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FAQs: terms and conditions

The Agenda for Change partners will make every effort to continue to support, encourage and promote a partnership approach to implementation of the new pay system at local level.

The agreement to work in partnership to deliver an NHS pay system which supports NHS service modernisation and meets the reasonable aspirations of staff should, therefore, be replicated at local level.

This guidance has been jointly agreed in partnership by the NHS Staff Council Executive and is intended to help in situations where, locally, the joint partners have not so far been able to agree a suitable way forward. These answers reflect the final Agenda for Change agreement and jointly agreed guidance issued for use by the Early Implementer sites.

This list of questions and answers refers to the final version of the NHS Terms and Conditions of Service Handbook as agreed by NHS employer and staff representatives for the new Agenda for Change Pay System, published January 2005.

*****NEW*** Where a post holder's role has been determined (based on one contract of employment) and it includes specialist responsibilities - is it permissible for an employee to be paid at the specialist pay band on days when they do specialist duties and at a lower pay band when they do not?**

Section 1: pay structure.

No, the higher specialist pay band applies for all of their service.

*****NEW*** Does the protection for on-call arrangements include protection for the "rate of pay?" For example, if the local protected agreement says that Sunday is double time is this protected under 2.13?**

Section 2: Working or providing emergency cover outside normal hours: paragraph 2.13 and 2.28.

Yes, all current on-call arrangements may be protected for groups of employees for up to four years from the effective date of assimilation, irrespective of whether they were nationally or locally agreed (paragraphs 2.13 and 2.28). It is the totality of the local or national on-call agreement that is protected. Pay circular (AforC) 4/2007 announced that where flat rate on-call allowances continue to be paid in accordance with Section 2 these should be increased in line with the staged pay award.

*****NEW*** Paragraphs 4.7 and 46.5 express COLS as RRP. These say that "current entitlements will continue. . . ." Where this RRP (COL) is being paid to a staff group should newly appointed staff receive it on the same basis as existing staff?**

Section 4: Pay in High Cost Areas: paragraphs 4.7 and 46.5.

Yes.

*****NEW*** Where a member of staff is in receipt of a COLs based RRP (4.7 and 46.5) and is promoted within the same Trust does he or she retain the RRP?**

High Cost Area Payments: paragraph 4.7.

Yes, providing the person is still in a staff group meeting the eligibility criteria.

*****NEW*** How long do the national long-term RRP for posts in the list in Table 19 in Annex R continue?**

Section 5, paragraph 3 and paragraph 18 in Annex R: National Long-Term Recruitment and Retention Premia.

On assimilation the minimum level of premium for posts listed in Table 19 should be set locally. During the transition period the level of premium should be at least sufficient to ensure that staff do not require pay protection (paragraph 9 in Annex R). After the transition period local partnerships will need to review the value of any continuing RRP in accordance with the provisions in Section 5. This does not apply to RRP for qualified maintenance craft persons, qualified maintenance technicians and chaplains in Annex R.

*****NEW*** How is the reference period for calculating sick pay determined under Section 14?**

Section 14: Sickness Absence; paragraph 4.

This is the average pay for the three month period ending on the day before an employee commences sick leave - or any other locally agreed reference period.

*****NEW*** Paragraph 14.4 in the Agenda for Change Handbook provides for full pay to be paid when staff are on sickness absence. This takes into consideration "regularly paid supplements" such as unsocial hours. Unsocial hours arrangements are contained in section 2. where a staff group has existing, pre-Agenda for Change unsocial hours arrangements, protected during the interim regime but those arrangements do not include sick pay calculated on the basis of average pay in a reference period, should**

that staff group receive sick pay based on average pay as outlined in 14.4 or are they only paid basic pay?

Section 14: Sickness Absence: paragraph 4.

The commitment in Agenda for Change was to ensure that where staff were on sickness absence their income should not suffer. A staff group which has had their unsocial hours arrangements protected but did not receive sick pay based on average pay in a reference period will now receive sick pay based on 14.4.

*****NEW*** What happens when local partnerships are not able to reach agreement on "other" terms and conditions of service not covered in the NHS Terms and Conditions of Service Handbook (see paragraph 19.1)?**

Section 19: Other terms and conditions of service: paragraph 1.

