

The Scottish Government

Directorate for Health Workforce and Performance
Pay and Terms and Conditions of Service Division



Dear Colleague

**ARRANGEMENTS FOR AGENDA FOR CHANGE
STAFF WHO UNDERTAKE ON-CALL DUTIES**

Summary

1. Following a national review of on-call systems in place across the UK, the NHS Staff Council agreed a set of principles to underpin local negotiations to harmonise on-call payments. In Scotland, these local negotiations took place under the aegis of the Scottish Terms and Conditions Committee and the parties have now reached agreement on a unified system for NHSScotland.

The Agreement

2. The full Agreement is set out at Annex A and a Q&A is included at Annex B. This circular supersedes any arrangement put in place under paragraphs 2.32 to 2.56 or Annex D of the Agenda for Change Handbook. An up to date version of the Handbook can be viewed at www.msg.scot.nhs.uk.

3. It also supersedes any previous circulars covering on-call working specifically or any issue now covered within the attached Agreement.

Effective Date

4. These new provisions will be effective from 1 October 2012.

Cabinet Secretary Approval

5. The content of the circular has been approved by Scottish Ministers under Regulation 2 and 3 of the National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991 (SI 1991 No 537). A copy of the formal approval is attached.

11 October 2012

Addressees

For action

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

For information

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

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Action

6. NHS Boards and Special Health Boards should take steps to ensure that their arrangements for on-call working comply with this circular and that these provisions are applied with an effective date of 1 October 2012. Employers currently in receipt of Variation Orders covering on-call working will need to consider whether these are still required and, where appropriate, work to align practices with the Agreement.

Enquiries

7. Employees should direct their personal enquiries to their employing NHS Board or Special Health Board.

8. Employers should make their own arrangements for obtaining additional copies of this circular, which can be viewed at:

www.sehd.scot.nhs.uk

Yours sincerely

SHIRLEY ROGERS

Deputy Director

Directorate for Health Workforce and Performance

The Scottish Government

Directorate for Health Workforce and Performance
Pay and Terms and Conditions of Service Division



**NATIONAL HEALTH SERVICE
APPROVAL OF REMUNERATION AND CONDITIONS OF SERVICE**

In accordance with regulations 2 and 3 of the National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991 (S.I. 1991/537) the remuneration and conditions of service set out in the attached Scottish Government Health Workforce Directorate circular of 11 October 2012 – PCS(AFC)2012/4 – in respect of arrangements for Agenda for Change staff who undertake on-call duties are hereby approved for the purposes of the said Regulations.

JOHN CONNAGHAN

Director
Health Workforce and Performance
Scottish Government
St Andrew's House
EDINBURGH
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11 October 2012

NHS SCOTLAND ON-CALL AGREEMENT

1. Introduction

1.1 Following a national review of on-call systems in place across the UK, the NHS Staff Council agreed a set of principles to underpin local (NHSScotland) negotiations to harmonise on-call payments.

1.2 In Scotland, these negotiations were undertaken by the Scottish Terms and Conditions Committee.

1.3 The following agreement sets out arrangements for a new on-call system in Scotland. These new arrangements comply with the NHS Staff Council principles and fully reflect the provisions of the Agenda for Change agreement as laid out in the Agenda for Change NHS Terms and Conditions of Service Handbook.

2. Effective Date

2.1 This agreement will come into effect on 1 October 2012.

3. Scope

3.1 These arrangements apply to all staff covered by the Agenda for Change agreement, as laid out in the Agenda for Change NHS Terms and Conditions of Service Handbook.

4. Application

4.1 This agreement will cover situations where staff are on-call when, as part of an established arrangement with their employer, they are available outside their normal working hours – either at the workplace, at home or elsewhere – to work as and when required.

5. Principles of On-Call Arrangements

5.1 NHSScotland operates a number of on-call arrangements under which designated groups of staff are rostered to be available for work outside the normal working hours, as and when required. The type of on-call arrangement required will be agreed locally (NHS Board) in partnership and the appropriate Manager will be responsible for the organisation of the on-call arrangements and for ensuring these are sufficient to meet the needs of the service.

