

# Workforce Resources



## Optimal Application of Provisions of the NHS Terms and Conditions Handbook

Agenda for change

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## BACKGROUND

This document has been produced by the 'Improving Patient Care by being More Productive' project team, which is part of the NHS Wales 'Working Differently Working Together' programme. The document applies to staff employed on NHS terms and conditions of service formerly known as Agenda for Change. This guide does not cover Medical and Dental staff and a separate guide will be issued addressing optimal application of their terms and conditions.

## INTRODUCTION

Pay accounts for a large proportion of an average Health Board/Trust's costs and this document details a checklist of nine areas of staff terms and conditions that each Health Board/Trust should consider, so as to ensure that they are making proper use of existing employment frameworks, working consistently with the national agreements and getting the most from their workforce.

The NHS is constantly looking at ways that care and services can be transformed with consequent improvements in the patient experience. These challenges must be met against the backdrop of the need to achieve unprecedented financial savings and efficiencies. The workforce is crucial to delivering these challenges with a skilled and motivated workforce directly impacting on patient experience.

Developing ownership of change relies on individuals and groups making as many real decisions as possible about what they do and how they do it. Evidence shows that asking individuals/groups to make real decisions about what needs to be done, outlining the resources that are available and providing parameters within which they must work (terms and conditions of service, budgets, timescales etc.), leads to real and quicker change and real optimisation of resources. In essence, tough decisions can and should be made by those affected rather than being imposed by managers and all parts of NHS Wales are encouraged to adopt this approach. In recognising that staff ownership through engagement is critical to real change, the **NHS Wales Staff Engagement Resource:**

Engagement Resources

has been developed as part of the Working Differently, Working Together programme to provide tools to support managers in working effectively with staff and teams.

## USING THE GUIDE

For each area, a description has been provided along with actions that every Health Board/Trust should consider. The paragraph numbers in brackets refer to the relevant section in the NHS Terms and Conditions of Service Handbook and these should be read in conjunction with the Handbook:

[NHS Terms and Conditions of Service Handbook](#)

## 1. UNSOCIAL HOURS (2.10 – 2.12)

### Description:

The NHS delivers patient services around the clock. Where staff are required to work to cover services in the evening, at night, over weekends and on general public holidays, the Handbook (2.10 – 2.12) outlines unsocial hours payments as detailed below:

Pay band	All time on Saturday (midnight to midnight) and any week day after 8 pm and before 6 am	All time on Sundays and Public Holidays (midnight to midnight)
1	Time plus 50%	Double Time
2	Time plus 44%	Time plus 88%
3	Time plus 37%	Time plus 74%
4 – 9	Time plus 30%	Time plus 60%

Where a continuous night shift or evening shift on a weekday (other than a public holiday) includes hours outside the period of 8 pm to 6 am, the enhancements in the second column should be applied to the whole shift if **more than** half of the time falls between 8 pm and 6 am.

### Action:

- Managers are encouraged to think about when their shift patterns start and finish as this would have an impact on the amount of unsocial hours that are payable to staff. Such planning should also reflect effective planning of shift times to meet patient need/staff available to meet peaks in workflow, whilst considering effective timing from a pay perspective.
- Ensure that enhancements are only payable to the whole shift if **more than** half of the shift falls between 8pm and 6am. e.g. a shift that was 4 pm to 12/midnight would not have the whole shift payable at enhanced rates.

## 2. PROSPECTIVE APPLICATION OF UNSOCIAL HOURS ENHANCEMENTS (2.19 - 2.23)

### Description:

The unsocial hours agreement may be used retrospectively or prospectively. It will be for local partnerships to decide which option best meets local operational needs.

If this agreement is used prospectively, it must comply with the principle of equal pay for work of equal value. It must produce broadly the same level of payments as a retrospective system, including for part-time staff.

Local partnerships will need to agree a reference period that can be used to calculate the appropriate level of prospective payment.

Prospective systems are more likely to be satisfactory where work patterns are predictable. If rotas vary so much that it is not possible to predict working patterns accurately this is likely to be a good reason to choose to use the system retrospectively.

