

NHS Terms and Conditions of Service Handbook

This is Volume 8 of the record of amendments

This is a chronological record of amendments to the Handbook starting on 1 January 2016.

Changes to terms and conditions in the NHS Terms and Conditions of Service Handbook are notified to employers by pay circulars and notices in the NHS Workforce Bulletin. The Handbook is on the NHS Employers website at:

<http://www.nhsemployers.org/tchandbook>

Amendment Number	Section(s)/ Annex(es) Number(s)	Section(s) Title	Amendment(s)	Date Amended	AforC Pay Circular Number
36		Title page	<p>“Amendment number 35” is changed to “Amendment number 36”</p> <p>“Pay and Conditions Circulars (AforC) number 1/2015, number 2/2015 and number 3/2015” is changed to “Pay and Conditions Circular (AforC) number 1/2016”.</p>		Number 1 of 2016
	Section 1(a) (England and Wales)	Pay structure	<p>Paragraph 1.9 is: “Provided the appropriate level of performance and delivery has been achieved during the review period, individuals will progress from pay point to pay point on an annual basis, except that in England staff on pay spine points 34 to 54 will not be eligible for incremental pay progression from 1 April 2015 to 31 March 2016 (see Annex C, which also contains specific provisions for staff on pay spine point 1). Outside of this period in England, for pay bands 1 to 7, 8A and 8B, incremental pay progression, dependent on the appropriate level of performance and delivery, will apply to all the pay points in each pay Band. For pay bands 8C, 8D and 9 it will apply for the first 4 pay points in the band (see Annex C, and paragraphs 1.11 to 1.15 in this Section).”</p> <p>It is changed to: “Provided the appropriate level of performance and delivery has been achieved during the review period, individuals will progress from pay point to pay point on an annual basis. For pay bands 1 to 7, 8A and 8B this will apply to all the pay points in each pay Band. For pay bands 8C, 8D and 9 this will apply for the first 4 pay points in the band (see Annex C and paragraphs 1.11 to 1.15 in this Section).”</p> <p>Paragraph 1.10: line 9: the words “(see paragraph 1.9 in this Section)” are deleted.</p>		

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			<p>Paragraph 1.11 is: “Pay progression beyond the first four pay points in pay bands 8C, 8D and 9 will be dependent upon the achievement of locally determined levels of performance. Staff will progress through the last two pay points in these pay bands only when they are assessed as having met the required level of performance, except that in England these staff will not have access to incremental pay progression from 1 April 2015 to 31 March 2016 (see Annex C, which also contains specific provisions for staff on pay spine point 1).”</p> <p>It is changed to: “Pay progression beyond the first four pay points in pay bands 8C, 8D and 9 will be dependent upon the achievement of locally determined levels of performance. Staff will progress through the last two pay points in these pay bands only when they are assessed as having met the required level of performance.”</p> <p>Paragraph 1.15: line 4: the words “(employers in England see paragraphs 1.9 and 1.11 in this Section)” at the end of the paragraph are deleted.”</p>		
	Section 6(a) (England and Wales)	Career progression	<p>The following sentence, at the end of paragraph 1, is deleted. “Employers in England should note that staff in England on pay spine points 34 to 54 will not be eligible for incremental pay progression from 1 April 2015 to 31 March 2016 (see Annex C, which also contains specific provisions for staff on pay spine point 1).”</p>		
	Section 15	Maternity leave and pay	<p>Paragraph 15.48</p> <p>The following sentence, at the end of the paragraph, is deleted: “Employers in England should note that staff in England on pay spine points 34 to 54 will not be eligible for incremental pay progression from 1 April 2015 to 31 March 2016 (see Annex C, which also contains specific provisions for staff on pay spine point 1).”</p>		

