

**Revised Protocol for the Development and Review of All Wales NHS Workforce Policies**

**(V.5 June 2023)**

**1. Introduction**

The Welsh Partnership Forum is composed of three partners: staff organisations, employer organisations and the Welsh Government.

The aim of this protocol is to set out the process to be followed in developing and reviewing workforce policies and to clearly outline the roles and responsibilities of those involved in the process.

The development or review of policies will be led by the Welsh Partnership Forum and will be coordinated on behalf of the partners by NHS Wales Employers.

The Welsh Partnership Forum will ensure that proper assessment is undertaken of the impact of any new and revised Policies on groups with 'protected characteristics' as defined under the Equality Act 2010. This will help NHS Wales to demonstrate how we are:

- Eliminating unlawful discrimination, harassment & victimization;
- Advancing equality of opportunity for all; and
- Fostering good relations between different groups

**2. Process**

**Stage 1 – Identification of policy areas**

- Throughout the year, the NHS organisations, NHS Wales Employers, Staff representatives and Welsh Government Officers will develop a view of a range of subjects that might require or benefit from being developed and promulgated on a consistent all-Wales basis.
- These subjects will be put before the Business Committee of WPF on a periodic basis, and at least annually, in order that a decision can be made, in partnership, as to whether an all-Wales approach is desirable.
- The Business Committee will also consider whether the subject requires the development of a policy or whether a good practice guideline would be a more appropriate response.
- The Business Committee will consider on a case-by-case basis the joint development of generic employment policy and practice with other parts of the NHS e.g., NHS Employers, particularly in response to NHS Staff Council amendments.
- The Business Committee may also wish to consider which existing policies should be subject to evaluation and either transactional review (i.e., minor changes not material to the principles of the policy) or full review (where fundamental elements of the

policy require more detailed consideration). Triggers for review of existing policies will be:

- ✓ Any new or changed relevant legislation;
  - ✓ Amendments to national Pay, Terms and Conditions of Service;
  - ✓ Significant issues raised across employing organisations regarding interpretation and/or compliance;
  - ✓ Review date (where a specific date has been set for a material reason at the outset)
- The WPF will agree prioritisation of these and incorporate those chosen into its work plan.

### **Stage 2 – Initial research and scoping**

- NHS Wales Employers will undertake an initial scoping exercise, including Equality Impact Assessment screening, taking into account Welsh Government legislation and policy and examining current best practice and legal developments together with other relevant guidance.
- NHS Wales Employers will identify the scope the range stakeholders for each specific policy particularly focussing on areas which may affect a specific staff group and/or if the guidance may extend beyond normal partnership arrangements.
- NHS Wales Employers will recommend those policies requiring transactional review and those for full review

### **Stage 3 – Establishing joint development and review groups**

- A joint policy development or full review group will be established with NHS Organisation/management representation being nominated by W&OD Directors and staff side representation through the Chair of the Staff Side of the Welsh Partnership Forum. The group will not normally exceed four staff and four management side representatives, together with the lead NHS Wales Employers officer and a WG observer, when required.
- The staff and management side representatives will commit to attend all the required meetings and to the timescale for the policy development, or review to ensure consistent involvement at all sessions and timeliness of the outputs. Employing organisations will be notified of involvement of their staff and be requested/encouraged to support appropriate release.
- Where an existing policy is subject to a transactional review, a smaller group may be sufficient for the task and where practicable at least one management side and one staff side representative from the original development group will be involved.
- The development group will give initial consideration to the overall context and intended outcome of the policy and the evaluation of any existing local policies previously undertaken by NHS Wales Employers through the Equality Impact Assessment screening.
- The group will be appraised by NHS management, Staff side representatives and WG as to any specific concerns and opportunities presented by the development of a new policy within the area.

- The group may be supplemented, as required by individuals with particular areas of expertise, including those identified within the EqIA screening.
- Where there is a level of more detailed consultation and negotiation required regarding the local application e.g., of Agenda for Change flexibilities (on-call, pay protection etc.), the same process will be applied with an understanding that the outcome will be subject to wider consultative processes by stakeholders prior to approval.

#### Stage 4- Drafting

- During this stage, the respective group will draft the policy or changes to the existing policy. This will be facilitated through a series of meetings, email exchanges or other policy development activities, co-ordinated by NHS Wales Employers. The draft policy will be informed by the outcome of the EqIA screening.
- Whilst the policy is in development it is recognised that the emerging content may be the subject of discussion outside the meetings. It is important, however, that all parties should be clear that all discussions/documentation are provisional and may change substantially.
- There is an expectation that group members will make every effort to attend meetings in order to influence the discussions.
- Agreements reached by those present at such meetings will be “banked” and will not normally be re-considered at any future meeting. It is however, recognised that where the process is one of negotiation, the principles will be different with the matters potentially being re-visited as the shape of a final agreement is developed.
- Equality Impact Assessments will be an integral part of the process. NHS Wales Employers will lead on ensuring the proper Equality Impact Assessment of the policies. However, it is also recommended that an Equality Link worker acts as an advisor to each group.

