annex A2(a) (England): Guidance on frequently asked questions" is changed to "**Annex A2(a) (England and Wales): Guidance on frequently asked questions**"

Part 2: Pay Section 1: Pay Structure

The following sentence is added onto the end of paragraph 1.10:
"**Employers elsewhere will need to refer to the relevant documents in their countries**".

Section 1(a) (England): Pay structure

The title "Section 1(a) (England): Pay structure" is changed to "**Section 1(a) (England and Wales): Pay structure**"

In paragraph 1.8: line 6: "Annex W (England)" is changed to "**Annex W (England and Wales)**".

In paragraph 1.14: line 1: "Annex W (England)" is changed to "**Annex W (England and Wales)**".

Paragraph 1.15 is:

"This will apply to appraisal objectives after April 2013 for incremental pay progression post April 2014".

It is changed to:

"In England this will apply to appraisal objectives after April 2013 for incremental pay progression post April 2014 and in Wales this will apply to appraisal objectives after April 2015 for incremental pay progression post April 2016".

The following sentence is added onto the end of paragraph 1.16:

“Employers elsewhere will need to refer to the relevant documents in their countries”.

Section 2(a) England: Maintaining round the clock services

The title "Section 2(a) (England): Maintaining round the clock services" is changed to **"Section 2(a) (England and Wales): Maintaining round the clock services"**

In paragraph 2.13: line 5: the reference to “paragraph 6.21 in Section 6(a) (England)” is changed to **“paragraph 6.21 in Section 6(a) (England and Wales)”**.

In paragraph 2.14: line 4: the reference “(see paragraph 14.7 in Section 14(a) (England)” is changed to **“(see paragraph 14.7 in Section 14(a) (England and Wales)”**.

In line 7 the reference to “paragraph 14.4 in Section 14(a) (England)” is changed to “paragraph 14.4 in Section 14(a) (England and Wales)”.

In paragraph 2.15: the first sentence is:

“From 31 March 2013, for staff on pay spine points 9 to 54, unsocial hours payments will be pensionable and will count for contractual maternity pay only, in line with Section 15”.

It is changed to:

“From 31 March 2013 in England and from 1 January 2015 in Wales, for staff on pay spine points 9 to 54, unsocial hours payments will be pensionable and will count for contractual maternity pay only, in line with Section 15”.

Section 6(a) (England): Career progression

The title “Section 6(a) (England): Career progression” is changed to **“Section 6(a) (England and Wales): Career progression”**

In paragraph 6.7: first bullet point: line 3: the reference to “Annex W (England)” is changed to **“Annex W (England and Wales)”**

In paragraph 6.16: line 4: the reference to “Annex W (England)” is changed to **“Annex W (England and Wales)”**

Section 13: Annual leave and general public holidays

Paragraph 13.4: line 4: the reference in brackets "(see Section 2 or 2(a) (England) and Annex A3)" is changed to **"(see Sections 2 or 2(a) (England and Wales) and Annex A3)."**

Section 14(a) (England): Sickness absence

The title "Section 14(a) (England): Sickness absence" is changed to **"Section 14(a) (England and Wales): Sickness absence"**

Paragraph 14.5 is:

“From 31 March 2013, for staff on pay spine points 9 to 54, full pay in this agreement is pay which is in line with the appropriate pay point in the relevant pay circular, plus high cost area supplements (if these are in payment on the day before the sickness absence begins). The pay of staff who begin a period of sickness absence before 31 March 2013, and who remain absent on this date will, from 31 March 2013 and for

the remainder of the absence, be in line with this paragraph. Their pay during subsequent sickness absences will be in line with this paragraph”

It is changed to:

“In England:

from 31 March 2013, for staff on pay spine points 9 to 54, full pay in this agreement is pay which is in line with the appropriate pay point in the relevant pay circular, plus high cost area supplements (if these are in payment on the day before the sickness absence begins). The pay of staff who begin a period of sickness absence before 31 March 2013, and who remain absent on this date will, from 31 March 2013 and for the remainder of the absence, be in line with this paragraph. Their pay during subsequent sickness absences will be in line with this paragraph;

and in Wales:

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

Section 15: Maternity leave and pay

In paragraph 15.48: line 5: the words **“and Wales”** are inserted immediately after the word “England” in brackets.