Where the system is used prospectively, an unforeseen change payment of £15 will be available. This will be used where it is necessary for employers to ask staff to change their shift within 24 hours of the scheduled work period

### Action:

- If operating the prospective system there will need to be periodic checks on the level of payments produced. These will need to be compared with the level of payments produced by the system in its retrospective form to ensure that the levels are broadly similar. This will allow early action to be taken in partnership if it does not.
- Managers must ensure that where the system is used prospectively, there is not excessive use of the unforeseen change payment of £15; if this is the case, managers will need to consider if a move to the retrospective system would be more suitable.
- Managers are reminded that this payment is not applicable to shifts that staff agree to work as overtime, or that they swap with other staff members. It is not available, in any circumstances, in the retrospective system.



### 3. ON-CALL (ALL WALES ON-CALL AGREEMENT)

#### Description:

On-call systems exist as part of arrangements to provide appropriate service cover across the NHS. A member of staff is on-call when, as part of an established arrangement they are available outside their normal working hours – either at the workplace, at home or elsewhere – to work as and when required.

Employees who are called into work during a period of on-call are entitled to receive payment for the period they are required to attend, including any travel time. Alternatively, staff may choose to take time off in lieu. However, if for operational reasons time off in lieu cannot be taken within three months, the hours worked must be paid for.

A specific **On-call Agreement** has been negotiated for staff in NHS Wales which outlines the operating arrangements for on-call schemes.

#### Action:

- On-call managers must ensure that all staff who are part of on-call rotas are receiving payment as per the new on-call pay arrangements (introduced 1st July 2012).
- There should be regular assessment/audit of on-call schemes to ensure that covering the service via an on-call system is the most suitable option and that changing the way staff work or are rostered would not be more beneficial.
- Staff should be offered the option of time off in lieu as an alternative to payment for work done whilst on-call.

## 4. a) OVERTIME PAYMENTS (SECTION 3)

### Description:

All staff in pay bands 1 to 7 will be eligible for overtime payments. There is a single harmonised rate of time-and-a-half for all overtime, with the exception of work on general public holidays, which will be paid at double time.

Overtime payments will be based on the hourly rate provided by basic pay plus any long-term recruitment and retention premia; however time off in lieu of overtime payments will be at plain time rates

The single overtime rate will apply whenever excess hours are worked over full-time hours, unless time off in lieu is taken, provided the employee's line manager or team leader has agreed with the employee to this work being performed outside the standard hours.

Staff may request to take time off in lieu as an alternative to overtime payments. However, staff who, for operational reasons, are unable to take time off in lieu within three months must be paid at the overtime rate.

Senior staff paid in pay bands 8 or 9 are not be entitled to overtime payments.

### Action:

Managers must ensure:

- Part-time employees only receive payments for the additional hours at plain time rates until their hours exceed standard hours of 37½ hours a week.
- Senior staff paid in pay bands 8 or 9 are not paid overtime.
- Time off in lieu of overtime payments is offered at plain time rates.

## 4. b) OVERTIME AND THE USE OF BANK STAFF (SECTION 3 AND 2.15/2.16)

### Description:

Bank staff receive basic pay and any unsocial hours premium that is applicable when they work, together with accrual of annual leave entitlements and where eligible employer pension contributions. These payments should be set against the costs that would be incurred if substantive staff were offered overtime.

Analysis has shown that:-

- On Monday to Friday day shifts starting after 6am and finishing before 8pm it is more cost effective to use bank staff than to pay overtime.

- It is more expensive to employ bank staff on a Sunday than to pay overtime to existing staff as unsocial hours paid to bank staff for these hours are greater than overtime.
- For staff in Band 2 it is more expensive to employ bank staff in any period of unsocial hours working than to pay overtime
- For staff in band 3 who work evenings and weekends the saving in using bank staff versus overtime is minimal however when annual leave entitlements and pension contributions for bank staff are taken into account, bank staff are a more expensive option.

Staff who work less than 37.5 hours per week are paid for additional hours at plain time with the relevant unsocial hours pay where applicable. Therefore it is always more cost effective to pay a part time member of staff additional hours rather than to pay through the bank due to the additional costs which will be incurred through annual leave accrual for bank staff.

It should also be noted the Bank staff are eligible to join the NHS Pension scheme, which requires an employer's contribution of 14%. Overtime payments are not eligible for pension contributions.

#### Action:

Managers must ensure that:

- Wherever possible part time staff should be offered additional hours on top of their substantive hours before shifts are offered to bank staff.
- Due to bank staff being the most expensive option on Sundays, that Bank staff should only be engaged to work on a Sunday as a last resort. As there is less clinical supervision in place at weekends it is also recommended from a safety and Clinical Governance perspective that regular staff should, wherever possible, be used to staff wards as opposed to bank staff.
- For shifts requiring Band 2/3 staff, consideration should be given to only engaging this category of Bank Staff to work Mondays to Fridays between 6am and 8pm. Shifts outside of this period should be covered by substantive staff wherever possible.

