

**HUMAN RESOURCES DIRECTORATE
PAY AND EMPLOYMENT UNIT**

Chief Executives of HSC Bodies¹;

For information:

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Your Reference: **HSC (AfC)(2) 2011**

12 February 2011

Dear Colleagues

AMENDMENT 22 TO THE NHS TERMS AND CONDITIONS HANDBOOK

1. This Circular informs HSC employers that NHS Employers has published a new Section 36 Employment Break Scheme to the NHS Terms and Conditions of Service Handbook.
2. The content of this Circular has been agreed with locally recognised trade unions.

Section 36 (Employment Break Scheme)

3. Before 1 April 2008, periods of authorised leave were pensionable. Where a period of authorised leave was granted and pensionable pay was reduced or suspended during that period, employee and employer pension contributions were based on the member's pensionable pay, immediately prior to the leave of absence.

Changes to HSC Pension Scheme Regulations effective 1 April 2008

4. From 1 April 2008, the HSC Pension Scheme Regulations changed to allow a member who commenced a period of authorised leave on or after this date (including a career break where the contract of employment is retained), to choose to remain pensionable for a period of up to 6 months.

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 and 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)

5. Where the authorised leave is to be pensionable the employer must treat the member as they would any other active member of the Scheme and ensure that employee and employer pension contributions are paid continuously throughout the 6-month period.
6. Before the leave begins, therefore, employers must make arrangements to collect the employee contributions continuously during the break. Arrears cannot be allowed to accumulate and payment made on returning to the Scheme.
7. Where pensionable pay is reduced or suspended, employee and employer pension contributions are based on the member's pensionable pay immediately prior to the break starting.

Changes to HSC Pension Scheme Regulations effective 1 October 2008

8. From 1 October 2008 the Regulations changed again to allow a member who has already paid contributions continuously during the first six months, to continue to pension the leave for a further period of up to 18 months.
9. Should the member wish to continue contributing to the Scheme during the additional period, they will be responsible for both the employee and employer pension contributions. Employers are responsible for ensuring that both employee and employer pension contributions are collected continuously throughout the leave and paid promptly to HSC Pensions. Arrears cannot be allowed to accumulate and payment made on returning to the Scheme.
10. The facility to pension authorised leave (which includes career breaks where the contract of employment is retained) applies equally to those contributing to the 1995 and the 2008 sections of the Scheme.

Action

11. Employers should ensure that the arrangements they make for contributions to the HSC Pension Scheme before, during and after employment breaks, are in line with the amendments to Section 36 set out in this circular. These amendments have been agreed following changes to the HSC Pension Scheme Regulations effective from 1 April 2008 and 1 October 2008.
6. The changes made effective by this circular are detailed in the Annex to pay circular ((AforC) 1/2011). An updated version of the NHS Agenda for Change Handbook can be downloaded from the NHS Employers web site at:
http://www.nhsemployers.org/SiteCollectionDocuments/afc_service_handbook_aw_010708.pdf.

Enquiries

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

Further Copies

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

Diane Taylor.

DIANE TAYLOR

Pay Circular (AforC) 1/2011

NHS Terms and Conditions of Service Handbook (amendment number 22): Section 36: employment break scheme

To: All NHS employers

Summary

This pay circular informs employers of the NHS Staff Council's agreement on changes to Section 36: employment break scheme.

Action

1. Employers should ensure that the arrangements they make for contributions to the NHS Pension Scheme before, during and after employment breaks, are in line with the amendments to Section 36 set out in this circular. These amendments have been agreed following changes to the NHS Pension Scheme Regulations effective from 1 April 2008 and 1 October 2008.

Employment break scheme

2. Before 1 April 2008, periods of authorised leave were pensionable. Where a period of authorised leave was granted and pensionable pay was reduced or suspended during that period, employee and employer pension contributions were based on the member's pensionable pay, immediately prior to the leave of absence.

Changes to NHS Pension Scheme Regulations effective 1 April 2008

3. From 1 April 2008, the NHS Pension Scheme Regulations changed to allow a member who commenced a period of authorised leave on or after this date (including a career break where the contract of employment is retained), to choose to remain pensionable for a period of up to 6 months.
4. Where the authorised leave is to be pensionable the employer must treat the member as they would any other active member of the Scheme and ensure that employee and employer pension contributions are paid continuously throughout the 6-month period.

