

## Terms and Conditions of Service – Specialty Doctor (England) April 2008

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|                                                                                                                     | Page           |
|---------------------------------------------------------------------------------------------------------------------|----------------|
| <b>Definitions</b>                                                                                                  | <b>2 – 4</b>   |
| <b>Schedule 1 Entry Criteria to the Grade</b>                                                                       | <b>5</b>       |
| <b>Schedule 2 Commencement of Employment and other Dates</b>                                                        | <b>6</b>       |
| <b>Schedule 3 Associated Duties and Responsibilities</b>                                                            | <b>7</b>       |
| <b>Schedule 4 Job Planning</b>                                                                                      | <b>8 – 11</b>  |
| <b>Schedule 5 Mediation and Appeals</b>                                                                             | <b>12 – 13</b> |
| <b>Schedule 6 Recognition for Unpredictable Emergency Work arising from On-Call Duties</b>                          | <b>14 – 15</b> |
| <b>Schedule 7 Additional Programmed Activities and Spare Professional Capacity</b>                                  | <b>16 – 17</b> |
| <b>Schedule 8 Out of Hours Work</b>                                                                                 | <b>18</b>      |
| <b>Schedule 9 On-Call Rotas</b>                                                                                     | <b>19</b>      |
| <b>Schedule 10 Provisions Governing the Relationship between NHS Work, Private Practice and Fee Paying Services</b> | <b>20 – 22</b> |
| <b>Schedule 11 Fee Paying Services</b>                                                                              | <b>23 – 25</b> |
| <b>Schedule 12 Principle Governing Receipt of Additional Fees</b>                                                   | <b>26 – 27</b> |
| <b>Schedule 13 Other Conditions of Employment</b>                                                                   | <b>28 – 29</b> |
| <b>Schedule 14 Pay and other Allowances</b>                                                                         | <b>30 – 32</b> |
| <b>Schedule 15 Pay Progression through Incremental Points and Thresholds</b>                                        | <b>33 – 36</b> |
| <b>Schedule 16 Pension Arrangements</b>                                                                             | <b>37</b>      |
| <b>Schedule 17 Arrangements for Leave</b>                                                                           | <b>38 – 43</b> |
| <b>Schedule 18 Termination of Employment</b>                                                                        | <b>44 – 45</b> |
| <b>Schedule 19 Incorporated General Council Conditions of Service</b>                                               | <b>46 – 47</b> |
| <b>Schedule 20 Model Provisions for Expenses</b>                                                                    | <b>48 – 59</b> |
| <b>Schedule 21 Maternity Leave and Pay (Temporary Schedule)</b>                                                     | <b>60 – 68</b> |
| <b>Schedule 22 Employment Break Scheme (Temporary Schedule)</b>                                                     | <b>69 – 71</b> |
| <b>Schedule 23 Redundancy Pay (Temporary Schedule)</b>                                                              | <b>72 – 77</b> |
| <b>Schedule 24 Caring for Children and Adults (Temporary Schedule)</b>                                              | <b>78 – 79</b> |

## Terms and conditions of service specialty doctors – England (2008)

|             |                                                       |         |
|-------------|-------------------------------------------------------|---------|
| Schedule 25 | Flexible Working Arrangements (Temporary Schedule)    | 80 – 81 |
| Schedule 26 | Balancing Work and Personal Life (Temporary Schedule) | 82 – 85 |
| Schedule 27 | Transitional Arrangements                             | 86 – 87 |
| Schedule 28 | Acting up Allowance                                   | 88      |
| Appendix 1  |                                                       | 89      |

### Definitions

**Additional NHS Responsibilities:** means special responsibilities within the employing organisation not undertaken by the generality of doctors, which are agreed between the doctor and the employer and which cannot be absorbed in the time set aside for Supporting Professional Activities. These could include, for example, being a clinical manager, clinical audit lead or clinical governance lead.

**Additional Programmed Activities:** Additional Programmed Activities may be offered to doctors by their employer in addition to the doctor's contracted number of Programmed Activities to reflect additional duties or activities or in accordance with the provisions of Schedule 7.

**Basic Salary:** means the salary attributed to each point on the salary scale set out in Appendix 1 with no further additions. The salary scale sets out salaries for full-time (10 Programmed Activities per week) doctors. Part-time doctors will be paid a pro rata rate.

**Contractual and Consequential Services:** means the work that a doctor carries out by virtue of the duties and responsibilities set out in his or her Job Plan and any work reasonably incidental or consequential to those duties. These services may include:

- Direct Clinical Care
- Supporting Professional Activities
- Additional NHS Responsibilities
- External Duties.

**Direct Clinical Care:** means work that directly relates to the prevention, diagnosis or treatment of illness. It includes:

- emergency duties (including work carried out during or arising from on-call)
- operating sessions including pre-operative and post-operative care
- ward rounds
- outpatient activities
- clinical diagnostic work
- other patient treatment
- public health duties
- multi-disciplinary meetings about direct patient care
- patient related administration linked to clinical work i.e. directly related to the above (primarily, but not limited to, notes letters and referrals).

**Doctor:** means a medical or dental practitioner except where stated separately.

## **Terms and conditions of service specialty doctors – England (2008)**

**Emergency Work:** see Predictable Emergency Work and Unpredictable Emergency Work arising from on-call duties.

**External Duties:** means duties that are not included in the definitions of ‘Direct Clinical Care’, ‘Supporting Professional Activities’ and ‘Additional NHS Responsibilities’, and not included within the definition of Fee Paying Services or Private Professional Services, but are undertaken as part of the prospectively agreed job plan by agreement between the doctor and the employing organisation without causing undue loss of clinical time. They might include, for example, trade union duties, reasonable amount of work for the Royal Colleges or Government Departments in the interests of the wider NHS.

**Fee Paying Services:** means any paid professional services, other than those falling within the definition of Private Professional Services, which a doctor carries out for a third party or for the employing organisation and which are not part of, nor reasonably incidental to, Contractual and Consequential Services. A third party for these purposes may be an organisation, corporation or individual, provided that they are acting in a health related professional capacity, or a provider or commissioner of public services. Examples of work that fall within this category can be found in Schedule 11.

**General Council Conditions of Service:** means the National Health Service Staff conditions of service of general application as determined by the General Council of the Whitley Councils for the Health Services (Great Britain) as may be amended from time to time, or any provisions which may be agreed by a successor body to the General Council and may reasonably be considered to have replaced the current conditions of service.

**Job Plan:** means (for the purposes of these Terms and Conditions of Service) a job plan agreed in accordance with the provisions of Schedule 4 and, where relevant, Schedule 5.

**Out-of-Hours:** means any time that falls outside the period of 07:00 to 19:00 Monday to Friday and any time on a Saturday or Sunday, or statutory or public holiday.

**Portfolio:** means the personal development record compiled by a specialty doctor during the course of their career.

**Predictable Emergency Work:** means emergency work that takes place at regular and predictable times, often as a consequence of a period of on-call work (e.g. post-take ward rounds). This should be programmed into the Working Week as scheduled Programmed Activity.

**Private Professional Services (also referred to as “private practice”):** such services include:

- the diagnosis or treatment of patients by private arrangement (including such diagnosis or treatment under section 65(2) of the National Health Service Act 1977), excluding fee paying services as described in Schedule 10 of the Terms and Conditions of Service.
- work in the general medical, dental or ophthalmic services under Part II of the National Health Service Act.

## **Terms and conditions of service specialty doctors – England (2008)**

**Professional and Study Leave:** means professional leave or study leave in relation to professional work including, but not restricted to, participation in:

- study (usually but not exclusively or necessarily on a course or programme)
- research
- teaching
- examining or taking examinations
- visiting clinics
- attending professional conferences
- training.

**Programmed Activity:** means a scheduled period, normally equivalent to four hours, during which a doctor undertakes Contractual and Consequential Services.

**Supporting Professional Activities:** means activities that underpin Direct Clinical Care. These might include, but are not restricted to, participation in:

- audit
- continuing professional development
- local clinical governance activities
- training
- formal teaching
- appraisal
- job planning
- research.

**Unpredictable Emergency Work arising from on-call duties:** means work done whilst on-call and associated directly with the doctor's on-call duties (except in so far as it takes place during a time for scheduled Programmed Activities), e.g. recall to hospital to operate on an emergency basis. For the purposes of Schedule 4, non-emergency work shall be regarded as including the regular, programmed work of doctors whose specialty by its nature involves dealing routinely with emergency cases, e.g. A&E doctors.

**Working Week:** A standard full-time working week will be based on a Job Plan containing ten Programmed Activities.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 1**

#### **Entry Criteria to the Grade**

1. A doctor appointed to this grade:
  - shall have full registration with the General Medical Council; and
  - shall have completed at least four years' full-time postgraduate training (or its equivalent gained on a part-time or flexible basis) at least two of which will be in a specialty training programme in a relevant specialty or as a fixed term specialty trainee in a relevant specialty; or.
  - shall have equivalent experience and competencies.
  
2. A dentist appointed to this grade:
  - shall be registered with the General Dental Council; and
  - shall have completed four years' full-time postgraduate training (or its equivalent gained on a part-time or flexible basis) since first obtaining registration, including adequate experience in the relevant specialty; or
  - shall have equivalent experience and competencies.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 2**

#### **Commencement of Employment and other Dates**

1. The following dates must be stated in clause 2 of the doctor's contract of employment:
  - The date from which employment under this contract began (the start date for this contract and Terms and Conditions of Service).
  - The date of the start of the current period of continuous employment with the employer for the purposes of the Employment Rights Act 1996 including, if applicable, employment with predecessor organisations that had previously held the contract, e.g. former Regional Health Authorities from whom the current contract was transferred to the current employer under TUPE or equivalent arrangements. Previous employment with other NHS employing organisations does not count as continuous service for the purposes of the Employment Rights Act 1996 except as provided for under the National Health Service and Community Care Act 1990 or any other statute.
  - The date of the start of the current period of continuous employment with the NHS.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 3**

#### **Associated Duties and Responsibilities**

1. Whilst on duty a doctor has clinical and professional responsibility for their patients or, for doctors in public health medicine, for a local population. It is also the duty of a doctor to:
  - keep patients (and/or their carers if appropriate) informed about their condition;
  - involve patients (and/or their carers if appropriate) in decision making about their treatment;
  - maintain professional standards and obligations as set out from time to time by the General Medical Council (GMC) and comply in particular with the GMC's guidance on 'Good Medical Practice' as amended or substituted from time to time (Doctors only);
  - maintain professional standards and obligations as set out from time to time by the General Dental Council (GDC) (Dentists only).
2. A doctor is responsible for carrying out any work related to and reasonably incidental to the duties set out in their Job Plan such as:
  - the keeping of records and the provision of reports;
  - the proper delegation of tasks;
  - maintaining skills and knowledge.
3. Doctors will be expected to be flexible and to cooperate with reasonable requests to cover for their colleagues' absences where they are safe and competent and where it is practicable to do so. Where doctors undertake duties in accordance with this paragraph and such duties take place outside of their contracted hours they will receive either an equivalent off duty period or remuneration. Where this adversely impacts on the Job Plan and/or opportunities for individual doctors a temporary Job Plan will be agreed for the period of cover. Where covering is not practicable, the employing organisation (and not the doctor) shall be responsible for the engagement of a locum tenens, but the doctor shall have the responsibility of bringing the need to the employer's notice.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 4**

#### **Job Planning**

##### **General Principles**

1. Job planning will be based on a partnership approach. The employer will be responsible for ensuring that a draft Job Plan is prepared either by the clinical manager or by the doctor.<sup>‡</sup> The draft Job Plan will then be discussed and a final Job Plan agreed with the doctor. Job Plans are prospective for the coming year and will list all the NHS duties of the doctor, the number of Programmed Activities for which the doctor is contracted and paid, the doctor's objectives and agreed supporting resources. The Job Plan will also include a schedule of the doctor's activities.

##### **Job Content**

2. The Job Plan sets out the doctors' duties, responsibilities and objectives for the coming year. The Job Plan will include any duties for other NHS employers. A standard full-time Job Plan will contain ten Programmed Activities. Subject to the provisions in Schedule 8 for recognising work done in Out of Hours a Programmed Activity will have a timetable value of four hours. Programmed Activities will be programmed as blocks of four hours or in half units of two hours each.
3. The duties and responsibilities set out in a Job Plan will include, as appropriate:
  - Direct Clinical Care duties including any on-call work;
  - Supporting Professional Activities (a minimum of 1 PA)<sup>†</sup>;
  - Any additional NHS Responsibilities;
  - Any agreed External Duties;
  - Any Additional Programmed Activities.

##### **Job Schedule**

4. The Job Plan will include a schedule of Programmed Activities setting out how, when and where the doctor's duties and responsibilities will be delivered. It is expected that all the Programmed Activities will normally take place at a doctor's principal place of work but there will be flexibility to agree off site working where appropriate. The clinical manager will draw up the final schedule after full discussion with the doctor, taking into account the doctor's views on resources and priorities and making every effort to reach agreement.
5. The employer will be responsible for ensuring that a doctor has the facilities, training development and support needed to deliver the commitments in the agreed Job Plan and will make all reasonable endeavours to ensure that this support conforms with the standards set out in 'Improving Working Lives'.
6. Where a doctor is required to participate in an on-call rota, the Job Plan will set out the frequency of the rota.

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<sup>‡</sup> For those doctors assimilating to this contract it is expected that they will prepare an initial draft job plan based on their current timetable of activities. For all new posts it is expected that the employer will prepare the initial job plan.

<sup>†</sup> See Schedule 15.



## **Terms and conditions of service specialty doctors – England (2008)**

7. Subject to agreement via the job planning process and in accordance with employer's change management policies, doctors may be expected to take part in non-emergency work after 7pm and before 7am during weekdays or at weekends, or on public or statutory holidays.

### **Managerial Responsibilities**

8. The Job Plan will set out any management responsibilities.

### **Accountability Arrangements**

9. The Job Plan will set out the doctor's accountability arrangements, both professional and managerial.

### **Objectives**

10. The Job Plan will include appropriate and identified personal objectives that have been agreed between the doctor and his or her clinical manager and will set out the relationship between these personal objectives and local service objectives. Where a doctor works for more than one NHS employer, the lead employer will take account of any objectives agreed with other employers.
11. The nature of a doctor's personal objectives will depend in part on his or her specialty, but they may include objectives relating to:
  - quality;
  - activity and efficiency;
  - clinical outcomes;
  - clinical standards;
  - local service objectives;
  - management of resources, including efficient use of NHS resources;
  - service development;
  - multi-disciplinary team working;
  - continuing professional development and continuing medical education.
12. Objectives may refer to protocols, policies, procedures and work patterns to be followed. Where objectives are set in terms of output and outcome measures, these must be reasonable and agreement should be reached.
13. The objectives will set out a mutual understanding of what the doctor will be seeking to achieve over the annual period that they cover and how this will contribute to the objectives of the employing organisation. They will:
  - be based on past experience and on reasonable expectations of what might be achievable over the next period;
  - reflect different, developing phases in the doctor's career;
  - be agreed on the understanding that delivery of objectives may be affected by changes in circumstances or factors outside the doctor's control, which will be considered at the Job Plan review.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Supporting Resources**

14. The doctor and his or her clinical manager will use Job Plan reviews to identify the resources that are likely to be needed to help the doctor carry out his or her Job Plan commitments over the following year and achieve his or her agreed objectives for that year. This may require a reassessment of the balance between Supporting Professional Activities and Direct Clinical Care duties as described in Schedule 15.
15. The doctor and his or her clinical manager will also use Job Plan reviews to identify any potential organisational or systems barriers that may affect the doctor's ability to carry out the Job Plan commitments or to achieve agreed objectives.
16. The Job Plan will set out:
  - agreed supporting resources, which will include necessary facilities such as administrative, clerical or secretarial support, office accommodation, IT resources and other forms of support;
  - any action that the doctor and/or employing organisation agree to take to reduce or remove potential organisational or systems barriers.

### **Job Plan Review**

17. The Job Plan will be reviewed annually. The annual review will examine all aspects of the Job Plan and should be used to consider amongst other possible issues:
  - what factors affected the achievement or otherwise of objectives;
  - adequacy of resources to meet objectives;
  - any possible changes to duties or responsibilities, or the schedule of Programmed Activities;
  - ways of improving management of workload;
  - the planning and management of the doctor's career.
18. The annual review will be informed by the same information systems that serve the appraisal process and by the outcome of the appraisal discussions.
19. The annual Job Plan review may result in a revised prospective Job Plan.
20. In the case of doctors with more than one NHS employer, a lead employer will normally be designated to conduct the Job Plan review on behalf of all the doctor's employers. The lead employer will take full account of the views of other employers (including for the purposes of Schedule 6) and inform them of the outcome.
21. Following the annual Job Plan review, the clinical manager will document the outcome, copied to the doctor, setting out for the purpose of decisions on pay progression whether the criteria in Schedule 15 have been met..
22. The doctor and clinical manager shall conduct an interim review of the Job Plan if either party believes that duties, responsibilities, accountability arrangements or objectives have changed or need to change significantly within the year. In

## **Terms and conditions of service specialty doctors – England (2008)**

particular, in respect of the agreed objectives in the Job Plan, both the doctor and clinical manager will:

- keep progress against those objectives under review; and
- identify to each other any problems in meeting those objectives as they emerge.

Either the doctor or the clinical manager may propose an interim Job Plan review if it appears that the objectives may not be achieved for reasons outside the doctor's control.

