

Consultants

A guide to contracting for
additional/extra programmed activities

October 2006

1. Introduction

The purpose of this guide is to set out best practice regarding the contractual arrangements that we believe should apply to additional or extra Programmed Activities (PAs).

The 2003 consultant contract established a standard full-time working week comprised of ten PAs. The Terms and Conditions, Consultants (England) 2003 provide flexibility for NHS organisations and consultants to agree to contract for additional PAs for a variety of purposes, although no consultant can be compelled to agree to a contract containing more than ten PAs. Similarly, employers should not advertise posts on the basis of more than ten PAs.

An important benefit of the 2003 contract is to provide an improved work/life balance for consultants. Where a workload is so onerous that it cannot be accommodated within a standard full-time working week, NHS organisations should identify ways of reducing workload over time, so that best employment practice is observed. It may be necessary to look at how services are delivered so that consultant time is used efficiently, for example by redesigning supporting roles or transferring work to other clinical staff.

2. 'Additional' or 'extra' Programmed Activities?

Provision is made within the Terms and Conditions for two types of extra-contractual PAs (for practical purposes these can be used interchangeably). The distinction is explained below, although for the purposes of simplicity in the remainder of this guide, we shall refer to all such PAs as 'additional PAs'.

Extra PAs are referred to in Schedule 6 of the Terms and Conditions as those that are linked to spare professional capacity. Consultants wishing to undertake private practice as defined, and who wish to remain eligible for pay progression, are required to offer up the first portion of any spare professional capacity (up to a maximum of one PA per week). Where a consultant intends to undertake such work, the employing organisation may, but is not obliged to, offer the consultant the opportunity to carry out up to one extra PA per week on top of the standard commitment set out in their contract of employment. Schedule 6.2 of the Terms and Conditions sets out the provisions regarding putting offers to consultants and the periods of notice required.

There is flexibility to agree a fixed number of extra PAs to be undertaken as required over the course of the year and NHS organisations may find this provision particularly helpful in that arrangements can be tailored to reflect varying service needs. One approach, for example, is to assess on a departmental basis how many extra PAs are likely to be required during the course of a year to increase capacity temporarily, for example for waiting list work; to cover clinics and lists; or to cover a vacancy. The employer can then

contract for an agreed number of extra PAs with those consultants willing to work them.

Additional PAs are not linked to spare professional capacity but may be used to reflect regular, additional duties or activities (whether scheduled or unscheduled) that cannot be contained within a standard ten PA contract. They can be used, for example, to recognise an unusually high routine workload, or to recognise additional responsibilities. In this context “regular” is not intended to necessarily imply “at the same time each week or month”.

A consultant whose job plan includes at least one additional PA will be deemed to have satisfied the requirement as set out in Schedule 6.2 of the Terms and Conditions to offer up an extra PA for pay progression purposes.

3. Contracting for additional PAs

Clause 7.1 of the consultant contract should contain only the standard number of PAs (i.e. ten for a full-time consultant and the agreed number for a part-time consultant), while clause 7.6 provides for a written agreement covering any additional PAs.

When contracting for additional PAs, care should be taken to be explicit as to their purpose and duration, so as to avoid possible misunderstandings in the event that the requirement for additional PAs may cease. It is important to distinguish between standard contractual duties and additional contractual duties, as indicated in Clause 7.6 of the contract, since the additional contractual duties are intended to be temporary in nature and may be contracted for flexibly, while Clause 7.1 identifies the basic, mutual contractual commitment. This is particularly important for part-time consultants.

Pay protection arrangements do not apply to additional PAs, as they form no part of basic pay, for example this means that if PAs are reduced from say eleven to ten in future, pay would decrease as a consequence. It is not protected.

Paying for additional PAs

Additional PAs contracted for on a regular basis, for example weekly, and used for example, to recognise additional routine workload, will be payable for each week including annual and study leave weeks, and during any periods of sick leave.

Additional PAs that are contracted for on an ad hoc basis, for example by the parties agreeing prospectively to a level of extra activity that can be undertaken flexibly during the year, can be paid by annualising and paying through equal salary payments.

Up to ten PAs per week are pensionable, for both full-time and part-time consultants. Therefore, additional PAs for full-time consultants i.e. those in

excess of ten PAs, are not pensionable, while for part-time consultants; additional PAs are pensionable up to an overall maximum of ten per week, including their standard contractual PAs.

Examples of contracts

We have set out in this guide three examples of contracts that NHS organisations may wish to use:

- contract for a regular additional PA for a full-time consultant
- contract for 20 extra, annualised PAs for a full-time consultant
- contract for 15 extra, annualised PAs for a part-time consultant.

NHS Employers
16 October 2006

Example contract for one regular additional PA for a full-time consultant to recognise current workload

Dear [Dr/Mr/Mrs/Miss/Ms]

Contract for additional Programmed Activities

In accordance with clause 7.6 of your main contract of employment, the [insert name of NHS organisation] has agreed to offer, and you have agreed to undertake, [one] additional Programmed Activity over and above the ten Programmed Activities that constitute your standard contractual duties, in recognition of [e.g. the level of your current routine workload and/or the following additional responsibilities (insert here a description of the activity or duty giving rise to the additional PA)]. The additional Programmed Activity will be incorporated into your Job Plan schedule.

The remuneration for this is covered by clause 21 of your main contract of employment, and Schedules 13 and 14 of the Terms and Conditions – Consultants (England) 2003, as amended from time to time. The additional Programmed Activity is not pensionable.

