

## Terms and Conditions – Consultants (England) 2003

DEFINITIONS .....	3
Schedule 1 Commencement of employment .....	6
Schedule 2 Associated duties and responsibilities .....	7
Schedule 3 Job planning .....	8
Schedule 4 Mediation and appeals .....	11
Schedule 5 Recognition for emergency work arising from on-call duties.....	13
Schedule 6 Extra programmed activities and spare professional capacity .....	15
Schedule 7 Premium time.....	17
Schedule 8 On-call rotas .....	18
Schedule 9 Provisions governing the relationship between NHS work, private practice and fee paying services .....	19
Schedule 10 Fee paying services .....	22
Schedule 11 Principles governing receipt of additional fees.....	25
Schedule 12 Other conditions of employment.....	26
Schedule 13 Basic salary and payment for additional programmed activities for consultants appointed before 31 October 2003.....	28
Schedule 14 Basic salary and payment for additional programmed activities for consultants appointed after 31 October 2003.....	31
Schedule 15 Pay thresholds .....	34
Schedule 16 Pay supplements .....	36
Schedule 17 Pension arrangements .....	39
Schedule 18 Leave and public holidays .....	40
Schedule 19 Termination of employment.....	45
Schedule 20 Incorporated general council conditions of service .....	46
Schedule 21 Model provisions for expenses –NHS consultants.....	48
Schedule 22 Locum consultants .....	61
Schedule 23 Application of terms and conditions of service for NHS consultant clinical academics .....	63
Schedule 24 Maternity Leave and Pay (Temporary Schedule) .....	66
Schedule 25 Employment Break Scheme (Temporary Schedule).....	76
Schedule 26 Redundancy Pay (Temporary Schedule).....	79
Schedule 27 Caring for Children and Adults (Temporary Schedule).....	85
Schedule 28 Flexible Working Arrangements (Temporary Schedule) .....	87
Schedule 29 Balancing Work and Personal Life (Temporary Schedule).....	89
Schedule 30 Clinical Excellence Awards.....	96

The terms and conditions set out in this document shall incorporate, and be read, subject to any amendments which are from time to time the subject of negotiation by the appropriate negotiation bodies and are approved by the Secretary of State after considering the results of such negotiations. Any amendments should be published.

Version 1 - 20 October 2003  
Version 2 - 19 January 2004  
Version 3 – 1 June 2005  
Version 4 – 1 March 2007  
Version 5 – 2 April 2007  
Version 6 – 30 July 2007  
Version 7 – 1 April 2008  
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## DEFINITIONS

**Contractual and Consequential Services:** the work that a consultant 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:** work directly relating to the prevention, diagnosis or treatment of illness that forms part of the services provided by the employing organisation under section 3(1) or section 5(1)(b) of the National Health Service Act 1977. This includes emergency duties (including emergency 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 and administration directly related to the above (including but not limited to referrals and notes).

**Supporting Professional Activities:** activities that underpin Direct Clinical Care. This may include participation in training, medical education, continuing professional development, formal teaching, audit, job planning, appraisal, research, clinical management and local clinical governance activities.

**Additional NHS Responsibilities:** special responsibilities – not undertaken by the generality of consultants in the employing organisation – which are agreed between a consultant and the employing organisation and which cannot be absorbed within the time that would normally be set aside for Supporting Professional Activities. These include being a Medical Director, Director of Public Health, Clinical Director or lead clinician, or acting as a Caldicott guardian, clinical audit lead, clinical governance lead, undergraduate dean, postgraduate dean, clinical tutor or regional education adviser. This is not an exhaustive list.

**External Duties:** duties not included in any of the three foregoing definitions and not included within the definition of Fee Paying Services or Private Professional Services, but undertaken as part of the Job Plan by agreement between the consultant and employing organisation. These might include trade union duties, undertaking inspections for the Commission for Health Improvement (or its successor body), acting as an external member of an Advisory Appointments Committee, undertaking assessments for the National Clinical Assessment Authority, reasonable quantities of work for the Royal Colleges in the interests of the wider NHS, reasonable quantities of work for a Government Department, or specified work for the General Medical Council. This list of activities is not exhaustive.

**Emergency Work:**

Predictable emergency work: this is 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.

Unpredictable emergency work arising from on-call duties: this is work done whilst on-call and associated directly with the consultant'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 3, paragraph 6, non-emergency work shall be regarded as including the regular, programmed work of consultants whose speciality by its nature involves dealing routinely with emergency cases, e.g. A&E consultants.

**Fee Paying Services:** any paid professional services, other than those falling within the definition of Private Professional Services, which a consultant 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 10 of the Terms and Conditions.

**Private Professional Services (also referred to as "private practice"):** such services as 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
- work in the general medical, dental or ophthalmic services under Part II of the National Health Service Act 1977 (except in respect of patients for whom a hospital medical officer is allowed a limited "list", e.g. Members of the hospital staff).

**Professional and Study Leave:** professional leave or study leave in relation to professional work including:

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

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

**Premium Time:** any time that falls outside the period 07:00 to 19:00 Monday to Friday, and any time on a Saturday or Sunday, or public holiday.

**General Council Conditions:** 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.

## **Schedule 1 Commencement of employment**

1. The date from which employment under this contract began must be stated in clause 2.1 of the consultant's contract of employment.<sup>2</sup>
2. The date from which continuous employment as a consultant began for the purposes of the Employment Rights Act 1996 must be set out in clause 2.2 of the contract of employment and should include, 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 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.<sup>3</sup>

### **Calculation of seniority**

3. NHS organisations should take into account all previous service as a consultant with other NHS employing organisations and any equivalent experience in another EEA Member State. The employing organisation may, at its discretion, take into account service outside the NHS, for example including:
  - employment outside the EEA
  - voluntary service
  - employment in the independent sector
  - service in HM armed forces.<sup>4</sup>

On appointment to a Consultant post Associate Specialists should be paid in line with Schedule 14 paragraph 11.<sup>56</sup>

## **Schedule 2 Associated duties and responsibilities**

1. A consultant has continuing clinical and professional responsibility for patients admitted under his or her care or, (for consultants in public health medicine) for a local population. It is also the duty of a consultant 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.
  - maintain professional standards and obligations as set out from time to time by the General Dental Council (GDC) (Dental consultants only).
2. A consultant 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. Consultants shall be expected in the normal run of their duties to deputise for absent consultant or associate specialist colleagues so far as is practicable, even if on occasions this would involve interchange of staff within the same employing organisation. This does not include deputising where an associate specialist colleague is on a rota with doctors in training. When deputising is not practicable, the employing organisation (and not the consultant) shall be responsible for the engagement of a locum tenens, but the consultant shall have the responsibility of bringing the need to the employer's notice. The employing organisation shall assess the number of Programmed Activities required.

## **Schedule 3 Job planning**

### **General principles**

1. Job planning will be based on a partnership approach. The clinical manager will prepare a draft job plan, which will then be discussed and agreed with the consultant. Job plans will list all the NHS duties of the consultant, the number of Programmed Activities for which the consultant is contracted and paid, the consultant's objectives and agreed supporting resources.

### **Job content**

2. The Job Plan will set out all of a consultant's NHS duties and responsibilities and the service to be provided for which the consultant is accountable. 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 7 for recognising work done in Premium Time, a Programmed Activity will have a timetable value of four hours. Programmed Activities may 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 on-call work
  - Supporting Professional Activities
  - Additional NHS Responsibilities
  - External Duties
  - Travelling Time as defined in Schedule 12, paragraphs 10-11.

### **Job schedule**

4. The Job Plan will include a schedule of Programmed Activities setting out how, when and where the consultant's duties and responsibilities will be delivered. It is expected that Programmed Activities will normally take place at a consultant's principal place of work but there will be flexibility to agree off site working where appropriate. The clinical manager will draw up the schedule after full discussion with the consultant, taking into account the consultant's views on resources and priorities and making every effort to reach agreement.
5. The employer will be responsible for ensuring that a consultant has the facilities, training development and support needed to deliver the commitments in the job plan and will make all reasonable endeavours to ensure that this support conforms with the standards set out in 'Improving Working Lives'.
6. Non emergency work after 7pm and before 7am during weekdays or at weekends will only be scheduled by mutual agreement between the consultant and his or her clinical manager. Consultants will have the right to refuse non-emergency work at such times. Should they do so there will be no detriment in relation to pay progression or any other matter.
7. Where a consultant is required to participate in an on-call rota, the Job Plan will set out the frequency of the rota.

### **Managerial responsibilities**

8. The Job Plan will set out the consultant's management responsibilities.

### **Accountability arrangements**

9. The Job Plan will set out the consultant'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 consultant and his or her clinical manager and will set out the relationship between these personal objectives and local service objectives. Where a consultant 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 consultant'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.
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 consultant 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 consultant's career
  - be agreed on the understanding that delivery of objectives may be affected by changes in circumstances or factors outside the consultant's control, which will be considered at the Job Plan review.

## **Supporting resources**

14. The consultant and his or her clinical manager will use Job Plan reviews to identify the resources that are likely to be needed to help the consultant carry out his or her Job Plan commitments over the following year and achieve his or her agreed objectives for that year.
15. The consultant and his or her clinical manager will also use Job Plan reviews to identify any potential organisational or systems barriers that may affect the consultant'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 may include facilities, administrative, clerical or secretarial support, office accommodation, IT resources and other forms of support;
  - any action that the consultant 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 consultant'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 consultants with more than one NHS employer, a lead employer will normally be designated to conduct the Job Plan review on behalf of all the consultant's employers. The lead employer will take full account of the views of other employers (including for the purposes of Schedule 5) and inform them of the outcome.
21. Following the annual Job Plan review, the clinical manager will report the outcome, via the Medical Director, to the Chief Executive and copied to the consultant, setting out for the purposes of decisions on pay thresholds whether the criteria in Schedule 15 have been met.
22. The consultant and clinical manager may conduct an interim review of the Job Plan where duties, responsibilities, accountability arrangements or objectives have changed or need to change significantly within the year. In particular, in respect of the agreed objectives in the Job Plan, both the consultant and clinical manager will:
  - keep progress against those objectives under review
  - identify to each other any problems in meeting those objectives as they emerge
  - propose an interim Job Plan review if it appears that the objectives may not be achieved for reasons outside the consultant's control.

### **Resolving disagreements over job plans**

23. The consultant 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 consultant may refer to mediation and, if necessary, appeal as set out in Schedule 4.

## **Schedule 4 Mediation and appeals**

1. Where it has not been possible to agree a Job Plan, or a consultant disputes a decision that he or she has not met the required criteria for a pay threshold in respect of a given year, a mediation procedure and an appeal procedure are available.

### **Mediation**

2. The consultant, or (in the case of a disputed Job Plan) the clinical manager, may refer the matter to the Medical Director, or to a designated other person if the Medical Director is one of the parties to the initial decision. Where a consultant is employed by more than one NHS organisation, a designated employer will take the lead (in the case of a disputed Job Plan, a lead employer should have already been identified). The purposes of the referral will be to reach agreement if at all possible. The process will be that:
  - the consultant or clinical manager makes the referral in writing within two weeks of the disagreement arising;
  - the party making the referral will set out the nature of the disagreement and his or her position or view on the matter;
  - where the referral is made by the consultant, 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 thresholds have been met, will set out the employing organisation's position or view on the matter;
  - where the referral is made by the clinical manager, the consultant will be invited to set out his or her position on the view or matter;
  - the Medical Director or appropriate other person will convene a meeting, normally within four weeks of receipt of the referral, with the consultant and the responsible clinical manager to discuss the disagreement and to hear their views;
  - if agreement is not reached at this meeting, then the Medical Director will decide the matter (in the case of a decision on the Job Plan) or make a recommendation to the Chief Executive (in the case of a decision on whether the criteria for a pay threshold have been met) and inform the consultant and the responsible clinical manager of that decision or recommendation in writing;
  - in the case of a decision on whether the criteria for a pay threshold have been met, the Chief Executive will inform the consultant, the Medical Director and the responsible clinical manager of his or her decision in writing;
  - if the consultant is not satisfied with the outcome, he or she may lodge a formal appeal.