Section 17: Reimbursement of travel costs

The following footnote is added below paragraph 17.5:

Footnote number 1

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

Section 22: Injury allowance

In paragraph 22.2: line 2: the reference to “Section 14(a) (England)” is changed to **“Section 14(a) (England and Wales)”**.

In paragraph 22.8: line 5: the reference to “paragraph 14.4 and paragraphs 14.4 and 14.5 in Section 14(a) (England) is changed to **“paragraph 14.4 and paragraphs 14.4 and 14.5 in Section 14(a) (England and Wales)”**.

In paragraph 22.13: line 3: the reference to “paragraph 14.4 and paragraphs 14.4 and 14.5 in Section 14(a) (England)” is changed to **“paragraph 14.4 and paragraphs 14.4 and 14.5 in Section 14(a) (England and Wales)”**.

Section 27: Working time regulations

Paragraph 27.13: line 6: the reference in brackets “(see also paragraph 27.8 and Section 2 or 2(a) (England) and Annex A3” is changed to “**(see also paragraph 27.8, Sections 2 or 2(a) (England and Wales) and Annex A3)**”.

Section 31: Recruitment, promotion and staff development

In paragraph 8: line 5: the reference to “6(a) (England)” is changed to “**6(a) (England and Wales)**”

In paragraph 31: lines 2 and 3: the reference in brackets is “(see Section 3 of the KSF Handbook and/or, in England, relevant local policy documents). It is changed to “**(see Section 3 of the KSF Handbook and/or, in England and Wales, relevant local policy documents)**”.

Section 34: Flexible working arrangements

Paragraph 1: line 5: the reference to “Sections 2 or 2(a) (England)” is changed to “**Sections 2 or 2(a) (England and Wales)**”.

Annexes

Annex B: Pay bands and pay points on the second pay spine in England from 1 April 2013
Table 9(j)

The reference in the footnote to table 9(j) “(see paragraphs 1.11 to 1.15 in Section 1(a) (England)” is changed to “**(see paragraphs 1.11 to 1.15 in Section 1(a) (England and Wales)**” and the following sentence is added at the end of the note: “**(See relevant policy documents for information on pay in Wales)**”.

Annex C: Pay bands and pay points on the second pay spine in England from 1 April 2014
Table 10

The reference in the footnote to Table 10 “(see paragraphs 1.11 to 1.15 in Section 1(a) (England)” is changed to “**(see paragraphs 1.11 to 1.15 in Section 1(a) (England and Wales)**” and the following sentence is added at the end of the note: “**(See relevant policy documents for information on pay in Wales)**”.

Annex D: Working or providing emergency cover outside normal hours

In paragraph 2: line 2: the reference “Sections 2 or 2(a) (England) and Annex A3” is changed to “**Sections 2 or 2(a) (England and Wales) and Annex A3**”.

Annex W (England): Pay progression

The title “Annex W (England): Pay progression” is changed to “**Annex W (England and Wales): Pay progression**”

Paragraph 2(i) is:

“local appraisal, performance and development reviews will need to be consistent with the employer's local objectives and the NHS Constitution;
it is changed to

“local appraisal, performance and development reviews will need to be consistent with the employer's local objectives and the NHS Constitution for England or the equivalent statements of principles/values in the other UK countries (see paragraph 8, Principles and Partnership)”

Annex X (England): Guidance on workforce re-profiling

The title “Annex X (England): Guidance on workforce re-profiling is changed to”
“Annex X (England and Wales): Guidance on workforce re-profiling”

Annex A2(a) (England): Guidance on frequently asked questions (FAQs)

The title “Annex A2(a) (England): Guidance on frequently asked questions (faqs)” is changed to **“Annex A2(a) (England and Wales): Guidance on frequently asked questions (faqs)”**

All references to Sections and Annexes applying in England are changed to include **“Wales”**.

In addition the changes detailed below are made.

“Part 2: Section 1(a) (England and Wales): Pay Structure
Paragraph 7

Footnote number 3

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

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

Is changed to

“Part 2: Section 1(a) (England and Wales): Pay Structure
Paragraph 7

Footnote number 3

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

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

“Part 2: Section 1(a) (England): Pay Structure
Paragraph 9

Footnote number 5

What happens if I start a programme of preceptorship before 31 March 2013 and this programme continues after 31 March 2013?

