



Dear Colleague

ORGANISATIONAL CHANGE PAY PROTECTION

1. This circular updates the guidance first published as [PCS\(AFC\)2019/5](#), in order to clarify certain aspect of the policy agreed in 2019. The updated version is attached at Annex A and an updated Q&A is attached at Annex B.

2. The changes confirm, firstly, that regular overtime/excess hours should be included in organisational change pay protection calculations. Sections 3.iv, 5, 5.2.iv, have been amended to reflect this point, and question 18 has been added to the Q&A. In addition, Section 3.vi has been amended to clarify the position where on call shifts are replaced by rostered shifts.

Action

3. NHS Boards and Special Health Boards should ensure that staff and managers refer to this version of the policy for guidance around Organisational Change Protection.

Enquiries

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

5. This circular is available online at: www.publications.scot.nhs.uk.

Yours sincerely

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22 March 2022

Addressees

For action

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**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 22 March 2022 – PCS(AFC)2022/1 – in respect of Organisational Change Pay Protection Policy are hereby approved for the purposes of the said Regulations.

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22 March 2022

POLICY ON ORGANISATIONAL CHANGE PAY PROTECTION FOR AGENDA FOR CHANGE STAFF IN NHS SCOTLAND FROM 1 APRIL 2019

1. Introduction

For the purposes of pay protection, organisational change is defined as a management or organisational change which impacts on an individual's contractual earnings or where the individual is redeployed into a lower banded post. In these circumstances, organisational change protection will apply on a no detriment basis.

2. Scope

This policy applies to all staff employed on Agenda for Change Terms and Conditions and will be applied on a prospective basis.

3. Key Principles

The principles described below apply in protection situations:

- i) "No detriment" protection means that staff will be no worse off, but not any better off, and they will continue to receive the benefit of annual pay uplifts and increments.
- ii) Managers must involve HR and the relevant Trades Unions in discussions regarding protection at an early stage.
- iii) Managers must alert the Pay Department to the possibility of protection being required in order that they can plan for this.
- iv) Managers should avoid making temporary changes to working hours and working patterns which, through default, become long term and therefore may result in protection of earnings e.g. overtime working which becomes the norm. If contracted overtime or regular overtime/excess hours has been in place for some time, this will need to be included in protection payments if the pattern is regular and settled.
- v) Appropriate performance monitoring and assurance arrangements will be locally implemented with reporting through the Area Partnership Forum and nationally via STAC. The Area Partnership Forum may also access STAC for points of clarification and interpretation if necessary.
- vi) Protection will be applied to that component that changes as a consequence of organisational change i.e. if the change relates to shift patterns the element of pay that will be protected relates to the shift change. This also applies to on call shifts that are replaced by rostered shifts. On call payments and availability supplements will be protected, however they will be offset by unsocial or shift payments.
- vii) To ensure consistency and uniformity in calculating the level of earnings to be protected a reference period of 12 months will be applied. This will be adjusted accordingly for any employee on maternity leave or long term sick leave during the 12 month period or any other exceptional individual circumstance. Employees moving into protected earnings will receive written confirmation and guidance on how protected earnings will be applied and arrangements for working up to the level of protection.

- viii) Individuals who, having received these written confirmations, do not wish to work up to the level of protection described may forgo their right to protection of earnings.
- ix) Employees who unreasonably refuse to work up to the previously agreed level of protection will forgo their right to protection of earnings.
- x) Local operational unit level and Board level monitoring of protection i.e. to review the degree to which individuals work up to the level of protection is being explored via the SSTS Team. If a solution is found, reporting on this aspect of protection will also be incorporated into the monitoring arrangements.
- xi) For employees who require grade protection as a consequence of organisational change, employers need to redeploy into suitable alternative posts as soon as possible, ensuring that staff maintain their skills and competencies. Employees also have an obligation to maintain their skills and competencies. To ensure redeployment is maximised, and operates in line with PIN guidelines, STAC will monitor the situation on a six monthly basis.
- xii) Employees who unreasonably refuse suitable redeployment into a post at the level of the protected grade will forgo their right to grade protection.
- xiii) If employees secure a promoted post or their post is subsequently re-graded (in the same role) they will be placed on a pay point that takes into account their protected earnings to ensure no detriment. If the protected earnings exceed the top of the new pay scale they will move to the top and the balance of protected earnings will be paid on a mark time basis.

