

**HUMAN RESOURCES DIRECTORATE
PAY AND EMPLOYMENT UNIT**

Chief Executives of HSC Bodies¹;

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Your Reference: **HSC (AfC)(1) 2012**

13 March 2012

Dear Colleagues

**NHS AGENDA FOR CHANGE TERMS AND CONDITIONS OF SERVICE
HANDBOOK (AMENDMENT NUMBER 25)**

Summary

1. This pay circular informs HSC employers of revisions to Section 35 and Section 16 of the NHS terms and conditions of service handbook. This follows a partnership review of the handbook by the NHS Staff Council to ensure legal compliance with the Equality Act 2010 and Public Sector Duty.
2. Although the Equality Act 2010 does not extend to Northern Ireland, anti discrimination legislation already exists here and the general forms of discrimination in Northern Ireland are the same as in GB. For example, the Disability Discrimination Act 1995, although now repealed in GB remains in force in Northern Ireland. The Northern Ireland legislation also prohibits discrimination on grounds of religious and/or political belief albeit in a different format to that used in GB.

¹ The Health and Social Care Board, HSC Trusts, the Public Health Agency, the Business Services Organisation, the Northern Ireland Blood Transfusion Service Agency, the Northern Ireland Guardian ad Litem Agency, the Northern Ireland Practice & Education Council for Nursing, Midwifery & Health Visiting (NIPEC), the Northern Ireland Social Care Council (NISCC), the Patient & Client Council, the Northern Ireland Regulation and Quality Improvement Authority and the Northern Ireland Medical and Dental Training Agency (NIMDTA)

3. **Section 35:** Revisions have been made to Section 35 to reflect the changes introduced by the Additional Paternity Leave Regulations 2010 for babies born on or after the 3 April 2011 or in adoption cases where a matching notice is issued on or after the 3 April 2011.
4. **Section 16: Redundancy:** References to the transitional arrangements in place between 1 October 2006 and 30 September 2011 have been removed. Paragraphs 16.30 to 16.43 are now deleted.
5. The content of this Circular has been agreed with locally recognised trade unions.

Action

6. Employers should note this amendment to the NHS terms and conditions of service handbook.

Enquiries

7. **Employees should direct personal enquiries to their employer.**
8. Enquiries about the contents of this Circular should be directed to, Human Resources Directorate, Pay and Employment Unit, Room D1, Castle Buildings, Stormont, Upper Newtownards Road, Belfast BT4 3SJ (telephone 028 90522832), email: p&e@dhsspsni.gov.uk.

Further Copies

9. Copies of this Circular can be obtained from the Department's website at www.dhsspsni.gov.uk/index/publications. A copy of the NHS Terms and Conditions of Service Handbook can be downloaded from the NHS Employers website at:
http://www.nhsemployers.org/sitecollectionDocuments/afc_service_handbook_aw_010708.pdf.

Diane Taylor

DIANE TAYLOR
Director of Human Resources

Pay Circular (AforC) 1/2012

NHS Terms and Conditions of Service Handbook (amendment number 25): Revisions to the handbook to ensure legal compliance with the Equality Act 2010 and Public Sector Duty; Revisions to Section 35 to reflect the changes introduced by the Additional Paternity Leave Regulations 2010 and in Section 16 the removal of the transitional arrangements in place: 1 October 2006 to 30 September 2011

To all NHS employers

Summary

This pay circular informs employers of the NHS Staff Council's agreements on:

- Revisions to the NHS terms and conditions of service handbook following a partnership review by the NHS Staff Council to ensure legal compliance with the Equality Act 2010 and Public Sector Duty.
- Section 35: Revisions to Section 35 to reflect the changes introduced by the Additional Paternity Leave Regulations 2010 for babies born on or after the 3 April 2011 or in adoption cases where a matching notice is issued on or after the 3 April 2011.
- Section 16: Redundancy – Reference to the transitional arrangements in place: 1 October 2006 to 30 September 2011 are removed. Paragraphs 16.30 to 16.43 are deleted.

Action:

Revisions to the terms and conditions of service handbook

1. Revisions to the terms and conditions of service handbook following a review by the NHS Staff Council to ensure legal compliance with the Equality Act 2010 and Public Sector Duty.