### **Resolving Disagreements over Job Plans**

23. The doctor and clinical manager will make every effort to agree any appropriate changes to the Job Plan at the annual or interim review. If it is not possible to reach agreement on the Job Plan, the doctor may refer the Job Plan to mediation and, if necessary, appeal as set out in Schedule 5. Prior to reaching a resolution the provisions of Schedule 5 shall be effective.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 5**

#### **Mediation and Appeals**

1. Where it has not been possible to agree a Job Plan (including Job Plan reviews and interim reviews) or a doctor disputes a decision that he or she has not met the required criteria for a pay increment or threshold in respect of a given year, a mediation procedure and an appeal procedure are available.
2. Where a doctor is employed by more than one NHS organisation, mediation and appeals will be undertaken by the organisation where the issue arises.

#### **Mediation**

3. The doctor may refer the matter to the Medical Director, or to a designated other person (subject to local arrangements). The purpose of the referral will be to reach agreement if at all possible. The process will be that:
  - the doctor makes the referral in writing within 10 working days of the disagreement arising;
  - the doctor will set out the nature of the disagreement and his or her position or view on the matter; This should be provided in writing and normally within 15 working days of the referral being submitted;
  - the clinical manager responsible for the Job Plan review, or (as the case may be) for making the recommendation as to whether the criteria for pay increments or thresholds have been met, will set out the employing organisation's position or view on the matter. This should be provided in writing and normally within 15 working days of the referral being received;
  - the Medical Director or designated other person will convene a meeting, normally within 20 working days of receipt of the referral, with the doctor and the responsible clinical manager to discuss the disagreement and to hear their views;
  - if agreement is not reached at this meeting, then within 10 working days the Medical Director or designated other person will decide the matter and shall notify the doctor and the responsible clinical manager of that decision or recommendation in writing;
  - if the doctor is not satisfied with the outcome, he or she may lodge a formal appeal in accordance with paragraph 5 below.

#### **Formal Appeal**

4. A formal appeal panel will be convened only where it has not been possible to resolve the disagreement using the mediation process. A formal appeal will be heard by a panel under the procedure set out below.
5. An appeal shall be lodged by the doctor in writing to the Chief Executive as soon as possible and in any event within 10 working days of receipt by the doctor of the decision.

## **Terms and conditions of service specialty doctors – England (2008)**

6. The appeal should set out the points in dispute and the reasons for the appeal. The Chief Executive will, on receipt of a written appeal, convene an appeal panel to meet within 20 working days.
7. The membership of the panel will be:
  - a chair, being a Non-executive Director of the appellants employing organisation;
  - a second panel member nominated by the appellant doctor, preferably from within the same grade; and
  - an Executive Director from the appellant's employing organisation.

No member of the panel should have previously been involved in the dispute.

8. The parties to the dispute will submit their written statements of case to the appeal panel and to the other party no less than 5 working days before the appeal hearing. The appeal panel will hear oral submissions on the day of the hearing. Following the provision of the written statements neither party shall introduce new (previously undisclosed) written information to the panel. A representative from the employing organisation will present its case first.
9. The doctor may present his or her own case in person, or be assisted by a work colleague or trade union or professional organisation representative, but legal representatives acting in a professional capacity are not permitted.
10. Where the doctor, the employer or the panel requires it, the appeals panel may hear expert advice on matters specific to a specialty or to the subject of the appeal.
11. It is expected that the appeal hearing will last no more than one day.
12. The decision of the panel will be binding on both the doctor and the employing organisation. The decision shall be recorded in writing and provided to both parties no later than 15 working days from the date of the appeal hearing.
13. The decision of the panel will be implemented in full as soon as is practicable and normally within 20 working days.
14. No disputed element of the Job Plan will be implemented unless and until it is confirmed by the outcome of the appeals process and where appropriate a revised Job Plan is issued.
15. A decision which increases the salary or pay which the appellant doctor will receive will have effect from the date on which the doctor referred the matter to mediation. A decision which reduces salary or pay will have effect from a date after that which the revised job plan was offered (giving a locally agreed period of notice) following the decision of the panel.

## Terms and conditions of service specialty doctors – England (2008)

### Schedule 6

#### Recognition for Unpredictable Emergency Work Arising from On-Call Duties

1. The expected average amount of time that a doctor is likely to spend on unpredictable emergency work each week whilst on-call and directly associated with on-call duties will be treated as counting towards the number of Direct Clinical Care Programmed Activities that the doctor is regarded as undertaking. This will normally be up to a maximum of two Programmed Activities per week.
2. Where the unpredictable emergency work arising from a doctor's on-call duties exceeds the equivalent of two Programmed Activities per week the clinical manager and the doctor will review the position. The employing organisation shall ensure additional arrangements to recognise work in excess of this limit, either by remuneration or time off, are in place. The doctor and the clinical manager should also consider whether some of the work is sufficiently regular and predictable to be programmed into the Working Week on a prospective basis. If no arrangements are made the default position is to trigger a Job Plan review.
3. The employing organisation will assess with the doctor on a prospective basis, the number of Programmed Activities that are to be regarded for these purposes, as representing the average weekly volume of unpredictable emergency work arising from a doctors on-call duties during a period of between one and eight weeks. This will be based on a periodic assessment of the average weekly amount of work over a prior reference period. The doctor will be the key player in the assessment by maintaining records of his/her activities. The clinical manager will agree the reference period with the doctor.
4. Tables 1 and 2 below set out illustrations of the relationship between the average weekly emergency work arising from on-call duties and the number of Programmed Activities that this work is regarded as representing. The general principle is that an average of four hours of such work per week, or – subject to the provisions in Schedule 8, an average of three hours of such work per week during Out of Hours – constitutes for these purposes one Programmed Activity.

Table 1

#### Possible allocation of Programmed Activities where emergency work does not arise during Out of Hours

| <b>Average emergency work per week likely to arise from on-call duties</b> | <b>Possible allocation of Programmed Activities (PAs)</b> |
|----------------------------------------------------------------------------|-----------------------------------------------------------|
| ½ hour                                                                     | 1 PA every 8 weeks, or a half-PA every 4 weeks            |
| 1 hour                                                                     | 1 PA every 4 weeks, or a half-PA every 2 weeks            |
| 1½ hours                                                                   | 3 PAs every 8 weeks                                       |
| 2 hours                                                                    | 1 PA every 2 weeks, or a half-PA every week               |
| 3 hours                                                                    | 3 PAs every 4 weeks                                       |
| 4 hours                                                                    | 1 PA per week                                             |
| 6 hours                                                                    | 1 ½ PAs per week, or 3 PAs every 2 weeks                  |
| 8 hours                                                                    | 2 PAs per week                                            |

## Terms and conditions of service specialty doctors – England (2008)

Table 2

Possible allocation of Programmed Activities where emergency work arises during Out of Hours

| <b>Average emergency work per week likely to arise Out of Hours from on-call duties</b> | <b>Possible allocation of Programmed Activities (PAs)</b> |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------|
| ½ hour                                                                                  | 1 PA every 6 weeks, or a half-PA every 3 weeks            |
| 1 hour                                                                                  | 1 PA every 3 weeks                                        |
| 1½ hours                                                                                | 1 PA every 2 weeks, or a half-PA per week                 |
| 2 hours                                                                                 | 2 PAs every 3 weeks                                       |
| 3 hours                                                                                 | 1 PA per week                                             |
| 4 hours                                                                                 | 3 PAs every two weeks                                     |
| 6 hours                                                                                 | 2 PAs per week                                            |

5. Where on-call work averages less than 30 minutes per week, compensatory time will be deducted from normal Programmed Activities on an ad hoc basis.
6. Where a doctors on-call duties give rise to a different amount of time spent on unpredictable emergency work than assumed in this prospective assessment a job plan review will be triggered in which the clinical manager and the doctor will review the position and, where appropriate, agree adjustments to the Job Plan on a prospective basis from an agreed date. Additional Unpredictable Emergency Work undertaken during the period prior to reaching a revised Job Plan shall be remunerated. Where the review results in a reduction in the number of Programmed Activities, the new arrangements will take immediate effect without any period of protection. A full-time doctor has the right to maintain a full-time salary. Where such a reduction would otherwise result in a Working Week of fewer than ten programmed activities, the doctor has the option of accepting other appropriate duties consistent with the doctor's skills and experience to maintain a full-time salary. Similar protection applies to part-time doctors.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 7**

#### **Additional Programmed Activities and Spare Professional Capacity**

1. Where a doctor intends to undertake remunerated clinical work that falls under the definition of Private Professional Services other than such work specified in his or her Job Plan, whether for the NHS, for the independent sector, or for another party, the provisions in this Schedule will apply.
2. Where a doctor intends to undertake such work:
  - the doctor will first consult with his or her clinical manager;
  - the employing organisation may, but is not obliged to, offer the doctor the opportunity to carry out under these Terms and Conditions of Service (including the remuneration arrangements contained in these Terms and Conditions of Service) up to one Additional Programmed Activity per week on top of the standard commitment set out in his or her contract of employment;
  - Additional Programmed Activities may be offered on a fixed basis, but where possible the employing organisation will offer them on a mutually agreed annualised basis. Where doctors prospectively agree to Additional Programmed Activities these will be remunerated;
  - where possible, the employing organisation will put any such offer to the doctor at the annual Job Plan review but, unless the employing organisation and doctor agree otherwise, no fewer than three months in advance of the start of the proposed Additional Programmed Activities, or six months in advance where the work would mean the doctor has to re-schedule external commitments;
  - there will be a minimum notice period of three months for termination of these additional activities. If a doctor ceases to undertake Private Professional Services, he/she may relinquish the Additional Programmed Activity subject to a similar notice period;
  - the employing organisation will give all clinically appropriate doctors an equal opportunity to express an interest in undertaking these additional activities. Any offer or acceptance should be made in writing;
  - full-time doctors who are contracted to work 11 or more Programmed Activities and agree with their clinical manager that the same level of activity should form part of their Job Plan under the new contract will not be expected to offer any additional work on top of this;
  - subject to the provisions of paragraph 5 part-time doctors who wish to use some of their non-NHS time to do private practice will not be expected to offer any more than one Additional Programmed Activity on top of their normal Working Week.
3. If a doctor declines the opportunity to take up Additional Programmed Activities that are offered in line with the provisions above, and the doctor subsequently undertakes remunerated clinical work as defined above, this will constitute one of the grounds for deferring a pay increment or threshold by one year. If another doctor in the group accepts the work, there will be no impact on pay progression for any doctor in the group.



## **Terms and conditions of service specialty doctors – England (2008)**

4. Where a doctor works for more than one NHS employer, the employers concerned may each offer Additional Programmed Activities, but the doctor will not be expected to undertake on average any more than one Additional Programmed Activity per week to meet the relevant criterion for pay increments or thresholds. The job planning process should be used to agree for which employing organisation any Additional Programmed Activities should be undertaken.
5. Should there be any significant increase in the time a part-time doctor working between seven and nine Programmed Activities devotes to Private Professional Services, the doctor will notify the employing organisation and the doctor and employing organisation may review the number of Programmed Activities in the doctor's Job Plan.
6. The provisions in this Schedule are without prejudice to the possibility that the doctor and employing organisation may wish to agree Additional Programmed Activities up to the maximum level consistent with the Working Time Regulations.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 8**

#### **Out of Hours Work**

1. The following provisions will apply to recognise the unsocial nature of work undertaken Out of Hours and the flexibility required of doctors who work at these times as part of a more varied overall working pattern.

#### **Predictable Out of Hours Work**

2. For each Programmed Activity (including Additional Programmed Activities) undertaken during Out of Hours there will, by mutual agreement, be:-
  - a) a reduction in the timetabled value of the Programmed Activity itself to three hours; or
  - b) a reduction in the timetabled value of another Programmed Activity by one hour.
3. If a Programmed Activity undertaken Out of Hours lasts for four hours or more an enhanced rate of pay of time and a third may be agreed.
4. Where a Programmed Activity falls only partly Out of Hours, the reduction in the timetabled value of this or another Programmed Activity will be on a pro rata basis, if an enhancement to payment is made this will be applied to the proportion of the Programmed Activity falling Out of Hours.

#### **Unpredictable Emergency Work Arising from On-Call Duties**

5. In assessing the number of Programmed Activities needed to recognise Unpredictable emergency work arising from on-call duties which shall be calculated and paid in accordance with the provisions in schedule 6, the employing organisation will treat unpredictable emergency work done in Out of Hours as three hours being equivalent to one Programmed Activity or four hours being remunerated at the rate of time and a third. The provisions of paragraph 3 may also apply.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 9**

#### **On-Call Rotas**

##### **Duty to be Contactable**

1. Doctors must ensure that they are contactable at any time during the period when they are on-call.

##### **High Frequency Rotas**

2. Where a doctor is on a rota of 1 in 4 or more frequent, the employing organisation will review at least annually the reasons for this rota and for its high frequency and take any practicable steps to reduce the need for high frequency rotas of this kind. The views of doctors will be taken into account.

##### **Private Professional Services and Fee Paying Services**

3. Subject to the following provision, the doctor will not undertake Private Professional Services or Fee Paying Services when on on-call duty. The exception to this rule is where the doctor has to provide emergency treatment or essential continuing treatment for a private patient. If the doctor finds that such work regularly impacts on his or her NHS commitments, he or she will make alternative arrangements to provide emergency cover for private patients.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 10**

#### **Provisions Governing the Relationship between NHS Work, Private Practice and Fee Paying Services**

1. This Schedule should be read in conjunction with the 'Code of Conduct for Private Practice', which sets out standards of best practice governing the relationship between NHS work, private practice and fee paying services.
2. The doctor is responsible for ensuring that the provision of Private Professional Services or Fee Paying Services for other organisations does not:
  - result in detriment of NHS patients or services;
  - diminish the public resources that are available for the NHS.

#### **Disclosure of Information about Private Commitments**

3. The doctor will inform his or her clinical manager of any regular commitments in respect of Private Professional Services or Fee Paying Services. This information will include the planned location, timing and broad type of work involved.
4. The doctor will disclose this information at least annually as part of the Job Plan Review. The doctor will provide information in advance about any significant changes to this information.

#### **Scheduling of Work and Job Planning**

5. Where there would otherwise be a conflict or potential conflict of interest, NHS commitments must take precedence over private work. Subject to paragraphs 10 and 11 below, the doctor is responsible for ensuring that private commitments do not conflict with Programmed Activities.
6. Regular private commitments must be noted in the Job Plan.
7. Circumstances may also arise in which a doctor needs to provide emergency treatment for private patients during time when he or she is scheduled to be undertaking Programmed Activities. The doctor will make alternative arrangements to provide cover if emergency work of this kind regularly impacts on the delivery of Programmed Activities.
8. The doctor should ensure that there are arrangements in place, such that there can be no significant risk of private commitments disrupting NHS commitments, e.g. by causing NHS activities to begin late or to be cancelled. In particular where a doctor is providing private services that are likely to result in the occurrence of emergency work, he or she should ensure that there is sufficient time before the scheduled start of Programmed Activities for such emergency work to be carried out.
9. Where the employing organisation has proposed a change to the scheduling of a doctor's NHS work, it will allow the doctor a reasonable period in line with Schedule 7, to rearrange any private commitments. The employing organisation will take into account any binding commitments that the doctor may have entered into (e.g. leases). Should a doctor wish to reschedule private commitments to a time that would conflict with Programmed Activities,

## **Terms and conditions of service specialty doctors – England (2008)**

he or she should raise the matter with the clinical manager at the earliest opportunity.

### **Scheduling Private Commitments Whilst On-Call**

10. The doctor will comply with the provisions in Schedule 9 of these Terms and Conditions of Service.
11. In addition, where a doctor is asked to provide emergency cover for a colleague at short notice and the doctor has previously arranged private commitments at the same time, the doctor should only agree to do so if those commitments would not prevent him or her returning to the relevant NHS site at short notice to attend an emergency. If the doctor is unable to provide cover at short notice it will be the employing organisation's responsibility to make alternative arrangements.

### **Use of NHS Facilities and Staff**

12. Except with the employing organisation's prior agreement, a doctor may not use NHS facilities or NHS staff for the provision of Private Professional Services or Fee Paying Services for other organisations.
13. The employing organisation has discretion to allow the use of its facilities and will make it clear which facilities, if any, a doctor is permitted to use for private purposes and to what extent.
14. Should a doctor, with the employing organisation's permission, undertake Private Professional Services or Fee Paying Services in any of the employing organisation's facilities, the doctor should observe the relevant provisions in the 'Code of Conduct for Private Practice'.
15. Where a patient pays privately for a procedure that takes place in the employing organisation's facilities, that procedure should take place at a time that does not impact on normal services for NHS patients. Except in emergencies, such procedures should occur only where the patient has given a signed undertaking to pay any charges (or an undertaking has been given on the patient's behalf) in accordance with the employing organisation's procedures.
16. Private patients should normally be seen separately from scheduled NHS patients. Only in unforeseen and clinically justified circumstances should a doctor cancel or delay a NHS patient's treatment to make way for his or her private patient.
17. Where the employing organisation agrees that NHS staff may assist a doctor in providing Private Professional Services, or provide private services on the doctor's behalf, it is the doctor's responsibility to ensure that these staff are aware that the patient has private status.
18. The doctor has an obligation to ensure, in accordance with the employing organisation's procedures, that any patient whom the doctor admits to the employing organisation's facilities is identified as private and that the responsible manager is aware of that patient's status.

