

NES INJURY ALLOWANCE PROCEDURE



1. Introduction

- 1.1 PCS (AFC) 2013/1 and PCS (DD) 2013/1 advised NHS Boards of the new Injury Allowance provisions, which are effective from 31 March 2013. This new allowance replaces the previous Injury Benefits Scheme administered by the Scottish Public Pensions Agency (SPPA). However under transitional arrangements, injuries or illness which were wholly or mainly attributable to the duties of NHS employment, which occurred on or before 30 March 2013 will still be eligible to be claimed under the previous Injury Benefits Scheme administered by SPPA – see section 8 below.
- 1.2 The Injury Allowance can be paid to an employee who, due to a work related injury, illness or other health conditions is on authorised sickness absence or a phased return to work with reduced or no pay. An employee who has an injury, disease or other health condition that is wholly or mainly attributable to their NHS employment which occurred on or after 31 March 2013 may be entitled to an Injury Allowance payment subject to certain conditions as detailed in this procedure. However, the injury, disease or other health condition must have been sustained or contracted in the discharge of the employee's duties of employment or be an injury that is not sustained on duty but is connected with or arising from the employee's employment.
- 1.3 The attribution of injury, illness or other health condition will be determined by NES, based on the information provided by the employee and the appropriate medical advice. In taking this decision the civil burden of proof - "on the balance of probability" (more likely than not) – will be used to determine the outcome. Where the employee disagrees with the decision taken there will be a right of appeal as detailed in this procedure.
- 1.4 Payment of the Injury Allowance is not dependent on length of service.

2. Eligibility

- 2.1 The allowance is applicable to all staff remunerated on Agenda for Change, Medical and Dental and Senior Manager Terms and Conditions of Service.
- 2.2 However, the Injury Allowance will not be paid in the following circumstances:
 - Injury whilst on a normal journey travelling to and from work, except where the journey is part of their contractual NHS duties;
 - Sickness absence as a result of disputes relating to employment matters, conduct or job applications;
 - Injury, disease or other health condition due to or seriously aggravated by the employee's own negligence or misconduct.

3. ROLES AND RESPONSIBILITIES

The application for Injury allowance requires all parties to be fully aware of their respective responsibilities as follows;

3.1 Employees will:

- Understand the policy and their responsibilities
- Inform their Line Manager at the first available opportunity of a work related injury, illness or health condition they perceive to be sustained or contracted in the discharge of their duties within NES employment.
- Complete any application form for Injury Allowance.
- Read, understand and sign the Injury Allowance application form declaration or the application may not be considered.
- Co-operate with management and occupational health as required to establish eligibility for injury allowance.
- Participate as required in consultations or meetings in relation to their application and assessment for injury allowance.
- Comply with any advice or recommendations provided as a result of a work related injury, illness or health condition.
- Be responsible for notifying NES if they have received or receive a damages or compensation payment in respect of the same injury.
- To operate and comply within all of the NES policies and procedures and not act in a negligent manner to exacerbate or aggravated a work related injury, illness or health condition.

3.2 Managers

- Understand the policy and complete their responsibilities in accordance with the policy.
- Managers have a key role in ensuring that the policy is communicated to their staff and in supporting them to access and implement the policy at local level.
- .Managers must specifically and formally request information for the Injury Allowance claim via the Occupational Health Referral Form.

3.3 Human Resources staff will:

- Advise managers on the correct implementation of the policy
- File any correspondence in relation to the claim in the employee's personal file in line with Data Protection legislation
- Provide advice in relation to implementation and monitoring of the policy
- Support employee and managers by providing advice on policy and process.

3.4 Occupational Health will:

- Provide timeous expert and impartial advice to all parties on relevant issues.
- Complete and make available relevant Occupational Reports as requested by management and determined by employee consent.
- Occupational health is an advisory service and will provide the panel with information regarding the nature of the injury and medical condition and provide an opinion on whether the injury/ medical condition is consistent with the history of the alleged incident.

3.5 Partnership representatives will:

- Understand the Policy and their responsibilities
- Make sure their members are aware of their rights and responsibilities
- Advise their members on the relevant policies.