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

Is changed to

“Part 2: Section 1(a) (England and Wales): Pay Structure
Paragraph 9

Footnote number 5

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

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

“Part 2: Section 1(a) (England): Pay Structure
Paragraph 12

Footnote number 7

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

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

Is changed to

“Part 2: Section 1(a) (England and Wales): Pay Structure
Paragraph 12

Footnote number 7

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

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

“Part 3: Section 14(a) (England): Sickness absence
Paragraph 5

Footnote number 4

From what date will the change to sickness pay start?

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

Is changed to

“Part 3: Section 14(a) (England and Wales): Sickness absence
Paragraph 5

Footnote number 4

“From what date will the change to sickness pay start?

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

“Implementation annexes: Annex T: Development of professional roles

Paragraph 3

Footnote number 1

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

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

Is changed to

“Implementation annexes: Annex T: Development of professional roles

Paragraph 3

Footnote number 1

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

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

“Implementation annexes: Annex W (England): Pay progression

Main heading

Footnote number 1

What will local pay progression schemes contain?

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

Is changed to

“Implementation annexes: Annex W (England and Wales): Pay progression

Main heading

Footnote number 1

What will local pay progression schemes contain?

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

“Implementation annexes: Annex W (England): Pay progression

Paragraph 1

Footnote number 2

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

Employers will be able to start updating their appraisal and pay progression policies, in line with Annex W, from 31 March 2013”.

Is changed to

“Implementation annexes: Annex W (England and Wales): Pay progression

Paragraph 1

Footnote number 2

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

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

“Implementation annexes: Annex W (England): Pay progression

Secondary heading: Criteria for local schemes

Footnote number 6

How will pay progression under Annex W (England) work?

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

Is changed to

“Implementation annexes: Annex W (England and Wales): Pay progression

Secondary heading: Criteria for local schemes

Footnote number 6

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

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

Annex A3: Principles for harmonised on-call arrangements

Paragraph 1: line 1: the first sentence is:

“Paragraph 2.25 in Section 2 and paragraph 2.27 in Section 2(a) (England) confirm that from 1 April 2011, payments for on-call will need to be agreed locally and consistent with the principles set out below.”

This is changed to:

“Paragraph 2.25 in Section 2 and paragraph 2.27 in Section 2(a) (England and Wales) confirm that from 1 April 2011, payments for on-call will need to be agreed locally and consistent with the principles set out below.”

Paragraph 2: line 1: the reference to paragraph 2.24 in Section 2 and paragraph 2.26 in Section 2(a) (England)" is changed to **“paragraph 2.24 in Section 2 and paragraph 2.26 in Section 2(a) (England and Wales)”**

2. Commitment or availability payment

In the last paragraph the reference to “paragraphs 2.19 to 2.20 in Section 2 and paragraphs 2.21 to 2.22 in Section 2(a) (England)” is changed to **“paragraphs 2.19 to 2.20 in Section 2 and paragraphs 2.21 to 2.22 in Section 2(a) (England and Wales)”**.

The footnote **“In Wales this Section is part of a three year agreement. It applies there until 31 December 2017.”** is attached to the headings of the following

Sections:

Section 1(a) (England and Wales) Pay Structure

Section 2(a) (England and Wales) Maintaining round the clock services

Section 6(a) (England and Wales) Career progression

Section 14(a) (England and Wales) Sickness absence

Annex W (England and Wales) Pay progression

Annex X (England and Wales) Guidance on workforce re-profiling

Annex A2(a) (England and Wales) Guidance on frequently asked questions (FAQs)

This causes re-numbering of the footnotes in each of these Sections.

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

2. Revisions associated with the new English redundancy provisions at Section 16(a)(England)

Contents

A new entry “**Section 16(a) (England) Redundancy pay**” is inserted.

A new Section 16(a) (England) “**Redundancy pay**” is inserted. (see below)

Section 20: Mutually agreed resignation schemes: principles

Paragraph 20.5: line 5: the words “**or Section 16(a) (England)**” are inserted after “Section 16”.

Annex X: (England and Wales): Guidance on workforce re-profiling

Paragraph 4(ii): line 4: the words “**or Section 16(a) (England)**” are inserted into the brackets after the words “Section 16”.

Section 16(a) (England): Redundancy pay

Introduction

16.1 This Section sets out the arrangements for redundancy pay for employees dismissed by reason of redundancy who, at the date of termination of their contract, have at least 2 years of continuous full-time or part-time service. These take effect from 1 April 2015. It also sets out the arrangements for early retirement on grounds of redundancy and in the interests of the service, for those who are members of the NHS Pension Scheme and have at least two years of continuous full-time or part-time service and two years of qualifying membership in the NHS Pension Scheme. NHS contractual redundancy is an enhancement to an employee's statutory redundancy entitlement, the statutory payment being offset against any contractual payment.