### **Formal appeal**

3. 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.

4. An appeal shall be lodged in writing to the Chief Executive as soon as possible, and in any event within two weeks, after the outcome of the mediation process. 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 four weeks.
5. The membership of the panel will be:
  - a chair nominated by the appellants employing organisation;
  - a second panel member nominated by the appellant consultant;
  - a third member chosen from a list of individuals approved by the Strategic Health Authority and the BMA and BDA. The Strategic Health Authority will monitor the way in which individuals are allocated to appeal panels to avoid particular individuals being routinely called upon. If there is an objection raised by either the consultant or the employing organisation to the first representative from the list, one alternative representative will be allocated. The list of individuals will be regularly reviewed.<sup>5</sup>

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

6. The parties to the dispute will submit their written statements of case to the appeal panel and to the other party one week before the appeal hearing. The appeal panel will hear oral submissions on the day of the hearing. Management will present its case first explaining the position on the Job Plan, or the reasons for deciding that the criteria for a pay threshold have not been met.
7. The consultant 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.
8. Where the consultant, the employer or the panel requires it, the appeals panel may hear expert advice on matters specific to a speciality.
9. It is expected that the appeal hearing will last no more than one day.
10. The appeal panel will make a recommendation on the matter in dispute in writing to the Board of the employing organisation, normally within two weeks of the appeal having been heard and this will normally be accepted. The consultant should see a copy of the recommendation when it is sent to the Board. The Board will make the final decision and inform the parties in writing.
11. No disputed element of the Job Plan will be implemented until confirmed by the outcome of the appeals process. Any decision that affects the salary or pay of the consultant will have effect from the date on which the consultant referred the matter to mediation or from the time he or she would otherwise have received a change in salary, if earlier.
12. In the case of a job planning appeal from a Medical Director or Director of Public Health, mediation would take place via a suitable individual, for example, a Non-Executive Director.

## Schedule 5 Recognition for emergency work arising from on-call duties

1. The expected average amount of time that a consultant is likely to spend on unpredictable emergency work each week whilst on-call and directly associated with his or her on-call duties will be treated as counting towards the number of Direct Clinical Care Programmed Activities that the consultant is regarded as undertaking. This will be up to a maximum average of one Programmed Activity per week until 31 March 2005 and a maximum average of two Programmed Activities per week from 1 April 2005.
2. Where the unpredictable emergency work arising from a consultant's on-call duties significantly exceeds the equivalent of two Programmed Activities on average per week, the clinical manager and the consultant will review the position. In exceptional circumstances, the employing organisation may agree additional arrangements with the consultant to recognise work in excess of this limit, either by additional remuneration or time off. The clinical manager and the consultant 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 consultant, 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 consultant's 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 such work over a prior reference period. The consultant will be the key player in the assessment by maintaining records of his/her activities. The employing organisation will agree the reference period with the consultant.
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 7, and from April 2004, an average of three hours of such work per week during Premium Time – constitutes for these purposes one Programmed Activity, up to a maximum of one Programmed Activity until 31 March 2005 and a maximum of two Programmed Activities from 1 April 2005.
5. Table 1 illustrates possible ways of allocating Programmed Activities for these purposes, during the transitional period or where the emergency work in question does not arise during Premium Time.

**Table 1**

<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

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

6. Table 2 illustrates possible ways of allocating Programmed Activities for these purposes, where from April 2004 the emergency work in question arises during Premium Time.

**Table 2 – Applicable from 1 April 2004**

<b>Average emergency work per week likely to arise during Premium Time 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

7. 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.
8. Where a consultant's on-call duties give rise to a different amount of time spent on unpredictable emergency work than assumed in this prospective assessment, the clinical manager and the consultant will review the position at a Job Plan review and, where appropriate, agree adjustments on a prospective basis. Where this results in a reduction in the level of recognition, the new arrangements will take immediate effect without any period of protection. A whole time consultant 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 consultant should have the option of accepting other duties to maintain a full time salary. Similar protection will apply to part-timers.

## **Schedule 6 Extra programmed activities and spare professional capacity**

1. Where a consultant 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 consultant intends to undertake such work:
  - the consultant will first consult with his or her clinical manager
  - the employing organisation may, but is not obliged to, offer the consultant the opportunity to carry out under these Terms and Conditions (including the remuneration arrangements contained in these Terms and Conditions) up to one extra Programmed Activity per week on top of the standard commitment set out in his or her contract of employment, subject to the provisions in paragraph 7 for consultants who have previously held a maximum part-time NHS consultant contract
  - 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 consultants prospectively agree to extra Programmed Activities these will be remunerated;
  - where possible, the employing organisation will put any such offer to the consultant at the annual Job Plan review but, unless the employing organisation and consultant agree otherwise, no fewer than three months in advance of the start of the proposed extra Programmed Activities, or six months in advance where the work would mean the consultant has to re-schedule external commitments;
  - there will be a minimum notice period of three months for termination of these additional activities. If a consultant 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 consultants an equal opportunity to express an interest in undertaking these additional activities. Any offer or acceptance should be made in writing;
  - full-time consultants who are currently working the equivalent of 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;
  - part-time consultants who wish to use some of their non-NHS time to do private practice will not be expected to offer any more than one extra Programmed Activity on top of their normal working week.
3. If a consultant declines the opportunity to take up additional Programmed Activities that are offered in line with the provisions above, and the consultant subsequently undertakes remunerated clinical work as defined above, this will constitute one of the grounds for deferring a pay threshold in respect of the year in question. If another consultant in the group accepts the work, there will be no impact on pay progression for any consultant in the group.

4. Where a consultant works for more than one NHS employer, the employers concerned may each offer additional Programmed Activities, but the consultant will not be expected to undertake on average any more than one Programmed Activity per week to meet the relevant criterion for pay 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 consultant working between seven and nine Programmed Activities devotes to Private Professional Services, the consultant will notify the employing organisation and the consultant and employing organisation may review the number of Programmed Activities in the consultant's Job Plan.
6. The provisions in this Schedule are without prejudice to the possibility that the consultant and employing organisation may wish to agree extra programmed activities up to the maximum level consistent with the Working Time Regulations.

**Transitional provisions**

7. For the first year under these Terms and Conditions (2003/04), the number of extra Programmed Activities that the employing organisation may offer, for the purposes of the provisions above, to consultants who have previously held a maximum part-time NHS consultant contract will not exceed an average of one extra Programmed Activity every three weeks. For the second year under these Terms and Conditions (2004/05), the number will not exceed an average of one extra Programmed Activity every two weeks. As provided by paragraph 6 above, this does not preclude the possibility of arranging additional Programmed Activities by mutual agreement.



## **Schedule 7 Premium time**

1. From 1 April 2004, the following provisions will apply to recognise the unsocial nature of work done in Premium Time and the flexibility required of consultants who work at these times as part of a more varied overall working pattern.

### **Scheduled work**

2. For each Programmed Activity scheduled during Premium Time there will be a reduction in the timetable value of the Programmed Activity itself to three hours or a reduction in the timetable value of another Programmed Activity by one hour, subject to a maximum reduction of three hours per week.
3. If, by mutual agreement, a Programmed Activity in Premium Time lasts for four hours or more, an equivalent enhancement to payment may be agreed.
4. Where a Programmed Activity falls only partly in Premium Time, the reduction in the timetable value of this or another Programmed Activity will be on an appropriate pro rata basis. If an enhancement to payment is made this will be applied to the proportion of the Programmed Activity falling within Premium Time.

### **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 under the provisions in Schedule 5, the employing organisation will treat three hours of unpredictable emergency work done in Premium Time as equivalent to one Programmed Activity. The provisions of paragraph 3 may also apply.

### **Work in premium time exceeding three programmed activities per week**

6. The foregoing provisions are designed to cover situations where work in Premium Time is up to the equivalent of three Programmed Activities per week on average. Where work during Premium Time exceeds this average, the employing organisation and the consultant will agree appropriate arrangements.

## **Schedule 8 On-call rotas**

### **Duty to be contactable**

1. Subject to the following provisions, the consultant must ensure that there are clear and effective arrangements so that the employing organisation can contact him or her immediately at any time during a period when he or she is on-call.
2. The only exception to this requirement is where a consultant's on-call duties have been assessed as falling within category B described in Schedule 16 and the employing organisation and the consultant have agreed in advance that the consultant may arrange short intervals during an on-call period during which it will not be possible for him or her to be contacted straight away. In these circumstances, the consultant must ensure that:
  - the intervals in question have been agreed with the employing organisation in advance and clearly recorded;
  - there are arrangements for messages to be taken if the employing organisation contacts the consultant during such an interval;
  - the consultant can and does respond immediately after such an interval.

### **High frequency rotas**

3. Where a consultant or consultants are 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 consultants will be taken into account.
4. Where unusually a consultant is asked to be resident at the hospital or other place of work during his or her on-call period, appropriate arrangements may be agreed locally. A consultant will only be resident during an on-call period by mutual agreement.

### **Private professional services and fee paying services**

5. Subject to the following provisions, a consultant will not undertake Private Professional Services or Fee Paying Services when on on-call duty. The exceptions to this rule are where:
  - the consultant's rota frequency is 1 in 4 or more frequent, his or her on-call duties have been assessed as falling within the category B described in Schedule 16, and the employing organisation has given prior approval for undertaking specified Private Professional Services or Fee Paying Services;
  - the consultant has to provide emergency treatment or essential continuing treatment for a private patient. If the consultant 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.

## **Schedule 9 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 consultant 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 consultant 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 consultant will disclose this information at least annually as part of the Job Plan Review. The consultant 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 consultant 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 consultant needs to provide emergency treatment for private patients during time when he or she is scheduled to be undertaking Programmed Activities. The consultant will make alternative arrangements to provide cover if emergency work of this kind regularly impacts on the delivery of Programmed Activities.
8. The consultant 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 consultant 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 consultant's NHS work, it will allow the consultant a reasonable period in line with Schedule 6, paragraph 2 to rearrange any private commitments. The employing organisation will take into account any binding commitments that the consultant may have entered into (e.g. leases). Should a consultant wish to reschedule private commitments to a time that would conflict with Programmed

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

#### **Scheduling private commitments whilst on-call**

10. The consultant will comply with the provisions in Schedule 8, paragraph 5 of these Terms and Conditions.
11. In addition, where a consultant is asked to provide emergency cover for a colleague at short notice and the consultant has previously arranged private commitments at the same time, the consultant 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 consultant 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 consultant 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 a consultant is permitted to use for private purposes and to what extent.
14. Should a consultant, with the employing organisation's permission, undertake Private Professional Services or Fee Paying Services in any of the employing organisation's facilities, the consultant 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 consultant 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 consultant in providing Private Professional Services, or provide private services on the consultant's behalf, it is the consultant's responsibility to ensure that these staff are aware that the patient has private status.
18. The consultant has an obligation to ensure, in accordance with the employing organisation's procedures, that any patient whom the consultant admits to the employing organisation's facilities is identified as private and that the responsible manager is aware of that patient's status.
19. The consultant 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 consultant is approached by a patient and asked about the provision of Private Professional Services, the consultant may provide only such standard advice as has been agreed with the employing organisation for such circumstances.
21. The consultant 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 consultant should not initiate discussions about providing Private Professional Services for NHS patients, nor should the consultant 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 consultant 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 consultant 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 consultant will make all reasonable efforts to support initiatives to increase NHS capacity, including appointment of additional medical staff and changes to ways of working.

## Schedule 10 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 Board, 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 consultant's Contractual and Consequential Duties, or where the consultant is giving evidence on the consultant's own behalf or on the employing organisation's behalf in connection with a case in which the consultant 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 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 consultant'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 BD8, 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 consultants, 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 consultant is acknowledged to be an expert;

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



## Schedule 11 Principles governing receipt of additional fees

1. In the case of the following services, the consultant will not be paid an additional fee, or - if paid a fee - the consultant must remit the fee to the employing organisation:
  - any work in relation to the consultant's Contractual and Consequential Services;
  - duties which are included in the consultant's Job Plan, including any additional Programmed Activities which have been agreed with the employing organisation;
  - fee paying work for other organisations carried out during the consultant'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 consultant's Programmed Activities;
  - lectures and teaching during the course of the consultant's clinical duties;
  - lectures and teaching that are not part of the consultant's clinical duties, but are undertaken during the consultant's Programmed Activities.

