



Cymru Wales



Llywodraeth Cymru  
Welsh Government

To:

Health Board and Trust

- Chief Executives
- COOs
- Medical Directors
- Directors of Nursing
- Directors of Workforce
- EPRR Leads
- NHS Wales Employers

Dear Colleagues

### **Planning for junior doctor industrial action**

You will be aware that the British Medical Association (BMA) has balloted junior doctors for industrial action. The BMA has now confirmed that the ballot has returned a majority vote in favour of strike action. As a result, there will be a 72-hour full walkout of all junior doctors, including those providing emergency care during the period 7am Monday 15<sup>th</sup> January 2024 to 7am Thursday 18<sup>th</sup> January 2024.

Welsh Government, NHS Wales Employers, and the BMA all wish to ensure that patients remain safe while junior doctors are taking lawful industrial action. This statement sets out our joint staff recall position in the event of industrial action.

### **System Resilience Planning and Preparedness**

In addition to the normal capacity and demand planning undertaken for the winter and Christmas and New Year Planning, Health Boards and Trusts have been asked to ensure that the impact of a full withdrawal of labour from junior doctors for the period of industrial action is factored into this planning. Decisions regarding a reduction in the level of elective and non-emergency treatment, non-clinical events or activities, leave approval etc. should be included.

Health Boards and Trusts are expected to ensure that adequate staffing levels are maintained during junior doctor industrial action by engaging and obtaining agreement from SAS and consultant doctors to provide cover, whilst also maintaining senior decision-making roles.

With adequate scenario planning, health boards and trusts should ensure that they are able to provide safe staffing levels from amongst SAS and consultant doctor staff to ensure adequate cover.

### **Derogation requests *ahead* of Junior Doctor Industrial action**

Derogation in the event of a full walkout is designed to be responsive to patient safety concerns arising **during** strike action rather than pre-empting impacts of strike action.

Whilst Welsh Government, NHS Wales Employers and the BMA acknowledge that this is an already challenging time of year, the BMA has stated that no prospective requests for derogation (call back of junior doctors) will be considered or approved before the start of the industrial action.

### **Derogation requests during Junior Doctor Industrial Action**

Welsh Government, BMA and NHS Wales Employers have agreed a mechanism to consider and approve such requests as set out at Appendix 1.

Documentation and templates to support this process will be communicated to Health Boards and Trusts shortly.

Failure to adequately plan for service demand will not be reason alone for a derogation to be granted. Before any derogation will be considered by the BMA, the requesting health board/trust will be expected to have requested cover from all available SAS and consultant doctors – including cross covering other specialties at appropriate levels – and have offered extra contractual rates of pay or where applicable, relevant enhanced contractual entitlement.

A health board/trust requesting a derogation without being able to evidence having followed these principles risks having the derogation request refused on the grounds that they are still able to resolve any patient safety concerns that have arisen through the available workforce.

Where a local derogation is identified as necessary once the industrial action has commenced, the BMA and NHS Wales Employers have agreed the medical director or nominated executive director of the relevant trust or trusts should contact NHS Wales Employers. They will pass details of the situation to the BMA who will then need to agree that the incident can only be mitigated by requesting doctors to return to work and that a derogation is appropriate.

Once the BMA has approved a derogation, the health board/trust may contact doctors and seek their return to work. The BMA will also communicate the approval through its local structure and will post to its Twitter account that the derogation has been agreed so that it is easy for members to verify it.

Doctors on strike need not return to work unless the need for derogations is confirmed by the BMA, the exception to this is in response to major incident (as set out below). The derogations which are agreed between the BMA and employers are

an informal agreement and are not legally enforceable and so do not themselves place any legal obligation on staff to work or not to work during a strike.

**Staff recall for declared major incidents with mass casualties.**

All parties acknowledge that, despite the comprehensive contingency plans being put in place, major incidents, or an unforeseen or extreme event, is likely to require a request for staff to return to work for a limited period in order to maintain safe patient care.

Welsh Government, NHS Wales Employers and the BMA recognise it may be necessary in exceptional circumstances, such as a declared major incident, for a health board/trust to contact doctors directly in the event of a declared major incident with mass casualties explaining the situation and seeking their return to work.

The health board/trust should then follow standard procedures to escalate the incident, in line with the escalation framework (appendix 1) and via the appropriate on-call route and NHS Wales Employers will escalate to the BMA. The health board/trust will be required to complete and submit a derogation form (in retrospect) to verify the need for the recall. This process does not apply to incidents that arise due to the industrial action itself.

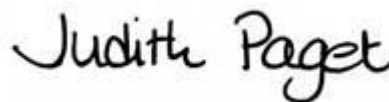
Furthermore, we have agreed a failsafe bypass mechanism whereby a health board/trust may ask junior doctors to return to work in parallel with central escalation from NHS Wales Employers to the BMA. The failsafe also extends to the doctors themselves to use their discretion if they hear of a major incident occurring that they feel they need to help with. Any use of this failsafe bypass should be exceptional, will be audited, and will be subject to review of arrangements in any future industrial action.

The formal escalation process for derogation in a major incident is set out in Appendix 1.

Yours sincerely



Dr Iona Collins  
BMA Welsh council chair



Judith Paget CBE  
Director General Health & Social Services /  
NHS Wales Chief Executive



Sue Green  
Director, NHS Wales Employers