

The Scottish Government
Health Workforce Directorate
Employment and Retention Division¹



Dear Colleague

AMENDMENTS TO THE TERMS AND CONDITIONS OF SERVICE FOR HOSPITAL MEDICAL, DENTAL AND PUBLIC HEALTH MEDICINE CONSULTANTS EMPLOYED UNDER THE 2004 CONSULTANT CONTRACT

CHANGES TO MATERNITY LEAVE AND PAY ARRANGEMENTS, PARENTAL AND CARERS LEAVE PROVISIONS AND FLEXIBLE WORKING ARRANGEMENTS

Summary

1. This pay circular notifies employers of changes in respect of maternity leave and pay arrangements, parental and carers leave provisions and flexible working arrangements from 1 April 2007 to the 2004 consultant contract (Scotland) Terms and Conditions of Service (TCS) which were introduced from 1 April 2004 under cover of [NHS Circular PCS\(DD\)2004/2](#) dated 30 March 2004 and updated by [NHS Circular PCS\(DD\)2005/13](#) on 23 December 2005.

Agreement

2. The NHS Staff Council has approved changes to the maternity, maternity support, adoption leave and pay arrangements, parental and carers leave and flexible working arrangements to take account of the improvements to the statutory regulations introduced by the Work and Families Act from April 2007.

3. Agreement has been reached to revise the maternity leave and pay arrangements laid down in Temporary Appendix 11 of the new consultant contract.

4. Agreement has also been reached to incorporate provisions relating to adoption leave and pay arrangements, parental and carers leave and flexible working arrangements into the TCS on a temporary basis.

24 September 2007

Addresses

For action

Chairs, NHS Boards and Special Health Boards and NHS National Services Scotland
Chief Executives, NHS Boards and Special Health Boards and NHS National Services Scotland
Directors of Finance, NHS Boards and Special Health Boards and NHS National Services Scotland
Directors of Human Resources, NHD Boards and Special Health Boards and NHS National Services Scotland

For information

Members, Scottish Partnership Forum
Members, Scottish Terms and Conditions Committee
Members, Scottish Workforce and Governance Group

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5. The Joint Negotiating Committee (Seniors) have approved amendments, detailed in Annex A to this Circular, to the relevant TCS.

Amendments to TCS

6. The text of the TCS has been amended to reflect these changes and a copy of the relevant Temporary Appendices is attached at Annex B. A copy of the revised TCS document is attached at Annex C.

Action

7. NHS Boards, Special Health Boards and NHS National Services Scotland are required to make the necessary arrangements to implement, and where necessary, retrospectively apply the new arrangements as notified in the Annexes to this Circular in full with effect from 1 April 2007 as appropriate.

8. The revised arrangements apply:

- in respect of maternity to all employees whose expected week of childbirth begins on or after 1 April 2007;
- in respect of adoption where an adoption agency notifies the adopter of a match with a child on or after 1 April 2007.

9. A High Court judgement in 2006 highlighted the need for NHS employers to take all reasonable steps to ensure that the effects of nationally negotiated collective agreements are incorporated into individual contracts of employment.

10. It is good practice that employers should:

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

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Enquiries

11. Employees should direct their personal enquiries to their employing NHS Board or Special Health Board.

12. NHS Employers are asked to make their own arrangements for obtaining any additional copies of this Circular. This Circular can be viewed on <http://www.show.scot.nhs.uk/sehd/pes.asp>.

Yours sincerely



ALEX KILLICK

Deputy Director for Health Workforce
Employment and Retention

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Employment and Retention Division¹



DIRECTION

The Cabinet Secretary for Health and Wellbeing, in exercise of the powers conferred on her by Section 105(7) of, and paragraph 5 of Schedule 1 and paragraph 7 of Schedule 5 to, the National Health Service (Scotland) Act 1978, hereby give to NHS Boards and Special Health Boards and NHS National Services the following Direction:

The new terms and conditions of service for hospital medical and dental staff and doctors in public health and the community health service (consultant grade) introduced under NHS Circular PCS(DD)2004/2 dated 30 March 2004 are amended by the changes to the terms and conditions of service which were approved by the Cabinet Secretary for Health and Wellbeing on 24 September 2007 in NHS Circular PCS(DD)2007/11 with effect from 1 April 2007.

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24 September 2007

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The Scottish Government
Health Workforce Directorate
Employment and Retention Division¹



**NATIONAL HEALTH SERVICE
APPROVAL OF REMUNERATION AND CONDITIONS OF SERVICE**

The Cabinet Secretary for Health and Wellbeing, in exercise of the powers conferred on her by regulations 2 and 3 of the National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991 hereby approves the agreement of the Joint Negotiating Committee to the amendments to the Handbook of the Terms and Conditions of Service for Hospital Medical and Dental Staff and Doctors in Public Health and the Community Health Service (consultant grade) as set out in the Annexes to NHS Circular PCS(DD)2007/11 dated 24 September 2007.

This approval has effect from 1 April 2007.

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24 September 2007

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AMENDMENTS TO TERMS AND CONDITIONS OF SERVICE

AMENDMENTS TO TERMS AND CONDITIONS OF SERVICE FOR HOSPITAL MEDICAL, DENTAL AND PUBLIC HEALTH MEDICINE CONSULTANTS EMPLOYED UNDER THE 2004 CONSULTANT CONTRACT

Temporary Appendix 11 – Maternity Leave and Pay

1. Agreement has been reached to revise the maternity leave and pay arrangements and these can be found in Appendix 11 of the TCS.

Temporary Appendix 12 – Employment Break Scheme

2. This section has not been amended and is included for ease of reference.

Temporary Appendix 13 – Redundancy Pay

3. This section is incorporated following the issue of [NHS Circular PCS\(DD\)2007/1](#) on 12 March 2007.

Temporary Appendices 14, 15 and 16 – Caring for Children and Adults, Flexible Working Arrangements and Balancing Work and Personal Life

4. Agreement has been reached to incorporate new Appendices setting out more favourable arrangements for Caring for Children and Adults – Appendix 14, Flexible Working Arrangements – Appendix 15 and Balancing Work and Personal Life – Appendix 16 in the TCS. These arrangements mirror those for non-medical NHS staff. The arrangements were formerly based on parts of General Council Conditions of Service Section 7 agreements which have been superseded. These have been inserted on a temporary basis, pending further discussion.

General Council Conditions of Service Provisions

5. A number of changes have been made to the TCS to update references to the General Whitley Council Conditions of Service. All other relevant provisions in the General Council Conditions of Service as listed in Appendix 10 of the TCS shall apply.

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ANNEX B
TEMPORARY APPENDIX 11

MATERNITY LEAVE AND PAY

Introduction

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

Eligibility

7. An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the NHS contractual maternity pay scheme if:
 - (i) she has twelve months continuous service (see paragraphs 60 to 64) with one or more NHS employers at the beginning of the eleventh week before the expected week of childbirth;
 - (ii) she notifies her employer in writing before the end of the 15th 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 11th 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:

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- (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

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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.

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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 spilt 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 24th 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 25th 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.

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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.

Accrual of Annual Leave

49. Annual leave will continue to accrue during maternity leave, whether paid or unpaid, provided for by this agreement.

50. Where the amount of accrued annual leave would exceed normal carry over provisions, it may be mutually beneficial to both the employer and employee for the employee to take annual leave before and/or after the formal (paid and unpaid) maternity leave period. The amount of annual leave to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Payment in lieu may be considered as an option where accrual of annual leave exceeds normal carry over provisions.

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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;

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- (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://jobcentreplus.gov.uk/JCP/Customers/WorkingAgeBenefits/Dev_008115.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

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EMPLOYMENT BREAK SCHEME

General

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

Scope

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

Eligibility

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

Length of Break

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

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- 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.

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REDUNDANCY PAY

1. This section sets out the arrangements for redundancy pay for employees dismissed by reason of redundancy who, at the date of termination of their contract, have at least 104 weeks of continuous full-time or part-time service. These take effect from 1 October 2006. It also sets out the arrangements for early retirement on grounds of redundancy and in the interests of the service for those who are members of the NHS pension scheme and have at least two years continuous full time or part time service and two years qualifying membership in the NHS pension scheme. Pension changes take effect from 1 December 2006. It further sets out transitional arrangements from 1 December 2006 to 30 September 2011 for staff aged over 50 at the time of redundancy who are members of the NHS Pension scheme with at least five year's pensionable service.

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 Boards, Special Health Boards and NHS National Services Scotland 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;

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- 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 1/12th 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.*

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.

* Subject to consultation, for those who are in the new pension scheme (with a normal pension age of 65), minimum pension age will be 55 from when the scheme is set up

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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.¹

13. This sum will be paid from the lump sum redundancy payment that otherwise would have been paid to the employee. If the cost to the employer of paying by single payment for early retirement is less than the value of the redundancy payment that the member would have received under paragraph 8 then the redundant employee will also receive from the employer a redundancy payment equivalent to the difference between the two sums. The cost to the employer would therefore normally be the same as if the employee had chosen to take a redundancy payment without unreduced early retirement. However, if the cost of early retirement is more than the redundancy payment due, the employer will pay the additional cost. If the employer chooses to pay in five instalments, the employer is responsible for the additional interest charge.

Treatment of Concurrent Pensionable Employment

14. Where there is concurrent pensionable employment, members may choose between:

- Ceasing all pensionable employment and taking early retirement on the terms set out below in respect of each employment in which case they cannot be pensionable again in the current scheme (normal pension age of 60). (An employment may continue if it is not more than 16 hours a week, without affecting the payment of enhanced benefits, but it will not be pensionable in the scheme) and:
- Taking benefits only in respect of the employment that is being terminated, in which case they can continue being pensionable in other employments. After 6 April 2010, this will not apply if taking benefits under the age of 55.
- 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.^{2,3}

15. 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

16. 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

¹ It is open to qualifying members to take early retirement under the normal scheme arrangements for voluntary early retirement or normal age retirement.

² 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.

³ Practitioners are general medical and general dental practitioners

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- 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

17. 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.

18. ‘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 for alternative employment, regard should be had to the personal circumstances of the employee. Employees will, however, be expected to show some flexibility.

19. 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

20. 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.

21. 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

22. 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

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23. 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

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

Early Retirement in the Interests of the Efficiency of the Service

25. 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, sex, race, religion or disability.

26. 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.

27. 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

28. 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.

Transitional Arrangements: 1 October 2006 to 30 September 2011

29. There will be transitional arrangements in place from 1 December 2006 to 30 September 2011. These transitional arrangements apply to staff:

- whose continuous NHS service and/or pension scheme membership began before 1 October 2006
- who are aged over 50 on 30 September 2006 or who reach 50 during the transition period: 1 October until 30 September 2011; (after 6 April 2010 subject to the rules on minimum pension age set out in paragraph 10)
- who are members of the NHS Pension scheme and have at least five years qualifying membership in the scheme at the date of redundancy.

30. Employees who are made redundant and qualify for transitional protection can choose between a redundancy payment under the new arrangements and payment under transitional protection. The transitional arrangements for early retirement (but not the redundancy payment) will also apply to staff given early retirement in the interests of the service and who meet the qualifying conditions in paragraph 29.

31. Transitional Protection has two phases. The first phase applies from 1 December 2006 to 30 June 2007. During this phase, the maximum pension that an employee can receive on taking

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redundancy retirement is that to which they would have been entitled had they been made redundant under the old agreement on 30 September 2006.

32. The second phase is from 1 July 2007 to 30 September 2011. During this phase, as well as freezing the maximum enhanced pension at that which would have been available on 30 September 2006, there will be a further reduction so that all enhancements are removed by 30 September 2011.

33. The date used to calculate the level of both final pensionable pay and of salary for redundancy payment under the transition will be set by reference to the actual date of redundancy.

Calculation of Baseline Entitlement During Transition

34. For employees taking advantage of the transitional arrangements, and subject to a maximum of 20 years' reckonable service being counted, the lump sum redundancy payment will be calculated based on the arrangements in place before 1 October 2006 as follows. Based on service at 30 September 2006:

- 1 1/2 week's pay for each complete year of reckonable service at age 41 or over
- one week's pay for each complete year of reckonable service at age 22 or over but under 41
- 1/2 week's pay for each complete year of reckonable service at age 18 or over but under 22
- overall maximum 30 week's pay.

35. Fractions of a year of reckonable service will not be taken into account except that they may be aggregated under paragraph 34 above to make complete years. The lowest weeks' pay multiplier relevant to the employee's calculation will apply to the complete year aggregated.

Reduction to Baseline Entitlement

36. Redundant employees who are entitled to an enhancement of their pension benefits on ceasing to be employed will, if the enhancement of service if they had been made redundant on 30 September 2006 is less than 10 years, be entitled to receive a redundancy payment. Where the enhancement of service does not exceed 6 2/3 years they will be paid in full; where the enhancement of service exceeds 6 2/3 years they will be reduced by 30 per cent in respect of each year of enhanced service over 6 2/3 years with pro-rata reduction for part years.

37. The redundancy payment made under these transitional arrangements will be based on the number of week's service applicable for a redundancy on 30 September 2006 along with the reduction for enhancement greater than 6 2/3 years that would have been made had the redundancy taken place on that date. If there has been a break in continuous service between 1 October 2006 and the date of redundancy, then the payment would be based on the number of years continuous service at the date of redundancy.

38. As a baseline calculation for transitional protection all employees eligible for premature payment of pension and compensation benefits under the terms of this agreement on transition shall have their reckonable years in the NHS scheme at 30 September 2006 doubled subject to a maximum enhancement of ten added years. Total reckonable years (including enhancements) will in all cases be limited to the lesser of:

- the total reckonable service that would have been attained by continuing in service to retirement age of 65; or
- 40 years; provided that:
- the enhancement of reckonable service for employees with relevant optant service shall be based on the aggregate of their reckonable NHS service and their relevant optant service.

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Transition Phase One: 1 October 2006 to 30 June 2007

39. For redundancies from 1 October 2006 until 1 December 2006, when the regulations to give effect to the transition are introduced, employees will receive enhanced pension based on the pre 1 October arrangements including the calculation of redundancy payment.

40. From 1 December 2006 to 30 June 2007, the enhancement that the employee will be eligible to receive will be the enhancement on which the pension would have been based had they been made redundant on 30 September 2006, less the number of days since 30 September 2006. For those who have any part time membership, the reduction in enhancement will be scaled down according to the scaling factor applicable at 30 September 2006.

Transition Phase Two: 1 July 2007 to 30 September 2011.

41. During this phase, maximum enhancement available to the employee made redundant will continue to be the enhancement available on 30 September 2006 less the number of days since 30 September 2006. There will be a further reduction in entitlement to enhancement. For those whose enhancement on 30 September 2006 would have been greater than five years, the additional amount of service enhancement over five years should be reduced by 1/60th for each whole month that has elapsed between 30 September 2006 and the date of redundancy. The effect of the two transition elements together is that after each year of transition, the maximum enhancement would be reduced by two years until no enhancement is available from 1 October 2011.

42. Paragraphs 29 to 42 will be removed from this agreement on 1 October 2011.

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CARING FOR CHILDREN AND ADULTS

General

1. All NHS employers must have a carer's policy to address the needs of people with caring responsibilities and to meet the requirements of the "right to request" flexible working legislation for carers of children and dependant adults (see Employment Relations Act for definition of "carer"). This policy should emphasise the benefits of employment breaks, flexible working arrangements and balancing work and personal life as set out in Temporary Appendices 12, 15 and 16.

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, where an employee is involved in substantial and regular care sufficient for them to seek a change in their permanent contract of employment

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 Appendices, 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 childcare, the policy should indicate where other arrangements are available to support people with childcare responsibilities, and what alternative ways of working exist.

8. Applications and outcomes should be monitored annually, in partnership with local staff representatives.

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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.

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FLEXIBLE WORKING ARRANGEMENTS

General

1. NHS employers in partnership with staff organisations will develop positive flexible working arrangements which allow people to balance work responsibilities with other aspects of their lives.
2. Employers are required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff and job applicants under the Disability Discrimination Act, and staff returning from maternity leave (see Appendix 11).
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.

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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.

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BALANCING WORK AND PERSONAL LIFE

GENERAL

1. NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments.
2. Leave arrangements should be part of an integrated policy of efficient and employee friendly employment practices, and this Schedule should be seen as operating in conjunction with other provisions particularly the Employment Break Scheme, Flexible Working Arrangements and the Caring for Children and Adults Appendices.
3. Arrangements should be agreed between employers and local staff representatives.
4. A dependant is someone who is married to, or is a partner or civil partner, “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.

FORMS OF LEAVE

Parental Leave

5. This should be a separate provision from either maternity or maternity support leave and should provide an untransferable individual right to at least 13 weeks’ leave (18 weeks if child is disabled). 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.

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

11. This will apply to biological and adoptive fathers, nominated carers and same sex partners.
12. There will be an entitlement to two weeks’ occupational maternity support 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

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paternity pay receivable. Only one period of occupational paternity pay is ordinarily available when there is a multiple birth. However, NHS organisations have scope for agreeing locally more favourable arrangements where they consider it necessary, or further periods of unpaid leave.

13. Eligibility for occupational paid maternity support pay will be twelve months' continuous service with one or more NHS employers at the beginning of the week in which the baby is due. More favourable local arrangements may be agreed with staff representatives and/or may be already in place.

14. Local arrangements should specify the period during which leave can be taken and whether it must be taken in a continuous block or may be split up over a specific period.

15. An employee must give his or her employer a completed form SC3 "Becoming a Parent" at least 28 days before they want leave to start. The employer should accept later notification if there is good reason.

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

17. All employees are entitled to two weeks maternity support leave. Employees who are not eligible for occupational maternity support pay may still be entitled to Statutory Paternity Pay (SPP) subject to the qualifying conditions. The rate of SPP is the same as for Statutory Maternity Pay (SMP).

Adoption Leave and Pay

18. All employees are entitled to take 52 weeks adoption leave.

19. There will be entitlement to paid occupational adoption leave for employees wishing to adopt a child who is newly placed for adoption.

20. It will be available to people wishing to adopt a child who has primary carer responsibilities for that child.

21. 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.

22. 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.

23. 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.

24. 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.

25. Reasonable time off to attend official meetings in the adoption process should also be given.

26. 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

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27. Employees will be entitled to Keep in Touch Days (KIT) in line with the maternity leave and pay provisions as set out in Appendix 11.

Leave/Time Off for Domestic Reasons

28. This form of leave should cover a range of needs, from genuine domestic emergencies through to bereavement.

29. These provisions should cover all employees.

30. Payment may be made by local agreement, but the expectation is that relatively short periods of leave for emergencies will be paid.

31. If the need for time off continues, other options may be considered, such as a career break.

32. Applicants for the above forms of leave should be entitled to a written explanation if the application is declined.

33. Appeals against decisions to decline an application for leave should be made through the Grievance Procedure.

Monitoring and Review

34. All applications and outcomes should be recorded, and each leave provision should be annually reviewed by employers in partnership with local staff representatives

35. Applications and outcomes should be monitored annually, in partnership with local staff representatives.

36. Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness

37. Applications and outcomes, from both employer and employees should be recorded and kept for a minimum of one year

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NATIONAL HEALTH SERVICE
HOSPITAL MEDICAL AND DENTAL STAFF AND DOCTORS IN PUBLIC
HEALTH AND THE COMMUNITY HEALTH SERVICE

(SCOTLAND)

CONSULTANT GRADE
TERMS AND CONDITIONS OF SERVICE

Scottish Government Health Directorates

This is an up to date and complete version of the new Consultant Contract as at August 2007. It has been assembled from the Annexes to NHS Scotland circulars:

- PCS(DD)2004/2 - NEW CONSULTANT CONTRACT and
- PCS(DD)2005/4 - NEW CONSULTANT CONTRACT, INCREASES TO NATIONAL SALARY SCALES AND FEES AND ALLOWANCES 2005-06
- PCS(DD)2005/10 – AMENDMENTS TO TERMS AND CONDITIONS OF SERVICE
- PCS(DD)2005/13 - AMENDMENTS TO TERMS AND CONDITIONS OF SERVICE
- PCS(DD)2007/11 - AMENDMENTS TO TERMS AND CONDITIONS OF SERVICE

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INTRODUCTION

1. The remuneration and conditions of service set out in this handbook have been approved by Scottish Ministers under Regulations 2 and 3 of the National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991 (SI 1991 No 537) and under Section 105(7) of and paragraph 5 of Schedule 1 and paragraph 7 of Schedule 5 to the National Health Service (Scotland) Act 1978.
2. The Terms and Conditions of Service set out in this handbook shall incorporate, and be read subject to, any amendments which are from time to time the subject of negotiation by the appropriate negotiating bodies and are approved by Scottish Ministers after considering the results of such negotiations.
3. The approved provisions of this handbook are the Terms and Conditions of Service determined from time to time for the purposes of the contracts of the consultant grade and have been so determined by Scottish Ministers for the purpose of those contracts requiring the Scottish Ministers' determination.
4. Where reference is made in these Terms and Conditions of Service to the Department, this should be taken to mean the Scottish Government Health Directorates.
5. Where reference is made to employers or NHS Boards in these Terms and Conditions of Service, this should be taken as including the Special NHS Boards, the island Health Boards and the Common Services Agency.
6. This handbook should be read in conjunction with the General Whitley Council Conditions of Service 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. Those sections of the General Council Conditions of Service which apply to consultants are listed in Appendix 10 to this handbook.
7. The term "regular appointment" excludes locum appointments.

1. APPOINTMENT TO THE GRADE

- 1.1.1 A consultant holding a medical post must be a fully registered medical practitioner. A consultant holding a dental post must be a registered dental practitioner or fully registered medical practitioner.
- 1.1.2 A practitioner must be on the GMC or GDC Specialist Register as appropriate to be eligible for appointment as a consultant.
- 1.1.3 A consultant must be appointed in accordance with the terms of Statutory Instrument 1993 SI No. 994 or any amendment from time to time.
- 1.1.4 A consultant, other than a locum consultant, will hold his/her appointment until retirement unless terminated under the provisions set out in **Section 10**.
- 1.1.5 On appointment, a consultant will be offered a contract which conforms to the model contained in **Appendix 1**.
- 1.1.6 The passing of a medical examination will be a condition of appointment of all consultants within the scope of the NHS Superannuation Scheme. Any fee for examination will be paid by the appointing authority, except that where, at the instance of a candidate who has failed to pass the first examination, a second examination is carried out by one or more doctors approved by the appointing authority, any fee for such examination will be paid by the candidate.

2. RATES OF PAY

2.1.1 A consultant will be paid in accordance with the rates set out in **Appendix 3** and subject to the terms and conditions of service set out elsewhere within this handbook.

2.2 Discretionary Points

2.2.1 A consultant who has reached point 5 of the pay point scale will be eligible to be paid discretionary points in accordance with the rates in **Appendix 3**. The employer, in determining the award of discretionary points, will follow the guidance in NHS Circular PCS(DD)1995/6 and the 12 January 2000 guidance "Discretionary Points for Consultants".

2.3 Distinction Awards

2.3.1 Distinction awards will be payable where these have been recommended for an individual consultant by the Scottish Advisory Committee on Distinction Awards, at the rate given in **Appendix 3**. The detailed provisions governing the granting of awards, the process for deciding them, and the review of awards, together with other information about the distinction awards scheme and how it operates, are set out in the *Guide to the NHS Distinction Awards Scheme in Scotland* published annually by the Scottish Advisory Committee on Distinction Awards.

2.4 Chief Officer Supplement

2.4.1 A chief officer of an NHS Board will receive a supplement within the range set out in **Appendix 3**, depending on the band within which his/her post falls and the weight of the post as assessed by his/her employer. "Chief Officer" means a consultant in public health medicine who is a director of public health or a chief administrative medical officer. The definition of the relevant bands for NHS Boards is set out below:

Band B	Director of Public Health Population of 450,000 and over
Band C	Director of Public Health Population in the range 250,000 – 449,999
Band D	Director of Public Health Population in the range 50,000 – 249,999
Island Health Boards	Population under 50,000

Supplements will be an element of remuneration and will be superannuable.

2.4.2 Population numbers will be reviewed annually at 1 April. The relevant population for this purpose will be the Registrar General's estimate of the home population for the employer at the previous 30 June.

2.4.3 If the home population for the employer increases to a higher population band for one year only, this will 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 6 months. Payment of any increased supplement following such a review will be made with retrospective effect from 1 April of the previous year.

If the home population for the employer falls to a lower population band for one year only, this will 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 6 months. Where this would result in a reduction in the value of the supplement, an officer will retain the cash value of his/her existing supplement for so long as that remains more favourable.

2.5 Equal Pay

- 2.5.1 The salary scales in **Appendix 3** and all terms and conditions of service will apply equally to all consultants irrespective of age, gender, marital status, race, religion, creed, sexual orientation, colour or disability.

3. JOB PLANNING

3.1. JOB PLANS

3.1.1. Job planning is a requirement for all consultants, including those on honorary NHS contracts. Agreed job plans will be prospective and will set out:

- all professional commitments;
- time and service commitments;
- accountability and management arrangements;
- objectives;
- resources;
- any agreed extra programmed activities.