This list is not exhaustive and as a general principle, work undertaken during Programmed Activities will not attract additional fees.

2. Services for which the consultant can retain any fee that is paid:
  - Fee Paying Services carried out in the consultant's own time, or during annual or unpaid leave;
  - Fee Paying Services carried out during the consultant'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 consultant's own time, though it is expected that such consultations will normally be scheduled as part of Programmed Activities;<sup>1</sup>
  - Private Professional Services undertaken in the employing organisation's facilities and with the employing organisation's agreement during the consultant's own time or during annual or unpaid leave;
  - Private Professional Services undertaken in other facilities during the consultant's own time, or during annual or unpaid leave;
  - lectures and teaching that are not part of the consultant's clinical duties and are undertaken in the consultant's own time or during annual or unpaid leave.

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

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<sup>1</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.

## **Schedule 12 Other conditions of employment**

### **Outside employment and financial interests**

1. A consultant 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 consultant 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 consultant must be contactable by telephone.

### **Health assessment**

4. Consultants 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 consultant 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.

### **Research**

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

### **Publications**

7. A consultant shall be free, without prior consent of the employing organisation, to publish books articles, etc and to deliver any lecture or speak, whether on matters arising out of his or her NHS service or not.

### **Confidentiality**

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

### **Public interest disclosure**

9. Should a consultant 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 should have a right to speak out and be afforded statutory protection and should follow local procedures<sup>2</sup> for disclosure of information in the public interest.

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<sup>2</sup> As required under the Public Interest Disclosure Act 1998 (PIDA).

**Travelling time**

10. Where consultants 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 consultant's main place of work, after deducting the time normally spent travelling between home and main place of work. Employers and consultants may need to agree arrangements for dealing with more complex working days. Travelling time between a consultant's main place of work and home or private practice premises will not be regarded as part of working time.

## **Schedule 13 Basic salary and payment for additional programmed activities for consultants appointed before 31 October 2003<sup>42</sup>**

1. This Schedule applies to those whose first appointment as a NHS consultant was before 31 October 2003. Schedule 14 applies to those whose first appointment as a NHS consultant was on or after 31 October 2003. For the purposes of determining whether this Schedule or Schedule 14 applies, the date of appointment will be regarded as the date on which the consultant post was offered.

### **Date of transfer**

2. Where a consultant subject to this Schedule gave a formal commitment to the new contract on or before 31 October 2003, pay increases under the new contract will be backdated to 1 April 2003. Where a consultant gave a formal commitment to the new contract between 31 October 2003 and 31 March 2004, pay increases will be backdated by three months from the date on which the commitment was given. In each case, backdating will be conditional upon a job plan being agreed within three months, except where this deadline was not met for reasons beyond the consultant's control. Consultants may choose any shorter period of backdating if they so wish. Where a consultant gives a commitment to the contract after 1 April 2004, there will be no backdating. A formal commitment for these purposes is not legally binding, but consultants are expected to enter into such a commitment in good faith and in the full expectation of taking up the new contract.
3. For consultants subject to this Schedule, progression through pay thresholds will be on the anniversary of transfer to these Terms and Conditions of Service, subject to being continuously employed in the NHS. For consultants who give a formal commitment to the new contract before 1 April 2004 and who therefore received backdated increases in pay, the date of transfer will be regarded as the date to which increases in pay are backdated. For other consultants subject to this Schedule, the date of transfer will be the date on which the consultant first starts work under these Terms and Conditions.<sup>89</sup>

### **Pay Uplifts**

4. Increases to pay threshold values may be determined from time to time following the recommendations of the Review Body on Doctors' and Dentists' Remuneration.

### **Definition of seniority**

5. Both salary on commencement and eligibility for subsequent pay thresholds will depend on a consultant's seniority (see Annex A, Note 1). For these purposes, seniority is to be measured as the sum of the number of whole years completed as an NHS consultant, plus the point on the salary scale when appointed (on a scale of 1 to 5), plus any additional credited seniority (in whole years) to reflect non-NHS consultant level experience or flexible training (see below). For the avoidance of doubt, seniority may only accrue during an absence when on an employment break scheme to reflect the gaining of approved non-NHS consultant level experience.<sup>6,90</sup>
6. The employing organisation will credit appropriate additional seniority to reflect any consultant level experience gained outwith the NHS consultant system,

taking care to ensure that there is no double counting of this and any additional seniority granted at appointment by way of a higher point on the salary scale.

7. Where a consultant's training has been lengthened by virtue of being in a flexible training scheme or because of undergoing dual qualification, the employing organisation will, where necessary, credit appropriate additional seniority to ensure that the consultant is not prevented from reaching the pay threshold they would have attained had they trained on a full time or single qualification basis (e.g. training extended by two years counts as the equivalent of two years' seniority as a consultant on first appointment as a consultant). See separate guidance on part time contracts.

#### **Basic pay on commencement**

8. On commencement, and subject to the provisions on pay protection set out below, the value of basic salary – and of payments for any additional Programmed Activities – will:
  - for full-time consultants who have previously held a whole-time NHS consultant contract and full-time consultants who have previously held a maximum part-time NHS consultant contract be as referred to by Annex A, Note 1;
  - for part-time consultants be pro rata to the levels referred to by Annex A, Note 1, based on the number of agreed weekly Programmed Activities in the consultant's Job Plan as a proportion of the standard ten Programmed Activities for full-time consultants.<sup>7,8</sup>
9. For consultants who hold discretionary points or a local clinical excellence award as at 31 March 2018, there will be a pro rata increase in the payment for an additional Programmed Activity, compared with the rates referred to by Annex A, Note 1. This will not apply to any local clinical excellence award points received on or after 1 April 2018.<sup>7,5</sup>
10. Where a consultant holds a distinction award or a higher clinical excellence award under the current national clinical excellence award scheme as enforced from time to time, the pro rata increase in the payment for an additional Programmed Activity will be based on the maximum level of discretionary points or local clinical excellence awards as the case may be.
11. The annual rate for an additional Programmed Activity will be 10% of basic salary, where basic salary includes the pay thresholds and any local clinical excellence awards held as at 31 March 2018. This will not apply to local clinical excellence award points received on or after 1 April 2018.<sup>9</sup>

#### **Pay protection**

12. There will be no financial detriment to any consultants for whom the combined total of their basic pay and any on-call availability supplement (as assessed under the provisions in Schedule 16) would otherwise be less than the combined total of their basic pay and any intensity supplement under their previous NHS contract and terms and conditions. For consultants who transferred to these Terms and Conditions in 2003/04, there will be full protection for one year, i.e. taking account of annual pay uplift for 2004/05 for consultants on the previous national terms and conditions. After this date, protection will be on a mark-time basis (i.e. until the new salary exceeds the salary at the point of transfer).<sup>10</sup>

13. This is provided the consultant continues to undertake the same level of duties and responsibilities and on-call commitments and remains employed by the same NHS organisation or equivalent successor organisation.

**Pay thresholds**

14. Consultants will become eligible for pay thresholds at the intervals set out in Annex A, Note 1 on the anniversary of transfer to the contract (see paragraph 3 above).<sup>91</sup>
15. The value of pay thresholds for full-time consultants who have previously held a whole-time NHS consultant contract will be as referred to by Annex A, Note 1.
16. The value of pay thresholds for part-time consultants will be pro rata to the levels referred to by Annex A, Note 1, based on the number of agreed weekly Programmed Activities in the consultant's Job Plan as a proportion of the ten standard Programmed Activities for full-time consultants.
17. Unallocated.

Unallocated<sup>11</sup>

18. .

**Annex A<sup>12, 34</sup>**

Note 1: Pay rates for consultants appointed before 31 October 2003 can be found in the latest Pay Circular [see Annex A of the Pay Circular: Section 2: Annex A] which is available on the NHS Employers website at [www.nhsemployers.org](http://www.nhsemployers.org)<sup>76</sup>

## **Schedule 14 Basic salary and payment for additional programmed activities for consultants appointed after 31 October 2003<sup>43</sup>**

1. This Schedule applies to all those whose first appointment as a NHS consultant is on or after 31 October 2003. For these purposes, the date of appointment will be regarded as the date on which the consultant post was offered. There are four pay thresholds for consultants first appointed on or after 31 October 2003, the value of which is set out in a Pay Circular (see Annex B: Note 1).<sup>96</sup>
2. For consultants subject to this Schedule, progression through pay thresholds (see below) will be on the anniversary of appointment, subject to being continuously employed in the NHS. For these purposes, the date of appointment will be regarded as the date on which the consultant first started work as a consultant subject to these Terms and Conditions.

### **Pay Uplifts**

3. Increases to pay threshold values may be determined from time to time following the recommendations of the Review Body on Doctors' and Dentists' Remuneration.

### **Basic pay and pay thresholds**

4. On commencement, basic salary – and payments for any additional Programmed Activities – will be the first of the thresholds referred to by Annex B, Note 1, subject to paragraphs 5 and 6 below.
5. Basic salary on commencement will be set at a higher threshold to reflect any approved consultant-level experience that a consultant has gained. For the avoidance of doubt, seniority may only accrue during an absence on an employment break scheme to reflect the gaining of approved non-NHS consultant level experience.<sup>13</sup>
6. Where a consultant's training has been lengthened by virtue of being in a flexible training scheme or because of undergoing dual qualification, the employing organisation will, where necessary, set basic salary on commencement at a higher threshold to ensure that the consultant is not prevented from reaching the pay threshold they would have attained had they trained on a full time or single qualification basis (e.g. training extended by two years counts as the equivalent of two years' consultant service where a consultant would not otherwise be able to reach the same pay threshold).<sup>14</sup>
7. The annual rate for an additional Programmed Activity will be 10% of basic salary, where basic salary includes the pay thresholds and any local clinical excellence awards held as at 31 March 2018. This will not apply to local clinical excellence award points received on or after 1 April 2018.<sup>15, 77</sup>
8. Consultants will become eligible for additional pay thresholds at the intervals in Annex B, Table 1 on the anniversary of appointment (see paragraph 2 above).
9. The value of pay thresholds for part-time consultants will be pro rata to the levels referred to by Annex B, Note 1, based on the number of agreed weekly

Programmed Activities in the consultant's Job Plan as a proportion of the ten standard Programmed Activities for full-time consultants.