5.2 Staff who have a specific roster commitment to be on-call outside the normal working hours for their service will be eligible to receive an on-call availability allowance which will recognise their availability to provide such cover. Part-time staff will receive the same on-call availability allowance per period of on-call as full-time staff.

5.3 All staff required to be on-call shall ensure that they are available to actually report for duty if required, and always remain contactable.

5.4 Managers will regularly monitor the on-call arrangements to ensure that they provide the most appropriate level of service required and are within the financial parameters of the service. Managers working in partnership with staff side will ensure that the system is fair to the individuals participating.

6. On-Call Periods

6.1 The on-call period in each week should be agreed locally (NHS Board/service area) to meet service requirements. The period of on-call will normally cover the time between the end of one working day and the start of the next as determined for each service, but the duration of each on-call period will be determined locally (NHS Board/service area) and may be covered by one or more members of staff.

6.2 For on-call purposes, the working week is split into a maximum of 9 on-call sessions:

- Monday to Friday – 1 session each day
- Saturday and Sunday - 2 sessions each day.
- Public holiday – 2 sessions each day

7. On-Call Availability Allowance

7.1 The availability payment structure is at the following rates:

- From 1 October 2012 - £16.50 per session
- From 1 April 2013 - £17.00 per session
- From 1 April 2014 £18.00 per session

7.2 The availability payment from 1 April 2014 onwards will be increased in line with any Agenda for Change pay awards.

8. Payment for Work Done Whilst On-Call

8.1 Staff who are called into work from home (or other agreed base) will be paid according to the duration of the call out (including actual travelling time), rounded up to the nearest 15 minutes. The call out time will be calculated from when the member of staff leaves home (or other agreed base) to when they return home (or other agreed base).

8.2 For staff who, for operational reasons, are required to remain in the workplace whilst on-call, a locally (service area) agreed mechanism will be required to define when the period of work done has started and finished.

8.3 Work undertaken from home, either by telephone or on-line, will attract payment for work done according to the actual duration of the period of work.

8.4 Payment for work done will be at the postholder's substantive rate and will be paid at time plus a half with the exception of work done on general public holidays which will be at double time.

8.5 Normal mileage rates will apply for any travel incurred while on-call.

9. Sleeping in Arrangements

9.1 A further group of staff have “sleeping-in” arrangements, where they sleep on work premises or in a clients home but are seldom required to attend an incident during the night. The term “sleeping in” does not refer to individuals who are on-call from the workplace but are able to rest between periods of work done.

9.2 An allowance will be paid for each period of sleeping in undertaken. This allowance will be equivalent to the on-call availability allowance. In addition to this, staff will receive a payment of two hours at the NHSScotland minimum hourly rate to reflect disturbed time at the start and end of each shift. This will be paid at double time if the shift is undertaken on a public holiday. The sleeping in allowance is not applicable to staff who are on rostered night duty.

9.3 Any emergency work carried out during the sleeping in period will be paid as work done for on-call based on the duration of the work undertaken, rounded up to the nearest 15 minutes.

10. Time Off in Lieu (TOIL)

10.1 Staff should have the option to take TOIL rather than payment for work done in line with paragraph 3.5 of the Agenda for Change NHS Terms and Conditions of Service Handbook. TOIL will be at plain time rate. TOIL for work done should normally be taken within 3 months or according to the needs of the Service. Payment (which should be at the rate applicable at the time the work was undertaken) will be made if staff are unable to take TOIL within 3 months.

10.2 For staff in receipt of protection, TOIL cannot be taken as an alternative to work done until such a time as the new earnings under this arrangement, including payment for work done, exceed the protected level of earnings.

11. Working Time Requirements – Compensatory Rest

11.1 In all cases, compensatory rest must be given in line with Section 27 of the Agenda for Change NHS Terms and Conditions of Service Handbook and by referring to [HDL\(2003\)3](#).