Definition of redundancy

- 16.2 A dismissal will be by reason of redundancy if it is mainly or wholly attributable to:
- the fact that the employer has ceased, or intends to cease to carry on the business for the purposes of which the employee was employed; or to carry on the business in the place where the employee was so employed; or
 - the fact that the requirements of the business for employees to carry out work of a particular kind; or the requirements of the business for employees to carry out work of a particular kind in the place where they were so employed, have ceased or diminished or are expected to cease or diminish.

Qualification for a redundancy payment

16.3 To qualify for a redundancy payment the member of staff must be an employee, working under a contract of employment for an NHS employer. 'NHS employer' means any of the organisations listed at Annex A in this Handbook and any predecessor or successor body. Non-executive directors of NHS organisations do not qualify. Contracts of employment may be written or verbal, and can be for a fixed period or be continuous. In law, employees have a contract as soon as they

start work and in accepting and undertaking the work required they accept the terms and conditions offered by the employer. To qualify for a redundancy payment the employee must also have at least 2 years of continuous full-time or part-time service. A redundancy payment will only be paid where the employee is dismissed by reason of redundancy.

Definition of continuous service

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

Definition of reckonable service

16.5 “Reckonable service” for the purposes of an NHS redundancy payment, which is calculated on the basis of the service up to the date of termination of the contract, means continuous full-time or part-time employment with the present or any previous NHS employer but with the following additions:

- subject to paragraph 16.6 below, where there has been a break in service of 12 months or less, the period of employment prior to the break will count as reckonable service;
- periods of employment as a trainee with a general medical practitioner, in accordance with the provisions of the Trainee Practitioner Scheme, will count as reckonable service;
- at employer discretion, any period or periods of employment with employers outside the NHS, where these are judged to be relevant to NHS employment, can be included in reckonable service – see Section 12 of the handbook.

16.6 The following employment will not count as reckonable service:

- employment that has been taken into account for the purposes of a previous redundancy, or loss of office payment by an NHS employer;
- where the employee has previously been given NHS pension benefits, any employment that has been taken into account for the purposes of those pension benefits.

Definition of a month's pay

16.7 "Month's pay" means whichever is the more beneficial of the following calculations:

- 4.35 times a week's pay, calculated in accordance with the provisions of Sections 221 to 224 of the Employment Rights Act 1996;
- an amount equal to $1/12^{\text{th}}$ of the annual salary in payment at the date of termination of employment.

Calculation of redundancy payment

16.8 The redundancy payment will take the form of a lump sum, dependent on the employee's reckonable service at the date of termination of employment. The lump sum will be calculated on the basis of one month's pay for each complete year of reckonable service, subject to a minimum of two years' continuous service and a maximum of 24 years' reckonable service being counted.

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

16.9 Fractions of a year of reckonable service will not be taken into account.

Early retirement on grounds of redundancy for employees entitled to pension benefits

Qualification criteria

16.10 Members of the NHS Pension Scheme who are made redundant and meet the conditions set out below may choose to retire early and use the redundancy payment, set out in paragraphs 16.12 to 16.15 to buy out all or part of the pension benefits reduction. To qualify for early retirement the member of staff must:

- be an active member of the NHS Pension Scheme in respect of the employment that is being terminated;
- have at least two years' continuous service and two years' qualifying membership of the NHS Pension Scheme;
- have reached the minimum pension age. The Finance Act 2004 allows for protection of a minimum pension age of 50, for members who had the right to take reduced benefits at that age on 5 April 2006. This protection may continue as long as members retiring early after 6 April 2010 take all their benefits payable under scheme rules. In the NHS Pension Scheme, for those without this protection, members who first joined and some who returned to the scheme after 6 April 2006, minimum pension age is 55.

Definition of qualifying membership

16.11 'Qualifying membership' is membership that counts towards establishing entitlement for benefits. Pensionable membership is service that counts when calculating the value of pension benefits. This may be different from reckonable service for the purposes of a redundancy payment as it can include pensionable service from previous periods of employment with the NHS or another employer, and periods of part-time working.