Section 16: Redundancy

2. Reference to the transitional arrangements in place: 1 October 2006 to 30 September 2011. Paragraphs 16.30 to 16.43 are removed: Paragraphs 16.30 to 16.43 are deleted.

Effect of this amendment

3. Details of the changes made effective by this circular are in the attached Annex.

Enquiries

4. Employees must direct personal enquiries to their employer.

1 February 2012

The NHS Terms and Conditions of Service Handbook

Pay Circular (AforC) 1/2012

5. Employers should direct enquiries to: www.agendaforchange@nhsemployers.org
6. Copies of this circular can be downloaded from: www.nhsemployers.org
7. A copy of the NHS Terms and Conditions of Service Handbook can be downloaded from the NHS Employers website at the following web address:
www.nhsemployers.org/PayAndContracts/AgendaForChange/Pages/Afc-AtAGlanceRP.aspx
8. Prior to the establishment of NHS Employers in November 2004, responsibility to inform the NHS of changes to pay and allowances for staff on Agenda for Change contracts rested with the Department of Health. Changes were published in Advance Letters. Copies of Advance Letters going back to 1995 may be obtained from the Department of Health website at the following address:
www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Advancedletters/index.htm

Issued by

Geoffrey Winnard
Head of Agenda for Change/Non-Medical Pay
NHS Employers

Annex

Pay Circular (AforC) 1/2012

NHS Terms and Conditions of Service Handbook, amendment number 25

In this pay circular, Section 16, and Section 35 have been reproduced in full. This is to help readers recognise the changes they contain. Some pages in other Sections which contain changes are also reproduced e.g. sections 6, 30, 31, 32, 33, 34 and 36 some other pages are attached as backing pages.

The changes made effective by this circular are:

Title Page:

“Amendment number 24” is deleted and replaced by “**Amendment number 25**”

“Pay Circular (AforC) 3/2011” is changed to “**Pay Circular (AforC) 1/2012**”.

A replacement title page is attached.

Section 6: Career and pay progression

In section 6: paragraph 6.26, 7th bullet point, lines 3 and 4 have been changed to: “or bias in relation to race or ethnicity, gender, **disability**, sexual orientation, religion, **or belief**, age or trade union”

A replacement page is attached.

Section 16: Redundancy

In Section 16: Paragraph 16.1: The final sentence is deleted.

In Section 16: To take account of consultations that have now ceased, Footnote 1 and 2 are deleted. All subsequent footnotes in Section 16 have been re-numbered.

In Section 16: Paragraph 16.26: lines 10, 11 and 12 have been changed to: “discrimination on grounds of age, **gender, gender identity or gender expression, pregnancy or maternity, marriage or civil partnership**, race, religion or **belief**, disability, **or sexual orientation**.”

In Section 16: Paragraph 16.27 lines, 6 and 7 have been changed to: “before agreeing to early retirement, **including reasonable adjustments to an existing role or potential suitable alternatives.**”

In Section 16: Delete header: “Transitional arrangements: 1 October 2006 to 30 September 2011”

In Section 16: Paragraphs 16.30 to 16.43 are deleted.

A new Section 16 has been reproduced in full. 4 replacement pages are attached.

Section 30: General equality and diversity statement

In section 30: paragraph 30.2, 5th bullet point, line 4 has been changed to: “gender **pregnancy or maternity, marriage or civil partnership**, religion”

In Section 30: Paragraph 30.5, 1st bullet point, lines 1 and 2 have been changed to: “workforce data by race, **gender**, disability, **sexual orientation, religion or belief, age** and contract status (i.e. part time)”

In Section 30: Paragraph 30.5 the 3rd bullet point has been changed to: “data on pay and grading by race, **gender**, disability, **sexual orientation, religion or belief, age** and contract status i.e. part time” - a replacement page has been attached.

A replacement page is attached.

Section 31: Recruitment, promotion and staff development

In section 31: paragraph 31.22 line 2 has been changed to “arrangements **or reasonable adjustments** to be made in the selection”

In Section 31: Paragraph 31.23 a new paragraph is inserted: “**Applicants must not be asked about their health status prior to an offer of employment.**” All the following paragraphs have been re-numbered.