### **Terms and conditions of service specialty doctors – England (2008)**

19. The doctor will comply with the employing organisation's policies and procedures for private practice.

#### **Patient Enquiries about Private Treatment**

20. Where, in the course of his or her duties, a doctor is approached by a patient and asked about the provision of Private Professional Services, the doctor may provide only such standard advice as has been agreed with the employing organisation for such circumstances.
21. The doctor will not during the course of his or her Programmed Activities make arrangements to provide Private Professional Services, nor ask any other member of staff to make such arrangements on his or her behalf, unless the patient is to be treated as a private patient of the employing organisation.
22. In the course of his/her Programmed Activities, a doctor should not initiate discussions about providing Private Professional Services for NHS patients, nor should the doctor ask other staff to initiate such discussions on his or her behalf.
23. Where a NHS patient seeks information about the availability, or waiting times, for NHS services and/or Private Professional Services, the doctor is responsible for ensuring that any information he or she provides, or arranges for other staff to provide on his or her behalf is accurate and up-to-date.

#### **Promoting Improved Patient Access to NHS Care**

24. Subject to clinical considerations, the doctor is expected to contribute as fully as possible to reducing waiting times and improving access and choice for NHS patients. This should include ensuring that patients are given the opportunity to be treated by other NHS colleagues or by other providers where this will reduce their waiting time and facilitating the transfer of such patients.

#### **Increasing NHS Capacity**

25. The doctor will make all reasonable efforts to support initiatives to increase NHS capacity, including appointment of additional medical staff and changes to ways of working.

## Terms and conditions of service specialty doctors – England (2008)

### Schedule 11

#### Fee Paying Services

1. Fee Paying Services are services that are not part of Contractual or Consequential Services and not reasonably incidental to them. Fee Paying Services include:
  - a. work on a person referred by a Medical Adviser of the Department for Work and Pensions, or by an Adjudicating Medical Authority or a Medical Appeal Tribunal, in connection with any benefits administered by an Agency of the Department for Work and Pensions;
  - b. work for the Criminal Injuries Compensation Authority, when a special examination is required or an appreciable amount of work is involved in making extracts from case notes;
  - c. work required by a patient or interested third party to serve the interests of the person, his or her employer or other third party, in such non-clinical contexts as insurance, pension arrangements, foreign travel, emigration, or sport and recreation. (This includes the issue of certificates confirming that inoculations necessary for foreign travel have been carried out, but excludes the inoculations themselves. It also excludes examinations in respect of the diagnosis and treatment of injuries or accidents);
  - d. work required for life insurance purposes;
  - e. work on prospective emigrants including X-ray examinations and blood tests;
  - f. work on persons in connection with legal actions other than reports which are incidental to the doctor's Contractual and Consequential Duties, or where the doctor is giving evidence on the doctor's own behalf or on the employing organisation's behalf in connection with a case in which the doctor is professionally concerned;
  - g. work for coroners, as well as attendance at coroners' courts as medical witnesses;
  - h. work requested by the courts on the medical condition of an offender or defendant and attendance at court hearings as medical witnesses, otherwise than in the circumstances referred to above;
  - i. work on a person referred by a medical examiner of HM Armed Forces Recruiting Organisation;
  - j. work in connection with the routine screening of workers to protect them or the public from specific health risks, whether such screening is a statutory obligation laid on the employing organisation by specific regulation or a voluntary undertaking by the employing organisation in pursuance of its general liability to protect the health of its workforce;
  - k. occupational health services provided under contract to other NHS, independent or public sector employers;
  - l. work on a person referred by a medical referee appointed under the Workmen's Compensation Act 1925 or under a scheme certified under section 31 of that Act;
  - m. work on prospective students of universities or other institutions of further education, provided that they are not covered by Contractual and

## Terms and conditions of service specialty doctors – England (2008)

- Consequential Services. Such examinations may include chest radiographs;
- n. examinations and recommendations under Part II of the Mental Health Act 1983 (except where the patient is an in-patient), where it follows examination at an out-patient clinic or where given as a result of a domiciliary consultation:
    - ▶ if given by a doctor who is not on the staff of the hospital where the patient is examined; or
    - ▶ if the recommendation is given as a result of a special examination carried out at the request of a local authority officer at a place other than a hospital or clinic administered by a NHS organisation;
  - o. services performed by members of hospital medical staffs for government departments as members of medical boards;
  - p. work undertaken on behalf of the Employment Medical Advisory Service in connection with research/survey work, i.e. the medical examination of employees intended primarily to increase the understanding of the cause, other than to protect the health of people immediately at risk (except where such work falls within Contractual and Consequential Services);
  - q. completion of Form B (Certificate of Medical Attendant) and Form C (Confirmatory Medical Certificate) of the cremation certificates;
  - r. examinations and reports including visits to prison required by the Prison Service which do not fall within the doctor's Contractual and Consequential Services and which are not covered by separate contractual arrangements with the Prison Service;
  - s. examination of blind or partially-sighted persons for the completion of form CVI, except where the information is required for social security purposes, or an Agency of the Department for Work and Pensions, or the Employment Service, or the patient's employer, unless a special examination is required, or the information is not readily available from knowledge of the case, or an appreciable amount of work is required to extract medically correct information from case notes
2. Fee Paying Services may also include work undertaken by public health doctors, including services to a local or public authority of a kind not provided by the NHS, such as:
- a. work as a medical referee (or deputy) to a cremation authority and signing confirmatory cremation certificates;
  - b. medical examination in relation to staff health schemes of local authorities and fire and police authorities;
  - c. lectures to other than NHS staff;
  - d. medical advice in a specialised field of communicable disease control;
  - e. work for water authorities, including medical examinations in relation to staff health schemes;
  - f. attendance as a witness in court;
  - g. medical examinations and reports for commercial purposes, e.g. certificates of hygiene on goods to be exported or reports for insurance companies;
  - h. advice to organisations on matters on which the doctor is acknowledged to be an expert;



## **Terms and conditions of service specialty doctors – England (2008)**

- i. examinations and recommendations under Part II of the Mental Health Act 1983.

## Terms and conditions of service specialty doctors – England (2008)

### Schedule 12

#### Principles Governing Receipt of Additional Fees

1. In the case of the following services, the doctor will not be paid an additional fee, or - if paid a fee - the doctor must remit the fee to the employing organisation:
  - any work in relation to the doctor's Contractual and Consequential Services;
  - duties which are included in the doctor's Job Plan, including any Additional Programmed Activities which have been agreed with the employing organisation;
  - Fee Paying Services for other organisations carried out during the doctor's Programmed Activities, unless the work involves minimal disruption and the employing organisation agrees that the work can be done in NHS time without the employer collecting the fee;
  - domiciliary consultations carried out during the doctor's Programmed Activities;
  - lectures and teaching during the course of the doctor's clinical duties;
  - lectures and teaching that are not part of the doctor's clinical duties, but are undertaken during the doctor's Programmed Activities.

This list is not exhaustive and as a general principle (save as set out in paragraph 2 below), work undertaken during Programmed Activities will not attract additional fees.

2. Services for which the doctor can retain any fee that is paid:
  - Fee Paying Services carried out in the doctor's own time, or during annual or unpaid leave;
  - Fee Paying Services carried out during the doctor's Programmed Activities that involve minimal disruption to NHS work and which the employing organisation agrees can be done in NHS time without the employer collecting the fee;
  - domiciliary consultations undertaken in the doctor's own time, though it is expected that such consultations will normally be scheduled as part of Programmed Activities;<sup>+</sup>
  - Private Professional Services undertaken in the employing organisation's facilities and with the employing organisation's agreement during the doctor's own time or during annual or unpaid leave;
  - Private Professional Services undertaken in other facilities during the doctor's own time, or during annual or unpaid leave;
  - lectures and teaching that are not part of the doctor's clinical duties and are undertaken in the doctor's own time or during annual or unpaid leave.

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<sup>+</sup> And only for a visit to the patient's home at the request of a general practitioner and normally in his or her company to advise on the diagnosis or treatment of a patient who on medical grounds cannot attend hospital.

## **Terms and conditions of service specialty doctors – England (2008)**

This list is not exhaustive but as a general principle the doctor is entitled to the fees for work done in his or her own time, or during annual or unpaid leave.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 13**

#### **Other Conditions of Employment**

##### **Outside Employment and Financial Interests**

1. A doctor must declare:
  - any financial interest or relationship with an external organisation he or she may have which may conflict with the policies, business activity and decisions of the employing organisation; and/or
  - any financial or pecuniary advantage he or she may gain whether directly or indirectly as a result of a privileged position within the employing organisation.

##### **Private Residence**

2. A doctor is required to reside within a distance of 30 minutes or ten miles by road from their principal place of work unless an employing organisation agrees that they may reside at a greater distance.
3. A doctor must be contactable by telephone.

##### **Health Assessment**

4. Doctors are required to notify their clinical manager as soon as possible of any illness, disease or condition, which prevents them from undertaking their duties.
5. The employer may at any time require a doctor who is unable to perform his or her duties as a consequence of illness to submit to an examination by the organisation's occupational health services in accordance with local procedures.

##### **Research**

6. All research must be managed in accordance with the requirements of the Department of Health Research Governance Framework. Doctors must comply with all reporting requirements, systems and duties of action put in place by the employing organisation to deliver research governance. Doctors must also comply with the GMC guidance 'Good Practice in Research' as from time to time amended.

##### **Publications**

7. A doctor shall be free, without prior consent of the employing organisation but in the doctor's own time, to publish books articles, etc and to deliver any lecture or speak, whether on matters arising out of his or her NHS employment or not.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Confidentiality**

8. A doctor has an obligation not to disclose any information of a confidential nature concerning patients, employees, contractors or the confidential business of the employing organisation.

### **Public Interest Disclosure**

9. Should a doctor have cause for genuine concern about an issue (including one that would normally be subject to the above paragraph) and believes that disclosure would be in the public interest, he or she has a right to speak out and be afforded statutory protection and should follow local procedures<sup>‡</sup> for disclosure of information in the public interest.

### **Travelling Time**

10. Where doctors are expected to spend time on more than one site during the course of a day, travelling time to and from their main base to other sites will be included as working time.
11. Travel to and from work for NHS emergencies, and 'excess travel' will count as working time. 'Excess travel' is defined as time spent travelling between home and a working site other than the doctor's main place of work, after deducting the time normally spent travelling between home and main place of work. Employers and doctors may need to agree arrangements for dealing with more complex working days. Travelling time between a doctor's main place of work and home or private practice premises will not be regarded as part of working time.

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<sup>‡</sup> As required under the Public Interest Disclosure Act 1998 (PIDA).

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 14**

#### **Pay and other Allowances**

1. Doctors shall be paid at the rates set out in Appendix 1.
2. The value of increments for part-time doctors will be pro rata to the levels in Appendix 1, based on the number of agreed weekly Programmed Activities in the doctor's Job Plan as a proportion of the 10 required Programmed Activities for full-time doctors.
3. Payment shall be made to a locum doctor at the rate set out in Appendix 1.

#### **Starting Salaries, Incremental Dates and Counting of Previous Service**

4. Except as provided for elsewhere in these Terms and Conditions of Service, doctors shall on their first appointment in this grade be paid at the minimum point of the scale. Their incremental date shall be the date of taking up their appointment.
5. Where doctors are appointed to a post in the specialty doctor grade having already given substantive service in one or more posts in that grade, the staff grade or equivalent, or a higher grade (measured in terms of the current maximum rate of full-time basic salary), all such service shall be counted in determining their starting salary and incremental date.
6. Employers may set basic salary at a higher incremental point to recognise non-NHS experience in the specialty at an equivalent level.
7. Where doctors have held a regular appointment in the specialty doctor grade, the staff grade or equivalent, or higher grade, all subsequent NHS employed locum service in the specialty doctor grade (or higher grade) shall count towards incremental credit as though it had been service in a substantive post.
8. All locum service in other cases of three or more continuous months' duration in the specialty doctor grade, the staff grade or equivalent, or a higher grade shall count towards incremental credit at the rate of one half on substantive appointment to that grade. Continuous locum service shall be taken to mean service as a locum in the employment of one or more NHS organisations uninterrupted by the tenure of a substantive appointment or by more than two weeks during which the doctor was not employed by the NHS.
9. Where a doctor has been paid in their previous regular appointment in a lower grade (measured in terms of the current maximum rate of full-time basic salary) under a National Contract and Terms and Conditions of Service<sup>#</sup> at a rate of salary higher than or equal to the rate at which they would (were it not for this provision) be paid on taking up their new appointment, then their starting salary in the new appointment shall be fixed at the point in the scale next above that previous rate, or at the maximum if that previous rate were higher.

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<sup>#</sup> NHS Hospital Medical and Dental Staff and Doctors in Public Health Medicine and the Community Health Service (England and Wales) Terms and Conditions of Service

## **Terms and conditions of service specialty doctors – England (2008)**

### **Counting of Service Whilst on Leave**

10. Absence on leave with pay for annual leave, public and statutory holidays, sick leave, study leave, special leave and paid or unpaid maternity, paternity, parental or adoption leave shall count for incremental purposes.
11. Where a NHS organisation grants leave without pay to a doctor to accept a short term appointment of not more than three years in an overseas university or other position of similar standing this will also count for incremental purposes.

### **Pay on Assimilation**

12. Where Staff Grades, Hospital Practitioners, Clinical Assistants, Clinical Medical Officers and Senior Clinical Medical Officers are assimilated to a Specialty Doctor post, without a break in service, they will enter the Specialty Doctor grade on the next highest pay point, based on their previous NHS basic salary.

### **Protection on Assimilation**

13. Subject to the work contracted for in the new contract being of the same time and nature as work carried out under the national contract and Terms and Conditions of Service<sup>§</sup>, then any remuneration paid to an individual doctor under that contract/Terms and Conditions of Service<sup>§</sup> will be protected, subject to hours and intensity remaining the same. Protection is to be applied at mark time of the value of payments at 31 March 2008 plus the value of any annual pay increase recommended by the Doctors' and Dentists' Review Body and accepted by the Secretary of State for Health on behalf of the Health Departments in Great Britain for 2008/09 only.
14. The period of protection will end when the total level of payments under the new arrangements exceeds the level of protected pay.

### **Pay Progression**

15. Doctors will become eligible for additional increments at the intervals set out in Appendix 1 on their incremental date. See Schedule 15.

### **Secondment Opportunities**

16. Individuals who have been seconded to a training placement will return to their existing post at the end of the placement. Whilst on placement they will retain their Basic Salary and be paid for the hours worked during the secondment in accordance with their existing Terms and Conditions of Service including any annual increments.

### **Additional Programmed Activities**

17. The annual rate for an Additional Programmed Activity will be 10% of Basic Salary. Where part-time doctors have contracted to undertake Additional Programmed Activities these will be paid at 10% of full-time Basic Salary.

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<sup>§</sup> NHS Hospital Medical and Dental Staff and Doctors in Public Health Medicine and the Community Health Service (England and Wales) Terms and Conditions of Service.

## Terms and conditions of service specialty doctors – England (2008)

### Out of Hours Work

18. See Schedule 8.

### On-Call Duties

19. Doctors who are required to be on an on-call rota will be paid an on-call availability supplement. This shall be calculated as a percentage of full-time Basic Salary (excluding any Additional Programmed Activities, London Weighting allowance and any other fees, allowances or supplements). The supplement payable will depend on the frequency of on-call duties. The percentage rates are set out in Table 1 below.

**Table 1**

#### On-Call Availability Supplement

| Frequency                                    | Percentage of Basic Salary |
|----------------------------------------------|----------------------------|
| more frequent than or equal to 1 in 4        | 6%                         |
| less frequent than 1 in 4 or equal to 1 in 8 | 4%                         |
| less frequent than 1 in 8                    | 2%                         |

20. If a doctor participates in an on-call rota then the frequency of this will be set out in his or her Job Plan.

### London Weighting Allowance

21. Doctors whose place of work (i.e. where his or her principal duties lie) is within the boundaries of the former health authorities designated by paragraph 5, or in one of the units designated by paragraph 10, of Section 56 of the General Council Conditions of Service shall be paid London Weighting at the rate specified from time to time in circulars advising national rates of pay.
22. Doctors whose place of work (i.e. where his or her principal duties lie) is within the boundaries of the former health authorities designated by paragraph 12 of Section 56 of the General Council Conditions of Service shall be paid London Weighting at the rate for the 'Fringe Zone' specified from time to time in circulars advising national rates of pay, unless he or she is employed at a unit described in paragraph 21 above.
23. A reduced rate of London Weighting is payable to resident staff who receive free accommodation.
24. Part-time doctors shall receive the appropriate proportion of London Weighting.



## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 15**

#### **Pay Progression through Incremental Points and Thresholds**

1. The grade is made up of 11 pay points. There will be annual progression up to point 4 of the salary scale. In order to progress from point 4 to point 5 doctors will be required to pass through Threshold 1. Progression between point 5 and point 7 will be at 2 yearly intervals. To progress from point 7 to point 8 of the salary scale, doctors will need to pass through Threshold 2. Progression between point 8 and point 10 will be at 3 yearly intervals.
2. Therefore there are three forms of pay progression within the grade:
  - incremental pay progression,
    - for which the doctor will have satisfied the criteria set out in paragraph 4 below;
  - progression through threshold one,
    - for which the doctor will have satisfied the criteria set out in paragraph 6 below; and,
  - progression through threshold two,
    - for which the doctor will have satisfied the criteria set out in paragraph 7 below.
3. The principles for progression/movement through the grade are that:
  - The process should be fair and clear, as straightforward as possible to implement and neither the process nor the gathering and demonstrating of evidence should be onerous;
  - The evidence required must be as objective as possible; and,
  - There should be 'no surprises' at any review. Good employment practice is to provide employees with feedback on a continuing basis.