10. For consultants who hold discretionary points or a local clinical excellence award as at 31 March 2018, there will be a pro rata increase in the payment for an additional Programmed Activity, compared with the rates referred to by Annex B, Note 1. This will not apply to any local clinical excellence award points received on or after 1 April 2018.<sup>78</sup>
11. Where a consultant holds a national clinical excellence award under any national clinical excellence award scheme as enforced from time to time, the pro rata increase in the payment for an additional Programmed Activity will be based on the maximum level of local clinical excellence awards.
12. Where Associate Specialists have been paid in their previous regular employment at a basic salary, including any discretionary points, higher or equal to the rate at which they would (were it not for this provision) be paid on taking up their new Consultant appointment, then their starting salary in the new appointment shall be fixed at the threshold in the scale next above that previous rate.<sup>57</sup>



**Annex B**<sup>16, 35</sup>

Note 1: Pay rates for consultants appointed on or after 31 October 2003 can be found in the latest Pay Circular [see Annex A of the Pay Circular: Section 2: Annex B] which is available on the NHS Employers website at [www.nhsemployers.org](http://www.nhsemployers.org)<sup>79</sup>

Note 2: Pay points MC72 Point 15 to MC72 Point 19 temporarily remain to allow for transition from the previous pay scale to the new pay scale.<sup>93</sup>

Table 1: Pay progression for consultants appointed on or after 31 October 2003<sup>94</sup>

<b>Years</b>	<b>Threshold</b>	<b>Period before</b>	<b>Payroll point</b>
<b>completed as a consultant</b>		<b>eligibility for next threshold</b>	
0	1	3 year	MC72 Point 00
1		2 year	MC72 Point 01
2		1 year	MC72 Point 02
3	2a	1 year	MC72 Point 03
4	2b	4 years	MC72 Point 04
5		3 years	MC72 Point 05
6		2 years	MC72 Point 06
7		1 year	MC72 Point 07
8	3	6 years	MC72 Point 08
9		5 years	MC72 Point 09
10		4 years	MC72 Point 10
11		3 years	MC72 Point 11
12		2 years	MC72 Point 12
13		1 year	MC72 Point 13
14	4	-	MC72 Point 14
15			MC72 Point 15
16			MC72 Point 16
17			MC72 Point 17
18			MC72 Point 18
19			MC72 Point 19

## Schedule 15 Pay thresholds

### Criteria for pay thresholds

1. Following the annual Job Plan review, the clinical manager who has conducted the Job Plan review will report the outcome, via the Medical Director, to the Chief Executive and copied to the consultant and the Chief Executive of any other NHS organisation with which the consultant holds a contract of employment, setting out for the purposes of decisions on pay thresholds whether the consultant has:
  - made every reasonable effort to meet the time and service commitments in the Job Plan;
  - participated satisfactorily in the appraisal process;
  - participated satisfactorily in reviewing the Job Plan and setting personal objectives;
  - met the personal objectives in the Job Plan, or where this is not achieved for reasons beyond the consultant's control, made every reasonable effort to do so;
  - worked towards any changes identified in the last Job Plan review as being necessary to support achievement of the employing organisation's objectives;
  - taken up any offer to undertake additional Programmed Activities that the employing organisation has made to the consultant in accordance with Schedule 6 of these Terms and Conditions;
  - met the standards of conduct governing the relationship between private practice and NHS commitments set out in Schedule 9.
2. The Chief Executive, informed by the Medical Director's recommendation, will subsequently decide each year whether the consultant has met the criteria.
3. Where one or more of the criteria are not achieved in any year, the Chief Executive will have the discretion to decide where appropriate, for instance because of personal illness, that the consultant should nonetheless be regarded as having met the criteria for that year.
4. Consultants should not be penalised if objectives have not been met for reasons beyond their control. Employers and consultants will be expected to identify problems (affecting the likelihood of meeting objectives) as they emerge, rather than wait until the job plan review.
5. It will be the norm for consultants to achieve pay progression. Pay progression may only be deferred where the consultant has not met the specified criteria at paragraph 1 of this Schedule. Employing organisations cannot introduce any new criteria. For instance, pay progression cannot be withheld or delayed on the grounds of the employing organisation's financial position. Nor would it be acceptable for NHS organisations to use any system of quotas for pay progression.
6. A consultant has the right of appeal against a decision by the Chief Executive that he or she has not met the criteria in respect of any given year. In the event of an appeal, it will be the responsibility of the employing organisation to show

why this decision was taken. The appeal process is at Schedule 4 of the Terms and Conditions.

**Process for award of pay thresholds**

7. When a consultant becomes eligible for a pay threshold by virtue of fulfilling the required number of years' service in Schedule 13 or Schedule 14 of the Terms and Conditions, he or she will receive that pay threshold provided that the Chief Executive agrees that they have met the criteria above in each year since the award of the previous threshold or, in the case of a consultant's first pay threshold, since the commencement of a contract subject to these terms and conditions.
8. Where the Chief Executive has decided in any one year that a consultant has not met the necessary criteria, the employing organisation will defer the award of the appropriate pay threshold for one year beyond the date on which they would otherwise have received the threshold. Provided the Chief Executive decides that a consultant has met the criteria in the intervening year, he or she will receive that pay threshold from the start of the following year.

## Schedule 16 Pay supplements<sup>32</sup>

### On-call availability supplement

1. If a consultant is required to participate in an on-call rota, he or she shall be paid a supplement in addition to basic salary, in recognition of his or her availability to work during on-call periods. The availability supplement will be paid at the appropriate rate set out in Table 1 below.
2. The level of supplement will depend on both
  - the contribution of the consultant to the on-call rota and
  - the category of the consultant's on-call duties.

### Contribution to the rota

3. Full-time consultants shall receive the availability supplement as specified in Table 1 below. Part-time consultants, whose contribution when on-call is the same as that of full-time consultants on the same rota, shall receive the appropriate percentage of the equivalent full-time salary. The contribution of any consultant to the rota will be determined without regard to any alternative arrangements that the consultant may make with colleagues to provide on-call cover.

### Category of on-call duties

4. The employing organisation will determine the category of the consultant's on-call duties for these purposes by making a prospective assessment of the typical nature of the response that the consultant is likely to have to undertake when called during an on-call period. This assessment will take into account the nature of the calls that the consultant typically receives whilst on-call. The two categories are:
  - Category A: this applies where the consultant is typically required to return immediately to site when called or has to undertake interventions with a similar level of complexity to those that would normally be carried out on site, such as telemedicine or complex telephone consultations;
  - Category B: this applies where the consultant can typically respond by giving telephone advice and/or by returning to work later.
5. Where there is a change to the consultant's contribution to the rota or the categorisation of the consultant's on-call duties, the level of the availability supplement will be amended on a prospective basis. Where this results in a reduction in the level of availability supplement, there will be no protection arrangements in relation to previous entitlements. The consultant is entitled to challenge any changes to the assessment of on-call duties through the Job Planning process.
6. The availability supplement does not alter the amount of basic salary for any other purpose or calculation.
7. Basic salary, for these purposes, will include pay thresholds. It will exclude any Clinical Excellence Awards, Discretionary Points, Distinction Awards, London Weighting Allowance, on-call availability supplement, recruitment or retention premium, and any other fees, allowances or supplements.

**Table 1**

**On-call availability supplement**

Frequency of rota commitment	Value of availability supplement as a percentage of full-time basic salary	
	Category A	Category B
High frequency: 1 in 1 to 1 in 4	8.0%	3.0%
Medium frequency: 1 in 5 to 1 in 8	5.0%	2.0%
Low frequency: 1 in 9 or less frequent	3.0%	1.0%

8. Unallocated.<sup>44</sup>

**London Weighting Allowance**

9. Consultants 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 (or subsequent replacement) shall be paid London Weighting at the rate specified from time to time in Pay Circulars advising national rates of pay.<sup>45</sup>
10. Consultants 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 (or subsequent replacement) shall be paid London Weighting at the rate for the 'Fringe Zone' specified from time to time in Pay Circulars advising national rates of pay, unless he or she is employed at a unit described in paragraph 9 above.<sup>46</sup>
11. A reduced rate of London Weighting is payable to resident staff who receive free accommodation.<sup>47</sup>
12. Part time consultants shall receive the appropriate proportion of London Weighting.

**Recruitment and retention premia**

13. An employing organisation may under certain circumstances decide to award a recruitment or a retention premium in addition to basic salary. This may be paid either as a single sum, or on recurrent basis but for a time-limited period. If the latter, the period in question will not typically last for more than four years.
14. Employing organisations will determine the value of any such premium and may adjust its value from time to time to take account of changing circumstances. The value of the premium will not typically exceed 30 per cent of the normal starting salary for a consultant post.
15. Before making such an award, employing organisations will:
- set out evidence of difficulties in recruiting and retaining consultants in the particular specialty, or post in question;
  - set out evidence that they have adequately considered and tried non-pay solutions to such difficulties;

- consult with other NHS employing organisations and other appropriate bodies such as the Strategic Health Authority for the area in question.

**Other payments and allowances**

16. A consultant may be entitled to certain other payments and allowances at the discretion of the employing organisation.<sup>48</sup>

**Directors of Public Health**

17. Directors of Public Health will be entitled to supplements in addition to basic salary (in line with the provisions in Schedule 13 or Schedule 14) within the range as specified from time to time in Pay Circulars advising national rates of pay. These supplements will depend on the band within which their post falls and the weight of the post as assessed by their employing organisation. Band A applies to regional posts, irrespective of population. The definition of the relevant bands is set out below:

Band A: Director of Public Health – Regional Posts

Band B: Director of Public Health – population over 450,000

Band C: Director of Public Health – population 250,000 - 449,999

Band D: Director of Public Health – population 50,000 - 249,999<sup>49</sup>

18. Supplements shall be an element of remuneration and shall be pensionable.<sup>50</sup>
19. Population shall be reviewed annually at 1 April. The relevant population for this purpose shall be the Registrar General's estimate of the home population for the employing organisation at the previous 30 June.
20. If the home population for the employing organisation increases to a higher population band for one year only, this shall have no effect on the minimum supplement. If the rise to a higher population band is confirmed by the next year's estimate, a review of the supplement payable should be completed within six months. Payment of any increased supplement following such a review shall be made with retrospective effect from 1 April of the previous year.
21. If the home population for the employing organisation falls to a lower population band for one year only, this shall have no effect on the minimum supplement. If the fall in population is confirmed by the next year's estimate, a review of the supplement payable should be completed within six months. Where this would result in a reduction in the value of the supplement, a Director of Public Health shall retain the cash value of his or her existing supplement for so long as that remains more favourable.<sup>51</sup>

## Schedule 17 Pension arrangements<sup>52</sup>

1. The consultant 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 consultant's basic salary (up to ten Programmed Activities), including pay thresholds;
  - enhancements to basic salary by way of any discretionary points, distinction awards or clinical excellence awards held as at 31 March 2018. This will not apply to local clinical excellence award points received on or after 1 April 2018;
  - any on-call availability supplement;
  - any London Weighting Allowance; and
  - fees for domiciliary visits not undertaken during Programmed Activities.<sup>80</sup>
3. The following will not be pensionable in the NHS Pension Scheme:
  - travelling, subsistence, and other expenses paid as a consequence of the consultant's work for the employing organisation or the wider NHS;
  - any recruitment or retention premium;
  - any payments for additional Programmed Activities; and
  - any payments for work the consultant undertakes for Local Authorities, subject to local agreements to the contrary.

### **Removal or downgrading of a distinction award or clinical excellence award**

4. If a distinction award or clinical excellence award is removed or downgraded, the consultant loses the value of the award or receives the value of the downgraded award from the point at which this decision was made. This will be taken into account in the calculation of the consultant's pension in the normal way, subject to the NHS Pension regulations.<sup>81</sup>
5. In exceptional circumstances, a consultant may lose the value of the award as well as the award itself. This may affect the value of the consultant's pension depending on the date on which this deduction was made.

### **Mental health officer status**

6. There will be no effect on the Mental Health Officer status of consultants transferring to these terms of service.

## Schedule 18 Leave and public holidays

### A. Annual leave and public holidays

#### Annual leave

1. Consultants are entitled to annual leave at the following rates per year, exclusive of public holidays and extra statutory days:

Year	Number of years of completed service as a consultant	
	Up to seven years	Seven or more years
Until 31 March 2004	Six weeks	Six weeks
1 April 2004 – 31 March 2005	Six weeks	Six weeks + one day
From 1 April 2005	Six weeks	Six weeks + two days

2. The leave year runs from the anniversary date of the consultant's appointment, or adjusted to a common start date in force in that employment. No detriment to the consultant will arise from the leave year adjustment.
3. Annual leave should be discussed at the annual Job Plan review. Dates for annual leave and the arrangements for the consultant's work to be done in his or her absence should be incorporated into the agreed Job Plan, or alternatively agreed at least two months in advance, if possible. Subject however to suitable arrangements having been made, consultants may take up to two days of their annual leave without seeking formal permission provided that they give notification beforehand.

#### Public holidays

4. The leave entitlements of consultants in regular appointment are 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.<sup>17</sup>
5. In addition, a consultant 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 9am on statutory or public holidays should receive a day off in lieu.

#### Carry over of annual leave

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

#### Sickness during annual leave

8. If a consultant 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 consultant must obtain a medical certificate for subsequent days. Further annual leave will be suspended from the date of the first statement.