This contract for [one] additional Programmed Activity will commence on [date] for a fixed period of one year, but may be terminated sooner upon service of three months' notice by either party. The requirement for you to undertake additional Programmed Activities will be reviewed annually as part of your Job Plan review. Termination of this contract for additional Programmed Activities will have no effect on your main contract of employment.

Additional Programmed Activities are not subject to pay protection arrangements.

Yours sincerely

[Signature]

On behalf of [insert name of NHS organisation]

I hereby accept the offer of additional Programmed Activities on the terms and subject to the conditions mentioned in the foregoing letter.

[Signature]

[Date]

This offer and acceptance of it shall together constitute a contract between the parties.

Example contract for 20 annualised extra PAs for a full-time consultant to reflect limited uptake of spare professional capacity

Dear *[Dr/Mr/Mrs/Miss/Ms]*

Contract for additional Programmed Activities

In accordance with clause 7.6 of your main contract of employment, the *[insert name of NHS organisation]* has agreed to offer, and you have agreed to undertake, *[twenty]* extra Programmed Activities per *[year]* over and above the ten Programmed Activities per week that constitute your standard contractual duties. The extra Programmed Activities will be used for *[insert purpose – typically a Direct Clinical Care activity]* and will be worked at the following times *[insert times or state “flexibly by mutual agreement when required throughout the year”]*. *Note: Where extra PAs are to be worked flexibly and not on fixed dates or times, there should be local agreement as to how much notice will be given before the extra PA is required to be worked.]*

The remuneration for this is covered by clause 21 of your main contract of employment and Schedules 13 and 14 of the Terms and Conditions – Consultants (England) 2003, as amended from time to time. The extra Programmed Activities are not pensionable.

This contract for *[twenty]* extra Programmed Activities will commence on *[date]* and may be terminated upon service of three months’ notice by either party. The requirement for you to undertake extra Programmed Activities will be reviewed annually as part of your Job Plan review. Termination of this contract for extra Programmed Activities will have no effect on your main contract of employment.

Extra Programmed Activities are not pensionable nor are they subject to pay protection arrangements.

It is confirmed that by performing these extra Programmed Activities you will comply with the requirements of Schedule 6 of the Terms and Conditions – Consultants (England) 2003. In the event of termination of this contract for extra Programmed Activities by *[insert name of NHS organisation]*, there will be no adverse impact on pay progression.

Yours sincerely

[Signature]

On behalf of *[insert name of NHS organisation]*

I hereby accept the offer of extra Programmed Activities on the terms and subject to the conditions mentioned in the foregoing letter.

[Signature]

[Date]

This offer and acceptance of it shall together constitute a contract between the parties.

Example contract for 15 annualised extra PAs for a part-time consultant to reflect limited uptake of spare professional capacity

Dear [Dr/Mr/Mrs/Miss/Ms]

Contract for additional Programmed Activities

In accordance with clause 7.6 of your main contract of employment, the [insert name of NHS organisation] has agreed to offer, and you have agreed to undertake, [fifteen] extra Programmed Activities per [year] over and above the [six] Programmed Activities per [week] that constitute your standard contractual duties. The extra Programmed Activities will be used for [insert purpose – typically a Direct Clinical Care activity] and will be worked at the following times [insert times or state “flexibly by mutual agreement when required throughout the year”. Note: Where extra PAs are to be worked flexibly and not on fixed dates or times, there should be local agreement as to how much notice will be given before the extra PA is required to be worked.]

The remuneration for this is covered by clause 21 of your main contract of employment and Schedules 13 and 14 of the Terms and Conditions – Consultants (England) 2003, as amended from time to time. The extra Programmed Activities are pensionable.

This contract for [fifteen] extra Programmed Activities will commence on [date] and may be terminated upon service of three months’ notice by either party. The requirement for you to undertake extra Programmed Activities will be reviewed annually as part of your Job Plan review. Termination of this contract for extra Programmed Activities will have no effect on your main contract of employment.

Extra Programmed Activities are not subject to pay protection arrangements.

It is confirmed that by performing these extra Programmed Activities you will comply with the requirements of Schedule 6 of the Terms and Conditions – Consultants (England) 2003. In the event of termination of this contract for extra Programmed Activities by [insert name of NHS organisation], there will be no impact on pay progression.

Yours sincerely

[Signature]

On behalf of [insert name of NHS organisation]

I hereby accept the offer of extra Programmed Activities on the terms and subject to the conditions mentioned in the foregoing letter.

[Signature]

[Date]

This offer and acceptance of it shall together constitute a contract between the parties.

NHS Employers is the employers' organisation for the NHS in England. Our aim is to help employers improve the working lives of staff who work in the NHS and, through them, to provide better care for patients. NHS Employers is part of the NHS Confederation but has its own director, policy board and assembly. In striving to make the NHS an employer of excellence, we have four key roles:

- negotiating on behalf of employers
- supporting employers
- representing employers
- promoting the NHS as an employer.

Contact us

www.nhsemployers.org

Email enquiries@nhsemployers.org

NHS Employers

29 Bressenden Place

London SW1E 5DD

2 Brewery Wharf

Kendell Street

Leeds LS10 1JR

Copyright NHS Employers 2006

This document may not be reproduced in whole or in part without permission

The NHS Confederation (Employers) Company Ltd

Registered in England. Company limited by guarantee: number 5252407

Ref. EGUI02101