Use of redundancy payment to pay for early retirement

16.12 Pension benefits that are paid earlier than a member's normal pension age are usually reduced to cover the cost of paying the pension early. The amount of reduction is calculated by the

scheme actuary and depends on how early the pension has been taken.

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

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

16.15 If the redundant member of staff does not wish to take unreduced or partly reduced pensions benefits early, they can opt to keep their redundancy lump sum payment and either preserve their pension benefits for payment at a later date or take those benefits immediately but with a reduction applied in the same way as if the member had opted to take voluntary early retirement.

Repayment

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

Treatment of concurrent pensionable employment

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

- ceasing all pensionable employment and taking all pension benefits. For members of the 1995 section of the NHS Pension Scheme, this means that they cannot be pensionable again in the scheme. (An employment may continue if it is not more than 16 hours a week, without affecting the payment of enhanced benefits, but it will not be pensionable in the scheme); and
- taking benefits only in respect of the employment that is being terminated on redundancy grounds, in which case they can continue being pensionable in other employments.

16.18 Members with concurrent practitioner and non-practitioner employments (as defined by the relevant NHS pension scheme), who choose to cease all pensionable employments, will receive only their non-practitioner benefits on redundancy grounds. Where appropriate, benefits for practitioner membership may be taken on an early retirement basis with an actuarial reduction or preserved for payment at normal pension¹ age².

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

Exclusion from eligibility

16.20 Employees shall not be entitled to redundancy payments or early retirement on grounds of redundancy if:

- they are dismissed for reasons of misconduct, with or without notice; or
- at the date of the termination of the contract have obtained without a break, or with a break not exceeding four weeks,

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

² Practitioners are general medical and general dental practitioners.

suitable alternative employment with the same or another NHS employer; or

- unreasonably refuse to accept or apply for suitable alternative employment with the same or another NHS employer; or
- leave their employment before expiry of notice, except if they are being released early (see Paragraphs 20 to 21 below); or
- they are offered a renewal of contract (with the substitution of the new employer for the previous NHS one); or
- where their employment is transferred to another public service employer who is not an NHS employer.

Suitable alternative employment

16.21 Employers have a responsibility, before making a member of staff redundant or agreeing early retirement on grounds of redundancy, to seek suitable alternative employment for that person, either in their own organisation or through arrangements with another NHS employer. Employers should avoid the loss of staff through redundancy wherever possible, to retain valuable skills and experience where appropriate within the local health economy.

16.22 'Suitable alternative employment', for the purposes of paragraph 16.20, should be determined by reference to Sections 138 and 141 of the Employment Rights Act 1996. In considering whether a post is suitable alternative employment, regard should be had to the personal circumstances of the employee. Employees will, however, be expected to show some flexibility.

16.23 For the purposes of this scheme any suitable alternative employment must be brought to the employee's notice in writing or by electronic means agreed with the employee, before the date of termination of contract and with reasonable time for the employee to consider it. The employment should be available not later than four weeks from that date. Where this is done, but the employee fails to make any necessary application, the employee shall be deemed to have refused suitable alternative employment. Where an employee accepts suitable alternative employment the 'trial period' provisions in Section 138 (3) of the Employment Rights Act 1996 will apply.

Early release of redundant employees

16.24 Employees who have been notified of the termination of their employment on grounds of redundancy, and for whom no suitable alternative employment in the NHS is available, may, during the period of notice, obtain other employment outside the NHS.

16.25 If they wish to take this up before the period of notice of redundancy expires the employer will, unless there are compelling reasons to the contrary, release such employees at their request on a mutually agreeable date. That date will become the revised date of redundancy for the purpose of calculating any entitlement to a redundancy payment under this agreement.

Claim for redundancy payment

16.26 Claims for redundancy payment or retirement on grounds of redundancy must be submitted within six months of the date of termination of employment. Before payment is made the employee will certify that:

- they had not obtained, been offered or unreasonably refused to apply for or accept, suitable alternative health service employment within four weeks of the termination date and they understand that payment is made only on this condition and undertake to refund it if this condition is not satisfied.

Retrospective pay awards

16.27 If a retrospective pay award is notified after the date of termination of employment, then the redundancy payment and/or pension will be recalculated, and any arrears due paid.

Disputes

16.28 An employee who disagrees with the employer's calculation of the amount of redundancy payment or the rejection of a claim for redundancy payment, should make representations to the employer via local grievance procedures. See also paragraph 16.25 about making a claim for a redundancy payment.