#### **Incremental Pay Progression**

4. Incremental pay progression will depend upon a doctor having:
  - participated in job planning:
    - made every reasonable effort to meet the time and service commitments in their Job Plan and participated in the annual Job Plan review;
    - met the personal objectives in the Job Plan, or where this is not achieved for reasons beyond the doctors control, made every reasonable effort to do so; and
    - worked towards any changes identified in the last Job Plan review as being necessary to support achievement of joint objectives;
  - participated satisfactorily in the appraisal process in accordance with the GMC's requirements set out in 'Good Medical Practice'; and
  - for those doctors undertaking private practice, taken up any offer to undertake additional Programmed Activities in accordance with Schedule 7 of the Terms and Conditions of Service and met the standards governing the relationship between private practice and NHS commitments set out in Schedule 10 of the Terms and Conditions of Service.

## Terms and conditions of service specialty doctors – England (2008)

### Pay Progression through the Increments

5. The clinical director/medical director will have the responsibility of ensuring processes are in place to sign off the incremental progression assessment. Where one or more of the criteria are not achieved in any year, the clinical director/medical director, or designated person, will have the discretion to decide where appropriate, for instance, because of personal illness, that the doctor should nonetheless be regarded as having met the criteria for that year.

### Progression through Threshold One

6. All doctors will pass through this threshold unless they have demonstrably failed to comply with any of the following criteria:
  - participated in job planning:
    - made every reasonable effort to meet the time and service commitments in their Job Plan and participated in the annual Job Plan review;
    - met the personal objectives in the Job Plan, or where this is not achieved for reasons beyond the doctors control, made every reasonable effort to do so; and
    - worked towards any changes identified in the last Job Plan review as being necessary to support achievement of joint objectives.
  - participated satisfactorily in the appraisal process in accordance with the GMC's requirements set out in 'Good Medical Practice';
  - undertaken 360 degree appraisal/feedback (in the year preceding threshold one); and
  - for those doctors undertaking private practice, taken up any offer to undertake Additional Programmed Activities in accordance with Schedule 7 of the Terms and Conditions of Service and met the standards governing the relationship between private practice and NHS commitments set out in Schedule 10 of the Terms and Conditions of Service.

### Progression through Threshold Two

7. The criteria for passing through threshold two recognises the higher level of skills, experience and responsibility of those doctors working at that level. Doctors will pass through threshold two if they have met the criteria at a), b) and c) as set out below:
  - a) The threshold one criteria set out in paragraph 6 above;
  - b) Doctors should be able to demonstrate an increasing ability to take decisions and carry responsibility without direct supervision; and
  - c) Doctors should also provide evidence to demonstrate their contributions to a wider role, for example, meaningful participation in or contribution to relevant:
    - Management or leadership
    - Service development and modernisation
    - Teaching and training (of others)
    - Committee work
    - Representative work
    - Innovation

## **Terms and conditions of service specialty doctors – England (2008)**

- Audit
8. This list referred to in paragraph 7 c) is not exhaustive but is intended to give an indication of the types of evidence of contributing to a wider role that a doctor could provide.
  9. In making a judgement about whether a doctor has met the requirements for threshold two, there will not be an expectation that the doctor will be able to provide evidence in all wider areas of contribution listed in addition to those required for threshold one. An overall picture will be considered.

### **Threshold One and Two – Process**

10. When a doctor has successfully demonstrated that they have complied with the criteria to pass through a threshold, this should be signed off by a clinical manager. The clinical director/medical director will have the responsibility of ensuring processes are in place to sign off the threshold assessment. It is expected that payments will be made automatically unless payroll are informed otherwise.

### **Progression between Threshold One and Threshold Two**

11. The aim should be that doctors who have passed through threshold one will acquire the skills and experience to allow them to meet the criteria for passing through threshold two, with appropriate support and development through Job Plan review, appraisal, and Supporting Professional Activities.
12. Doctors will continue to undertake annual appraisal and Job Plan review between threshold one and threshold two, and continue to develop a portfolio of evidence in order to meet the criteria for threshold two. The normal requirements for incremental progression set out in paragraph 4 will need to be satisfied annually between threshold one and threshold two.
13. As a doctor becomes more experienced and takes on a broader role the employer will need to keep all elements of the Job Plan under review. Employers should ensure that doctors have the support needed to enable them to meet the requirements of the second threshold and can progress in their career. Threshold two requires evidence of demonstrating a contribution to a wider role which may require reassessment of the balance between Supporting Professional Activities and Direct Clinical Care duties and allocations.

### **Progression through Increments and Thresholds**

14. Doctors should not be penalised if any element of the relevant incremental or threshold criteria have not been met for reasons beyond their control. Therefore, if the doctor has been prevented by any action or inaction on the part of the employer from satisfying any element of the incremental or threshold criteria they will not be prevented from moving through the relevant increment or threshold. Employers and doctors will be expected to identify problems affecting the likelihood of meeting objectives as they emerge, rather than wait until the Job Plan review. For doctors moving to a new employer before an annual increment or progression through a threshold is due the provisions of paragraph 15 will apply.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Moving to a New Employer**

15. If a doctor moves to a new employer shortly before an annual increment or progression through a threshold is due, the new employer will be expected to carry out the review required, within three months of the date that the doctor begins work for the new employer (“the date of employment”). If the annual increment or progression through a threshold is granted, pay shall be backdated to the date of employment. If such a review is not undertaken by the new employer within 3 months following the date of employment the provisions of paragraph 14 shall apply.

### **Mediation and Appeals**

16. Where a doctor disputes a decision that he or she has not met the required criteria to progress either incrementally or through a threshold, the mediation procedure and the appeal procedure should be followed. The mediation and appeal procedure is at Schedule 5 of the Terms and Conditions of Service.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 16**

#### **Pension Arrangements**

1. The doctor will be eligible for membership of a NHS Pension Scheme, the provisions of which are set out in the NHS Pension Scheme Regulations 1995 (as amended).
2. The following will be pensionable in the NHS Pension Scheme:
  - the doctor's basic salary (up to ten Programmed Activities), including pay thresholds;
  - any on-call availability supplement;
  - any London Weighting Allowance; and
  - fees for domiciliary visits not undertaken during Programmed Activities
3. The following will not be pensionable in the NHS Pension Scheme:
  - travelling, subsistence, and other expenses paid as a consequence of the doctor's work for the employing organisation or the wider NHS;
  - any payments for Additional Programmed Activities that exceed 10 PAs per week;
  - any payments for work the doctor undertakes for Local Authorities, subject to local agreements to the contrary.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 17**

#### **Arrangements for Leave**

##### **A. Annual Leave and Public Holidays**

#### **Annual Leave**

1. Doctors who have completed a minimum of two years' service in the specialty doctor grade and/or in equivalent grades or who had an entitlement to six weeks' annual leave a year or more in their immediately previous appointments shall be entitled to annual leave at the rate of six weeks a year.
2. Doctors other than those mentioned in paragraph 1 shall be entitled to leave at the rate of five weeks a year.
3. The leave year runs from the anniversary date of the doctor's appointment, or may be adjusted to a common start date in force in that employment. No detriment to the doctor will arise from any leave year adjustment.
4. Annual leave should be discussed at the annual Job Plan review otherwise doctors shall provide a minimum of six weeks notice of annual leave. Subject however to suitable arrangements having been made, doctors may take up to two days of their annual leave without seeking formal permission provided that they give notification beforehand.

#### **Carry Over of Annual Leave**

5. Annual leave may be carried over subject to Section 1, paragraphs 10 to 14 of the General Council Conditions of Service.
6. The employing organisation will not ordinarily make payment in lieu of any untaken annual leave.

#### **Public Holidays**

7. The annual leave entitlement of doctors in regular appointment is additional to eight public holidays and two statutory holidays or days in lieu thereof. The two statutory days may, by local agreement, be converted to a period of annual leave.
8. In addition to the provisions of paragraph 7, a doctor who in the course of his or her duty was required to be present in hospital or other place of work between the hours of midnight and 9.00am on a statutory or public holiday should receive a day off in lieu.

#### **Sickness during Annual Leave**

9. If a doctor falls sick during annual leave and produces a statement to that effect, he or she will be regarded as being on sick leave from the date of the statement. A self certificate may cover days 1 to 7 of the period of sickness. The doctor must obtain a medical certificate for subsequent days. Further annual leave will be suspended from the date of the first statement.

## **Terms and conditions of service specialty doctors – England (2008)**

### **B. Professional and Study Leave**

#### **Proposing Professional or Study Leave**

10. Any grant of leave is subject to the need to maintain NHS services.
11. Where leave with pay is granted, the doctor must not undertake any other paid work during the leave period without the employing organisation's prior permission.

#### **Period of Leave**

12. Subject to the conditions set out in paragraph 15, Professional or Study Leave will normally be granted to the maximum extent consistent with maintaining essential services in accordance with the recommended standards, or may exceptionally be granted under the provisions of paragraphs 13 and 14. The recommended standard is leave with pay and expenses or time off in lieu with expenses within a maximum of thirty days (including off-duty days falling within the period of leave) in any period of three years for professional purposes within the United Kingdom.

#### **Additional Periods of Professional and Study Leave in the United Kingdom**

13. Employers may at their discretion grant Professional or Study Leave in the United Kingdom above the period recommended in paragraph 12 with or without pay and with or without expenses or with some proportion thereof.

#### **Professional and Study Leave outside the United Kingdom**

14. Employers may at their discretion grant Professional or Study Leave outside the United Kingdom with or without pay and with or without expenses or with any proportion thereof.

#### **Conditions**

15. The following conditions shall apply:
  - (i) where a doctor is employed by more than one NHS organisation, the leave and the purpose for which it is required must be approved by all the organisations concerned;
  - (ii) where leave with pay is granted, the doctor must not undertake any remunerative work without the special permission of the leave-granting organisation;
  - (iii) where an application is made under paragraphs 13 and 14 for a period of leave with pay, and this exceeds three weeks, it shall be open to the leave granting organisation to require that one half of the excess over three weeks shall be counted against annual leave entitlement, the carry forward or anticipation of annual leave within a maximum of three weeks being permitted for this purpose.

## Terms and conditions of service specialty doctors – England (2008)

### Sabbaticals

16. A doctor may apply for sabbatical leave in accordance with the employing organisation's current arrangements. Any proposal for sabbatical leave should be considered in the annual Job Plan review.

### C. Sick Leave

17. A doctor absent from duty owing to illness (including injury or other disability) shall, subject to the provisions of paragraphs 18 to 32, be entitled to receive an allowance in accordance with the following table:

**Table 1 – Doctor Sick Leave Entitlement**

|                                              |                                                                                        |
|----------------------------------------------|----------------------------------------------------------------------------------------|
| During the first year of service             | One month's full pay and (after completing four months' service) two months' half pay. |
| During the second year of service            | Two months' full pay and two months' half pay.                                         |
| During the third year of service             | Four months' full pay and four months' half pay.                                       |
| During the fourth and fifth years of service | Five months' full pay and five months' half pay.                                       |
| After completing five years of service       | Six months' full pay and six months' half pay.                                         |

18. The employer shall have discretion to extend a doctor's sick leave entitlement.
19. To enable rehabilitation, the employer has the discretion to allow a doctor to return to work on reduced hours or to be encouraged to work from home without loss of pay to aid rehabilitation. Any such arrangements need to be consistent with statutory sick pay rules.

### Calculation of Allowances

20. The rate of allowance and the period for which it is to be paid in respect of any period of absence due to illness, shall be ascertained by deducting from the period of benefit (under Table 1) appropriate to the doctor's service, on the first day of absence the aggregate for the period of absence due to illness during the 12 months immediately preceding the first day of absence. In aggregating the periods of absence, no account shall be taken of:
- (i) unpaid sick leave; or
  - (ii) injuries or diseases sustained to members of staff in the actual discharge of their duties through no fault of their own; or
  - (iii) injury resulting from a crime of violence not sustained on duty but connected with or arising from the doctor's employment or profession, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority (CICA); or
  - (iv) due to injury as at sub-paragraph (ii) above which has not been the subject of payment by the CICA on the grounds that it has not given rise to more than three weeks loss of earnings, or was not one for which compensation above the minimum would arise.



## **Terms and conditions of service specialty doctors – England (2008)**

21. The employer may at its discretion also take no account of the whole or any part of the period of absence due to injury (not on duty) resulting from a crime of violence not arising from or connected with the doctor's employment or profession.

### **Previous Qualifying Service**

22. For the purposes of ascertaining the appropriate allowance of paid sick leave under paragraph 17, previous qualifying service shall be determined in accordance with the doctor's statutory rights and all periods of service, (without any break of 12 months or more, subject to paragraph 23 below), with a National Health Service employer shall be aggregated.
23. Where a doctor has broken his or her regular service in order to go overseas in a rotational appointment forming part of a recognised training programme, or for any other appointment which is considered by the Postgraduate Dean or College or Faculty Adviser in the specialty concerned (if necessary, with the advice of the consultant) to be part of a suitable programme of training, or to undertake voluntary service, the doctor's previous NHS or approved service, as set out in paragraph 22 above, shall be taken fully into account in assessing entitlement to sick leave allowance, provided that:
  - i. the doctor has not undertaken any other work outside the NHS during the break in service, apart from limited or incidental work during the period of the training appointment or voluntary service; and
  - ii. the employer considers that there has been no unreasonable delay between the training or voluntary service abroad ending and the commencement of the subsequent NHS post.

### **Limitation of Allowance when Insurance or other Benefits are Payable**

24. The sick pay, paid to a doctor when added to any statutory sickness, injuries or compensation benefits, including any allowances for adult or child dependants, must not exceed full pay.

### **Submission of Doctor's Statements**

25. A doctor who is incapable of doing his or her normal work because of illness shall immediately notify his or her employer in accordance with the employer's procedures.
26. Any absence of more than seven days shall be certified by a doctor (other than the sick doctor). Statements shall be submitted in accordance with the employer's procedures.

### **Accident due to Sport or Negligence**

27. An allowance shall not normally be paid in a case of accident due to active participation in sport as a profession, or in a case in which contributory negligence is proved, unless the employer decides otherwise.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Injury Sustained on Duty**

28. a. 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.
- 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.<sup>1</sup>

### **Recovering of Damages from Third Party**

29. A doctor who is absent as a result of an accident is not entitled to sick pay if damages are received from a third party. Employers may agree to advance to a doctor a loan, not exceeding the amount of sick pay under these provisions, providing the doctor repays to the employer when damages are received, the full amount or portion thereof corresponding to the amount in respect of loss of remuneration including the damages received. Once received, the absence shall not be taken into account for the purposes of the scale set out in Table 1.

### **Medical Examination**

30. The employer may at any time require a doctor, who is unable to perform his or her duties as a consequence of illness, to submit to an examination by a medical doctor nominated by the employer. Any expense incurred in connection with such an examination shall be met by the employer.

### **Termination of Employment**

31. After investigation, consultation and consideration of alternative posts, and where there is no reasonable prospect of the doctor returning to work, employers will have the option to terminate employment before the doctor has reached the end of his or her contractual period of sick leave, provided that the doctor will receive his or her entitlement in accordance with Table 1.

### **Procedures and Payments where Injuries are connected with other Insured Employment**

32. Notification procedures and payment of sick pay when injuries are connected with other insured employment, will be for local determination.

#### **D. Special Leave With or Without Pay**

33. Special leave for any purpose may be granted (with or without pay) at the discretion of the employer. Where this grade of doctor is required to attend court as a witness, as a result of the normal course of delivering his or her NHS duties, such attendance will be classified as Contractual and Consequential Services.
34. Where a doctor has received a jury summons the doctor shall as soon as is reasonably practicable notify his/her employer. If the doctor participates in jury service he/she will be able to apply for special leave with pay in accordance with their employer's internal policy.

**Terms and conditions of service specialty doctors – England (2008)**

**E. Maternity Leave and Pay**

35. The provisions of Temporary Schedule 21 shall apply.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 18**

#### **Termination of Employment**

##### **Period of Notice**

1. Where termination of employment is necessary, an employer will give a doctor three months notice in writing.
2. Doctors are required to give their employer three months written notice if they wish to terminate their employment.
3. Shorter or longer notice periods may apply where agreed between both parties in writing and signed by both.

##### **Grounds for Termination of Employment**

4. A doctor's employment may be terminated for the following reasons:
  - (i) conduct;
  - (ii) capability;
  - (iii) redundancy;
  - (iv) failure to hold or maintain a requisite qualification, registration or licence to practice;
  - (v) in order to comply with a statute or other statutory regulation; or
  - (vi) where there is some other substantial reason to do so in a particular case.
5. Should the application of any disciplinary or capability procedures result in the decision to terminate a doctor's contract of employment, he or she will be entitled to an appeal.
6. In cases where employment is terminated, a doctor may be required to work his or her notice, or if the employer considers it more appropriate, the doctor may be paid in lieu of notice, or paid through the notice period but not be required to attend work.
7. In cases of gross misconduct, gross negligence, or where a doctor's registration as a medical doctor (and/or their registration as a dental doctor) has been removed or has lapsed without good reason, employment may be terminated without notice.

##### **Termination of Employment following Re-organisation**

8. Where a re-organisation of local health services involves displacement of, or significant disturbance to, the services provided by a doctor, the employer will use reasonable endeavours to render effective assistance to the doctor with a view to his or her obtaining comparable work elsewhere in the NHS.

