

## Section 25: Time off and facilities for trade union representatives

## Time off and facilities for trade union representatives

25.1 The NHS Staff Council is committed to the principles of partnership working and staff involvement. Partnership underpins and facilitates the development of sound and effective employee relations throughout the NHS. The national partners recognise that the participation of trades union representatives in the partnership process can contribute to delivering improved services to patients and users.

25.2 Further information about the partnership approach to the implementation of pay modernisation is set out in Part 1 of this handbook, including the importance of ensuring that the representatives of trades unions recognised for purposes of collective bargaining at local level are released appropriately to participate in local partnership arrangements. The principles of partnership working are set out in Annex 27.

25.3 It is for employers and representatives of locally recognised trades unions to agree in partnership local arrangements and procedures on time off and facilities that are appropriate in local circumstances. Local arrangements are expected to be consistent with the principles set out below.

## Accredited representatives

25.4 Local arrangements should apply to accredited representatives of trades unions recognised by local NHS organisations. Accreditation will only be given to employees of the organisation who have been duly elected or appointed in accordance with the rules of the respective trades unions.

25.5 Accredited representatives of trades unions will:

abide by the rules of their trades union and the policies and procedures of the employing organisation

represent their members on matters that are of concern to the employing organisation and/or its employees.

25.6 It will be for the relevant trades unions to discuss and agree with the local employer an appropriate number of representatives. Local discussions should have regard to the size and location of the unions' membership and the expected workload associated with the role. The unions would be required to issue written credentials and notify the human resources department of the number and location of work groups for which each representative will be responsible.

25.7 Subject to the needs of the service and adequate notification, accredited representatives should be permitted paid time off, including time to prepare for meetings and disseminate information and outcomes to members during working hours, to carry out duties that are concerned with any aspect of:

negotiation and/or consultation on matters relating to terms and conditions of employment or agreed partnership processes – examples include:

terms and conditions of employment

engagement or termination of employment

allocation of work

matters of discipline

grievances and disputes

union membership or non-membership

facilities for trades union representatives

machinery for negotiation or consultation or other procedures; meetings with members

meetings with other lay officials or full-time officers  
appearing on behalf of members before internal or external bodies  
all joint policy implementation and partnership working  
other matters relating to employee relations and partnership working.

25.8 The expectation is that it is good practice that staff representatives should indicate the general nature of the business for which time off is required and where they can be contacted if required. Requests should be made as far in advance as possible, as is reasonable in the circumstances. Wherever possible the representatives should indicate the anticipated period of absence. The expectation is that requests for paid time off for trades union representatives will not be unreasonably refused.

## Training

25.9 Accredited trades union representatives should be given adequate time off to allow them to attend trades union approved training courses or events. Time off should not be regarded as automatic, as employers have responsibilities to take account of the needs of service delivery. However, the expectation is that requests for paid time off to attend training courses should not be unreasonably refused as long as locally agreed processes are followed.

25.10 The expectation is that requests for release for training should be made with reasonable notice to the appropriate manager. Any training course should be relevant to the duties approved by the trades union. Local representatives should provide details of the course to local management.

## Payment arrangements

25.11 Where time with pay has been approved, the payment due will equate to the earnings the employee would otherwise have received had they been at work.

25.12 When meetings called by management are held on matters covered by paragraph 7, when staff representatives have to attend outside their normal working hours, equivalent time off will be granted or appropriate payment should be made by local agreement.

25.13 There should be local agreement on when travelling and subsistence expenses will be reimbursed to accredited representatives, who are undertaking approved work in relation to the partnership process and/or joint policy implementations (as listed in paragraph 25.7).

## Trade union activities

25.14 It is the responsibility of the recognised local trades unions to ensure that the time and resources provided in this context are used appropriately.

25.15 NHS organisations are encouraged to support partnership working by giving reasonable time off during working hours to enable trades union members or representatives to:

- attend executive committee meetings or annual conference or regional union meetings
- vote in properly conducted ballots on industrial relations
- vote in union elections
- attend meetings to discuss urgent matters relating to the workplace
- recruit and organise members.

25.16 Local arrangements should specify the circumstances when time off may be refused for either representatives or members. These may include:  
unreasonable notice periods on behalf of the representatives  
activities which do not fall within any of the categories in paragraphs 7, 10 and 15  
activities are not authorised by the union

service needs.

25.17 Locally, it may be agreed that it is appropriate in the interests of partnership working and good industrial relations, for trades union representatives to be released from work for regular defined periods each week.

#### Trade union learning representatives

25.18 Trades union learning representatives are accredited by their unions to support organisations in identifying training needs and ensuring staff access to training. Learning representatives also have the right to reasonable paid time off for undertaking these duties and for relevant training.

#### Health and safety representatives

25.19 The Safety Representatives and Safety Committee Regulations 1977 provides a legal entitlement for trades union appointed safety representatives to have paid time from their normal work to carry out their functions and undergo training.

