

The Scottish Government
Health Workforce Directorate
Employment and Retention Division



Dear Colleague

MANAGING SICKNESS ABSENCE

Summary

1. This pay circular informs employers about agreed changes to Section 14 of the NHS Terms and Conditions of Service Handbook and introduces a supporting Annex which provides an outline framework to support the management of sickness absence.

2. The management of sickness absence within the NHS is challenging, but provides opportunities to improve overall health and wellbeing in the workplace, which will ultimately boost organisational productivity and support service improvements for patients. The changes agreed are complementary to the work around Working Well and OHSxtra being taken forward in Scotland in conjunction with the Scottish Workforce and Governance Committee (SWAG), and this work will continue.

3. The changes to Section 14 of the Handbook and the introduction of the supporting Annex have been taken forward on a UK-wide basis and agreed by the UK NHS Staff Council. They ensure that locally agreed procedures allow for a series of reviews to be carried out to assess and monitor staff when they are off sick. All necessary review and decision dates should be set out in light of an individual's sick pay entitlements, ensuring staff are promptly reviewed before their sick pay ends. For those members of staff on long term absence this would culminate in a final review where a decision on the appropriate way forward is made.

4. This agreement also encourages employers to identify appropriate ways of supporting staff to remain in work or return to work at the earliest opportunity through early intervention so that any appropriate treatment can be considered.

9 May 2008

Addresses

For action

Chairs, NHS Boards and Special Health Boards and NHS National Services Scotland (Common Services Agency)
Chief Executives, NHS Boards and Special Health Boards and NHS National Services Scotland (Common Services Agency)
Directors of Finance, NHS Boards and Special Health Boards and NHS National Services Scotland (Common Services Agency)
Directors of Human Resources, NHS Boards and Special Health Boards and NHS National Services Scotland (Common Services Agency)

For information

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

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5. In recognition of the need for staff and employers to work together to effectively manage sickness absence the supporting Annex sets out the key responsibilities of both parties. Underpinning this arrangement is the need to foster robust communication protocols for both staff and employers.

6. Attached to this circular is an Appendix listing the changes to the Agenda for Change Terms and Conditions flowing from this agreement. Revised sections containing these amendments are also attached for ease of reference.

Cabinet Secretary approval

7. Employers should implement this circular, which has been approved by the Cabinet Secretary under regulations 2 and 3 of the National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991 (S.I. 1991/537). A copy of the formal approval is attached.

Action

8. Employers should consider the new arrangements set out in 14.9 in respect of any staff who are currently on long term sickness absence and have exhausted their sick pay entitlements.

9. Employers should note the discretions set out in 14.10 to reinstate a member of staff's period of sick pay beyond the scale set out in 14.2.

10. Employers should note that reference should be made to the payment of NHS Temporary Injury Allowance in 14.17 for staff who suffer from a workplace injury or disease.

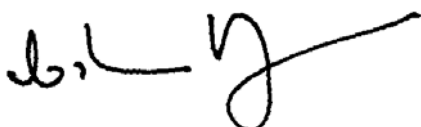
11. Employers should consider the requirement to amend their local arrangements for the management of sickness absence, in partnership with local staff side representatives, to ensure consistency with the minimum standards set out in the supporting Annex Z.

12. The new arrangements apply to all staff on Agenda for Change terms and conditions. Its application to other staff groups will be considered separately by the appropriate joint negotiating committees.

13. Employers should make their own arrangements for obtaining additional copies of this circular, which can be viewed at:

www.show.scot.nhs.uk/sehd/publications.asp

Yours sincerely



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Acting Deputy Director for Health Workforce
Employment and Retention

The Scottish Government
Health Workforce Directorate
Employment and Retention Division



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

In accordance with regulations 2 and 3 of the National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991 (S.I. 1991/537) the remuneration and conditions of service set out in the attached Scottish Government Health Workforce Directorate circular of 9 May 2008 – PCS(AFC)2008/2 – in respect of Managing Sickness Absence are hereby approved for the purposes of the said Regulations.

