

**The Scottish Government**

Directorate for Health Workforce, Leadership and Service Reform  
NHS Pay and Conditions



**Scottish Government**  
Riaghaltas na h-Alba  
gov.scot

Dear Colleague

**PAY DURING ANNUAL LEAVE**

1. Section 13.9 of the Agenda for Change Handbook states that pay during annual leave will be calculated on the basis of what the individual would have received had he/she been at work.
2. Historically, this has meant that all relevant contractual elements are included. However, following partnership discussions under the aegis of the Scottish Terms and Conditions Committee (STAC), it has been agreed that regularly paid non-contractual overtime and excess hours should be included in these calculations.
3. STAC has agreed that “regular” will be defined as “4 or more separate occasions in the 12 month period which precedes the first day of annual leave”.
4. It has further been agreed that this change to the calculation of holiday pay will be effective from 1 August 2017.
5. Annex A sets out the formal agreed position. This circular should be read in conjunction with section 13.9 of the Agenda for Change Handbook. The Handbook can be found at:  
[www.msg.scot.nhs.uk/pay/agenda-for-change](http://www.msg.scot.nhs.uk/pay/agenda-for-change)
6. Annex B addresses frequently asked questions and sets out the intended timetable for making payments, subject to the successful development of the Scottish Standard Time System and ePayroll.

12 July 2019

**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:**

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## **Cabinet Secretary Approval**

7. 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.

### **Action**

8. NHS Boards and Special Health Boards should follow the procedures, advice and timescales set out in the guidance.

### **Enquiries**

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

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

[www.sehd.scot.nhs.uk](http://www.sehd.scot.nhs.uk)

Yours sincerely



### **SHIRLEY ROGERS**

NHS Scotland Chief People Officer &

Director of Workforce, Leadership, Reform and EU Withdrawal Preparation



**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 12 July 2019 – PCS(AFC)2019/6 – in respect of Pay During Annual Leave are hereby approved for the purposes of the said Regulations.

A handwritten signature in black ink that reads "Shirley Rogers".

**SHIRLEY ROGERS**

NHS Scotland Chief People Officer &  
Director of Workforce, Leadership, Reform and  
EU Withdrawal Preparation  
Scottish Government  
St Andrew's House  
EDINBURGH  
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12 July 2019

**PAY DURING ANNUAL LEAVE IN NHS SCOTLAND  
SCOTTISH AGREEMENT ON VOLUNTARY OVERTIME AND EXCESS HOURS**  
(Section 13.9 of the Agenda for Change Handbook is to be read in conjunction with the following paragraphs)

1. For the purpose of this section of AFC, “annual leave” means the annual leave to which a staff member is entitled in terms of section 13.1 of AFC. It does not include Public Holidays for either full time, or part time staff. It does not apply to any other form of leave, for example sick leave or special leave.

2. The following overtime is currently included in the calculation of the payment to be made to a member of staff when on annual leave:

a. Contractual overtime

A commitment by an individual to work where an employee has a formal agreement contained within their contract of employment to overtime as part of their normal working pattern and/or a commitment by an employee to work whereby the individual employee enters into agreement to undertake overtime at a given time or frequency from which point they can only leave on arrangement by giving formal notice in writing of a minimum of 4 weeks.

3. From 1 August 2017, the following will also be included in the calculation of the pay made to a member of staff when on annual leave, **but only when the payment has been paid on 4 or more separate occasions in the 12 month period which precedes the first day of annual leave:**

a. Payment for voluntary overtime, non-contractual overtime/excess hours

Voluntary overtime, non-contractual overtime/excess hours is performed when a member of staff is not required by contract to perform the overtime/excess hours, but nonetheless, following a request by or on behalf of their employer, agrees to do work beyond their contracted hours. Non-contractual excess hours is work by part time staff in excess of their contracted hours, up to 37.5 hours a week. Voluntary overtime and non-contractual overtime is work beyond 37.5 hours a week carried out by full time or part time staff.

4. Calculation of the payment to be made in relation to paragraphs 2 and 3 above, will be based on the average pay for contractual overtime and voluntary overtime/non-contractual overtime/excess hours received in the 12 month period which precedes the first day of annual leave. For 3 above, payment must have been paid on 4 or more separate occasions during the preceding 12 month period to instigate the average calculation payment.

**PAY DURING ANNUAL LEAVE IN NHS SCOTLAND  
SCOTTISH AGREEMENT ON VOLUNTARY OVERTIME AND EXCESS HOURS**

## Questions and Answers

**Q1. I have worked periods of overtime/excess hours since 1 August 2017. What do I need to do to receive my additional annual leave payment?**

A1. You do not need to do anything. The Payroll Department will review the records of all staff who have worked overtime or excess hours on four or more occasions in a twelve month period and they will then process the additional annual leave payment.

**Q2. When will I receive my payment?**

A2. As this is a new entitlement the current national payroll system needs to be re-developed in order to process the change and this will take a few months. However, what the Payroll Department are going to do is manually process the payments from 1 August 2017 to 31 March 2019. Employees will receive a back-dated payment for this period by 31 August 2019.

**Q3. What about my payments after 1 April 2019?**

A3. As stated above, the national payroll system needs to be redeveloped which will take a few months. So we intend to make a further back dated payment by 31 December to cover the period 1 April 2019 to 30 November 2019. Thereafter from 1 December 2019 your local SSTS holder will record your overtime/excess hours on the system and this will automatically be included in any future payment for annual leave, providing there has been 4 or more occasions of overtime/excess hours in the preceding 12 months.

**Q4. If my Trade Union have lodged an application at an Employment Tribunal; will I still get my payments?**

A4. Yes, as we are amending Agenda for Change Terms and Conditions your payments from 1 August 2017 will still be processed as long as you have worked overtime/excess hours on four or more occasions in a twelve month period.

**Q5. What happens to my Tribunal application?**

A5. You will receive guidance from your trade union representative on the position.

**Q6. I am a part-time employee who sometimes works additional hours. Will I receive the additional annual leave payment.**

A6. Yes, if you work additional hours on 4 or more occasions in a twelve month period you will receive the additional payment.

**Q7. How will historic payments be calculated?**

A7 A nationally agreed calculation will be used, based on a notional annual leave entitlement of 30 days for all staff (current workforce systems do not hold annual leave entitlements for all staff) with payments for period 1 August 2017 – 31 March 2019 being made at 31 March 2019 hourly rates.