Paragraph 19.1 of the handbook states 'Other terms and conditions not covered in this Handbook will be determined locally following consultation with staff representatives with a view to reaching agreement on such terms and conditions or any changes to them (see Annex O).' In the absence of a local agreement the previous contractual arrangements for those on national contracts will apply.

*****NEW*** Paragraph 46.2 provides for staff on local contracts, not incorporating national agreements on pay and conditions of service the opportunity to assimilate to Agenda for Change. Can staff whose NHS contract of employment arises from a TUPE transfer into the NHS prior to 1 October 2004 exercise the right to assimilate or not to assimilate to Agenda for Change terms and conditions.**

Section 46: Assimilation and Protection: paragraph 2.

Yes, staff who have transferred into the NHS who are not on Whitley or shadow Whitley contracts will be deemed to be NHS employees for the purposes of Agenda for Change implementation. For the purposes of paragraph 46.2 staff on local contracts will have the right to opt for Agenda for Change assimilation or remain on their existing terms and conditions.

*****NEW*** Where a post holder is matched to a profile which includes "consultant" in the job title, is there is a requirement for the employing organisation to involve an external assessor from the appropriate professional body to determine whether assimilation to that post and the use of the job title is acceptable?**

Section 46: Assimilation and Protection.

Once a post holder is matched to a profile there is no scope for a further external assessment process to affect the assimilation to the appropriate pay band.

*****NEW*** How are arrears of pay to be calculated when someone "acts up" and works in a role at a higher level of responsibility for a period between 1 October 2004 and their date of assimilation to Agenda for Change?**

Section 6 and Section 46.

Two pay histories need to be constructed. Each will start on 1 October 2004 and finish on the day before assimilation. Table 7 in Section 46 of the Handbook sets out what items should be included in each pay history.

One details actual pay and all changes to pay under Whitley 'before assimilation' and will include details of any changes to pay relating to the period of 'acting up'. The second pay history details what would have been paid if the employee had been receiving Agenda for Change pay on 1 October 2004 and throughout the rest of the period. In this pay history Agenda for Change pay for the period of the 'acting up' needs to be determined using paragraphs 6.30 to 6.32 in the Handbook. Paragraph 31 says that when the person acting up is not required to carry out the full responsibilities of the post, pay will be determined by job evaluation. Both parties will need to agree the two pay histories. A comparison of the two totals produced when all the calculations in each pay history have been done will show if arrears of pay, including any arrears of pay attributable to the period of 'acting up', are due. Paragraph 3.6 in the NHS Job Evaluation Handbook describes the jointly agreed procedures when jobs change.

Are new staff to be recruited to the new conditions including new standard hours of 37½ from 1 December 2004?

Section 46, paragraph 5

Yes - subject to the provision in paragraph 46.5 allowing recruitment on pre-Agenda for Change terms. In accordance with this paragraph the protection provisions apply including those on hours of work tables 8 and 9. Where a staff group is increasing hours under Agenda for Change (e.g. radiographers) if recruiting new starters at 37½ hours causes problems the local parties would have to agree in partnership how to proceed.

Are on-call allowances and on-call payments included in pay during sickness absence?

Section 14, paragraph 4

Paragraph 14.4 allows regularly paid supplements to be included in pay during sickness absence. This will include on-call allowances and on-call payments where these are normally paid at regular intervals. An allowance which is paid only occasionally will not count.

Are there any special arrangements for the assimilation of staff who are approaching retirement age?

Section 46, paragraph 17

Paragraph 46.17 provides rules for staff whose basic pay before assimilation is below their new minimum. There are no other special provisions for staff approaching retirement age who assimilate according to the provisions in Section 46 including the provisions for protection.

Are trainees who are covered by Annex U (paragraph 2 (iii)) subject to the foundation and second gateway?

Annex U: Trainees: paragraph 2 (iii)

There are no agreed pay bands or pay scales for trainees under 2 (iii). It follows that there is no pay point identified in their pay where there is an agreed second gateway. All staff who have served less than one year in their post are subject to the foundation gateway.

Are trusts that employ maintenance crafts persons and Qualified Maintenance Technicians required to pay the specified amount of National Recruitment and Retention Premia or can this amount be varied to a lower

rate or not paid at all?