Elinor Mitchell

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9 May 2008

APPENDIX

Changes to the Agenda for Change NHS Terms and Conditions of Service Handbook

Section 14: Sickness Absence has been revised. The old Section 14 should be destroyed as it is now redundant and replaced by the new version.

Annex Z: Management of sickness absence has been added to the Terms and Conditions.

Specific Changes to Section 14

1. The following words are added to the existing paragraph 14.1:

“This section is supplemented by Annex Z which sets out a framework to support employers and staff in the management of sickness absence and manage the risk of premature and unnecessary ill health retirements.”

2. The following words are added to the existing 3rd bullet point paragraph 14.6:

“(England and Wales), the Criminal Injuries Compensation Authority (Scotland) and the Compensation Agency (Northern Ireland).”

3. The existing paragraph 14.9 is replaced by the following words:

“Sick pay for those who have exhausted sick pay entitlements should be reinstated at half pay, after 12 months of continuous sickness absence, in the following circumstances:

- ***staff with more than 5 years reckonable service - sick pay will be reinstated if sick pay entitlement is exhausted before a final review meeting for long term absence has taken place.***
- ***staff with less than 5 years reckonable service - sick pay will be reinstated if sick pay entitlement is exhausted and a final review does not take place within 12 months of the start of their sickness absence.***

Reinstatement of sick pay should continue until the final review meeting has taken place. Reinstatement of sick pay is not retrospective for any period of zero pay in the preceding 12 months of continuous absence.

These arrangements will be in accordance with local sickness absence procedures established in accordance with Annex Z and will only apply where the failure to undertake the final review meeting is due to delay by the employer. This provision will not apply where a review is delayed due to reasons other than those caused by the employer.”

4. A new paragraph has been inserted at 14.10 with the following words:

“Employers will have discretion to reinstate a member of staff’s period of sick pay beyond the scale set out in 14.2

- ***where there is the expectation of return to work in the short term and an extension would materially support a return and or assist recovery. Particular consideration should be given to those staff without full sick pay entitlements.***
- ***in any other circumstance that the employer deems reasonable.”***

5. Existing paragraph 14.10 has been moved to 14.11 and replaced with the following words:

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

6. Existing paragraphs 14.11 to 14.15 become paragraphs 14.12 to 14.16

7. A new paragraph has been inserted at 14.17 with the following words

“Payment of NHS Temporary Injury Allowance for workplace injuries or disease should be in accordance with the NHS Injury Benefit Scheme regulations.”

CONTENTS

Part 1	Principles and partnership
Part 2	Pay
Section 1	Pay structure
Section 2	Maintaining round the clock services
Section 3	Overtime payments
Section 4	Pay in high cost areas
Section 5	Recruitment and retention premia
Section 6	Career and pay progression
Section 7	Payment of annual salaries
Sections 8–9	(Unallocated)
Part 3	Terms and conditions of service
Section 10	Hours of the working week
Section 11	Part-time employees and employees on fixed-term contracts
Section 12	Contractual continuity of service
Section 13	Annual leave and general public holidays
Section 14	Sickness absence
Section 15	Maternity leave and pay
Section 16	Redundancy pay

As amended by PCS(AFC)2008/2

- Section 17 Mileage allowances
- Section 18 Subsistence allowances
- Section 19 Other terms and conditions
- Sections 20–24 (Unallocated)

Part 4 Employee relations

- Section 25 Facilities for staff organisations
- Section 26 Joint consultation machinery
- Section 27 Working time regulations
- Sections 28–29 (Unallocated)

Part 5 Equal opportunities

- Section 30 General statement on equality and diversity
- Section 31 Recruitment, promotion and staff development
- Section 32 Dignity at work
- Section 33 Caring for children and adults
- Section 34 Flexible working arrangements
- Section 35 Balancing work and personal life
- Section 36 Employment break scheme
- Sections 37–39 (Unallocated)