#### Facilities for trades union representatives

25.20 The local partnership should agree the facilities that are provided to representatives of recognised trades unions. It is recommended that local employers provide the following facilities:

access to appropriate private accommodation, with storage facilities for documentation, appropriate administrative facilities and access to meeting rooms

access to internal and external telephones with due regard given for the need for privacy and confidentiality

access to appropriate internal & external mail systems

appropriate access to the employer's intranet and email systems

access to appropriate computer facilities

access to sufficient notice boards at all major locations for the display of trade union literature and information

access for staff representatives to all joint documents relating to the local partnership process

based on the geographical nature of the organisation, consideration may need to be given to access to suitable transport facilities

backfilling of posts, where practical. The extent to which this would be practical would inevitably be dependent on such factors as the numbers of representatives needing time off, the work areas that would need to be covered and the needs of the service.

25.21 Within NHS Scotland the Staff Governance Standard (which includes the PIN on facilities arrangements) applies.

#### *Amendment number 39: NHS TCS Advisory Notice 01/2018*

### Section 26: Joint consultation machinery

#### Joint consultation machinery

26.1 Joint consultation arrangements should be set up, in agreement with employee representatives, to lay down the rules and procedures which will govern the operation of a joint consultative committee (JCC).

26.2 Joint consultative arrangements should be based on a partnership approach to industrial relations. This should involve the systematic and routine involvement of staff

and their trades union representatives at all levels in shaping the service and in the decision making process at all stages which affects their working lives and the delivery of healthcare.

26.3 Agreement should be reached on a number of issues when establishing a JCC.

These include:

size and composition of the committee;

organisation of committee meetings;

subjects to discuss;

facilities for committee members; and

arrangements for reporting back.

26.4 All organisations benefit from good employer/employee consultation. Organisations which ensure that systematic communication and consultation take place on a wide range of subjects will benefit from better decision making, greater employee understanding and commitment and improved industrial relations.

26.5 Further guidance on the setting up of a JCC as well as a checklist of issues to be covered in a JCC constitution is contained in the ACAS booklet, *Employee communications and consultation*.

## Section 27: Working time regulations

### Working time regulations

27.1 There is a general responsibility for employers and employees, under health and safety law, to protect, as far as is practicable, the health and safety of all employees at work. Control on working hours should be regarded as an integral element of managing health and safety at work and promoting health at work. It is, therefore, appropriate that health service employers, when organising work, should take account of the general principle of adapting work to the worker.

27.2 In reaching local arrangements to implement this agreement, employers or employees are expected to ensure that no arrangements are reached which discriminate against members of staff with family or other carer responsibilities.

### Exceptions

27.3 Doctors in training are excluded from the provisions of this agreement.

27.4 Regulation 18 of the Working Time Regulations states:

“Regulations 4(1) and (2), 6(1), (2) and (7), 7(1), and (6), 8, 10(1), and 11(1) and (2), 12(1), 13 and 16 do not apply ...

(c) where characteristics peculiar to certain specified services such as the armed forces or the police, or to certain specific activities in the civil protection services, inevitably conflict with provisions of these Regulations.”

27.5 Regulation 2 cites ambulance services within the definition of civil protection services. In the case of employees unable to benefit from the protection of the Working Time Regulations, ambulance services employers are expected to apply the principles of the Regulations and this agreement, as far as the exigencies of the service permit.

### Protection

27.6 Employees must suffer no detriment because they have exercised any of their entitlements under the Regulations. The provisions of the Working Time Regulations are

not maximum standards and conditions which are currently in place and more favourable to staff, should not be worsened.

## Records

27.7 Employers must keep records, which will be available to locally recognised unions, which are adequate to ensure that the limits specified in paragraph 27.9 (maximum weekly working time), paragraph 27.15 (rest breaks), paragraph 27.17 (daily rest), paragraph 27.19 (weekly rest periods), and paragraph 27.20 (night work) are complied with and that where there is an entitlement to compensatory rest this is provided for.

## Maximum weekly working time

27.8 Working time may or may not happen to coincide with the time for which a worker receives pay or with the time during which he/she may be required to work under a contract of employment. Working time will include time taken for training purposes, civic and public duties, health and safety and trades union duties.

27.9 Employees will normally not be expected to work on average more than 48 hours per each seven-day period, calculated over 17 weeks. In exceptional circumstances the reference period may be extended, by agreement with locally recognised unions, to a maximum of 52 weeks.

27.10 Unless it is agreed with locally recognised unions to the contrary, the averaging reference period (as per paragraph 27.9) is the 17 weeks immediately preceding each day in the course of a worker's employment.

27.11 Working time will be calculated exclusive of meal breaks, except where individuals are required to work during meals, in which case such time should be counted as working time.