3.1.2 Job plans will follow the model format contained at **Appendix 4**.

3.1.3 It will be a contractual responsibility to fulfil the professional, time and service and accountability arrangements except in emergencies or where otherwise agreed. The employer is responsible for providing the resources and facilities identified in the job plan.

3.1.4 The job plan and any variation should be agreed between the employer and the consultant after full discussion and with both parties using their best endeavours to resolve any issues arising. This should include referral for mediation by more senior management in the event of continuing disagreement between the consultant and his/her immediate manager. There may be exceptional cases where agreement cannot be reached. In such circumstances the process set out in **Section 3.4** will be followed.

3.1.5 The employer will ensure that a job plan is available for the consideration of candidates for appointment to a consultant post.

3.1.6 **Section 14** sets out the transitional job planning arrangements for those consultants transferring from their existing contracts.

3.1.7 The job plan will be subject to review at least annually, or more often, if changes to staffing resources, or working practices, or the consultant's circumstances require it.

3.1.8 An interim job plan review may be instigated at any time by either the employer or the consultant.

3.1.9 Where a consultant works for more than one NHS employer, the employers will agree a designated lead employer and design one integrated job plan. Where a consultant has an NHS employer and a non-NHS employer e.g. a

consultant who holds both a University contract and an NHS contract, the NHS employer will work with the non-NHS employer to agree the commitments of the consultant and undertake the job planning process on a joint basis.

3.1.10 Job planning is linked closely with, but is separate to, the agreed appraisal scheme for consultants. The job plan review will take into account the outcome of the appraisal discussion and reflect the agreed personal development plan.

3.1.11 In agreeing job plans, the employer and the consultant will have regard to the requirements of **Appendix 8** (Code of Conduct for Private Practice).

3.2. ELEMENTS OF THE JOB PLAN

Professional Commitments

3.2.1 The agreed job plan will include all of the consultant's professional duties and commitments, including:

- a) agreed direct clinical care duties;
- b) agreed supporting professional activities;
- c) additional agreed responsibilities;
- d) other agreed external duties;
- e) any agreed extra programmed activities.

These categories of activity are described in **Section 4**.

Time and Service Commitments

3.2.2 The employer will agree a timetable with the consultant setting out when and how the job content and objectives will be delivered and specifying the nature and location of the activity. The timetable will be made up of programmed activities, units of typically four hours each but which may be programmed in half-units of two hours each.

3.2.3 The timetable will cover on-call and out-of-hours commitments. Regular, predictable, commitments arising from on-call responsibilities should be scheduled into programmed activities. Rota commitments will also be specified.

3.2.4 Service redesign may include scheduling of programmed activities of non-emergency work outwith 8am – 8pm Monday to Friday, 9am – 1pm Saturdays and public holidays. These programmed activities may only be scheduled following agreement between the employer and the consultant as part of the annual or interim job planning process. For the periods 8am – 8pm Monday to Friday, 9am – 1pm Saturday and public holidays, any failure to agree is

subject to the appeals process set out in **Section 3.4**. The employer cannot schedule programmed activities outwith these periods where a consultant withholds his/her agreement, and this matter cannot be taken to appeal. In either event, there will be no detriment to progression through seniority points or any other matter.

- 3.2.5 For consultants who hold honorary NHS contracts, e.g. clinical academic consultants, or who undertake teaching activities away from their principal place of employment (e.g. at a university), job plans will take full account of both the university or teaching commitments and their NHS commitments. The NHS employer will engage in a dialogue with the university employer to ensure that the job plan is mutually agreed and that all parties are aware of the employee's full commitments (see **Section 13**). The priority given to NHS and University work should be equal and account should be taken of the likelihood of clinical responsibilities resulting from emergency care that might impact on other scheduled responsibilities.
- 3.2.6 A consultant and the employer must agree in advance any commitments that may impact on the consultant's agreed scheduled duties. In agreeing these commitments, agreement will need to be reached between the consultant and the employer as to how the affected agreed schedule should continue to be provided in such a way as to secure an acceptable continuity of agreed activity

Undergraduate Teaching and University sponsored research

- 3.2.7 The job plan should reflect a consultant's commitment to regular formal undergraduate teaching where this has been agreed between a consultant and his/her employer in consultation with the relevant Dean.
- 3.2.8 There may be cases where protected time is to be built in to the job plan to undertake university-sponsored research involving significant use of medical school facilities or where the consultant is part of a medical school-led research team. In these cases this element of the job plan should be agreed between the consultant and his/her employer in consultation with the relevant Dean.

Location

- 3.2.9 A consultant's principal place of work will be stipulated in the terms of his/her appointment to post. Any proposal to undertake duties at any site outwith the consultant's principal place of work will be agreed between employer and consultant as part of the job planning process and subject to the appeals process, where necessary.
- 3.2.10 A consultant will not be required to undertake duties that would necessitate relocation under the terms of Section 26 of the General Council Conditions of Service unless otherwise agreed. Where a consultant withholds agreement this will not be subject to the appeals process. In this event there will be no detriment to progression through seniority points or any other matter.

- 3.2.11 Consultants will normally be expected to be at the location agreed in the job plan for all programmed activities that form part of their agreed working week, except where agreed with the employer and specified in the job plan.
- 3.2.12 Exceptions will include travelling between sites and attending agreed meetings away from the workplace (**see paragraph 4.7.1**). Arrangements to work off-site or at home (e.g. telemedicine) at specified times may be agreed in relation to specified duties and will be set out in the job plan.
- 3.2.13 With the employer's agreement, elements of supporting professional activity may be:
- scheduled flexibly; and
 - undertaken off site.

Accountability and Management Arrangements

- 3.2.14 The job plan will set out the consultant's professional and management accountability arrangements. These will normally be to either the Clinical or Medical Director /Director of Public Health. It is necessary, in the interests of patients, for a consultant to exercise independent professional judgement in clinical decision making.
- 3.2.15 The job plan will include any management responsibilities.

Objectives

- 3.2.16 Agreed objectives will set out a mutual understanding of what the consultant and employer will be seeking to achieve over the next 12 months or other agreed period - informed by past experience, based on reasonable expectations of what might be achievable in future and will reflect different and developing phases of a consultant's career. Objectives must also be achievable within the available resources.
- 3.2.17 Objectives will not be contractually binding but consultants will be expected to make every reasonable effort to achieve them. Performance against objectives will be one of the elements that inform decisions on progression through seniority points.
- 3.2.18 Objectives will vary according to specialty or field of clinical practice.
- 3.2.19 Objectives will be appropriate, identified and agreed and may include numerical outcomes and outputs.
- 3.2.20 Objectives will be agreed on the understanding that achievement against them may be affected by changes in circumstances or factors outside the control of the individual or agreement between the employer and consultant that an objective has become unrealistic - all of which should properly be taken into account at the job plan review.

- 3.2.21 Objectives must be kept under review, and the consultant or the employer will be expected to organise an interim job plan review if either believe that objectives should be revised. Employers and consultants will be expected to identify problems (affecting the likelihood of meeting objectives) as they emerge, rather than wait until the annual job plan review.

Resources

- 3.2.22 The employer will set out in the job plan the facilities and resources necessary to support delivery of the consultant's duties and objectives for all programmed activities. This will include staffing support, accommodation, equipment, and any other identified resources necessary.

Extra Programmed Activities

- 3.2.23 Any extra programmed activities agreed between the employer and a consultant under the provisions of **Section 4** will be included within the job plan and will be contracted for separately under the same terms and conditions as the main contract.

3.3 JOB PLAN REVIEW

- 3.3.1 The job plan will be reviewed annually, at a time which permits decisions on progression through seniority points (as set out in **Section 5**) to be implemented prospectively. The job plan review will be informed by the same information systems that also feed into appraisal, and by the outcome of the appraisal discussion.
- 3.3.2 Interim job plan reviews will be conducted where duties, responsibilities or objectives have changed or need to change significantly within the year, or where the manager believes that any of the progression through seniority points criteria, detailed at **paragraph 5.2.3**, are unlikely to be met by the time of the next annual job plan review.
- 3.3.3 The job plan review will be carried out by the consultant and the Medical Director /Director of Public Health or the Clinical Director, or other lead clinician nominated by the Medical Director/ Director of Public Health, and will review the job content and objectives as well as the delivery of commitments.
- 3.3.4 As part of the job plan review, progress against objectives and factors affecting delivery will be considered. The employer and the consultant should discuss whether targets were at the right level, resources adequate, and whether the timetable of time and service commitments should be amended.
- 3.3.5 Following the annual job plan review, the manager via the Medical Director/DPH will make a report and recommendation to the Chief Executive. This will inform decisions on progression through seniority points under the provisions set out in **Section 5**.

3.4 MEDIATION AND APPEALS

Mediation

- 3.4.1 Job plans and variations to job plans should be agreed between the employer and the consultant after full discussion and with both parties using their best endeavours to resolve any issues arising. This should include referral for mediation by more senior management in the event of continuing disagreement between the consultant and his/her immediate manager. In such circumstances the process set out below will be followed:

Stage 1

The consultant and/or manager will, within two weeks of the exhaustion of their initial discussions, refer the point of disagreement, in writing, to the Divisional Medical Director/Director of Public Health. If the Divisional Medical Director /Director of Public Health was involved directly or indirectly in the job plan under disagreement, the referral will be to another appropriate person nominated by him/her and agreed with the consultant. The Divisional Medical Director/Director of Public Health (or other agreed person) will convene a meeting with the consultant and the manager, normally within three weeks of the referral, to discuss the point of disagreement and to hear the parties' consideration of the issues. All parties will use their best endeavours to ensure that agreement is reached at this stage. The Divisional Medical Director/Director of Public Health (or other agreed person) will, normally within two weeks of the meeting, advise the consultant and manager of his/her decision concerning the point of disagreement, giving full reasons to explain his/her decision.

For a Medical Director or Director of Public Health, mediation will take place via a suitable individual nominated by the Divisional Chief Executive or NHS Board Chief Executive.

Stage 2

Following receipt of this decision, where exceptionally a consultant remains dissatisfied with the proposed job plan, he/she may refer the point of disagreement to the Divisional Chief Executive (or in the case of a consultant in public health medicine, to the Chief Executive of the NHS Board). This referral should be made, in writing, within two weeks of the receipt of the decision. The Divisional Chief Executive (or Chief Executive of the NHS Board in the case of a consultant in public health medicine) will convene a meeting with the consultant and the manager to discuss the point of disagreement and to hear the parties' consideration of the issues. All parties will use their best endeavours to ensure that agreement is reached at this stage. The Divisional Chief Executive (or Chief Executive of the NHS Board in the case of a consultant in public health medicine) will, normally within two weeks of the meeting, advise the consultant and manager of his/her decision concerning the point of disagreement, giving full reasons to explain his/her decision.

Formal Appeal

- 3.4.2 There may be exceptional cases where agreement cannot be reached through mediation. In such circumstances the process set out below will be followed:

Following receipt of the decision from the Divisional Chief Executive (or in the case of a consultant in public health medicine, the Chief Executive of the NHS Board), where a consultant remains dissatisfied with the proposed job plan, he/she will be entitled to present a formal appeal to the employer. Such a request will be made in writing to the Chief Executive of the NHS Board (or in the case of a consultant in public health medicine, to the Chair of the NHS Board) within four weeks of the receipt of the decision. The Chief Executive will, on receipt of a written request for appeal, convene an appeals panel which should meet normally within 6 weeks of the request. Membership of the panel will be:

- One member nominated by the Chief Executive on behalf of the NHS employer, who would act as the chair;
- One member nominated by the consultant;
- One member appointed from an agreed consultants' appeals panel list.

While it is not necessary for members of the appeals panel to be NHS Board members, the panel will be constituted as a subcommittee of the employing board.

- 3.4.3 Where either the consultant or the employer requires it, the appeals panel will hear expert advice on matters specific to a specialty.

The List

- 3.4.4 A list of members (the consultants' appeals panel list) suitable for acting as the third appeals panel member will be agreed between the NHS Board and the local negotiating committee (LNC) for medical and dental staff. If a local list is unavailable, the third member should be drawn from a "national" list, which will be the combined lists from all those boards where a list has been agreed.
- 3.4.5 The member from the list will be nominated by the Chief Executive after discussion with the consultant or his/her representative. Where there is a recognised incompatibility with the first member nominated, the Chief Executive will select an alternative from the list. The Chief Executive should endeavour to ensure that individuals on the list are normally used in rotation.
- 3.4.6 The list should be regularly reviewed.

Membership of the Appeals Panel

- 3.4.7 No one will be a member of the appeals panel if they have been involved directly or indirectly in the job plan under disagreement.

- 3.4.8 The consultant has the right to be represented at all stages of mediation and formal appeal.
- 3.4.9 The appeals panel will not include legal representatives acting in a professional capacity.
- 3.4.10 Appeals panel members will not act in an advocacy role but are expected to judge each case on its merits.
- 3.4.11 The employer and consultant nominees will be NHS employees/NHS Board members (or in the case of clinical academics they may be employees of the University).

Administration

- 3.4.12 The appeals panel will make a final decision (on a majority basis) on the proposed job plan which will be binding on both parties; no further right of appeal exists.
- 3.4.13 No point of disagreement of the job plan will be implemented until confirmed by the outcome of the formal appeal except that any decision of the panel which has implications for the salary of the consultant will have effect from the date at which the consultant gave notice of his/her intention to appeal formally.

4. WORKING WEEK

4.1 PRINCIPLES

- 4.1.1 The job plan for each consultant and payments made to the consultant by the employer will adhere to the terms and conditions set out in this section.
- 4.1.2 The working week for a full-time consultant will be expressed as 10 programmed activities with a timetabled value of 4 hours each (subject to the provisions of **paragraph 4.8**). These will typically be programmed as blocks of 4 hours, or in half-units of 2 hours.
- 4.1.3 Any fraction of a programmed activity should be rounded up to the nearest half-unit.
- 4.1.4 There will be flexibility for the precise length of individual programmed activities to vary. Regular and significant differences between timetabled hours and hours worked should be addressed through the mechanism of the annual or interim job plan review under the provisions of **Section 4.6**.
- 4.1.5 The number and timetabling of programmed activities to be worked by consultants in each calendar week will normally be defined on an annual basis in the job plan. Alternative approaches may, however be agreed between the consultant and the employer to allow for flexible timetabling of commitments over a period (e.g. a reduction in number of hours worked during school holidays). The number of programmed activities worked may therefore vary from week to week provided that the total number worked over the period of each year equates to the number for which the consultant is contracted to work in terms of his/her job plan. In these circumstances, the job plan will be expressed in terms of the average number of programmed activities worked per week, allowing for periods of leave as authorised under **Section 7**.
- 4.1.6 The employer and consultant may agree variations in the length of individual programmed activities over an agreed reference period, provided that the consultant's average weekly or annualised commitment is met and details are built into the job plan.
- 4.1.7 A consultant working less than 10 programmed activities will be paid pro-rata to the basic salary for the number of programmed activities agreed and will be referred to as a 'part-time' consultant.
- 4.1.8 All programmed activities worked between 8am – 8pm Monday to Friday, including emergency work, will be paid at plain-time rates. Work undertaken outside this period, or on public holidays, will be paid at premium rates.
- 4.1.9 Extra programmed activities agreed between the employer and the consultant will be paid for under the terms of a separate contract under the provisions of **Section 4.4**

4.2 PROGRAMMED ACTIVITIES

4.2.1 Programmed activities will be separated for timetabling purposes into the categories of:

- a) direct clinical care duties;
- b) supporting professional activities;
- c) additional responsibilities;
- d) other agreed external duties.

4.2.2 Unless otherwise agreed, a full-time consultant will devote 7.5 programmed activities per week to direct clinical care, and 2.5 programmed activities to supporting professional activities. Part-time consultants will require an allocation for supporting professional activities that is higher than the pro-rata allocation, as set out in the table below:

Total Number of programmed activities	Number of SPAs
2 or less	0.5
2.5 – 3.5	1
4 – 5.5	1.5
6 – 7.5	2
8 or more	2.5

Direct Clinical Care Duties

4.2.3 The direct clinical care duties of the post will include:

- Emergency duties (including emergency work carried out during or arising from on-call);
- Operating sessions;
- Pre and post operative care;
- Ward rounds
- Outpatient clinics
- Clinical diagnostic work
- Other patient treatment
- Public health duties
- Multi-disciplinary meetings about direct patient care
- Administration directly related to patient care (eg referrals, notes, complaints, correspondence with other practitioners)
- On-site medical cover
- Any other work linked to the direct clinical care of NHS patients
- Travelling time associated with any of these duties, in accordance with **paragraph 4.7.1.**

Emergency duties (both predictable and unpredictable) will be given first priority when allocating programmed activities for direct clinical care.

Supporting Professional Activities

4.2.4 Supporting professional activities of the post will include:

- Continuing professional development
- Teaching and training
- Management of doctors in training
- Audit
- Job planning
- Appraisal
- Revalidation
- Research
- Contribution to service management and planning
- Clinical governance activities
- Any other supporting professional activities
- Travelling time associated with these duties in accordance with **paragraph 4.7.1.**

Additional Responsibilities

4.2.5 Additional responsibilities are duties of a professional nature carried out for or on behalf of the employer or the Scottish Government which are beyond the range of the supporting professional activities normally to be expected of a consultant. Additional responsibilities are:

- Caldicott guardians
- Clinical Audit leads
- Clinical Governance leads
- Undergraduate and Postgraduate deans
- Clinical Tutors
- Regional Education Advisers
- Formal medical management responsibilities
- Other additional responsibilities agreed between a consultant and his/her employer which cannot reasonably be absorbed within the time available for supporting professional activities
- Travelling time associated with these duties in accordance with **paragraph 4.7.1.**

4.2.6 Where a consultant has agreed additional responsibilities with his/her employer, the time for these, including travelling time in accordance with **paragraph 4.7.1** will be substituted for other work or remunerated separately. Where they are substituted, the consultant and employer will agree which other work should be substituted taking full account of the consultant's professional requirements in respect of supporting professional activities and his/her commitments to direct clinical care. Where they are remunerated, this will be by contracting for extra programmed activities under the terms of

Section 4.4 or by additional remuneration agreed locally, or a combination of these.

Other External Duties

4.2.7 Other external duties comprises work not directly for the NHS employer, but relevant to and in the interests of the NHS. Examples include:

- Trade Union and professional association duties
- Acting as an external member of an advisory appointments committee
- Undertaking assessments for NHS Education for Scotland, NHS Quality Improvement for Scotland or equivalent bodies
- Work for the Royal Colleges
- Work for the General Medical Council or other national bodies concerned with professional regulation
- NHS disciplinary procedures
- NHS appeals procedures
- Travelling time associated with these duties in accordance with **paragraph 4.7.1**

4.2.8 ‘Other external duties’ must be explicitly agreed in advance. Where such duties might affect the performance of direct clinical care duties, the consultant should agree with the employer a revision on an ad hoc basis of the timetabled programme of activities agreed in the job plan. Unless otherwise agreed, this should be done at least a month in advance. Programmed activities may be substituted with the agreement of the employer, or otherwise undertaken with the approval of the employer.

4.2.9 Where it is anticipated that the volume of work involved may be such as to affect on a predictable basis the performance of programmed duties, the consultant should, at the initial job plan meeting on transfer, on first appointment, or thereafter at job plan review or interim job plan review, raise the matter and seek agreement to the substitution of ‘other external duties’ for programmed duties.

4.3 FEE PAYING WORK

4.3.1 Fee-paying work is that which is not part of contractual work and not reasonably incidental to it, and is listed in **Appendix 5(a)**. Items may be added to this list by agreement between the employer and the local negotiating committee for medical and dental staff. This work should be undertaken outwith a consultant’s programmed activities or during periods of leave, with the fee retained by the consultant.

4.3.2 Where such work involves minimal disruption, at the discretion of the employer, this work may be done within programmed activities with the consultant retaining the fee.

4.3.3 Employers have the discretion to make reasonable charges to consultants for the use of NHS facilities outside programmed activities, although consultants should not be charged for the use of patient records.

4.3.4 Fees for NHS work under **Section 9** of these terms and conditions of service may only be claimed for work undertaken outwith agreed programmed activities.

4.3.5 Where fee-paying activities, defined as “**Appendix 5(a)** activities”, are undertaken on a regular basis, they will be included in the job plan.

4.4 EXTRA PROGRAMMED ACTIVITIES

4.4.1 Extra programmed activities (EPAs) are those in excess of 10 per week for full-time consultants, and in excess of the number of programmed activities in the main contract agreed for part-time consultants.

4.4.2 The pay rate used to calculate extra programmed activities will be basic pay plus any discretionary points held by the consultant up to a maximum of 8 discretionary points. For a consultant holding a distinction award, the pay rate used will be basic pay plus the maximum of 8 discretionary points. The arrangements set out in **Section 4.8** will apply where such activities are undertaken in the out-of-hours period. A consultant may agree with the employer to undertake extra programmed activities. Any such activities should be agreed and timetabled through the job planning process as set out in **Section 3**. Such extra programmed activities will be separately contracted for under the same terms and conditions of service as the main contract.

4.4.3 An agreement to undertake extra programmed activities that would require a consultant to work in excess of 48 hours per week for the employer is subject to the consultant having signed a waiver opting-out of the requirements of the Working Time Regulations regarding the maximum working week of 48 hours.

4.4.4 A model contract for extra programmed activities is included as **Appendix 2**. Such a contract may be entered into for any period of time but where possible should be offered and agreed on an annual basis. These extra programmed activities may be terminated at any time by either the consultant or the employer giving the other a minimum of three months' notice. In exceptional circumstances EPAs may be contracted for a period of less than three months, in which case the contract should specify the duration and it may not be terminated prior to the expiry of its term.

4.4.5 An employer will not require a consultant to undertake programmed activities in excess of 10 per week, or the number in the main contract for a part-time consultant, where the consultant's agreement is withheld. Where a consultant withholds agreement, this is not subject to appeal and there will be no detriment to progression through seniority points (except under the provisions of **paragraphs 4.4.6 to 4.4.12**) or any other matter.

Extra Programmed Activities – Private Practice

- 4.4.6 There are special provisions relating to extra programmed activities which apply to a consultant who wishes to undertake private practice. These provisions are set out in paragraphs **4.4.7-4.4.12** below.
- 4.4.7 ‘Private practice’ is defined as:
- a) the diagnosis or treatment of patients by private arrangement (including such diagnosis or treatment under Section 57 of the National Health Service (Scotland) Act 1978 as inserted by Section 7 (11) of the Health Medicines Act 1988 and further amended by Schedule 9 to the NHS and Community Care Act 1990), excluding, however, work of the kind referred to in **Section 4.3** and **Section 9** of these terms and conditions of service; and
 - b) work in the general medical, dental or ophthalmic services under Part 2 of the National Health Service (Scotland) Act 1978.
- 4.4.8 A consultant (whether working full-time or part-time) who wishes to undertake private practice as defined above, must first inform his/her employer in writing. A consultant appointed after 1 April 2004 who already undertakes private must inform his/her employer of this in writing at the time of appointment. Arrangements for consultants transferring to these terms and conditions under the provisions of **Section 14** are set out in **paragraph 14.3.6**.
- 4.4.9 An employer has discretion to offer consultants (including part-time consultants) who undertake private practice the opportunity to carry out extra programmed activities as described in **paragraphs 4.4.1 to 4.4.3** above. The employer should offer all clinically appropriate consultants (i.e. not just those wishing to undertake private practice) an equal opportunity to undertake such extra programmed activities. Where possible, such offers should be made at annual job plan review but in any event, unless otherwise agreed between the employer and the consultant, must be made no less than 3 months in advance of the start of the proposed extra work or no less than 6 months in advance where the work would require the consultant to re-schedule external commitments.
- 4.4.10 Where a consultant declines in a given seniority year the opportunity to contract for up to 1 extra programmed activity as offered under the terms of **paragraph 4.4.9** above and subsequently undertakes private practice during that year, progression through seniority points as set out in Section 5 may be deferred for that seniority year.
- 4.4.11 Where a consultant already undertakes one or more extra programmed activities, **paragraph 4.4.10** does not apply.
- 4.4.12 At the employer’s discretion, some categories of private practice may be exempted from these arrangements.

4.5 WAITING TIMES INITIATIVE PAYMENTS

- 4.5.1 In circumstances where, as a direct result of published national or local waiting times targets, the employer requires increased ad hoc activity not previously identified within the job plan, the employer and consultant may agree a separate contract for this purpose. Such work will be voluntary.
- 4.5.2 Such work will be paid at three times the hourly rate appropriate to point 20 of the seniority scale set out in **Appendix 3**, or alternatively and by agreement with the employer:
- paid at twice the hourly rate appropriate to point 20 of the seniority scale set out in **Appendix 3** and equivalent time off in lieu; or
 - paid at the hourly rate appropriate to point 20 of the seniority scale set out in **Appendix 3** and twice the equivalent time off in lieu.
- 4.5.3 NHS patients may be treated within the private sector at the request of the consultant's main employer. Where a consultant undertakes such work over a sustained reference period to be agreed locally, and an extra programmed activity has not already been agreed as part of the job plan, the need for a consultant to offer an extra programmed activity before he/she can engage in private practice without detriment to progression through seniority points will be waived.