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	Annex C	Pay bands and pay points on the second pay spine in England from 1 April 2015	The existing Annex C: "Pay bands and pay points on the second pay spine in England from 1 April 2015" becomes a new Table 9 (L) in Annex B. A new Annex C: " Pay bands and pay points on the second pay spine in England from 1 April 2016 " is inserted.		
	Annex I	High cost area supplements	The existing Table 16, High cost area supplements effective "from 1 April 2015", becomes a new Table 15(h) . A new Table 16, High cost area supplements effective " from 1 April 2016 " is inserted.		
	Annex W (England and Wales)	Pay progression	The following sentence, at the end of paragraph 1, is deleted: "In England staff on pay spine points 34 to 54 will not be eligible for incremental pay progression from 1 April 2015 to 31 March 2016 (see Annex C, which also contains specific provisions for staff on pay spine point 1)."		
	Annex A2 (a) (England and Wales)	Guidance on frequently asked questions	"Implementation annexes: Annex W (England and Wales): Pay progression Secondary heading: Criteria for local schemes Footnote number 7 How will pay progression under Annex W (England and Wales) work? Once a trust has updated their current appraisal and pay progression processes, in line with Annex W (England and Wales), individuals will progress on the basis of demonstrating and applying the required levels of performance and delivery consistently during the performance review period and they will benefit from incremental pay progression. Where an individual has not met their performance criteria then they will not be entitled to progress up the pay band for that given year. From 1 April 2015 to 31 March 2016 staff in England on pay spine points 34 to 54 will not be eligible for incremental pay progression (see Annex C, which also contains specific provisions for staff on pay spine point 1)." This is changed to: "Once a trust has updated their current appraisal and pay progression processes, in line with Annex W (England and Wales), individuals will		

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			progress on the basis of demonstrating and applying the required levels of performance and delivery consistently during the performance review period and they will benefit from incremental pay progression. Where an individual has not met their performance criteria then they will not be entitled to progress up the pay band for that given year.”		
36		Title page	“Pay and Conditions Circular (AforC) number 1/2016” is changed to “Pay and Conditions Circular (AforC) number 1/2016 and number 2/2016.”		Number 2 of 2016
	Section 14	Sickness Absence	<p>Paragraph 14.6 is:</p> <p>“The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated, by deducting from the employee’s entitlement on the first day of sickness, the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness no account will be taken of:</p> <ul style="list-style-type: none"> • unpaid sick absence; • injuries, diseases, or other health conditions sustained or contracted in the discharge of the employee’s duties of employment, as defined in Section 22; • injury resulting from a crime of violence, not sustained on duty but connected with or arising from the employee’s employment, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority (England, Wales and Scotland) and the Compensation Agency (Northern Ireland); • as above, but an injury which has not attracted payment of an award as it has not met the loss of earnings criteria or was not one for which compensation above the minimum would arise.” <p>It is changed to:</p> <p>“The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated, by deducting from the employee’s entitlement on the first day of sickness, the aggregate</p>		

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			<p>periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness the following absences will be disregarded:</p> <ul style="list-style-type: none"> • unpaid sick absence; • absence caused by injuries, diseases, or other health conditions that are wholly or mainly attributable to the employee's NHS employment and which have been sustained or contracted in the discharge of the employee's duties of employment, as defined in paragraph 22.3; • absence caused by injury resulting from a crime of violence, not sustained on duty but connected with or arising from the employee's employment, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority (England, Wales and Scotland) and the Compensation Agency (Northern Ireland); • absence caused by injury resulting from a crime of violence as described in the bullet immediately above, but which has not attracted payment of an award as it has not met the loss of earnings criteria or was not one for which compensation above the minimum would arise." 		
	Section 14(a) (England and Wales)	Sickness absence	<p>Section 14(a) (England and Wales): sickness absence Paragraph 14.7 is:</p> <p>The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated, by deducting from the employee's entitlement on the first day of sickness, the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness no account will be taken of:</p> <ul style="list-style-type: none"> • unpaid sick absence; • injuries, diseases or other health conditions sustained or contracted in the discharge of the employee's duties of employment, as 		