Annex R, paragraph 13

The amount specified in Annex R should be paid to all staff so designated. RRP cannot be paid at less than the agreed national rate (£2,899). The nationally agreed rate can be increased "where it is necessary to ensure no loss under the rules in paragraphs 4 to 7" in Annex R (paragraph 13 in Annex R). The minimum level of RRP in Annex R should be paid until it is otherwise varied by the Staff Council.

Can a new appointee be placed on a Transitional Point where there are no other members of their job/professional group in that unit (or equivalent work area) on a Transitional Point in their pay band?

Section 46, paragraph 15

Paragraph 46.15 is clear on this point. Staff can only be appointed to a Transitional Point where there are already other staff in their job/professional group in that unit (or equivalent work area) on a Transitional Point.

Can I challenge a matching panel on the grounds that it was made up of an unequal number of management or union representatives?

Section 8: Paragraph 2.1

Section 8 (paragraph 2) of the JE Handbook is clear that the make up of matching panels is a matter for local agreement. Neither the overall number of matching panel members nor the number of members representing management and staff would be grounds for a challenge; however, an individual still has the right to a review if he or she is not happy with the outcome of the matching process, in accordance with any locally agreed review procedure.

The number of members per panel is for local agreement, but from three to five is the recommended range, with four being found most satisfactory by Agenda for Change Early Implementer organisations (JE Handbook Section 8, paragraph 2.1).

Do PRP payments continue under Agenda for Change?

Section 46, paragraph 42

Such schemes cease at the date of assimilation. Any new scheme must be such that all staff in the organisation, or unit or work area concerned have fair access to it.

Do staff continue to receive pay increments on their Whitley basic pay past 1 October and 1 December 2004 and until they are assimilated to Agenda for Change pay?

Section 46, paragraph 9

Yes - and the basic pay on the effective assimilation date is to be calculated as in paragraph 46.9.

Do the provisions for unsocial hours payments in Annex E apply just to staff working on ambulances or to all staff?

Annex E, paragraph 1 Paragraph 2.8 makes clear that the arrangements in Annex E should apply to ambulance staff (i.e. those who would have been subject to the provisions of the Ambulance Whitley Council had they been on national contracts). Other staff working in ambulance trusts (i.e. control staff, nurses etc) would be subject to the provisions of their old Whitley Council. Annex E can also apply to EI sites, subject to paragraph 2.11.

Do we recover money overpaid as a result of a gap between implementing specific parts of Agenda for Change and the final assimilation to the whole package?

Section 46, paragraph 8

Where partners agree locally to implement the new Agenda for Change overtime rates at the same time as assimilation the following method should be applied:

A calculation commencing October 1 should take the total earnings for an individual under the original conditions and a similar calculation for total earnings that would have applied had Agenda for Change been operational.

- Total earnings from October 1 2004 to personal assimilation date under original conditions.
- Total earnings under Agenda for Change conditions from 1 October 2004.
- (b) minus (a) = positive or negative figure.

Subject to this calculation a positive figure will be returned to the employees as arrears.

A negative figure would not be recovered (unless it is as a result of any cause other than the implementation of Agenda for Change).

Does paragraph 13.4 provide an entitlement to equivalent time off at plain time rates plus the appropriate payment on top of the standard entitlement to 8 general and public holidays (see table 6)?

Section 13, paragraphs 1 and 4

No - paragraph 13.4 preserves the right to 8 general and public holidays. It does not provide additional entitlements.

Does the provision for movement into pay band 6 apply to staff groups other than midwives?

Annex T, paragraph 3

This provision is not restricted to midwives. Annex T applies to all staff groups meeting the criteria in paragraph 3. In the circumstances described, job size should be reviewed no earlier than one year and no later than two years from the date of qualification, using the NHS Job Evaluation Scheme.

Does the rate of unsocial hours start at 7pm as in Agenda for Change or 8pm as in e.g. the Whitley nurses' agreements?

Section 2, paragraphs 4 to 12

Where the Agenda for Change unsocial hours system is used the hours are 7am to 7pm. Where Whitley arrangements are in use the hours are those described in the relevant handbook. Paragraph 2.4 allows the Whitley provisions to be used subject to the provisions of the following paragraphs. Where Whitley provisions are used the arrangements are described in the relevant Handbook. The system available to ambulance staff employed by ambulance trusts and available to Early Implementers is in Annex E. The relevant times of the day are in paragraph 2.

