

The Scottish Government

Health Workforce and Strategic Change Directorate
NHS Pay and Conditions



Dear Colleague

**A. RECOGNITION OF EQUIVALENT SERVICE IN
MEMBER STATES OF EUROPEAN UNION**

**B. CHANGE TO DESIGNATION OF ANNEXES IN
SCOTTISH HANDBOOK**

1. The NHS Staff Council recently agreed an amendment to the Agenda for Change Handbook. This addressed the consideration of service in other European Union member states for the purpose of determining annual leave entitlement. The amendment was based on legal advice provided by the Department of Health.
 2. Agenda for Change allows employers to take account of previous service inside and outside the NHS when calculating an employee's entitlement to annual leave (paragraph 12.2). The key point to highlight is that employers should be able to demonstrate that consideration of equivalent service in other member states of the European Union was part of the process in deciding whether or not to award additional annual leave.
 3. This circular confirms that the same amendment has been made to the Scottish Agenda for Change Handbook. The specific changes are detailed at Annex A.
- Annexes now designated by number**
4. The NHS Staff Council also recently changed the designation of Annexes within the Handbook from letters to numbers. To maintain consistency, the designation of Annexes in the Scottish Handbook has also been changed. This change is purely in respect of labelling and does not represent a change in the content of the Annexes.

9 March 2017

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

Enquiries to:

Colin Cowie
Scottish Government Health
Directorates
Health Workforce
Ground Floor Rear
St Andrew's House
EDINBURGH EH1 3DG

Tel: 0131-244 3778
Fax: 0131-244 2837

E-mail:
Colin.cowie@gov.scot

5. A copy of the Scottish Agenda for Change Handbook can be found on the Management Steering Group website - www.msg.scot.nhs.uk/pay/agenda-for-change.

Cabinet Secretary Approval

6. The provisions of this circular have been approved by Scottish Ministers under Regulations 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.

Enquiries

7. 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

A handwritten signature in black ink, appearing to read 'Shirley Rogers'.

SHIRLEY ROGERS

Director, Health Workforce and Strategic Change

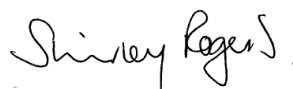
The Scottish Government

Health Workforce and Strategic Change Directorate
NHS Pay and Conditions



**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 9 March 2017 – PCS(AFC)2017/1 – in respect of consideration of reckonable service and the designation of Annexes in the Agenda for Change Handbook are hereby approved for the purposes of the said Regulations.



SHIRLEY ROGERS

Director
Health Workforce and Strategic Change
Scottish Government
St Andrew's House
EDINBURGH
EH1 3DG
9 March 2017

Textual Changes to the NHS Terms and Conditions of Service Handbook

Section 12: Contractual Continuity of Service

A new footnote number 1 is added, linking paragraph 12.2 with Annex 28: Guidance on frequently asked questions (FAQs) and Annex 28(a): Guidance on frequently asked questions (FAQs) (England and Wales).

New footnote: *See the question and answer guidance in Annex 28 or Annex 28(a)(England and Wales).*

The existing footnote number 1 becomes footnote number 2.

New FAQ:

Part 3: Terms and conditions

Section 12: Contractual continuity of service

Paragraph 2

Footnote number 1

Is previous health care service abroad, including service in the health services of the member states of the European Union, relevant?

Employers are required to implement Agenda for Change and their own policies in a way that complies with EU law and which is not discriminatory. Agenda for Change allows for previous NHS service with a different employer to be taken into account for the purpose of calculating annual leave. It also contains (at paragraph 12.2) a discretion to take relevant non-NHS experience into account.

12.2 Employers have discretion to take into account any period or periods of employment with employers outside the NHS, where these are judged to be relevant to NHS employment.

Relevant experience outside the NHS may include previous employment abroad or in the health services of another member state of the European Union. It is important that this is included when employers consider '*service with employers outside the NHS*' when deciding whether to exercise the discretion to increase annual leave entitlement. The exercise of discretion in paragraph 12.2 is a local matter. However it is important that any decision is made in a fair, transparent and non-discriminatory way. An employer should be able to demonstrate that it has given due consideration to any equivalent service in another country and that such consideration was part of the process in deciding whether or not to award additional annual leave in each case, as set out under Section 12.2 of the NHS Terms and Conditions of Service Handbook.

Employers are required to exercise their discretion in accordance with the legal framework, as required by the Equality Act 2010; and by Article 45 of the Treaty on the Functioning of the European Union and Article 7, paragraph 1, of the Regulation (EU) No 492/2011 on freedom of movement for workers within the Union, which prohibit discrimination between EU workers as regards conditions of employment and work.

A number of judgments from the Court of Justice of the European Union (CJEU) have addressed the issue of recognition of experience and seniority gained in the public service of another Member State, for example: *Commission v. Italy* [Case C-371/04, ECLI:EU:C:2006:668]; *Köbler* [Case C-224/01, ECLI:EU:C:2003:513].

The views of the Commission regarding recognition of professional experience and seniority are set out in the Commission Staff Working Document 'Free movement of workers in the public sector', SEC(2010)1609, of 14 December 2010.