Part 6 Operating the system

- Section 40 New bodies and procedures

As amended by PCS(AFC)2008/2

Sections 41–45 (Unallocated)

Part 7 Transitional arrangements

Section 46 Assimilation and protection

Section 47 Monitoring, reviews and appeals

Annexes

Annex A NHS employers

Annex B Pay bands and pay points 2004; 2005 and 2006

Annex C Pay bands and pay points 2007

Annex D Working or providing emergency cover outside normal hours

Annex E Provisions for unsocial hours payments for ambulance staff and available to early implementer sites

Annex F Examples of special cases under the provisions for work outside normal hours

Annex G Good practice guidance on managing working patterns

Annex H High cost area payment zones

Annex I High cost area supplements

Annex J Local recruitment and retention premium criteria

Annex K Additional freedoms for trusts with earned autonomy

Annex L Mileage allowances

Annex M Lease car policies

Annex N Subsistence allowances

As amended by PCS(AFC)2008/2

Annex O	Other terms and conditions
Annex P	Coverage of Nurses and Other Health Professions Review Body

Implementation annexes

Annex Q	Classification of leads and allowances (listed by staff group)
Annex R	Guidance on the application of national recruitment and retention premia
Annex S	Local appeals procedures
Annex T	Development of professional roles
Annex U	Arrangements for pay and banding of trainees
Annex V	NHSScotland: Partnership Information Network guidelines
Annex W	Support for professional fees for staff in bands 5 to 8A (England only)
Annex X	Working or providing emergency cover outside normal hours
Annex Y	Christmas and New Year holidays at weekends
Annex Z	Managing sickness absence – developing local policies and procedures

As amended by PCS(AFC)2008/2

SECTION 14

SICKNESS ABSENCE

- 14.1 These arrangements are intended to supplement statutory sick pay to provide additional payment during absence due to illness, injury or other disability. This section is supplemented by Annex Z which sets out a framework to support employers and staff in the management of sickness absence and manage the risk of premature and unnecessary ill health retirements.

Scale of allowances

- 14.2 Employees absent from work owing to illness will be entitled, subject to the conditions of this agreement, to receive sick pay in accordance with the scale below (see Section 12 for provisions governing reckonable service):
- during the first year of service – one month's full pay and two months' half pay
 - during the second year of service – two months' full pay and two months' half pay
 - during the third year of service – four months' full pay and four months' half pay
 - during the fourth and fifth years of service – five months' full pay and five months' half pay
 - after completing five years of service – six months' full pay and six months' half pay.
- 14.3 In the event of employment coming to an end, entitlement to sick pay ceases from the last day of employment.
- 14.4 The definition of full pay will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. Sick pay is calculated on the basis of what the individual would have received had he/she been at work. This would be based on the previous three months at work or any other reference period that may be locally agreed. Local partnerships can use virtual rotas showing what hours the employee would have worked in a reference period had he or she been at work.
- 14.5 Full pay needs to be inclusive of any statutory benefits (so as not to make sick pay greater than normal working pay). The combined addition of statutory sick pay to half pay must not exceed full pay.

Calculation of allowances

- 14.6 The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated by deducting from the employee's entitlement on the first day of sickness the aggregate periods of paid sickness absence during

As amended by PCS(AFC)2008/2

the 12 months immediately preceding that day. In aggregating periods of absence due to illness no account will be taken of:

- unpaid sick absence;
- injuries or diseases sustained to members of staff in the actual discharge of their duties through no fault of their own;
- injury resulting from a crime of violence not sustained on duty but connected with or arising from the employee's employment where the injury has been the subject of payment by the Criminal Injuries Compensation Board (England and Wales), the Criminal Injuries Compensation Authority (Scotland) and the Compensation Agency (Northern Ireland);
- as above, but an injury which has not been the subject of payment by the Board on grounds that it has not given rise to more than three weeks' loss of earnings or was not one for which compensation above the minimum would arise.