## Individual option to work more than 48 hours a week

27.12 Individuals may choose to agree to work more than the 48 hours average weekly limit if they agree with their employer in writing. A decision to exercise this option is an individual, voluntary one and no pressure should be placed on an employee to take this option. Such an individual agreement may either relate to a specified period or apply indefinitely. To end any agreement a worker must give written notice to his/her employer. This can take the form of a previously specified notice period of up to three months written in any agreement or, if no notice period is specified, only seven days notice would be required. Records of such agreements must be kept and be made available to locally recognised unions.

## On-call staff

27.13 Staff who are on-call, i.e. available to work if called upon, will be regarded as working from the time they are required to undertake any work-related activity. Where staff are on-call but otherwise free to use the time as their own, this will not count towards working time. This method of calculating working time will not affect on-call payments (see also paragraph 27.8 and Section 2 (England and Wales) or Section 2 (Scotland and Northern Ireland) and Annex 29).

27.14 Where staff are required to 'sleep in' on NHS premises for the duration of a specified period, local agreements should be made for compensatory rest.

## Rest breaks

27.15 Where the working day is longer than six hours, all staff are entitled to take a break of at least 20 minutes. Rest breaks must be taken during the period of work and should not be taken either at the start or the end of a period of working time. Employees should be able to take this rest break away from their work station. In exceptional circumstances and by agreement with the worker, where a rest break cannot be taken the unused entitlement should be claimed as a period of equivalent compensatory rest. Line managers should ensure that provision is made to allow compensatory rest to be taken. Existing local arrangements which already provide for breaks of more than 20 minutes (e.g. lunch breaks) will meet the requirements of this provision and no further action will be needed.

27.16 In circumstances where work is repetitive, continuous or requiring exceptional concentration, employers must ensure the provision of adequate rest breaks as an integral part of their duty to protect the health and safety of their employees. In such circumstances the advice of local occupational health services should be sought.

#### Minimum daily rest periods

27.17 Employees should normally have a rest period of not less than 11 hours in each 24 hour period. In exceptional circumstances, where this is not practicable because of the contingencies of the service, daily rest may be less than 11 hours. In these circumstances records should be kept by the employer which will be available to locally recognised unions. Local arrangements should be agreed to ensure that a period of equivalent compensatory rest is provided. Any proposed regular amendment to the minimum daily rest period must be agreed with locally recognised unions. It is recognised that in some emergency situations compensatory rest may not always be possible.

27.18 Where full daily rest cannot be taken because a worker is changing shifts the employer should make arrangements to allow equivalent compensatory rest.

#### Weekly rest periods

27.19 All employees should receive an uninterrupted weekly rest period of 35 hours (including the eleven hours of daily rest) in each seven day period for which they work for their employer. Where this is not possible they should receive equivalent rest over a 14 day period, either as one 70 hour period or two 35 hour periods.

#### Night work

27.20 "Night-time" is a period of at least seven hours which includes the period from midnight to 5am. A night worker is someone who is classed as working for at least three hours of their daily working time during night-time as a "normal course." Employers should ensure that the "normal hours" of their night workers do not exceed an average of eight hours per 24 hour period over a rolling 17 week reference period. Where the night worker's job involves special hazards or heavy physical or mental strain no averaging of hours is permitted and the night worker must not work more than eight actual hours in each 24 hour period.

27.21 "Normal hours" are those which are regularly worked and/or fixed by contract of employment (not hours actually worked). The calculation is therefore not affected by absence from work, as a worker's normal hours of work would remain the same, regardless of the "actual" hours worked. Time worked as regular or obligatory or guaranteed overtime does form part of "normal hours".

## Special hazards or heavy physical or mental strain

27.22 Employers must identify special hazards faced by night workers by identifying them in risk assessments, as involving a significant risk to health and safety, undertaken in accordance with the Management of Health and Safety at Work Regulations 1992.

27.23 Employers should ensure that night workers, whose work does involve special hazards or heavy physical or mental strain, do not actually work for more than eight hours in any 24 hour period, during which the night worker performs night work. *Where the night worker's job involves special hazards or heavy physical or mental strain no averaging of hours is permitted and the night worker must not work more than eight actual hours in each 24 hour period.*

## Health assessment for night workers/transfer to day work

27.24 All night workers are entitled to a regular free and confidential occupational health assessment and, additionally, when a work-related problem is identified, to determine whether the worker is fit to undertake the night work to which he/she is assigned. The format and content of the health assessment should be agreed by locally recognised unions in accordance with the advice on occupational health services issued by NHS Employers and the Health and Safety Commission's Health Services Advisory Committee.<sup>1</sup> Paid time off should be given to employees to attend occupational health assessments.

27.25 Employees identified by a medical practitioner as having health problems related to night work should be offered, wherever possible, the option of transfer to suitable day work with appropriate pay and conditions of service.

<sup>1</sup> The management of health, safety and welfare issues for NHS staff (NHS Employers, 2005) and The management of occupational health services for healthcare staff (Health Services Advisory Committee, 1993).

*Information note number 1: amendment number 34*

Section 28 and 29: Unallocated

Unallocated

*Amendment number 43*

*TCS Advisory Notice (01/2021)*