12. Protection

12.1 Staff who suffer a loss of earnings as a consequence of the new on-call payment system will receive protection of earnings on a mark-time basis. The level of protection will be assessed according to total earnings in a reference period prior to the implementation of the agreement on 1 October 2012, such reference period to be agreed locally (NHS Board/service area) in partnership.

12.2 In line with paragraph 46.27 of the Agenda for Change NHS Terms and Conditions of Service Handbook, staff with pay protection arising from changes unrelated to this agreement e.g. organisational change, who are also eligible for mark time protection under this agreement may, at the time of implementation, elect either to continue with their existing protection agreement or move to this protection agreement.

13. Implementation

13.1 It is required that local NHS Boards/systems establish an implementation group in partnership through their respective partnership fora to implement this agreement.

13.2 It is expected that this agreement is fully implemented by 31 January 2013 backdated to 1 October 2012.

NHS Scotland On-Call Agreement

Q&A for Staff and Managers

Agreement

Q1. Why is there a separate system for on-call working in Scotland when the rest of Agenda for Change TCS are UK wide?

A. The complexities around on-call working across the UK made it difficult to agree a suitable system for all four countries. It was therefore agreed that the UK Staff Council sub-group should develop a set of equality proofed principles to enable local development of on-call systems. Within Scotland, this was taken forward by the Scottish Terms and Conditions Committee.

Q2. The current systems for on-call appear to work well, why is this new system being introduced?

A. Current systems provide different levels of payments to staff in different groups who make similar on-call commitments. This is not in line with equal pay and the Agenda for Change principles. These arrangements will harmonise payments and will comply with equal pay principles.

Q3. How has this been agreed on my behalf?

A. An agreement has been reached between Management and the appropriate trade unions by a process of collective bargaining as provided for in the Agenda for Change NHS Terms and Conditions of Service Handbook.

Q4. What if I am not a member of a union and I disagree with the agreement?

A. Terms and conditions of service are at the direction of Scottish Ministers and are subject to a collective agreement within the framework provided by Agenda for Change NHS Terms and Conditions of Service Handbook. NHSScotland, in keeping with this agreement, is duty bound to negotiate any local (Scottish) variation that may be allowed within the Handbook with the appropriate recognised Trade Unions for the relevant staff groups. All staff on Agenda for Change terms and conditions are bound by any such agreed changes, whether a member of a trade union or not. This is an example of one these agreements.

NHS Scotland recognises the rights of staff to belong or not to belong to a trade union as they so choose.

Pay arrangements

Q5. Can I elect to retain my current system of on-call payments?

A. No. The new payment arrangements for on-call have been agreed by Trades Unions and Management and will apply to all staff.

Q6. Why is there now a flat rate availability payment?

- A. A flat rate payment for on-call availability was agreed to ensure fairness and equity across AfC Pay Bands recognising that irrespective of the Pay Band remuneration for the level of inconvenience and subsequent availability payments should be no different.

Q7. I currently receive a prospective payment, will the new arrangement impact on how I am paid?

- A. Yes, you will now be paid retrospectively. This transition will be managed within each NHS Board/system through the local implementation group.

Q8. I previously received more than one availability allowance for a particular period of on-call. Will this continue under the new agreement?

- A. No. An individual is only entitled to one availability payment per session of on-call.

Q9. If I am part of a rota that requires more than one individual to cover a session, what do I get paid?

- A. All individuals required to be available would be paid as per the agreement.

Implementation**Q10. I am a service manager what do I do now?**

- A. The agreement requires each Health Board/system to set up a local implementation group via their respective partnership fora who will provide further guidance.

Q11. Who determines if my system of work falls within the definition of on-call as outlined in this agreement?

- A. This will be determined in partnership by the local implementation group.

Q12. Will new staff joining after 1 October 2012 go onto protected arrangements if the existing staff group are on protection?

- A. No. New starters from 1 October 2012 who participate in the on-call rota will go directly onto the new payments and protection arrangements will not apply.