A replacement page is attached.

Section 32: Dignity at work

In section 32: paragraph 32.9 lines 1 to 4 have been changed to: “Harassment is defined as “any conduct based on age **gender, pregnancy or maternity, marriage or civil partnership**, sexual orientation, gender reassignment, disability, HIV status, race, religion **or belief** political, trades union or other opinion, national or social”

A replacement page is attached.

Section 33: Caring for children and adults

In section 33: paragraph 33.5, lines 2 and 3 have been changed to: “dependent adults **including the needs of dependant young people over the age of 14** where an employee is involved in substantial and regular”

In Section 33: Paragraph 33.7, lines 2 and 3 have been changed to: “**support**, the policy should indicate where other arrangements are available to **help** people with **caring** responsibilities, and”

A replacement page is attached.

Section 34: Flexible working arrangements

In section 34: paragraph 34.2 has been deleted and replaced with “ Employees are required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff, **staff with dependants and job applications under the Equality Act** and staff who are returning from maternity leave (see Section 15).”

A replacement page is attached.

Section 35: Balancing work and personal life

In section 35: Paragraph 35.4, lines 1 and 2 has been changed to: "A dependent is someone who is married to, is a civil partner **or a partner (whether opposite or same sex)** "a near relative" or someone".

Section 35: Maternity support (paternity) leave and pay and ante-natal leave

In section 35: Paragraphs 35.11 to 35. 17 setting out the arrangements for Maternity support (paternity) leave and pay and ante-natal leave have been deleted and have been replaced and all the following paragraphs have been re-numbered.

Section 35 has been replaced in full. 3 pages are attached.

Section 36: Employment break scheme

In Section 36, paragraph 36.22 has been changed to: "The operation of the scheme should be monitored annually by employers, in partnership with local staff representatives. **This will include consideration of diversity data.**

A replacement page is attached.

NHS terms and conditions of service handbook

Amendment number 25 -
Pay Circular (AforC) 1/2012

THE NHS STAFF COUNCIL
WORKING IN PARTNERSHIP

progression may be deferred if the review indicates that they are not yet applying the full range of knowledge and skills required for the post.

6.24 - The gateway system will only become fully operational when an employer has put in place reasonable arrangements to ensure that staff have access to development reviews, personal development plans and appropriate support for training and development to meet the applied knowledge and skills required at the gateway concerned.

6.25 - Existing staff with at least 12 months experience in post will be assumed to have met the criteria for passing through the foundation gateway. Where the gateway system is operational they will, however, be subject to the normal operation of the new system at the second gateway.

6.26 - The following safeguards will also apply:

- there will be a normal expectation of progression and no national or local quotas will apply. All staff must have an equal opportunity to demonstrate the required standard of knowledge and skills to progress through the gateways and pay points;
- the applied skills and knowledge required at the foundation and second gateways should be clearly stated during recruitment;
- the KSF outlines may be changed subsequently by local agreement, within the work area concerned, where changes apply to a number of posts, or with the individual, where they apply only to a single post. They may also be changed where that is necessary to reflect a change in professional standards, as agreed by the relevant professional body or authority;
- the demonstration of knowledge and skills must be that used within each dimension, level and indicators in the KSF;
- employers must ensure there is a robust, jointly agreed process for checking managers' decisions and reviewing disagreements, with an agreed timescale for re-review;
- pay progression cannot be deferred unless there has been prior discussion between the individual and the person undertaking their review (which should be recorded) about the knowledge and skills that the individual needs to develop and apply and the member of staff has been given the opportunity to achieve the necessary development;
- employers and staff representatives acting in partnership, will monitor decisions on pay progression to ensure that there is no discrimination or bias in relation to race or ethnicity, gender, disability, sexual orientation, , religion or belief, age or trade union membership, or pattern of employment e.g. part-time, flexible and night workers.

Development of Professional Roles

6.27 - Guidance on the development of professional roles for healthcare professionals on pay band 5 is set out at Annex T.

Exceptional grounds for deferral of pay progression

6.28 - Where significant weaknesses in performance in the current post have been identified, discussed and documented with the staff member concerned and have not been resolved, despite opportunities for appropriate training/development and support, exceptionally, pay progression may be deferred at any pay point until the problems are resolved.

