

GUIDELINES ON THE IMPLEMENTATION
OF THE FLEXIBLE WORKING SCHEME AND
REVISED SUPERANNUATION
ARRANGEMENTS FOR PART-TIME AND
WHOLETIME TEMPORARY STAFF



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Introduction

This booklet has been produced in response to requests from health service employers for explanatory guidelines in relation to aspects of the implementation of the Flexible Working Agreement and, in particular, issues arising from changes in the superannuation arrangements for staff employed under part-time and wholtime temporary contracts of employment.

A Working Group comprising representatives from the health board, voluntary hospital and intellectual disability sectors was established to produce these guidelines.

The members of the Working Group were:

Mr Martin McDonald, Health Service Employers Agency

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The Working Group met on six occasions and wishes to convey its appreciation to various individuals who raised specific issues for which clarification was sought. It is hoped that the booklet will be of assistance to all concerned.

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1. Background

The Agreement on Flexible Working in the Health Service came into operation on February 1st, 2001 and provided for the implementation of permanent and pensionable part-time working arrangements in the health service (Appendix 1). Part-time staff who participate in the Flexible Working Scheme are entitled to all the benefits of permanent status on a pro rata basis, including access to the relevant superannuation scheme. Prior to this Agreement, membership of the superannuation schemes was mainly confined to staff employed in a permanent wholetime and job-sharing capacity. Temporary non-officers employed in health boards and voluntary hospitals were eligible to join the relevant superannuation scheme subject to satisfying certain service criteria.

In association with the introduction of the Flexible Working Scheme, existing temporary wholetime and part-time staff who had in excess of one year's continuous service and were employed under a 'potentially renewable' contract of employment were given the option of joining the relevant superannuation scheme from February 1st 2001. Provision was also made for the introduction of mandatory registration in respect of all new temporary wholetime and part-time appointments.

In January 2002 the Department of Health and Children issued Circular Ref 7/2002 (Appendix 2) giving effect to mandatory registration in the relevant superannuation scheme in respect of all new temporary appointments, with effect from February 1st, 2002. This effectively means that it is compulsory for all temporary wholetime and part-time staff who were appointed on or after February 1st 2002 to join the relevant superannuation scheme. The requirement that temporary staff have in excess of one year's continuous service to be eligible for membership of the superannuation scheme no longer applies.

The revised superannuation arrangements for part-time staff are consistent with the provisions of the *Protection of Employees (Part-Time Work) Act, 2000*, which came into

operation on December 20th, 2001. Under this legislation part-time employees are entitled to the same conditions of employment on a pro rata basis as their comparable wholetime equivalents, including access to occupational pension schemes. The HSEA will be issuing detailed explanatory guidelines on the *Protection of Employees (Part-Time Work) Act, 2000* and its implications for health service employers.

These guidelines are intended to assist health service employers in the implementation of the Flexible Working Agreement and, in particular, the revised superannuation arrangements which now apply to part-time staff (permanent and temporary) and wholetime temporary officers.

It should be noted that these guidelines only apply to staff employed by agencies to which the following superannuation schemes apply:

- Local Government Superannuation Scheme (LGSS)
- Voluntary Hospitals Superannuation Scheme (VHSS)
- Nominated Health Agencies Superannuation Scheme (NHASS)

Section 2 deals with general issues arising from the implementation of revised superannuation arrangements for temporary wholetime and part-time staff.

Section 3 deals specifically with the calculation of contributions and benefits for part-time staff and sets out a number of examples to illustrate how pro rata deductions should be made.

Section 4 sets out Frequently Asked Questions relating to other conditions of employment under the Flexible Working Scheme.

2 Revised Superannuation Arrangements for Wholetime Temporary and Part-Time Staff

In accordance with Department of Health and Children Circular 7/2002, it is mandatory that all wholetime temporary and part-time staff appointed on or after February 1st 2002 be registered in the relevant superannuation scheme.

