

NHS STAFF COUNCIL

GUIDANCE ON OVERTIME PAYMENTS DURING COVID-19 PERIOD

Context

During the exceptional circumstances of the COVID-19 period, the normal NHS Staff Council processes of co-production and iteration of guidance has not been possible. Trade unions and employers have continued to work constructively, and at pace, to input into the government's emergency response in producing guidance and updates on emerging positions.

As part of this work, the employers and trade unions from the NHS Staff Council Executive recently asked the Secretary of State for Health and Social Care to introduce temporary changes to overtime payments made to staff during the COVID-19 emergency and its aftermath.

The request has been considered by the Secretary of State, who has confirmed that he is content to leave the matter for local determination rather than agree the proposal for a national solution. The NHS Staff Council is aware that the conversation about these overtime provisions will, consequently, move to an organisational level.

This guidance document sets out a framework to guide local conversations on this issue, setting out temporary measures that can be introduced, subject to local agreement.

The provisions in the guidance document require local agreement before they are adopted and are not intended to replace existing arrangements that have been jointly agreed.

FOR CONSIDERATION: TEMPORARY OVERTIME PROVISIONS

Bands 1-7 - Temporary increases in hours in excess of 37.5 hours per week

For the duration of the COVID-19 period, when:

- staff have to work beyond their allocated shift, in the form of 'shift overruns', which takes them beyond 37.5 hours a week
- or agree at the specific request of their employer to extend their working week beyond 37.5 hours,

then in line with [section 3: overtime payments](#) of the terms and conditions of service handbook (TCS handbook), overtime payments are extended to all groups of staff in bands 1-7.

Bands 8 and 9

The NHS terms and conditions of service do not provide for overtime payments to be made to staff in these pay bands; both employers and trade unions recognise this as an issue in the current COVID-19 period.

Working in partnership with local trade unions, employers may consider whether the introduction of a temporary local agreement to offer additional hours payments to staff in these pay bands would be the right approach to reward and recognise the exceptional levels of discretionary effort being undertaken to support the COVID-19 emergency response.

NB: In Scotland and Northern Ireland a national decision has been reached to extend overtime pay in line with the TCS handbook provisions for bands 1 – 7 to those on bands 8 and 9. In Wales, organisations have discretion to pay overtime at time and a half to these bands where additional activity relates specifically to the management of COVID-19.

Time off in lieu (TOIL) – temporary local agreement

Current provisions set out in section 3.5 of the NHS TCS handbook allow staff to take TOIL instead of overtime payments; but if this TOIL is unable to be taken within three months, for operational reasons, then it must be paid for at an overtime rate.

Working in partnership with local trade unions, employers may wish to consider making a temporary change to [section 3: overtime payments](#) in relation to paragraph 3.5 on payment for TOIL so that an individual can choose to be paid the overtime premium within one month, rather than the current three month provision).

Proposed duration of the temporary measures

The NHS Staff Council understands that the measures being proposed, above for local agreement are an exceptional and temporary response to the COVID-19 period.

It is expected that any local agreements would apply up to 31 August 2020 in the first instance, with an option for joint local review and extension for a further fixed-term period to continue to respond to the COVID-19 period.

Funding

In England, applications of the provisions set out above will incur additional costs. Employers will want to follow [advice issued](#) by NHS England and NHS Improvement on recording and claiming for additional costs and any subsequent updated guidance.

Annual leave and health and wellbeing

In recognising the exceptional contribution being made by staff in the current situation, the NHS Staff Council also acknowledges the importance of supporting staff health and wellbeing, and in particular ensuring appropriate periods of rest and recuperation.

In encouraging local partnership conversations about overtime, the NHS Staff Council is mindful of the impact of working excessive hours.

To this end, the NHS Staff Council recommends that adoption of these overtime provisions is also accompanied by discussion within local partnership forums on

- how overtime and excess hours are recorded and reported
- how staff can be encouraged to plan and take leave.

This is in order to avoid fatigue and the likelihood that excess hours will contribute to higher risk of infection.

NHS Staff Council Executive

29 May 2020