6.29 - Significant weaknesses are those which prevent a staff member from continuing to apply consistently, across a recognised normal workload, the knowledge and skills specified under the KSF foundation post outline for the foundation gateway or, for staff above the second gateway, the full range of knowledge and skills specified under the full KSF post outline, without continued supervision and support inappropriate to the post.

Career development moves

6.30 - Where a member of staff moves to another job in the NHS covered by this agreement, where the necessary arrangements to support the operation of the gateways are in place, pay progression will normally depend on demonstrating the knowledge and skills specified in the KSF outline for the post, within the first twelve months of appointment.

6.31 - Where, however, an individual re-trains in a different area of work, for wider service or operational reasons, with the explicit agreement of the employer concerned, their existing level of pay should be protected. Once protection is agreed, it may not be withdrawn until the person concerned has had a reasonable opportunity to complete their re-training and progress to a point where pay protection is no longer required. Explicit employer agreement in this context cannot, however, be deemed to have been given solely because the employer has agreed to re-employ someone following redundancy.

Temporary movement into a higher pay band

6.32 - Individuals may be moved into a higher pay band where it is necessary to fill a post on a temporary basis when a vacancy is unfilled, but being advertised, or the post is being held open for someone who is due to return, e.g. from long-term sick leave, maternity leave, or from extended training.

Section 16: Redundancy pay

Introduction

16.1 - 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 of continuous full-time or part-time service and two years of qualifying membership in the NHS Pension Scheme. Pension changes take effect from 1 December 2006.

Definition of redundancy

16.2 - 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

16.3 - 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 any of the organisations listed at Annex A in this Handbook 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

16.4 - “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

- 16.5 - "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 – see Section 12 of the handbook.
- 16.6 - 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 month's pay

- 16.7 - "Month's 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

- 16.8 - 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 years' reckonable service being counted.

16.9 - 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

16.10 - 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 Pension 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

16.11 - '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

16.12 - 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

16.13 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

16.14 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.

16.15 - Members with concurrent practitioner and non-practitioner employments, who choose to cease all pensionable employments, will receive only their non-practitioner benefits on redundancy grounds. Where appropriate, benefits for practitioner membership may be taken on an early retirement basis with an actuarial reduction or preserved for payment at age 60.^{2 3}

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.

16.16 The employer who authorises early retirement will be responsible for the pension costs accruing from other terminating employment. If a member returns to work after taking their pension, their pension will be abated, if the combined value of their pension and salary is greater than they earned prior to retirement. This will continue until they reach their normal pension age.

Exclusion from eligibility

16.17 Employees shall not be entitled to redundancy payments or early retirement on grounds of redundancy if:

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

Suitable alternative employment

16.18 Employers have a responsibility, before making a member of staff redundant or agreeing early retirement on grounds of redundancy, to seek suitable alternative employment for that person, either in their own organisation or through arrangements with another NHS employer. Employers should avoid the loss of staff through redundancy wherever possible, to retain valuable skills and experience where appropriate within the local health economy.

16.19 'Suitable alternative employment', for the purposes of paragraph 17, should be determined by reference to Sections 138 and 141 of the Employment Rights Act 1996. In considering whether a post is suitable alternative employment, regard should be had to the personal circumstances of the employee. Employees will, however, be expected to show some flexibility.

16.20 - For the purposes of this scheme any suitable alternative employment must be brought to the employee's notice in writing or by electronic means agreed with the employee, before the date of termination of contract and with reasonable time for the employee to consider it. The employment should be available not later than four weeks from that date. Where this is done, but

the employee fails to make any necessary application, the employee shall be deemed to have refused suitable alternative employment. Where an employee accepts suitable alternative employment the 'trial period' provisions in Section 138 (3) of the Employment Rights Act 1996 will apply.

Early release of redundant employees

16.21 Employees who have been notified of the termination of their employment on grounds of redundancy, and for whom no suitable alternative employment in the NHS is available, may, during the period of notice, obtain other employment outside the NHS.

16.22 - If they wish to take this up before the period of notice of redundancy expires the employer will, unless there are compelling reasons to the contrary, release such employees at their request on a mutually agreeable date. That date will become the revised date of redundancy for the purpose of calculating any entitlement to a redundancy payment under this agreement.

