



Management Steering Group

**BMA**

Scotland



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## **Joint statement on the application of contractual provisions for junior doctors and dentists in Scotland during the Covid-19 pandemic**

The Covid-19 pandemic, and the immense demands it is placing upon the NHS, represents an unprecedented challenge to this country. The past few weeks have already seen junior doctors alongside other healthcare workers demonstrating extraordinary levels of commitment and willingness to go above and beyond usual expectations. To ensure that these efforts are sustainable in the weeks and months to come it is of paramount importance that staff are not working in a manner that compromises their health or safety or that of their patients.

The National Health Service Hospital Medical and Dental Staff and Doctors in Public Health Medicine and the Community Health Service (Scotland) Terms and Conditions of Service April 2003 as amended contains a range of working hours restrictions, rest requirements and rota monitoring requirements that are designed to protect junior doctors and dentists from excessive fatigue and burnout. The expectation is that these protections, along with the Working Time Regulations and other important additional extra-contractual rota requirements agreed in Scotland (i.e. maximum 7 days/shift working, 46 hours rest post nights, no rota to contain seven nights in a row, and adequate notice of fixed annual leave) will continue to be applied during the coming weeks and months spent facing the Covid-19 pandemic.

As noted in DL (2020) 8, Boards have the same duty of care to their staff during a pandemic as in other circumstances and must take steps to safeguard their health and safety. This should include access to basic wellbeing provisions, including regular breaks to reduce the onset of fatigue, 24-hour access to appropriate facilities to access and/or prepare food, and signposting to sources of psychological support and counselling services.

BMA Scotland, Management Steering Group (MSG) as employers and Scottish Government agree the following principles that will apply during this exceptional period in order to assist the Covid-19 crisis:

- **The contractual requirement to monitor rotas is temporarily paused. This is initially for the remainder of the current monitoring period up to the end of July 2020. Any extension to the pause would be by agreement between BMA and MSG. However, all emergency rotas must still be put through the DRS rota software to ensure compliance with hour rules and to determine the appropriate banding.**
- All partners agree that when designing rotas the health and wellbeing of our junior doctors and dentists, patient safety and sustainable service delivery remain paramount. Every effort will continue to be made to ensure that breaks are taken during and between shifts.
- In accordance with DL (2020) 5, Boards should offer those working on the staff bank without a substantive contract, a fixed term contract to help manage staffing levels for COVID-19, and to offer them security and stability.
- Emergency rotas should be agreed with junior doctors and dentists, who should be involved where possible in their design. These should be reviewed in partnership with junior doctors and dentists locally on an ongoing basis. All rotas should be designed to minimise the adverse effects of fatigue and workload, and ensure adequate time for rest between and during shifts. Rotas should follow intelligent circadian shift patterns of early – late – night

rotations if a three or more shift pattern is used, allowing the body to adjust as naturally as possible to the altered working times.

- No individual will suffer financial detriment as a result of changes made to their pre-Covid-19 working pattern or by agreeing to be placed on a new emergency working pattern.
- Where working patterns may change the junior doctors on the rota will be paid the appropriate banding supplement for the emergency Covid-19 rota, if that is higher than the banding supplement that would attract to their pre-Covid-19 substantive rota. If the emergency rota banding is lower than their pre-Covid-19 substantive rota, then overall salary applicable to the usual pre-Covid-19 banding will be maintained for the duration of the emergency rota. Incremental credit and progression will continue to apply.
- Individual doctors may for a variety of reasons find themselves unable to work a particular rota or take on certain clinical responsibilities during the Covid-19 pandemic. These individual circumstances should be managed sensitively and on a case-by-case basis to identify and address any potential barriers and ensure that they can contribute as they are able.
- When a new or amended rota is implemented, any Less than Full Time (LTFT) doctor or dentist and those with reasonable adjustments in place must have their existing status protected unless they agree otherwise. There should be no discrimination during this period toward junior doctors and dentists whatever decision they choose to make, nor should choices made during this time prejudice future applications for LTFT or reasonable adjustments. Applications for LTFT will remain open, although at the present time NES will only look favourably on those applications that fall into category 1.