1. What is the position of wholetime temporary and part-time (non-pensionable) staff appointed before 1st February 2002?

Admission to the relevant superannuation scheme will also be compulsory for all wholetime temporary and part-time (non pensionable) staff appointed before February 1st 2002. It is the view of the Working Group that the best approach would be to register such individuals from the date of renewal of their contract of employment where applicable to allow for the new arrangements to be phased-in. However, it is recognised that some employers may wish to adopt an approach that involves registration of staff concerned from a specified date. Individuals should be given prior notification that mandatory registration will apply.

Where an individual's contract renewal date will not arise for an appreciable time, it is recommended that the individual concerned be permitted to apply for registration in the superannuation scheme prior to the intended contract renewal date.

It should be noted that wholetime temporary and part-time (non pensionable) staff who were employed on February 1st 2001 on potentially renewable contracts of employment and who had in excess of one year's continuous service on that date were afforded the option of joining the relevant superannuation scheme.

2. *Has there been any change in the superannuation arrangements for non-officer grades?*

Wholetime temporary and part-time non-officer grades employed in health boards and voluntary hospitals are eligible for entry in the LGSS and VHSS once they have completed 130 service days in accordance with the provisions of the relevant scheme. In the case of part-time non-officer grades, a service credit of 5 days is applicable for each week in which the employee works 18 hours or more under the terms of Department of Environment Circular S11/96. This threshold may now be changed to **8 hours per week**.

Wholetime temporary and part-time non-officer grades employed by agencies to which the NHASS applies are now eligible to join the superannuation scheme on the same basis as it applies to permanent staff.

3. *Does registration in the superannuation scheme change employment status?*

Access to occupational pension schemes does not, of itself, confer an entitlement to appointment in a permanent capacity. It is a matter for individual employers to contemplate conversion of temporary staff to permanent status in the light of their overall staffing/operational requirements and budgetary constraints having regard, inter alia, to the issue of coverage of dismissal or non-renewal of contract by protective legislation in certain circumstances.

Access to occupational pension schemes for temporary part-time employees does not, of itself, confer any entitlement to appointment in a permanent capacity with the same contracted hours of work.

4. Are there any exclusions from mandatory registration in the superannuation scheme?

An exception may be made in the case of staff employed on a *once-off* short-term contract, e.g. a medical consultant who is recruited from abroad on a short-term contract to provide locum cover or students engaged on summer work. The general criterion to be employed in such cases is whether or not the contract is deemed to be “potentially renewable”.

Retired persons who are in receipt of a pension under the LGSS, VHSS or NHASS and are subsequently re-employed in a temporary capacity by an agency to which one of these superannuation schemes applies should not be registered in the superannuation scheme.

Individuals who are engaged under a contact for service (‘independent contractors’) or who are employed by third parties, e.g. employment agencies, are not eligible to join the superannuation schemes.

Individuals who are paid directly by the employer at “sessional” rates, which are subject to deduction of PAYE and PRSI, and who work under the direction of the employer may be regarded as employed under a contract of service. In these circumstances it is recommended that the individual’s contractual arrangements be regularised (i.e. paid the standard salary for the category/grade concerned in their employment on a pro rata basis) and registered in the relevant superannuation scheme where eligible. Admission to the superannuation scheme is conditional on the individual signing up to the standard salary and conditions of employment for the category/grade.

5. Does mandatory registration apply to newly appointed persons aged 60 years or over with no previous reckonable service?

Yes.

6. *Is previous service reckonable?*

All relevant service given prior to entry to the superannuation scheme will be reckonable in accordance with the provisions of the relevant scheme. The existing threshold of 18 hours per week may now be changed to **8 hours per week** in respect of all previous service.

- Under the VHSS and NHASS, purchase of previous relevant service is currently optional.
- Under the LGSS, all previous relevant service is compulsorily reckonable.

The following exception should be noted for Part-Time Home Helps

In view of the difficulties in determining the amount of service worked by part-time home helps prior to the implementation of the *Part-Time Home Helps Agreement (2000)*, the Group recommends that only service from January 1st 2000 onwards be reckoned for pension purposes.