Claim for redundancy payment

16.23 - Claims for redundancy payment or retirement on grounds of redundancy must be submitted within six months of the 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

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

Disputes

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

Early retirement in the interests of the efficiency of the service

- 16.26 - Members of the NHS Pension Scheme will receive payment of benefits without reduction if they retire early in the interests of the efficiency of the service, and they satisfy the qualifying conditions set out in paragraph 10. Retiring early in the interests of the service is a flexibility available at employer discretion. In these cases, no redundancy payment is due. In agreeing to retirement in the interests of the service, the employer undertakes to pay the costs of paying the pension and lump sum early. Employers will need to ensure that they exercise this discretion appropriately and will be conscious of the implications of any potential discrimination on grounds of age, gender, gender identity or gender expression, pregnancy or maternity, marriage or civil partnership, race, religion or belief, disability, or sexual orientation.
- 16.27 These arrangements are aimed at employees who have given valuable NHS service in the past but are no longer capable of doing so. This might be because of new or expanded duties or a decline in the ability to perform existing duties efficiently but not so as to qualify them for ill health retirement. Employers would be expected to consider alternatives before agreeing to early retirement, including reasonable adjustments to an existing role or potential suitable alternatives.
- 16.28 - The relevant NHS pension scheme certifies the grounds on which early retirement is taking place. The scheme does so on the basis of the information provided by the employer. In each case, therefore, an appropriate senior manager should authorise the early retirement, ensuring that the relevant criteria have been met.

Employer responsibilities

- 16.29 - Employer contributions to the NHS Pension Scheme do not cover the costs of early retirement benefits. There is a requirement for NHS employers to pay these costs if they retire staff early on grounds of redundancy or in the interests of the service.

Part 5: Equal opportunities

Section 30: General equality and diversity - statement -

30.1 - All parties to this agreement commit to building a NHS workforce which is valued and whose diversity reflects the communities it serves, enabling it to deliver the best possible healthcare service to those communities. The NHS will strive to be a leader in good employment practice, able to attract and retain staff from diverse backgrounds and communities.

30.2 - The parties will strive to ensure that:

- everyone working in the NHS should be able to achieve his or her full potential, in an environment characterised by dignity and mutual respect;
- the past effects of institutional discrimination are identified and remedial action taken;
- equality of opportunity is guaranteed;
- Individual difference and the unique contribution that individual experience, knowledge and skills can make is viewed positively;
- job descriptions, person specifications and the terms and conditions of service fit with the needs of the service and those who work in it, regardless of age, disability, race, nationality, ethnic or national origin, gender, pregnancy or maternity, marriage or civil partnership, religion, beliefs, sexual orientation, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trades union membership.

Making it happen

30.3 - To achieve these goals all parties to this agreement will ensure that:

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- everyone who works in the NHS knows about these agreements and what they say;
- everyone knows what their responsibilities are in relation to equality and diversity and these are reflected in individual KSF outlines and development reviews;
- steps taken to promote equality and diversity are monitored;
- appropriate training is provided. This will include appropriate equality and diversity training for all staff and relevant skills based training for line managers and others who play a key role in implementing equality and diversity policy;
- appropriate resources where appropriate, are made available to achieve these aims;
- the boards of NHS trusts (of NHS boards in Scotland) and other NHS organisations and senior managers will demonstrate their commitment and accountability for implementing these aims by measuring and monitoring progress through their equality schemes;
- the NHS will encourage other organisations, such as local authorities, education providers, contractors and recruitment agencies, to work in partnership with the service to achieve the aims of this agreement, including the application of its commissioning and procurement activities.

Monitoring and review

- 30.4 - The NHS Staff Council will keep this agreement under review against best practice, as it develops, inside the NHS and elsewhere.
- 30.5 - NHS employers and local staff representatives should review their local arrangements to ensure they produce outcomes that are consistent with this agreement. Annual 'equality audits' are recommended, and these should include a review of:
- workforce data by race, gender, , disability, sexual orientation, religion or belief, age and contract status (i.e. part time);
 - existing equality policies and procedures and any gaps requiring the development of new arrangements;
 - data on pay and grading by race, gender, , disability, sexual orientation, religion or belief, age and contract status i.e. part-time.
- 30.6 - Where under-representation of particular groups is identified, employers should take advantage of the positive action provisions in the discrimination legislation, assuming that the detailed conditions in the legislation are met.