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			<p>defined in Section 22;</p> <ul style="list-style-type: none"> • absence caused by injury resulting from a crime of violence, not sustained on duty but connected with or arising from the employee's employment, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority (England, Wales and Scotland), and the Compensation Agency (Northern Ireland); • as above, but an injury which has not attracted payment of an award as it has not met the loss of earnings criteria or was not one for which compensation above the minimum would arise. <p>It is changed to: "The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated, by deducting from the employee's entitlement on the first day of sickness, the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness the following absences will be disregarded:</p> <ul style="list-style-type: none"> • unpaid sick absence; • absence caused by injuries, diseases, or other health conditions that are wholly or mainly attributable to the employee's NHS employment and which have been sustained or contracted in the discharge of the employee's duties of employment, as defined in paragraph 22.3; • absence caused by injury resulting from a crime of violence, not sustained on duty but connected with or arising from the employee's employment, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority (England, Wales and Scotland), and the Compensation Agency (Northern Ireland); • absence caused by injury resulting from a crime of violence as described in the bullet immediately above, but which has not attracted payment of an award as it has not met the loss of 		

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			<p>earnings criteria or was not one for which compensation above the minimum would arise.”</p>		
	Section 14(a) (England and Wales)	Sickness absence	<p>Paragraph 14.4: the first sentence is: “For staff on pay spine points 1 to 8 and those absent due to a work related injury or disease contracted in the actual discharge of their duties (see paragraph 14.7 in this Section) who are in receipt of injury allowance, the definition of full pay will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements Sick pay is calculated on the basis of what the individual would have received had he/she been at work. This would be based on the previous three months at work or any other reference period that may be locally agreed. Local partnerships can use virtual rotas showing what hours the employee would have worked in a reference period had he or she been at work.”</p> <p>It is changed to: “For staff:</p> <ul style="list-style-type: none"> • on pay spine points 1 to 8: and • those staff who are absent due to injuries, diseases or other health conditions sustained or contracted in the discharge of their duties of employment which are wholly or mainly attributable to their NHS employment, whom the employer determines are eligible to receive injury allowance in line with paragraphs 22.3 and 22.4 (see paragraph 14.7 in this Section); <p>pay during sickness absence is calculated on the basis of what the individual would have received had he/she been at work. It will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. It will be based on the previous three months at work or any other reference period that may be locally agreed. Local partnerships can use virtual rotas showing what hours the employee would have worked in a reference period had he or she been</p>		

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			at work.”		
	Section 15	Maternity leave and pay	<p>The heading above paragraph 15.49 is: “Accrual of annual leave”. It is changed to “Annual leave and public holidays”</p> <p>Paragraph 15.49 is: “Annual leave will continue to accrue during maternity leave, whether paid or unpaid, provided for by this agreement.” It is changed to: “Employees on paid and unpaid maternity leave retain their right to the annual leave and public holidays provided by Section 13.”</p> <p>Paragraph 15.50 is: “Where the amount of accrued annual leave would exceed normal carry over provisions, it may be mutually beneficial to both the employer and employee for the employee to take annual leave before and/or after the formal (paid and unpaid) maternity leave period. The amount of annual leave to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Payment in lieu may be considered as an option where accrual of annual leave exceeds normal carry over provisions. It is changed to “Where unused annual leave and public holidays exceed local provisions for carry over to the next leave year it may be beneficial to the employer and employee for the employee to take the unused annual leave and public holidays before and/or after the agreed (paid and unpaid) maternity leave period. The amount of annual leave and public holidays to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Payment in lieu may be considered as an option where accrual of annual leave and public holidays exceeds normal carry over provisions.”</p>		
	Annex A	NHS Employers	The entry “National Institute for Health and Clinical Excellence” is changed to National Institute for Health and Care Excellence.”		

