



Short Term Protection of Earnings Process

1. Scope and remit

- 1.1 This process has been developed in partnership, to provide All Wales consistency and clarification with regards to the application of Short Term Protection of Earnings as defined in the [NHS Wales Organisation Change Policy \(OCP\)](#). This process must be read and applied in conjunction with the OCP.

2. Definition

- 2.1 The principles of Short-Term Protection of Earnings can be located in section 10.3 of the OCP. Short Term Protection of Earnings is defined as where, through organisational change, an employee is required to undertake a change which may affect their earnings but does not require a change in pay band/grade.
- 2.2 An employee's salary is made up of basic pay (contractual hours), enhancements (Saturday, Sunday etc), additional hours, overtime hours, on call, work done as a result of an on-call and various other allowances.
- 2.3 The earnings eligible for short term protection will be considered in accordance with the relevant Terms and Conditions of Employment and agreed in partnership. Links to the relevant terms and conditions of service can be found on the following links on the NHS Wales Employers website:-

[Medical and Dental \(W\) – Terms and Conditions of Service](#)

[Agenda for Change \(W\) – Terms and Conditions of Service](#)

- 2.4 Earnings in the new post/rota/shift pattern will be offset against protectable earnings.

3. Principles

- 3.1 In consideration of a change to an employees' contracted hours/change to working pattern, there is a requirement to assess if there is a negative impact on the employees' earnings. As part of the Short-Term Protection of Earnings process, the manager will be required to engage with the following at the earliest opportunity;

- The affected employee
- Staff Side Representatives
- Workforce
- Finance
- NWSSP Payroll Services.

The methodology of calculating Short Term Protection (as defined in point 4 of his process) will be agreed at the start of the change process. Exact and individual calculations will not be available until the consultation period has closed.

3.2 The assessment of Protectable Earnings will be based on: -

Earnings in the Old Post; This is assessed as 17 weeks/4-month earnings immediately prior to the date the change takes effect, or in line with their previous rota if applicable.

Earnings in New Post; This is assessed once the Manager provides details of the change(s) in the new post i.e. contracted hours/shift pattern/rota pattern.

3.3 In changing an employees' shift/rota pattern, consideration will need to be given to the impact on other elements that could negate Short Term Protection entitlement.

3.4 Going forward Short-Term Pay Protection will not be paid as a lump sum value on the basis that payment eligibility is dependent on the criteria set out within the OCP.

The OCP advises that when assessing protectable earnings "regular or contracted overtime/extra hours" should be included. For the purposes of this assessment under the OCP only, all overtime/extra hours will be included in the calculation, irrespective of regularity. See [NHS Terms and Conditions of Service Handbook Section 3](#) for more information.

4. Calculation of Short Term Pay Protection

4.1 The NHS Organisation will need to agree in partnership with the member(s) of staff and their accredited representative(s) the most appropriate methodology for payment of Short-Term Protection which will be dependent on the changes being introduced.

4.2 Option 1 – Short Term Pay Protection based on total gross salary value

Short Term Protection Pay Value will be determined by assessment of 17 weeks/4-month average of total gross pay which includes all protectable elements. Short Term Protection will be paid up to the 'Protectable Pay Value' based on the earnings in the new post.

4.3 Option 2 – Short Term Pay Protection based on affected elements only

Short Term Pay Protection is determined by assessing the individual relevant pay element that is affected by the change. Where the pay element being changed can be individually defined i.e. removal of on-call rota; removal of overtime; change in shift pattern; reduction in contracted hours.

Short Term Protection Value will be determined by assessment of 17 weeks/4-month average of the affected pay elements only.

5. Short Term Pay Protection Procedure

- 5.1 The Manager will be required to engage with Workforce before commencing change under the OCP to discuss potential changes to an employees' hours/working pattern to assess if there will be a potential impact on employees' earnings under the OCP. This should also include collaboration with employees and Staff Side Representatives on this matter.
- 5.2 If it is determined that potential changes could have a negative impact to employee earnings there should be engagement with both the NHS Organisation's Finance Team and NWSSP Payroll Services to scope out the impact on employees' earnings and determine if Short Term Pay Protection is applicable. The scale of the potential changes will determine the most appropriate option of calculating Short Term Pay Protection as detailed in point 4 of this process.
- 5.3 To support the assessment of eligibility of Short-Term Protection of Earnings, the 17 week/4 month earnings prior to the specified date of change can be extracted to determine the average earnings prior to the change. Anticipated average earnings in the new post will be calculated based on the proposed working pattern and arrangements provided by the manager. These calculations cannot be provided if there are insufficient details on the proposed new working pattern or arrangements. This calculation is not a final assessment of the protectable earnings, which can only be confirmed after the consultation has closed.
- 5.4 In accordance with the OCP it is the managers responsibility to engage directly with employees in respect of the changes and any entitlement to Short Term Protection Payment. Following the end of the consultation period, the manager should provide all affected employees with written confirmation of both the duration and value of Short Term Pay Protection, along with the conditions of continued payment. If the employee disputes the Short-Term Protection value, this should be addressed directly with the Manager.
- 5.5 On finalisation of the Short Term Protectable Pay, a formal instruction should be issued to NWSSP Payroll Services to proceed with the payment of Short-Term Pay Protection i.e. issue of individual Change Forms/Spreadsheet (depending on numbers) authorised by the relevant Manager. This should clearly define the agreed method of calculation as detailed in point 4 of this process.
- 5.6 NWSSP Payroll Services will process Short-Term Protection payments in line with agreed payments and duration. Short Term Protection will be paid on a weekly/monthly basis in the employee's usual salary.

6. Continuity of Short-Term Protection Payments

- 6.1 As detailed in 10.3 of the OCP, if for any particular pay period the earnings in the new rota/shift pattern exceed the protectable earnings, protection of earnings is extinguished and earnings in the new rota/shift will be paid in full for that particular pay period. Pay protection will then immediately recommence in the next pay period if applicable. See section 6.3 Entitlement to STP (Manager Responsibilities).
- 6.2 Short Term Protection of Pay is also conditional on: -

- The employee undertaking overtime, shift work, on call, emergency work and additional duties where applicable in the new post up to the level at which earnings in the new post equal the protected earnings. Where option 2 is agreed for the provision of short term protection payments, it will be appropriate to agree which element(s) will be considered to be conditional for the ongoing short term payment protection and only those agreed elements will impact on the provision of the pay protection. E.g. where the change impacts on overtime payments, the employee will be required to work overtime up to the level of protectable earnings but will not be required to work additional unsocial hours. There will be no expectation that employees will be required to work more overtime/OOHs shifts/hours than on the pay protected job/role.
- The employee accepting any subsequent offer (during the period of protection) of another suitable post within the same Employing Organisation which attracts a higher level of average earnings than that applying to the new post.

6.3 Entitlement to STP (Manager Responsibilities)

The Manager will be required to continuously review entitlement to Short Term Protection for the duration of protection period and bring to the attention of Workforce, Finance and NWSSP Payroll Services of any changes to the 'new post' that may impact on the employees' eligibility to maintain Short Term Pay Protection. If there are any questions/concerns relating to ongoing entitlement to Short Term Protection of Earnings, the Manager should contact the Workforce Team to discuss. It is the Manager's responsibility to ensure that an employee's pay is correct in order to mitigate the risk of over/under payments.

Appendix 1 - Short Term Pay Protection Process Flow Chart