#### Stage 5 - Engagement

The legal equality duties relating to public sector organisations in Wales state that a “listed body” **must** “...involve people who it considers representative of one or more of the protected groups and who have an interest in how an authority carries out its functions”, and that this **must** take place in relation to (amongst other things) “assessing the likely impact on protected groups of any policies or practices being proposed or reviewed.”

The following principles will be observed:

- Management and staff side representatives will be expected to engage with their respective constituencies, during the scoping and drafting of the policy. A similar approach should occur when there are substantial and material changes proposed during a review of an existing all-Wales policy.
- The need for a wider correspondence group to consider the operational implications of policies before they are taken forward for full consultation will be considered on a

case-by-case basis. For example, this may include a mechanism to facilitate the input of service users given that many aspects of service provision e.g., Mental Health, include partnerships with service users in employment practice such as recruitment. The need to engage more widely may well be identified during the EqIA screening.

- The engagement timeline will need to take into account the need for TU membership consultation/ballots where the process is a negotiation regarding a terms and conditions flexibility.
- All stakeholders will be requested to contribute and respond during the specified consultation period ensuring that sufficient time is given to the consultation process, so as to ensure the content of the final draft is broadly acceptable to all parties before it reaches WPF Business Committee for agreement and to ensure that practical considerations for the operation of the policy are identified.
- A record will be kept of the stakeholders who respond.
- Where the changes are minor, amendments will be made and signed off by the Business Committee. Substantive changes will be referred back to the policy drafting group.

## **Stage 6 - Approval and Implementation**

- The final draft policy and EqIA will be presented for acceptance to the WPF Business Committee, with a covering report including information on group membership, key purpose, date of completion and suggested review date.
- Any additional implementation guidance and /or training deemed necessary by the WPF Business Committee will be developed by the development group.
- The new policy and associated EqIA will be formally ratified by the next Welsh Partnership Forum and will be issued for implementation by NHS Wales Employers on behalf of the Joint Chairs.
- Where the outcome of the policy is the application of a terms and conditions change e.g., on-call, protection of pay etc., it may require Cabinet Secretary approval but will then be issued for implementation by NHS Wales Employers on behalf of the Joint Chairs.
- All newly developed policies will be subject to a high-level transactional review no later than 12 months following ratification. This is to acknowledge that gaps and issues often only come to light once a policy is in operation and an early opportunity to address such matters will be programmed into policy development cycle. The high-level review will be coordinated on behalf of the partners by the NHS Wales Employers;
  - where there are only minor modifications proposed the policy will be amended and presented to the Business Committee of WPF.
  - where there are more significant changes proposed a process will be agreed at the Business Committee of WPF to revise/amend the policy.
- Once ratified, the local Health Board or Trust should adopt the policy for local implementation as soon as practicable thereafter (in accordance with the appropriate governance route within the organisation).

- Individual employees already being managed under an existing local or national policy will remain under the auspices of that policy until there is mutual agreement for a migration to the new policy **or** until a period of twelve months has elapsed, whichever is the sooner.
- If a situation arises where there is a disagreement over the interpretation of an agreed policy within an NHS organisation the following process will be observed:
  - The parties within an NHS Wales organisation must seek to resolve the issue locally;
  - Should the matter remain unresolved, following partnership discussions in the organisation, it must be referred to the LPF outlining why it has not been possible to resolve the matter locally;
  - Should the LPF agree that the matter cannot be resolved locally, a joint employer/TU submission should be made by the LPF to the joint (employer/TU) chairs of the WPF outlining the area requiring clarification/resolution;
  - The joint chairs will collectively determine a partnership process for considering the matter and to arrive at a decision/make a recommendation;
  - Once the joint chairs have received and considered the decision/recommendation and jointly agreed the appropriate interpretation, their response will be communicated to the LPF;
  - The decision of the joint chairs will be final and reported to the WPF Business Committee.

### **3. Monitoring and Data Collection**

- Each NHS organisation will be responsible for:
  - ensuring the correct and consistent application of the terms of the policy,
  - monitoring the local application of the policy disaggregated against each protected equality characteristic, workplace/directorate and staff group
  - determining its own monitoring arrangements, but as a minimum to include periodic reports to the executive team, Local Partnership Forum and Board as appropriate;
  - sharing the outputs of any audits/reviews of compliance with NHS Employers to assist in learning, sharing of good practice and areas for policy review.
- NHS Employers will be responsible for:
  - publishing policies on the Welsh Partnership Portal/Site
  - publishing associated guidance to support consistent application of policies on the Welsh Partnership Portal/Site

**KW/WNHSEU – 18/07/11**  
**Revised RMT 28/02/12 & 02/09/16**  
**Revised AD 26/01/17 & 09/03/17**  
**Revised AD/ RMT 30/03/23**  
**Revised AD/SG 01/06/23**