4. Written confirmation of Protection Arrangements

In order to process protection calculations and confirm these in a timely manner to employees it is proposed that the 12 month reference period should commence 15 months before the change is enacted, e.g. If the change is effective from 1 July 2019, the 12 month reference period would be the period 1 April 2018 to 31 March 2019.

5. Offsetting and Working up

Offsetting will still apply but has to be a payment connected to the reason for the change. Overtime and excess hours will not be offset unless the protection is related to either contracted or regular overtime or excess hours

If an employee is on protection, they can be asked to undertake additional duties connected with the reasons for their original protection up to the level of their protected salary. The following principles will apply:

5.1 For Staff Protected for On-Call Payments (including availability supplements and call outs)

- i) If the employee works on-call and the frequency of on-call reduces the employee is protected at the higher frequency of on-call. However the employee can be asked to work up to that higher level if there are gaps to be filled due to increased demand or staff absences. This can be at their own site or another site.

ii) If the employee is no longer required to work on-call they will be protected for on-call, however they may be required to work on-call at another site due to staff absences or increased demand.

iii) In accordance with Annex A of NHS Circular PCS(AFC)2015/3, paragraph 8.1, staff will be paid according to the duration of call-out including actual travel time, rounded up to the nearest 15 minutes. The call-out time will be calculated from when the member of staff leaves home (or other agreed base) to when they return home (or other agreed base). In addition paragraph 8.3 also states that "Work undertaken from home, either by telephone or online, will attract payment for work done according to the actual duration of the period of work".

5.2 Shift Pattern Changes and Change in Hours

i) If the employee works on a shift pattern that changes as a consequence of organisational change and their shift payments are reduced, the employee can be asked to work up to their level of earnings if there are any gaps in the shift due to increased demand or staff absences. Staff would not be expected to work beyond their contracted hours but may be required to work a higher level of unsocial hours (as per their protected salary). However, if staff agree to work beyond their contracted hours they would be paid as per Agenda for Change Terms and Conditions.

ii) In situations where there are significant changes to rota, NHS Boards should try to redeploy staff into posts which reduce the reliance on protection in order to stabilise the employees' working pattern.

iii) If an employee's contractual hours of work are reduced they will be entitled to organisational change protection. However, the employee can be asked to work up to their contractual hours if there is increased demand or staff absences.

iv) If an employee has either their contractual or regular overtime or excess hours stopped or reduced they will be entitled to organisational change protection. However, the employee can be asked to work up to their level of contracted or regular overtime, or excess hours.

5.3 Working on Different Sites

i) Employees on protection can be asked to work at different sites within reason and with reasonable notice.

ii) For staff required to work at another site other than their home base, line managers must ensure that the individuals are competent to work on the different site and have received appropriate induction/orientation training. Staff will be entitled to travel costs as per Agenda for Change terms and conditions.

6. Financial Governance

It is proposed that payroll departments conduct an annual audit and review of protection payments to ensure proper financial governance of this process and all payments associated with protection. Boards should ensure the annual review process is conducted, and take appropriate management action to ensure financial governance standards are maintained.

Q&A ON NEW ARRANGEMENTS FOR THE PROTECTION OF EARNINGS**Q1: Who do these new arrangements apply to?**

A1: They apply to any employee that requires organisational change pay protection from 1st April 2019. This may be as a consequence of a management or organisational change which has impacted on an individual's contractual earnings, or where they are redeployed into a lower banded post. There is no retrospective change to the organisational change protection arrangements that were in place for protected employees prior to 1 April 2019.

Q2: What am I entitled to?

A2: If an employee requires pay protection they will be entitled to retain the same level of contracted earnings including annual pay uplifts and increments to ensure they suffer no detriment.

Q3: What happens if I am redeployed into a lower banded post?

A3: If you are redeployed into a lower banded post you will still continue to receive your higher banded salary including pay uplifts and increments. However the organisation will continue to seek opportunities to redeploy you into a suitable alternative post at the higher band. Your local human resources team will support you through this process. Staff are also entitled to seek representation and guidance from their Staff Side representative.

Q4: How do I maintain my skills, competencies and professional accreditation if I am redeployed into a different post?

A4: Your new manager will ensure that you are provided with the opportunities to allow you to maintain your skills, competencies and professional/clinical accreditation.

Q5: What happens if I refuse a post on redeployment?