4.6 WORKLOAD ASSESSMENT

- 4.6.1 Where a consultant believes that his/her average workload exceeds the amount of work for which the consultant contracts as programmed activities agreed in the job plan, he/she should request an interim job plan review which the employer will set up within one month of the request.
- 4.6.2 In such cases, the consultant will complete a model diary (see **Appendix 6**) measuring workload over an agreed period. The completed diary, along with any other appropriate supporting documentation provided by the consultant and/or employer, will form the basis of determining the consultant's workload. Where this demonstrates that the consultant's workload does exceed contracted programmed activities, the job plan will be adjusted in one of the following respects:
- a) the consultant and employer may agree that the consultant will continue the same level of activity and contract for a number of extra programmed activities which equate to the hours worked; or
 - b) the consultant and employer may agree a reduction in hours worked to equate to the number of programmed activities contracted in the previously agreed job plan; or
 - c) the consultant and employer may agree a combination of a) and b) such that the programmed activities contracted in the revised agreed job plan (including

any extra programmed activities) equate to the consultant's new working hours.

- 4.6.3 Where it is agreed to contract for extra programmed activities as in (a) above, the effective date for the payment of these will be the date at which the consultant first brought the matter to the employer's attention by requesting an interim job plan review. Where the employer agrees to reduce actual workload as in (b) or (c) above, this must be achieved within three months of the date of the interim job plan review. Time off in lieu will be accrued from the date of the interim job plan review.
- 4.6.4 If agreement cannot be reached, the appeal process set out in **Section 3.4** will apply.
- 4.6.5 Where an employer has concerns that the workload does not match the job plan then they will ask the individual consultant to complete a diary or other supporting documentation, but if the consultant believes that this is an unreasonable request then the consultant may refer back to the appeals process set out in **Section 3.4**.

4.7 TRAVELLING

- 4.7.1 Time spent travelling in the course of fulfilling duties and responsibilities agreed in the job plan will be counted as part of agreed programmed activities. This will include travel to and from base to other sites, travel between other sites, travel when recalled from home during on-call periods (but not normal daily journeys between home and base), and 'excess travelling time'. 'Excess travelling time' is defined as time spent travelling between home and a working site away from base less the amount of time normally spent travelling between home and base.

4.8 OUT-OF-HOURS WORK

- 4.8.1 All programmed activities worked between 8am – 8pm Monday to Friday, including emergency work, will be paid at plain-time rates. Work undertaken outside this period, or on public holidays, will be paid at premium rates as set out below.
- 4.8.2 Subject to the provisions of **Section 14**, work done in hours outside those set out in **paragraph 4.8.1** will be treated as follows:
 - a) in assessing the number of programmed activities needed to recognise emergency work done whilst on-call, three hours of emergency work out-of-hours will be treated as equivalent to one programmed activity (see table at **paragraph 4.10.7**) and consequently there will be a reduction in a consultant's time-tabled weekly work, equivalent to one hour for each programmed activity scheduled in the times indicated above;

OR, by mutual agreement between the employer and consultant –

- b) the consultant will receive a premium payment in addition to his/her contracted salary at a rate of one third of his/her basic hourly rate, excluding discretionary points and/or distinction awards.

4.8.3 The employer will agree with the consultant the allocation of programmed activities for out-of-hours work (including work arising from on-call) and the level of this recognition will be made on a prospective basis at job plan review. These decisions will be based on the process as described at **paragraphs 4.6.2 and 4.10.6**. Where a job plan review results in a reduction in the level of recognition for out-of-hours work, there will not be any protection arrangements in relation to previous recognition for out-of-hours work.

4.8.4 Employers will ensure that where consultants work through the out-of-hours period adequate rest is provided before and after the out-of-hours period.

4.8.5 Other than in exceptional circumstances, the number of programmed activities undertaken during the out-of-hours period should not exceed three per week.

Where a programmed activity spans the two relevant time periods, the part of the programmed activity falling in the out-of-hours period will be treated under the provisions of paragraph 4.8.2.

4.9 RESIDENT ON-CALL

4.9.1 Consultants will not, save in exceptional circumstances, undertake resident on-call. However, the employer will agree with the local negotiating committee (LNC) for medical and dental staff the arrangements in respect of resident on-call, including remuneration, paid time off in lieu, accommodation and catering. Where it is agreed between the consultant and employer that he/she will undertake resident on-call duty, these arrangements agreed with the LNC will apply.

4.10 ON-CALL

Work done whilst on-call

4.10.1 All emergency work undertaken during or as a consequence of the on-call period will count towards the number of programmed activities scheduled in the job plan for direct clinical care.

4.10.2 All emergency work that takes place at predictable times will be programmed into the working week on a prospective basis and count towards a consultant's programmed activities.

4.10.3 All unpredictable emergency work undertaken during or as a consequence of the on-call period will count towards the number of programmed activities scheduled in the job plan for direct clinical care up to a maximum of two per week, and subject to provisions in **Section 14**.

4.10.4 Where consultants' on-call commitments give rise to work in excess of the equivalent of two programmed activities on average per week, this will be

addressed through job planning. In exceptional circumstances, where employers and consultants agree additional work is necessary, employers should make additional arrangements locally to recognise this excess work.

- 4.10.5 The number of programmed activities for on-call work will be allocated on a prospective basis, based on periodic assessments of the average weekly amount of such work over a prior, agreed reference period.
- 4.10.6 The consultant will complete a model diary (see **Appendix 6**) measuring on-call workload over the agreed reference period. The completed diary, along with any other appropriate supporting documentation provided by the consultant and/or employer, will form the basis of determining the consultant's on-call workload.

4.10.7 Programmed activities will be allocated over a one- eight week period on the basis of the following table:

Average emergency work per week directly associated with on-call duties	Allocation of programmed activities	Allocation of programmed activities where emergency work arises during Premium Time
Less than half an hour	Compensatory time will be deducted from normal programmed activities on an ad hoc basis.	Compensatory time will be deducted from normal programmed activities on an ad hoc basis.
Half-an-hour	One programmed activity every eight weeks, or one half-activity every four weeks	One programmed activity every six weeks, or one half programmed activity every three weeks
One hour	One programmed activity every four weeks, or two half-activities per fortnight	One programmed activity every three weeks
One-and-a-half hours	One programmed activity every three weeks	One programmed activity every two weeks, or half a programmed activity per week
Two hours	One programmed activity per fortnight, or half a programmed activity per week	Two programmed activities every three weeks
Three hours	Three programmed activities every four weeks	One programmed activity per week
Four hours	One programmed activity per week	One and a half programmed activities per week, or three programmed activities every two weeks
Six hours	One and a half programmed activities per week, or three programmed activities every two weeks	Two programmed activities per week
Eight hours	Two programmed activities per week	Three programmed activities per week

4.10.8 Where a programmed activity spans the two relevant time periods, the part of the programmed activity falling in the out-of-hours period will be treated under the provisions of **paragraph 4.8.2.**

On-call availability

- 4.10.9 A consultant participating in an on-call rota will be paid a supplement in addition to his/her basic salary in respect of his/her availability for on-call work. This supplement is separate from and additional to the arrangements for recognising actual work undertaken in the on-call period. The supplement will represent a percentage of basic salary as set out in the table contained in **Appendix 3** and will vary according to the criteria set out in **paragraph 4.10.10** below.
- 4.10.10 The level of supplement paid will reflect frequency of availability and will, in addition, recognise two levels of on-call availability:
- **Level 1** will apply to a consultant who needs to attend a place of work immediately when called, or to undertake analogous interventions (e.g. telemedicine or complex telephone consultations).
 - **Level 2** will apply to a consultant who can attend a place of work later or respond by non-complex telephone consultations later.
- 4.10.11 Consultants in both categories will be required to be contactable throughout the on-call period. A consultant in **Level 2** may, by mutual agreement with the employer, arrange short intervals during an on-call period within which it will not be possible for him/her to be contacted immediately, provided that there are arrangements for any messages to be taken and for the consultant to be able to respond immediately after the interval in question. Payment will be made in accordance with the table included as **Appendix 3**.
- 4.10.12 The frequency of availability and the associated banding supplement will be agreed prospectively during the job planning process following assessment by aggregating the number of on-call duties over an agreed period.
- 4.10.13 Where a consultant or consultants are on a rota of 1 in 4 or more frequent, the employer and consultant(s) together 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.
- 4.10.14 Consultants may agree alternative arrangements for covering emergency rotas, although such arrangements will not alter frequency bandings for the purposes of paying these supplements.
- 4.10.15 A part-time consultant qualifying for an availability supplement will receive the appropriate percentage of the equivalent full-time salary in accordance with the provisions of **paragraphs 4.10.9 and 4.10.10** above.

5. STARTING SALARY AND PROGRESSION THROUGH SENIORITY POINTS

5.1 STARTING SALARY

- 5.1.1 On appointment to a consultant post the starting salary will be the minimum point of the pay scale except in the circumstances set out in **paragraphs 5.1.2 to 5.1.7 and sections 5.2 and 5.4** below. The pay scale is set out in **Appendix 3**.
- 5.1.2 The “seniority date” will be the anniversary of the date of appointment subject to the terms of **paragraphs 5.1.3 to 5.1.6** below. The year between any two seniority dates will be known as the ‘seniority year’.
- 5.1.3 All previous regular service in the consultant grade in the NHS, including any absence on authorised leave, will be counted in full in determining the starting salary, seniority point and seniority date. Service under an honorary NHS consultant contract and any service on a part-time basis will be regarded for the purposes of this paragraph as regular service in the consultant grade.
- 5.1.4 All equivalent service at consultant level in posts within or outside the NHS will be counted in full in determining the starting salary, seniority point and seniority date. Guidance on starting salaries and seniority dates is contained in **Appendix 7**.
- 5.1.5 All locum service in a consultant post undertaken for 3 or more continuous months ('continuous' as defined in **paragraph 11.5.1**) prior to first appointment as a consultant in the NHS will count at the rate of one half in determining the starting salary, seniority point and seniority date. All locum service as a consultant undertaken after first appointment to the consultant grade will count in full in determining the starting salary, seniority point and seniority date.
- 5.1.6 Any service in terms of the above paragraphs which equates to a fraction of a year will result in the seniority date being brought forward by the equivalent proportion of a year. Thereafter the seniority date will be the anniversary of the first seniority date.
- 5.1.7 Where the salary of the previous regular appointment, including staff grade optional and associate specialist discretionary points, exceeds the minimum of the consultant salary scale, the consultant will be appointed to a point on the scale next above the pay rate of their previous regular appointment.

5.2 PROGRESSION THROUGH SENIORITY AND PAY POINTS

- 5.2.1 Progression through seniority points will be through a twenty-point scale of “seniority points” as set out at **Appendix 3**. There will be five pay points at one-year intervals followed by three further pay points at five-year intervals. The provisions for progression for consultants appointed prior to 1 April 2004 are subject to **Section 14**.

- 5.2.2 The consultant will normally progress each year through the seniority points set out in **Appendix 3**. Progression through seniority points can only be withheld or delayed on the grounds as detailed in **paragraph 5.2.3**.
- 5.2.3 The employer may decide to delay progression through seniority points in any year only where it can be demonstrated that, in that year, the consultant has not:
- a) met the time and service commitments in his/her job plan (see **Section 3, paragraphs 3.2.2 to 3.2.6**); or
 - b) met the personal objectives in his/her job plan or – where this is not achieved for reasons beyond the individual consultant’s control – having made every reasonable effort to do so (see **paragraph 3.2.16 to 3.2.21**); or
 - c) participated satisfactorily in annual appraisal, job planning and objective setting; or
 - d) worked towards any changes agreed as being necessary to support achievement of the organisation’s service objectives in the last job plan review; or
 - e) allowed the NHS (in preference to any other organisation) to utilise the first portion of any additional capacity they have (see **paragraph 4.4.6 to 4.4.12**); or
 - f) met required standards of conduct governing the relationship between private practice and NHS commitments (see **Section 6 and Appendix 8**).
- 5.2.4 Progression through seniority points will not be deferred in circumstances where the inability to meet the requirements set out in **paragraph 5.2.3** above is occasioned by factors outwith the control of the consultant, for example, absence on leave.
- 5.2.5 Progression through seniority points must not be related to or affected by the outcome of the appraisal process.
- 5.2.6 Where a manager believes that a consultant is unlikely to meet the criteria set out in **paragraph 5.2.3**, an interim job plan review should be arranged to address this at the earliest opportunity.
- 5.2.7 Following the annual job plan review, the manager will make a report to the Medical Director/DPH on whether the consultant has met the criteria set out **at paragraph 5.2.3**, taking into account the provisions at **paragraph 5.2.4**. This report will be prepared by the manager within 2 weeks of the job plan meeting and will be sent to the consultant and the Medical Director/DPH. Where the consultant disagrees with the terms of the report he/she will be entitled to invoke the process set out in **paragraph 3.4.1 (stage 1)**.
- 5.2.8 Where the Medical Director/DPH makes a recommendation to the Chief Executive, based upon the manager’s report, that progression through seniority

points should be withheld in any year, the consultant will be entitled to invoke the process set out in **paragraph 3.4.1 (stage 2)**.

- 5.2.9 Following receipt of any decision by the Divisional Chief Executive (or in the case of a consultant in public health medicine, the Chief Executive of the NHS Board) to withhold progression through seniority points, the consultant will be entitled to present a formal appeal to the employer under the terms of **paragraphs 3.4.2 – 3.4.13**.
- 5.2.10 There may be circumstances where the annual job plan review process is delayed through factors outwith the consultant's control. In such circumstances, the job plan review should take place at the earliest opportunity, but any decision to withhold progression through seniority points cannot be implemented retrospectively, but will be implemented from the date of the job plan review. In the event of appeal, **paragraph 3.4.13** will apply.
- 5.2.11 Progression through seniority points, where agreed, will be on the anniversary of appointment, subject to **paragraphs 5.1.3 to 5.1.6** and, for consultants appointed prior to 1 April 2004, subject to **Section 14**.
- 5.2.12 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.

5.3 RECRUITMENT AND RETENTION DISCRETION

- 5.3.1 The employer has the discretion to pay recruitment or retention premia to a consultant, in addition to basic salary.
- 5.3.2 The value of any recruitment or retention premium will be determined by the employer, after consultation with other NHS Scotland employers, but will not typically exceed 30% of the normal starting salary for a consultant post. The employer has discretion to offer the premium as a lump sum payment.
- 5.3.3 The employer may award time-limited premium payments on an annually renewable basis. The employer may adjust the value of the time-limited premium payment each year, taking into account the extent of local recruitment or retention pressures. The employer will inform the consultant in advance of any such adjustment.

5.4 LENGTHENED TRAINING

- 5.4.1 Where a consultant's training has been lengthened by virtue of being in a flexible training scheme or dual qualification (e.g. maxillofacial surgery, oral medicine), the employer will, where necessary, credit appropriate additional seniority to ensure that the consultant is not prevented from reaching the pay point he/she would have attained had he/she 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).

5.4.2 There may be other circumstances where it is appropriate for the employer to consider applying this provision in the appointment of a consultant. Guidance is contained in **Appendix 7**.

6. PRIVATE PRACTICE

- 6.1.1 A consultant will be free to undertake private practice as defined in **paragraph 4.4.7** without requiring the approval of his/her employer and without impact on his/her NHS contract (except for the provisions set out in **paragraphs 4.4.6 to 4.4.12**) provided that such work is undertaken outside the time agreed in the job plan for programmed activities. In addition, a consultant undertaking such work will have an obligation to inform his/her employer under the terms of **paragraph 4.4.8**
- 6.1.2 Consultants are required to adhere to the provisions set out in **Appendix 8** governing the relationship between NHS commitments and private practice.

7. LEAVE ARRANGEMENTS

7.1 Annual Leave

- 7.1.1 A consultant is entitled to annual leave at the rate of 6 weeks per year. The number of days to which '6 weeks' equates, where leave is taken in periods of less than 1 week, will be assessed for full-time and part-time consultants by calculating the average number of days per week when the consultant is on duty as agreed in the job plan, including on-call availability, and multiplying it by 6.
- 7.1.2 The leave year will run from the date of taking up appointment as a consultant.
- 7.1.3 A consultant will notify his/her employer when he/she wishes to take annual leave and the granting of such leave will be subject to approved arrangements having been made for his/her work to be done during his/her absence.
- 7.1.4 The provisions of Section 1 of the General Council Conditions of Service will apply.
- 7.1.5 Annual leave will continue to be accrued during any period of paid leave as set out elsewhere within this section.

7.2 Public Holidays

- 7.2.1 A full-time consultant is entitled to 10 days public holidays in addition to the annual leave entitlement set out in **paragraph 7.1.1** above.
- 7.2.2 A part-time consultant is entitled to such holidays on a pro-rata basis, determined by the number of days (or part days) worked per week.
- 7.2.3 Public holidays should be taken in accordance with Section 2 of the General Council Conditions of Service, as amended, or days in lieu thereof. A consultant who in the course of duty was required to be present at a hospital or other place of work, or undertake complex telephone consultations, between the hours of midnight and 9am on a public holiday will receive a day off in lieu.

7.3 Study Leave

- 7.3.1 Professional or study leave is granted to consultants for postgraduate purposes approved by the employer and includes study (usually, but not exclusively or necessarily, on a course), research, teaching, examining or taking examinations, visiting clinics and attending professional conferences.
- 7.3.2 Subject to the conditions in **paragraph 7.3.4** below, professional or study leave for a consultant will normally be granted to the maximum extent consistent with maintaining essential services up to thirty days (including off-duty days falling within the period of leave) in any 3 years for leave within the European Union.

- 7.3.3 Any leave granted under the terms of **paragraphs 7.3.1 and 7.3.2** above will be granted with full pay. In circumstances where the leave is taken within the United Kingdom it will be granted with full reimbursement of associated expenses. Where leave is taken elsewhere within the European Union, it will be granted with reimbursement of associated expenses at a level agreed between the consultant and his/her employer, which will normally be comparable with the level of expenses available for study leave within the United Kingdom. Journeys undertaken in association with study leave will, for the purposes of the reimbursement of expenses, be treated as journeys on the business of the employer.
- 7.3.4 An employer may at its discretion grant professional or study leave in the European Union in addition to the period set out in **paragraph 7.3.2** above, with or without pay and expenses or with any proportion thereof.
- 7.3.5 An employer may at its discretion grant professional or study leave outside the European Union with or without pay and expenses, or with any proportion thereof.
- 7.3.6 Where leave with pay is granted, the consultant must not undertake any remunerative work without the special permission of the employer.

7.4 Sabbatical Leave

- 7.4.1 After 7 years service in the consultant grade, a consultant will be eligible to apply for one period of sabbatical leave of up to 6 weeks or after 10 years service, a consultant will be eligible to apply for up to 3 months sabbatical leave. If either of these options is granted with pay, no further period of paid sabbatical leave will be granted until retirement.
- 7.4.2 Sabbatical leave has clear benefits for the individual and the service, enabling a period of development and refreshment. It will be granted where it can be demonstrated that the consultant proposes to use the leave in furtherance of a project that is in the interests of the NHS and contributes to his/her continuing professional, clinical or leadership development.
- 7.4.3 The consultant applying for such leave must set out a stated case explaining how the leave will be used and how the sabbatical will benefit the NHS.
- 7.4.4 Sabbatical leave will only be granted subject to approved arrangements having been made to cover the absence of the consultant.
- 7.4.5 An application must be made a minimum of 6 months in advance of the intended date of leave to be taken. Where an application for sabbatical leave is rejected, a period of 12 months must elapse before a fresh application can be considered.
- 7.4.6 Applications will be considered by the Medical Director / Director of Public Health and must have the written support of the Clinical Director / manager.

- 7.4.7 Where travel and accommodation expenses will be incurred, the employer has discretion to meet these in part or in full.
- 7.4.8 Sabbatical leave may be granted without pay in circumstances other than those set out above. The paid period of 6 weeks / 3 months may be extended by a further unpaid period at the discretion of the employer. Any such extension will be considered on the same terms as the original sabbatical leave agreement.
- 7.4.9 When sabbatical leave has been granted without pay, an employer has discretion to grant additional periods of sabbatical leave at intervals of no less than seven years after the first period.
- 7.4.10 All employment rights will be preserved during periods of sabbatical leave.

7.5 Sick Leave

7.5.1 A consultant absent from duty due to illness, injury or other disability will, subject to the provisions of **paragraphs 7.5.2-7.5.17** below, be entitled to receive an allowance in accordance with the following scale:

During the first year of service	One month's full pay (and after completing 4 months service) 2 months half pay.
During the second year of service	2 months full pay and 2 months half pay.
During the third year of service	4 months full pay and 4 months half pay.
During the fourth year of service	5 months full pay and 5 months half pay.
During the fifth year of service	5 months full pay and 5 months half pay.
After completing 5 years of service	6 months full pay and 6 months half pay.

The employer will have discretion to extend the application of the scale set out in this paragraph in an exceptional case. A case of a serious character, in which a period of sick leave on full pay in excess of the period of benefit stipulated above would, by relieving anxiety, materially assist a recovery of health, will receive special consideration by the employer.

Calculation of allowances

7.5.2 The rate of allowance and the period for which it is to be paid in respect of any period of absence due to illness, will be ascertained by deducting from the period of benefit (under **paragraph 7.5.1**) appropriate to the consultant's service on the first day of his/her absence the aggregate for the period of absence due to illness during the 12 months immediately preceding the first

day of absence. In aggregating the periods of absence, no account will be taken of any absence:-

- (a) On unpaid sick leave
- (b) Due to 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 Board; or
- (c) Due to injury as at (b) above which has not been the subject of payment by the Criminal Injuries Compensation Board on grounds that it has not given rise to more than 3 weeks loss of earnings, or was one for which compensation of less than the minimum provided for under the scheme would be given (subject in such case to the provision of a satisfactory proof that the injury was sustained as a result of the crime of violence).

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

7.5.3 a) For the purpose of ascertaining the appropriate allowance of paid sick leave under **paragraph 7.5.1**, all periods of service (without any break of 12 months or more, subject to sub-paragraph b) below) under any employer constituted under the NHS (Scotland) Act 1978, or any local authority, or in the Civil Service or the teaching service, or any service approved by Scottish Ministers for the purposes of Regulation 82(1) of the NHS (Superannuation) (Scotland) Regulations 1980, will be aggregated.

b) Where a consultant has broken his/her regular service to go overseas on a rotational appointment, or on an appointment which is considered by the Postgraduate Dean or College or Faculty Adviser in the specialty concerned (if necessary, with the advice of the consultant) to be part of a suitable programme of training, or to undertake voluntary service, the consultant's previous NHS or approved service, as set out in **sub-paragraph a)** above, will be taken fully into account in assessing entitlement to sick leave allowance, provided that:

- i. The consultant has not undertaken any other work outside the NHS during the break in service, apart from limited or incidental work during the period of the training appointment or voluntary service; and
- ii. The employer considers that there has been no unreasonable delay between the training or voluntary service abroad ending and the commencement of the NHS post.

Limitation of Allowance when Insurance or other benefits are Payable

7.5.4 The allowance made to a consultant during absence on sick leave when added to:

- (a) The amount of sickness benefit, severe disablement allowance, invalidity benefit or statutory sick pay receivable under the National Insurance and Social Security Acts;
- (b) Any element in compensation payments under any employers' liability acts or under common law which is attributable to immediate loss of remuneration; and
- (c) The dependency element of any amount received as a treatment allowance from the Department for Work and Pensions (the personal element of this allowance will not be taken into account)

will not exceed the consultant's normal salary for the period, and the occupational sick leave allowance will be restricted accordingly where necessary, except that no deduction will be made under (a) above in the case of a consultant on whose behalf the employer makes no National Insurance contributions.

7.5.5 The benefits, compensation payments and allowances to be taken into account under **paragraph 7.5.4** above will be those for the consultant's own incapacity, including allowances for adult and child dependants.

Consultants on Half-Pay

7.5.6 Where a consultant is entitled to an occupational sick pay allowance equivalent to half-pay and to statutory sick pay, the occupational sick pay allowance will be increased by an amount equivalent to the amount of statutory sick pay due, except that the sum of the occupational sick pay allowance and statutory sick pay payable will not exceed the consultant's normal pay for the period.

Married Women

7.5.7 A married woman who retains the right not to pay standard rate National Insurance contributions (i.e. chose to pay reduced Class1 contributions prior to 6 April 1977) will, for the purposes of these sick leave provisions, be deemed to be receiving the full rate of social security benefits that would have been receivable had she chosen to pay standard rate National Insurance contributions.

Definition of 'One Month'

7.5.8 For the purpose of calculation of an allowance, twenty-six working days will be deemed to be equivalent to 'one month'.

Submission of Doctors' Statements

- 7.5.9 A consultant who is incapable of doing his/her normal work because of illness will immediately notify the employer in the manner laid down by them. If an absence because of sickness continues beyond the third calendar day, the consultant will submit a statement of the nature of the illness, within the first seven calendar days of absence. Further statements will be submitted to cover any absence extending beyond the first seven calendar days. These further statements will not normally be submitted more frequently than once every succeeding seven calendar days. Unless the employer otherwise prescribes, they will take the form of medical certificates completed by a doctor other than the sick consultant. Exceptionally, the employer may, in a particular case, require statements to be submitted at more frequent intervals.