## **B. Professional and study leave**

### **Definition**

9. Professional and study leave includes:
- study, usually but not exclusively or necessarily on a course or programme;
  - research;
  - teaching;
  - examining or taking examinations;
  - visiting clinics and attending professional conferences;
  - training.

### **Proposing professional or study leave**

10. A consultant may be allowed professional or study leave for approved postgraduate purposes.

### **Conditions**

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

### **Period of leave**

13. Subject to the conditions in paragraph 16, 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 14 and 16. The recommended standard for consultants is leave with pay and 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**

14. Authorities may at their discretion grant professional or study leave in the United Kingdom above the period recommended in paragraph 13 with or without pay and with or without expenses or with some proportion thereof.

### **Professional and study leave outside the United Kingdom**

15. Authorities 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**

16. The following conditions shall apply:
- (i) where a consultant 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 consultant must not undertake any remunerative work without the special permission of the leave-granting organisation;

- (iii) where an application is made under paragraphs 14 and 15 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.

**C. Sabbaticals**

17. A consultant may apply for sabbatical leave in accordance with the employing organisation's current arrangements. Any proposal for sabbatical leave should be made before the annual appraisal and considered in the annual Job Plan review.

**D. Sick leave**

Section D is supplemented by Annex Z of the NHS Staff Handbook which sets out a framework to support employers and staff in the management of sickness absence and manage the risk of premature and unnecessary ill health retirements."

**Scale of allowances**

18. A consultant absent from duty owing to illness (including injury or other disability) shall, subject to the provisions of paragraphs 2 to 15, be entitled to receive an allowance in accordance with the following table:

Table1: Consultant 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.

19. The employer shall have discretion to extend a consultant's sick leave entitlement.
20. To aid rehabilitation the employer has discretion to allow a consultant 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**

21. 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 paragraph 18) appropriate to the consultant's service on the first day of absence the aggregate for the period of absence due to

illness during the twelve months immediately preceding the first day of absence. In aggregating the periods of absence, no account shall be taken of:

- unpaid sick leave; or
  - injuries or diseases sustained to members of staff in the actual discharge of their duties through no fault of their own; or
  - injury resulting from a crime of violence not sustained on duty but connected with or arising from the consultant's employment or profession, where the injury has been the subject of payment by the Criminal Injuries Compensation Authority; or
  - due to injury as at sub-paragraph (ii) above which has not been the subject of payment by the Authority on 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.
22. The employer may at its discretion also take no account of the whole or part of the periods of absence due to injury (not on duty) resulting from a crime of violence not arising from or connected with the consultant's employment or profession.

#### **Previous qualifying service**

23. For the purpose of ascertaining the appropriate allowance of paid sick leave under paragraph 18, previous qualifying service shall be determined in accordance with a consultant's statutory rights and all periods of service, without any break of twelve months or more (unless undertaking voluntary service), with a National Health Service employer shall be aggregated.

#### **Limitation of allowance when insurance or other benefits are payable**

24. The sick pay paid to a consultant 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 consultant who is incapable of doing his or her normal work because of illness shall immediately notify the employer according to the employer's procedures.
26. Any absence of more than seven days shall be certified by a doctor other than the sick consultant. Statements shall be submitted according to 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.

#### **Injury sustained on duty**

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

(ii) The injury Allowance provisions will apply as set out in Section 22 of the NHS Terms and Conditions of Service Handbook, and should be read alongside the accompanying guidance issued by NHS Employers.<sup>59</sup>

#### **Recovering of damages from third party**

29. A consultant 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 consultant a loan, not exceeding the amount of sick pay under these provisions, providing the consultant 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 consultant who is unable to perform his or her duties as a consequence of illness to submit to an examination by a medical practitioner 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 other alternative posts, and where there is no reasonable prospect of the consultant returning to work, employers will have the option to terminate employment before the employee has reached the end of the contractual period of sick leave, provided that the consultant will receive his or her entitlement in accordance with Table 1.

#### **Procedures and payment when 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.

#### **E. Special leave with or without pay**

33. Special leave for any circumstances may be granted (with or without pay) at the discretion of the employer. Where a consultant 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.<sup>18</sup>

#### **F. Maternity leave and pay**

34. The provisions of Schedule 24 shall apply.
35. Unallocated.<sup>18</sup>

## **Schedule 19 Termination of employment**

### **Period of notice**

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

### **Grounds for termination of employment**

4. A consultant's employment may be terminated for the following reasons:
  - conduct
  - capability
  - redundancy
  - failure to hold or maintain a requisite qualification, registration or licence to practice
  - in order to comply with statute or other statutory regulation
  - 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 consultant's contract of employment, he or she will be entitled to an appeal.
6. In cases where employment is terminated, a consultant may be required to work his or her notice, or, if the employing organisation considers it more appropriate, a consultant may be paid in lieu of notice, or paid through the notice period but not be required to attend work.<sup>53</sup>
7. In cases of gross misconduct, gross negligence, or where a consultant's registration as a medical practitioner (and/or their registration as a dental practitioner) has been removed or has lapsed without good reason, employment may be terminated without notice.

### **Termination of employment upon re-organisation**

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

### **Termination of employment by redundancy**

9. If a consultant's employment is terminated because of redundancy within the meaning of section 39 of the Employment Rights Act 1996, or in the circumstances described in Schedule 26, then provided that he or she has two years or more continuous service, entitlement will be in accordance with Schedule 26.<sup>28</sup>

## **Schedule 20 Incorporated general council conditions of service<sup>36</sup>**

**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.**

<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
S46.	Payment of superannuation and compensation benefits on premature retirement
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 (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

NB – Please note that Maternity Leave and Pay arrangements are now covered in temporary Schedule 24.<sup>19</sup>

NB – Information on the new doctor's and dentist's disciplinary framework can be found at:<sup>19</sup>

[http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPAmpGBrowsableDocument/fs/en?CONTENT\\_ID=4103418&chk=UVbdwG](http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPAmpGBrowsableDocument/fs/en?CONTENT_ID=4103418&chk=UVbdwG)

NB – Please note that Redundancy Pay arrangements are now covered in Temporary Schedule 26.<sup>29</sup>

NB – Please note that Caring for Children and Adults is now covered by Temporary Schedule 27.

NB – Please note that Flexible Working Arrangements is now covered by Temporary Schedule 28.

NB – Please note that Balancing Work and Personal Life is now covered by Temporary Schedule 29.

## **Schedule 21 Model provisions for expenses –NHS consultants**

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

### **General**

1. Travelling, subsistence, and other expenses incurred in the service of the employer shall be reimbursed to meet actual costs. Expenses do not form part of a consultant's pay and are not pensionable.

### **Submission of claims**

2. In preparing claims, consultants 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 allowances**

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 consultant conducts his or her main duties". Where a consultant 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 consultant conducts his or her main duties within that joint contract, irrespective of employing organisation.

### **Mileage allowances payable**

4. Except where a consultant has been allocated a Lease Car (paragraphs 32 to 54 and subject to paragraph 35 of these provisions) mileage allowances shall be payable in accordance with the rates specified at paragraphs 15 to 26 of these provisions, as appropriate, where consultants 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 11.

### **Emergency visits**

6. Consultants 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.

### **Home-to- principal place of work mileage**

#### **Official journeys beginning at home**

7. Mileage allowance will be paid for official journeys on behalf of the employing organisation where consultants travel by private car between their home and places other than their principal place of work, subject to a maximum of the



distance between the consultant's principal place of work and the place visited, plus ten miles, for each single journey (twenty miles for a return journey).

8. For consultants in public health medicine, for official journeys between 6pm and 8am and on Saturdays, Sundays, statutory and public holidays only between 8am and 6pm, the base for the calculation of mileage allowance shall be the doctor's own home.

#### **Subsequent official journeys**

9. In addition, consultants may claim mileage allowance for one return journey daily between their home and their principal place of work, up to a maximum of ten miles in each direction, on days when they subsequently use their car for an official journey.

#### **Liability to make emergency visits**

10. Consultants with commitments under the same contract to visit more than one place of work which includes a liability to make emergency visits to subsidiary hospitals, other institutions, or domiciliary visits, may, if the employing organisation decides that their liability is so extensive as to make it desirable that their car should always be available at their principal place of work, claim mileage allowances for normal daily journeys between their home and principal place of work up to a maximum of ten miles in each direction.

#### **Scattered hospitals**

11. Where, in exceptional circumstances, consultants are required by their employing organisation, as a condition of their contract, to live within a specified area at a distance of more than ten miles by road from their principal place of work in order to provide adequate emergency cover to a group of widely scattered hospitals or other institutions, mileage allowance at the approved rate shall be paid for the whole of the journey between their home and their principal place of work.

#### **Part-time consultants**

12. In the case of part-time consultants to whom paragraphs 7 to 11 do not apply, journeys between their place of residence and any place of work where they are employed, other than their principal place of work, shall be regarded as a journey in the service of the employing organisation, provided that no expenses shall be allowed for any such journey or part of such journey which would have been undertaken by the consultant, irrespective of their duties for the employer.
13. Where a part-time consultant travels between their place of residence and their principal place of work before and/or after an official journey, expenses shall be payable for the whole distance, provided that, for journeys to and from their principal place of work, no expenses shall be paid for any distance exceeding ten miles each way, unless the circumstances warrant exceptional treatment.

#### **Locum Consultants<sup>58</sup>**

14. Where a locum consultant 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.

#### **Rates of mileage allowance: regular user allowances**

15. Allowances at regular user rates shall be paid to consultants who :

- (i) are classified by the employing organisation as regular or essential users and choose not, or are unable, to avail themselves of a Lease Car in accordance with paragraphs 32 to 40; 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 32 to 40; 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; or
- (iv) are consultants who are classified as essential users.

#### **Essential users allowance**

16. Essential users are consultants who:

- (i) travel on average at least 1,250 miles (other than normal travel between their home or their practice premises and their principal place of work) each year; and
- (ii) either have ultimate clinical responsibility, or on-call responsibility normally controlled by a rota system, for the diagnosis and treatment of patients in hospital with emergency conditions which require them to be immediately available for recall; and are expected to be recalled to hospital in emergency at an average rate (taken over the year, but excluding period of leave) of twice or more during a working week;
- (iii) or whose duties require them to pay frequent visits to places away from their principal place of work (eg. to clinics, schools, residential establishments and other places, for instance, in connection with the control of infectious diseases and food poisoning), or who are liable to be called out in an emergency in connection with statutory duties relating to the control of communicable disease and food poisoning or the compulsory removal to suitable premises of persons in need of care and attention.

#### **Change in circumstances**

17. If there is a change in a consultant'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 consultant 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**

18. Where an employing organisation does not consider that a consultant, other than one to whom paragraph 35 of these provisions applies, should be classified as a regular or essential user, and if this gives rise to any serious difficulty, the consultant shall have recourse to local grievance procedures.

### **Payment of lump sums**

19. 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.

20. In the case of a consultant 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 consultant 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**

21. Part months of service shall be regarded as complete months for the purposes of paragraph 19. 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**

22. When a consultant 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 the 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.

### **Standard mileage rates**

23. Mileage allowances at standard rates will be paid to consultants who use their own vehicles for official journeys, other than in the circumstances described in paragraphs 15, 24 and 35 of these provisions, provided that a consultant 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**

24. The foregoing rates shall not apply if a consultant 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**

25. 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**

26. Subject to the production of vouchers wherever possible, consultants 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 consultant is entitled to night subsistence allowance for overnight absence. Similar expenses may also be refunded to consultants 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**

27. The provisions of this paragraph apply to consultants who qualify for the first time as essential car users in the NHS, other than those who are offered, or provided with, a suitable Lease Car.

28. Such consultants 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).

29. Loans shall be made in accordance with the provisions of paragraphs 22 to 27 of Section 24 of the General Council Conditions of Service.

30. 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.