How can a job be evaluated where there is a degree of alternating "power sharing" but where everything else remains equal?

Job evaluation

This is not so much a job evaluation issue as an HR issue. The situation should be approached in exactly the same way as it was before Agenda for Change. Depending on the proposed arrangement for such jobs, the following are possible solutions:

evaluate both posts;

following the evaluation of both posts, local arrangements need to be in place to set the level of remuneration and how the timing of rotation is to be handled;

the combined role could be evaluated as one job and local arrangements put in place as to how the second panel would review the relevant factors but not match the whole job again.

How does pension protection work for employees whose pay is subject to the Agenda for Change pay protection provisions in Section 46?

Section 46: Assimilation and Protection: Paragraph 46.17

Individual members of staff will not be required to make applications for the protection of their pensions. Employers will identify staff whose pay is protected and provide the relevant details to the NHS Pensions Agency (NHSPA). The NHSPA will provide the employee with a letter confirming that pension benefits have been protected.

How is overtime pay calculated for staff on "protected pay"? As an example: if staff are on Agenda for Change pay point £18,000 but the protected level of pay is £20,000, is overtime paid on £20,000?

Section 3: Overtime: paragraph 3.2

Yes. Overtime is not off-set against protected pay. Overtime payments are calculated by taking the annual rate of basic pay and working out the rate of pay per hour. In this case the annual rate of pay used will be £20,000. If a long-term RRP is in payment the hourly rate is calculated on £20,000 plus the long-term RRP (paragraph 3.2). All overtime is payable at one and a half times the hourly rate, except overtime worked on general public holidays which is payable at twice the hourly rate (paragraph 3.1).

How is pay and time off in lieu (TOIL) calculated when staff work on general public holidays?

Staff required to work or to be on-call on a general public holiday are entitled to time to off in lieu at plain time rate in addition to the appropriate payment for the duties undertaken (paragraph 13.4).

Staff who are required to work more than 60 hours (8 x 7½ hours) on general public holidays, in their personal leave year, will receive TOIL at plain time rate for all of the hours worked and the appropriate payment for all of the hours worked. The 60 hour threshold will be set on a pro-rata basis for part-time staff. E.g. if staff were required to work 70 hours per year on bank holidays they would receive 70 hours TOIL plus the appropriate payment.

Staff who volunteer to work more than 60 hours in their personal leave year will receive TOIL at plain time rate up to the 60 hour threshold and the appropriate payment for the duties they undertake. For any time worked over the 60 hour threshold they will receive payment only.

Guidance on what to do when Easter falls in March and entitlements to public holiday leave exceed 8 days in a leave year is in another Q and A.

How is the leave entitlement pre-assimilation determined to establish whether protection is required?

Section 46: Assimilation and Protection: paragraph 34

Where an entitlement to annual leave is reduced under Agenda for Change paragraph 46.34 provides that the previous entitlement can be protected for five years from the date of assimilation.

Leave pre-assimilation is the total of Whitley or locally agreed leave plus the two statutory leave days if they have not already been converted into annual leave.

If a member of staff on a local contract is offered assimilation to a pay band where the matching or evaluation outcome is subject to review, can the post holder defer a decision?

Section 46, paragraph 2 (first bullet point)

Can the post holder defer a decision until the outcome of the review is known, but still maintain the original effective date of assimilation?

Yes.

If staff who have contracts described in 2.7 and have local "premium" arrangements for TOIL, undertake Bank Holiday working how is their TOIL allocated in respect of paragraph 13.4?

Section 2, paragraph 7

Staff who have contracts as described in 2.7 are entitled to a TOIL entitlement as provided in their 'locally determined' unsocial hours provisions for the duration of the interim regime. Where, under this paragraph, existing local arrangements are retained 'payment' also covers 'TOIL' arrangements.

In view of recent increases in fuel costs, are there any plans to increase the nationally agreed rates of mileage allowances?

Section 17

The general principle is that staff using their own cars for NHS business should not be disadvantaged as a result of increases in motoring costs.