14.7 Sick pay paid to an employee under this scheme when added to any statutory sickness, injuries or compensation benefits, including any allowances for adult or child dependants, must not exceed full pay (see paragraph 14.4 above).

Conditions for contractual sick pay

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

14.9 Sick pay for those who have exhausted sick pay entitlements should be reinstated at half pay, after 12 months of continuous sickness absence, in the following circumstances:

- staff with more than 5 years reckonable service - sick pay will be reinstated if sick pay entitlement is exhausted before a final review meeting for long term absence has taken place.
- staff with less than 5 years reckonable service - sick pay will be reinstated if sick pay entitlement is exhausted and a final review does not take place within 12 months of the start of their sickness absence.

Reinstatement of sick pay should continue until the final review meeting has taken place. Reinstatement of sick pay is not retrospective for any period of zero pay in the preceding 12 months of continuous absence.

These arrangements will be in accordance with local sickness absence procedures established in accordance with Annex Z and will only apply where the failure to undertake the final review meeting is due to delay by the employer. This provision will not apply where a review is delayed due to reasons other than those caused by the employer.

As amended by PCS(AFC)2008/2

- 14.10 Employers will also have discretion to extend the period of sick pay on full or half pay beyond the scale set out in 14.2
- where there is the expectation of return to work in the short term and an extension would materially support a return and or assist recovery. Particular consideration should be given to those staff without full sick pay entitlements.
 - In any other circumstance that the employer deems reasonable
- 14.11 During the rehabilitation period employers should allow employees to return to work on reduced hours or, where possible, be encouraged to work from home without loss of pay. Any such arrangements need to be consistent with statutory sick pay rules
- 14.12 Sick pay is not normally payable for an absence caused by an accident due to active participation in sport as a profession, or where contributable negligence is proved.
- 14.13 An employee who is absent as a result of an accident is not entitled to sick pay if damages are received from a third party. Employers will advance to an employee a sum not exceeding the amount of sick pay payable under this scheme providing the employee repays the full amount of sickness allowance to the employer when damages are received. Once received the absence shall not be taken into account for the purposes of the scale set out in paragraph 14.2 above.
- 14.14 Employers may at any time require an employee absent from work due to illness to attend an examination by a medical practitioner. Furthermore, staff do not need to be off sick to be referred by their employer for a medical. The employer will meet the cost of any medical examination.
- 14.15 After investigation, consultation and consideration of other alternative posts, and where there is no reasonable prospect of the employee returning to work, employers will have the option to terminate employment before the employee has reached the end of the contractual paid sick absence period, subject to the employers' agreed sickness absence policies and procedures.
- 14.16 Notification procedures and payment of sick absence pay when injuries are connected with other insured employment will be for local determination.
- 14.17 Payment of NHS Temporary Injury Allowance for workplace injuries or disease should be in accordance with the NHS Injury Benefit Scheme regulations.

As amended by PCS(AFC)2008/2

ANNEX Z**MANAGING SICKNESS ABSENCE – DEVELOPING LOCAL POLICIES AND PROCEDURES**

The management of ill health within the NHS is challenging, but provides opportunities to improve the overall health and wellbeing in the workplace, which will ultimately boost organisational productivity and support service improvements for patients.

The arrangements set out in this annex are intended to support employers and staff in the management of sickness absence and in managing the risk of premature and unnecessary ill health retirements. It is intended that employers will amend, in partnership with local staff sides, their local policies and procedures consistent with the provisions of this agreement.

This agreement details the responsibilities of both staff and employers in the management of ill health in the NHS.