### **Pedal cycles**

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

## **Lease cars**

### **Allocation**

32. For the purposes of paragraphs 33 to 54, a "Lease Car" is any vehicle owned or contract-hired by an employing organisation.
33. Employing organisations may offer Lease Cars for individual use on official business where they deem it economic (see also paragraph 51 of these provisions) or otherwise in the interest of the service to do so.
34. Consultants who are required to travel on NHS business and have been classified by the employing organisation as regular or essential 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**

35. A consultant who was a new appointee after 1 April 2003 (including a consultant 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 34 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 2,000cc for regular and standard users, regardless of the vehicle's engine size.
36. A consultant who initially refused an offer of a Lease Car will continue to be eligible for one, providing there has been no change in the consultant's duties.
37. A consultant 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 paragraphs 41 to 54 of these provisions.
38. The offer of a Lease Car constitutes the offer of a base vehicle which should in no case exceed 1800cc. Unless the consultant 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 consultants 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;
  - (iv) the physical requirements of the postholder; and
  - (v) the need to transport equipment.
39. 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.

40. 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**

41. Following consultation with the representatives of the professions locally, an employing organisation's conditions of use shall set out the consultant'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 consultant:
- (i) breach of conditions of use;
  - (ii) disqualification from driving;
  - (iii) wilful neglect;
  - (iv) termination of the consultant's contract of employment, on: disciplinary grounds; voluntary resignation; transfer to another employing organisation (where practicable, reciprocal arrangements should be made);
  - (v) change of duties resulting in the consultant 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**

42. 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 consultant 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).
43. A consultant will be required to pay one composite annual charge for private use. This will comprise 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.
44. The basis of the fixed charge for agreed private mileage shall be the consultant'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.
45. In the event that a consultant 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 consultant. In the event that a consultant 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 refundable to the consultant. If no recovery is available to the employing organisation, no refund will be made to the consultant.

46. A consultant shall meet the cost to the employing organisation of the fitting of any optional extras the consultant requires, and the contract between the employing organisation and the consultant should specify whether such extras will become the property of the contract-hirer or the consultant. In the latter case, the consultant 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 consultant has a certified disability, then the costs shall be met by the employing organisation.
47. In the event of a consultant's death in service or an early termination of the consultant's contract on the grounds of ill health, there shall be no financial penalty to the consultant or the consultant's estate on account of the early termination of the contract for private use of the Lease Car.
48. In the event of a consultant's absence from work for an extended period on maternity, sick, study or special leave, a consultant 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 consultant on account of early termination of the contract.

#### **Alternative vehicle**

49. Subject to the agreement of the employing organisation, which shall not be unreasonably withheld, a consultant 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 consultant 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.

#### **Reimbursement of petrol and other costs**

50. A consultant who has been allocated a Lease Car will be responsible for purchasing all petrol, whether for business or private mileage.
51. NHS business mileage costs will be reimbursed by reference to a claim form or diary showing daily visits on NHS business signed by the consultant. NHS business mileage costs include journeys for which a mileage allowance would be payable under paragraphs 7 to 13 of these provisions.
52. 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 employers 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.

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

#### **Carriage of passengers**

54. 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 consultants on the carriage of official passengers.

#### **Other expenses**

##### **Subsistence allowances**

55. The provisions of Section 22 of the General Council Conditions of Service shall apply, with the following provisos:

56. For the purposes of this guidance the term "principal place of work" shall be understood to mean "the NHS facility where the consultant's principal duties lie", except in the case of consultants who work occasional sessions with the Blood Transfusion Services in which case the regional headquarters of the Blood Transfusion Service shall be considered to be the principal place of work for any such sessions.

57. No day allowance shall be payable in respect of any period spent at a NHS facility as part of the Programmed Activities of the consultant concerned.

##### **Postage etc**

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

##### **Expenses of candidates for appointments**

59. The provisions of this paragraph shall apply where an employing organisation summons a consultant to appear before a selection board or invites a short-listed consultant 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 consultant 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 consultant is entitled to travelling expenses in accordance with paragraph 3 of these provisions and to subsistence allowance in accordance with paragraphs 55 to 57.
- (iii) where a consultant to whom sub-paragraph (ii) does not apply provides general medical or dental services under Part II of the National Health Service (Scotland) Act 1978, or is an assistant to such a consultant, he or she is entitled to travelling expenses and subsistence allowance at the higher rate applicable under paragraphs 55 to 57 of these provisions.



- (iv) a consultant 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.
- (v) a candidate for a consultant appointment shall not be reimbursed for more than three attendances. Where an employing organisation invites such a candidate to attend prior to short-listing, it may reimburse the candidate's expenses provided that he or she is subsequently short-listed, but not otherwise.
- (vi) a candidate to whom sub-paragraph (v) does not apply shall not be reimbursed for more than two attendances.

60. A consultant to whom sub-paragraph 59(ii) applies and who is summoned to appear before a selection board while on holiday shall be reimbursed for:

- (i) travelling expenses from the consultant'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 consultant 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 consultant is able to stay at his or her own home and it is reasonable to expect the consultant to do so.

61. Reimbursement shall not be made to a consultant who refuses the offer of the appointment as advertised on grounds which the employing organisation considers inadequate.

**Removal expenses**

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

## Annex A – Allowances and charges for private use

**Table 1: Mileage allowances**

**NB** These rates will be updated from time to time by the employing organisation

1 Public transport rate: 24p per mile.

2 Regular user rates:

Motor cars:

Engine capacity	(cc)	501 to 1000	1,001 to 1,500	1,501 to 2,000	over 2,000
Lump sum	(£)	508	626	760	760
Up to 9,000 miles	(p)	29.7	36.9	44.0	44.0
9,001 - 15,000 miles	(p)	17.8	20.1	22.6	22.6
Thereafter	(p)	17.8	20.1	22.6	22.6

3 Standard rates:

Motor cars:

Motor cars:

Engine capacity	(cc)	501 to 1000	1,001 to 1,500	1,501 to 2,000	over 2,000
Up to 3,500 miles	(p)	37.4	447.3	58.3	58.3
3,501 - 9,000 miles	(p)	23.0	28.2	33.5	41.0
9,001 - 15,000 miles	(p)	17.8	20.1	22.7	25.5
Thereafter	(p)	17.8	20.1	22.6	22.6

4 Other motor vehicles:

Engine capacity	(cc)	Up to 125	Over 125
Up to 5,000 miles	(p)	17.8	27.8
Over 5,000 miles	(p)	6.7	9.9

5 Passenger allowance:

Each passenger: 5 p per mile

6 Pedal cycles: 10p per mile

**Table 2: Lease cars charges for private use of allocated lease cars**

**NB** These rates will be updated from time to time by the employing organisation

A.	The current rates of:	£
	Road Fund Licence	e.g. 155
	Insurance for Private Use * (National call-off contract)	e.g. 88
	Including cover for private use:	e.g. 128
	Handling charge	95

B. Fixed Annual Charge per 1,000 private miles (for each year of the contract or notional contract), determined as follows:

$$\frac{(\text{Cost of Contract Hire at } \quad ) - (\text{Cost of Contract Hire at } \quad )}{(\text{maximum quoted mileage}) - (\text{minimum quoted mileage})}$$

1000

Plus total excess costs for non-base vehicle, where appropriate.

Plus VAT on total charge to consultant (A+B).

NB: Where the cost to the employing organisation of hiring the car includes Road Fund Licence and/or Insurance, these items should be extracted and the net cost used in calculating the charge per 1,000 miles.

- Lease Cars, while used solely on NHS business, do not require to be taxed or insured for the purposes of the Road Traffic Act 1972; any private mileage requires that the vehicle be taxed and insured.

## **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 23 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 consultant 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 consultant'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 consultants start and finish work when public transport may not be a viable way of travelling.

## **Schedule 22 Locum consultants**

1. The provisions of these terms and conditions shall apply to locum consultants, subject to the provisions set out below.
2. Locum consultants should ordinarily be included on the General Medical Council's, or the General Dental Council's, Specialist Register. Where, exceptionally, doctors or dentists not included on either Specialist Register are appointed to locum consultant posts, terms and conditions shall – subject to the provisions below – be on the same basis as for other locum appointments.

### **Appointment and tenure of post**

3. Locum appointments should be made in line with guidance issued by the Department of Health. Locum appointments are not permanent posts; tenure will be as agreed on appointment.

### **Basic salary**

4. Locum consultants who have not at any time held a substantive consultant post shall be remunerated at the equivalent rate to the first point on the salary scale, subject to the provisions for pay progression set out below and subject to recognising any approved non-NHS consultant level experience. Where a locum consultant's training has been lengthened by virtue of being in a flexible training scheme or because of undergoing dual qualification (required for the locum post concerned), the employing organisation will, where necessary, credit appropriate additional seniority to ensure that the locum consultant is not prevented from reaching the pay threshold they would have attained had they trained on a full time or single qualification basis (e.g. training extended by two years counts as the equivalent of two years' consultant level experience where a locum consultants would not otherwise be able to reach the same pay threshold).<sup>20</sup>
5. Locum consultants who hold a substantive consultant post (either within the employing organisation, or with another NHS employer) and will continue to hold such a post beyond the tenure of the locum post shall be remunerated at a rate consistent with their current pay threshold, or rate of pay, including any Distinction Award, Discretionary Points or Clinical Excellence Awards.<sup>21</sup>
6. Locum consultants who do not currently hold a substantive consultant post with the relevant employer (e.g. retired consultants) shall be remunerated at a rate consistent with their most recent pay threshold as a substantive consultant or, for those who have not previously held employment under these Terms and Conditions, their calculated seniority, subject to the provisions for pay progression set out below.<sup>22</sup>

### **Pay progression**

7. A locum in post for a period of six months will become subject to the Job Planning process. Where a locum doctor is covered by the Job Planning process and has completed twelve months' locum service, whether continuous or cumulative, there shall be an assessment of whether he or she has met the criteria set out in Schedule 15 for pay progression in respect of that year's service. Subject to meeting the criteria in respect of the relevant year(s), locums shall receive pay progression in the same way as substantive consultants.<sup>23</sup>
8. Where a locum consultant is approaching the completion of twelve months' service, the current employing organisation is responsible for making a decision

as to whether the criteria for pay progression have been met in respect of that year. Where part of the previous twelve months' service has been for one or more other NHS employing organisations, the current employing organisation shall ensure that they receive an assurance as to whether the criteria have been met in respect of this other service.

9. Where Associate Specialists have been paid in their previous regular employment at a basic salary, including any discretionary points, higher or equal to the rate at which they would (were it not for this provision) be paid on taking up their new locum consultant appointment, then their starting salary in the new appointment shall be fixed at the threshold in the scale next above that previous rate.<sup>60</sup>

## Schedule 23 Application of terms and conditions of service for NHS consultant clinical academics<sup>1, 24, 37</sup>

1. The following schedule applies to a consultant clinical academic holding an honorary (unpaid) NHS contract and a substantive contract of employment with an academic institution (normally a University) which is responsible for remunerating the whole of the academic's duties. Such duties will be agreed in an integrated Job Plan. In managing the contracts of clinical academics, NHS employers shall be informed by the 'Guidance Notes for the Employment of Consultant Clinical Academics (England) 2003' (amended August 2006).
2. **This schedule does not form any part of a contract with a non-NHS employer.**
3. Table 1 sets out the Schedules of these Terms and Conditions that shall apply to the honorary consultant post held by a clinical academic.
4. **Reference to supporting guidance is given to facilitate implementation only and is not part of the contract.**

Table 1 – Application of schedules to honorary consultant posts

Schedule 1	Commencement of Employment	Shall apply (see also paragraph 28 of accompanying guidance)
Schedule 2	Associated Duties and Responsibilities	Shall apply, except that, where a clinical academic is asked to deputise for an absent colleague (paragraph 3), account shall be taken of the clinical academic's duties for the substantive employer.
Schedule 3	Job Planning	Shall apply, except that: <ul style="list-style-type: none"> <li>• the substantive employer shall be party to a joint Job Planning process.</li> <li>• the recommendation on pay progression (paragraph 21) shall be a joint recommendation, agreed between the substantive employer and the honorary employer. And,</li> <li>• where the clinical academic's duties or responsibilities have changed during the year the substantive employer will also be able to propose amendment to the Job Plan.</li> </ul> <p>There should be appropriate application of the Follett principles in the agreement of clinical academic integrated Job Plans, outlined in the accompanying guidance.</p>
Schedule 4	Mediation and Appeals	Shall not apply. The provisions of Annex B of the honorary consultant contract (England) replace Schedule 4 for clinical academics.
Schedule 5	Recognition for Emergency Work Arising from On-Call Duties	Shall apply.
Schedule 6	Extra Programmed Activities and Spare Professional Capacity	Shall apply.  The requirement for the individual to undertake one additional Programmed Activity (if offered by either employer) before undertaking private practice should apply to clinical academics where they personally profit from undertaking privately remunerated clinical work.

