

**HUMAN RESOURCES DIRECTORATE
PAY AND EMPLOYMENT UNIT**

Chief Executive of each HSC body¹

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Your Reference: **HSS (JNF) (1) 2011**

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Dear Colleagues

PAY PROTECTION ARRANGEMENTS

Introduction

1. This Circular sets out an agreement of the Joint Negotiating Forum relating to pay protection for all HSC staff where it is required by reason of organisational change. The Department has also consulted with regional recognised trade unions and professional bodies on the definitions and general conditions contained in this Circular.
2. This Circular applies to all staff newly appointed to HSC Trusts from 1 April 2007 and to staff newly appointed to HSC RPA Phase 2 Organisations from 1 April 2009. All HSC Trust staff employed before 1 April 2007 and HSC RPA Phase 2 Organisations before 1 April 2009 are subject to the provisions of JNF (1) 2007; which incorporated all legacy HSS Employer's protection arrangements.
3. From 1 April 2011 anyone currently entitled to the protection provisions of JNF (1) 2007 will have these arrangements honoured if protection needs to be initiated in the future until such times as either the individual takes a voluntary change in contract, either by means of promotion or movement

¹ HSC Trusts, Health and Social Care Board, the Public Health Agency, Business Services Organisation, Patient and Client Council, the Northern Ireland Blood Transfusion Service Agency, the Northern Ireland Regional Medical Physics 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 Northern Ireland Regulation and Quality Improvement Authority and the Northern Ireland Medical and Dental Training Agency (NIMDTA)

to another HSC employer, when thereafter the provisions of this circular will apply if protection becomes applicable at any date after the point of the change in contract.

4. Anyone currently receiving protection under the provisions of JNF (1) 2007 will have these arrangements honoured until such times as either the individual takes a voluntary change in contract, either by means of promotion or movement to another HSC employer, when thereafter the provisions of this circular will apply if protection becomes applicable at any date after the point of the change in contract.
5. These conditions apply to any permanent employee, subject to the qualifying period of 1 year's reckonable service, who is affected by organisational change (defined as a management initiated change to the way services are organised or delivered) and is required by their employer to move to an alternative post and/or who suffers a reduction in basic hours of the standard working week. It provides:-
 - Short-term protection of earnings whether or not downgrading is involved;
 - Long term protection of basic wage where downgrading is involved.
6. Staff who choose, for personal reasons, to change their working arrangements or post and as a consequence have reduced earnings, will not be entitled to protection under these arrangements. Furthermore, these arrangements do not apply when an employee's capability, conduct or health has been addressed through the appropriate policy and the outcome has resulted in a loss of earnings.

Pay protection arrangements

7. **Long-term Protection** – is applicable on basic pay and only applies when downgrading is involved. Please see the definitions at paragraphs 8 – 12.

Reckonable Service	Full Protection Period	Mark Time Protection Period
1 year / 2 years	1 year	Nil
3 years	2 years	1 year
4 years	2 years	2 years
5 years or more	3 Years	2 years

Definitions

8. **Downgrading** occurs when the new post, irrespective of its job title, is at a pay band lower than the pay band which applied to the post held previously.
9. **Basic Wage or Salary** is the weekly or monthly sum due in respect of basic hours worked by the individual concerned within the standard

working week/month, plus any long-term recruitment and retention premium but excluding any additional earnings paid. The reference period for this calculation will be over a period of four months for monthly paid staff or 18 weeks for weekly paid staff immediately preceding the first day of employment in the new post.

10. **Reckonable service** is the total continuous or total aggregated HPSS/HSC or NHS service. A period of 3 months or more spent outside HPSS/HSC or NHS employment counts as a break in service. Periods spent on employment or career breaks do not in themselves constitute a break in service.
11. **Full protection** is protection of basic pay with pay uplifts and increments applying to the pay band.
12. **Protection on a mark-time basis** occurs after the period of full protection has ended and means protection of basic pay without the benefit of any subsequent pay uplifts, increments etc applying to the pay band.

Short-term Protection of Earnings

13. Short protection of earnings occurs when an individual is moved to a new post which does not involve downgrading and/or suffers a reduction in contracted hours.
14. Additional earnings eligible for short term protection will include regularly paid supplements (see Appendix A) i.e. Standby/On-Call allowance paid to a member of staff who has specific roster commitment to be available to carry out emergency work & Un-Sociable Hours payment and Short-term recruitment and retention premium.

Reckonable Service	Protection Period
1 year / 2 years	4 months
3 years / 4 years	8 months
5 years or more	1 year

The intention of this protection is to offset the immediate impact of a reduction in total earnings. This will therefore not be paid in any period where total earnings, i.e. basic pay plus additional earnings after the change in terms and conditions, are equal to or more than regular earnings before the change.