See link:

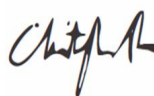
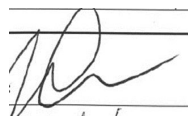
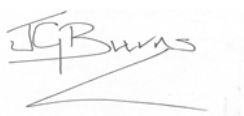
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- Boards must ensure that all junior doctors and dentists are paid without unreasonable delay for any additional work they are asked to undertake beyond their scheduled rostered hours, that they are made fully aware of the local arrangements for claiming such payment and that they are encouraged to do so. Such additional work should be paid at the internal locum rates set out in the TCS.
- If an LTFT doctor or dentist agrees to offer additional hours, they may choose to do this either on an ad-hoc basis or by voluntarily increasing their proportion of full-time equivalent and any change should be reflected in revised pay arrangements.
- Some junior doctors and dentists who currently work non-resident on-call (NROC) rotas may temporarily convert to a full shift pattern, depending on local needs. Others may be asked to remain at home on 'standby', also known as being 'shadow rostered', in order to minimise staff exposure but provide availability to cover absence. This means that they may have to be available to attend their place of work at short notice. Such hours on 'standby' should be reflected accurately as being non-resident on-call in any working pattern when calculating the banding supplement for the new rota. If the doctor is still required to attend on site for handover, it may be appropriate to use hybrid arrangements, e.g. to have a short full shift to cover handover prior to the beginning or at the end of an on-call period.
- For those who need to attend on site, or are acting as "floaters" between areas of the hospital in response to clinical activity, it is likely to be more appropriate to roster these periods as Full Shift (or Partial Shift for low intensity periods where doctors require to be resident). This may also be necessary for doctors who are on standby, but whose call out distance is sufficiently short that it is not practicable for them to remain on standby from home (e.g. call out time of 20 minutes maximum, when doctors home address is 30 minutes away, or they may be required to attend at more than one site when on standby).
- Boards should continue to consider annual leave requests, as staff rest and recuperation at a time of the pandemic is vital. Any move to cancel pre-booked leave must be very carefully considered as part of emergency preparedness planning, and all other avenues should be

explored with the individual junior doctor or dentist before such a decision is taken. As the response to Covid-19 changes and develops, rotas should be reviewed and constructed in a manner which ensures that junior doctors are able to use their annual leave to the greatest extent possible prior to the August rotation, subject to the needs of the service.

- Where a junior doctor or dentist is unable to take their full 2019/20 annual leave entitlement due to service demands, this will be carried forward into the individual's next leave year, in line with the provisions of DL (2020) 9. Such carried forward leave can then either be taken as annual leave or they can request payment for the full amount of carried forward leave, or they can opt to request payment for some of the days and take the remainder as annual leave. Where payment is chosen, the rate that will apply will be the salary, including banding, at the time the leave was accrued. Board employers are keen for junior doctors with outstanding leave at the end of their current rotation to actively consider taking the payment option, in order to minimise bureaucracy, and to allow both Boards and doctors to move forward into the new leave year and future rotations without any outstanding leave related issues. However, the option of taking the leave or payment in lieu of the leave will be available to up until the end of the 2021/22 leave year, regardless of any change of board employer, provided the individual remains in continuous employment within NHS Scotland. For those leaving employment with NHS Scotland before the end of the 2021/22 leave year, any remaining 2019/20 leave still outstanding will be paid automatically on termination. The above carry forward provisions do not apply to Interim Foundation doctors (FiY1s) as DL (2020) 9 only covers staff unable to take their 2019/20 annual leave and these doctors did not commence employment until April 2020.
- Individuals on emergency Covid-19 rotas will revert to their usual pre-Covid-19 rota and pay arrangements once the emergency response period is over. Whilst the duration of the emergency response period may be determined locally by each Health Board, this statement will remain in force nationally until all parties agree that the emergency response period has concluded across the whole of Scotland. The parties to this statement have agreed to review these emergency working conditions no later than 30 June 2020.

These are unprecedented times and all of those working in the NHS are likely to find that they are working harder and in circumstances more challenging than those they have faced before. We know that all staff involved will pull together to support each other. BMA Scotland, MSG and Scottish Government are so very grateful for the commitment, flexibility and professionalism demonstrated by our junior doctors in Scotland at this acutely challenging time.



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