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			Health Education England is added to the list of NHS Employers in England.		
	Annex G	Good practice guidance on managing working patterns	<p>Paragraph 4 is: NHS Staff Council guidance on Improving Working Lives (IWL) is at: http://www.nhsemployers.org/HealthyWorkplaces/ImplementingBoorman/Pages/Improvingworkinglives.aspx It includes a good practice database, which provides examples of how flexible working is used to cover both normal hours and the provision of care outside normal hours. There are comparable initiatives providing similar information in each of the other countries (e.g. the PIN policies in NHSScotland). It is changed to: NHS Staff Council guidance on Improving Working Lives (IWL) is at: http://www.nhsemployers.org/your-workforce/retain-and-improve/staff-experience/health-work-and-wellbeing/protecting-staff-and-preventing-ill-health/partnership-working-across-your-organisation/partnership-working-on-health-safety-and-wellbeing/hswpg-publications-advice-and-resources This substantial database of jointly agreed advice and guidance includes information on the importance of effective partnership working on health, safety and wellbeing, guidance on the prevention and management of stress at work and on the prevention and management of sickness absence. There are comparable initiatives providing similar information in each of the other UK countries (e.g. the PIN policies in NHSScotland).</p>		
	Annex A2	Guidance on frequently asked questions	<p>Part 3: Terms and conditions Part 3: Section 12: Contractual continuity of service Paragraph 4 Footnote number 1 When calculating entitlements to annual leave should I take account of a single period of previous service or should I aggregate several periods? An employer must include all reckonable service when calculating annual</p>		

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			leave entitlement (12.3). 12.2 gives discretion to employers to decide what previous (non-NHS) employment can count towards annual leave entitlement. Is changed to: Part 3: Terms and conditions Part 3: Section 12: Contractual continuity of service Paragraph 4 Footnote number 1 When calculating entitlements to annual leave should I take account of a single period of previous service or should I aggregate several periods?		
37		Title page	“Amendment number 36” is deleted and replaced by “ Amendment number 37 ” “Pay and Conditions Circular (AforC) number 1/2016 and number 2/2016” is changed to “ Pay and conditions circular (AfC) number 3/2016 . ”		Number 3 of 2016
	Section 12	Contractual continuity of service	A new footnote number 1 is added, linking to paragraph 12.2 and Annex 28: Guidance on frequently asked questions (FAQs) (England and Wales) and Annex 28: Guidance on frequently asked questions (FAQs) (Scotland and Northern Ireland): “ See the question and answer guidance in Annex 28 (England and Wales*1) or Annex 28 (Scotland and Northern Ireland). ” The existing footnote number 1 becomes footnote number 2		
	Annex 28	Guidance on frequently asked questions (FAQs) (England and Wales*1)	A new FAQ is inserted as follows: Part 3: Terms and conditions Section 12: Contractual continuity of service Paragraph 2 Footnote number 2 Is previous health care service abroad, including service in the health services of the member states of the European Union, relevant?		

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			<p>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.</p> <p><i>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.</i></p> <p>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 ‘<i>service with employers outside the NHS</i>’ when deciding whether to exercise the discretion to increase annual leave entitlement.</p> <p>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.</p> <p>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.</p> <p>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: <i>Commission v. Italy</i> [Case C-371/04, ECLI:EU:C:2006:668]; <i>Köbler</i> [Case</p>		

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			<p>C-224/01, ECLI:EU:C:2003:513].</p> <p>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.</p>		
	Annex 28	Guidance on frequently asked questions (FAQs) (Scotland and Northern Ireland)	<p>A new FAQ is inserted as follows:</p> <p>Part 3: Terms and conditions Section 12: Contractual continuity of service Paragraph 2 Footnote number 2</p> <p>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.</p> <p><i>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.</i></p> <p>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.</p> <p>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</p>		

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			<p>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.</p> <p>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.</p> <p>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: <i>Commission v. Italy</i> [Case C-371/04, ECLI:EU:C:2006:668]; <i>Köbler</i> [Case C-224/01, ECLI:EU:C:2003:513].</p> <p>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.</p>		