15. **Short-term Protection of Earnings** is not influenced by basic salary/wage but will be calculated as the monthly or weekly average of the **additional earnings** paid over the four months for monthly paid staff or 18 weeks for weekly paid staff immediately preceding the first day of employment in the new post.

General Conditions

16. If, prior to the organisational change, a reduction in pay occurred due to e.g. sickness absence, maternity leave, career break, authorised unpaid leave, the basic wage or salary and/or short term protectable earnings will be calculated as if a member of staff had not been absent.
17. Protection of both long term protection of basic pay (outlined at paragraph 7 - 12) and Short-term Protection of Earnings (outlined at paragraph 13 & 14) can apply simultaneously in accordance with the conditions outlined in this Circular. However in circumstances where this applies, only protection of basic pay continues after any period of short term protection of earnings is exhausted.
18. Earnings associated with the new post will be compared with protected earnings. If for any particular pay period the earnings in the new post exceed the protected earnings, the protected earnings are extinguished and earnings in the new post are paid in full for that particular pay period. In such situations this does not allow for an extension of the overall period of protection.
19. Short-term Protection of Earnings is conditional on the employee undertaking, if required, any shift work or other additional duties which may be required up to a level at which earnings in the new post equal the protected earnings. Staff refusing to accept this provision will not be paid the short-term protection of earnings and the employer may seek recovery of any payment made to that point.
20. Protection of both Long-term full protection of basic pay and Short-term Protection of Earnings is conditional on the employee accepting any subsequent offer of a suitable alternative post identified by the employer within the organisation which attracts earnings/basic pay equal to or in excess of those applicable to the post occupied on a protected basis. If refused, protection will cease.
21. Basic pay will be fully protected with the benefit of any subsequent improvements or increments applying to the scale for the period of full protection. Thereafter protection continues on a mark time basis until:-
 - The period of protection is exhausted, or
 - The employee is appointed to a post in which the normal basic wage or salary is equal to or exceeds the protected basic wage or salary, or
 - The employee moves on their own application to a post with a basic wage or salary which is equal or lower to that of the existing post, or
 - The employee moves on their own application to another HSC employer, or
 - The employee retires or leaves the service, or

- The basic wage or salary of the post is equal to or exceeds the protected basic wage or salary.
22. When the period of long-term protection is exhausted the employee moves to the maximum salary point of the pay band of the post they are holding at that time.
 23. Employees with an entitlement to protection of basic pay may at any time opt for the complete package of remuneration and conditions of service applicable to the new post. This option, once exercised, cannot be reversed.
 24. If a member of staff is disadvantaged by a further organisational change during a period of protection, they will be given the option to (i) remain on their existing protection or (ii) to move to the new protection arrangements. This option, once exercised, cannot be reversed. A new period of protection will commence at the date of the new change and will run concurrently with the period of previous protection as illustrated in the following table.

Example – An employee, who has 5 years of service, is displaced on 1 April 2009 and moves from a Band 8A post to a Band 7 post.

1 April 2009 to 31 March 2012 – 3 years full basic pay protection as Band 8A

1 April 2012 to 31 March 2014 – 2 years mark time protection as Band 8A

1 April 2013 further organisational change to Band 6 – individual is given the option (i) to remain on original protection arrangement or (ii) take new protection arrangement linked to further organisational change

(i) Retains original protection arrangement:

1 April 2013 to 31 March 2014 – 1 year of mark time protection as Band 8A

1 April 2014 paid as Band 6

(ii) New protection arrangement taken:

1 April 2013 to 31 March 2016 – 3 years full basic pay protection as Band 7

1 April 2016 to 31 March 2018 – 2 years of mark time protection as Band 7

1 April 2018 – paid as Band 6

Enquiries

25. Enquiries about the contents of this Circular should be directed to the Pay and Employment Unit of the Human Resources Directorate, Room D.1,

Castle Buildings, Upper Newtownards Road, Belfast, BT4 3SJ, telephone 028 9052 2832, email; p&e@dhsspsni.gov.uk.

26. **Employees** should direct personal enquiries to their employer.

Further Copies

27. Copies of this Circular can be obtained from the Department's extranet site at <http://extranet.dhsspsni.gov.uk> .

Yours sincerely

A handwritten signature in black ink that reads "Diane Taylor". The signature is written in a cursive, slightly slanted style.

DIANE TAYLOR

Additional Earnings

The following payments should be included in the computation of the four month average only if they are a regular requirement of the job.

Unsocial Hours payments

On-call and stand-by allowances