##### **Termination of Employment by Redundancy**

9. If a doctor's employment is terminated because of redundancy (within the meaning of Section 139 of the Employment Rights Act 1996, or the circumstances described in temporary Schedule 23 of these Terms and Conditions of Service) then provided that he or she has two years or more

## **Terms and conditions of service specialty doctors – England (2008)**

continuous service, entitlement to redundancy will be in accordance with temporary Schedule 23 of these Terms and Conditions of Service.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 19**

#### **Incorporated General Council Conditions of Service**

This Schedule lists those General Whitley Council (or successor body) agreements which apply under the contract except where otherwise indicated in these Terms and Conditions of Service.

| <b>GWC Section</b> | <b>Subject</b>                                                                   |
|--------------------|----------------------------------------------------------------------------------|
| S1.                | Annual Leave Entitlement                                                         |
| S2.                | Statutory and Public Holidays                                                    |
| S7.A.              | General Statement                                                                |
| S7.B.              | Recruitment, promotion and staff development                                     |
| S7.C.              | Dignity at work                                                                  |
| S22.               | Subsistence Allowances                                                           |
| S23.               | Travelling Expenses                                                              |
| S26.               | Removal Expenses and Associated Provisions                                       |
| S38.               | Facilities for Staff Organisations                                               |
| S39.               | Joint Consultation Machinery                                                     |
| S41.               | Health Awareness for NHS staff                                                   |
| S48.               | Protection of Pay and Conditions of Service                                      |
| S52.               | Position of Employees Elected to Parliament                                      |
| S53.               | Membership of Local Authorities                                                  |
| S54.               | Payment of Annual Salaries                                                       |
| S55.               | Preparation for Retirement                                                       |
| S56.               | London Weighting<br>(only paragraphs 4, 10 to 14 and 18 to 20 thereof apply)     |
| S57.               | Statutory Sick Pay: Qualifying Days                                              |
| S59.               | NHS Trusts - Continuity of Service                                               |
| S61.               | Annual Leave and Sick Pay Entitlements on Re-entry and Entry into NHS Employment |

## **Terms and conditions of service specialty doctors – England (2008)**

NB – Please note that Maternity Leave and Pay arrangements are now covered in temporary Schedule 21.

NB – Please note that Redundancy arrangements are now covered in temporary Schedule 23.

NB – Information on the new doctor' and dentist' disciplinary framework can be found at:

<http://www.nhsemployers.org/EmploymentPolicyAndPractice/disciplinary-procedures/Pages/NewDisciplinaryProcedures-Overview.aspx><sup>2</sup>

NB – Please note that Caring for Children and Adults is now covered by Temporary Schedule 24.

NB – Please note that Flexible Working Arrangements is now covered by Temporary Schedule 25.

NB – Please note that Balancing Work and Personal Life is now covered by Temporary Schedule 26.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 20**

#### **Model Provisions for Expenses**

These model provisions are designed to serve as the basis for agreements about the payment of doctors' expenses for doctors employed by the NHS or contracted on an honorary basis. NHS employers and doctors may agree alternative provisions.

#### **General**

1. Travelling, subsistence, and other expenses incurred in the service of the employer shall be reimbursed to meet costs at the rates set out in this schedule or up to the limits set and agreed locally. Expenses do not form part of a doctor's pay and are not pensionable.

#### **Submission of Claims**

2. In preparing claims, doctors shall indicate adequately the nature of the expenses involved and submit valid receipts; claims shall be submitted normally at intervals of not more than one month, and as soon as possible after the end of the period to which the claim relates.

#### **Travelling Expenses and Mileage Allowance**

3. The provisions of Section 23 (except paragraphs 2.4 and 4) of the General Council Conditions of Service shall apply. In these provisions "principal place of work" shall be understood to mean "the hospital or other base from which the doctor conducts his or her main duties". Where a doctor has a joint contract with more than one employing organisation, the term "principal place of work" shall be interpreted as meaning the base from which the doctor conducts his or her main duties within that joint contract, irrespective of employing organisation.

#### **Mileage Allowances Payable**

4. Except where a doctor has been allocated a Lease Car (paragraphs 26 to 48 and subject to paragraph 29 of these provisions) mileage allowances shall be payable in accordance with the rates specified at paragraphs 10 to 20 of these provisions, as appropriate, where doctors use their private vehicle for any official journey on behalf of their employing organisation, including travel in connection with domiciliary consultations.
5. No allowance shall be payable for their normal daily journey between their home and their principal place of work, except as provided for in paragraphs 6 to 9.

#### **Emergency Visits**

6. Doctors called out in an emergency shall be entitled to mileage allowance in respect of any journey they are required to undertake, including the distance between their home and principal place of work.



## **Terms and conditions of service specialty doctors – England (2008)**

### **Home-to-Principal Place of Work Mileage**

#### **Official Journeys Beginning At Home**

- 7.a. Subject to sub-paragraph 7.b. where a doctor travels between their home and principal hospital before and/or after an official journey, or journey direct from their home to the place visited and/or return direct to their home from the place visited, mileage allowance shall be payable for the whole distance travelled, subject to a maximum based on the return journey from their principal hospital to the place visited, plus twenty miles. Mileage allowance shall be paid for the distance equal to the return journey between the principal hospital and the place visited. The additional (maximum) twenty miles shall be paid for as follows:
- i. if the doctor is the holder of a current season ticket for travelling between their home and their principal hospital, mileage allowance in accordance with paragraphs 10 to 17.
  - ii. if the doctor is not a season ticket holder, mileage allowance less the public transport rate.
- b. No allowance shall be paid in respect of home to principal hospital mileage to a doctor whose normal practice is to travel from their home to their principal hospital by private car even when the car is required for the purpose of making an official journey.

#### Application of paragraph 7

8. Paragraph 7 shall be applied as follows:
- a. Doctors who travel by car only on the days when they require it to make an official journey which attracts mileage allowance, other than at the public transport rate, shall be paid mileage allowance calculated in accordance with sub-paragraph 7.a;
  - b. except as provided in sub-paragraph 8.c, doctors whose normal practice is to travel to their principal hospital by car shall, if they use it on any day to make an official journey, be paid mileage allowance by reference to the excess, if any, of the total distance travelled over the normal return journey between their home and their principal hospital;
  - c. doctors whose normal practice is to use their car to travel to their principal hospital, but who satisfy both the following requirements, may, if the employing authority by resolution so decide, be treated as in sub-paragraph 8.a., i.e. they may, in respect of the days on which they actually use the car to make an official journey which attracts mileage allowance, other than at the public transport rate, be paid mileage allowance in accordance with sub-paragraph 7.a. Doctors to whom this arrangement apply are those who have a claim to special consideration because:
    - i. they have a definite commitment to make an official journey every day for which the use of their car is justified, or, alternatively, their duties are such that they are liable to be called upon to make official journeys by car which cannot be arranged in advance, and that liability is so extensive and the journeys in practice so frequent as to make it

## **Terms and conditions of service specialty doctors – England (2008)**

desirable that their car should always be available at their principal hospital; and

- ii. they would not otherwise require to travel to their principal hospital by car.

### **Locum Tenens**

9. Where a locum doctor travels between his or her home (or temporary accommodation) and principal place of work, expenses shall be payable in respect of any distance by which the journey exceeds 10 miles each way.

### **Rates of Mileage Allowance: Regular User Allowances**

10. Allowances at regular user rates shall be paid to doctors who:
  - (i) are classified by the employing organisation as regular users and choose not, or are unable, to avail themselves of a Lease Car in accordance with paragraphs 26 to 34; or
  - (ii) are new appointees to whom the employing organisation has deemed it uneconomic, or is unable to offer a Lease Car in accordance with paragraphs 26 to 34; and
  - (iii) are required by their employing organisation to use their own car on NHS business and, in so doing, either:
    - (a) travel an average of more than 3,500 miles a year; or
    - (b) travel an average of at least 1,250 miles a year; and
    - (c) necessarily use their car on an average of three days a week; or
    - (d) spend an average of at least 50% of their time on such travel, including the duties performed during the visits.

### **Change in Circumstances**

11. If there is a change in a doctor's duties or if the official mileage falls below that on which a regular or essential user classification was based and which is likely to continue, the application to the doctor of the regular user agreement should be reconsidered. Any decrease in the annual official mileage or the frequency of travel, etc which is attributable to circumstances such as prolonged sick leave or the temporary closure of one place of duty should be ignored for this purpose.

### **Non-Classification as Regular User**

12. Where an employing organisation does not consider that a doctor, other than one to whom paragraph 29 of these provisions applies, should be classified as a regular or essential user, and if this gives rise to any serious difficulty, the doctor shall have recourse to local grievance procedures.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Payment of Lump Sums**

13. Payment of the annual lump sum allowance shall be made in equal monthly instalments over a period from 1 April in any year to 31 March in the succeeding year.
14. In the case of a doctor who takes up an appointment with an employing organisation or leaves the employment of his or her employing organisation after 1 April in any year, allowances shall be paid pro rata. The calculation of the mileage allowance should thus be in accordance with the following procedure:
  - (i) The mileage allowance to be paid at the higher rate would, at 9,000 miles per annum, be equivalent to 750 miles per month of service. The excess over 750 miles per month of service would be paid at the intermediate and, if appropriate, the lower rate. For example, where the total service in the period 1 April in any year to 31 March in the succeeding year is five months, then up to 3,750 miles would be paid at the higher rate and any excess at the intermediate, and if appropriate, the lower rate. Similarly, the lump sum should be divided into twelve monthly payments.
  - (ii) When a doctor leaves the employment of an employing organisation, a calculation shall be made in respect of his or her entitlement for the portion of the year served with the employing organisation and any adjustments made thereafter.

### **Part Months of Service**

15. Part months of service shall be regarded as complete months for the purposes of paragraph 13. However, a regular user who leaves the service of one employing organisation and enters the employment of another during the same month shall receive only one lump sum instalment for that month, payable by the former employing organisation.

### **Cars Out of Use**

16. When a doctor entitled to the regular user allowance does not use his or her car as a result of a mechanical defect or absence through illness:
  - (i) the lump sum payment should be paid for the remainder of the month in which the car was out of use and for a further three months thereafter. For the following three months, payment should be made at the rate of 50% of the lump sum payment. No further payments should be made if a car is out of use for six months or longer;
  - (ii) during the period when the car is “off the road” for repairs, out of pocket expenses in respect of travel by other forms of transport should be borne by the employing organisation, in accordance with the provisions of paragraph 2 of Section 23 of the General Council Conditions of Service.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Standard Mileage Rates**

17. Mileage allowances at standard rates will be paid to doctors who use their own vehicles for official journeys, other than in the circumstances described in paragraph 10, 18 and 29 of these provisions, provided that a doctor may opt to be paid mileage allowances at standard rates, notwithstanding his or her entitlement to payment at regular user rates.

### **Public Transport Mileage Rate**

18. The foregoing rates shall not apply if a doctor uses a private motor vehicle in circumstances where travel by a public service (e.g. rail, bus) would be appropriate. For such journeys, an allowance at the public transport rate shall be paid, unless this is higher than the rate that would be payable at the standard, regular user or special rate. Further guidance on the application of the public transport mileage rate is attached at Annex B.

### **Passenger Allowances**

19. Where other employees or members of an employing organisation are conveyed in the same vehicle, other than a Lease Car, on the business of the National Health Service and their fares by a public service would otherwise be payable by the employing organisation, passenger mileage allowance shall be paid.

### **Garage Expenses, Tolls and Ferries**

20. Subject to the production of vouchers wherever possible, doctors using their private motor vehicles on an official journey at the standard, regular user or special rate of mileage allowance shall be refunded reasonable garage and parking expenses and charges for tolls and ferries necessarily incurred, except that charges for overnight garaging or parking shall not be reimbursed, unless the doctor is entitled to night subsistence allowance for overnight absence. Similar expenses may also be refunded to doctors only entitled to the public transport rate of mileage allowance, provided that the total reimbursement for an official journey does not exceed the cost which would otherwise have been incurred on public transport, including the fares of any official passengers.

### **Loans for Car Purchase**

21. The provisions of this paragraph apply to doctors who qualify for the first time as regular car users in the NHS, other than those who are offered, or provided with, a suitable Lease Car.
22. Such doctors are entitled to a loan at 2½% flat rate of interest, provided that the request for the loan is made within three months of such classification, or of taking up the post (whichever is the later).
23. Loans shall be made in accordance with the provisions of paragraphs 22 to 27 of Section 24 of the General Council Conditions of Service.
24. In determining whether a car is “suitable” for the purposes of these provisions, various factors may need to be taken into account, such as the total official mileage to be driven, reliability, the need to carry heavy or bulky equipment and local road conditions, etc.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Pedal Cycles**

25. Doctors using pedal cycles for official journeys may be reimbursed at the rate set out in Annex A, Table 1.

### **Lease Cars**

#### **Allocation**

26. For the purposes of paragraphs 27 to 48, a “Lease Car” is any vehicle owned or contract-hired by an employing organisation.
27. Employing organisations may offer Lease Cars for individual use on official business where they deem it economic (see also paragraph 45 of these provisions) or otherwise in the interest of the service to do so.
28. Doctors in post on 9 May 1990 who are required to travel on NHS business and have been classified by the employing organisation as regular users may continue to receive the regular user lump sum payments and allowances set out in Annex A, Table 1 for so long as they remain in the same post or until they voluntarily accept the offer of a Lease Car.

#### **New Appointees**

29. A doctor who was a new appointee after 9 May 1990 (including a doctor who voluntarily moves post within the same employing organisation, or to a different employing organisation) and who is required to travel on NHS business and who chooses to use his or her own car, rather than to accept the employing organisation’s offer of a Lease Car, shall not receive the allowances specified in paragraph 28 of these provisions, but shall be reimbursed at the special rate. The special rate will be equivalent to the current 9,001 to 15,000 miles rate for over 2000cc for regular and standard users, regardless of the vehicle’s engine size.
30. A doctor who initially refused an offer of a Lease Car will continue to be eligible for one, providing there has been no change in the doctor’s duties.
31. A doctor who has been allocated a Lease Car for individual use on NHS business is entitled to private use of the car, subject to the conditions set out in paragraph 35 to 48 of these provisions.
32. The offer of a Lease Car constitutes the offer of a base vehicle which should in no case exceed 1800cc. Unless the doctor and the employing organisation agree to the allocation of a smaller vehicle, it shall be at least 1500cc. In determining the operational needs of a post for assessing the base vehicle requirement, employing organisations shall have regard, in consultation with the doctors concerned or their representatives, to:
  - (i) the clinical commitments of the postholder, including the nature, frequency and urgency of the journeys to be undertaken;
  - (ii) the distances to be travelled;
  - (iii) the road, traffic and climatic conditions;

## **Terms and conditions of service specialty doctors – England (2008)**

- (iv) the physical requirements of the postholder; and
  - (v) the need to transport equipment.
33. A Lease Car which is no longer required by an individual member of staff may be allocated to another for the remaining term of the contract (or notional contract). In that event, the charges for private use will be based on the fixed annual charges determined when the employing organisation first obtained the vehicle.
34. Employing organisations shall ensure that proper arrangements are made for the economic servicing, repair, maintenance in a roadworthy condition and replacement of Lease Cars.

### **Conditions of Use**

35. Following consultation with the representatives of the professions locally, an employing organisation's conditions of use shall set out the doctor's obligations in respect of the Lease Car and shall state the effect of the following events on the contract and any subsequent financial liability on the doctor:
- (i) breach of conditions of use;
  - (ii) disqualification from driving;
  - (iii) wilful neglect;
  - (iv) termination of the doctor's contract of employment on disciplinary grounds, voluntary resignation or transfer to another employing organisation (where practicable reciprocal arrangements should be made);
  - (v) change of duties resulting in the doctor no longer being required to drive on official business;
  - (vi) substantial reduction in annual business mileage;
  - (vii) prolonged absence on annual study, special or maternity leave.

### **Charges for Private Use**

36. The basis of charges for private use set out in this paragraph assumes that Lease Cars are provided on a contract hire basis. Where this is not the case, charges for private use are to be based on the notional cost to the employing organisation of providing Lease Cars on a contract hire basis. Notional contract hire charges at current rates are to be used, and the fixed charge to the doctor for agreed private mileage determined on this basis is to remain unaltered for the period for which the contract would have remained in force (e.g. three years).
37. A doctor will be required to pay one composite annual charge for private use. This will comprise of the sum of the items listed in Annex A, Table 2. The composite annual charge will be paid by monthly deduction from salary of one twelfth of the total.

## **Terms and conditions of service specialty doctors – England (2008)**

38. The basis of the fixed charge for agreed private mileage shall be the doctor's estimate to the nearest thousand miles of his or her annual private mileage, as agreed by the employing organisation and multiplied by the rate per thousand miles, determined in accordance with the formula set out in Annex A, Table 2, Paragraph B.
39. In the event that a doctor underestimates his or her annual private mileage, an excess charge will be levied by the employing organisation, based on the contract hirer's excess charge to the employing organisation for the particular car hired to the doctor. In the event that a doctor overestimates his or her annual private mileage, any sum recoverable by the employing organisation from the contract hirer in respect of the overestimate will be refunded to the doctor. If no recovery is available to the employing organisation, no refund will be made to the doctor.
40. A doctor shall meet the cost to the employing organisation of the fitting of any optional extras the doctor requires, and the contract between the employing organisation and the doctor should specify whether such extras will become the property of the contract hirer or of the doctor. In the latter case, the doctor shall be liable for the cost of making good any damage caused to the car by the removal of such fittings at the end or on early termination of the contract. However, if such alterations are required because the doctor has a certified disability, then the costs shall be met by the employing organisation.
41. In the event of the doctor's death in service or an early termination of the doctor's contract on the grounds of ill health, there shall be no financial penalty to the doctor or the doctor's estate on account of the early termination of the contract for private use of the Lease Car.
42. In the event of a doctor's absence from work for an extended period on maternity, sick, study or special leave, a doctor who has contracted for private use of a Lease Car may choose to continue the private use at the contracted charge or to return the vehicle to the employing organisation. In the latter case, there shall be no financial penalty to the doctor on account of early termination of the contract.