7. *How are contributions for previous service calculated?*

In the case of **LGSS/VHSS**, contributions for previous service are calculated on an uprated basis, i.e. by reference to the employee's current rate of remuneration.

Temporary officers who were appointed before 5 April 1995 and who have been in continuous employment since that date will continue to be covered by Class A insurance which means that contributions for previous service should be at uprated pay rates, (i.e. the 'concessionary Class A method' does not apply).

In the case of the **NHASS**, contributions are calculated by reference to the current salary scale for the grade(s) held by the individual during the period in question **e.g.** if the individual is currently employed in a Grade IV clerical/administrative post but is

purchasing previous service in respect of time worked as a Grade III Clerical Officer, contributions are calculated by reference to the current value of the Grade III salary scale.

8. *How is the ‘service day’ issue to be dealt with for part-time non-officer grades?*

Part-time non-officers were previously eligible to join the LGSS and VHSS if they worked a minimum of 18 hours each week. A service credit of 5 days is applicable for each week in which the employee works 18 hours or more. This threshold may now be reduced to **8 hours per week**, e.g.

- Employee A works 7.5 hours × 2 days per week which gives a total of 15 hours per week
- Employee B works 3 hours × 5 days per week which gives a total of 15 hours per week

In both cases the employees satisfy the minimum threshold of 8 hours per week and therefore are eligible to be registered in the superannuation scheme in accordance with the service day criterion, i.e. a ‘service credit’ of five days for each week in which the employee works 8 hours per week or more.

It should be noted that the ‘service credit’ only applies to eligibility for registration in the superannuation schemes. Benefits payable under these scheme are based on actual service in accordance with pro rata intergration arrangements (see Section 3 for examples).

9. *How are contributions in respect of previous service payable?*

This liability may be met by way of a single lump sum payment or, alternatively, by paying contributions, as an addition to standard contributions, on a periodic basis as may be determined by the employer.

10. *If the person resigns before normal retirement age is s/he entitled to a refund of contributions from the superannuation scheme?*

The existing provisions in relation to refund of contributions continue to apply i.e.

- A person with less than 5 years' reckonable service is entitled to a refund of contributions
- A person with 5 years or more reckonable service is covered by compulsory preservation of benefits

Where an individual has less than 5 years' service but intends to take up employment in the public service it may be more appropriate to 'freeze' his or her contributions. The decision as to whether contributions should be frozen is ultimately an operational one having regard to the employee's circumstances and intentions to resume employment in the public service.

The *Pensions (Amendment) Act 2001*, which is due to come into effect on June 1st, provides for a reduction of the statutory "vesting period" from five years to two years for persons leaving service after June 1st, 2002. This means that an individual will qualify for preserved benefits on completion of two years' pensionable service. Agencies should await formal sanction in relation to this amendment.

11. *Can a person be a member of two superannuation schemes?*

It is recommended that newly appointed staff be required to sign a declaration form prior to commencement of employment indicating if they are currently employed in another healthcare agency to which the LGSS, VHSS or NHASS apply and stating their contracted hours of work. This information should be verified with the employer to ensure that the individual's combined hours of work do not exceed the standard weekly working hours for the wholetime equivalent. Any issues arising in relation to

membership of more than one superannuation scheme should be referred to the superannuation section of the Department of Environment or the VHSS section of the Department of Health and Children as appropriate.

12. Is the provision for purchase of notional service changed?

No. The present position should be continued pending detailed clarification of changes in pensions legislation.

13. What would be the position regarding calculation of Death Gratuity and Spouses' and Children's benefits for part-time staff who die in service?

The Pension Commission's Report notes that there are certain difficulties in deciding how the principle of pro rata should be applied in the context of the calculation of death gratuity benefits, particularly the notional added years obtained by projecting forward to normal retirement age. It recommends that insofar as possible the principle of pro rata benefits should apply and that discussion should take place with a view to devising a method for calculating benefits. No conclusion has yet been reached in relation to this issue.

