

27 March 2013

Pay Circular (M&D) 2/2013

Changes to Terms and Conditions of Service for hospital medical and dental staff, doctors and dentists in public health medicine and the community health service

To: All employers in the NHS (England)

Cc: UK Health Departments for information/action

Summary

This pay circular notifies employers of changes to the following documents with effect from 31 March 2013:

Terms and Conditions of Service – Consultants (England) 2003

Terms and Conditions of Service for Specialty Doctors – England (2008)

Terms and Conditions of Service for Associate Specialists – England (2008)

National Health Service Hospital Medical and Dental Staff and Doctors in Public Health Medicine and the Community Health Service (England) Terms and Conditions of Service (now renamed Terms and Conditions of Service - NHS Medical and Dental Staff (England) 2002)

Agreement – all Terms and Conditions of Service

- 1 The Joint Negotiating Committee (Seniors), Joint Negotiating Committee (SAS), and Joint Negotiating Committee (Juniors) have approved amendments to all sets of TCS which are detailed below.

Injury Allowance

- 2 The NHS Staff Council has approved a new section in the NHS Terms and Conditions of Service Handbook (Section 22) which introduces a contractual right to injury allowance which will replace the statutory Injury Benefit provisions.
- 3 For doctors and dentists on the terms and conditions covered by this pay circular, it has been agreed that this will be incorporated into the relevant TCS section on Injury Sustained On Duty. The wording of this section is set out in Annexes A to D. It is anticipated that employers will review the contracts of staff on local arrangements and consider how the injury allowance provisions might be introduced. These injury allowance arrangements will come into effect on 31 March 2013.

Parental leave and public sector equality duty

- 4 Following a review by the NHS Staff Council to ensure legal compliance with the Equality Act 2010 and Public Sector Duty, the temporary schedules and appendices of each set of TCS are revised.
- 5 To ensure legal compliance with the Parental Leave (EU Directive) Regulations 2013, the parental leave provisions are updated.

Redundancy

- 6 References to the transitional arrangements in place 1 October 2006 to 30 September 2011 are deleted.

Agreement – Consultants

- 7 The Joint Negotiating Committee (Seniors) has approved the following amendment.

Schedule 22 – Pay for Associate Specialists taking up locum consultant posts

- 8 It was agreed that the provisions set out in Schedule 13, paragraph 11 of the Terms and Conditions – Consultants (England) 2003 should also apply to Associate Specialists taking up locum posts, and that a parallel provision should be inserted into Schedule 22. This arrangement will come into effect on 31 March 2013. The text of the amendment can be found in Annex A.

Agreement – Juniors

- 9 The Joint Negotiating Committee (Juniors) has approved the following amendment.

Pay protection on return to training

- 10 Paragraph 132 is amended to reflect the changes set out in Pay Circular (M&D) 4/2007 and to clarify that practitioners whose previous appointment was in the England, Scotland, Wales, Northern Ireland, Isle of Man or Channel Islands hospital service are eligible for protection of salary under the terms of the paragraph. The text of the paragraph can be found in Annex D.

Banding questionnaire

- 11 The Joint Negotiating Committee (Juniors) has confirmed that this is still a valid contractual document and have agreed that it should be republished. The document can be found at <http://www.nhsemployers.org/SiteCollectionDocuments/Banding%20questionnaire.pdf>.

Contract maintenance

- 12 To reflect the incorporation of public health dental staff into the TCS as set out in Pay Circular (M&D) 2/2008, the National Health Service Hospital Medical and Dental Staff and Doctors in Public Health Medicine and the Community Health Service (England) Terms and Conditions of Service are renamed "Terms and Conditions of Service – NHS Medical and Dental Staff (England) 2002".
- 13 NHS Employers can only publish documentation for England and therefore all references to the application of terms and conditions or legislation in the devolved administrations are removed from the Terms and Conditions of Service – NHS Medical and Dental Staff (England) 2002.
- 14 There have been a number of minor amendments made to the contract to ensure consistency of style and language.
- 15 Changes set out in previous pay circulars have also been consolidated into the Terms and Conditions of Service – NHS Medical and Dental Staff (England) 2002. See Annex D.

Action

- 16 Employers are requested to make use of the new TCS from 31 March 2013.

- 17 Copies of the amended TCS and the amended record of amendments log can be downloaded from the NHS Employers website at the following web address:
<http://www.nhsemployers.org>.
- 18 Other Health Departments should ensure that where applicable their local documentation reflects the changes detailed here.
- 19 A High Court judgment in 2006 highlighted the need for NHS employers to take all reasonable steps to ensure that the effects of nationally negotiated collective agreements are incorporated into individual contracts of employment.