31.18 - Selection should be consistently applied and based upon clear criteria which are in line with the job description and person specification.

31.19 - A written record of all decisions should be kept for a minimum of one year.

31.20 - A means of monitoring the selection process should be agreed at local level.

Selection processes and tools

31.21 - Interviews are one means of selecting job applicants. Consideration should be given to the options available. In all cases the process should suit the requirements of the job and be designed to bring out the best in the applicants.

31.22 - All shortlisted applicants should be asked if they require any particular arrangements or reasonable adjustments to be made in the selection process, to enable ease of participation.

31.23 - Applicants must not be asked about their health status prior to a offer of employment.

Promotion to a higher pay band

31.24 - Promotion should be a competitive selection process for internal candidates except in cases where the provisions for the development of professional roles for certain staff in band 5 apply (see Annex T).

31.25 - Opportunities for promotion should be as widely publicised as possible and open to anyone with either the skills, or potential after training, to meet the requirements of the job description.

31.26 - Selection processes should apply as above.

31.27 - All applicants, where they request it, should be entitled to reasons why their promotion has been unsuccessful.

Positive action

31.28 - As set out in the general statement in Section 30, positive action measures are permitted where the conditions set down in legislation are met.

31.29 - Statements in advertisements, and the appropriate placement of advertisements, can encourage people from under-represented groups to apply.

Training and development

- 31.30 - Every new employee should undergo a comprehensive induction programme, including training in equal opportunities policy and practice at work.
- 31.31 - Every employee should have annual development reviews and a personal development plan (see Section 3 of the KSF Handbook).
- 31.32 - Information on training and development opportunities should be widely publicised and the take up of such opportunities monitored as part of the auditing process.

Monitoring and review

- 31.33 - Recruitment policies and practices should be monitored in line with codes of practice published by both statutory bodies.
- 31.34 - Action should be taken by employers to analyse data on recruitment, promotion and training in partnership with local staff representatives.
- 31.35 - Records on recruitment and promotion, including reasons for decisions to employ or not, should be kept for a minimum of twelve months.

Section 32: Dignity at work

Policy

- 32.1 - As part of the overall commitment to equality for a diverse workforce, NHS employers should aim to create a culture in which all staff have the right to be treated with dignity and respect.
- 32.2 - To achieve this, employers should, in partnership with local staff representatives, draw up a policy on dignity at work, including a procedure for dealing effectively with cases of harassment.
- 32.3 - The policy should apply to all staff, contractors and employees of other organisations who are on site, volunteers, visitors and patients at the point of service delivery.
- 32.4 - It should be the responsibility of employers, through publication and promotion, to ensure that all concerned are aware of this policy and of sources of available support; that managers and staff are aware of the expectations which flow from the policy and what to do if these are not met.
- 32.5 - There should be appropriate training undertaken to support the promotion of this policy.

Setting a culture to promote dignity at work

- 32.6 - NHS employers and local staff representatives should agree what actions will be taken to identify the main causes of harassment or bullying at work and what actions should be taken to remove these causes.
- 32.7 - NHS employers have a duty to prevent harassment taking place. Managers have a responsibility to set the standards of acceptable behaviour expected of staff. They should ensure their own behaviour could not be construed as personal harassment by acting with fairness and equity. This includes using their judgement to correct standards of conduct or behaviour which could be seen as harassment, and to remind staff of these standards. Each member of staff carries responsibility for his or her own behaviour.

Dealing with complaints

- 32.8 - NHS employers and local staff representatives should agree in partnership a procedure designed to deal with cases where there has been a departure from the dignity at work policy or where there has been an allegation of harassment or bullying.