Protection**Q13. What happens if I'm worse off under the new arrangements from 1 October 2012?**

- A. You will not be worse off under the new arrangements. Any member of staff who finds that the new arrangements provide lower earnings will have their earnings protected in line with the "Chisholm Agreement". This type of

protection is not time limited and will continue on a “mark time” basis for as long as it is required.

Q14. What is the “Chisholm Agreement”?

- A. In March 2003, a decision was taken by Malcolm Chisholm, who was at that time the Scottish Minister for Health, to ensure that no Scottish employee would suffer a loss of existing earnings as a result of the implementation of Agenda for Change terms and conditions. This was initially applied to the results of the assimilation process and was also applied to the implementation of changes to Unsocial Hours Payments, which took effect in April 2008. Since the new on-call arrangements form the final part of the implementation of the Agenda for Change Terms and Conditions then the “Chisholm Agreement” applies.

Q15. What staff are covered by the “Chisholm Agreement” being applied to the on-call arrangements?

- A. Any staff who suffer loss of earnings either directly or indirectly as a consequence of the introduction of the new on-call payment system, including those who might fall outwith the new definition, are covered by this protection. However, this will not be used as a substitute where organisational change no detriment protection should be applied.

Q16. What does “mark time” protection mean?

- A. Your total earnings as outlined in Table 8 of paragraph 46.19 of the Agenda for Change Terms and Conditions, will be calculated over a reference period. Total earnings consist of basic pay, including any contractual overtime plus shift allowances and other payments related to working outside normal hours as per Section 2/Annex Q plus on-call payments. If your earnings under your old payment arrangements are more than that provided under these new arrangements, then your prior total earnings will be protected. That level of earnings will continue to be paid on a ‘mark time’ basis i.e., no increments or cost of living increases, until they are overtaken by the level of earnings achieved under the new arrangements. Protection will cease, however, if you choose to change jobs, choose to leave the on-call rota or leave the NHS.

Q17. If protection is required, what reference period will be used to calculate pay protection?

- A. The effective date of implementation is 1 October 2012. This means that the reference period will be a period immediately prior to 1 October 2012. The standard accepted reference period in paragraph 46.20 of the Agenda for Change Terms and Conditions is 12 weeks or 3 months. However if this does not fairly reflect average earnings e.g., because of length of rota or maternity leave, another reference period of up to 52 weeks/12 months should be agreed by local management, HR and staff organisations.

Q18. I am currently in receipt of protection of earnings due to organisational change. The proposed new arrangements state that protection will be on a mark time basis, but my current organisational change protection provides an uplift in line with annual pay awards. How will this affect my pay?

A. In line with Para 46.27 of the Agenda for Change Terms and Conditions, staff with pay protection arising from changes unrelated to this agreement e.g. organisational change, who are also eligible for mark time protection under this agreement may, at the time of implementation, elect either to continue with their existing protection agreement or move to this protection agreement.

Q19. If I'm on protection as a result of the new on-call arrangements can I be asked to work up to my protected earnings limit?

A. Employees can be expected, within reason, to undertake on-call duties up to their protected earnings limit. It is not the intention that employees in receipt of protected earnings will be expected to undertake a proportionately greater level of duties which would otherwise attract additional payments than their colleagues. Therefore, the extent to which staff may be asked to undertake additional on-call duties should not exceed that of the individual's working pattern prior to the change.

Earnings for any additional duties undertaken will be included in the assessment of new earnings against the protected level of earnings. If this exceeds the protected level of earnings then payment in excess of the protected level will be paid.

Q20. What happens to protected pay if I reduce or increase hours?

A. If you reduce your contracted hours the protected level of earnings will be re-calculated on a pro rata basis. If you increase your contracted hours protected level of earnings will remain at that level and will not be increased on a pro rata basis.

Q21. If I'm on protection can I choose to take TOIL as an alternative to payment for work done?

A. You cannot take TOIL as an alternative to payment for work done until such time as your new earnings under this arrangement, including payment for work done, exceed your protected level of earnings.

Q22. Are bank staff who undertake on-call entitled to protection of earnings?

A. No, bank staff are excluded from protection arrangements as they do not have a set working pattern.