### **Alternative Vehicle**

43. Subject to the agreement of the employing organisation, which shall not be unreasonably withheld, a doctor who wishes to contract for private use of a Lease Car may choose a larger or more expensively equipped vehicle than that offered. In this event, the doctor shall be responsible for meeting the additional costs to the employing organisation by means of an addition to the composite annual charge, which shall be paid by monthly deduction from salary of one twelfth of the total determined. The rate for reimbursement of petrol used on official business shall be that of the appropriate base vehicle.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Reimbursement of Petrol and Other Costs**

44. A doctor who has been allocated a Lease Car will be responsible for purchasing all petrol, whether for business or private mileage.
45. NHS business mileage costs will be reimbursed by reference to a claim form or diary showing daily visits on NHS business signed by the doctor. NHS business mileage costs include journeys for which a mileage allowance would be payable under paragraphs 7 to 8 of these provisions.
46. The rate per mile will be determined according to the following formula:

$$\frac{\text{Cost of one gallon of premium unleaded petrol}^*}{\text{Base Vehicle's mileage on urban cycle}}$$

\* The price of petrol will be as recommended from time to time by the Department of Health or any new body to whom this function may in future be delegated. The mileage on the urban cycle will be as quoted by manufacturers from officially approved tests under the Passenger Car Fuel Consumption Order 1983.

47. The provisions of paragraph 26 of these provisions shall apply to expenses incurred by a doctor using a Lease Car on official business.

### **Carriage of Passengers**

48. Liability for compensation of authorised official passengers injured while being carried in a Lease Car will be borne by the employing organisation. It is for each employing organisation to reach a view and issue advice to doctors on the carriage of official passengers.

### **Other Expenses**

#### **Subsistence Allowances**

49. The provisions of Section 22 of the General Council Conditions of Service shall apply, with the following provisos:
50. For the purposes of this guidance the term “principal place of work” shall be understood to mean “the NHS facility where the doctor’s principal duties lie”.
51. No day allowance shall be payable in respect of any period spent at a NHS facility as part of the Programmed Activities of the doctor concerned.

#### **Postage etc**

52. Any expenditure necessarily incurred by a doctor on postage or telephone calls in the service of an employing organisation shall be reimbursed, through the periodical claim for travelling and subsistence.



## **Terms and conditions of service specialty doctors – England (2008)**

### **Expenses of Candidates for Appointments**

53. The provisions of this paragraph shall apply where an employing organisation invites a doctor to appear before a selection board or invites a shortlisted doctor to attend in connection with his or her application for appointment.
- (i) reimbursement of eligible expenses shall be made by the prospective employing organisation.
  - (ii) where a doctor holds a paid or honorary appointment with an employing organisation and applies for a new post with his or her own or another employing organisation, the doctor is entitled to travelling expenses in accordance with paragraph 3 of these provisions and to subsistence allowance in accordance with paragraphs 49 to 51.
  - (iii) where a doctor to whom sub-paragraph (ii) does not apply provides general medical or dental services under Part II of the National Health Service Act 1978, or is an assistant to such a doctor, he or she is entitled to travelling expenses and subsistence allowance at the higher rate applicable under paragraphs 49 to 51 of these provisions.
  - (iv) a doctor to whom sub-paragraphs (ii) and (iii) do not apply may at the discretion of the employing organisation be reimbursed travelling expenses and subsistence allowance, subject, unless the circumstances warrant exceptional treatment, to the maximum that would have been payable had those provisions applied.
54. A doctor to whom sub-paragraph 53(ii) applies and who is invited to appear before a selection board while on holiday shall be reimbursed for:
- (i) travelling expenses from the doctor's holiday address, but limited in the case of travel from abroad to expenses from the port of entry in Great Britain, provided that the doctor returns to his or her holiday address after interview; for this purpose, travel from Northern Ireland the Isle of Man and the Channel Islands shall not be regarded as travel from abroad; and
  - (ii) subsistence allowance at the appropriate rate, unless the doctor is able to stay at his or her own home and it is reasonable to expect the doctor to do so.
55. Reimbursement shall not be made to a doctor who refuses the offer of the appointment as advertised on grounds which the employing organisation considers inadequate.

### **Removal Expenses**

56. The provisions of Section 26 of the General Council Conditions of Service shall apply.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Annex A – Transport Fees and Allowances**

Please see the latest Pay Circular which deals with pay and conditions of service of hospital medical and dental staff and doctors in public health medicine and the community health service. This is available on the NHS Employers website at [www.nhsemployers.org](http://www.nhsemployers.org) <sup>3</sup>

## **Terms and conditions of service specialty doctors – England (2008)**

### **Annex B – Application of the Public Transport User Rate**

1. This annex provides further guidance on the application of the public transport user rate instead of the standard mileage rate, under the provisions set out in paragraph 17 of the main body of this guidance.
2. If mileage allowance is payable, the public transport rate (set out in Annex A, Table 1) should be paid where travel by a public service is appropriate, but the doctor prefers to use a private means of transport instead. In all other circumstances, the standard or regular user rates apply.
3. Employers should use the following criteria in deciding whether the public transport rate should apply:
  - the nature of the doctor's duties;
  - the length and complexity of journeys (including the number of changes and likely waiting times);
  - the availability of public transport;
  - personal safety;
  - the time of day;
  - relative journey times (public transport compared with private vehicle);
  - any other relevant factors, for example, equipment or luggage to be carried.
4. In particular, employers should take into account the variable times at which doctors start and finish work when public transport may not be a viable way of travelling.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 21 (Temporary Schedule)**

#### **Maternity Leave and Pay**

##### **Introduction**

1. All employees will have the right to take 52 weeks of maternity leave
2. Paragraphs 7 to 54 of this Schedule set out the maternity leave and pay entitlements of NHS employees under the NHS contractual maternity leave scheme.
3. Paragraphs 55 to 59 give information about the position of staff who are not covered by this scheme because they do not have the necessary service or do not intend to return to NHS employment.
4. Paragraphs 60 to 64 define the service that can be counted towards the twelve month continuous service qualification set out in paragraph 7 (i) below and which breaks in service may be disregarded for this purpose.
5. Paragraph 65 explains how to get further information about employees' statutory entitlements.
6. Where locally staff and employer representatives agree arrangements which provide benefits to staff, beyond those provided by this section, those local arrangements will apply.

##### **Eligibility**

7. An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the NHS contractual maternity pay scheme if:
  - (i) she has twelve months continuous service (see paragraphs 60 to 64) with one or more NHS employers at the beginning of the eleventh week before the expected week of childbirth;
  - (ii) she notifies her employer in writing before the end of the 15<sup>th</sup> week before the expected date of childbirth (or if this is not possible, as soon as is reasonably practicable thereafter):
    - (a) of her intention to take maternity leave;
    - (b) of the date she wishes to start her maternity leave – she can choose when to start her maternity leave – this can usually be any date from the beginning of the 11<sup>th</sup> week before the baby is born (but see paragraph 8 below);
    - (c) that she intends to return to work with the same or another NHS employer for a minimum period of three months after her maternity leave has ended;
    - (d) and provides a MATB1 form from her midwife or GP giving the expected date of childbirth.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Changing the Maternity Leave Start Date**

8. If the employee subsequently wants to change the date from which she wishes her leave to start she should notify her employer at least 28 days beforehand (or, if this is not possible, as soon as is reasonably practicable beforehand).

### **Confirming Maternity Leave and Pay**

9. Following discussion with the employee, the employer should confirm in writing:
  - (i) the employee's paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);
  - (ii) unless an earlier return date has been given by the employee, her expected return date based on her 52 weeks paid and unpaid leave entitlement under this agreement; and
  - (iii) the length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal maternity leave period (see paragraphs 49 and 50 below);
  - (iv) the need for the employee to give at least 28 days notice if she wishes to return to work before the expected return date.

### **Keeping in Touch**

10. Before going on leave, the employer and the employee should also discuss and agree any voluntary arrangements for keeping in touch during the employee's maternity leave including:
  - (i) any voluntary arrangements that the employee may find helpful to help her keep in touch with developments at work and, nearer the time of her return, to help facilitate her return to work;
  - (ii) keeping the employer in touch with any developments that may affect her intended date of return.

### **Work during the Maternity Leave Period**

#### **Keeping in Touch Days**

11. To facilitate the process of Keeping in Touch Days (KIT days) it is important that the employer and employee have early discussion to plan and make arrangements for KIT days before the employee's maternity leave takes place.
12. To enable employees to take up the opportunity to work KIT days employers should consider the scope for reimbursement of reasonable childcare costs or the provision of childcare facilities.
13. KIT days are intended to facilitate a smooth return to work for women returning from maternity leave.

## **Terms and conditions of service specialty doctors – England (2008)**

14. An employee may work for up to a maximum of 10 KIT days without bringing her maternity leave to an end. Any days of work will not extend the maternity leave period.
15. An employee may not work during the two weeks of compulsory maternity leave immediately after the birth of her baby
16. The work can be consecutive or not and can include training or other activities which enable the employee to keep in touch with the workplace.
17. Any such work must be by agreement and neither the employer nor the employee can insist upon it.
18. The employee will be paid at their basic daily rate, for the hours worked less appropriate maternity leave payment for KIT days worked.
19. Working for part of any day will count as one KIT day
20. Any employee who is breastfeeding must be risk assessed and facilities provided in accordance with paragraph 34

### **Paid Maternity Leave**

#### **Amount of Pay**

21. Where an employee intends to return to work the amount of contractual maternity pay receivable is as follows:
  - (i) for the first eight weeks of absence, the employee will receive full pay, less any Statutory Maternity Pay or Maternity Allowance (including any dependants' allowances) receivable;
  - (ii) for the next 18 weeks, the employee will receive half of full pay plus any Statutory Maternity Pay or Maternity Allowance (including any dependants' allowances) receivable, providing the total receivable does not exceed full pay.
  - (iii) for the next 13 weeks, the employee will receive any Statutory Maternity Pay or Maternity Allowance that they are entitled to under the statutory scheme
22. By prior agreement with the employer occupational maternity pay may be paid in a different way, for example a combination of full pay and half pay or a fixed amount spread equally over the maternity leave period.

#### **Calculation of Maternity Pay**

23. Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Maternity Pay entitlements, subject to the following qualifications:
  - (i) in the event of a pay award or annual increment being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or annual increment had effect throughout the entire Statutory Maternity Pay calculation

## **Terms and conditions of service specialty doctors – England (2008)**

period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;

- (ii) in the event of a pay award or annual increment being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or annual increment should be increased accordingly. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;
- (iii) in the case of an employee on unpaid sick absence or on sick absence attracting half pay during the whole or part of the period used for calculating average weekly earnings in accordance with the earnings rules for Statutory Maternity Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay.

### **Unpaid Contractual Leave**

24. Employees are also entitled to take a further 13 weeks as unpaid leave to bring the total of leave to 52 weeks. However, this may be extended by local agreement in exceptional circumstances for example, where employees have sick pre-term babies or multiple births.

### **Commencement and Duration of Leave**

25. An employee may begin her maternity leave at any time between eleven weeks before the expected week of childbirth and the expected week of childbirth provided she gives the required notice.

### **Sickness Prior to Childbirth**

26. If an employee is off work ill, or becomes ill, with a pregnancy related illness during the last four weeks before the expected week of childbirth, maternity leave will normally commence at the beginning of the fourth week before the expected week of childbirth or the beginning of the next week after the employee last worked, whichever is the later. Absence prior to the last four weeks before the expected week of childbirth, supported by a medical statement of incapacity for work, or a self-certificate, shall be treated as sick leave in accordance with normal leave provisions.
27. Odd days of pregnancy related illness during this period may be disregarded if the employee wishes to continue working till the maternity leave start date previously notified to the employer.

### **Pre-term Birth**

28. Where an employee's baby is born alive prematurely the employee will be entitled to the same amount of maternity leave and pay as if her baby was born at full term.
29. Where an employee's baby is born before the eleventh week before the expected week of childbirth and the employee has worked during the actual week of childbirth, maternity leave will start on the first day of the employee's absence.

## **Terms and conditions of service specialty doctors – England (2008)**

30. Where an employee's baby is born before the eleventh week before the expected week of childbirth and the employee has been absent from work on certified sickness absence during the actual week of childbirth, maternity leave will start the day after the day of birth.
31. Where an employee's baby is born before the eleventh week before the expected week of childbirth and the baby is in hospital the employee may split her maternity leave entitlement, taking a minimum period of two weeks' leave immediately after childbirth and the rest of her leave following her baby's discharge from hospital.

### **Still Birth**

32. Where an employee's baby is born dead after the 24<sup>th</sup> week of pregnancy the employee will be entitled to the same amount of maternity leave and pay as if her baby was born alive.

### **Miscarriage**

33. Where an employee has a miscarriage before the 25<sup>th</sup> week of pregnancy normal sick leave provisions will apply as necessary.

### **Health and Safety of Employees Pre and Post Birth**

34. Where an employee is pregnant, has recently given birth or is breastfeeding, the employer must carry out a risk assessment of her working conditions. If it is found, or a medical practitioner considers, that an employee or her child would be at risk were she to continue with her normal duties the employer should provide suitable alternative work for which the employee will receive her normal rate of pay. Where it is not reasonably practicable to offer suitable alternative work the employee should be suspended on full pay.
35. These provisions also apply to an employee who is breastfeeding if it is found that her normal duties would prevent her from successfully breastfeeding her child.

### **Return to Work**

36. An employee who intends to return to work at the end of her full maternity leave will not be required to give any further notification to the employer, although if she wishes to return early she must give at least 28 days' notice.
37. An employee has the right to return to her job under her original contract and on no less favourable terms and conditions.

### **Returning on Flexible Working Arrangements**

38. If at the end of maternity leave the employee wishes to return to work on different hours the NHS employer has a duty to facilitate this wherever possible, with the employee returning to work on different hours in the same job. If this is not possible the employer must provide written, objectively justifiable reasons for this and the employee should return to the same grade and work of a similar nature and status to that which they held prior to their maternity absence.



## **Terms and conditions of service specialty doctors – England (2008)**

39. If it is agreed that the employee will return to work on a flexible basis, including changed or reduced hours, for an agreed temporary period this will not affect the employee's right to return to her job under her original contract at the end of the agreed period.

### **Sickness Following the End of Maternity Leave**

40. In the event of illness following the date the employee was due to return to work normal sick leave provisions will apply as necessary.

### **Failure to Return to Work**

41. If an employee who has notified her employer of her intention to return to work for the same or a different NHS employer in accordance with paragraph 7 (ii) (c) above fails to do so within 15 months of the beginning of her maternity leave she will be liable to refund the whole of her maternity pay, less any Statutory Maternity Pay, received. In cases where the employer considers that to enforce this provision would cause undue hardship or distress the employer will have the discretion to waive their rights to recovery.

### **Miscellaneous Provisions**

#### **Fixed – Term Contracts or Training Contracts**

42. Employees subject to fixed-term or training contracts which expire after the eleventh week before the expected week of childbirth and who satisfy the conditions in paragraphs 7 (i), 7 (ii) (a), 7 (ii) (b) and 7 (ii) (d) shall have their contracts extended so as to allow them to receive the 52 weeks which includes paid contractual and statutory maternity pay and the remaining 13 weeks of unpaid maternity leave.
43. Absence on maternity leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service.
44. If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred the repayment provisions set out in paragraph 41 above will not apply.
45. Employees on fixed-term contracts who do not meet the twelve months continuous service condition set out in paragraph 7 (i) above may still be entitled to Statutory Maternity Pay.

#### **Rotational Training Contracts**

46. Where an employee is on a planned rotation of appointments with one or more NHS employers as part of an agreed programme of training, she shall have the right to return to work in the same post or in the next planned post irrespective of whether the contract would otherwise have ended if pregnancy and childbirth had not occurred. In such circumstances the employee's contract will be extended to enable the practitioner to complete the agreed programme of training.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Contractual rights**

47. During maternity leave (both paid and unpaid) an employee retains all of her contractual rights except remuneration.

### **Increments**

48. Maternity leave, whether paid or unpaid, shall count as service for annual increments and for the purposes of any service qualification period for additional annual leave.

### **Annual leave and public holidays**

49. Employees on paid and unpaid maternity leave retain their right to the annual leave and public holidays provided by Schedule 17.
50. 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.<sup>20</sup>

### **Pensions**

51. Pension rights and contributions shall be dealt with in accordance with the provisions of the NHS Superannuation Regulations.

### **Antenatal Care**

52. Pregnant employees have the right to paid time off for antenatal care. Antenatal care includes relaxation and parent-craft classes as well as appointments for antenatal care.