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5. Before the leave begins, therefore, employers must make arrangements to collect the employee contributions continuously during the break. Arrears cannot be allowed to accumulate and payment made on returning to the Scheme.
6. Where pensionable pay is reduced or suspended, employee and employer pension contributions are based on the member's pensionable pay immediately prior to the break starting.

Changes to NHS Pension Scheme Regulations effective 1 October 2008

7. From 1 October 2008 the Regulations changed again to allow a member who has already paid contributions continuously during the first six months, to continue to pension the leave for a further period of up to 18 months.
8. Should the member wish to continue contributing to the Scheme during the additional period, they will be responsible for both the employee and employer pension contributions. Employers are responsible for ensuring that both employee and employer pension contributions are collected continuously throughout the leave and paid promptly to NHS Pensions. Arrears cannot be allowed to accumulate and payment made on returning to the Scheme.
9. The facility to pension authorised leave (which includes career breaks where the contract of employment is retained) applies equally to those contributing to the 1995 and the 2008 sections of the Scheme.

Enquiries

10. Employees must direct personal enquiries to their employer.
11. Employers should direct enquiries to: www.agendaforchange@nhsemployers.org
12. Copies of this circular can be downloaded from: www.nhsemployers.org
13. 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
14. 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

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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

A handwritten signature in black ink, appearing to read 'Geoffrey Winnard', with a stylized flourish at the end.

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

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Annex

Pay circular (AforC) 1/2011

NHS Terms and Conditions of Service Handbook: amendment number 22

The changes made effective by this circular are:

Title page

“Amendment number 21” is deleted and replaced by “**Amendment number 22**”

“Pay circular (AforC) 6/2010” is deleted and replaced by “**Pay circular (AforC) 1/2011**”.

Section 36: employment break scheme

Paragraph 36.15: a further bullet point has been added as follows:

- **NHS pension arrangements during the break. Further information for Scheme members in England and Wales can be obtained from the NHS Pensions website at www.nhsbsa.nhs.uk/Pensions. Members in Northern Ireland should refer to the HSC Pension Service website www.hscpensions.hscni.net. Members in Scotland should refer to the Scottish Public Pensions Agency circular 2009/13 which can be found on their website www.sppa.gov.uk/nhs/circulars2009.htm.**

Paragraph 36.18: the word “pensions” in line one has been deleted so that the paragraph now is:

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).

Section 36: Employment break scheme

General

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

Scope

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

Eligibility

- 36.8 The employment break scheme should normally be open to all employees who have a minimum of 12 months of service.
- 36.9 Applications should be submitted in writing and notice periods should be clearly stated in an agreement between the employee and employer.

Length of break

- 36.10 The maximum length of break should be five years.
- 36.11 It should be possible to take breaks, either as a single period or as more than one period.
- 36.12 The minimum length of break should be three months.
- 36.13 The length of any break should balance the needs of the applicant with the needs of the service.
- 36.14 The scheme should have provision for breaks to be extended with appropriate notice, or for early return from breaks.
- 36.15 All breaks should be subject to an agreement between the employer and applicant before the break begins (see also separate provisions in Section 12). The agreement should cover:
- the effect of the break on various entitlements related to length of service;
 - a guarantee that, if the applicant returns to work within one year, the same job will be available, as far as is reasonably practicable;
 - if the break is longer than one year, the applicant may return to as similar a job as possible;
 - return to work at the equivalent salary level, reflecting increases awarded during the break;
 - the notice period required before the return to work should be two months if the break is less than a year and six months if the break is more than a year;
 - arrangements for keeping in touch during the break;
 - requirements on the applicant to keep up to date with their relevant professional registration needs, including attendance at specified training courses and conferences, and any assistance the employer may give in the support of this;
 - training arrangements for re-induction to work;
 - any other conditions required either by the employer or the applicant;
 - NHS pension arrangements during the break. Further information for Scheme members in England and Wales can be obtained from the NHS Pensions website at www.nhsbsa.nhs.uk/Pensions. Members in Northern Ireland should refer to the HSC Pension Service website www.hscpensions.hscni.net. Members in Scotland should refer to the Scottish Public Pensions Agency circular 2009/13 which can be found on their website www.sppa.gov.uk/nhs/circulars2009.htm.

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.