Early retirement in the interests of the efficiency of the service

16.29 Members of the NHS Pension Scheme will receive payment of benefits without reduction if they retire early in the interests of the efficiency of the service, and they satisfy the qualifying conditions set out in paragraph 16.10. Retiring early in the interests of the service is a flexibility available at employer discretion. In these cases, no redundancy payment is due. In agreeing to retirement in the interests of the service, the employer undertakes to pay the costs of paying the pension and lump sum early. Employers will need to ensure that they exercise this discretion appropriately and will be conscious of the implications of any potential discrimination on grounds of age, gender, gender identity or gender expression, pregnancy or maternity, marriage or civil partnership, race, religion or belief, disability, or sexual orientation.

16.30 These arrangements are aimed at employees who have given valuable NHS service in the past but are no longer capable of doing so. This might be because of new or expanded duties or a decline in the ability to perform existing duties efficiently but not so as to qualify them for ill health retirement. Employers would be expected to consider alternatives before agreeing to early retirement, including reasonable adjustments to an existing role or potential suitable alternatives.

16.31 The relevant NHS pension scheme certifies the grounds on which early retirement is taking place. The scheme does so on the basis of the information provided by the employer. In each case, therefore, an appropriate senior manager should authorise the early retirement, ensuring that the relevant criteria have been met.

Employer responsibilities

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

Transitional arrangements.

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

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

3. Revisions associated with the introduction of Shared Parental Leave (SPL)

Section 15: Maternity pay and leave

The heading above paragraph 15.66 is “Information about statutory maternity/adoption and paternity leave and pay.” It is changed to “**Information about statutory maternity/adoption leave, Shared Parental Leave and paternity leave and pay**”.

Paragraph 15.66: line 3: the words “**Shared Parental Leave**” are inserted after the words “maternity/adoption”.

Section 34: Flexible working arrangements

Paragraph 1: the last sentence is deleted.

A new paragraph 2 is inserted as follows:

“In considering the provisions of this Section employers should also have regard to the provisions in Sections 2 or 2(a) (England and Wales), Maintaining round the clock services and Annex A3: Principles for harmonised on-call arrangements.”

All following paragraphs are re-numbered.

The existing paragraph 2 is:

“Employers are required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff, staff with dependants and job applications under the Equality Act and staff returning from maternity leave (see Section 15).”

It is changed to:

“Employers are required to consider flexible working options for all staff in the workplace for example:

- **disabled staff and staff with health conditions;**
- **staff returning to work following maternity/paternity leave, parental leave; adoption leave or Shared Parental Leave;**
- **staff in need of temporary changes to their employment arrangements, for example, following a domestic crisis, bereavement or sickness absence.”**

A second sentence is added to the existing paragraph 7 as follows:

“All jobs should be considered for flexible working; if this is not possible the employer must provide written, objectively justifiable reasons for this and give a clear, demonstrable operational reason why this is not practicable.”

The existing paragraph 8 is deleted.

The following sentence is added to the existing paragraph 9:

“Employers should make reference to the ACAS Code of Practice and guidance in this respect which can be found at www.acas.org.uk”

The existing paragraph 11 is deleted and replaced with a new paragraph 11 which is:

“Employers will need to ensure that their flexible working policies and procedures operate fairly and transparently and do not advantage any group of staff over another.”

The existing paragraph 12 is deleted and replaced with a new paragraph which is:
“Applications and outcomes and records should cover all information necessary to ensure that there is equitable access to flexible working.”

The existing paragraph 34.13 is:

“Application and outcomes, from both employer and employees, should be recorded and kept for a minimum of one year.”

It is changed to:

“Application and outcome records should be monitored and analysed in partnership with local staff side representatives, and data used to review and revise policies and procedures to ensure their continuing effectiveness and equity of access.”

The following is added to the existing Scottish annotation:

“With regard to NHSScotland’s Shared Parental Leave policy, please see DL(2015)5 available at www.sehd.scot.nhs.uk.”

Section 35: Balancing work and personal life

Paragraph 1 is:

“NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments. This form of leave should cover a wide range of needs from genuine domestic emergencies through to bereavement and should take into account all religion or belief obligations and associated activities.”

It is changed to:

“NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments. This form of leave should cover a wide range of needs including but not limited to, parental responsibilities, genuine domestic emergencies and bereavement, and should take into account all religion or belief obligations and associated activities. All forms of leave should have regard to legal requirements and the need to ensure equity of access across all equality strands.”