Spouses' and Children's benefits are based on the potential pension of the individual at 65 years calculated in accordance with the pro rata integration method.

14. Are Additional Voluntary Contribution (AVC) arrangements affected?

No. The revised superannuation arrangements do not, of themselves, change the terms of existing AVC scheme agreements.

3. Calculation of Contributions for Part-time Staff

1. What does pro rata integration mean for the purpose of calculating superannuation benefits?

The method used to calculate the pension entitlements for part-time staff is known as *pro rata integration*. This involves aggregating the part-timer's actual service at retirement (i.e. add together all the hours, days and years the person has worked) and applying this figure to the full time remuneration for the position (less the Social Welfare offset of twice the rate of Old Age Contributory Pension).

This pro rata integration arrangement already applies to individuals participating in the job-sharing scheme e.g. an individual with 20 years' full-time service and 20 years' job-sharing service would have a total of 30 years' pensionable service for the determination of benefits. Similarly, an individual with 20 years' full-time service, 10 years' job-sharing service (i.e. 50% of the standard wholetime hours for the grade) and 10 years' service at 25% of the norm under the Flexible Working Scheme would have a total of 27.5 years' pensionable service for the determination of benefits.

The advantage of pro rata integration is that it is based on actual service and therefore accommodates staff who choose to vary their contracted hours of employment over their lifetime. Under full integration (where pension is based on retiring salary or the average of the final three years), part-time employees whose hours of work increased in later years would gain disproportionately while those who chose to reduce their work commitments prior to retirement would lose out.

2. What is the position regarding emoluments?

Under pro rata intergration, both basic salary and emoluments (i.e. unsocial hours premia, qualification/location allowances, etc.) are adjusted upwards to the level of a comparable wholetime employee for the purpose of determining pensionable remuneration.

Example:

A part-time non-officer contracted to work a 20-hour week works 51.28% of the standard weekly working hours for the grade, i.e. 39 hours.

Basic pay is pro rata the maximum point of the Group I (non-Dublin) salary scale i.e. 51.28% of €20,581.18 = €10,554.03.

Emoluments earned in the 3-year period prior to retirement amount to €3,600.

Adjustment for Pensionable Remuneration Purposes:-

Basic Pay	:	$\frac{€10,554.03 \times 39}{20}$	=	€20,581.18
Emoluments	:	$\frac{€3,600 \times 39}{20}$	=	€7,020.00 ÷ 3 (averaged)
			=	€2,340.00
Total Pensionable Remuneration	=			€22,921.18

3. *What contributions are payable?*

Pension contributions are deducted on a pro rata basis which effectively means that the contribution to be deducted should reflect exactly the proportion of the wholetime hours for which the part-time employee is contracted. A person contracted for 50% of the wholetime hours of the grade involved would have a liability to pay 50% of the contributions of the wholetime employee. Similarly, persons contracted for 30% or 75% of the wholetime hours for the grade would have a liability to pay 30% or 75% of the contributions of the wholetime employee. In accordance with pro rata integration arrangements, each completed year of service would count proportionately as service for pension purposes, with benefits to be based on the wholetime salary for the grade.

The following examples illustrate how superannuation contributions are calculated for a part-time employee who is contracted to work 30 hours per week.

Example 1

The employee in this case pays **PRSI at the modified rate (Class D)**. The calculations set out below are based on the contributions to be deducted where payment is made on a monthly, fortnightly and weekly basis.