### **Post-natal Care and Breastfeeding Mothers**

53. Women who have recently given birth should have paid time off for post-natal care e.g. attendance at health clinics.
54. Employers are required to undertake a risk assessment and to provide breastfeeding women with suitable private rest facilities. The Health and Safety Executive Guidance recommends that employers provide:
  - a clean, healthy and safe environment for women who are breastfeeding,
  - suitable access to a private room to express and store milk in an appropriate refrigerator.

Employers are reminded that they should consider requests for flexible working arrangements to support breastfeeding women at work

## **Terms and conditions of service specialty doctors – England (2008)**

### **Employees Not Returning to NHS Employment**

55. An employee who satisfies the conditions in paragraph 7, except that she does not intend to work with the same or another NHS employer for a minimum period of three months after her maternity leave is ended, will be entitled to pay equivalent to Statutory Maternity Pay, which is paid at 90% of her average weekly earnings for the first six weeks of her maternity leave and to a flat rate sum for the following 33 weeks.

### **Employees with Less than Twelve Months Continuous Service**

56. If an employee does not satisfy the conditions in paragraph 7 for occupational maternity pay she may be entitled to Statutory Maternity Pay. Statutory Maternity Pay will be paid regardless of whether she satisfies the conditions in paragraph 7.
57. If her earnings are too low for her to qualify for Statutory Maternity Pay, or she does not qualify for another reason, she should be advised to claim Maternity Allowance from her local Job Centre Plus or social security office.
58. All employees will have a right to take 52 weeks of maternity leave whether they return to NHS Employment or not.
59. Paragraph 65 contains further information on statutory maternity entitlements.

### **Continuous Service**

60. For the purposes of calculating whether the employee meets the twelve months continuous service with one or more NHS employers qualification set out in paragraph 7 (i) the following provisions shall apply:
- (i) NHS employers includes health authorities, NHS Boards, NHS Trusts, Primary Care Trusts and the Northern Ireland Health Service;
  - (ii) a break in service of three months or less will be disregarded (though not count as service).
61. The following breaks in service will also be disregarded (though not count as service);
- (i) employment under the terms of an honorary contract;
  - (ii) employment as a locum with a general practitioner for a period not exceeding twelve months;
  - (iii) a period of up to twelve months spent abroad as part of a definite programme of postgraduate training on the advice of the Postgraduate Dean or College or Faculty Advisor in the speciality concerned;
  - (iv) a period of voluntary service overseas with a recognised international relief organisation for a period of twelve months which may exceptionally be extended for twelve months at the discretion of the employer which recruits the employee on her return;

## **Terms and conditions of service specialty doctors – England (2008)**

- (v) absence on a employment break scheme in accordance with the provisions of Schedule 22;
  - (vi) absence on maternity leave (paid or unpaid) as provided for under this agreement.
62. Employers may at their discretion extend the period specified in paragraphs 60 (ii) and 61.
63. Employment as a trainee with a General Medical Practitioner in accordance with the provisions of the Trainee Practitioner Scheme shall similarly be disregarded and count as service.
64. Employers have the discretion to count other previous NHS service or service with other employers.

### **Information about Statutory Maternity/Adoption and Paternity Maternity Leave and Pay**

65. There are occasions when employees are entitled to other statutory benefits/allowances and information about all statutory maternity/adoption and paternity rights can be found using the following link:

<https://www.gov.uk/employers-maternity-pay-leave>

Information about Health and Safety for new and expectant mothers at work can be found using the following link:

[www.hse.gov.uk](http://www.hse.gov.uk)<sup>4</sup>

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 22 (Temporary Schedule)**

#### **Employment Break Scheme**

##### **General**

1. NHS employers should provide all staff with access to an employment break scheme.
2. The scheme should be agreed between employers and local staff representatives.
3. The scheme should be viewed with others, particularly those relating to flexible working, balancing work and personal life, and provisions for carers, as part of the commitment to arrangements which enable employees to balance paid work with their other commitments and responsibilities.
4. The scheme should also enable employers to attract and retain the experience of staff consistent with the NHS commitment to the provision of high quality healthcare.
5. The scheme should provide for people to take a longer period away from work than that provided for by the parental leave and other leave arrangements.

##### **Scope**

6. The scheme should explicitly cover the main reasons for which employment breaks can be used, including childcare, eldercare, care for another dependant, training, study leave or work abroad. It should also indicate that other reasons will be considered on their merits.
7. People on employment breaks will not normally be allowed to take up paid employment with another employer except where, for example, work overseas or charitable work could broaden experience. In such circumstances written authority from the employer would be necessary.

##### **Eligibility**

8. The employment break scheme should normally be open to all employees who have a minimum of twelve months' service.
9. Applications should be submitted in writing and notice periods should be clearly stated in an agreement between the employee and employer.

##### **Length of Break**

10. The maximum length of break should be five years.
11. Breaks should be able to be taken either as a single period or as more than one period.
12. The minimum length of break should be three months.

## **Terms and conditions of service specialty doctors – England (2008)**

13. The length of any break should balance the needs of the applicant with the needs of the service.
14. The scheme should have provision for breaks to be extended with appropriate notice, or for early return from breaks.
15. All breaks should be subject to an agreement between the employer and applicant before the break begins. The agreement should cover:
  - the effect of the break on various entitlements related to length of service;
  - a guarantee that, if the applicant returns to work within one year, the same job will be available, as far as is reasonably practicable;
  - if the break is longer than one year, the applicant may return to as similar a job as possible;
  - return to work at the equivalent salary level, reflecting increases awarded during the break;
  - the notice period required before the return to work should be two months if the break is less than a year and six months if the break is more than a year;
  - arrangements for keeping in touch during the break;
  - requirements on the applicant to keep up to date with their relevant professional registration needs, including attendance at specified training courses and conferences, and any assistance the employer may give in the support of this;
  - training arrangements for re-induction to work;
  - any other conditions required either by the employer or the applicant.

### **Return to Work**

16. Applicants should not have to resign to take an employment break, although there will be a change to the contract of employment.
17. The period of the break should count toward continuous employment for statutory purposes.
18. Other provisions depending upon length of service, i.e. pensions, contractual redundancy payments, leave entitlements etc, should be suspended for the period of the break.

### **Appeals**

19. Applicants should be entitled to a written reason for the refusal of any application.

### **Terms and conditions of service specialty doctors – England (2008)**

20. Applicants may resort to the grievance procedure if a request for a break is refused.

#### **Monitoring and Review**

21. All records of applications and decisions should be kept for a minimum of twelve months.
22. The operation of the scheme should be monitored annually by employers in partnership with local staff representatives. This will include consideration of diversity data.<sup>5</sup>

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 23 (Temporary Schedule)**

#### **Redundancy Pay**

1. This section sets out the arrangements for redundancy pay for employees dismissed by reason of redundancy who, at the date of termination of their contract, have at least 104 weeks of continuous full-time or part-time service. These take effect from 1 October 2006. It also sets out the arrangements for early retirement on grounds of redundancy and in the interests of the service for those who are members of the NHS pension scheme and have at least two years continuous full-time or part-time service and two years qualifying membership in the NHS pension scheme. Pension changes take effect from 1 December 2006.<sup>6</sup>

#### **Definition of Redundancy**

2. The Employment Rights Act 1996 Section 139 states that redundancy arises when employees are dismissed in the following circumstances:
  - "where the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed; or where the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed; or
  - where the requirements of the business for employees to carry out work of a particular kind, in the place where they were so employed, have ceased or diminished or are expected to cease or diminish".

#### **Qualification for a Redundancy Payment**

3. To qualify for a redundancy payment, the member of staff must be an employee, working under a contract of employment for an NHS employer. 'NHS employer' means NHS trusts, primary care trusts, strategic health authorities and special health authorities and any predecessor or successor body. Non executive directors of NHS organisations do not qualify. Contracts of employment may be written or verbal, and can be for a fixed period or be continuous. In law, employees have a contract as soon as they start work and in accepting and undertaking the work required they accept the terms and conditions offered by the employer. To qualify for a redundancy payment the employee must also have at least 104 weeks of continuous full-time or part-time service.

#### **Definition of Continuous Service**

4. "Continuous service" means full-time or part-time employment with the present or any previous NHS Employer. If with more than one NHS employer, there must not have been a break of more than a week (measured Sunday to Saturday) between employments.

#### **Definition of Reckonable Service**

5. "Reckonable service" for the purposes of an NHS redundancy payment, which is calculated on the basis of the service up to the date of termination of the contract, means continuous full-time or part-time employment with the present or any previous NHS employer but with the following additions:



## **Terms and conditions of service specialty doctors – England (2008)**

- where there has been a break in service of 12 months or less the period of employment prior to the break will count as reckonable service;
  - periods of employment as a trainee with a general medical practitioner in accordance with the provisions of the Trainee Practitioner Scheme will count as reckonable service;
  - at employer discretion, any period or periods of employment with employers outside the NHS where these are judged to be relevant to NHS employment can be included in reckonable service.
6. The following employment will not count as reckonable service:
- employment that has been taken into account for the purposes of a previous redundancy, or loss of office payment by an NHS employer;
  - where the employee has previously been given pension benefits, any employment that has been taken into account for the purposes of those pension benefits.

### **Definition of a Months Pay**

7. “Months pay” means whichever is the more beneficial of the following calculations:
- 4.35 times a week’s pay calculated in accordance with the provisions of Section 221 to 229 of the Employment Rights Act 1996;
  - an amount equal to 1/12<sup>th</sup> of the annual salary in payment at the date of termination of employment.

### **Calculation of Redundancy Payment**

8. The redundancy payment will take the form of a lump sum, dependent on the employee’s reckonable service at the date of termination of employment. The lump sum will be calculated on the basis of one month’s pay for each complete year of reckonable service subject to a minimum of two years (104 weeks) continuous service and a maximum of 24 year’s reckonable service being counted.
9. Fractions of a year of reckonable service will not be taken into account.

## **Early Retirement on Grounds of Redundancy for Employees Entitled to Pension Benefits**

### **Qualification Criteria**

10. Members of the NHS Pension Scheme who are made redundant and meet the conditions set out above in paragraphs 3 to 6, may choose to retire early without reduction in the value of pension benefits as an alternative to receiving the full lump sum benefit set out in paragraph 8. To qualify for early retirement the member of staff must:
- Be a member of the NHS Pension Scheme;
  - Have at least two years’ continuous service and two years’ qualifying membership;
  - Have reached the minimum pension age. The Finance Act 2004 allows for protection of a minimum pension age of 50 for members who had the right

## **Terms and conditions of service specialty doctors – England (2008)**

to take reduced benefits at that age on 5 April 2006. This protection may continue as long as members retiring early after 6 April 2010 take all their benefits payable under scheme rules. In the NHS Scheme, for those without this protection, members who first joined and some who returned to the scheme after 6 April 2006, minimum pension age will change from 50 to 55 from 6 April 2010.<sup>7</sup>

### **Definition of Qualifying Membership**

11. 'Qualifying membership' is membership that counts towards entitlement for benefits. Pensionable membership is membership that counts when benefits are calculated. This may be different from reckonable service for the purposes of a redundancy payment as it can include pensionable service from previous periods of employment with the NHS or another employer and periods of part time working.

### **Use of Redundancy Payment to Pay for Early Retirement**

12. If the redundant member of staff chooses to take early retirement with an unreduced pension under these arrangements, they will receive immediately the full value of their qualifying pension benefits at the point of redundancy without the actuarial reduction that would occur with voluntary early retirement. Their employer will pay the relevant NHS pension scheme a sum equivalent to the capitalised cost of paying the pension and lump sum early; either as one payment or in five instalments.<sup>u</sup>
13. This sum will be paid from the lump sum redundancy payment that otherwise would have been paid to the employee. If the cost to the employer of paying by single payment for early retirement is less than the value of the redundancy payment that the member would have received under paragraph 8 then the redundant employee will also receive from the employer a redundancy payment equivalent to the difference between the two sums. The cost to the employer would therefore normally be the same as if the employee had chosen to take a redundancy payment without unreduced early retirement. However, if the cost of early retirement is more than the redundancy payment due, the employer will pay the additional cost. If the employer chooses to pay in five instalments, the employer is responsible for the additional interest charge.

### **Treatment of Concurrent Pensionable Employment**

14. Where there is concurrent pensionable employment, members may choose between:
  - Ceasing all pensionable employment and taking early retirement on the terms set out below in respect of each employment in which case they cannot be pensionable again in the current scheme (normal pension age of 60). (An employment may continue if it is not more than 16 hours a week, without affecting the payment of enhanced benefits, but it will not be pensionable in the scheme) and:
  - Taking benefits only in respect of the employment that is being terminated, in which case they can continue being pensionable in other employments. After 6 April 2010, this will not apply if taking benefits under the age of 55.

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<sup>u</sup> It is open to qualifying members to take early retirement under the normal scheme arrangements for voluntary early retirement or normal age retirement.

## Terms and conditions of service specialty doctors – England (2008)

15. Members with concurrent practitioner and non-practitioner employments, who choose to cease all pensionable employments, will receive only their non-practitioner benefits on redundancy grounds. Where appropriate, benefits for practitioner membership may be taken on an early retirement basis with an actuarial reduction or preserved for payment at age 60.\* +  
(amendment 8)
16. The employer who authorises early retirement will be responsible for the pension costs accruing from other terminating employment. If a member returns to work after taking their pension, their pension will be abated, if the combined value of their pension and salary is greater than they earned prior to retirement. This will continue until they reach their normal pension age.

### Exclusion from Eligibility

17. Employees shall not be entitled to redundancy payments or early retirement on grounds of redundancy if:
  - they are dismissed for reasons of misconduct, with or without notice; or
  - at the date of the termination of the contract have obtained without a break, or with a break not exceeding four weeks, suitable alternative employment with the same or another NHS employer; or
  - unreasonably refuse to accept or apply for suitable alternative employment with the same or another NHS employer; or
  - leave their employment before expiry of notice, except if they are being released early (see paragraphs 20 to 21 below); or
  - are offered a renewal of contract (with the substitution of the new employer for the previous NHS one);
  - where their employment is transferred to another public service employer who is not an NHS employer.

### Suitable Alternative Employment

18. Employers have a responsibility before making a member of staff redundant or agreeing early retirement on grounds of redundancy to seek suitable alternative employment for that person, either in their own organisation or through arrangements with another NHS employer. Employers should avoid the loss of staff through redundancy wherever possible to retain valuable skills and experience where appropriate within the local health economy.
19. 'Suitable alternative employment', for the purposes of paragraph 17, should be determined by reference to Sections 138 and 141 of the Employment Rights Act 1996. In considering whether a post is suitable alternative employment, regard should be had to the personal circumstances of the employee. Employees will, however, be expected to show some flexibility.
20. For the purposes of this scheme any suitable alternative employment must be brought to the employee's notice in writing or by electronic means agreed with

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\* Where practitioner membership ended 12 months or more before the date of non-practitioner retirement on redundancy, and all other posts have ceased, practitioner benefits will be paid at the same time as the redundancy benefits and associated pension costs will be met by the NHS employer authorising retirement.

+ Practitioners are general medical and general dental practitioners

## **Terms and conditions of service specialty doctors – England (2008)**

the employee before the date of termination of contract and with reasonable time for the employee to consider it. The employment should be available not later than four weeks from that date. Where this is done, but the employee fails to make any necessary application, the employee shall be deemed to have refused suitable alternative employment. Where an employee accepts suitable alternative employment the 'trial period' provisions in Section 138 (3) of the Employment Rights Act 1996 will apply.

### **Early Release of Redundant Employees**

21. Employees who have been notified of the termination of their employment on grounds of redundancy, and for whom no suitable alternative employment in the NHS is available, may, during the period of notice, obtain other employment outside the NHS.
22. If they wish to take this up before the period of notice of redundancy expires the employer will, unless there are compelling reasons to the contrary, release such employees at their request on a mutually agreeable date. That date will become the revised date of redundancy for the purpose of calculating any entitlement to a redundancy payment under this agreement.

### **Claim for Redundancy Payment**

23. Claims for redundancy payment or retirement on grounds of redundancy must be submitted within six months of date of termination of employment. Before payment is made the employee will certify that:
  - they had not obtained, been offered or unreasonably refused to apply for or accept suitable alternative Health Service employment within four weeks of the termination date;
  - they understand that payment is made only on this condition and undertake to refund it if this condition is not satisfied.

### **Retrospective Pay Awards**

24. If a retrospective pay award is notified after the date of termination of employment then the redundancy payment and/or pension will be recalculated, and any arrears due paid.<sup>9</sup>

### **Disputes**

25. An employee who disagrees with the employer's calculation of the amount of redundancy payment or the rejection of a claim for redundancy payment should make representations to the employer via local grievance procedures. See also paragraph 22 about making a claim for a redundancy payment.

### **Early Retirement in the Interests of the Efficiency of the Service**

26. Members of the NHS Pension Scheme will receive payment of benefits without reduction if they retire early in the interests of the efficiency of the service, and they satisfy the qualifying conditions set out in paragraph 10. Retiring early in the interests of the service is a flexibility available at employer discretion. In these cases, no redundancy payment is due. In agreeing to retirement in the interests of the service, the employer undertakes to pay the costs of paying the pension and lump sum early. Employers will need to ensure that they exercise

## **Terms and conditions of service specialty doctors – England (2008)**

this discretion appropriately and will be conscious of the implications of any potential discrimination on grounds of age, gender, gender identity or gender expression, pregnancy or maternity, marriage or civil partnership, race, religion or belief, disability, or sexual orientation.<sup>10</sup>

27. These arrangements are aimed at employees who have given valuable NHS service in the past but are no longer capable of doing so. This might be because of new or expanded duties or a decline in the ability to perform existing duties efficiently but not so as to qualify them for ill health retirement. Employers would be expected to consider alternatives before agreeing to early retirement, including reasonable adjustments to an existing role or potential suitable alternatives.<sup>11</sup>
28. The relevant NHS pension scheme certifies the grounds on which early retirement is taking place. The scheme does so on the basis of the information provided by the employer. In each case, therefore, an appropriate senior manager should authorise the early retirement, ensuring that the relevant criteria have been met.