		<p>Where the proceeds are retained by, or used to the benefit of, the University there should be no expectation that he or she should undertake an additional Programmed Activity in order to qualify for pay progression.</p> <p>The utilisation of additional Programmed Activities should be subject to agreement between the clinical academic consultant, the University employer and the honorary NHS employer.</p>
Schedule 7	Premium Time	Shall apply.
Schedule 8	On-Call Rotas	Shall apply.
Schedule 9	Provisions Governing The Relationship Between NHS Work, Private Practice and Fee Paying Services	Shall apply, except that the substantive employer's rules about undertaking private practice may also apply.
Schedule 10	Fee Paying Services	Shall apply. Any separate Fee Paying Services undertaken explicitly on behalf of the academic employer will be exempt from NHS rules.
Schedule 11	Principles Governing Receipt of Additional Fees	Shall apply. Any separate Fee Paying Services undertaken explicitly on behalf of the academic employer will be exempt from NHS rules.
Schedule 12	Other Conditions of Employment	Shall apply, except that paragraph 2 will not normally apply.
Schedules 13 – 15	Salary and Pay Thresholds	Clinical academic pay is covered by the substantive contract
Schedule 16	Pay Supplements	<p>Shall apply, except that:</p> <ul style="list-style-type: none"> <li>all payable supplements, including (where appropriate) London weighting and Recruitment or Retention Premia, will be paid by the substantive employer. Any Recruitment and Retention Premia will be jointly agreed on appointment or as part of the integrated Job Planning process.</li> <li>Paragraphs 9 to 15 shall not apply.</li> </ul>
Schedule 17	Pension Arrangements	Clinical academics who are continuing contributors to the NHSPS shall have the option to contribute to the USS or to remain in the NHSPS, subject to the terms of that scheme.
Schedule 18	Leave and Public Holidays	<p>Does not apply, except that:</p> <ul style="list-style-type: none"> <li>Leave entitlement for clinical academics will be determined by the University employer, but should be no less favourable than that available in the NHS; and</li> <li>The timing of leave will need to be agreed in advance with both employers.</li> </ul>
Schedule 19	Termination of Employment	Shall apply.
Schedule 20	Incorporated General Council Conditions of Service	The contract does not change any existing applicability of General Whitley Council provisions.
Schedule 21	Model Provisions for Expenses – NHS Consultants	Shall apply, except that: only costs incurred during the course of carrying out duties under the honorary contract may be claimed.
Schedule 22	Locum Consultants	Shall apply
Schedule 24	Maternity Leave and Pay (Temporary schedule)	Shall not apply.



Schedule 25	Employment Break Scheme (Temporary Schedule)	Shall not apply
Schedule 26	Redundancy Pay (Temporary Schedule)	Shall not apply
Schedule 27	Caring for Children and Adults (Temporary Schedule)	Shall not apply
Schedule 28	Flexible working arrangements (Temporary Schedule)	Shall not apply
Schedule 29	Balancing Work and Personal Life (Temporary Schedule)	Shall not apply

## Schedule 24 Maternity leave and pay (temporary schedule)<sup>25</sup>,

38

### 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.

### **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.
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 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.
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.
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.

#### **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 18.<sup>82</sup>
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.

#### **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

### **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;
  - (v) absence on a employment break scheme in accordance with the provisions of Schedule 25 ;
  - (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 links:

<http://www.dti.gov.uk/employment/workandfamilies/maternity-leave-pay/guidance/page21116.html>

[http://www.dwp.gov.uk/lifeevent/benefits/statutory\\_maternity\\_pay.asp](http://www.dwp.gov.uk/lifeevent/benefits/statutory_maternity_pay.asp)

<http://jobcentreplus.gov.uk/JCP/Customers/WorkingAgeBenefits/Dev008115.xml.html>

**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)

## **Schedule 25 Employment break scheme (temporary schedule)**

### **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.

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.
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>61</sup>

## **Schedule 26 Redundancy pay (temporary schedule)<sup>31</sup>**

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>62</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:

- 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



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>3</sup> (amendment 63)

### **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>4</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.

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<sup>4</sup>It is open to qualifying members to take early retirement under the normal scheme arrangements for voluntary early retirement or normal age retirement.

After 6 April 2010, this will not apply if taking benefits under the age of 55.<sup>(amendment 64)</sup>

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.<sup>5,6</sup>
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.

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<sup>5</sup> 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.

<sup>6</sup> Practitioners are general medical and general dental practitioners

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 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.

### **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 23 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 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>66</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>67</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>68</sup>

## **Schedule 27 Caring for Children and Adults (Temporary Schedule)<sup>39</sup>**

### **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 25, 28 and 29.
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 dependant 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>69</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;
  - 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>70</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.

## Schedule 28 Flexible Working Arrangements<sup>40</sup>

### 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>71</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;

- 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.



## **Schedule 29 Balancing Work and Personal Life<sup>41</sup>**

### **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>72</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.<sup>72</sup> Leave is normally unpaid, but may be paid by local agreement.
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.

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.<sup>73</sup>
12. NHS organisations have scope for agreeing locally more favourable arrangements where they consider it necessary, or further periods of unpaid leave.

### **Shared Parental Leave**

13. A Consultant working full-time or part-time will be entitled to paid and unpaid shared parental leave and pay if:

i) they have 12 months' continuous service with one or more NHS employers at the beginning of the 11th week before the expected week of childbirth, or at the beginning of the week in which they are notified of being matched with a child for adoption, or by the 15th week before the baby's due date if applying via a surrogacy arrangement;

ii) they notify their employer of their wish to take shared parental leave and provide a minimum of eight weeks' notice, through the submission of a booking notification form or other local process, which will confirm:

- (a) their intention to take shared parental leave;
- (b) the date(s) they wish to access shared parental leave (noting that two weeks compulsory maternity or adoption leave must be taken by the mother or primary adopter before they can access shared parental leave);
- (c) that they intend to return to work with the same or another NHS employer for a minimum period of three months after their shared parental leave has ended;
- (d) that the mother or primary adopter has returned to work following maternity or adoption leave, or has provided the binding notice confirming that they intend to bring their maternity or adoption leave and pay entitlements to an early end.

iii) they confirm that the other parent meets the statutory "employment and earnings test" by being an employed or self-employed earner in the UK for a total of 26 weeks (not necessarily continuously) in the 66 weeks preceding the week the child is due to be born or matched for adoption. The individual must have earned at least an average of £30 (gross) a week in 13 of those 26 weeks (not necessarily continuously). This amount can be amended from time to time by the Secretary of State.

14. In order to access enhanced shared parental leave employees will be required to complete the appropriate forms produced by ACAS and available on the Government website (<https://www.gov.uk/sharedparental-leave-and-pay/applying-for-leave-and-pay>). As stated on the statutory forms, some employers may provide their own standard forms for employees to use. Employing organisations will need to be able to satisfy themselves that they have all the information necessary to offer this enhanced benefit.
15. Employing organisations may at their discretion require the individual to provide additional information on their circumstances where this is

reasonable and necessary to determine entitlements.

16. It is the responsibility of the employee to ensure that all information provided is accurate. Where inaccurate information is provided that leads to overpayment of statutory or occupational entitlements, the employing organisation will have a right to reclaim any overpayment. Providing deliberately inaccurate information may also lead to the employing organisation taking disciplinary or other action against the employee.
17. It is recommended that organisations develop their own local shared parental leave policy and processes in partnership with local staff sides to ensure application processes are consistent and to enable local audit procedures to be carried out where necessary, ensuring equality duties are met.

### **Booking and varying shared parental leave**

18. Shared parental leave and pay must be taken within one year of the birth of the child, or the date the child was placed with the family in cases of adoption.
19. Following notification of their intention to take shared parental leave, an employee should provide notice to book a period of leave. The minimum period of notice to book or amend a period of leave shall be eight weeks.
20. An employee can provide up to three notices to book leave. This includes notices to vary a previously agreed pattern of leave.
21. Each of the three notices to book leave may include a single, continuous or discontinuous block of leave.
22. Requests for single blocks of leave cannot be refused.
23. Confirmed leave arrangements can be amended by the submission of a notice to vary the agreed period of leave. An employee can submit a notice to extend a period of leave, end it sooner than previously agreed or consolidate a number of discontinuous weeks in to a single block of leave using a variation notice. Eight weeks' notice must be given but flexibility should be provided in the event of early and late births.
24. In instances where discontinuous periods of leave are requested, employers are not bound to agree the requested pattern. A two-week discussion period between the employee and employer will commence on the date the employee submits the booking notice. The review will look at the requested pattern of leave and discuss possible alternatives. In the limited circumstances where the employer refuses the requested pattern, they will explain the reason for the refusal. The employee cannot be prevented from taking the amount of leave they have requested within that notice, but the employer has authority over how and when it is taken.
25. In instances where a discontinuous period of leave has been refused and an alternative period has not been agreed during the discussion period, the total combined weeks' leave requested on that notice may be taken as a single continuous block. This should commence on a date specified by the employee but be no less than eight weeks from the date the original notice was provided to the employer. The employee has five days from the end of the two-week discussion period in which to confirm the date their leave will

commence. In instances where the employee specifies no date, leave will commence on the start date of the first period of discontinuous leave that was originally applied for.

26. An employee is not entitled to withdraw a notice for a single continuous block of leave but may do so with the employer's express permission.
27. An employee may withdraw their notice to book discontinuous blocks of leave within 15 days of submitting their notice providing an agreement has not been reached with their employer about when they will be absent from work. Once the 15th day has passed any changes to a period of leave must be made by using a variation notice and a minimum of eight weeks' notice must be provided.
28. If a notice is withdrawn it will not count towards the three booking notifications cap. Confirming shared parental leave and pay
29. Following discussion with the employee, the employer should confirm in writing:
  - i) the employee's paid and unpaid shared parental leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under the agreement)
  - ii) the confirmed leave pattern, including start and end dates, for each block of shared parental leave the employee and employer have agreed will be taken;
  - iii) confirmation of the notification process and the required notice periods for instances where agreed blocks of leave need to be amended; and iv) the length of any period of accrued annual leave which it has been agreed may be taken following the end of shared parental leave.
30. Eligible employees will be entitled to claim up to 37 weeks of statutory shared parental leave pay (ShPP), less any weeks of statutory maternity pay, maternity allowance or statutory adoption pay that has already been claimed by either partner. ShPP can be claimed following the birth or placement of the child, but not at the same time as the compulsory two weeks of leave following the birth or placement of the child. ShPP is paid at a rate set by the government each year.
31. Where an employee intends to return to work after a period of shared parental leave, the maximum joint entitlement of an eligible couple to occupational shared parental pay will be as set out below. The maximum entitlement will only apply where either parent has not already received statutory or occupational maternity pay, maternity allowance or statutory or occupational adoption pay in respect of the child. Where such pay (excluding pay during the compulsory two-week maternity/adoption leave period) has been received by either parent, the maximum joint entitlement set out below will reduce proportionate to the amount of maternity or adoption pay which has either been taken and paid to either parent, or notified as intending to be taken by either parent.
  - i) for the first six weeks of absence the employee will receive full pay. Full pay is inclusive of any ShPP. The total receivable cannot exceed

full pay;

ii) for the next 18 weeks of absence the employee will receive half of full pay plus any ShPP. The total receivable cannot exceed full pay;

iii) for the next 13 weeks, the employee will receive any ShPP that they are entitled to under the statutory scheme.

iv) for the final 13 weeks, the employee will receive no pay.