A5: The aim is to redeploy employees into a suitable alternative post. However, if you unreasonably refuse suitable redeployment into a post at the band you are protected on, then you will forgo your right to protection.

Q6: What happens if my shift patterns / hours of work / on-call rota changes?

A6: Protection will be applied to that component that changes as a consequence of organisational change e.g. if you are no longer required to undertake on-call, you will continue to receive on-call payments or if you move from nightshift to day shift you will continue to receive your night shift allowance or if your contracted hours of work reduce you will continue to be paid your contracted hours.

Q7: Can I be asked to work up to my level of protected earnings?

A7: Yes, you can be asked to work up to your level of protection in additional duties connected with the reasons for the change. This will be off set against protection payment. However you will not be expected to work more than your contracted hours. The principles for this are described in Section 5 of Annex A.

Q8: How will I know what my protected earnings are?

A8: You will receive written confirmation and guidance on how your protected earnings will be applied and arrangements for working up to your level of protection. The payroll department will use a reference period of twelve months to calculate your protection.

Q9: What happens if I want to apply for a promoted post?

A9: If you secure a promoted post or your redeployed post is subsequently regraded, you will be placed on a pay point that takes into account your protected earnings to ensure no detriment. If the protected earnings exceed the top of the new pay scale you will move to the top and the balance of your protected earnings will be paid on a mark time basis.

Q10: I have submitted a request to have my previous post re-evaluated prior to being redeployed will that affect my level of protection if the re-evaluation results in my grade increasing?

A10: Yes your protection will need to be recalculated to take into account your change in grade.

Q11: What does 'mark time' mean?

A11: Mark time means that element of your pay that is still subject to protection following promotion to a higher level post will not attract any future cost of living increases.

Q12: Can I be asked to work on a different site?

A12: Yes, you can be asked to work at a different site within reason and with reasonable notice. For employees required to work at a different site other than their home base, line managers must ensure that the individuals are competent to work on the different site and have received appropriate training. Employees will be entitled to travel costs as per Agenda for Change terms and conditions. In regard to travel time, if the employee is asked to work at a different site which results in a significantly longer journey time, the employee will be allowed to claim for the additional travel time.

Q13: What arrangements are in place to ensure protection is paid fairly and consistently?

A13: To ensure that all employees are treated fairly and consistently, Area Partnership Forums will be asked to monitor protection arrangements and they will be required to provide reports to STAC. Staff who feel they have not been treated fairly can seek support and advice from their Human Resources team or their staff representative.

Q14: My current role is changing from a post with core hours during Monday to Friday and a requirement to work on-call to a post where I will be expected to work shifts:

a) What are my entitlements in regard to protection?

b) What if I cannot work shifts?

A14: a) If your earnings in the shift post are less than what you earned working on-call, your shift allowance will be off set against your on-call payments and you will be entitled to receive organisational change pay protection on the shortfall. This is covered in section 5 in Annex A of the organisational change circular.

b) If you are unable to work shifts, you need to discuss this with your manager during the redeployment process in order to explore what other suitable alternative arrangements may be available.

Q15: In the pay circular PCS(AFC)2019/1, paragraph 6, it states “Staff on organisational change pay protection as at 31 March will have their protected earnings increased in line with the headline uplift for their pay level, 2.8% for those earning less than £80,000 and £1600 for those earning £80,000 and above”. However, with the changes in some of the incremental points my increment changes by more than 2.8%. Under organisational change protection, should I not get the benefit of this increase?

A15: Yes. In this scenario you are entitled to receive the benefit of the increase.

Q16: Prior to going onto organisational change pay protection, I asked for the grade of my post to be reviewed. What happens if that changes?

A16: If your post moves to a higher band, your organisational change pay protection will be recalculated to take your new salary into account.

Q17: If the post I have been redeployed into is subsequently regraded, am I still entitled to organisational change protection?

Q17: Yes. If the post is regraded and your earnings are still less than your protected earnings you will still receive protection to ensure you suffer no detriment.

Q18: What is regular overtime or regular excess hours?

A18: Regular overtime or excess hours describes situations when an employee is asked to work additional extra hours on a regular basis and there is a settled pattern of additional hours. It is difficult to apportion exact figures to what constitutes regular and settled as there are many types of shift patterns and working arrangements across NHS Scotland. However, there is an expectation that during periods of organisational change that arrangements are in place through partnership forums to discuss and agree what will be classified as regular and settled and will be included in protection payments.