The national provisions on mileage allowances set out in Section 17 of the NHS Terms and Conditions Handbook contains flexibilities which allow staff and employer representatives to agree arrangements which provide benefits to staff beyond those provided by the national provisions or are agreed as operationally preferable. We are aware that some employers have agreed in partnership variations to the national rates to address particular problems.

The national Agenda for Change partners have agreed to review Section 17 of the Handbook as part of next years programme of work.

Is the effect of the second sub-clause to give staff who defer their decision until the outcome of the review the right to backdating to 1 October 2004?

Section 46, paragraph 2

No - providing these staff give their employer reasonable notice their effective date of assimilation and the effective date for Agenda for Change pay and conditions will be the effective date of the new unsocial hours arrangements.

On what date does the four-year period of protection of current on-call arrangements start?

Section 2, paragraph 13

It starts from 1 October 2004 - the effective date for new pay and conditions except hours of work (see paragraph 46.6).

Under Agenda for Change when does overtime start for a part-time member of staff?

Section 3, paragraphs 1 and 4

For staff working a portion of the standard 37½ hours, overtime starts when these staff work over 37½ hours (paragraph 3.3). Where standard hours are as in Tables 8 and 9 in Section 46 overtime starts when the hours in the right-hand column in each table are exceeded.

What happens in the former "early implementer" sites where the period of protection for on-call (paragraph 2.28) runs out on 30 May 2007?

Section 2: Working or providing emergency cover outside normal hours: paragraph 28

The period of protection is extended to 30 September 2008.

What happens to 'MUFTI' allowances in Agenda for Change?

Section 19, annex O

We have been asked for advice on 'MUFTI' allowances. There is no national provision for this within Agenda for Change. MUFTI is not part of the evaluation scheme and is, therefore, not an allowance replaced by the scheme. It is our view that any discussion on the provisions of MUFTI allowances are for local partnerships. The partners to any such discussion should give careful consideration to the equal pay implications of any mufti provisions that they might contemplate.

What happens to my two public holiday days when Easter is in March (as it is this year) and when, therefore, I have already had two days for Easter in the current twelve-month period, ending March 2008?

Section 13, paragraph 1

The new Agenda for Change annual leave and general public holiday entitlements are set out in Section 13. In normal circumstances all staff are entitled to 8 general public holidays in a twelve-month period. Sometimes (as will happen this year) Easter will fall in March. This may mean that in some organisations there will, in effect, be two Easter holidays in the same twelve-month period. In such circumstances the local partners will need to decide on the appropriate action to take. Pragmatically, this might mean anticipating the two public holidays falling in the next twelve-month period.

What happens where an employee, who has their annual leave entitlement protected moves employer/post? Do they retain the protection?

Section 46, paragraph 46.34

Paragraph 46.34 applies. "Any member of staff whose leave entitlement is reduced under Agenda for Change will have their existing entitlement protected for five years from the date of assimilation onto the new system." Individuals would retain their protection subject to continuity of service. Where there is a break in service, however, protection no longer applies.

What is meant by, "...significantly below the minimum..." in relation to assimilation to transitional points on the pay scale (para 46.12)?

Section 46, paragraph 12

This was not specified in the agreement and was left for those assimilating to conclude for themselves. We are aware that in many cases local partnerships have already reached agreements on how to apply this clause and we have no wish to disturb these arrangements. However, those local partnerships still interpreting this clause should be aware that the intention of the Agenda for Change negotiators was that transitional points would apply where salary before assimilation was below both the minimum of the new pay band and one of the transitional points. In these circumstances the normal rules for assimilation should apply and assimilation would be made to the next highest point.

This is demonstrated by the following examples using Band 3:

an individual matched to Band 3 on a pre-assimilation salary of £12,000 would assimilate to the first Band 3 transitional point i.e. £12,044; while an individual on a pre-assimilation salary of £12,050 would assimilate to the second Band 3 transitional point i.e. £12,539.

What is the annual leave entitlement for term time only employees? For example there can be staff who work TTO but who effectively work the whole year (40 weeks full time) whilst another, on a TTO contract, may in that period be working part time e.g. 3 days a week for 40 weeks?

Section 13, paragraphs 13.4 to 13.9 Term time only employees would have a pro-rata entitlement to annual leave and it is down to local employers to calculate these entitlements.