Consultants admitted to Hospital

- 7.5.10 A consultant entering a hospital or similar institution will submit a doctor's statement on entry and on discharge in substitution for periodical statements, unless the period of absence from duty does not exceed seven calendar days. If the period of absence is seven calendar days or less, the consultant will submit a self-certificate, as under **paragraph 7.5.9** above.

Accident due to Sport or Negligence

- 7.5.11 An allowance will not 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

- 7.5.12 A period of absence due to injury sustained by a consultant in the actual discharge of his/her duty and without the consultant's own default will not be recorded for the purposes of this scheme.

Recovering of damages from Third Party

- 7.5.13 A consultant who is absent as a result of an accident will not be entitled to an allowance if damages are recoverable from a third party in respect of such accident. In this event, the employer may, having regard to the circumstances of the case, advance to the consultant a sum not exceeding the sickness allowance which would have been payable under these provisions but for this condition, subject to the consultant undertaking to refund to the employer the total amount of such allowance or a portion thereof corresponding to the amount in respect of loss of remuneration including the damages received. Any period of absence in such a case where a refund of monies advanced is made in full will not count against the consultant's sick leave entitlement. Where, however, the refund is made in part only, the employer may, at its discretion, decide to what extent, if any, the period of absence may be taken into account. This paragraph does not apply to compensation awarded by the Criminal Injuries Compensation Board.

Medical examination

- 7.5.14 The employer may at any time require a consultant who is unable to perform his/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 examination will be met by the employer.

Termination of employment

- 7.5.15 The sick leave provisions of these Terms and Conditions of Service will cease to apply to a consultant on the termination of employment by reasons of permanent ill health or infirmity of mind or body, of resignation, of age, or any other reason.

Forfeiture of rights

- 7.5.16 If it is reported to the employer that a consultant has failed to observe the conditions of this scheme, or has been guilty of conduct prejudicial to his/her recovery, and the employer is satisfied that there is substance in the report, the payment of the allowance will be suspended until the employer has made a decision thereon, provided that, before making a decision, the employer will advise the consultant of the terms of the report, and will afford him/her an opportunity of submitting his/her observations thereon and of appearing or being represented before the employer or its appropriate committee. If the employer decides that the consultant has failed without reasonable excuse to observe the conditions relating to the granting of sick leave, or has been guilty of conduct prejudicial to his/her recovery, then the consultant will forfeit his/her right to any further payment of allowance in respect of that period of absence.

Locum tenens

- 7.5.17 For the purpose of sick leave allowances, a consultant's service will be taken to include locum service. A consultant who has reached age sixty-five will not be entitled to sick leave allowance, unless immediately beforehand the consultant has completed at least three months' continuous locum service; three months' continuous locum service having the meaning assigned to it in paragraph 11.5.1.

7.6 Special Leave

Special leave with and without pay

- 7.6.1 Special leave for any circumstances may be granted (with or without pay) at the discretion of the employer with the following qualifications:
- (a) Jury service: Normally consultants are entitled to be excused jury service.
 - (b) Contact with notifiable diseases: In general, the situation will not arise in the case of consultants who come into contact with notifiable diseases because of their professional position.

Maternity leave and Pay and the Employment Break Scheme

- 7.6.2 Appendices 11 and 12 set out details of maternity leave and pay and the employment break scheme.

Special leave for domestic, personal and family reasons

- 7.6.3 The provisions of Appendix 16 will apply.

7.7 Arrangements for cover during periods of leave

- 7.7.1 Agreement should be reached with the employer in advance through the job planning process with regard to the circumstances in which consultants will provide cover for colleagues on leave. Any extra programmed activities resulting from cover will be by agreement between the consultant and employer.
- 7.7.2 Where cover by consultant colleagues is not available, the employer (and not the consultant) will be responsible for the engagement of a locum tenens, or other arrangement.

8. EXPENSES

8.1 General

- 8.1.1 Travelling, subsistence, and other expenses will be paid to meet actual disbursements of consultants engaged in the service of employers, and will not be regarded as a source of emolument or reckoned as such for the purposes of pension.
- 8.1.2 In preparing claims, consultants will indicate adequately the nature of the expenses involved; claims will 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.

8.2 Travelling Expenses and Mileage Allowances

General Council Conditions Applied

- 8.2.1 The provisions of Section 23 (except paragraphs 2.4 and 4) of the General Council Conditions of Service will apply. In the General Conditions of Service and in **paragraphs 8.2.2-8.2.28** of this section, the terms "headquarters" and "principal hospital" will be understood to mean "the hospital or other base from which the consultant conducts his/her main duties" and the term "hospital" will be understood to mean "hospital or other place to which the consultant is required to make official journeys". Where a consultant has a joint contract with more than one employer, the terms "headquarters" and "principal hospital" will be interpreted as meaning the base from which the consultant conducts his/her main duties within that joint contract, irrespective of employer.

Mileage allowances payable to all consultants

- 8.2.2 Except where a consultant has been allocated a Leased Car (**paragraphs 8.2.22-8.2.28** below) and subject to **sub- paragraph 8.2.25d**) below, mileage allowances will be payable in accordance with the rates specified in **paragraphs 8.2.9 – 8.2.19** below, as appropriate, where consultants use their private vehicle for any official journey on behalf of their employer, including travel in connection with domiciliary consultations and study leave. No allowance will be payable for their normal daily journey between their home, or their practice premises, and their principal hospital, except as provided for in **paragraphs 8.2.4-8.2.8** below and **paragraph 11.5**, which also specify the rules for payment of allowances for journeys between their home and other places (including subsidiary hospitals).

Emergency visits

- 8.2.3 Consultants called out in an emergency will be entitled to mileage allowance in respect of any journey they are required to undertake.

Home-to-Hospital Mileage

- 8.2.4 Mileage allowance will be paid for official journeys on behalf of the employer where consultants travel by private car between their home or their practice premises and places other than their principal hospital, subject to a maximum of the distance between the practitioner's principal hospital and the place visited, plus ten miles, for each single journey (twenty miles for a return journey).
- 8.2.5 For consultants in public health medicine, for official journeys between 6pm and 8am and on Saturdays, Sundays and public holidays only between 8am and 6pm, the base for the calculation of mileage allowance will be the consultant's own home.
- 8.2.6 In addition, consultants may claim mileage allowance for one return journey daily between their home or their practice premises and their principal hospital, up to a maximum of ten miles in each direction, on days when they subsequently use their car for an official journey.
- 8.2.7 Consultants with commitments under the same contract to visit more than one hospital which includes a liability to make emergency visits to subsidiary hospitals or other institutions, or consultants with a liability to make emergency domiciliary visits, may, if the employer decide that their liability is so extensive as to make it desirable that their car should always be available at their principal hospital, claim mileage allowances for normal daily journeys between their home and principal hospital up to a maximum of ten miles in each direction.
- 8.2.8 Where, in exceptional circumstances, consultants are required by their employer, 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 hospital in order to provide adequate emergency cover to a group of widely scattered hospitals or other institutions, mileage allowance at the approved rate will be paid for the whole of the journey between their home and their principal hospital.

Regular user allowances

- 8.2.9 Allowances at regular user rates will be paid to consultants who:
- (a) are classified by the employer as regular or essential users and choose not, or are unable, to avail themselves of a Leased Car in accordance with **paragraph 8.2.22**; or
 - (b) are new appointees to whom the employer has deemed it uneconomic, or is unable, to offer a Leased Car in accordance with **paragraph 8.2.22**; and
 - (c) are required by their employer to use their own car on NHS business and, in so doing, either:

- i. travel an average of more than 3,500 miles a year; or
- ii. travel an average of at least 1,250 miles a year, and:
 - a) necessarily use their car on an average of three days a week; or
 - b) spend an average of at least 50% of their time on such travel, including the duties performed during the visits; or
- iii. are consultants who are classed as essential users

Essential users

8.2.10 Essential users are consultants who:

- a) travel on average at least 1,250 miles (other than normal travel between their home or their practice premises and their principal hospital) each year; and
- b) 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;
- c) or whose duties require them to pay frequent visits to places away from their principal place of work (e.g. 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

8.2.11 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

8.2.12 Where an employer does not consider that a consultant, other than one to whom **sub-paragraph 8.2.23a)** applies, should be classified as a regular or essential user, and if this gives rise to any serious difficulty, the consultant will

have the right to request that the Department should be consulted; they will seek the views of the Staff Side of the Joint Negotiating Committee on the appropriate solution.

Payment of lump sums

8.2.13 Payment of the annual lump sum allowance will be made as follows:

- a) In equal monthly instalments over a period from 1 April in any year to 31 March in the succeeding year.
- b) In the case of a consultant who takes up an appointment with an employer or leaves the employment of his or her employer after 1 April in any year, the total allowance payable should be so calculated that the amount payable is directly proportionate to a full year's allowance. The calculation of the mileage allowance should thus be in accordance with the following procedure:

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.

When a consultant leaves the employment of an employer, a calculation will be made in respect of his/her entitlement for the portion of the year served with the employer and any adjustments made thereafter.

Part months of service

8.2.14 Part months of service will be regarded as complete months for the purposes of **paragraph 8.2.13** above. However, a regular user who leaves the service of one employer and enters the employment of another during the same month will receive only one lump sum instalment for that month, payable by the former employer.

Cars out of use

8.2.15 When a consultant entitled to the regular user allowance does not use his/her car as a result of mechanical defect or absence through illness:

- a. 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;

- b. 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 employer, in accordance with the provisions of paragraph 2 of Section 23 of the General Council Conditions of Service.

Standard mileage rates

- 8.2.16 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 8.2.9, 8.2.17 and 8.2.23a**); 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

- 8.2.17 Mileage allowance at Public Transport rate will be paid where consultants use their own vehicles for official journeys in circumstances where travel by a public transport service (e.g. rail, boat, bus) would be appropriate. Employers in applying this provision will have regard to the provisions of NHS Circular PCS(DD)2001/4.

Passenger allowances

- 8.2.18 Where other employees or members of an employer are conveyed in the same vehicle, other than a Leased Car, on the business of the National Health Service and their fares by a public service would otherwise be payable by the employer, passenger mileage allowance will be paid.

Garage expenses, tolls and ferries

- 8.2.19 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 will be refunded reasonable garage and parking expenses and charges for tolls and ferries necessarily incurred, except that charges for overnight garaging or parking will 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

- 8.2.20 Consultants may apply for loans for car purchase on the basis of the following paragraphs:

- a) The provisions of **sub-paragraph b)** below apply to consultants who qualify for the first time as regular car users in the NHS, other than those who are offered, or provided with, a suitable Leased Car.
- b) Such consultants are entitled to a loan at 2.5% 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).
- c) Loans will be made in accordance with the provisions of paragraphs 22 to 27 of Section 24 of the General Council Conditions of Service.
- d) In determining whether a car is "suitable" for the purposes of this paragraph, 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

8.2.21 Consultants using pedal cycles for official journeys may be reimbursed at the rate set out in **Appendix 3**.

Leased Cars

8.2.22 Allocation

- a) For the purposes of paragraphs **8.2.22 to 8.2.28** and the Road Traffic Act, a "Leased Car" is any vehicle owned or contract-hired by an employer.
- b) Employers may offer Leased Cars for individual use on official business where they deem it economic (see also **paragraph 8.2.27b)** or otherwise in the interests of the service to do so.
- c) Consultants in post who, at 3 August 1990, were required to travel on NHS business and had been classified by the employer as regular or essential users may continue to receive the regular user lump sum payments and allowances set out in **Appendix 3** for so long as they remain in the same post or until they voluntarily accept the offer of a Leased Car.

8.2.23 General Provisions

- a) A consultant appointed after 3 August 1990 (including a first time appointee, a consultant who voluntarily moves to a different post with the same employer and a consultant who moves to a new post with another employer) and who is required to travel on NHS business and who chooses to use his or her own car, rather than to accept the employer's offer of a Leased Car, will not receive the allowances specified in **sub-paragraph 8.2.22c)** above, but will 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.

- b) A consultant who initially refused an offer of a "Leased Car" will continue to be eligible for one, providing there has been no change in the consultant's duties.
- c) A consultant who has been allocated a Leased Car for individual use on NHS business is entitled to private use of the car, subject to the conditions set out in paragraphs **8.2.24 to 8.2.28** below.
- d) The offer of a Leased Car constitutes the offer of a base vehicle which should in no case exceed 1800cc. Unless the consultant and the employer agree to the allocation of a smaller vehicle, it will be at least 1500cc. In determining the operational needs of a post for assessing the base vehicle requirement, employers will 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;
 - v. the need to transport equipment.
- e) A Leased Car, which is no longer required by one consultant, 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 employer first obtained the vehicle.
- f) Employers will ensure that proper arrangements are made for the economic servicing, maintenance in a roadworthy condition and replacement of Leased Cars.

8.2.24 Conditions of Use

Following consultation with the representatives of the professions locally, an employer's conditions of use will set out the consultant's obligations in respect of the Leased Car and will 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 employer (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, sabbatical or maternity leave.

8.2.25 Charges for private use

- a) The basis of charges for private use set out in this paragraph assumes that Leased 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 employer of providing Leased 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).
- b) A consultant will be required to pay one composite annual charge for private use. This will comprise the sum of the items listed in **Appendix 3**. The composite annual charge will be paid by monthly deduction from salary of one twelfth of the total.
- c) The basis of the fixed charge for agreed private mileage will be the consultant's estimate to the nearest thousand miles of his or her annual private mileage, as agreed by the employer and multiplied by the rate per thousand miles, determined in accordance with the formula set out in **Appendix 3**.
- d) In the event that a consultant underestimates his or her annual private mileage, an excess charge will be levied by the employer, based on the contract-hirer's excess charge to the employer for the particular car hired to the consultant. In the event that a consultant overestimates his/her annual private mileage, any sum recoverable by the employer from the contract-hirer in respect of the overestimate will be refundable to the consultant. If no recovery is available to the employer, no refund will be made to the consultant.
- e) A consultant will meet the cost to the employer of the fitting of any optional extras the consultant requires, and the contract between the employer 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 will 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.

- f) 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 will 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 Leased Car.
- g) In the event of a consultant's absence from work for an extended period on maternity, sick, study, sabbatical or special leave, a consultant who has contracted for private use of a Leased Car may choose to continue the private use at the contracted charge or to return the vehicle to the employer. In the latter case, there will be no financial penalty to the consultant on account of early termination of the contract.

8.2.26 Alternative Vehicle

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

8.2.27 Reimbursement of petrol and other costs

- a) A consultant who has been allocated a Leased Car will be responsible for purchasing all petrol, whether for business or private mileage.
- b) 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 8.2.4-8.2.8** above, or **paragraph 11.3.1**.
- c) The rate per mile will be determined according to the following formula:

Cost of one gallon of unleaded petrol
Base Vehicle's mileage on urban cycle

- d) The price of petrol will be as notified from time to time by the Department. The mileage on the urban cycle will be as quoted by manufacturers from officially approved tests under the Passenger Car Fuel Consumption Order 1983.
- e) The provisions of **paragraph 8.2.19** will apply to expenses incurred by a consultant using a Leased Car on official business.

8.2.28 Carriage of Passengers

Liability for compensation of authorised official passengers injured while being carried in a Leased vehicle will be borne by the employer. It is for each employer to reach a view and issue advice to consultants on the carriage of official passengers.

8.3 Subsistence allowances

8.3.1 The provisions of Section 22 of the General Council Conditions of Service will apply, with the following provisos:

- a. The terms "headquarters" will be understood to mean, "the hospital or the place of work where the consultant's principal duties lie".
- b. No day allowance will be payable in respect of any period spent at a hospital or place of work as part of the regular duties of the consultant concerned;

8.4 Postage and telephone expenses

8.4.1 Employers will reimburse the cost of installation (where not already installed) and rental of telephones to consultants where they are required to be on-call from home. The employer may by agreement with the consultant make available alternative facilities for telecommunication.

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

8.5 Expenses of candidates for appointments

8.5.1 The provisions of this section will apply where an employer summons a practitioner to appear before a selection board or invites a short-listed practitioner to attend in connection with his/her application for appointment.

8.5.2 Reimbursement of eligible expenses will be made by the prospective employer.

8.5.3 Where a practitioner holds a paid or honorary appointment with an employer and applies for a new post with his or her own or another employer, the practitioner is entitled to travelling expenses in accordance with **paragraph 8.2.1** and to subsistence allowance in accordance with **paragraph 8.3.1** at the rate appropriate to the post the practitioner already holds.

8.5.4 Where a practitioner to whom **paragraph 8.5.3** above 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 practitioner, he or she is entitled to travelling expenses and subsistence allowance at the higher rate applicable under **paragraph 8.3.1**.

- 8.5.5 A practitioner to whom **paragraphs 8.5.3 and 8.5.4** do not apply may at the discretion of the employer 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.
- 8.5.6 A candidate for a consultant appointment will not be reimbursed for more than three attendances. Where an employer 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.
- 8.5.7 A practitioner to whom **paragraph 8.5.3** applies and who is summoned to appear before a selection board while on holiday will be reimbursed for:
- a) travelling expenses from the practitioner'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 practitioner returns to his or her holiday address after interview; for this purpose, travel from Northern Ireland, the Isle of Man and the Channel Islands will not be regarded as travel from abroad;
 - b) Subsistence allowance at the appropriate rate, unless the practitioner is able to stay at his or her own home and it is reasonable to expect the practitioner to do so.
- 8.5.8 Reimbursement will not be made to a practitioner who refuses the offer of the appointment as advertised on grounds which the employer considers inadequate.

8.6 Removal Expenses

- 8.6.1 The provisions of Section 26 of the General Council Conditions of Service will apply.

9. FEES FOR NHS WORK

Fees for the work referred to in this section will be paid under the provisions set out below, subject to the terms of **Section 4.3**, at the rates set out in **Appendix 5(b)**. Such fees may only be claimed for work undertaken outwith agreed programmed activities.

9.1 Domiciliary Consultations

9.1.1 A domiciliary consultation will, for the purposes of these Terms and Conditions of Service, be understood to mean a visit to the patient's home at the request of the general practitioner and normally in his/her company, to advise on the diagnosis or treatment of a patient who on medical grounds cannot attend hospital. Visits not falling within this definition include:

- (i) A visit made at the instance of a hospital or specialist to review the urgency of a proposed admission to hospital or to continue or supervise treatment initiated or prescribed at a hospital or clinic;
- (ii) A visit for which a separate fee is payable as part of work undertaken in the community health services;
- (iii) In the case of dental staff, a visit undertaken as part of a consultant's responsibilities within the community dental services.

9.1.2 Subject to the provisions of **paragraphs 9.1.3 to 9.1.5, and 9.1.8 to 9.1.9** below, a fee will be paid for each consultation at the standard rate set out in **Appendix 5(b)**.

9.1.3 Where a consultant is called for domiciliary consultation and sees in the same residence or institution more than one clinically related case, a consultation fee will be payable at the standard rate for the first such case seen, and at the intermediate rate for up to three such further cases. Where more than four clinically related cases are seen, no additional fees will be payable for such subsequent cases.

9.1.4 Where a pathologist carries out a series of domiciliary consultations in connection with anti-coagulant therapy, or to supervise treatment with cytotoxic drugs, fees at the standard rate (plus any additional fee or fees where appropriate) will be payable for each consultation. Unless a general practitioner, for clinical reasons, considers that a patient requires more than three visits, the payment will be limited to an overall maximum of three consultation fees during any one illness.

9.1.5 Where an ophthalmologist completes form BP1 under collaboration arrangements, in the course of or following a domiciliary visit for hospital purposes, i.e. without a further visit being necessary, a combined fee will be paid (by his/her employer).

9.1.6 The employer will make a payment in respect of travelling time, additional to the fees set out above and to the normal travelling and subsistence expenses, at the lower rate for a journey to a place over 20 miles and up to 40 miles

distance, with an additional fee at the lower rate for every further 20 miles outward.

- 9.1.7 A locum consultant will receive fees for domiciliary consultations in the same way as a consultant holding a permanent appointment.
- 9.1.8 A consultant will not receive fees for more than 300 domiciliary consultations in a year. Where a consultant is called for domiciliary consultation and sees on the same occasion in the same residence or institution more than one clinically related case, this will count as a single domiciliary consultation for this purpose.
- 9.1.9 Where an anaesthetist provides his/her own consumable drugs in the course of domiciliary visits, he/she will be entitled on request to secure replacement of these drugs through the hospital service, except where he/she is paid an additional fee.

9.2 Exceptional Consultations

- 9.2.1 A consultant who has no contract with the employer but who is called in exceptionally for a special visit (e.g. because of his/her unusual experience or interest) will be paid a fee to include any operative work etc, as set out in Appendix 5(b). This, however, will not apply in respect of calls of this kind made on the services of retired consultants holding honorary (unpaid) appointments.

9.3 Lecture Fees

- 9.3.1 Fees for lectures to non-medical and non-dental staff will be at the rates set out in **Appendix 5(b)**. Any fees will be limited to the number of lectures authorised for the subject in question.
- 9.3.2 Where a consultant gives a lecture on a professional subject to a group of doctors/dentists – whether or not GPs or other professional staff are present – a fee will be payable to the lecturer by the employer which employs the majority of the hospital staff expected to attend, or, where this does not apply, by the the lecturer’s employer, subject to the following conditions:
 - (a) The lecture will form part of a programme of postgraduate education approved by the authority; and
 - (b) A fee will not be payable by some other body in respect of the same lecture; and
 - (c) A fee will not be payable to a consultant for teaching, during the course of the consultant’s clinical duties, other practitioners who are working under his/her clinical supervision.

Where a fee is payable, travelling and subsistence expenses may also be paid where appropriate

9.4 Family Planning Fees

- 9.4.1 These terms and conditions of service supersede the provisions of NHS Circulars 1975(PCS)79 and 1976(PCS)66. All family planning work by consultants will be undertaken as part of their agreed programmed activities. Consultants who hold religious or moral objections to carrying out such family planning work may declare such objections on appointment, or at any point at which they may be asked to commence such work in which case they will be excused from undertaking such duties.

9.5 Adults with Incapacity (Scotland) Act 2000

- 9.5.1 **Appendix 5(b)** sets out the fee payable for completion of assessment and certificate under section 47 of Part 5 of the Adults with Incapacity (Scotland) Act 2000 for authorising treatment under the NHS by an independent health professional (for example, dentist, opticians and community pharmacists) where no valid certificate exists in respect of treatment by the practitioner or where they are unable to treat under an existing certificate.

9.6 Advisory Appointments Committees

- 9.6.1 The fees payable to consultants appointed to serve as members of advisory appointments committees are set out in **Appendix 5(b)**.

9.7 Other Fees and Allowances

- 9.7.1 The fees and allowances payable to doctors for sessional work in the community health services, medical services to local authorities (under collaborative arrangements), medical examinations of prospective NHS employees, and notification of infectious diseases and food poisoning are covered by NHS Circular PCS (DD) 2003/5 and subsequent annual updates.
- 9.7.2 The fee payable for radiology and pathology tests is set out in NHS circular PCS(DD)2003/4 and subsequent annual updates.

10. DISCIPLINE AND TERMINATION OF EMPLOYMENT

10.1 Discipline - Professional Competence and Conduct

10.1.1 In investigating and taking action with respect to allegations concerning the professional competence or conduct of a consultant, an employer will follow the provisions of the following NHS circulars:

NHS Circular 1990 (PCS) 8 as amended by 1990 (PCS) 32
NHS Circular PCS (DD) 1994/11
NHS Circular PCS (DD) 1999/7
NHS Circular PCS (DD) 2001/9

10.2 Discipline - Personal Conduct

10.2.1 In investigating and taking action with regard to allegations concerning the personal conduct of consultants, an employer will agree procedures locally with the local negotiating committee (LNC) for medical and dental staff, following the principles set out in Section 42 of the General Council Conditions of Service.

10.3 Redundancy

10.3.1 Redundancy pay arrangements are set out in Temporary Appendix 13.

10.3.2 It is understood that where a local change of organisation in services involves displacement or serious disturbance of the services of a consultant, the employer recognises that in addition to its statutory obligations, it has a moral obligation to render the greatest possible assistance to the consultant with a view to his/her obtaining comparable work elsewhere in the NHS.

10.4 Appeals against dismissal

10.4.1 A consultant employed prior to 1 April 2004, and whose contract included a right of appeal to Scottish ministers under the provisions of paragraph 190 of the terms and conditions of service then applying, will continue to benefit from this right of appeal. These provisions are set out in **Appendix 9**. Other consultants will have a right of appeal against dismissal as locally agreed between the employer and the local negotiating committee (LNC) for medical and dental staff.

10.5 Notice

10.5.1 The minimum period of notice for both the consultant and the employer in respect of the termination of a regular consultant appointment will be 3 calendar months. A period of less than 3 months notice may only be given with the express agreement of the other party save in circumstances of dismissal on grounds of gross misconduct or resignation on grounds of constructive dismissal.

11. REMUNERATION AND CONDITIONS OF SERVICE OF LOCUM TENENS

11.1 Rates of Pay

11.1.1 The rates of pay for locum appointments are as set out in **Appendix 3** and paragraphs 11.1.2 – 11.1.5 below.

11.1.2 A locum consultant who has not at any time held a substantive consultant post will be remunerated at the equivalent rate of the first pay point on the salary scale, subject to the provisions for pay progression set out in **paragraphs 11.4.1** and **11.4.2** and subject to recognising any consultant level experience outwith the NHS in line with **Appendix 7**.