Salary details for full-time staff:

Salary:	€32,148.00
Allowances:	<u>€ 3,500.00</u>
Total Pensionable Remuneration:	€35,648.00 per annum

Salary details for part-time staff member contracted to work a 30-hour week:

Basic:	€32,148.	divided by 39 X 30 =	€24,729.23
Allowances:	€3,500	divided by 39 X 30 =	<u>€ 2,692.31</u>
Total Pensionable Remuneration			€27,421.54 per annum

Contributions:

Main Scheme: 5% of salary

Spouses and Children's Scheme: 1.5% of salary

Staff paid monthly:

€27,421.54 divided by 12 = €2,285.13

5% of €2,285.13 = € 114.26

1.5% of €2,285.13 = € 34.28

TOTAL MONTHLY CONTRIBUTION = € 148.53

Staff paid fortnightly:

€27,421.54 divided by 52.18 X 2 =	€1,051.04
5% of €1,051.04 =	€ 52.55
1.5% of €1,051.04 =	€ <u>15.77</u>
TOTAL FORTNIGHTLY CONTRIBUTION =	€ 68.32

Staff paid weekly:

€27,421.54 divided by 52.18 =	€ 525.52
5% of €525.52 =	€ 26.28
1.5% of €525.52 =	€ <u>7.88</u>
TOTAL WEEKLY CONTRIBUTION =	€ 34.16

Example 2

In this case the employee (Non-Officer Grade) pays **full PRSI (Class A1)**.

Commitment:	30 hours per week
- Salary point:	€32,148 per annum
- Allowances:	€3,500 per annum
- Total pension remuneration:	€35,648 per annum
- Twice OACP:	€15,372

Annual Salary paid:

Basic:

<u>€32,148 X 30 =</u>	€24,729.23
39	

Allowances:

<u>€3,500 X 30 =</u>	<u>€ 2,692.31</u>
39	
TOTAL	€27,421.54

OACP Abatement:

<u>€15,372X30 =</u>	<u>€11,824.62</u>
39	
ABATED SALARY	€15,596.92

Contributions (Annual):

Main Scheme:

1.5% of salary paid	€411.32
PLUS	
3.5% of abated salary	€545.88

Spouses Scheme:

1.5% of abated salary	<u>€233.95</u>
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TOTAL	€1,191.15
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Monthly Salary:

Fortnightly Salary

Salary:

<u>€32,148 X 30 =</u>	€2,060.77
39X12	

Salary:

<u>€32,148 X 30 =</u>	€ 947.84
39X26.09	

Allowance:

<u>€3,500 X 30 =</u>	€ 224.36
39X12	

Allowance:

<u>€3,500 X 30 =</u>	€ 103.19
39X26.09	

TOTAL	€2,285.13
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TOTAL	€1,051.03
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OACP. Abatement:
(€15,372X30) = € 985.38
39X12

ABATED SALARY €1,299.75

Contributions (monthly)

Main Scheme:
1.5% of full salary €34.27
PLUS
3.5% of abated salary €45.49

Spouses Scheme:
1.5% of abated salary €19.50

Total monthly contribution €99.36

OACP. Abatement:
(€15,372X30) = € 453.22
39X26.09

ABATED SALARY € 597.81

Contributions (Fortnightly)

Main Scheme:
1.5% of full salary €15.76
PLUS
3.5% of abated salary €20.92

Spouses Scheme:
1.5% of abated salary € 8.97

Total fortnightly contribution €45.65

Section 4 Agreement on Flexible Working in the Health Service – Frequently Asked Questions

Q. Can an employee (working 9 – 5, Monday to Friday) work their full working week (i.e. 5 days) over 4 days?

A. The consensus among employers is that this should not generally be allowed. The Flexible Working Agreement caters for requests to work reduced hours. It is not designed to cater for individuals who do not want to reduce their hours, but rather to work “full-time” over four days.

Q. What happens in a situation where an employee works less than his / her contracted hours and applies to reduce their weekly working hours?

A. An example of this is where a Public Health Nurse is contracted to work 39 hours per week, but in actual fact only works on average 35 hours per week. If such an employee were to apply to work half his / her working hours, are they reduced to 19½ hours per week or 17½ hours per week?

This issue cannot be addressed in the context of this Agreement. This matter should be looked at by each employer having regard to the arrangements which would have been allowed in the case of job-sharing requests in the past. The ideal arrangement would be where entitlements are granted pro rata to the standard hours of work for that grade.