It is good practice that employers should:

- a. write to individual medical and dental practitioners in order to notify them of the revisions to their TCS; and
- b. place a copy of the notification on each individual's HR record.

Record of amendments

- 18 For ease of reference, all significant amendments made to the Terms and Conditions of Service for each grade are collated in record of amendments logs. The logs also record the Advance Letter, Pay Circular, or other reference under which amendments were issued.
- 19 Each significant amendment in the Terms and Conditions of Service for each grade has been given a reference number which appears in the text as a superscript number at the end of each amendment i.e., "the superscript shows that wording in this paragraph has changed¹³". The number corresponds to that given to the amendment in the log. By doing this, the reader is notified that an amendment has been made to the contract and is directed to the relevant section of the log.

Enquiries

- 20 Employers should direct enquiries to: doctorsanddentists@nhsemployers.org
- 21 Employees should direct personal enquiries to their employer.

Further copies

- 22 Copies of this circular can be downloaded from: www.nhsemployers.org
- 23 Prior to the establishment of NHS Employers in November 2004 responsibility to inform the NHS of changes to pay and conditions for medical and dental staff covered by this circular rested with the Department of Health and were published in Advance Letters (Medical and Dental).



Bill McMillan

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NHS Employers

Annex A

Doctors employed under Terms and Conditions – Consultants (England) 2003

Injury sustained on duty

Schedule 18, paragraph 28 is removed and replaced with the following:

28. (i) An absence due to injury sustained by a consultant in the actual discharge of his or her duty, for which the consultant was not liable, shall not be recorded for the purposes of these provisions.

(ii) The Injury Allowance provisions will apply as set out in Section 22 of the NHS Terms and Conditions of Service Handbook, and should be read alongside the accompanying guidance issued by NHS Employers.

Locum consultants entering from the AS grade

The following paragraph is added to Schedule 22:

9. Where Associate Specialists have been paid in their previous regular employment at a basic salary, including any discretionary points, higher or equal to the rate at which they would (were it not for this provision) be paid on taking up their new locum consultant appointment, then their starting salary in the new appointment shall be fixed at the threshold in the scale next above that previous rate.

Temporary Schedule 24 – Maternity Leave and Pay,
Temporary Schedule 25 – Employment Break Scheme,
Temporary Schedule 26 – Redundancy Pay,
Temporary Schedule 27 – Caring for Children and Adults,
Temporary Schedule 28 – Flexible Working Arrangements,
Temporary Schedule 29 – Balancing Work and Personal Life

Agreement has been reached to revise these arrangements in line with statutory changes and they can be found in the temporary schedules listed above.

Annex B

Doctors employed under Terms and Conditions of Service for Specialty Doctors – England (2008)

Injury sustained on duty

Schedule 17, paragraph 28 is removed and replaced with the following:

28. (i) An absence due to injury sustained by a doctor in the actual discharge of his or her duty, for which the doctor was not liable, shall not be recorded for the purposes of these provisions.

(ii) The Injury Allowance provisions will apply as set out in Section 22 of the NHS Terms and Conditions of Service Handbook, and should be read alongside the accompanying guidance issued by NHS Employers.

Temporary Schedule 21 – Maternity Leave and Pay,
Temporary Schedule 22 – Employment Break Scheme,
Temporary Schedule 23 – Redundancy Pay,
Temporary Schedule 24 – Caring for Children and Adults,
Temporary Schedule 25 – Flexible Working Arrangements,
Temporary Schedule 26 – Balancing Work and Personal Life

Agreement has been reached to revise these arrangements in line with statutory changes and they can be found in the temporary schedules listed above.

Annex C

Doctors employed under Terms and Conditions of Service for Associate Specialists – England (2008)

Injury sustained on duty

Schedule 17, paragraph 27 is removed and replaced with the following:

27. (i) An absence due to injury sustained by a doctor in the actual discharge of his or her duty, for which the doctor was not liable, shall not be recorded for the purposes of these provisions.

(ii) The Injury Allowance provisions will apply as set out in Section 22 of the NHS Terms and Conditions of Service Handbook, and should be read alongside the accompanying guidance issued by NHS Employers.

Temporary Schedule 22 – Maternity Leave and Pay,
Temporary Schedule 23 – Employment Break Scheme,
Temporary Schedule 24 – Redundancy Pay,
Temporary Schedule 25 – Caring for Children and Adults,
Temporary Schedule 26 – Flexible Working Arrangements,
Temporary Schedule 27 – Balancing Work and Personal Life

Agreement has been reached to revise these arrangements in line with statutory changes and they can be found in the temporary schedules listed above.