This annex should be read in conjunction with:

Section 14	Sickness Absence
Section 30	General statement on Equality and Diversity
Section 32	Dignity at Work
Section 34	Flexible working arrangements

Local sickness absence procedures

Effective partnership working is crucial in achieving the effective management of sickness absences. Employers therefore, in partnership with local staff side representatives, should ensure that their local sickness absence procedure and working arrangements incorporate the minimum standards set out below to minimise the risk of premature and unnecessary ill health retirements. This will ensure that, where possible, staff are able to continue working despite experiencing periods of ill health or disability.

- *legal responsibilities* including mutual responsibilities of employers and staff to comply with health and safety requirements, reporting of injuries and dangerous occurrences (RIDDOR), disability discrimination and other relevant legislation.
- *key employer responsibilities*; employers are expected to:
 - communicate appropriately with absent staff
 - manage absences under the locally agreed sickness absence procedure
 - provide support and advice through the use of occupational health services where appropriate
 - develop reporting arrangements, recognising that high levels of sickness absence are a financial risk to the organisation
 - have appropriate management systems in place to collect good quality data on sickness absence.
 - in partnership with Trade Union representatives, regularly monitor and review arrangements to identify where and how policies can be improved.

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- *key employee responsibilities*; employees are expected to:
 - ensure regular attendance at work
 - communicate appropriately with employer when absent from work
 - co-operate fully in the use of the locally agreed sickness absence procedures

Partnership arrangements should also ensure the regular monitoring and review of local policies and procedures is undertaken, to identify where and how policies can be improved.

The key elements of local procedure will include:

A structured review process

Regular reviews should be carried out to assess and monitor staff when they are off sick, and determine what action is needed at each stage. Where a member of staff is unlikely to return to work this would culminate in a final review where a decision on the appropriate way forward is made i.e. return to substantive employment/redeployment/termination of contract. It is assumed that as part of this process that reasonable adjustments have been considered. Medical evidence should be made available to support the review process and occupational health advice should be sought on the likelihood of:

- the prospects of a likely return to the previous employment with or without adjustments
- a phased return with or without a need for adjustments
- redeployment
- a successful ill health retirement application.

Early interventions

In order to avoid premature and unnecessary ill health retirements employers should also consider the following interventions as early as is practically possible and at the latest within one month of an employee going sick:

Rehabilitation – identifying appropriate ways of supporting staff to remain in work or return to work at the earliest opportunity through intervention with appropriate treatment. This will mean providing staff with direct access through appropriate dedicated resources, such as physiotherapy and cognitive behavioural therapy.

Phased return - enabling staff to work towards fulfilling all their duties and responsibilities within a defined and appropriate time period, through interim flexible working arrangements whilst receiving their normal pay.

Redeployment - enabling the retention of staff unable to do their own job through ill health or injury as an alternative to ill health retirement or termination. Staff should be made aware of the provisions within the NHS Pension scheme to assist this process through “step down and wind down” arrangements.

As amended by PCS(AFC)2008/2

Sick pay entitlements – review and decision dates should be determined taking account of the individual's sick pay entitlements and there should be a review before their sick pay ends. Procedures should make reference to the NHS Injury Benefit Scheme and in particular the circumstances when NHS Temporary Injury Allowance should be paid.

Occupational health support – Occupational health services have a responsibility to provide advice and support to both the individual and the employer. Line managers should seek advice on long term sickness cases from their occupational health service as early as reasonably practical. Individuals may also self-refer for advice and support about the best way of seeking a return to work.

Termination

Where termination of the contract of employment on the grounds of incapacity is considered, all reasonable efforts should be made to obtain appropriate medical evidence via the occupational health service, including occupational health advice on the likely outcome of a successful ill health retirement application. Before a decision to terminate is made all other options should meaningfully be considered, including:

- Rehabilitation
- Phased return
- A return to work with or without adjustments.
- Redeployment with or without adjustments

Contractual notice must be given to a member of staff whose contract is being terminated on grounds of ill-health.

As amended by PCS(AFC)2008/2