Q. Can an employee on ‘flexi-time’ avail of the flexible working arrangements?

A. A distinction should be made between flexible working arrangements and flexible hours.

Many Health Service Employers already have flexi-time facilities in operation. Employees who participate in the flexi-time scheme are committed to working the 'core hours' of the agency. This condition does not apply to an employee who wants to reduce his / her hours under the Flexible Working Agreement. Accordingly, while an individual may avail of the flexible working scheme, for example, to finish work at 3.00 p.m. every day it would not be possible for such an individual to also benefit from flexi-time arrangements as they could not fulfil the requirement to work 'core' hours, which is a condition of such 'flexi-time' arrangements.

Q. Will a Part-Time Worker's chance of promotion be affected by the fact that they do not work 'whole-time hours'?

A. Each employee will be entitled to apply for promotion. A 'service' requirement for eligibility to apply in terms of years experience may be met by either full-time or part-time years. However, it is a matter for the selection process to decide if a person has gained a sufficiently broad range of experience to render them capable of undertaking the promotional post satisfactorily.

Q. Do employees have to specify why they want to reduce their hours?

A. No, the Agreement does not stipulate a list of reasons under which applications for the working reduced hours will be considered. However, it would be prudent for each employer to spell out to each applicant to the scheme the service implications of their decision to increase or reduce their working hours and the fact that they retain the right to return to working 'whole-time hours'.

Q. Are employees who are on probation eligible to apply for flexible working arrangements?

A. Employees who are on probation are not precluded from applying. Their probation is not affected by a reduction in hours, e.g. a person who works 39 hours per week and applies to reduce his / her hours will still complete their probation in twelve months.

Q. Is there a prohibition on ‘outside’ employment as in the old job-sharing scheme?

A. No, it is not a condition of accessing flexible working arrangements that an individual give an undertaking not to engage in outside employment. It may, for example, suit an employer, in certain circumstances, to offer a part-time employment contract to an individual engaged in private professional practice.

Q. Is there a requirement to give an undertaking not to engage in particular activities which might conflict with their part-time employment?

A. This issue is considered to be covered by the conditions of employment under which all employees, full and part-time, are engaged, i.e. conflict of interest, confidentiality, etc.

Q. Do all hours by which an employee is facilitated in reducing their working time have to be replaced?

A. No. A practical, common sense approach is required on this. Consideration should be given to arrangements in relation to replacements which may have been undertaken in respect of parental leave. The Agreement provides that promotional posts be filled – as may have arisen, for example, where two individuals were granted job-sharing in the past.

Q. Should the availability of part-time positions be mentioned in job advertisements?

A. Yes, it would be good practice in terms of attracting applicants to indicate that part-time positions may be available. Applicants could indicate whether they were applying for full-time or part-time work. Separate panels could be formed, if necessary.

Q. When are increments payable?

A. Increments fall to be paid after each year of part-time service in accordance with the criteria for granting of increments.

Q. What is the position in relation to employees who are required to participate in emergency cover/out of hours rotas?

A. Attention should be drawn to the possible implications of a reduction in normal working hours of such an employee for the nature/extent of their participation in out-of-hours rotas. The general approach taken should not be one which would put full-time staff at a relative disadvantage vis-à-vis their colleagues who are working reduced hours.

Q. Can an employee who works on average less than 'whole time hours' earn overtime payments?

A. The general principle governing the granting of overtime payments is that overtime rates will apply where the employee has worked in excess of the standard weekly working hours for the category/grade concerned. There are however certain exceptions to this general principle:

Employees who are contracted to work less than wholetime attendance (i.e. participants in the flexible working scheme) may also qualify for overtime rates in certain limited and exceptional circumstances as outlined below:

- Where an employee is required to work outside the span of the shift applicable to the department or unit and this attendance is on an overtime (i.e. emergency) basis as opposed to a rostered basis;

- Where an employee finishes his/her committed hours of attendance on a particular day (regardless of the duration of those hours) and is requested to return to the hospital later on that day to work overtime because of an emergency or unforeseen circumstances.