Paragraph 3: a second sentence is added:

“Any leave will need to be agreed by employees’ line managers and any disputes handled according to the relevant local policies.”

Paragraph 4: line 3: the word **“children”** is added after “a relative for this purpose includes”.

Paragraph 5 is:

“This should be a separate provision from either maternity or maternity support leave and should provide a non-transferable individual right to at least 18 weeks’ leave. Leave is normally unpaid, but may be paid by local agreement.”

It is changed to:

“This should be a separate provision from either maternity or maternity support (paternity) leave, adoption and Shared Parental Leave and should provide a non-transferable individual right to at least 18 weeks’ leave. Leave is normally unpaid, but may be paid by local agreement.”

Paragraph 6 is:

“Parental leave should be applicable to any employee in the NHS who has nominated caring responsibility for a child under age 14 (18 in cases of adoption or disabled children).”

It is changed to:

“Parental leave should be applicable to any employee in the NHS who has nominated caring responsibility for a child under age 18.”

Paragraph 7 is:

“Leave arrangements need to be as flexible as possible, so that the leave may be taken in a variety of ways, by local agreement. Parental leave can be added to periods of maternity support or maternity leave.”

It is changed to:

“Leave arrangements need to be as flexible as possible, so that the leave may be taken in a variety of ways, by local agreement. Parental leave can be added to periods of maternity support (paternity) leave, maternity leave adoption leave and Shared Parental Leave.”

New paragraphs 11 and 12 are inserted as follows:

Shared parental leave

Eligible employees have a statutory right to request shared parental leave (SPL). Employers should have appropriate policies in place to deal with leave requests in line with the ACAS guidance on Shared Parental Leave.

Statutory pay during Shared Parental Leave

To qualify for statutory pay the employee and their partner must first meet certain qualifying conditions as described in the relevant legislation. Details of their qualifying conditions can be found on the www.gov.uk.

All following paragraphs are renumbered.

The existing paragraph 14 is:

“In addition, employees may be entitled to take up to twenty six weeks’ of additional maternity support (paternity) leave if their partner has returned to work, the leave can be taken between 20 weeks and one year after the child is born or placed for adoption.”

It is changed to:

“In addition, employees with babies born or children adopted before 5 April 2015 may be entitled to take up to twenty six weeks’ of additional maternity support (paternity) leave if their partner has returned to work, the leave can be taken between 20 weeks and one year after the child is born or placed for adoption.”

Existing paragraph 15: the link (<http://www.direct.gov.uk/en/employment/index.htm>) is changed to www.gov.uk

Existing paragraph 18 is:

“Employees who are not eligible for the two weeks of occupational maternity support (paternity) pay may still be entitled to statutory paternity pay subject to meeting the qualifying conditions. Details of the qualifying conditions can be found on the (<http://www.direct.gov.uk/en/employment/index.htm>)”

It is changed to

“Employees who are not eligible for the two weeks of occupational maternity support (paternity) pay may still be entitled to statutory paternity pay subject to meeting the qualifying conditions described in the relevant legislation. Details of the qualifying conditions can be found on the www.gov.uk”

Existing paragraph 22: the following words are added at the end:

“ . . according to legislation. This also covers the right to unpaid time off to accompany a pregnant woman to appointments for eligible employees.”

Existing paragraph 29: the following words are added at the start:

“For adoption placements up to 4 April 2015 “

A new paragraph 41 is added as follows:

“Employers will need to ensure that their leave policies and procedures operate fairly and transparently and do not advantage any group of staff over another.”

All following paragraphs are renumbered.

Existing paragraph 39 is:

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

It is changed to:

“All applications and outcomes should be recorded, and records should cover all information necessary to ensure that there is equitable access to leave provisions. Each leave provision, including applications for and decisions about, should be annually reviewed by employers in partnership with local staff representatives.”

Existing paragraph 40 is:

“Applications and outcomes should be monitored annually, in partnership with local staff representatives.”

It is changed to:

“Applications and outcomes should be recorded and monitored in partnership with local staff side representatives, and data analysed and used to review and revise policies and procedures to ensure their continuing effectiveness and equity of access.”

Existing paragraphs 41 and 42 are deleted.

The following is added to the existing Scottish annotation:

“With regard to NHSScotland’s Shared Parental Leave policy, please see DL(2015)5 available at www.sehd.scot.nhs.uk.”