11.1.3 A locum consultant who holds a substantive consultant post (either with the employer or with another NHS employer) and will continue to hold such a post beyond the tenure of the locum post will be remunerated at a rate consistent with his/her current pay point.

11.1.4 A locum consultant who does not currently hold but has previously held a substantive consultant post will be remunerated at a rate consistent with his/her most recent pay point (excluding distinction awards, discretionary points and clinical excellence awards) as a substantive consultant or, for someone who has not previously held employment under these Terms and Conditions of Service, his/her calculated seniority under the provisions of **paragraph 5.1.1**, subject to the provisions for pay progression as set out in **paragraphs 11.4.1** and **11.4.2** below.

11.1.5 A locum consultant will enter into a contract to be paid on a weekly basis or per programmed activity with a timetabled value of 4 hours, if the contract is for less than one week.

11.2 Basis of Appointment and Tenure of Post

11.2.1 A locum medical consultant will have full registration. A locum dental consultant will be a registered dental practitioner or fully registered medical practitioner.

11.2.2 In appointing to a locum consultant post, an employer should follow the provisions of NHS Circular MEL (1998) 27, Annex B, paragraphs 39-40, and NHS Circular PCS (DD)1998/1.

11.3 Job Planning

11.3.1 A locum consultant will be appointed to a post on the basis of agreeing to fulfil the existing job plan for that post, subject to any modifications which the employer may ask him/her to agree in order to accommodate the level of contribution required of a locum consultant, where that may be different to the contribution agreed for a substantive consultant. The job plan should be open to review in line with the provisions of Section 3.

11.4 Pay Progression

11.4.1 Where a doctor has completed 12 months' locum service, whether continuous or cumulative, there will be an assessment of whether he/she has met the criteria for pay progression, set out in **Section 5.2** in respect of that year's service. Subject to meeting the criteria in respect of the relevant year(s), a locum consultant will receive pay progression in the same way as a substantive consultant.

11.4.2 Where a locum consultant is approaching the completion of 12 months' service, the current employer 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 12 months' service has been for one or more other NHS employers, the current employer will ensure that they receive an assurance as to whether the criteria have been met in respect of this other service.

11.5 Travelling Expenses

11.5.1 Where a locum consultant travels (including, where he/she takes up temporary accommodation at or near the place of work, his/her initial and final journeys) between his/her practice premises or place of residence (whichever is the nearer) and his/her principal place of work, expenses will be payable in respect of any distance by which the journey exceeds ten miles each way, unless the application of the rules in **paragraphs 8.2.3 to 8.2.8** is more favourable.

11.6 Annual Leave and Public Holidays

11.6.1 Subject to **paragraph 11.6.2** below, a locum consultant will be entitled to annual leave at the rate of 6 weeks per 12 months' continuous locum service. He/she will also be entitled to any public holidays falling within the period of the contract.

11.6.2 The following conditions will govern the taking of annual leave by a locum consultant:

- a) The taking of leave will be subject to the needs of the employer;
- b) Wherever possible, leave will be taken during occupancy of the post. Where this is not possible, payment in lieu of leave not taken will be made.

11.7 Continuous Locum Service

11.7.1 For the purposes of **paragraphs 5.1.5, 7.5.17 and 11.6.1 to 11.6.2** above, 'continuous locum service' will be taken to mean service as a locum in the employment of one or more employers uninterrupted by the tenure of a regular appointment or by more than 2 weeks during which the consultant was not employed in the NHS.

11.8 Treatment of consultants carrying out locum service on 1 April 2004

11.8.1 Where a locum consultant is contracted for a period of more than 8 weeks and his/her contract straddles 1 April 2004, he/she will be entitled on that date to transfer to a locum contract covered by these terms and conditions of service (subject to **paragraph 11.9.1**).

11.8.2 Where a substantive consultant is carrying out locum service on 1 April 2004 (for example because he/she is undertaking locum work while on annual leave) and wishes to transfer to these terms and conditions of service, the provisions of **Section 14** will apply in respect of his/her substantive contract.

11.9 Application of Terms and Conditions of Service

11.9.1 The following paragraphs of these terms and conditions do not apply to locum consultants: **10.3.2, 10.5.1, 14.1, 14.2, 14.3, 14.4 and 14.6** (but see **paragraph 11.8.2**.) **Paragraph 8.6.1** (removal expenses) will only apply at the discretion of the employer. Subject to the provisions of **paragraphs 9.1.7 and 11.1.1 to 11.7.1** above, all other provisions of these terms and conditions apply to locum consultants.

12. MISCELLANEOUS

Publications, Lectures etc

- 12.1.1 A consultant will be free, without prior consent of the employer, to publish books, articles, etc., and to deliver any lecture or speak, whether on matters arising out of his/her NHS service or not.

Equal opportunities

- 12.1.2 The provisions of Section 7A of the General Council Conditions of Service will apply.

Dignity at work

- 12.1.3 The provisions of Section 7C of the General Council Conditions of Service will apply.

Childcare

- 12.1.4 The provisions of Appendix 14 will apply.

Retainer schemes

- 12.1.5 The general provisions of Appendix 15 will apply, subject where appropriate to the particular provisions of the Doctors and Dentists Retainer Schemes set out in NHS Circular 1976 (GEN) 96 and SOHHD/DGM (1991) 75.

Job-Sharing in the NHS

- 12.1.6 The provisions of Appendix 15 will apply.

Disputes procedures

- 12.1.7 The provisions of Section 42 of the General Council Conditions of Service will apply.

Health awareness for NHS staff

- 12.1.8 The provisions of Section 41 of the General Council Conditions of Service will apply.

Position of employees elected to Parliament

- 12.1.9 The provisions of Section 52 of the General Council Conditions of Service will apply.

Membership of local authorities

12.1.10 The provisions of Section 53 of the General Council Conditions of Service will apply.

Payment of annual salaries

12.1.11 The provisions of Section 54 of the General Council Conditions of Service will apply.

NHS Trusts -continuity of service

12.1.12 The provisions of Section 59 of the General Council Conditions of Service will apply.

Annual leave and sick pay entitlements on re-entry and entry into NHS employment

12.1.13 The provisions of Section 61 of the General Council Conditions of Service will apply.

13. CLINICAL ACADEMIC CONSULTANTS (Note: To be read with the guidance associated with Section 13 issued as Annex C to NHS Circular PCS(DD)2004/2)

INTRODUCTION

The terms and conditions set out in this Section apply to medical and dental consultants who are employed in Higher Education Institutions (HEIs), or other organisations, in a research and/or teaching capacity and who also provide services for NHS patients in NHS facilities.

The terms and conditions set out in this Section, together with the relevant parts of **Sections 1 to 15**, govern the delivery of duties under the honorary NHS contract and should be read in conjunction with the terms and conditions of the University Employer which, taken together, provide the full contractual framework in which the clinical academic consultant is expected to deliver his/her agreed duties and is remunerated. Where the terms and conditions specific to clinical academic consultants as set out in this Section vary from the terms and conditions in **Sections 1 to 15**, this Section will prevail

Throughout this section, the terms “NHS Employer” and “University Employer” are taken to mean the NHS body issuing the honorary contract and the substantive HEI employer (or other substantive employer such as a medical charity or research council) respectively, and the term “academic activities” is taken to include academic-related activities such as administration and management undertaken on behalf of the University Employer.

13.1 PAY PARITY AND THE WORKING WEEK

Principles

- 13.1.1 There will be consistency in approach between universities and across the NHS in Scotland in the application to clinical academic consultants of the new consultant contract, with incorporation of the principles of the Follett Review into the terms and conditions affecting clinical academic consultants.
- 13.1.2 Pay equivalence for clinical academic consultants will be achieved by linkage to the new NHS consultant contract which allows, in the case of full-time consultants, for a core commitment of 10 weekly programmed activities and up to 2 extra programmed activities. In exceptional circumstances and subject to the legal requirements of the Working Time Regulations, the limits of 2 EPAs and 12 PAs in total may be extended.
- 13.1.3 Pay will be determined on the basis of a joint assessment of the current and prospective clinical and academic components of the integrated clinical academic workload by the University Employer, the NHS Employer and the consultant through the job planning process.

- 13.1.4 Superannuable pay will be the consultant's basic salary (plus any extra programmed activities up to 10 programmed activities in total). Superannuable pay will also include discretionary points and distinction awards (or any successor schemes), on-call availability supplements and any other agreed superannuable salary.
- 13.1.5 The core academic and clinical service commitments taken together will not exceed the equivalent of 10 weekly programmed activities (see **paragraphs 13.1.8 and 13.1.9**) or, with extra programmed activities (see **paragraphs 13.1.10 to 13.1.13**), normally 12 weekly programmed activities in total. These commitments, which make up the integrated job plan (see **paragraph 13.2.1**), will be carried out by cross-referencing substantive University and honorary NHS contracts and given equal weight. Termination of one contract will result in a review of the other contract which may only be terminated after due process of the other employer.
- 13.1.6 For clinical academic consultants, university activities governed by their substantive contracts will include:
- undergraduate teaching and assessment;
 - research;
 - administration and management undertaken on behalf of the University employer.
- 13.1.7 Programmed activities for clinical academic consultants working under their honorary contracts will be as for NHS consultants, and separated into:
- direct clinical care duties;
 - supporting professional activities;
 - additional agreed responsibilities;
 - other agreed external duties.

Pay Linked to Core Activities

- 13.1.8 For a full-time clinical academic consultant, the equivalent of 5 weekly programmed activities will be set as the floor for the core academic component of pay. Core academic pay may nevertheless be varied upwards (e.g. where a clinical academic consultant has a substantive university administrative or managerial role), subject to a maximum equivalent to 10 weekly programmed activities, by agreement between the University Employer and the clinical academic consultant, in consultation with the NHS Employer.
- 13.1.9 For a full-time clinical academic consultant, 5 weekly programmed activities will be set as the core commitment for the clinical service related component of pay covered by the honorary NHS element of the combined substantive and honorary contracts (but see also **paragraphs 13.2.2 and 13.2.3** below), subject to variation by agreement between the NHS Employer, the University Employer and the clinical academic consultant.

Pay Linked to Extra Programmed Activities

- 13.1.10 A clinical academic consultant with a core commitment equivalent to 5 academic programmed activities will additionally be offered by the University employer the equivalent of 1 extra programmed weekly activity over and above the core academic related component of pay, except where he/she undertakes the normal maximum of 2 extra weekly clinical service programmed activities by agreement (see **paragraph 13.1.13**) or is contracted to work part-time. The clinical academic consultant will be under no obligation to accept the offer of the equivalent of 1 extra academic activity and failure to do so will not influence pay progression.
- 13.1.11 Where a clinical academic consultant has a substantive university administrative or managerial role, the equivalent of 2 extra programmed weekly activities over and above the core academic-related component of pay may be offered by the University employer, in consultation with the NHS Employer.
- 13.1.12 Normally, for full time consultants, not more than 1 extra weekly clinical service programmed activity will be contracted for locally over and above the core commitment of 5 weekly clinical service programmed activities. Nevertheless, the number of extra clinical service programmed activities may be varied by agreement between the NHS Employer, the University Employer and the clinical academic consultant, subject to a maximum within the integrated job plan equivalent to normally 12 weekly programmed activities for clinical service and academic activities combined.
- 13.1.13 Where a clinical academic consultant undertakes 2 or exceptionally more than 2 extra weekly clinical service programmed activities by agreement with the NHS and university employer (see **paragraph 13.1.12**), extra academic activity equivalents (see **paragraphs 13.1.10 and 13.1.11**) over and above a core equivalent to five programmed activities will not normally be offered by the University Employer until such time as the contractual commitment to extra clinical service programmed activities falls to below two extra programmed activities.

13.2 JOB PLANNING

- 13.2.1 There will be assessments of the academic and clinical workloads, which together constitute the integrated workload, implemented via an integrated job plan which will be jointly agreed with the clinical academic consultant by the University Employer and the NHS Employer prior to appointment and at the annual job plan review. Clinical academic consultants will be accountable to the University Employer (usually via the Dean) through their substantive contracts and via their honorary contracts to the NHS body in which they work (usually via the Clinical Director, Medical Director or Director of Public Health).
- 13.2.2 The core commitment of a full-time clinical academic consultant to clinical service will be set at 5 weekly programmed activities, and will normally not

exceed 6 programmed activities per week. Nevertheless, the clinical service component may be varied outwith these parameters by agreement between the clinical academic consultant with the Dean and Medical Director/Director of Public Health (or their nominees). Unless otherwise agreed, the ratio of direct clinical care activities to supporting professional activities as outlined at **Section 4.2.2** will be applied to the core clinical service commitment. In reaching an agreement on the ratio of direct clinical care activities to supporting professional activities within the job plan of a clinical academic consultant, account will be taken of the commitment of NHS consultants to formal undergraduate teaching within the relevant medical/dental school-NHS Board system. NHS direct clinical care activities will include consultant-led clinical teaching activities where patients are managed (or management is planned).

- 13.2.3 Unless otherwise agreed, emergency work undertaken during or as a consequence of the on-call period will count towards the total number of direct clinical care programmed activities at the level of 1 activity per week averaged over the year for a clinical academic consultant contracted for 5 weekly clinical programmed activities. This can be varied pro-rata for a clinical academic consultant working more or less than 5 clinical programmed activities by agreement as in **paragraph 13.2.2** above.
- 13.2.4 A clinical academic consultant qualifying for an on-call availability supplement will receive the appropriate supplement determined by the frequency of the on-call commitment, in accordance with the provisions of **paragraphs 4.10.9 to 4.10.15**.
- 13.2.5 In scheduling on-call rotas, the NHS employer will take account of the full integrated workload of the clinical academic consultant, applying the principle that the clinical and academic components of the job are of equal importance (see **paragraph 13.1.5**).

13.3 JOB PLAN REVIEW

- 13.3.1 The integrated job plan will be reviewed annually. The integrated job plan review will be informed by the same information systems that also feed into appraisal, and by the outcome of the appraisal discussion.
- 13.3.2 An interim job plan review will be conducted where duties, responsibilities or objectives have changed or need to change significantly within the year.
- 13.3.3 The job plan review will be carried out by the clinical academic consultant and the Head of Unit/Department (or other appropriate person nominated by the Dean – designated in the following paragraphs as the University manager) jointly with the Medical Director /Director of Public Health or the Clinical Director, or other lead clinician nominated by the Medical Director/ Director of Public Health (designated below as the NHS manager), and will review the job content and objectives as well as the delivery of commitments.

- 13.3.4 As part of the job plan review, progress against objectives and factors affecting delivery will be considered. The University and NHS managers and the clinical academic consultant should discuss whether targets had been set at the right level, resources provided by each organisation were adequate, and whether the timetable of time and service commitments should be amended.
- 13.3.5 The employer may decide to delay progression through seniority points in any year only where it can be demonstrated that, in that year, the clinical academic consultant has not:
- met the time and service commitments in his/her job plan; or
 - met the personal objectives in his/her job plan or - where this is not achieved for reasons beyond the individual clinical academic consultant's control - has made every reasonable effort to do so; or
 - participated satisfactorily in annual appraisal, job planning and objective setting; or
 - worked towards any changes agreed as being necessary to support achievement of both organisation's service objectives in the last job plan review; or
 - allowed, in preference to any other organisations, the NHS to utilise the first portion of any additional capacity (see **paragraph 13.6.1**) they have; or
 - met the required standards of conduct governing the relationship between private practice and University or NHS commitments.
- 13.3.6 Following the annual job plan review, the Head of Division (or other Dean's nominee), jointly with the Medical Director/DPH, will make a report on whether the clinical academic consultant has met the criteria set out at **paragraph 13.3.5**, taking into account the provisions at **paragraph 13.5.3**. This report will be prepared by the Head of Division (or Dean's nominee) within 2 weeks of the job plan meeting and will be sent to the clinical academic consultant and the Dean and Chief Executive. Where the clinical academic consultant disagrees with the terms of the report he/she will be entitled to invoke the process set out in **paragraph 13.4.1 (stage 1)**.
- 13.3.7 Where the Dean makes a recommendation to the Vice-Principal, based upon the Head of Division's report, that progression through seniority points should be withheld in any year, the clinical academic consultant will be entitled to invoke the process set out in **paragraph 13.4.1 (stage 2)**.
- 13.3.8 Following receipt of any decision by the Vice-Principal to withhold progression through seniority points, the clinical academic consultant will be entitled to present a formal appeal to the University employer under the terms of paragraphs 13.4.2 – 13.4.13.

13.4 MEDIATION AND APPEALS

Mediation

- 13.4.1 Job plans and variations to job plans should be agreed between the University employer, NHS employer and the clinical academic consultant after full discussion and with all parties using their best endeavours to resolve any issues arising. This should include referral for mediation by more senior management in the event of continuing disagreement between the clinical academic consultant and his/her immediate University or NHS managers. In such circumstances the process set out below will be followed:

Stage 1

The clinical academic consultant and/or University manager or NHS manager will, within two weeks of the exhaustion of their initial discussions, refer the point of disagreement, in writing, to the Dean who will consult with the Divisional Medical Director/Director of Public Health. If the Dean or Divisional Medical Director /Director of Public Health was involved directly or indirectly in the job plan under disagreement, the referral will be to another appropriate person nominated by the Dean and agreed with the clinical academic consultant and Divisional Medical Director/Director of Public Health. The Dean, working with the Divisional Medical Director/Director of Public Health (or other agreed person), will convene a meeting with the clinical academic consultant and the University and NHS managers, normally within three weeks of the referral, to discuss the point of disagreement and to hear the parties' consideration of the issues. All parties will use their best endeavours to ensure that agreement is reached at this stage. The Dean, in consultation with the Divisional Medical Director/Director of Public Health (or other agreed person) will, normally within two weeks of the meeting, advise the clinical academic consultant and the University and NHS managers of his/her decision concerning the point of disagreement, giving full reasons to explain his/her decision.

For a Medical Director or Director of Public Health, mediation will take place via a suitable individual nominated by the Divisional Chief Executive (or successor equivalent) or NHS Board Chief Executive.

Stage 2

Following receipt of this decision, where exceptionally a clinical academic consultant remains dissatisfied with the proposed job plan, he/she may refer the point of disagreement to the University Vice-Principal (or other appropriate person nominated by the Vice-Principal) who will consult with the Divisional Chief Executive (or in the case of a clinical academic consultant in public health medicine, the Chief Executive of the NHS Board). This referral should be made, in writing, within two weeks of the receipt of the decision. The Vice-Principal (or nominee), in consultation with the Divisional Chief Executive (or Chief Executive of the NHS Board in the case of a clinical academic consultant in public health medicine) will convene a meeting with the clinical academic consultant and the University

and NHS managers to discuss the point of disagreement and to hear the parties' consideration of the issues. All parties will use their best endeavours to ensure that agreement is reached at this stage. The Vice-Principal (or nominee), in consultation with the Divisional Chief Executive (or Chief Executive of the NHS Board in the case of a clinical academic consultant in public health medicine) will, normally within two weeks of the meeting, advise the clinical academic consultant and the University and NHS managers of his/her decision concerning the point of disagreement, giving full reasons to explain his/her decision.

Formal Appeal

- 13.4.2 There may be exceptional cases where agreement cannot be reached through mediation. In such circumstances the process set out below will be followed:

Following receipt of the decision from the Vice-Principal (or nominee), where a clinical academic consultant remains dissatisfied with the proposed job plan, he/she will be entitled to present a formal appeal to the University Employer. Such a request will be made in writing to the Principal within four weeks of the receipt of the decision. The Principal will, on receipt of a written request for appeal, convene an appeals panel which should meet normally within 6 weeks of the request. Membership of the panel will be:

- One member nominated by the Principal on behalf of the University Employer, with the agreement of the Chief Executive of the NHS Board, who would act as the chair;
- One member nominated by the clinical academic consultant;
- One member appointed from an agreed clinical academic consultants' appeals panel list.

- 13.4.3 Where either the clinical academic consultant or the University or NHS employer requires it, the appeals panel will hear expert advice on matters specific to a specialty.

The List

- 13.4.4 A list of members (the clinical academic consultants' appeals panel list) suitable for acting as the third appeals panel member will be agreed between the University Employer, the NHS Board, the BMA Medical Academic Staff representative and, where appropriate, the representative of the BDA. If a local list is unavailable, the third member should be drawn from a "national" list, which will be the combined list of all those which have been agreed.

- 13.4.5 The member from the list will be nominated by the Principal after discussion with the NHS Employer and the clinical academic consultant or their representative. Where there is a recognised incompatibility with the first member nominated, the Principal will select an alternative from the list. The Principal should endeavour to ensure that individuals on the list are normally used in rotation.

13.4.6 The list should be regularly reviewed.

Membership of the Appeals Panel

13.4.7 No one will be a member of the appeals panel if they have been involved directly or indirectly in the job plan under disagreement.

13.4.8 The clinical academic consultant has the right to be represented at each stage of the appeals process by a representative of the BMA or BDA, or other trade union / professional association, or colleague.

13.4.9 The appeals panel will not include legal representatives acting in a professional capacity.

13.4.10 Appeals panel members do not act in an advocacy role but are expected to judge each case on its merits.

13.4.11 The employer and clinical academic consultant nominees will be University employees or NHS employees/NHS Board members.

Administration

13.4.12 The appeals panel will make a final decision (on a majority basis) on the proposed job plan which will be binding on both parties; no further right of appeal exists.

13.4.13 No point of disagreement of the job plan will be implemented until confirmed by the outcome of the formal appeal except that any decision of the panel which has implications for the salary of the clinical academic consultant will have effect from the date at which the clinical academic consultant gave notice of their intention to appeal formally.

13.5 STARTING SALARY AND PROGRESSION THROUGH SENIORITY POINTS

13.5.1 There are both clinical and academic factors to be considered and applied in determining the starting point for a clinical academic consultant's substantive contract. These will be governed, in the case of the NHS elements of the individual's commitments, by **Sections 5.1 and 5.4**. The University Employer may also apply academic criteria (over and above the NHS terms and conditions) in determining the overall starting salary for the clinical academic consultant's integrated contract and this will not be less than the minimum point on the consultant pay scale.

13.5.2 Decisions on a clinical academic consultant's progression through seniority and pay points will be led by the University Employer (usually the Dean) but undertaken jointly with the NHS Employer (usually the Medical Director or Director of Public Health). These decisions will be informed by the annual

job plan review. The appeals procedure relating to pay progression will be the same as set out for job planning in **Section 13.4** above.

- 13.5.3 The clinical academic consultant will normally progress each year through the seniority points set out in **Appendix 3**. Progression through seniority points can only be withheld or delayed as detailed in **paragraph 13.3.5**.
- 13.5.4 Progression through seniority points will not be deferred in circumstances where the inability to meet the requirements set out in **paragraph 13.3.5** above is occasioned by factors outwith the control of the clinical academic consultant, for example, absence on leave.
- 13.5.5 Progression through seniority points must not be related to or affected by the outcome of the appraisal process.
- 13.5.6 Where a manager believes that a clinical academic consultant is unlikely to meet the criteria set out in **paragraph 13.3.5**, an interim job plan review should be arranged to address this at the earliest opportunity.

13.6 ADDITIONAL CAPACITY

- 13.6.1 Additional capacity, in relation to private practice, will be deemed to exist where a full time clinical academic consultant is contracted for 5 clinical service weekly programmed activities (or less) within a total equivalent to less than 12 weekly programmed activities in the integrated job plan. The utilisation of extra programmed activities for direct clinical care, as detailed in **paragraphs 4.4.6 – 4.4.12**, should be subject to agreement between the clinical academic consultant, the University Employer and the NHS Employer. Where a clinical academic consultant does not personally profit (e.g. the profits are retained by the university/charity) from undertaking private practice as defined in **paragraph 4.4.7**, there will be no expectation that he/she should then offer an extra programmed activity in order to qualify for pay progression.

13.7 PRIVATE PRACTICE AND FEE PAYING WORK

- 13.7.1 The rules and conditions regarding private practice, outlined in **Section 6** and **Appendix 8**, apply equally to clinical academic consultants as to NHS consultants. Where a clinical academic consultant wishes to undertake private practice, and this is allowed for under the terms of **Section 6** and is permitted under the terms of the University Employer's regulations, the impact on the university and NHS components of the clinical academic consultant's working week should be a matter for local determination by the University Employer (usually the Dean), with the full participation of the relevant NHS Medical Director/Director of Public Health, bearing in mind the need to achieve a fair balance between the individual's NHS and university commitments.
- 13.7.2 Any separate remunerated work undertaken by a clinical academic consultant explicitly on behalf of the University Employer will be exempt from the rule that he/she must first offer an extra programmed activity in

order to qualify for pay progression. For all other remunerated work the same rules as apply to NHS consultants will apply.

