



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Oifig an Stiúrthóra Náisiúnta, Acmhainní Daonna
Feidhmeannacht na Seirbhíse Sláinte
Ospidéal Dr. Steevens'
Baile Átha Cliath 8

Office of the National Director of Human Resources
Health Service Executive
Dr. Steevens' Hospital
Dublin 8

All Queries:

Corporate Employee Relations Services
63-64 Adelaide Rd., Dublin 2.
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HSE HR Circular 016/2013

30 September 2013

**To: Each Member of Leadership Team, HSE;
Each Regional Director of Performance and Integration, HSE;
Each Assistant National Director of Human Resources, HSE;
Each CEO, directly funded Voluntary Hospital / Agency;
Each HR Manager, directly funded Voluntary Hospital/Agency**

Re: Compliance with Health Sector Pay Policy

I attach Circular 11/2013 that has issued from the Department of Health regarding compliance with Health Sector Pay Policy. This policy has been prepared in conjunction with the Department of Public Expenditure and Reform and reflects Government pay policy as it applies across the public service. This pay policy applies to all employees of the HSE and agencies funded by the HSE, in whole or in part, under Section 38 of the Health Act 2004.

The Department of Health Consolidated Salary Scales (1 July 2013), as sanctioned by the Minister for Health, sets out current salaries for public health service staff. These salary scales must be strictly adhered to and in no circumstances should an employee receive remuneration in the nature of pay and allowances of any amount greater than the amount prescribed. Non-Exchequer sources of funding may not be used to supplement approved rates of remuneration.

Please ensure that this policy is complied with and bring to the attention of all relevant staff. Any queries on this Circular should be referred to **Corporate Employee Relations Services, (01) 6626966** info.t@hse.ie

Yours sincerely,

Barry O'Brien
National Director of Human Resources



Circular 11/2013
27th September, 2013
To: The Health Service Executive

Compliance with Health Sector Pay Policy

I am writing to set out the essential features of pay policy as it applies to the Health Service and in particular to those bodies funded, in whole or in part, under service agreements with the HSE under Section 38 of the Health Act 2004. In light of the findings in the HSE Internal Audit Report on remuneration in bodies funded under Section 38, dated March 15th 2013, the Minister for Health has instructed that Section 38 providers be reminded of their obligation to conform fully to Government pay policy. For the avoidance of doubt, employees of Section 38 providers are public servants. The policy set out in this circular applies equally to the HSE and its own employees.

1. Salary Scales

Under public service pay policy, the Department of Health Consolidated Salary Scales (1 July 2013), as sanctioned by the Minister for Health, set out current salaries for public health service staff. These salary scales must be strictly adhered to and in no circumstances should an employee receive remuneration in the nature of pay and allowances of an amount greater than the amount prescribed. Non-Exchequer sources of funding may not be used to supplement approved rates of remuneration. (For the purposes of this circular, remuneration is defined as basic salary, allowances and all other benefits in cash or in kind, together with general terms in regard to superannuation, holidays, sick leave etc., approximating to health service norms).

It is noted that the standard Service Agreement between the Section 38 providers and the HSE requires that remuneration in Section 38 bodies conforms to public sector pay norms. Attention is drawn to the following provisions in particular;

Section 3.2 (c)(v): Providers shall not pay nor subsidise salaries, expenses or other perquisites which exceed those normally paid within the public sector.

Section 16.5: The Provider will adhere to the consolidated salary scales where they apply and is not authorised to pay salaries in excess of the consolidated scales for approved grades.

2. Financial Emergency Measures in the Public Interest (No. 2) Act, 2009

The Financial Emergency Measures in the Public Interest (FEMPI) (No. 2) Act 2009 provided for reductions of public service pay rates with effect from 1 January 2010 and was amended by the FEMPI Act 2013 to effect further reductions for employees earning over €65,000 per annum.

Under Section 5(1) of that Act, a public servant whose pay has been reduced in accordance with the Act is not entitled to receive remuneration greater than the amount so determined. Additionally, no person or body responsible for paying the remuneration of a public servant is entitled to pay remuneration of an amount greater than the amount so determined. Accordingly, it is not open to any public service employer to implement an increase in remuneration for public servants while that legislation remains in force except in accordance with the very limited arrangements under Section 6 of that Act, which require the sanction of the Minister for Public Expenditure and Reform.

Furthermore, where a public servant has received remuneration from a public service body at a rate greater than the approved amount, section 5(2) of the FEMPI (No. 2) Act 2009 requires the recovery of that overpayment.

3. Future Payment of Allowances

As a general rule, only allowances included in the Department of Health Consolidated Salary Scales may be paid. Such allowances may be paid only in respect of those duties and grades specified in the Scales and at the approved rate, e.g. on-call allowances are payable only to those grades such as NCHDs, nurses etc. where the Consolidated Salary Scales provide for the payment of an on-call allowance; the approved rate of such allowances may not be varied.

Where, as an exception, it is proposed to pay an allowance which is not encompassed by, or in line with, the Department of Health Consolidated Salary Scales, a detailed business case must be submitted to the HSE outlining the rationale for the payment of the allowance, the length of time for which it is proposed to pay the allowance and whether it is pensionable or not. The approval of the Department of Health is required where a proposed allowance is not encompassed by existing rules.

The Department will consider all such requests and, where appropriate, seek the consent of the Department of Public Expenditure and Reform.

HSE and Section 38 providers' procedures should provide that where an allowance is approved, the individual should be informed in writing whether or not the allowance is reckonable for pension purposes. A copy of the notification must set out the basis for the decision and be retained on the individual's HR file.