Definitions

- 32.9 - Harassment is defined as “any conduct based on age, gender, pregnancy or maternity, marriage or civil partnership, sexual orientation, gender reassignment, disability, HIV status, race, religion, or belief political, trades union or other opinion, national or social origin, association with a minority, domestic circumstances, property, birth or other status which is unreciprocated or unwanted and which affects the dignity of men and women at work.”
- 32.10 - Bullying is defined as “the unwanted behaviour, one to another, which is based upon the unwarranted use of authority or power.”
- 32.11 - In all cases it will be for the recipient to define what is inappropriate behaviour.
- 32.12 - “At work” includes any place where the occasion can be identified with either the requirements of the employer, or with social events linked to the same employment. It includes any place where NHS care is delivered.

Process

- 32.13 - The procedure for dealing with complaints against members of staff should be seen as separate and different from the grievance procedure, and should recognise the difficulties being experienced by complainants.
- 32.14 - Separate procedures dealing with complaints by members of staff against patients, visitors or employees of other organisations should be drawn up.
- 32.15 - The procedures should advise complainants that they may, if they wish, deal with their complaint informally, by directly requesting the behaviour to stop (or with the assistance of a colleague).
- 32.16 - All complaints should be taken seriously and investigated promptly and thoroughly.
- 32.17 - For complaints against other staff members:
- there will be rights of representation in line with the grievance procedure and complainants should have access to trained advisers to help them to deal with the process of complaint;
 - there will be specific provision within the procedure to deal with cases where the alleged harasser manages, or is managed by, the complainant;

- an alleged harasser will have the right to be informed in writing of the complaint made against them.

Section 33: Caring for children and adults

General

- 33.1 - 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 flexible working arrangements, balancing work and personal life and employment breaks as set out in Section 34 to 36.
- 33.2 - 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.
- 33.3 - 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 carer's policy.

Child and dependant care

- 33.4 - Childcare covers a range of care choices for children from birth up to age 14 years.
- 33.5 - Dependant care covers a range of options to meet the needs of dependant adults including the needs of dependant young people over the age of 14 where an employee is involved in substantial and regular care sufficient for them to seek a change in their permanent contract of employment.
- 33.6 - 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 Sections in this part, 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 trades unions;
- allocation of senior management responsibility for the operation and monitoring of the policy.

33.7 - Where a decision is taken not to offer particular forms of support, the policy should indicate where other arrangements are available to help people with caring responsibilities, and what alternative ways of working exist.

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

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

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

Section 34: Flexible working arrangements

General

- 34.1 - 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. In considering the provisions of this paragraph employers should also have regard to the provisions in Section 2, *Maintaining round the clock services* and Annex A3: Principles for harmonised on-call arrangements.
- 34.2 - Employers are required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff, staff with dependants and job applications under the Equality Act and staff returning from maternity leave (see Section 15).
- 34.3 - New working arrangements should only be introduced by mutual agreement, whether sought by the employee or the employer.
- 34.4 - Flexible working should be part of an integrated approach to the organisation of work and the healthy work/life balance of staff.
- 34.5 - Policies for flexible working should be made clear to all employees.
- 34.6 - 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;
- tele-working, 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, separated parents to have access to their children and flexible rostering;
- flexible retirement.

34.7 - Flexible working arrangements should be available to all employees.

34.8 - 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.

34.9 - There should be a clear procedure for application for flexible working, agreed by employers and local staff representatives.

34.10 - 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

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

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

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

Section 35: Balancing work and personal life

General

- 35.1 - NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments. This form of leave should cover a wide range of needs from genuine domestic emergencies through to bereavement and should take into account all religion or belief obligations and associated activities.
- 35.2 - Leave arrangements should be part of an integrated policy of efficient and employee friendly employment practises, and this Section should be seen as operating in conjunction with other provisions, particularly the Employment Break Scheme, Flexing Work Positively and the Caring for Children and Adults Sections.
- 35.3 - Arrangements should be agreed between employers and local staff representatives.
- 35.4 - A dependent is someone who is married to, is a civil partner, or a partner (whether opposite or same sex) "a near relative" or someone who lives at the same address as the employee. A relative for this purpose includes: parents, parents-in-law, adult children, adopted adult children, siblings (including those who are in-laws), uncles, aunts, grandparents and step relatives or is someone who relies on the employee in a particular emergency.

Forms of leave

Parental leave

- 35.5 - This should be a separate provision from either maternity or maternity support leave and should provide a non-transferable individual right to at least 13 weeks' leave (18 weeks if child is disabled). Leave is normally unpaid, but may be paid by local agreement.
- 35.6 - 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).
- 35.7 - 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.