13.8 DISCIPLINARY AND GRIEVANCE PROCEDURES

- 13.8.1 The University Employer and NHS Employer will prepare agreed procedures for investigating and managing matters related to poor performance, discipline and grievance.
- 13.8.2 The University Employer and NHS Employer will agree on whether a matter related to poor performance, discipline or grievance will be dealt with under the procedures of the University Employer or those of the NHS Employer and, will work together at all stages of the jointly agreed procedures, irrespective of whether the issue has arisen in relation to the substantive or honorary contract.
- 13.8.3 Disciplinary or other proceedings undertaken by either the University Employer or NHS Employer resulting in the termination of the substantive or honorary contract may have implications for the continuation of the other contract which may only be terminated after due process of the other employer.
- 13.8.4 For clinical academic consultants, the university procedures for disciplinary and grievance matters are laid down by statute. Therefore, any matter leading to disciplinary action which arises under the clinical academic consultant's honorary contract, even if it is the result of a jointly agreed and jointly administered procedure, may be the subject of a further procedure undertaken by the University Employer in accordance with statute. However, disciplinary and grievance matters arising under the substantive contract, and investigated and managed under university statute as part of a joint procedure, will not be subject to any such further university procedure.

13.9 INTELLECTUAL PROPERTY

- 13.9.1 It is recognised that the University Employer and the NHS Employer (and grant awarding body funding the research and/or employing the clinical academic researcher) will have rules about intellectual property. The rules that will apply to a particular piece of research will require a written agreement between all interested parties and must be made explicit to the clinical academic consultant before the particular piece of research commences. Work undertaken outwith the integrated job plan and which is not related directly to activities undertaken within the job plan will not be subject to the rules about intellectual property of the University or NHS employer, or research council/charity where relevant, (referred to below as the stakeholders). Work of this nature may nevertheless raise issues of sharing intellectual property if carried out with the stakeholders' equipment or within the stakeholders' time and in these circumstances should be agreed with the interested parties at the start of the work.

13.10 ANNUAL LEAVE AND PUBLIC HOLIDAYS

13.10.1 The clinical academic consultant's annual leave and public holiday entitlement will be determined by the University Employer and set out in the substantive contract. It is expected, that in planning and taking annual leave, the clinical academic consultant will take into account the impact of the timing of annual leave on his/her clinical service and academic commitments and obtain the agreement of the appropriate University and NHS managers. Such agreement will not unreasonably be withheld. Where the annual leave entitlement does not incorporate university or public holidays, clinical academic consultants who are required to work on any part of one of a university or public holiday to fulfil the requirements of their job plan shall receive a day off in lieu.

14. TRANSITIONAL ARRANGEMENTS

14.1 EFFECTIVE DATE

14.1.1 The following arrangements will apply to the introduction of these terms and conditions of service from 1 April 2004.

14.2 TRANSFER OF CURRENT CONSULTANTS

14.2.1 A 'current consultant' is defined as a consultant appointed prior to 1 April 2004.

14.2.2 A current consultant may opt to remain on his/her existing contract and terms and conditions of service without detriment.

14.2.3 A consultant appointed prior to 1 April 2003 who, by 31 December 2003, gives a written expression of intent to transfer to a contract governed by these terms and conditions, and who by 31 March 2004 agrees a job plan under the terms set out in **section 14.3** below, will progress on 1 April 2004 to the seniority point that would have been due at that date had the contract been available from 1 April 2003. For such a consultant the date for calculating seniority for the purposes of **paragraph 14.4.2** is 1 April 2003.

14.2.4 A consultant appointed between 1 April 2003 and 31 March 2004 who gives a written expression of intent to transfer to a contract governed by these terms and conditions, by either:

- 31 December 2003, or
- at the time of acceptance of appointment,

whichever is the later, and, who by 31 March 2004 agrees a job plan under the terms set out in **section 14.3** below, will progress, on the anniversary of his/her appointment, to the seniority point that would have been due had the contract been available from 1 April 2003. For such a consultant the date for calculating seniority for the purposes of **paragraph 14.4.2** is the date of appointment.

14.2.5 A consultant who meets the criteria outlined in **paragraphs 14.2.3 to 14.2.4** above will be entitled to an amount of pay equivalent to the arrears of pay he/she would have been entitled to receive had the contract been available from 1 April 2003. This payment will be based upon the agreed job plan, including any extra programmed activities. The payment will be made either in April 2004 or upon transfer to the new contract if later than April 2004.

14.2.6 A current consultant may give a formal expression of intent to transfer to a contract governed by these terms and conditions under the terms of **paragraphs 14.2.3 to 14.2.4**, but be unable to agree a job plan by 31 March 2004 for reasons beyond his/her control, e.g. where the consultant has invoked the appeals process, or where the employer is unable to organise the job planning process in time to meet this deadline. In these circumstances, the consultant will transfer as soon as possible after 1 April 2004, and will be treated as having met the provisions of **paragraphs 14.2.3 or 14.2.4**.

- 14.2.7 A current consultant will be entitled to transfer to a contract governed by these terms and conditions at any time after 1 April 2004. Where he/she wishes to do so, he/she will enter into the process set out in **section 14.3** below. The effective date of transfer for salary and seniority purposes will be the date of commencing work in accordance with the agreed job plan except in circumstances outlined in **paragraph 14.2.8**.
- 14.2.8 It is anticipated that the job planning process will be completed within three months of a consultant writing to express interest in transferring to a contract governed by these terms and conditions. However, a current consultant may be unable to agree a job plan within three months of the expression of interest for reasons beyond his/her control, e.g. where the consultant has invoked the appeals process, or where the employer is unable to organise the job planning process in time to meet this deadline. In these circumstances, the consultant will transfer as soon as possible, and the effective date of transfer for salary and seniority purposes will be three months after the date of expression of interest.
- 14.2.9 A current consultant who has not met the criteria set out in **paragraphs 14.2.3, 14.2.4 or 14.2.6** will not be entitled to transitional pay progression or an arrears payment. In the event of any disagreement between the consultant and employer on the consultant's entitlement, the consultant will have access to the appeals process as set out in **Section 3.4**. For such a consultant, the date for calculating seniority for the purposes of **paragraph 14.4.2** is the date of transfer to these terms and conditions of service.

14.3 AGREEING THE JOB PLAN ON TRANSFER

- 14.3.1 Where a current consultant has expressed interest in transferring to a contract governed by these terms and conditions of service, he/she will endeavour to agree a job plan with his/her employer. The job planning process, as detailed in **Section 3**, should be applied taking account of potential service redesign, existing duties and any existing job plan agreed under previous arrangements. Where either the consultant or employer consider it necessary, the consultant will, for a period to be agreed with the employer, monitor his/her working hours by means of a model diary (see **Appendix 6**). This diary, along with any other appropriate supporting documentation provided by the consultant and/or employer, will be used to inform the job planning process.
- 14.3.2 Where the consultant is not able to reach agreement on a proposed job plan associated with transfer, he/she will have the right to invoke the appeals process as set out in **Section 3.4**.
- 14.3.3 If the consultant remains dissatisfied with his/her proposed job plan after the conclusion of the appeals process, he/she may elect to remain on his/her existing contract and terms and conditions of service, under the terms of **paragraph 14.2.2**.

14.3.4 A full-time consultant transferring to a contract governed by these terms and conditions of service will not be required to undertake programmed activities in excess of 10 per week where his/her agreement is withheld. Where a consultant withholds agreement, this is not subject to appeal and there will be no detriment to progression through seniority points (subject to **paragraphs 4.4.6 to 4.4.12**) or any other matter.

14.3.5 A current part-time consultant will be offered the choice of whether to take up a contract based on:

- the number of programmed activities that are nearest in equivalence (to the nearest half unit) to their current notional hours; or
- the number of programmed activities that are nearest in equivalence to their current working hours, as determined by the model diary (see **Appendix 6**) and taking account of the table in **paragraph 4.2.2**.

14.3.6 A consultant (whether working full-time or part-time) who wishes to undertake private practice as defined in **paragraph 4.4.7**, or who already undertakes such work, must inform the employer of this in writing as part of the initial job planning process on transfer.

14.4 SALARY ON TRANSFER

14.4.1 On transfer to these terms and conditions of service, a current consultant will move to the appropriate salary level, linked to the consultant's seniority, as detailed at **Appendix 3**, and thereafter there will be transitional arrangements for eligibility for progression through seniority points (see **Appendix 3**).

14.4.2 For the purposes of **Appendix 3**, a consultant's seniority is either:

- Current pay spine point (on the scale of 0 to 4) plus 1, for consultants who are not on the maximum of the scale; or
- Sum of whole years completed on maximum of scale, plus 5.

14.4.3 In determining seniority for the purposes of **Appendix 3**, the employer will apply the terms and conditions set out in **sections 5.1 and 5.4**.

14.4.4 A current consultant in receipt of discretionary points or distinction awards will continue to receive the payments in this respect which he/she received prior to transfer.

Pay Protection

14.4.5 Any current consultant who after transfer to these terms and conditions receives lower pay, will be entitled to protection of the pay to which he/she would have been entitled under his/her old contract. This protection will be applied differently for those who:

- a) fulfil the criteria set out at paragraphs 14.2.3, 14.2.4 or 14.2.6;
- b) transfer under other circumstances.

A consultant in category a) will be eligible for protection in respect of the first year (ie 2004-2005) on the basis that they will be entitled to receive the pay (taking basic pay and intensity payments together, and including any incremental and annual Review Body awards) which he/she would have received had he/she remained on his/her old contract, if this is higher than the pay (taking basic pay and availability supplements together) to which they would be entitled under these terms and conditions.

For a consultant in category a) after the first year, and for any consultant in category b), protection will be on a mark time basis. That is, he/she will be entitled to payment of the salary received under the old contract (taking basic pay and intensity supplements together) at the point of transfer, where this is higher in any year than the salary which they will be entitled to receive under these terms and conditions.

Protection will only be provided where:

- the consultant continues to undertake at least the same level of activity and on-call commitments;
- the consultant remains employed by the same NHS organisation or equivalent successor organisation.

14.4.6 A current consultant who writes to express interest in transferring to a contract governed by these terms and conditions after 31 March 2008 will not be subject to transitional pay arrangements.

14.5 PHASING OF OTHER ELEMENTS

14.5.1 There will be a two-year transitional period, ending on 31 March 2006, for phasing in some other elements of the new contract.

14.5.2 During this transitional period:

- for the first year of the new contract (ie 2004-2005), there will be a limit of one programmed activity on the level of recognition awarded for unpredictable emergency work arising from on-call duties;
- there will be arrangements to ensure that the new system of recognising on-call work does not result in a reduction in the time available for a consultant's other duties, if necessary by arranging for extra programmed activities to be contracted;
- for the purposes of calculating arrears of pay under the provisions of **paragraph 14.2.5** for the period before 1 April 2004, out-of-hours work will be paid at plain time rates. The provisions of **paragraph 4.8.2** will apply from 1 April 2004. Between 1 April 2004 and 31 March 2006, where scheduled provision is made for out-of-hours work, the employer may decide whether to give recompense in the form of premia or a reduction of hours. From 1 April 2006, premia may be paid only by mutual agreement between the employer and the consultant.

14.6 ARRANGEMENTS FOR CONSULTANTS WHO RETIRE BETWEEN 1 APRIL 2003 AND 31 MARCH 2004

14.6.1 Where, between 1 April 2003 and 31 March 2004, a consultant who would have moved on to the new contract retires at or above normal retirement age or at any age for reasons of ill-health, compulsory redundancy or organisational change, a superannuable payment will be applicable relating to the period between 1 April 2003 and their date of retiral. This payment will reflect pay due had the contract been available from 1 April 2003, and will be based on the basic salary. The employer will notify the Scottish Public Pensions Agency of this increase in superannuable remuneration and contributions arising from the payment of arrears to former employees. For the purposes of this paragraph, normal retirement age will be from age 60, or from age 55 for those consultants retiring with Mental Health Officer status and who have held this for a minimum of 20 years.

15. PENSION ARRANGEMENTS

15.1.1 A consultant will be eligible for membership of the NHS Superannuation Scheme (Scotland), the provisions of which are set out in the NHS Superannuation Scheme (Scotland) Regulations 1995 (as amended).

15.1.2 The following will be superannuable in the NHS Superannuation Scheme (Scotland):

- the consultant's basic salary (plus any extra programmed activities up to ten programmed activities in total), including progression through pay points and premium payments for out-of-hours;
- enhancements to basic salary by way of any discretionary points or distinction awards;
- any on-call availability supplement; and
- fees for domiciliary visits not undertaken during programmed activities.
- other pay allowances expressly agreed to be superannuable.
- any Director of Public Health supplement.

Superannuable pay will be subject to Inland Revenue limits.

15.1.3 The following will not be superannuable in the NHS Superannuation Scheme (Scotland):

- travelling, subsistence, and other expenses paid as a consequence of the consultant's work for the employer or the wider NHS;
- any recruitment or retention premium;
- any payments for extra programmed activities in excess of the full-time working week (i.e. 10 programmed activities) including premium payments for out-of-hours work; and
- any payments for work the consultant undertakes for local authorities, subject to local agreements to the contrary.

Employment after Retirement

15.1.4 Once a consultant has retired, and taken his or her NHS superannuation benefits, any salary paid to the consultant in any re-employment will not be superannuable in the NHS Superannuation Scheme (Scotland), except where retirement is on ill-health grounds and the consultant returns to the NHS before the age of 50 or where the consultant is made redundant but continues with another concurrent NHS post.

Removal or Downgrading of a Distinction Award

15.1.5 If a distinction award is removed or downgraded, the consultant will normally continue to be paid the value of the award he or she received at the time this decision was made. This will be taken into account in the calculation of the consultant's pension in the normal way.

15.1.6 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

- 15.1.7 On transferring to these terms and conditions of service, there will be no change to the pension arrangements for a consultant who has Mental Health Officer status.

MODEL CONSULTANT CONTRACT

In the model contract, round brackets indicate where text is to be inserted, square brackets indicate 'delete as appropriate'.

(date)

Dear

Appointment of Consultant in (Specialty)

Offer of appointment

1. (a) I am instructed by the (insert name) (employer) to offer you an appointment as [full-time], [part-time,] consultant in (specialty) commencing on (date) [The appointment is forprogrammed activities per week]

(b) The date of the start of your period of continuous employment is.....For the purposes of the (section to be specified) Employment Rights Act 1996, your previous employment with (insert name of previous employer) does [not] count as part of your continuous period of employment. However for the purpose of certain NHS conditions of service, previous NHS service, not treated as 'continuous' under the provisions of the Employment Rights Act 1996, may also be reckoned for those purposes, subject to the rules set out in the Terms and Conditions of Service.

Applicable collective agreement

2.The appointment will be subject to the Terms and Conditions of Service of the Consultant Grade (Scotland) as amended from time to time. A copy is attached and an up to date version is available at the following website: www.show.scot.nhs.uk/publications

Pension

3.(a)The appointment is superannuable, unless you opt out of the NHS Superannuation Scheme (Scotland) or are ineligible to join, and your remuneration will be subject to deduction of superannuation contributions in accordance with the scheme. Details of the scheme are given in the scheme guide, which is [enclosed] [available from ...].

Superannuable pay will include basic salary (up to 10 programmed activities, but not any extra programmed activities above this level), on-call availability supplements, discretionary points, distinction awards, and any other pay expressly agreed to be superannuable.

(b) You are contracted out of the State Second Pension Scheme.

For consultants contracted to work less than 40 hours per week

(c) Your pensionable pay for contributions purposes will be the appropriate proportion of actual full-time pay inclusive of on-call availability supplements, discretionary points, distinction awards and any other pay expressly agreed to be superannuable'.

(d) (Insert name of employer) will make arrangements to track and record these additional hours for pension purposes.

(e) Superannuable pay will be subject to Inland Revenue limits.

Duties and responsibilities

4. Your duties and responsibilities are as defined in your job plan, which is subject to review on an annual or interim basis. The provisions relating to job planning are as set out in Section 3 of the Terms and Conditions of Service.

Principal place of work

5. Your principal place of work is, as set out in the job plan and as governed by paragraphs 3.2.9 to 3.2.13 of the terms and conditions of service.

Private practice

6. You agree that any private practice you may undertake will be governed by the Code of Conduct set out in **Appendix 8** of the Terms and Conditions of Service.

Pay

7. (a) The salary of the appointment will be that appropriate to a [full-time] [part-time] consultant appointment [assessed at (.....) programmed activities a week]. Your starting salary will be (insert commencing salary) (pay point....). Salary will be payable (monthly).

(b) Your starting seniority point will be (...). You are eligible for progression through seniority points in accordance with the provisions of Section 5 of the Terms and Conditions of Service.

(c) Your seniority date will be the anniversary of the date of appointment (.....).
Note: different date for those transferring.

(d) The availability supplement payable will be.....

(e) In addition, you will be paid the following :

(Chief Officer Supplement)

(.....Discretionary Points)

(.....Distinction Awards)

(.....Recruitment/Retention Premium)

Notice

8.The employment is subject to three calendar months' notice on either side.

Registration and insurance

9.(a)You are required to be fully registered with the General [Medical] [Dental] Council throughout the duration of your employment and be included on the Specialist Register and continue to hold a licence to practise.

(b)You are normally covered by the NHS Hospital and Community Health Services indemnity against claims of medical negligence. However, in certain circumstances (especially in respect of services for which you receive a separate fee) you may not be covered by the indemnity. The (insert name of employer) therefore advise that you maintain membership of a medical defence organisation. Copies of NHS Circular 1989 (PCS) 32 and NHS MEL (2000) 18 on indemnity arrangements (are enclosed) (may be obtained on request).

Residence

10.Your private residence will not be more than (specify in minutes) travelling time or (specify) miles by road from your principal place of work unless specific approval is given by the (insert name of employer) otherwise. You must be contactable by telephone.

Leave

11. (a)You will be entitled toweeks' annual leave with full pay each year.

(b) Full details of the annual leave allowance and the conditions governing this allowance is set out in **Section 7** of the Terms and Conditions of Service.

(c) Other leave arrangements are as set out in **Section 7** of the Terms and Conditions of Service.

Sickness absence

12.The provisions relating to absence by you because of sickness and the sickness allowance applicable are set out in **Section 7** of the Terms and Conditions of Service.

Disciplinary procedure

13.The provisions relating to disciplinary procedure are set out in **Section 10** of the Terms and Conditions of Service.

Delete as appropriate

(As you were employed as a consultant in Scotland prior to 1 April 2004, and your contract included a right of appeal to Scottish Ministers under the provisions of paragraph 190 of the terms and conditions of service then applying, you will continue to benefit from this right of appeal.)

(You have a right of appeal against dismissal as agreed locally between the (insert name of employer) and the local negotiating committee (LNC) for medical and dental staff.)

Grievance procedure

14.(a) Should you have any grievance relating to your employment, you are entitled to discuss the matter in the first instance with your Clinical/Medical Director/Director of Public Health and, where appropriate, to consult with (insert name of the appropriate Human Resources Officer) at (insert address of HR Officer).

(b)The agreed procedure for settling differences between you and (insert name of employer) where the difference relates to a matter affecting your Terms and Conditions of Service is set out in Section 42 of the General Whitley Council Conditions of Service (or in any replacement provision which may come into force from time to time)

Property

15.(Insert name of employer) accepts no responsibility for damage to or loss of personal property, with the exception of small valuables handed to their officials for safe custody. You are therefore recommended to take out an insurance policy to cover your personal property.

Deductions

16.The (insert name of employer) will not make deductions from or variations to your salary other than those required by law without your express written consent.

Acceptance

17.If you agree to accept this appointment on the terms indicated above, please sign the form of acceptance at the foot of this page and return it to me in the enclosed stamped addressed envelope. A second signed copy of this contract is attached, which you should also sign and retain for your future reference.

Yours sincerely

Signature.....

On behalf of.....

(insert name of employer)

.....

I hereby accept the offer of appointment mentioned in the foregoing contract on the terms and subject to the conditions referred to in it. I undertake to commence my duties on the

Signature

Date

This offer and acceptance of it will together constitute a contract between the parties.

MODEL CONTRACT FOR EXTRA PROGRAMMED ACTIVITIES

1. [NHS.....] has agreed with you [insert name of consultant] that you will undertake [insert number] extra programmed activity (ies) (EPA) in respect of duties which are separate from and additional to your main contract of employment with [NHS.....].
2. The duties associated with this contract are set out in the attached schedule.
3. The date of commencement of this contract is [....]
4. This contract will have a duration of [one year] and may be renewed by agreement. However, either party may terminate the contract at any time by giving to the other at least three months notice in writing.
5. The terms and conditions of service for this contract are set out in the national terms and conditions of service (TCS) for the consultant grade for NHS Scotland.
6. The EPA[s] will have a timetabled value of four hours subject to the arrangements set out in section 4.8 of the TCS where activities are undertaken in the out-of-hours period.
7. The payment will be £xxx per annum (calculated on the basis of the pay rate as outlined at paragraph 4.4.2 and the arrangements set out in Section 4.8.)

Signed

NHS Board

Date

Consultant

Date

RATES OF PAY**1. PAY ARRANGEMENTS FOR NEW CONSULTANTS**

Salaries based on 2007/08 rates with effect from 1 April 2007

Seniority Point	Pay Point	Salary
1	1	£71,822
2	2	£74,071
3	3	£76,320
4	4	£78,569
5	5	£80,812
6	5	£80,812
7	5	£80,812
8	5	£80,812
9	5	£80,812
10	6	£86,153
11	6	£86,153
12	6	£86,153
13	6	£86,153
14	6	£86,153
15	7	£91,495
16	7	£91,495
17	7	£91,495
18	7	£91,495
19	7	£91,495
20	8	£96,831

2. DISTINCTION AWARDS FOR CONSULTANTS

A+ awards	£73,158
A awards	£53,911
B awards	£30,808

3. DISCRETIONARY POINTS FOR CONSULTANTS

1	2	3	4	5	6	7	8
3,088	6,176	9,264	12,352	15,440	18,528	21,616	24,704

* Guidance on the application of discretionary points for consultants is contained in NHS Circular PCS(DD)1995/6 and the 12 January 2000 guidance "Discretionary Points for Consultants".

4. AVAILABILITY SUPPLEMENTS

Frequency of Rota Commitment	Value of supplement as a percentage of full-time basic salary	
	Level 1	Level 2
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%

5. DIRECTORS OF PUBLIC HEALTH SUPPLEMENTS

	Minimum £	Maximum £	Exceptional Maximum £
Band B	Areas of 450,000 population and over		
	5,043	10,097	13,024
Band C	Areas of 250,000 to 449,999 population		
	4,216	8,403	10,097
Band D	Areas of 50,000 to 249,999 population		
	3,361	6,721	8,403
Island Health Boards	1,750	3,470	-

6. TRANSITIONAL PAY ARRANGEMENTS FOR CURRENT CONSULTANTS WHO TRANSFERRED UNDER THE PROVISIONS OF PARAGRAPHS 14.2.3, 14.2.4 or 14.2.6

Pay progression based on 2007/08 rates

Seniority (years) as at 1 April 2003	Current Salaries / Interval (years)	Basic Salary
20+	From 1 April 2007	£96,831
19	From 1 April 2007 1	£91,495 £96,831
18	From 1 April 2007 1	£91,495 £96,831
17	From 1 April 2007 2	£91,495 £96,831
16	From 1 April 2007 3	£91,495 £96,831
15	From 1 April 2007 4	£91,495 £96,831
14	From 1 April 2007 1 4	£86,153 £91,495 £96,831
13	From 1 April 2007 1 5	£86,153 £91,495 £96,831
12	From 1 April 2007 2 5	£86,153 £91,495 £96,831
11	From 1 April 2007 3 5	£86,153 £91,495 £96,831

10	From 1 April 2007 4 5	£86,153 £91,495 £96,831
9	From 1 April 2007 5 5	£86,153 £91,495 £96,831
7-8	From 1 April 2007 1 5 5	£80,812 £86,153 £91,495 £96,831
6	From 1 April 2007 1 5 5	£80,812 £86,153 £91,495 £96,831
5	From 1 April 2007 2 5 5	£80,812 £86,153 £91,495 £96,831
4	From 1 April 2007 2 5 5	£80,812 £86,153 £91,495 £96,831
3	From 1 April 2007 3 5 5	£80,812 £86,153 £91,495 £96,831
2	From 1 April 2007 4 5 5	£80,812 £86,153 £91,495 £96,831
1	From 1 April 2007* 5 5 5	£80,812 £86,153 £91,495 £96,831

* (or anniversary of appointment if appointed after 1 April 2003)

7. TRANSITIONAL PAY ARRANGEMENTS FOR CURRENT CONSULTANTS WHO TRANSFER BEFORE 1 APRIL 2008 UNDER THE PROVISIONS OF PARAGRAPHS 14.2.7 TO 14.2.9.