## 5. PAY PROGRESSION (1.8-1.10 and SECTION 6a)

### Description:

### Progression

On 1<sup>st</sup> January 2015 new pay progression arrangements linked to performance were introduced in NHS Wales and a revised Career and Pay Progression section of the National Pay and Terms and Conditions which apply to all non-medical Agenda for Change staff was introduced. Two sections of the AfC handbook have been amended: Section 1(a) (England and Wales) Pay structure and Section 6(a) (England and Wales) Career progression. The operation of these arrangements are set out in the NHS Wales Pay Progression Policy, which has been approved by the Welsh Partnership Forum.

NHS organisations are required to use the policy to develop a local implementation plan in partnership including the development of joint training programmes and awareness raising for staff at all levels.

In operation of the policy, there are three key principles:

- The process will be alignment with appraisal processes;
- Increments only achieved after staff have met expectations in 3 areas and;
- Individuals will be assessed against two Performance ratings

### The Principles in detail

#### 1. Alignment with appraisal processes

This part of the process supports best practice appraisal principles and sets out how managers and employees will approach the process:

- We will agree and understand what's expected of us in terms of what we should be doing and how we should be doing it
- We will all receive constructive and timely feedback on how we have done
- We will all ensure that we actively seek to develop and improve what we are doing for the benefit of patients

#### 2. Increments only achieved after staff have met expectations in 3 areas:

- Doing the right things
- Doing them the right way
- Doing things better



Each year, prior to an individual's incremental date the manager and member of staff will review how well the objectives have been met and agree whether their performance has been 'satisfactory' or 'unsatisfactory'

### 3. Performance ratings

Satisfactory - Has successfully met all of the core organisation objectives, has met the expected work objectives, demonstrated the right behaviours and ways of working, and has shown how they have developed or improved their area of work.

Unsatisfactory - Has not met all the core organisation objectives, has not met the expected work objectives, and/or has not demonstrated the right behaviours and ways of working, and/or has not shown how they have developed or improved their area of work.

The two ratings will lead to the following outcomes:

'Satisfactory' – the increment will be paid

'Unsatisfactory' – the increment will not be received and the manager will agree an improvement plan with the employee

If an unsatisfactory rating has been given and the increment has not been received the employee will be considered for an increment at next annual pay progression/PADR discussion

It should be noted that staff would not be deemed as unsatisfactory if non-achievement is through no fault of individual and specific justification and reasons will need to be clearly explored and identified if this is the case.

In addition to the process above, staff on bands 8c, 8d and 9 will be required to 're-earn' the top two increments each year (if they are not already in receipt one or both of the top two increments).

#### Application

To ensure that the process runs smoothly and fairly, managers should undertake discussions 8-12 weeks before incremental date, which will be in addition to the normal ongoing review throughout the PADR period. Managers and staff should prepare in advance, with employees expected to provide evidence of how they have met their objectives

The rating will be discussed with the employee and the reason for the rating must be provided and discussed. Where the objectives have not been met through no fault of the member of staff the manager will reset objectives or remove barriers

Where staff have not met all the core organisation objectives and/or have not met the expected work objectives but it is agreed that the member of staff is able to complete the required objective (e.g.



Mandatory and Statutory training) there is latitude adjourn the discussion and setting of a rating to allow the objective to be fulfilled.

**Action:**

Managers must ensure that:

- They are familiar with the NHS Wales Pay Progression Policy and the Health Board's/Trust's approach to implementing the policy.
- Ensure that there are appropriate arrangements in place to ensure that staff have access to development reviews, personal development plans and appropriate support for training and development to meet their objectives and to facilitate pay progression.
- Should pay progression be deferred for a member of staff this must not come as a surprise to the individual as there would have been numerous discussions with supporting documentation detailing the weaknesses that have been identified that led to the deferral of pay progression.



## 6. PAY ON PROMOTION (6.21)

### Description:

Pay on promotion should be set either at the minimum of the new pay band or, if this would result in no pay increase, the first pay point in the band which would deliver an increase in pay (by reference to basic pay plus any recruitment and retention premium, if applicable).