32. An NHS employer will not pay more than 26 weeks, 8 weeks' full pay (including the two weeks' compulsory leave) and 18 weeks' half pay, to employees accessing occupational maternity or adoption or shared parental pay in aggregate to an eligible couple. This is irrespective of whether one or both parents are NHS employees as shared parental leave and pay is a joint entitlement. Calculation of shared parental leave pay
33. Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Shared Parental Pay entitlements, subject to the following qualifications:
- i) in the event of a pay award or move to a higher pay point being implemented before the paid shared parental leave period begins, the shared parental pay should be calculated as though the pay award or new pay point had effect throughout the entire Statutory Shared Parental Pay calculation period. If such a pay award was agreed retrospectively, the shared parental pay should be re-calculated on the same basis;
  - ii) in the event of a pay award or move to a higher pay point being implemented during the paid shared parental leave period, the shared parental pay due from the date of the pay award or new pay point should be increased accordingly. If such a pay award was agreed retrospectively the shared parental 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 Shared Parental Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay.

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

34. 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.
35. 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.

36. 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**

37. 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.
38. 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.
39. 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**

40. 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**

41. 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 touch days is set out in Schedule 24 and is based on those used for statutory maternity leave and pay.
42. 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**

43. Reasonable paid time off to attend ante-natal classes will also be given.

#### **Adoption Leave and Pay<sup>74</sup>**

44. All employees are entitled to take 52 weeks adoption leave.
45. There will be entitlement to paid occupational adoption leave for employees wishing to adopt a child who is newly placed for adoption.
46. It will be available to people wishing to adopt a child who has primary carer responsibilities for that child.

47. 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.
48. 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.
49. 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.
50. 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.
51. Reasonable time off to attend official meetings in the adoption process should also be given.
52. 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**

53. Employees will be entitled to Keep in Touch Days (KIT) in line with the maternity leave and pay provisions as set out in Schedule 2

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

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

### **Monitoring and Review**

60. All applications and outcomes should be recorded, and each leave provision should be annually reviewed by employers in partnership with local staff representatives.
61. Applications and outcomes should be monitored annually, in partnership with local staff representatives.
62. Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness.
63. Applications and outcomes, from both employer and employees should be recorded and kept for a minimum of one year.



## Schedule 30 Clinical Excellence Awards<sup>68</sup>

1. For the purposes of this schedule the following definitions will apply:

- Pre-2018 LCEA: Local clinical excellence awards granted prior to 1 April 2018 under local clinical excellence awards schemes in place as of 31 March 2018.
- LCEA: Local clinical excellence awards granted from 1 April 2022.
- NCEA: National clinical excellence awards granted under the NCEA scheme.
- NCEA scheme: The national clinical excellence awards scheme in place until 31 March 2022.
- NCIA: National clinical impact awards granted under the NCIA scheme<sup>1</sup>.
- NCIA scheme: The national clinical impact awards scheme from 1 April 2022.
- Employers, employing organisations and employees to which this schedule applies: This schedule applies to all consultants employed under the Terms and Conditions – Consultants (England) 2003 and their employers.
- Award rounds: An annually run process which considers evidence of an individual's performance prior to 1 April of the award round year.<sup>70</sup>

The following arrangements will apply from 1 April 2022. Contractual provisions covered by this schedule for the period 1 April 2018 – 31 March 2022 can be found in the Terms and Conditions – Consultants (England) 2003 record of amendments documentation.<sup>71</sup>

2. Local variations to any LCEA schemes may be introduced by the employer in consultation with the JLNC. However, the provisions in paragraphs 3 – 14 shall continue to apply and cannot be varied locally.<sup>72</sup>
3. Any LCEA scheme must include an appeals mechanism.<sup>73</sup>
4. LCEAs will be non-consolidated and non-pensionable and will be payable for a period of up to three years, paid annually by lump sum and will not include an uplift for those undertaking additional programmed activities (APA).<sup>74</sup>
5. The minimum amount invested and paid annually in LCEA per eligible full time equivalent (FTE) consultant within each employing organisation will be £7,900 per FTE not including national insurance and employer pension contributions. The minimum amount invested in LCEA per eligible FTE will be published in the relevant pay circular.
6. Costs associated with any additional payments made through employers' local performance pay schemes, as set out in paragraph 19, will be met by reallocation of the previous NCEA funding stream to the LCEA funding stream. These costs will be met in addition to the minimum amount to be invested detailed in paragraph 5.
7. The level of investment will be subject to uplift in line with recommendations made by the Review Body on Doctors and Dentists Remuneration (DDRB) that are implemented by the Department of Health and Social Care.

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<sup>1</sup> NCIA reforms introduced by Government on 1 April 2022 were outside of the national collective bargaining arrangements and were not agreed with the trade union side.

8. For these purposes 'eligible' will be defined as substantively employed consultants with at least one year's service (on 1 April of the award year) at consultant level who do not hold an NCEA, NCIA or a distinction award.
9. Spend on local excellence awards from this sum will include monies expended on all of:
  - i. the continued payment of consolidated Pre-2018 LCEA set out in paragraphs 10 -11
  - ii. from 1 April 2022, costs associated with the reversion mechanism for NCIA holders as follows:

A requirement that any individual who has been awarded an NCEA (i.e., bronze, silver, gold, or platinum award) and whose renewal application is unsuccessful, will revert to either a Level 7 or 8 Pre-2018 LCEA or will not receive an award as determined by the following NCEA renewal scores.

Score	Outcome
≥ 27	Revert to Level 8 LCEA
14-26	Revert to Level 7 LCEA
< 14	Full loss of award payment

These Level 7 or 8 awards will be in the form of consolidated and pensionable Pre-2018 LCEA. In circumstances where the individual's score is <14, the value of the award will cease to be paid.

This reversion will apply to all consultants who are in receipt of NCEA awarded under the NCEA scheme.

- iii. LCEAs awarded under the provisions of this schedule.<sup>75</sup>

10. Pre-2018 LCEA will be retained for Pre-2018 LCEA award holders and these awards shall remain pensionable and consolidated but subject to the review process set out in paragraph 12. Pre-2018 LCEA holders will continue to receive uplifts when undertaking APA. Award values will be subject to uplift in line with recommendations made by the DDRB that are implemented by the DHSC.

11. Where an individual in receipt of a Pre-2018 LCEA moves to another employer to which this schedule applies and continues to work within the speciality for which the award was made, the award will continue to be paid by the new employer, subject to the provisions on change of circumstances as set out in the amended 2012 ACCEA guidance on employer-based awards. If the award holder ceases to work for any employer to which this schedule applies, they will no longer receive any award value from the date that they leave that employer. With effect from 1 April 2023, a consultant with a pre-2018 LCEA who retires, or partially retires, and returns to the same employer will retain their pre-2018 LCEA.<sup>76</sup>

12. Pre-2018 LCEA will be subject to a process of review, meeting the following key features.

- I. For Pre-2018 LCEA 1-8, the first review will take place five years after the date of the award of a consultant's last Pre-2018 LCEA point.
- II. Pre-2018 LCEA will be reviewed by employer-based awards committees or their successor using the Pre- 2018 LCEA 10, 6, 2, 0 ratings and according to the pre-existing five scoring domains (service delivery, service development, leadership and management,

research and innovation, and teaching and training). The following scoring system will apply:

Score	Outcome
> 20	Retain award(s) at current level and will not be reviewed again for five years.
16 – 19	Retain award(s) at current level and will not be reviewed again for three years.
11 – 15	Lose one LCEA point (and its associated cash value) and reviewed again after three years.
≤ 10	Lose two LCEA points (and their associated cash value) and reviewed again after two years.

iii. The duration of any review period will exclude time taken for maternity/paternity/adoption leave or an extended period of absence such as ill-health absence, subject to the arrangements outlined in the amended 2012 ACCEA employer-based award guidance.<sup>77</sup>

13. Level 9 Pre-2018 LCEA will continue to be subject to renewal arrangements. Level 9 Pre-2018 LCEA will be subject to the same scoring mechanism as all other Pre-2018 LCEA, set out in paragraph 12.<sup>78</sup>

14. Reversion to Pre-2018 LCEA for NCEA holders who are unsuccessful in their applications for renewal, as set out in paragraph 9(ii), will continue to apply. NCEA holders who have reverted to a Pre-2018 LCEA will have these awards reviewed three years after the date of the reversion. Following their reversion to a Pre-2018 LCEA, the scoring system set out in paragraph 12 will apply.<sup>79</sup>

15. All local arrangements must comply with the Equality Act 2010. To the extent that any terms are unlawfully discriminatory, and no corrective local variation to the LCEA arrangements can be agreed with the JLNC within six months of the date at which the issue was raised with the JLNC that removes the discriminatory effect, the employer may modify the local arrangements or delete the term to the minimum extent necessary to remove such discriminatory effect. Any modification to or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of the LCEA arrangements.<sup>80</sup>

## **National clinical excellence awards (NCEA) and National clinical impact awards (NCIA)**

The provisions below apply solely to the NCEA scheme and the NCIA scheme in England.<sup>81</sup>

16. Consultants will continue to have access to a national reward scheme that recognises excellence at a national or regional level.

17. Apart from the arrangements set out in paragraphs 18 - 20, the Secretary of State for Health and Social Care and the DHSC will have the right, after engaging in consultation, to introduce amendments and changes to the NCEA and NCIA scheme from time to time.<sup>82</sup>

18. Consultants who hold an NCEA at any date up to 31 March 2022 will retain their NCEA and the associated payment will be consolidated and pensionable, subject to the 2018 ACCEA review processes.<sup>83</sup>

Arrangements under the NCIA scheme:<sup>84</sup>

19. The following arrangements will apply to consultants who hold an NCEA and submit their first renewal application or application for an NCIA under the NCIA scheme.

For unsuccessful applicants.

- I. if their NCEA is due for renewal and their application for an NCIA has been unsuccessful, the consultant will revert to a Pre-2018 LCEA in line with a reversion process equivalent to that outlined in paragraph 9(ii).
- II. if their NCEA is not due for renewal but the consultant has submitted an application for an NCIA which has been unsuccessful, they retain their NCEA until they successfully apply for an NCIA or the NCEA lapses, whichever is sooner.

For successful applicants:

- III. the following principles will also apply to those with NCEAs.
  - a. a consultant who successfully receives an NCIA for an equivalent or higher level of performance but attracting a lower value of award than paid under the NCEA scheme will receive an additional payment so that they are paid no less overall than the cash value of their NCEA.
  - b. a consultant who receives an NCIA for a lower level of performance will receive an additional payment so that they are paid no less overall than the cash value of the equivalent lower award in the NCEA Scheme.
  - c. If the additional payment provided for by paragraph 19(iii)a – b is made through an employers' local performance pay scheme, it will be met by reallocation of the previous NCEA funding stream to the LCEA funding stream. In these circumstances, the consultant will revert to a Pre-2018 LCEA of the nearest monetary value to the payment. This will not change the amount of the overall payment received.
  - d. The Pre-2018 LCEA component will be subject to the review mechanism outlined in paragraph 12 of this schedule. If a consultant loses one or more Pre-2018 LCEA points after a review, the payment will be reduced to the value of the relevant Pre-2018 LCEA.
  - e. The overall payment for consultants who hold an NCEA will be pensionable up to the value of the consultant's award in the NCEA Scheme.<sup>86</sup>
3. Where a consultant submits an unsuccessful application for an NCIA subsequent to their first application as outlined in paragraph 19 the consultant will revert to a Pre-2018 LCEA in line with a reversion process equivalent to that outlined in paragraph 9(ii). However, any LCEA points that have been removed through the local review process outlined in paragraph 12 will

be deducted from the level to which they revert. The timing of the next local review will not be affected by the new reversion.<sup>87</sup>