7(a) Salary Upon Transfer (based on 2007/08 rates)

Spine Point	Seniority (years)	Starting Salary
0	1	£71,822
1	2	£72,383
2	3	£72,944
3	4	£73,510
4 (<1 year @ max)	5	£78,569
4 (+1 year @ max)	6	£79,690
4 (+ 2 - 24 years @ max)	7-29	£80,812
4 (>25 years @ max)	30+	£86,153

7(b) Subsequent Pay Progression based on 2007/08 rates

Seniority (years)	Interval (years)	Basic Salary
30+	1	£91,495
	1	£96,831
21 – 29	1	£86,153
	1	£91,495
	1	£96,831
20	1	£86,153
	2	£91,495
	1	£96,831
19	1	£86,153
	2	£91,495
	2	£96,831
18	2	£86,153
	1	£91,495
	2	£96,831
17	2	£86,153
	2	£91,495
	2	£96,831
16	3	£86,153
	1	£91,495
	3	£96,831
15	3	£86,153
	1	£91,495
	4	£96,831
14	3	£86,153
	2	£91,495
	4	£96,831

13	3	£86,153
	2	£91,495
	5	£96,831
12	3	£86,153
	3	£91,495
	5	£96,831
11	4	£86,153
	3	£91,495
	5	£96,831
10	4	£86,153
	4	£91,495
	5	£96,831
9	4	£86,153
	5	£91,495
	5	£96,831
7-8	5	£86,153
	5	£91,495
	5	£96,831
6	1	£80,812
	4	£86,153
	5	£91,495
	5	£96,831
5	1	£79,690
	1	£80,812
	4	£86,153
	5	£91,495
	5	£96,831
4	1	£76,320
	1	£78,569
	1	£80,812
	3	£86,153
	5	£91,495
	5	£96,831
3	1	£75,193
	1	£78,569
	1	£80,812
	4	£86,153
	5	£91,495
	5	£96,831
2	1	£74,071
	1	£78,569
	1	£80,812
	5	£86,153
	5	£91,495
	5	£96,831

1	1	£72,944
	1	£76,320
	1	£78,569
	1	£80,812
	5	£86,153
	5	£91,495
	5	£96,831

8. SUMMARY TABLE OF TRANSITIONAL PAY ARRANGEMENTS (FOR INFORMATION AND REFERENCE)

Date of appointment to consultant post	Date of transfer to new contract	Date for calculating seniority	Date of progression to subsequent seniority point on transitional scale	Backdating
Prior to 1 April 2003	1 April 2004 *	1 April 2003	1 April 2004 (i.e. immediate progression to subsequent seniority point on transitional scale, and then on anniversary of date of transfer.)	To 1 April 2003
Prior to 1 April 2003	After 1 April 2004 but before 1 April 2008	Date of transfer	Anniversary of date of transfer	None
Between 1 April 2003 and 31 March 2004	1 April 2004*	Date of appointment	Anniversary of date of appointment	To date of appointment
Between 1 April 2003 and 31 March 2004	After 1 April 2004 but before 1 April 2008	Date of transfer	Anniversary of date of transfer	None
Prior to 1 April 2004	1 April 2008 or later	Date of transfer	Transitional scale not applicable. Progression to next point of substantive scale on anniversary of date of transfer. **	None
1 April 2004 onwards	On appointment	Date of appointment	Transitional scale not applicable. Progression to second point of substantive scale on anniversary of date of appointment. **	None

* Must have given written expression of intent to transfer by 31 December 2003 or date of acceptance of appointment, whichever is later. May have transferred after 1 April 2004 if unable to agree a job plan by 31 March 2004 for reasons beyond his/her control. In such cases, he/she will be treated as having transferred on 1 April 2004.

** Subject to the provisions of Section 5.1. which determine starting salary, seniority point and seniority date.

8. MILEAGE ALLOWANCES

1. Public Transport Rate

23p per mile

2. Regular User Rates

Motor cars with 3 or 4 wheels*

Engine capacity	(cc)	501 to 1000	1001 to 1500	1501 to 2000	Over 2000
Lump Sum	(£)	399	475	580	580
Up to 9000 miles	(p)	27.0	33.5	40.0	40.0
9001 to 15000	(p)	16.5	19.7	22.7	25.5
Thereafter	(p)	16.2	18.3	20.5	20.5

3. Standard Rates

Motor cars with 3 or 4 wheels*

Engine capacity	(cc)	501 to 1000	1001 to 1500	1501 to 2000	Over 2000
Up to 3500 miles	(p)	34.0	43.0	53.0	53.0
3501 to 9000 miles	(p)	23.0	28.2	33.5	41.0
9001 to 15000	(p)	16.5	19.7	22.7	25.5
Thereafter	(p)	16.2	18.3	20.5	20.5

4. Other Motor Vehicles**

			Up to 125	Over 125
Engine Capacity	(cc)	up to 5,000 miles	16.2	25.3
Rate per mile	(p)	Over 5,000 miles	6.1	9.0

5. Passenger allowance

Each passenger: 2.0p per mile.

6. Pedal Cycles

6.2p per mile

* a practitioner using a 4-wheeled motor car under 501cc shall be paid at the rates for cars of 501 to 1000cc.

** includes motor cycles and combinations, motor scooters, mopeds and motor-assisted bicycles.

10. LEASE CARS

CHARGES FOR PRIVATE USE OF LEASE CARS

A.	The current rates of:	£
	Road Fund Licence	eg 155
	Insurance for private use	eg 88
	Including cover for private practice use:	eg 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:

(Cost of Contract Hire at) - (cost of Contract hire at)

$$\frac{(\text{Maximum quoted mileage} - \text{minimum quoted mileage})}{1000}$$

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

Plus VAT on total charge to practitioner (A+B)

NB: Where the cost to the employer 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.

MODEL JOB PLAN FORMAT

APPENDIX 4

Name:..... Specialty:.....

Principal Place of Work:.....

Contract: Full Time / Part Time / Honorary Programmed Activities:.....EPAs.....

Availability Supplement: None / Level 1 / Level 2 (delete as appropriate) %

Premium Rate Payment Received:

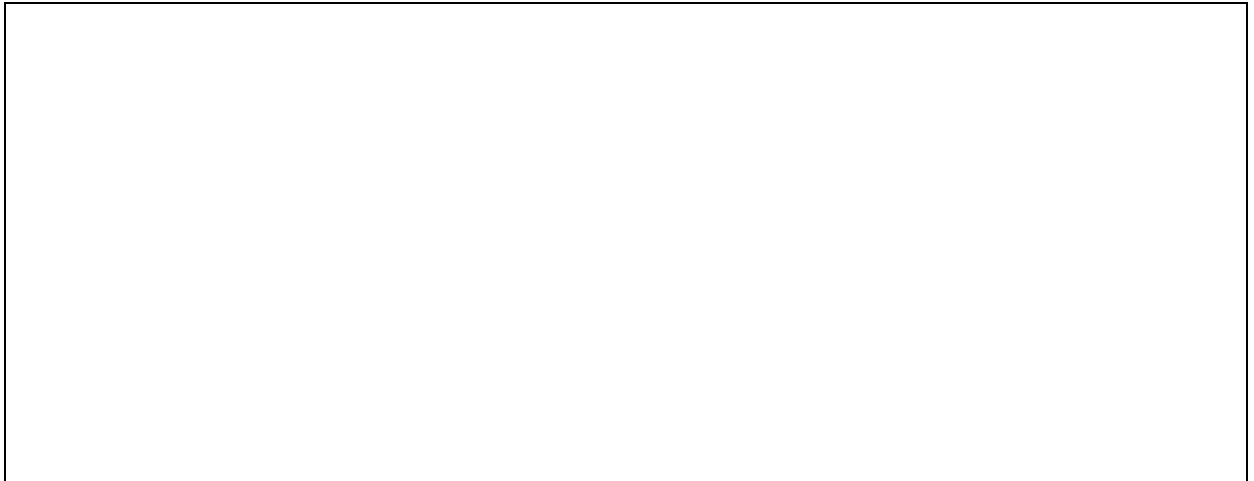
Managerially Accountable to:.....

Responsible for:.....

a) Timetable of activities which have a specific location and time

DAY	HOSPITAL/ LOCATION	TYPE OF WORK
Monday From / To		
Tuesday From / To		
Wednesday From / To		
Thursday From / To		
Friday From / To		
Saturday From / To		
Sunday From / To		

b) Activities which are not undertaken at specific locations or times



c) Activities during Premium Rate Hours of Work e.g. hours outwith 8am-8pm Monday to Friday



d) Extra programmed activities – see separate contract and schedule

MODEL JOB PLAN

Type of activity	Description of activity including when and where activity is conducted.	Average number of hours spent on each activity per week including travel where appropriate
Direct Clinical Care		
Emergency duties (including emergency work carried out during or arising from on-call) (refer to Section 4.10)		
Operating sessions		
Pre and post operative care		
Ward rounds		
Outpatient clinics		
Clinical diagnostic work		
Other patient treatment		

Type of activity	Description of activity including when and where activity is conducted	Average number of hours spent on each activity per week including travel where appropriate
Direct Clinical Care (contd)		
Public health duties		
Multi-disciplinary meetings about direct patient care		
Administration directly related to patient care (e.g. referrals, notes complaints, correspondence with other practitioners)		
On-site medical cover		
Any other work directly linked to the direct clinical care of NHS patients		
Total Direct Clinical Care Activities		

Type of activity	Description of activity including when and where activity is conducted.	Average number of hours spent on each activity per week including travel where appropriate
Supporting Professional Activities		
Continuing professional development		
Teaching and training		
Management of doctors in training		
Audit		
Job Planning		
Appraisal		
Revalidation		
Research		

Type of activity	Description of activity including when and where activity is conducted.	Average number of hours spent on each activity per week including travel where appropriate
Supporting Professional Activities (contd)		
Contribution to service management and planning		
Clinical governance activities		
Any other supporting professional activities		
Total Supporting Professional Activities		

Type of activity	Description of activity including when and where activity is conducted.	Average number of hours spent on each activity per week including travel where appropriate
<p align="center">Additional responsibilities (i.e. duties of a professional nature carried out for or on behalf of the employer or the Scottish Government which are beyond the range of the supporting professional activities normally expected of a consultant)</p>		
Caldicott guardian		
Clinical audit lead		
Clinical governance lead		
Undergraduate and postgraduate deans		
Clinical tutors		
Regional education advisers		

Type of activity	Description of activity including when and where activity is conducted.	Average number of hours spent on each activity per week including travel where appropriate
Additional Responsibilities (contd)		
Formal medical management responsibilities		
Other additional responsibilities		
Total Additional Responsibilities		

Type of activity	Description of activity including when and where activity is conducted.	Average number of hours spent on each activity per week including travel where appropriate
<p>Other external duties (i.e. work not directly for the NHS employer, but relevant to and in the interests of the NHS)</p>		
Trade union and professional association duties		
Acting as an external member of an advisory appointments committee		
Undertaking assessments for NHS Education for Scotland, NHS Quality Improvement for Scotland or equivalent bodies		
Reasonable quantities of work for the Royal Colleges in the interests of the wider NHS		
Work for the General Medical Council or other national bodies concerned with professional regulation		

Type of activity	Description of activity including when and where activity is conducted.	Average number of hours spent on each activity per week including travel where appropriate
Other external duties (contd)		
NHS disciplinary procedures and NHS appeals procedures		
Other external duties		
Total Other External Duties		

<p style="text-align: center;">Facilities and Resources</p> <p>Details of the facilities and resources necessary to support delivery of the consultant's duties and objectives for all programmed activities</p>	
<p>Staffing support</p>	
<p>Accommodation</p>	
<p>Equipment</p>	
<p>Any other identified resources necessary.</p>	

Objectives may cover personal development needs, training goals, organisational issues, CME and CPD e.g. acquisition / consolidation of new skills and techniques.

Objective	How objective will be met and resources required	Timescale
1.		
2.		
3.		
4.		
5.		

FEE PAYING WORK (Section 4.3)

1. Fee-paying work is work which is not part of contractual work and not reasonably incidental to it and is listed in this paragraph and paragraph 2. Items may be added to this list by agreement between the employer and the local negotiating committee (LNC) for medical and dental staff.

- 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 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, superannuation, 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 for Procurators Fiscal, and attendance at fatal accident inquiries as medical witnesses
- g. work requested by the courts on the medical condition of an offender or defendant
- h. attendance at court hearings as a medical witness, otherwise than in the circumstances where the consultant is giving evidence on his or her own behalf or on behalf of his or her employer in connection with a case with which the consultant is professionally concerned
- 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 employer by specific regulation or a voluntary undertaking by the employer in pursuance of the employer's general liability to protect the health of its workforce

occupational health services provided under contract to other NHS, independent or public sector employers
- k. 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
- l. work on prospective students of universities or other institutions of further education, provided that this is not covered by the consultant's contract. Such examinations may include chest radiographs
- m. examinations and recommendations under Part V of the Mental Health (Scotland) Act 1984:

- i. if given by a doctor who is not on the staff of the hospital where the patient is examined; or
- ii. 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 an employer.
- n. services performed by consultants for Government Departments as members of medical boards
- o. 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 of a disease, other than to protect the health of people immediately at risk
- p. completion of Form B (Certificate of Medical Attendant) and Form C (Confirmatory Medical Certificate) of the cremation certificates
- q. work as a medical referee (or deputy) to a cremation authority
- r. examinations and reports including visits to prison required by the Prison Service which do not fall within a consultant's contract and which are not covered by separate contractual arrangements between the consultant and the Prison Service
- s. examination on blind or partially-sighted persons for the completion of form BP1 (except where this information is required for social security purposes, for the Department for Work and Pensions, for the Employment Service or for the patient's employer and a special examination is not required). Where the examination is in connection with registration with a local authority, payment will be made by the NHS board under the collaboration arrangements in accordance with the appropriate schedule of fees for such work.

2. Fee-paying work also includes work undertaken by consultants in public health medicine, including services to a local or public authority of a kind not provided by the NHS, including:

- 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 and to driving licences
- c. lectures to other than NHS staff
- d. medical advice in a specialised field of communicable disease control, e.g. membership of a Departmental panel for an infectious disease
- e. work for water authorities, including medical examinations in relation to staff health schemes
- f. attendance as a witness in court (other than in the course of a consultant's normal duties)
- 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 (including NHS employers), other than the doctor's employer, on matters which the doctor is acknowledged to be an expert
- i. examinations and recommendations under Part II of the Mental Health Act 1983 and under Part V of the Mental Health (Scotland) Act 1984.

Arrangements for Mental Health Tribunal Work

- 3. Consultants undertaking work for the Mental Health Tribunal system must inform their employer about their involvement in Tribunal work and discuss with their employer how their job plan arrangements will operate so that Direct Clinical Care or Supporting Professional Activity is not lost. Consultants undertaking Tribunal work will receive the fee of £380 direct from the Tribunal service. As the Tribunals take place during the normal working week, consultants working full-time will time shift their work to accommodate Tribunal work and consultants working part-time may have to do the same.
- 4. Consultants who wish to undertake Tribunal work and need to time shift their NHS activities in order to accommodate their Tribunal work are required to agree this with their clinical manager and in their job plan review. Consultants and clinical managers will ensure that time shifting of work does not result in any net reduction in clinical activity or in a loss of SPA effort.

FEES FOR NHS WORK (Sections 9.1 to 9.5)

1. Domiciliary Consultations

The domiciliary consultation fees payable under Section 9.1 of the terms and conditions of service shall be as follows:

Standard rate	£78.76
Intermediate rate	£39.38
Lower rate	£19.73

The overall maximum payable for a series of visits in connection with anti-coagulant therapy or the use of cytotoxic drugs shall be £236.28.

The fee payable under paragraph 9.1.5 of the terms and conditions of service (not the fee under NHS Circular No 1986(PCS)33) shall be:

Combined fee for completion of Form BP1 - £120.13
For re-examination (provided previous form BP1 available) - £102.64

2. Exceptional Consultations

The fee payable to a consultant under Section 9.2 of the terms and conditions of service shall be £147.57.

3. Lecture Fees

The fees payable for lectures to nurses and other non-medical and non-dental staff under paragraph 9.3.1 of the terms and conditions of service shall be £57.15.

The fee payable for lectures to medical and dental staff under paragraph 9.3.2 of the terms and conditions of service shall be £72.40.

4. Section 47 of Part 5 of the Adults with Incapacity (Scotland) Act 2000

The fee payable for completion of assessment and certificate under paragraph 9.5.1 of the terms and conditions of service is £101.00.

5. Advisory Appointments Committee

The fees payable under paragraph 9.6.1 of the terms and conditions of service are £123.30 for a whole day and £61.65 for a half-day.

MODEL DIARY

Appendix 6

Name:	Specialty:	On-Call Rota: 1:
Principal Place of Work:		Level of On-Call: 1 / 2 (delete)
Week beginning:		Availability Supplement: %

	00.00 00.30	00.30 01.00	01.00 01.30	01.30 02.00	02.00 02.30	02.30 03.00	03.00 03.30	03.30 04.00	04.00 04.30	04.30 05.00	05.00 05.30	05.30 06.00	06.00 06.30	06.30 07.00	07.00 07.30	07.30 08.00	08.00 08.30	08.30 09.00	09.00 09.30	09.30 10.00	10.00 10.30	10.30 11.00	11.00 11.30	11.30 12.00
MON																								
TUE																								
WED																								
THU																								
FRI																								
SAT																								
SUN																								

	12.00 12.30	12.30 13.00	13.00 13.30	13.30 14.00	14.00 14.30	14.30 15.00	15.00 15.30	15.30 16.00	16.00 16.30	16.30 17.00	17.00 17.30	17.30 18.00	18.00 18.30	18.30 19.00	19.00 19.30	19.30 20.00	20.00 20.30	20.30 21.00	21.00 21.30	21.30 22.00	22.00 22.30	22.30 23.00	23.00 23.30	23.30 00.00
MON																								
TUE																								
WED																								
THU																								
FRI																								
SAT																								
SUN																								

Shaded area = Premium Rate Hours of Work

Please fill in the times as appropriate using the letters in bold within the key. Explanation of Key overleaf.

Key	No of Hours
Programmed Direct Clinical Care = D	
On-Call Worked = OCW	
Supporting Professional Activity = S	
Additional Responsibilities = A	
Other External Duties = E	
Leave = L	
Total Hours	

Travelling Time (to be included in each category)

Time spent travelling in the course of fulfilling duties and responsibilities agreed in the job plan is counted as part of agreed programmed activities. This will include travel to and from base to other sites, travel between other sites, travel when recalled from home during on-call periods (but not normal daily journeys between home and base) and “excess travelling time”. “Excess travelling time” is defined as time spent travelling between home and a working site away from base less the amount of time normally spent travelling between home and base.

Please refer to the terms and conditions in Section 4 The Working Week.

Programmed Direct Clinical Care (D)

1. ‘Programmed Direct Clinical Care’ includes: emergency duties (including emergency work carried out during or arising from on-call), operating sessions, pre and post operative care, ward rounds, outpatient clinics, clinical diagnostic work, other patient treatment, public health duties, multi-disciplinary meetings about direct patient care, administration directly related to patient care (e.g. referrals, notes, complaints, correspondence with other practitioners), on-site medical cover, any other work linked to the direct clinical care of NHS patients, and travelling time associated with any of these duties.
2. On-Call Worked (OCW)

All emergency work undertaken during or as a consequence of the on-call period.

Supporting Professional Activities (S)

‘Supporting Professional Activities’ includes: continuing professional development, teaching and training, management of doctors in training, audit, job planning, appraisal, revalidation, research, contribution to service management and planning, clinical governance activities, any other supporting professional activities, and travelling time associated with these duties.

Additional Responsibilities (A)

‘Additional Responsibilities’ are duties of a professional nature carried out for or on behalf of the employer or the Scottish Government which are beyond the range of the supporting professional activities normally to be expected of a consultant. Additional responsibilities are Caldicott guardians, clinical audit leads, clinical governance leads, undergraduate and postgraduate deans, clinical tutors, regional education advisers, formal medical management responsibilities, other additional responsibilities agreed between a consultant and his/her employer which cannot reasonably be absorbed within the time available for supporting professional activities and travelling time associated with these duties.

Other External Duties (E)

‘Other External Duties’ comprises work not directly for the NHS employer, but relevant to and in the interests of the NHS. Examples include trade union and professional association duties, acting as an external member of an advisory appointments committee, undertaking assessments for NHS Education for Scotland, NHS Quality Improvement for Scotland or equivalent bodies, work for the Royal Colleges, work for the General Medical Council or other national bodies concerned with professional regulation, NHS disciplinary procedures, NHS appeals procedures and travelling time associated with these duties.

Availability Supplement

A consultant participating in an on-call rota is paid a supplement in addition to their basic salary in respect of their availability for on-call work. This supplement is separate from and additional to the arrangements for recognising actual work undertaken in the on-call period. The level of supplement reflects frequency of availability and, in addition, recognises two levels of on-call availability. Level 1 applies to a consultant who needs to attend a place of work immediately when called, or to undertake analogous interventions (e.g. telemedicine or complex telephone consultations). Level 2 applies to a consultant who can attend a place of work later or respond by non-complex telephone consultations later.

GUIDANCE ON STARTING SALARIES AND SENIORITY DATES

Introduction

1. The terms and conditions of service for consultants provide for the taking into account by an employer, in determining salary and seniority date on appointment, of all previous service in the consultant grade in the NHS. Many consultants however, have either equivalent service other than in NHS appointments in Great Britain or equivalent service overseas, and section 5.1 authorises employers to take into account for starting salary, seniority point and seniority date credit, (but not pay protection) service which in their view is clearly covered by the guidance given in paragraphs 2-7 below. The Scottish Government Health Directorates is willing to consider cases falling outside the terms of this guidance. It should be noted that service outside the NHS as a locum cannot be counted.

Service in the Armed Forces

2. Service in HM Forces as a formally approved consultant will be counted as consultant service.

Service overseas or outside the NHS in Great Britain

3. Employers may count service outside the NHS in Great Britain as consultant service for starting salary, seniority point and seniority date purposes provided that they are satisfied that the level of responsibility, the range of work undertaken, and the training received before appointment, is fully equivalent to that in the consultant grade in the NHS in Great Britain.

Northern Ireland, The Irish Republic, The Isle of Man and Channel Islands

4. Employers are reminded that Northern Ireland, The Irish Republic, The Isle of Man and Channel Islands are outside the National Health Service of Great Britain and service in these countries is not reckonable under the Terms and Conditions of Service; it must therefore be considered under the terms of this guidance.

Verification of service

5. Employers in considering requests for the reckoning of consultant equivalent service outside the NHS are expected to require applicants to provide full details of the dates and nature of the previous service in respect of which credit is claimed and to verify this service, e.g. in requiring the production of appropriate original testimonials of service.

Starting salary on first appointment to a consultant post

6. Employers have discretion to increase the starting salary of a doctor/dentist on first appointment to the consultant grade above the minimum point of the pay scale. This should only be applied in cases where a candidate has experience and qualifications clearly in excess of that normally regarded as appropriate to a doctor/dentist on first appointment to the consultant grade. It is not intended that this provision should apply to those who have followed the normal career pathway to consultant level in the NHS in Great Britain.

Part-time consultants

7. When a consultant who, while holding one part-time appointment, is appointed to a second part-time appointment in the consultant grade, the part-time salaries in respect of both appointments should be fractions of the same full-time salary except in the rarest of circumstances. It should be very exceptional for a consultant who is given a new appointment to be paid at different points on the consultant scale or to have different seniority dates in relation to appointments in the same

grade. Any differences of this kind, however, which may exist at present, should be left undisturbed.

**CODE OF CONDUCT FOR PRIVATE PRACTICE: RECOMMENDED STANDARDS FOR NHS
CONSULTANTS**

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- Key Principles

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- Information for NHS Patients about Private Treatment
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- Promoting Improved Patient Access to NHS Care
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- Use of NHS Facilities
- Use of NHS Staff

PART I: INTRODUCTION

Scope of Code

- 1.1 This document sets out recommended standards of best practice for NHS consultants in Scotland about their conduct in relation to private practice¹. The standards are designed to apply equally to honorary contract holders in respect of their work for the NHS. The Code covers all private work, whether undertaken in non-NHS or NHS facilities.
- 1.2 This Code will be used at the annual job plan review as the basis for reviewing the relationship between NHS duties and any private practice.

Key Principles

- 1.3 The Code is based on the following key principles:
- NHS consultants and NHS employing organisations will work on a partnership basis to prevent any conflict of interest between private practice and NHS work. It is also important that NHS consultants and NHS organisations minimise the risk of any perceived conflicts of interest; although no consultant will suffer any penalty (under the code) simply because of a perception;
 - the provision of services for private patients should not prejudice the interest of NHS patients or disrupt NHS services;
 - with the exception of the need to provide emergency care, agreed NHS commitments will take precedence over private work; and
 - NHS facilities, staff and services may only be used for private practice with the prior agreement of the NHS employer.

¹ “Private practice” is defined as:

- a) the diagnosis or treatment of patients by private arrangement (including such diagnosis or treatment under section 57 of the National Health Service (Scotland) Act 1978 as inserted by section 7 (11) of the Health Medicines Act 1988 and further amended by Schedule 9 to the NHS and Community Care Act 1990), excluding, however, work of the kind referred to in section 4.3 and section 9; and
- b) work in the general medical, dental or ophthalmic services under Part 2 of the National Health Service (Scotland) Act 1978.