When calculating entitlements to annual leave should I take account of a single period of previous service or should I aggregate several periods?

Section 12, paragraphs 1 and 3

An employer must include all NHS reckonable service when calculating annual leave entitlement (12.3). 12.2 gives discretion to employers to decide what previous (non-NHS) employment can count towards annual leave entitlement.

When does overtime start for staff moving down from their current contracted hours to the new Standard hours in Agenda for Change?

Section 46, paragraph 30

Overtime starts when staff begin working more than their new standard hours set out in Table 8 in Section 46. For example, for someone working more than 41 hours before Agenda for Change this would be when they work more than 40½ hours from 1 December 2004.

When does overtime start for staff moving up from their current contracted hours to the new Standard

hours in Agenda for Change?

Section 46, paragraph 31

Overtime starts when staff begin working more than their new standard hours set out in Table 9 in Section 46. For example, for someone working more than 33 hours before Agenda for Change this would be when they work more than 33 hours from 1 December 2004.

When does protection of hours apply?

Section 46, paragraph 31 Paragraph 46.31 of the NHS Terms and Conditions of Service Handbook states: "Staff currently working less than 37.5 hours, excluding meal breaks, will have their hours protected for a phased protection period as set out in Table 9. These protection arrangements will continue to apply where staff move to a post with the same hours under the old pay system during the pay protection period."

The following examples provide advice on when protection does and does not apply.

An employee remaining in the same post will keep their protected hours for the period set out in Table 9.

An employee who moves to a new post, within the same job-family, on the same pay-band either within the same organisation or to another NHS employer, continues to receive protection for the period set out in Table 9.

An employee who is recruited into another post prior to assimilation within the same job family, on a higher pay band, continues to receive protection for the period set out in Table 9.

Protection will be lost if an employee moves to a new post within the same job family, on a higher pay band, after assimilation to Agenda for Change.

Protection will be lost if an employee either moves to a new post outside their job-family or leaves the NHS.

The Executive does not intend this guidance should disturb any local agreements on protection of hours reached on a partnership basis.

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

Section 1, paragraph 7

The NHS Terms and Conditions of Service Handbook makes clear that there will be separate arrangements for the most senior managers working in the NHS. These will be defined as chief executives and those senior managers at board level who report directly to them. These are expected to be announced shortly by the Department of Health. The Agenda for Change provisions will be available to all other managers who should be offered the opportunity to move onto Agenda for Change pay, terms and conditions backdated to 1 October 2004.

Which staff (working non-standard shifts), under 13.5, would require their annual leave to be calculated in hours?

Section 13, paragraph 13.5

"Where staff work standard shifts other than 7½ hours excluding meal breaks, annual leave and general public holiday entitlements should be calculated on an hourly basis to prevent staff on these shifts receiving more or less leave than colleagues on standard shifts." This applies to all staff working standard shifts other than 7½ hours excluding meal breaks.

Will guidance be provided (in partnership) in respect of the application of paragraph 3 other than that which is already described?

Annex T, paragraph 3

There are no plans for further guidance on Annex T.

Will Student Training Allowance be taken into account when assimilating staff onto Agenda for Change?

Section 46, paragraphs 18, 19, 20 and Table 7

For assimilation purposes the value of any Student Training Allowance (STA) received by staff in the year prior to the effective date of the agreement will be the amount taken into account for assimilation purposes. There may be cases where staff have previously regularly taken students but during the year prior to the effective date of the agreement were prevented from doing so. Such circumstances may include absence due to maternity or carer leave, career break, secondments, union representatives preparing for Agenda for Change implementation, or where the individual agreed, at the request of their employer, to undertake other duties which did not attract a STA. In such cases the intention is not to penalise staff on assimilation and staff in the circumstances above should therefore have the value of any allowance received, in any one year, during the period 1 October 2001 to 30 September 2003 included for assimilation purposes. Finally, when assimilating part-time staff who received STA, the whole-time value of the allowance should be added to the whole-time value of the basic pay and other relevant payments and then pro-rated.

Will the recruitment and retention premium for qualified maintenance craftspersons and technicians be updated?

Annex R, paragraph 13

Yes - the value of the premium is £2,808 from 1 April 2004. (See paragraph 17 in Annex R for uprating in April 2005).

Last reviewed 3 Jun 2008