### Action:

- The rules of promotion are clearly set out in the terms and conditions handbook and it is imperative that these rules are adhered to. There is no scope to advance individuals up the pay band on promotion for any reason and to do so could cause equal pay risks to organisations.

## 7. HOURS OF THE WORKING WEEK (SECTION 10.)

### Description:

The standard hours of all full-time NHS staff covered by the pay system is 37½ hours, excluding meal breaks. Working time is calculated exclusive of meal breaks, except where individuals are required to work during meal breaks, in which case such time should be counted as working time.

The standard hours may be worked over any reference period, e.g. 150 hours over four weeks or annualised hours, with due regard for compliance

### Action:

- It is important to ensure that all staff are working the standard working week of 37½ hours exclusive of meal breaks or pro rata where applicable.

## 8. ANNUAL LEAVE AND PUBLIC HOLIDAY ENTITLEMENT (SECTION 13.)

### Description:

Staff will receive the entitlement to annual leave and general public holidays as set out below (see Section 12 of the terms and conditions handbook for provisions on reckonable service).

<b>Length of service</b>	<b>Annual leave and general public holidays</b>
On appointment	27 days + 8 days
After five years' service	29 days + 8 days
After ten years' service	33 days + 8 days

### Action:

Managers must ensure:

- Where staff work shifts, which are greater or lesser than 7½ hours excluding meal breaks, then annual leave and general public holiday entitlements should be calculated on an hourly basis, to prevent staff on these shifts receiving greater or less leave than colleagues on standard shifts.
- Part-time workers' public holiday entitlements should be added to their annual leave (rolled-up). When a public holiday falls on a day when they would normally work this should be deducted from their rolled-up annual leave provision (this is also important as the facility to book annual leave through ESR is extended across the service).
- If part time staff have their annual leave and bank holidays entitlements rolled up it is important that managers ensure that when a member of staff is sick on a rostered day which falls on a bank holiday that the their overall leave entitlement is reduced.

## 9. CONDITIONS FOR CONTRACTUAL SICK PAY (SECTION 14)

### Description:

Pay during sickness absence will be paid at basic salary level, not including any allowances or payments linked to working patterns or additional work commitments. This change will not apply to the lowest paid staff on spine points 1 – 8 (i.e. up to £17,599) of the Agenda for Change pay structure or those staff whose absence is due to work-related injury or disease. Section 2(a): Maintaining round the clock services and Section 14 (a) - Sickness Absence will be amended to apply in NHS Wales.

Organisations should have a process in place to promptly investigate, assess and action applications for continuation of allowances during sickness absence in cases where there is absence due to action work-related injury or disease.

Employees will not be entitled to an additional day off if they are off sick on a statutory holiday.

During the rehabilitation period, employers should allow employees to return to work on reduced hours or, where possible, encourage employees to work from home without loss of pay. Any such arrangements need to be consistent with statutory sick pay rules.

Sick pay is not normally payable for an absence caused by an accident due to active participation in sport as a profession, or where contributable negligence is proved.

An employee who is absent as a result of an accident is not entitled to sick pay if damages are received from a third party. Employers will advance to an employee a sum not exceeding the amount of sick pay payable under the NHS sick pay arrangements, providing the employee repays the full amount of sickness allowance to the employer, when damages are received.

After investigation, consultation and consideration of other alternative posts, and where there is no reasonable prospect of the employee returning to work, employers will have the option to terminate employment before the employee has reached the end of the contractual paid sick absence period, subject to the agreed sickness absence policies and procedures being applied.

### Action:

- Applications for continuation of allowances during sickness absence in cases must be promptly investigated/actioned where there is absence due to action work-related injury or disease, using the Health Board/NHS Trust procedure to consider such claims.
- Managers must ensure that employees do not receive an additional day off if sick on a statutory holiday.
- Where the circumstances allow, employers should facilitate arrangements for employees to return to work on reduced hours or, where possible, encourage employees to work from home without loss of pay during a period of rehabilitation.

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- If staff have their annual leave and bank holiday enhancements rolled up it is important that when a member of staff is sick on a rostered day that falls on a bank holiday that the bank holiday entitlement is deducted from their overall leave entitlement.
  - Organisations should ensure that notification procedures are in place to ensure that employees can appropriately notify managers of injuries which are connected with other insured employment and arrangements are in place for employees to repay any sick pay that has been paid.



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Electronic copies of this document are available from:  
[Optimal Application of Provisions of the NHS Terms and Conditions Handbook](#)