PART II: STANDARDS OF BEST PRACTICE

Disclosure of Information about Private Practice

- 2.1 Consultants will declare any private practice, which may give rise to any actual or perceived conflict of interest, or which is otherwise relevant to the practitioner's proper performance of his/her contractual duties. As part of the annual job planning process, consultants will disclose details of regular private practice commitments, including the timing, location and broad type of activity, to facilitate effective planning of NHS work and out of hours cover
- 2.2 Under the appraisal guidelines agreed in 2001, NHS consultants should be appraised on all aspects of their medical practice, including private practice. In line with the requirements of revalidation, consultants should submit evidence of private practice to their appraiser.

Scheduling of Work and On-Call Duties

- 2.3 In circumstances where there is or could be a conflict of interest, programmed NHS commitments will take precedence over private work. Consultants will ensure that, except in emergencies, private commitments do not conflict with NHS activities included in their NHS job plan.
- 2.4 Consultants will ensure in particular that:
- private commitments, including on-call duties, are not scheduled during times at which they are scheduled to be working for the NHS (subject to paragraph 2.8 below);
 - there are clear arrangements to prevent any significant risk of private commitments disrupting NHS commitments, e.g. by causing NHS activities to begin late or to be cancelled;
 - private commitments are rearranged where there is regular disruption of this kind to NHS work; and
 - private commitments do not prevent them from being able to attend a NHS emergency while they are on call for the NHS, including any emergency cover that they agree to provide for NHS colleagues. In particular, private commitments that prevent an immediate response should not be undertaken at these times.
- 2.5 Effective job planning should minimise the potential for conflicts of interests between different commitments. Regular private commitments should be noted in a consultant's job plan, to ensure that planning is as effective as possible.
- 2.6 There will be circumstances in which consultants may reasonably provide emergency treatment for private patients during time when they are scheduled to be working or are on call for the NHS. Consultants will make alternative arrangements to provide cover where emergency work of this kind regularly impacts on NHS commitments.
- 2.7 Where there is a proposed change to the scheduling of NHS work, the employer will allow a reasonable period for consultants to rearrange any private sessions, taking into account any binding commitments entered into (e.g. leases).

Provision of Private Services Alongside NHS Duties

- 2.8 In some circumstances NHS employers may at their discretion allow some private practice to be undertaken alongside a consultant's scheduled NHS duties, provided that they are satisfied that

there will be no disruption to NHS services. In these circumstances, the consultants will ensure that any private services are provided with the explicit knowledge and agreement of the employer and that there is no detriment to the quality or timeliness of services for NHS patients.

Information for NHS Patients about Private Treatment

- 2.9 In the course of their NHS duties and responsibilities consultants will not initiate discussions about providing private services for NHS patients, nor will they ask other NHS staff to initiate such discussions on their behalf.
- 2.10 Where a NHS patient seeks information about the availability of, or waiting times for, NHS and/or private services, consultants should ensure that any information provided by them, is accurate and up-to-date and conforms to any local guidelines.
- 2.11 Except where immediate care is justified on clinical grounds, consultants will not, in the course of their NHS duties and responsibilities, make arrangements to provide private services, nor will they ask any other NHS staff to make such arrangements on their behalf unless the patient is to be treated as a private patient of the NHS facility concerned.

Referral of Private Patients to NHS Lists

- 2.12 Patients who choose to be treated privately are entitled to NHS services on exactly the same basis of clinical need as any other patient.
- 2.13 Where a patient wishes to change from private to NHS status, consultants will help ensure that the following principles apply:
- a patient cannot be both a private and an NHS patient for the treatment of one condition during a single visit to an NHS organisation;
 - any patient seen privately is entitled to subsequently change his or her status and seek treatment as a NHS patient, if eligible;
 - any patient changing their status after having been provided with private services, will not be treated on a different basis to other NHS patients as a result of having previously held private status and will not gain any advantage or disadvantage over other NHS patients by doing so and will not be treated on a different basis to other NHS patients;
 - patients referred for an NHS service following a private consultation or private treatment will join an NHS waiting list at a point determined by their clinical need. Subject to clinical considerations, a previous private consultation should not lead to earlier NHS admission or to earlier access to NHS diagnostic procedures.

Promoting Improved Patient Access to NHS Care and increasing NHS Capacity

- 2.14 Subject to clinical considerations, consultants will be expected to contribute as fully as possible to maintaining a high quality service to patients, including reducing waiting times and improving access and choice for NHS patients. This will include co-operating to make sure that patients are given the opportunity to be treated by other NHS colleagues or by other providers where this will maintain or improve their quality of care, such as by reducing their waiting time.

2.15 Consultants will make all reasonable efforts to support initiatives to increase NHS capacity, including appointment of additional medical staff.

PART III – MANAGING PRIVATE PATIENTS IN NHS FACILITIES

- 3.1 Consultants may only see patients privately within NHS facilities with the explicit agreement of the responsible NHS organisation. It is for NHS organisations to decide to what extent, if any, their facilities, staff and equipment may be used for private patient services and to ensure that any such services do not interfere with the organisation's obligations to NHS patients.
- 3.2 Consultants who practise privately within NHS facilities must comply with the responsible NHS organisation's policies and procedures for private practice. The NHS organisation will consult with all consultants or their representatives, when adopting or reviewing such policies.

Use of NHS Facilities

- 3.3 NHS consultants may not use NHS facilities for the provision of private services without the agreement of their NHS employer. This applies whether private services are carried out in their own time, in annual or unpaid leave, or – subject to the criteria in paragraph 2.8 - alongside NHS duties.
- 3.4 Where the employer has agreed that a consultant may use NHS facilities for the provision of private services:
- the employer will determine and make such charges for the use of its services, accommodation or facilities as it considers reasonable;
 - any charge will be collected by the employer, either from the patient or a relevant third party; and
 - a charge will take full account of any diagnostic procedures used, the cost of any laboratory staff that have been involved and the cost of any NHS equipment that might have been used.
- 3.5 Except in emergencies, consultants will not initiate private patient services that involve the use of NHS staff or facilities unless an undertaking to pay for those facilities has been obtained from (or on behalf of) the patient, in accordance with the NHS body's procedures.
- 3.6 In line with the standards in Part II, private patient services will take place at times that do not impact on normal services for NHS patients. Private patients will normally be seen separately from scheduled NHS patients. Only in unforeseen and clinically justified circumstances should an NHS patient's treatment be cancelled as a consequence of, or to enable, the treatment of a private patient.

Use of NHS Staff

- 3.7 NHS consultants may not use NHS staff for the provision of private services without the agreement of their NHS employer.
- 3.8 The consultant responsible for admitting a private patient to NHS facilities must ensure, in accordance with local procedures, that the responsible manager and any other staff assisting in providing services are aware of the patient's private status.

Appeals against dismissal (Paragraph 190 Rights)

- 190.a. Subject to sub-paragraph (c), a consultant, SHMO, SHDO, AS, senior clinical medical officer, senior medical officer (community medicine), clinical medical officer on or above the 6th point of the salary scale or hospital practitioner who considers that his or her appointment is being unfairly terminated may appeal to Scottish Ministers against the termination by sending to the Scottish Ministers a notice of appeal at any time during the period of notice of termination of his or her appointment.
- b. A practitioner appealing under sub-paragraph (a) shall send a full statement of the facts of his or her case to Scottish Ministers within:
- i. the period of 4 months beginning with the date on which the practitioner received notice of termination of his or her contract, or
 - ii. where Scottish Ministers are satisfied that it was not reasonably practicable for a statement of facts to be presented before the end of that period of 4 months, such further period as Scottish Ministers may permit.

If the practitioner fails to do so, the appeal will be treated as having been determined by a decision confirming the termination of his or her appointment.

- c. There is no right of appeal under sub-paragraph (a) where:
- i. the practitioner is ordinarily required to work in the hospital, public health and community health service (HCHS) for no more than 5 NHDs and the practitioner has income from other NHS medical or dental work equal to or greater than the income from the appointment being terminated,² or
 - ii. subject to sub-paragraphs (d) and (e), where the termination is on the sole ground of personal misconduct³. "Personal Misconduct": for the purpose of this paragraph shall mean "performance or behaviour of practitioners due to factors other than those associated with the exercise of medical or dental skills".
- d. A practitioner who considers that his or her appointment is being unfairly terminated on the sole ground of personal misconduct and who does not agree that his or her conduct could reasonably be described as personal misconduct may, within the period of one month beginning with the date on which the practitioner received notice of termination of his or her employment, require Scottish Ministers to refer to a panel the

² The equivalent level of programmed activities contracted for under the new consultant contract is 4.5PAs.

³ Section 42 of the General Whitley Council Terms and Conditions provides a mechanism for appeal where a practitioner is excluded by this provision from an appeal under paragraph 190. Where such an appeal is made, the panel set up by the employer should include one professional member appointed from outside the employer at the same grade and in the same (or related) specialty as the practitioner concerned.

question whether his or her appointment is being terminated on the sole ground of personal misconduct.

- e. The panel shall comprise the Chief Medical Officer or Chief Dental Officer of the Department (as appropriate) the Chairman of the Scottish Joint Consultants Committee, or their deputies, and an advocate or solicitor not in the employment of the government legal service or any employing authority. The panel shall decide whether or not the termination is on the sole ground of personal misconduct and notify the practitioner and the employing authority terminating the appointment accordingly. If the panel decides that the termination is not on the sole ground of personal misconduct, the practitioner may (if he or she has not already done so) appeal in accordance with sub-paragraph (a) within the period of one month beginning with the date of the notification to the practitioner of the panel's decision and the time allowed for the purposes of sub-paragraph (b) shall be two months from the date of such notification.
- f. On receipt of a notice of appeal from a practitioner entitled under sub-paragraph (a) and (c) to appeal Scottish Ministers shall:
 - i. request the employing authority to give its written views on the case:
 - ii. refer the case for advice to a professional committee consisting of representatives of Scottish Ministers and representatives of the practitioner's profession and chaired by the Chief Medical Officer or Chief Dental Officer of the Department or their deputies.
- g. The employing authority shall send to Scottish Ministers its written views within the period of 2 months following the date of the request made in accordance with sub-paragraph (f)(i) ("the request date"). If the employing authority fails to do so and unless Scottish Ministers extend the period for such further period as Scottish Ministers think reasonable in a case where Scottish Ministers are satisfied that it was not reasonably practicable for the employing authority's views to be presented within two months from the request date, the appeal shall be treated as having been determined by a decision to direct that the practitioner's appointment be continued.
- h. The professional committee -
 - i. shall be assisted by an advocate or solicitor;
 - ii. may, if it thinks fit, interview the practitioner and representatives of the employing authority;
 - iii. shall, so far as is reasonably practicable, hold any such interview no earlier than one month, and no later than three months, after receipt by Scottish Ministers of the employing authority's views;
 - iv. shall give its advice to Scottish Ministers.
- i. Where it appears to the professional committee that a solution other than confirmation of termination or continuance of the appointment may be appropriate, it shall:

- i. ascertain as far as possible the extent to which such a solution is likely to be acceptable to the practitioner and the employing authority, and
- ii. include in any advice given to Scottish Ministers to arrange such a solution its assessment of the extent to which it would prove acceptable to the practitioner and the Authority.
- j. In the light of the professional committee's advice, Scottish Ministers shall, as far as is reasonably practicable, within the period of 3 months of the date of the professional committee having considered the case -
 - i. confirm the termination of the practitioner's appointment;
 - ii. direct that the practitioner's appointment continue; or
 - iii. arrange some other solution agreeable to the practitioner and the employing authority.
- k. The termination of the practitioner's appointment shall not have effect while an appeal duly made in accordance with sub-paragraph (a) or a matter duly referred in accordance with sub-paragraph (d) is under consideration. Where a decision is not given before the expiry of the period of notice of termination of the appointment, the notice shall be extended by the employing authority until the decision is given (and, in the case of a referral under sub-paragraph (d) until any time allowed by sub-paragraph (e) for appealing has expired). If Scottish Ministers so direct, the period of notice shall be further extended as Scottish Ministers may direct in a case where Scottish Ministers give a decision to arrange a solution other than confirming the termination of the practitioner's appointment or directing that his or her appointment continue.

INCORPORATED GENERAL COUNCIL CONDITIONS OF SERVICE

This Appendix lists those General Council (or successor body) agreements which apply under the contract except where otherwise indicated in these terms and conditions.

Section	GWC Subject
1.	Annual Leave Entitlement
2.	Statutory and Public Holidays
3.	Special Leave
7A.	General Statement on Equality
7C.	Dignity at Work
22.	Subsistence Allowances
23.	Travelling Expenses
26.	Removal Expenses and Associated Provisions
34	Organisational Change appeals
38.	Facilities for Staff Organisations
39.	Joint Consultation Machinery
41.	Health Awareness for NHS staff
42.	Disciplinary and Disputes Procedures
46.	Payment of Superannuation and Compensation Benefits on Premature Retirement
47.	Protection of Pay and Conditions of Service
52.	Position of Employees Elected to Parliament
53.	Membership of Local Authorities
54.	Payment of Annual Salaries
55.	Preparation for Retirement
57.	Statutory Sick Pay: Qualifying Days
58	NHS Reorganisation 1974 – continuity of employment
59.	NHS Trusts - Continuity of Service
61.	Annual Leave and Sick Pay Entitlements on Re-entry and Entry into NHS Employment
57.	Statutory Sick Pay: Qualifying Days
58	NHS Reorganisation 1974 – continuity of employment
59.	NHS Trusts - Continuity of Service
61.	Annual Leave and Sick Pay Entitlements on Re-entry and Entry into NHS Employment

MATERNITY LEAVE AND PAY

Introduction

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

Eligibility

7. An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the NHS contractual maternity pay scheme if:
 - (i) she has twelve months continuous service (see paragraphs 60 to 64) with one or more NHS employers at the beginning of the eleventh week before the expected week of childbirth;
 - (ii) she notifies her employer in writing before the end of the 15th 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 11th 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 24th 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 25th 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.

Accrual of Annual Leave

49. Annual leave will continue to accrue during maternity leave, whether paid or unpaid, provided for by this agreement.

50. Where the amount of accrued annual leave would exceed normal carry over provisions, it may be mutually beneficial to both the employer and employee for the employee to take annual leave before and/or after the formal (paid and unpaid) maternity leave period. The amount of annual leave to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Payment in lieu may be considered as an option where accrual of annual leave exceeds normal carry over provisions.

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://jobcentreplus.gov.uk/JCP/Customers/WorkingAgeBenefits/Dev_008115.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

EMPLOYMENT BREAK SCHEME

General

1. NHS employers should provide all staff with access to an employment break scheme.
2. The scheme should be agreed between employers and local staff representatives.
3. The scheme should be viewed with others, particularly those relating to flexible working, balancing work and personal life, and provisions for carers, as part of the commitment to arrangements which enable employees to balance paid work with 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 provisions 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 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, ie 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.

REDUNDANCY PAY

1. This section sets out the arrangements for redundancy pay for employees dismissed by reason of redundancy who, at the date of termination of their contract, have at least 104 weeks of continuous full-time or part-time service. These take effect from 1 October 2006. It also sets out the arrangements for early retirement on grounds of redundancy and in the interests of the service for those who are members of the NHS pension scheme and have at least two years continuous full time or part time service and two years qualifying membership in the NHS pension scheme. Pension changes take effect from 1 December 2006. It further sets out transitional arrangements from 1 December 2006 to 30 September 2011 for staff aged over 50 at the time of redundancy who are members of the NHS Pension scheme with at least five year's pensionable service.

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 Boards, Special Health Boards and NHS National Services Scotland 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 1/12th 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.*

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

* Subject to consultation, for those who are in the new pension scheme (with a normal pension age of 65), minimum pension age will be 55 from when the scheme is set up

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.⁴

13. This sum will be paid from the lump sum redundancy payment that otherwise would have been paid to the employee. If the cost to the employer of paying by single payment for early retirement is less than the value of the redundancy payment that the member would have received under paragraph 8 then the redundant employee will also receive from the employer a redundancy payment equivalent to the difference between the two sums. The cost to the employer would therefore normally be the same as if the employee had chosen to take a redundancy payment without unreduced early retirement. However, if the cost of early retirement is more than the redundancy payment due, the employer will pay the additional cost. If the employer chooses to pay in five instalments, the employer is responsible for the additional interest charge.

Treatment of Concurrent Pensionable Employment

14. Where there is concurrent pensionable employment, members may choose between:

- Ceasing all pensionable employment and taking early retirement on the terms set out below in respect of each employment in which case they cannot be pensionable again in the current scheme (normal pension age of 60). (An employment may continue if it is not more than 16 hours a week, without affecting the payment of enhanced benefits, but it will not be pensionable in the scheme) and:
- Taking benefits only in respect of the employment that is being terminated, in which case they can continue being pensionable in other employments. After 6 April 2010, this will not apply if taking benefits under the age of 55.
- 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.^{5,6}

15. 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

16. 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

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

⁵ 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.

⁶ Practitioners are general medical and general dental practitioners

- 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

17. 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.

18. '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 for alternative employment, regard should be had to the personal circumstances of the employee. Employees will, however, be expected to show some flexibility.

19. 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

20. 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.

21. 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

22. 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

23. 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

24. An employee who disagrees with the employer's calculation of the amount of redundancy payment or the rejection of a claim for redundancy payment should make representations to the

employer via local grievance procedures. See also paragraph 22 about making a claim for a redundancy payment.

Early Retirement in the Interests of the Efficiency of the Service

25. 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, sex, race, religion or disability.

26. 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.

27. 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

28. 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.

Transitional Arrangements: 1 October 2006 to 30 September 2011

29. There will be transitional arrangements in place from 1 December 2006 to 30 September 2011. These transitional arrangements apply to staff:

- whose continuous NHS service and/or pension scheme membership began before 1 October 2006
- who are aged over 50 on 30 September 2006 or who reach 50 during the transition period: 1 October until 30 September 2011; (after 6 April 2010 subject to the rules on minimum pension age set out in paragraph 10)
- who are members of the NHS Pension scheme and have at least five years qualifying membership in the scheme at the date of redundancy.

30. Employees who are made redundant and qualify for transitional protection can choose between a redundancy payment under the new arrangements and payment under transitional protection. The transitional arrangements for early retirement (but not the redundancy payment) will also apply to staff given early retirement in the interests of the service and who meet the qualifying conditions in paragraph 29.

31. Transitional Protection has two phases. The first phase applies from 1 December 2006 to 30 June 2007. During this phase, the maximum pension that an employee can receive on taking redundancy retirement is that to which they would have been entitled had they been made redundant under the old agreement on 30 September 2006.

32. The second phase is from 1 July 2007 to 30 September 2011. During this phase, as well as freezing the maximum enhanced pension at that which would have been available on 30 September 2006, there will be a further reduction so that all enhancements are removed by 30 September 2011.

33. The date used to calculate the level of both final pensionable pay and of salary for redundancy payment under the transition will be set by reference to the actual date of redundancy.

Calculation of Baseline Entitlement During Transition

34. For employees taking advantage of the transitional arrangements, and subject to a maximum of 20 years' reckonable service being counted, the lump sum redundancy payment will be calculated based on the arrangements in place before 1 October 2006 as follows. Based on service at 30 September 2006:

- 1 1/2 week's pay for each complete year of reckonable service at age 41 or over
- one week's pay for each complete year of reckonable service at age 22 or over but under 41
- 1/2 week's pay for each complete year of reckonable service at age 18 or over but under 22
- overall maximum 30 week's pay.

35. Fractions of a year of reckonable service will not be taken into account except that they may be aggregated under paragraph 34 above to make complete years. The lowest weeks' pay multiplier relevant to the employee's calculation will apply to the complete year aggregated.

Reduction to Baseline Entitlement

36. Redundant employees who are entitled to an enhancement of their pension benefits on ceasing to be employed will, if the enhancement of service if they had been made redundant on 30 September 2006 is less than 10 years, be entitled to receive a redundancy payment. Where the enhancement of service does not exceed 6 2/3 years they will be paid in full; where the enhancement of service exceeds 6 2/3 years they will be reduced by 30 per cent in respect of each year of enhanced service over 6 2/3 years with pro-rata reduction for part years.

37. The redundancy payment made under these transitional arrangements will be based on the number of week's service applicable for a redundancy on 30 September 2006 along with the reduction for enhancement greater than 6 2/3 years that would have been made had the redundancy taken place on that date. If there has been a break in continuous service between 1 October 2006 and the date of redundancy, then the payment would be based on the number of years continuous service at the date of redundancy.

38. As a baseline calculation for transitional protection all employees eligible for premature payment of pension and compensation benefits under the terms of this agreement on transition shall have their reckonable years in the NHS scheme at 30 September 2006 doubled subject to a maximum enhancement of ten added years. Total reckonable years (including enhancements) will in all cases be limited to the lesser of:

- the total reckonable service that would have been attained by continuing in service to retirement age of 65; or
- 40 years; provided that:
- the enhancement of reckonable service for employees with relevant optant service shall be based on the aggregate of their reckonable NHS service and their relevant optant service.

Transition Phase One: 1 October 2006 to 30 June 2007

39. For redundancies from 1 October 2006 until 1 December 2006, when the regulations to give effect to the transition are introduced, employees will receive enhanced pension based on the pre 1 October arrangements including the calculation of redundancy payment.

40. From 1 December 2006 to 30 June 2007, the enhancement that the employee will be eligible to receive will be the enhancement on which the pension would have been based had they been made

redundant on 30 September 2006, less the number of days since 30 September 2006. For those who have any part time membership, the reduction in enhancement will be scaled down according to the scaling factor applicable at 30 September 2006.

Transition Phase Two: 1 July 2007 to 30 September 2011.

41. During this phase, maximum enhancement available to the employee made redundant will continue to be the enhancement available on 30 September 2006 less the number of days since 30 September 2006. There will be a further reduction in entitlement to enhancement. For those whose enhancement on 30 September 2006 would have been greater than five years, the additional amount of service enhancement over five years should be reduced by $1/60^{\text{th}}$ for each whole month that has elapsed between 30 September 2006 and the date of redundancy. The effect of the two transition elements together is that after each year of transition, the maximum enhancement would be reduced by two years until no enhancement is available from 1 October 2011.

42. Paragraphs 29 to 42 will be removed from this agreement on 1 October 2011.

CARING FOR CHILDREN AND ADULTS

General

1. All NHS employers must have a carer's policy to address the needs of people with caring responsibilities and to meet the requirements of the "right to request" flexible working legislation for carers of children and dependant adults (see Employment Relations Act for definition of "carer"). This policy should emphasise the benefits of employment breaks, flexible working arrangements and balancing work and personal life as set out in Temporary Appendices 12, 15 and 16.

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, where an employee is involved in substantial and regular care sufficient for them to seek a change in their permanent contract of employment

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 Appendices, 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 childcare, the policy should indicate where other arrangements are available to support people with childcare responsibilities, and what alternative ways of working exist.

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.

FLEXIBLE WORKING ARRANGEMENTS

General

1. NHS employers in partnership with staff organisations will develop positive flexible working arrangements which allow people to balance work responsibilities with other aspects of their lives.
2. Employers are required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff and job applicants under the Disability Discrimination Act, and staff returning from maternity leave (see Appendix 11).
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.

BALANCING WORK AND PERSONAL LIFE

GENERAL

1. NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments.
2. Leave arrangements should be part of an integrated policy of efficient and employee friendly employment practices, and this Schedule should be seen as operating in conjunction with other provisions particularly the Employment Break Scheme, Flexible Working Arrangements and the Caring for Children and Adults Appendices.
3. Arrangements should be agreed between employers and local staff representatives.
4. A dependant is someone who is married to, or is a partner or civil partner, “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.

FORMS OF LEAVE

Parental Leave

5. This should be a separate provision from either maternity or maternity support leave and should provide an untransferable individual right to at least 13 weeks’ leave (18 weeks if child is disabled). 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.

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

11. This will apply to biological and adoptive fathers, nominated carers and same sex partners.
12. There will be an entitlement to two weeks’ occupational maternity support 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 paternity pay is ordinarily available

when there is a multiple birth. However, NHS organisations have scope for agreeing locally more favourable arrangements where they consider it necessary, or further periods of unpaid leave.

13. Eligibility for occupational paid maternity support pay will be twelve months' continuous service with one or more NHS employers at the beginning of the week in which the baby is due. More favourable local arrangements may be agreed with staff representatives and/or may be already in place.

14. Local arrangements should specify the period during which leave can be taken and whether it must be taken in a continuous block or may be split up over a specific period.

15. An employee must give his or her employer a completed form SC3 "Becoming a Parent" at least 28 days before they want leave to start. The employer should accept later notification if there is good reason.

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

17. All employees are entitled to two weeks maternity support leave. Employees who are not eligible for occupational maternity support pay may still be entitled to Statutory Paternity Pay (SPP) subject to the qualifying conditions. The rate of SPP is the same as for Statutory Maternity Pay (SMP).

Adoption Leave and Pay

18. All employees are entitled to take 52 weeks adoption leave.

19. There will be entitlement to paid occupational adoption leave for employees wishing to adopt a child who is newly placed for adoption.

20. It will be available to people wishing to adopt a child who has primary carer responsibilities for that child.

21. 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.

22. 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.

23. 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.

24. 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.

25. Reasonable time off to attend official meetings in the adoption process should also be given.

26. 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

27. Employees will be entitled to Keep in Touch Days (KIT) in line with the maternity leave and pay provisions as set out in Appendix 11.

Leave/Time Off for Domestic Reasons

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

Monitoring and Review

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