4. Additional remuneration which has not been sanctioned

The HSE Internal Audit Report identified a number and range of payments and perquisites that do not conform to the Department of Health Consolidated Salary Scales. In this regard it is emphasised that any deviation from the Consolidated Salary Scales for persons employed by the HSE or in organisations funded under Section 38 of the Health Act 2004, is permissible only where approved by the Minister for Health with the consent of the Minister for Public Expenditure and Reform. As already indicated, non- Exchequer sources may not be used to supplement approved rates of remuneration.

5. One Person One Salary

The HSE Internal Audit Report identified many breaches of the *one person one salary* principle. The position is that, in accordance with the *one person one salary* principle, serving public servants require the consent of the Department of Public Expenditure and Reform in order to undertake other forms of paid remuneration in any part of the public service. In this context it should also be noted that public servants and public sector employees (with the exception of certain worker directors), who sit on state boards in an *ex officio* capacity or on behalf of their parent Department/organisation or who may be nominated to such boards independently of their public service employment, should not be paid remuneration in the form of board fees when serving in such a representational capacity.

6. Superannuation

It is a general condition of public service pension schemes that pensionable remuneration, for the purpose of the calculation of pension benefits, is determined by reference to the approved salary scale and sanctioned pensionable allowances, where applicable. The various superannuation

schemes in the health sector require that the salary and pensionable allowances used to determine pension benefits are those approved by the Minister for Health with the consent of the Minister for Public Expenditure and Reform.

Retirement benefits must be calculated by reference to the substantive grade of the retiring employee and the appropriate approved salary scale, and pensionable allowance where applicable, as set out in the Consolidated Salary Scales. Superannuation scheme rules do not permit the calculation of benefits using an unapproved salary or allowance to determine pensionable remuneration.

7. Action Required

The HSE should take immediate steps to ensure that remuneration in the nature of pay and allowances which is paid by bodies funded under Section 38 of the Health Act 2004 is brought into line with national pay policy. To this end:-

1. Section 38 providers are required to cease supplementing approved rates of remuneration from non- Exchequer sources.
2. Salaries for approved grades must be in accordance with the Department of Health Consolidated Salary Scales. The payment of any allowance or perquisite which is not encompassed by, or in line with the Scales, and which has not previously been sanctioned in writing by the Minister for Health, with the consent of the Minister for Public Expenditure and Reform, must cease with immediate effect.
3. Where an allowance was sanctioned in relation to the performance of a specific duty or obligation by a specific employee, the HSE should establish with the relevant employer if it continues to be necessary for the staff member concerned to continue to perform that duty or obligation.
 - a. Where the duty or obligation is no longer performed or required, arrangements should be made to cease the payment of the allowance with immediate effect.
 - b. In any instance where it is identified that a "red circled" or "personal to holder" allowance is now paid to a staff member other than the individual for whom the sanction was originally intended, the allowance should cease with immediate effect.

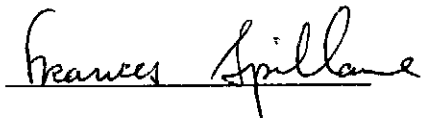
4. Notwithstanding 2 and 3 above, a Section 38 provider may make a business case for sanction to continue to pay a specified allowance or perquisite to an individual. Such case should be made to the HSE in the first instance. Where the HSE is satisfied that there are legitimate reasons for the continuation of the allowance, the case should be submitted to the Department of Health for sanction. The Department will liaise as appropriate with the Department of Public Expenditure and Reform. Each such case will be determined on its merits.
5. The HSE should ensure appropriate oversight of the sanctioning of allowances by Section 38 providers and in future, any allowances sanctioned should be time-bound and subject to review within a specified period.
6. Where a non-standard allowance has been sanctioned by the Department of Health/ Department of Public Expenditure and Reform and has been in payment for 5 years or more, a business case for the continuation of the payment should be submitted for consideration in the first instance by the HSE and, if appropriate, by the Department of Health in consultation with the Department of Public Expenditure and Reform.
7. The HSE should satisfy itself that the provisions of the FEMPI legislation have been properly implemented by Section 38 providers.
8. The HSE should examine all potential breaches of the *one person one salary* principle identified in the Internal Audit report and the situation should be regularised as a matter of urgency.
9. The HSE should review internal governance arrangements in the HSE and Section 38 providers so that persons who give payroll instructions for the payment of allowances are held accountable for ensuring that payments are in accordance with the Consolidated Salary Scales, and that any necessary sanction from the Department of Health has been obtained.
10. Any overpayment in remuneration made by the HSE or a Section 38 provider should be recouped. The HSE National Financial Regulation: Payroll Overpayments and Underpayments (NFR-04) as well as the provisions of the FEMPI (No. 2) Act 2009 as appropriate, provide a useful framework for the recoupment of overpayments.

11. The HSE should take the necessary steps to ensure that each Section 38 provider complies with the terms of their Service Level Agreement; any breaches of same should be managed in accordance with Section 13 of the Agreement. On each renewal of an Agreement, the HSE should satisfy itself that the remuneration payable to senior personnel remains in line with the approved rates.

12. Section 38 providers should provide written confirmation to the HSE that:-
 1. Remuneration payable is in accordance with the Department of Health Consolidated Salary Scales
 2. Non-Exchequer sources of funding are not used to exceed approved rates of remuneration
 3. The payment of all unsanctioned payments has ceased
 4. The recoupment of any overpayments will be pursued as expeditiously as possible.

8. Conclusion

The HSE should bring the terms of this Circular to the attention of all HSE managers and relevant Section 38 providers, as well as the Chair, Board, auditors and Audit Committee of each provider. All queries from Section 38 providers should be directed to the HSE.



Frances Spillane
Assistant Secretary