Doctors employed under the National Health Service Hospital Medical and Dental Staff and Doctors in Public Health Medicine and the Community Health Service

Title page

These terms and conditions are renamed as **Terms and Conditions of Service - NHS Medical and Dental Staff (England) 2002**.

Introduction

The definition of “career grade” is inserted into the Introduction as paragraph xiii:

xiii. For the purposes of paragraph 132 and 135 e the term 'career grade' is a reference to any NHS medical or dental practitioner appointment on national terms and conditions of service other than those in training grades.

Pay protection on return to training

Paragraph 132 is deleted and replaced by paragraphs 132.a. and b:

132.a. Where a practitioner in a career grade takes an appointment in a training grade which is recognised by the appropriate authority as being for the purpose of obtaining approved training (which may include training to enable the practitioner to follow a career in another specialty) and the practitioner has given continuous service in a career grade post or posts for at least 13 months immediately prior to re-entering training, the practitioner shall, while in the training grade, continue to receive a salary protected on the incremental point or threshold the practitioner had reached in his or her previous career grade appointment. Such a practitioner shall receive the benefit of any general pay awards. On reappointment to a career grade post, the practitioner's starting salary should be assessed as if the period spent in the approved training post had been continuing service in the previous career grade. Where a practitioner re-entering training from a career grade has held a recognised training post (or equivalent service overseas) in the 13 months of contracted employment prior to re-entering training, the intervening period spent in the career grade shall be taken as continuing service in the training grade, and the practitioner will be re-appointed on the appropriate incremental point of the training grade scale. Where pay in the earlier training post was already protected under these provisions, such protection shall continue. Practitioners whose previous appointment was in the England, Northern Ireland, Scotland, Wales, Isle of Man or Channel Islands hospital service are eligible for protection of pay point under the terms of this paragraph.⁷⁵

132.b. Where a practitioner moves directly from a higher training grade to a lower grade as determined by the maximum point of the basic pay scale, the practitioner shall, while in the lower grade, continue to be paid on the incremental point the practitioner had reached in his or her previous appointment. Such a practitioner shall receive the benefit of any general pay awards. On reappointment to the higher grade or on appointment to another higher grade, the practitioner's starting salary should be assessed as if the period spent in the approved training post had been continuing service in the previous higher grade.

Termination of Employment: representations against dismissal

As set out in Pay Circular (M&D) 2/2006, paragraph 190 has been superseded by the provisions of Maintaining High Professional Standards. Paragraphs 190-192 have been updated as follows:

190. Unallocated

Alternative employment

191. It is understood that, where a local change of organisation in the hospital and specialist services involves displacement or serious disturbance of the services of a practitioner in a regular appointment other than a training grade, the authority recognises that it has a moral obligation to render the greatest possible assistance to the practitioner with a view to his or her obtaining comparable work elsewhere in the NHS.

192. Where an authority grants leave without pay to a practitioner to permit the practitioner to accept a short-term appointment of not more than three years in an overseas university or other position of similar standing, the vacancy so created may be filled by another appointment for a limited period. Paragraph 191 shall not apply to a practitioner appointed for a limited period in these circumstances in respect of the termination of his or her appointment at the end of that period.

Injury sustained on duty

Paragraph 238 is removed and replaced with the following:

- 238.a. An absence due to injury sustained by a practitioner in the actual discharge of his or her duty, for which the practitioner was not liable, shall not be recorded for the purposes of these provisions.
- b. The Injury Allowance provisions will apply as set out in Section 22 of the NHS Terms and Conditions of Service Handbook, and should be read alongside the accompanying guidance issued by NHS Employers.

Removal of terms applicable to the devolved administrations

NHS Employers can only publish documentation for England and therefore all references to terms and conditions or legislation applicable in Scotland, Wales or Northern Ireland are removed from the TCS.

Temporary Appendix VI(i) – Maternity Leave and Pay,
Temporary Appendix VI(ii) – Employment Break Scheme,
Temporary Appendix VI(iii) – Redundancy Pay,
Temporary Appendix VI(iv) – Caring for Children and Adults,
Temporary Appendix VI(v) – Flexible Working Arrangements,
Temporary Appendix VI(vi) – Balancing Work and Personal Life

Agreement has been reached to revise these arrangements in line with statutory changes and they can be found in the temporary schedules listed above.