### **Employer Responsibilities**

29. Employer contributions to the NHS pension scheme do not cover the costs of early retirement benefits. There is a requirement for NHS employers to pay these costs if they retire staff early on grounds of redundancy or in the interests of the service.<sup>12</sup>

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 24 (Temporary Schedule)**

#### **Caring for Children and Adults**

##### **General**

1. All NHS employers must have a carer's policy to address the needs of people with caring responsibilities and to meet the requirements of the "right to request" flexible working legislation for carers of children and dependant adults (see Employment Relations Act for definition of "carer"). This policy should emphasise the benefits of employment breaks, flexible working arrangements and balancing work and personal life as set out in Schedules 22, 25 and 26.
2. The policy should seek to balance the requirements of delivering a first class service with the needs of employees, to find the most effective means of supporting those with carer responsibilities as part of a wider commitment by the NHS to improve the quality of working life.
3. Many of the policies related to child and dependant care will have relevance to other forms of care. For example the planning process for checking out what would help eligibility criteria and ensuring equality of access. These should be considered when drawing up a carers policy.

##### **Child and Dependant Care**

4. Childcare covers a range of care choices for children from birth up to age 14 years.
5. Dependant care covers a range of options to meet the needs of dependent adults including the needs of dependent young people over the age of 14 where an employee is involved in substantial and regular care sufficient for them to seek a change in their permanent contract of employment.<sup>13</sup>
6. The policy should be drawn up jointly between employers and local staff side representatives. This should cover:
  - the child and dependant care needs of people relative to matters such as place of work, working patterns (including shift patterns) and hours worked;
  - policy on child and dependant care support particularly related to specific difficulties in recruiting and retaining people in certain job categories;
  - equality of access to child and dependant care and affordability, respecting the diversity of personal domestic circumstances;
  - guidelines on eligibility;
  - how the policy relates to other Schedules, in particular those covering leave and flexible working arrangements;
  - the range of options open to carers, i.e. crèche facilities, childminders, workplace nurseries, allowances, school and holiday play schemes, term-time contracts etc. The policy should be clear as to why certain options are available;

### **Terms and conditions of service specialty doctors – England (2008)**

- partnership options with other employers and trade unions;
  - allocation of senior management responsibility for the operation and monitoring of the policy
7. Where a decision is taken not to offer particular forms of support, the policy should indicate where other arrangements are available to help people with caring responsibilities, and what alternative ways of working exist.<sup>14</sup>
  8. Applications and outcomes should be monitored annually, in partnership with local staff representatives.
  9. Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness.
  10. Applications and outcomes, from both employer and employees should be recorded and kept for a minimum of one year.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 25 (Temporary schedule)**

#### **Flexible Working Arrangements**

##### **General**

1. NHS employers in partnership with staff organisations will develop positive flexible working arrangements which allow people to balance work responsibilities with other aspects of their lives.
2. Employers are required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff, staff with dependants and job applications under the Equality Act and staff who are returning from maternity leave (see Schedule 21).<sup>15</sup>
3. New working arrangements should only be introduced by mutual agreement, whether sought by the employee or the employer.
4. Flexible working should be part of an integrated approach to the organisation of work and the healthy work/life balance of staff.
5. Policies for flexible working should be made clear to all employees.
6. Employers should develop policies on flexible working which, as far as is practicable, should include:
  - part-time working, where a person works to a pattern and number of hours by mutual agreement;
  - job sharing, where two or more people share the responsibilities of one or more full-time job(s), dividing the hours, duties and pay between them;
  - flexi-time, where employees can choose their own start and finish time around fixed core hours;
  - annual hours contracts, where people work a specific number of hours each year, with the hours being unevenly distributed throughout the year;
  - flexible rostering, using periods of work of differing lengths within an agreed overall period;
  - term-time working, where people work during the school term but not during school holidays;
  - school-time contracts;
  - teleworking, where people work from home for all or part of their hours with a computer or telecommunication link to their organisation;
  - voluntary reduced working time, where people work reduced hours by agreement at a reduced salary;



## **Terms and conditions of service specialty doctors – England (2008)**

- fixed work patterns, where, by agreement, days off can be irregular to enable, for example, access by separated parents to their children and flexible rostering.
  - Flexible retirement
7. Flexible working arrangements should be available to all employees.
  8. All jobs should be considered for flexible working. If this is not possible the employer must provide written, objectively justifiable reasons for this and give a clear, demonstrable operational reason why this is not practicable.
  9. There should be a clear procedure for application for flexible working, agreed by employers and local staff representatives.
  10. All people with flexible working arrangements should have access to standard terms and conditions of employment, on an equal or pro-rata basis, unless different treatment can be justified for operational reasons.

### **Monitoring and Review**

11. Applications and outcomes should be monitored annually, in partnership with local staff representatives.
12. Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness.
13. Applications and outcomes, from both employer and employees, should be recorded and kept for a minimum of one year.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 26 (Temporary Schedule)**

#### **Balancing Work and Personal Life**

##### **GENERAL**

1. NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments.
2. Leave arrangements should be part of an integrated policy of efficient and employee friendly employment practices, and this Schedule should be seen as operating in conjunction with other provisions particularly the Employment Break Scheme, Flexible Working Arrangements and the Caring for Children and Adults Schedules.
3. Arrangements should be agreed between employers and local staff representatives.
4. A dependant is someone who is married to, is a civil partner, or a partner (whether opposite or same sex), “a near relative” or someone who lives at the same address as the employee. A relative for this purpose includes: parents, parents-in-law, adult children, adopted adult children, siblings (including those who are in-laws), uncles, aunts, grandparents and step relatives or is someone who relies on the employee in a particular emergency.<sup>16</sup>

##### **FORMS OF LEAVE**

###### **Parental Leave**

5. This should be a separate provision from either maternity or maternity support leave and should provide a non-transferable individual right to at least 18 weeks’ leave. Leave is normally unpaid, but may be paid by local agreement.<sup>17</sup>
6. Parental leave should be applicable to any employee in the NHS who has nominated caring responsibility for a child under age 14 (18 in cases of adoption or disabled children).
7. Leave arrangements need to be as flexible as possible, so that the leave may be taken in a variety of ways by local agreement. Parental leave can be added to periods of maternity support or maternity leave.
8. Notice periods should not be unnecessarily lengthy and should reflect the period of leave required. Employers should only postpone leave in exceptional circumstances and give written reasons. Employees may also postpone or cancel leave that has been booked with local agreement.
9. During parental leave the employee retains all of his or her contractual rights, except remuneration and should return to the same job after it. Pension rights and contributions shall be dealt with in accordance with NHS Superannuation Regulations. Periods of parental leave should be regarded as continuous service.
10. It is good practice for employers to maintain contact (within agreed protocols) with employees while they are on parental leave.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Maternity Support (Paternity) Leave and Pay and Ante-Natal Leave**

11. This will apply to the father of the child (including adoptive fathers), the mother's husband or partner (whether opposite or same sex), or nominated carer.
12. NHS organisations have scope for agreeing locally more favourable arrangements where they consider it necessary, or further periods of unpaid leave.

### **Maternity support (paternity) leave**

13. All employees are entitled to two weeks' of ordinary maternity support (paternity) leave which can be taken around the time of the birth or the placement of the child for adoption.
14. In addition, employees may be entitled to take up to twenty six weeks of additional maternity support (paternity) leave if their partner has returned to work, the leave can be taken between 20 weeks and one year after the child is born or placed for adoption.
15. To qualify for additional maternity support (paternity) leave the employee and their partner must first meet certain qualification criteria. Details of the qualifying conditions and the notification requirements can be found at <http://www.direct.gov.uk/en/employment/index.htm>

### **Occupational pay during maternity support (paternity) leave**

16. There will be an entitlement to two weeks' occupational ordinary maternity support (paternity) pay. Full pay will be calculated on the basis of the average weekly earnings rules used for calculating occupational maternity pay entitlements. The employee will receive full pay less any statutory paternity pay receivable. Only one period of occupational maternity support (paternity) pay is ordinarily available when there is a multiple birth.
17. Eligibility for the two weeks of occupational maternity support (paternity) pay will be 12 months' continuous service with one or more NHS employer at the beginning of the week in which the baby is due.
18. Employees who are not eligible for the two weeks of occupational maternity support (paternity) pay may still be entitled to statutory paternity pay subject to meeting the qualifying conditions. Details of the qualifying conditions can be found at <http://www.direct.gov.uk/en/employment/index.htm>

### **Statutory pay during maternity support (paternity) leave**

19. To qualify for statutory pay in the additional maternity support (paternity) leave period, the employee and their partner must first meet certain qualifying conditions. Details of the criteria and the notification requirements can be found at <http://www.direct.gov.uk/en/employment/index.htm>

### **Rights during additional maternity support (paternity) leave**

20. Employees who are entitled to additional maternity support (paternity) leave/pay will be entitled to take up to 10 keeping in touch days during the course of the additional maternity support (paternity) leave period. The criteria for keeping in

## **Terms and conditions of service specialty doctors – England (2008)**

touch days is set out in Schedule 24 and is based on those used for statutory maternity leave and pay.

21. Employees who have taken additional maternity support (paternity) leave will have the right to return to the same job under their original contract and on no less favourable terms and conditions.

### **Ante-natal leave**

22. Reasonable paid time off to attend ante-natal classes will also be given.<sup>18</sup>

### **Adoption Leave and Pay**

23. All employees are entitled to take 52 weeks adoption leave.
24. There will be entitlement to paid occupational adoption leave for employees wishing to adopt a child who is newly placed for adoption.
25. It will be available to people wishing to adopt a child who has primary carer responsibilities for that child.
26. Where the child is below the age of 18 adoption leave and pay will be in line with the maternity leave and pay provisions as set out in this agreement.
27. Eligibility for occupational adoption pay will be twelve months' continuous NHS service ending with the week in which they are notified of being matched with the child for adoption. This will cover the circumstances where employees are newly matched with the child by an adoption agency.
28. If there is an established relationship with the child, such as fostering prior to the adoption, or when a step-parent is adopting a partner's children there is scope for local arrangements on the amount of leave and pay in addition to time off for official meetings.
29. If the same employer employs both parents the period of leave and pay may be shared. One parent should be identified as the primary carer and be entitled to the majority of the leave. The partner of the primary carer is entitled to occupational paternity leave and pay.
30. Reasonable time off to attend official meetings in the adoption process should also be given.
31. Employees who are not eligible for occupational adoption pay, may still be entitled to Statutory Adoption Pay (SAP) subject to the qualifying conditions. The rate of SAP is the same as for Statutory Maternity Pay.

### **Keeping in Touch**

#### **Work during the Adoption Leave Period**

#### **Keeping in Touch Days**

32. Employees will be entitled to Keep in Touch Days (KIT) in line with the maternity leave and pay provisions as set out in Schedule 21.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Leave/Time Off for Domestic Reasons**

33. This form of leave should cover a range of needs, from genuine domestic emergencies through to bereavement.
34. These provisions should cover all employees.
35. Payment may be made by local agreement, but the expectation is that relatively short periods of leave for emergencies will be paid.
36. If the need for time off continues, other options may be considered, such as a career break.
37. Applicants for the above forms of leave should be entitled to a written explanation if the application is declined.
38. Appeals against decisions to decline an application for leave should be made through the Grievance Procedure.

### **Monitoring and Review**

39. All applications and outcomes should be recorded, and each leave provision should be annually reviewed by employers in partnership with local staff representatives.
40. Applications and outcomes should be monitored annually, in partnership with local staff representatives.
41. Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness
42. Applications and outcomes, from both employer and employees should be recorded and kept for a minimum of one year <sup>16</sup>

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 27 (Temporary Schedule)**

#### **Transitional Arrangements**

##### **Effective Date**

1. The following transitional arrangements shall apply to the introduction of these Terms and Conditions of Service with effect from [1 April 2008].
2. Doctors in staff grades, CMOs, SCMOs, HPs and CAs may transfer to the Specialty Doctor contract.
3. Doctors may opt to remain on their existing contract and Terms and Conditions of Service without detriment.

##### **Transitional Process**

4. The process to transfer to these Terms and Conditions of Service shall be as follows:
  - a. Following the operative date employing organisations will write to eligible doctors to a) confirm that the doctor is eligible to transfer to these Terms and Conditions of Service and b) invite an expression of interest;
  - b. The eligible doctor shall have 12 weeks from the date of the employing organisations letter in which to confirm that they would be interested in transferring to these Terms and Conditions of Service (“an expression of interest”). An expression of interest shall not be legally binding nor shall it oblige the doctor to transfer to these Terms and Conditions of Service but it shall signify that the doctor wishes to commence the job planning process in good faith and in the expectation of transferring.
  - c. The employing organisation and the doctor shall then undertake the job planning process as set out in Schedule 4. Following the completion of this process the employing organisation will offer the doctor a Job Plan and salary package in writing (“the offer”);
  - d. Following such an offer, the doctor has 21 days within which to accept or decline the offer in writing;
  - e. Where it has not been possible to agree a job plan the doctor shall have access to the provisions for mediation and appeal as set out in Schedule 5 prior to transferring to these Terms and Conditions of Service.
5. Eligible doctors will be entitled to transfer to these Terms and Conditions of Service at any time after [1 April 2008]. Where he/she wishes to do so, he/she will enter into the process set out in paragraph 4 above. If the doctor is not eligible for transitional pay progression or back pay the effective date of transfer for salary purposes will be the date of commencing work in accordance with the agreed Job Plan.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Transitional Pay Progression and Back Pay**

6. Where a doctor gives an expression of interest to transfer to these Terms and Conditions of Service in accordance with paragraph 4.2 and agrees a Job Plan in accordance with Schedule 4, he/she will:
  - a. move to the scale point that would have been due at that date had the contract been available from the operative date (transitional pay progression); and
  - b. be entitled to an amount of pay equivalent to the arrears of pay he/she would have been entitled to receive had the contract been available from the operative date (back pay). This payment will be based upon the agreed work actually carried out during the back pay period, including payment for any additional sessions or notional half days. The payment will be made as soon as practicable after transfer to these Terms and Conditions of Service.
7. A doctor who has not met the criteria set out in paragraph 4 will not be entitled to transitional pay progression or back pay. In the event of any disagreement between the doctor and his/her employing organisation regarding the doctor's entitlement to pay progression or back pay, the doctor may submit a grievance to the employing organisation.

### **Agreeing the Revised Job Plan**

8. It is anticipated that the job planning process will be completed within three months of a doctor expressing an interest.

### **Salary on Transfer**

9. On transfer to these Terms and Conditions of Service, the eligible doctor will move to the appropriate scale point in accordance with paragraphs 12 and 13 of Schedule 14 and Appendix 1.

### **Arrangements for Doctors who Retire**

10. If a doctor retires at or above normal retirement age (or at any age for reasons of ill-health or compulsory redundancy) between the operative date and taking up the contract after having made an expression of interest at the appropriate time a pensionable payment will be applicable relating to the period between the operative date and their date of retirement. This payment will reflect pay due had the contract been available from the operative date and will be based on Basic Salary. The employer will notify the Pensions Agency of this increase in pensionable remuneration and contributions arising from the payment of arrears to former employees.

## **Terms and conditions of service specialty doctors – England (2008)**

### **Schedule 28**

#### **Acting up Allowance**

1. An acting-up allowance shall be payable to a doctor who, with the approval of their employer, takes over the full range of duties and responsibilities of a consultant, subject to the following provisions:
  - a. when a consultant is absent for more than a qualifying period of fourteen days other than on annual or professional leave within the recommended standard for the senior grade, and arrangements cannot be made either for cover by other consultants or for a locum to be engaged, a doctor under these Terms and Conditions shall be paid for acting-up if the employing organisation consider it is practicable for the doctor to take over the full range of duties and responsibilities of the absent consultant without supervision;
  - b. the allowance shall be such as to bring the doctor's rate of pay to the rate of pay he or she would receive on promotion to the consultant grade;
  - c. payment of the allowance shall have effect from the first day of the qualifying period.
  - d. the rate of allowance shall be determined in accordance with the appropriate schedule in the 2003 Consultant TCS. The allowance shall include any payment for fees for lectures to non medical or non dental staff and doctors and dentists as set out in the 2003 Consultant TCS. A doctor while acting up in the consultant grade will also be entitled to the arrangements on travelling allowance and mileage as set out in the 2003 Consultant TCS;
  - e. continuity of a period of acting-up will not be broken by days on which the practitioner is not required to be on duty; continuity will normally be broken by absence on leave of any kind of more than fourteen days and a further qualifying period of fourteen consecutive days will be required after such absence. A doctor shall not act up under the arrangements set out in this schedule for a continuous period longer than 6 months.<sup>19</sup>



## **Terms and conditions of service specialty doctors – England (2008)**

### **Appendix 1**

**Pay rates for the transitional year 2008/09 can be found on the NHS Employers website at [www.nhsemployers.org](http://www.nhsemployers.org)**