- 35.8 - 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.
- 35.9 - During parental leave the employee retains all of his/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.
- 35.10 - 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

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

Maternity support (paternity) leave

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

Occupational pay during maternity support (paternity) leave

- 35.16 - There will be an entitlement to two weeks' occupational ordinary maternity support (paternity) pay. Full pay will be calculated on the basis of the

average weekly earnings rules used for calculating occupational maternity pay entitlements. The employee will receive full pay less any statutory paternity pay receivable. Only one period of occupational maternity support (paternity) pay is ordinarily available when there is a multiple birth.

35.17 - Eligibility for the two weeks of occupational maternity support (paternity) pay will be 12 months' continuous service with one or more NHS employer at the beginning of the week in which the baby is due.

35.18 - Employees who are not eligible for the two weeks of occupational maternity support (paternity) pay may still be entitled to statutory paternity pay subject to meeting the qualifying conditions. Details of the qualifying conditions can be found on the <http://www.direct.gov.uk/en/employment/index.htm>

Statutory pay during maternity support (paternity) leave

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

Rights during additional maternity support (paternity) leave

35.20 - Employees who are entitled to additional maternity support (paternity) leave/pay will be entitled to take up to 10 keeping in touch days during the course of the additional maternity support (paternity) leave period. The criteria for keeping in touch days is set out in Section 15 and is based on those used for statutory maternity leave and pay.

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

Ante natal leave

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

Adoption leave and pay

35.23 - All employees are entitled to take 52 weeks' adoption leave.

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

- 35.25 - It will be available to people wishing to adopt a child who has primary carer responsibilities for that child.
- 35.26 - Where the child is below the age of 18 adoption leave and pay will be in line with the maternity leave and pay provisions set out in this agreement.
- 35.27 - Eligibility for occupational adoption pay will be 12 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.
- 35.28 - If there is an established relationship with the child, such as fostering, prior to the adoption, or when a step-parent is adopting a partner's children, there is scope for local arrangements on the amount of leave and pay in addition to time off for official meetings.
- 35.29 - If the same employer employs both parents, the period of leave and pay may be shared. One parent should be identified as the primary carer and be entitled to the majority of the leave. The partner of the primary carer is entitled to occupational maternity support leave and pay.
- 35.30 - Reasonable time off to attend official meetings in the adoption process should also be given.
- 35.31 - Employees who are not eligible for occupational adoption pay may still be entitled to statutory adoption pay (SAP) subject to the qualifying conditions. The rate of SAP is the same as for statutory maternity pay.

Keeping in touch

Work during the adoption leave period

Keeping in touch days

- 35.32 - Employees will be entitled to keep in touch days (KIT days) in line with the maternity leave and pay provisions as set out in Section 15 of this agreement.

Leave/time off for domestic reasons

- 35.33 - This form of leave should cover a range of needs, from genuine domestic emergencies through to bereavement.
- 35.34 - These provisions should cover all employees.

- 35.35 - Payment may be made by local agreement, but the expectation is that relatively short periods of leave for emergencies will be paid.
- 35.36 - If the need for time off continues, other options may be considered, such as a career break.
- 35.37 - Applicants for the above forms of leave should be entitled to a written explanation if the application is declined.
- 35.38 - Appeals against decisions to decline an application for leave should be made through the grievance procedure.

Monitoring and review

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

Return to work

- 36.16 - Applicants should not have to resign to take an employment break, although there will be a change to the contract of employment.
- 36.17 - The period of the break should count toward continuous employment for statutory purposes.
- 36.18 - Other provisions depending upon length of service, i.e. contractual redundancy payments, leave entitlements etc, should be suspended for the period of the break (see also separate provisions in Section 12).

Appeals

- 36.19 - Applicants should be entitled to a written reason for the refusal of any application.
- 36.20 - Applicants may resort to the grievance procedure if a request for a break is refused.

Monitoring and review

- 36.21 - All records of applications and decisions should be kept for a minimum of twelve months.
- 36.22 - The operation of the scheme should be monitored annually by employers, in partnership with local staff representatives. This will include consideration of diversity data.