3.6 Payroll will:

- Understand the policy and their responsibilities
- Action Injury Allowance payments timeously

4. Scale of Injury Allowance

- 4.1 Injury Allowance will be paid to an eligible employee as a top up to their sick pay or earnings or when on reduced pay as a result of a phased return to work. The calculation will include any contributory state benefits received by the employee to 85% of pay.
- 4.2 The Injury Allowance payment is subject to tax and national insurance contributions but is not subject to pension contribution deductions.
- 4.3 Contributory state benefits received for loss of earnings will be offset at the rate at which they are actually received by the employee. All other benefits or payments received should be ignored.
- 4.4 Employees are required to claim any contributory state benefits they may be entitled to and to declare receipt of such benefit(s) to NES. Timely notification will ensure that overpayments of Injury Allowance are not made. NES will require repayment when an overpayment is made in line with the Over/Under Payments of Salary procedure.
- 4.5 The Injury Allowance will be limited to the period of the employment contract and a maximum payment period of 12 months per relevant injury or disease, subject to the provisions of the NES Sickness Absence Policy.

5. Application Process

- 5.1 Where an employee considers that they may be eligible for an Injury Allowance payment, the Application for Injury Allowance form (Appendix A) should be completed providing details of the injury or illness, and any support received from Occupational Health as a result of the injury or illness. The form, together with any supporting documentation should be forwarded to the employee's line manager for verification. Copies of any current correspondence from the Occupational Health Service associated with the injury or illness outlined in the Application for an Injury Allowance Form should be attached to the form and once signed by the line manager, the form should be submitted to the Depute Director of HR.
- 5.2 Each application will then be considered by a panel consisting of the Depute Director of HR, an Operational Director and a Staff Side Representative. In cases where the Occupational Health Service have been involved, an up to date report will be requested from Occupational Health seeking their advice on the causation of the injury, illness or health condition, prior to any decisions being taken on the Injury Allowance application. This may require the employee to attend a further appointment with Occupational Health, if this is considered necessary. In cases where the employee has not already been attending Occupational Health an appointment will be made for them to attend and a report requested prior to any decision being take on the Injury Allowance application. In both circumstances the Occupational Health reports will be shared with the employee. Where the employee refuses to attend an appointment at Occupational Health, a decision will be taken on their Injury Allowance application in the absence of medical evidence.

- 5.3 The panel in considering an application may also seek further information from the line manager or applicant to ensure the appropriate decision is taken.
- 5.4 The panel will then assess the application, the Occupational Health report and any other supporting documentation and take a decision as to whether, in line with the guidance, an Injury Allowance should be paid. The decision of the panel will be confirmed in writing to the employee with a copy to their line manager.
- 5.5 Where applicable, the Depute Director of HR will notify the Payroll Department of any payment to be made together with the relevant dates.

6. Appeals Process

- 6.1 Where an employee is unhappy with the decision taken not to pay an Injury Allowance, they will have a right of appeal against this decision. This appeal should be made within 28 days of receiving the decision of the panel and should be addressed to the Director of Workforce, clearly detailing the reasons for the appeal. The Director of Workforce, in conjunction with the Employee Director, will consider the original application and supporting evidence and the decision taken by the panel along with the letter of appeal and advise whether the decision not to pay an Injury Allowance was appropriate or not.
- 6.2 Should further Occupational Health advice be required, this will be requested from an Occupational Health Physician not involved to date in the case. Any report provided as part of the appeal process will also be shared with the employee.
- 6.3 The Director of Workforce will then advise the employee of the outcome of their appeal and if appropriate arrange payment of the Injury Allowance. This will be the final stage of the process and there will be no further right of appeal.

7. Pay Protection

- 7.1 Employees eligible for the Injury Allowance payment and who then subsequently have to change jobs permanently to a position on lower pay due to a work related injury, illness or other health condition, will receive a period of protected pay that is the same as the provision for pay protection during organisational change.

8. NHS Injury Benefits Scheme – Transitional Arrangements

- 8.1 The NHS Injury Benefit provisions will continue to protect eligible employees who suffer a relevant injury or disease **on or before 30 March 2013** as follows:
- The “Sunset” clause provides for a period of 5 years (31 March 2013 to 30 March 2018). This is designed to provide a mechanism for the transition away from current provisions. Eligible employees will continue to be able to claim benefits as currently provided where an injury is sustained or a disease is contracted before 31 March 2013.
 - The “Exception” clause applies for an additional period of 20 years (31 March 2018 to 30 March 2038). This is designed to deal with claims associated with delayed onset of

symptoms resulting from injuries sustained and diseases contracted before 31 March 2013.

Together these measures provide a period of 25 years transitional protection for those who sustain a work related injury or contract a work related disease before 31 March 2013. Please refer to flowchart at Appendix B.

- 8.2 The NHS Injury Benefits Scheme can provide three forms of financial support for employees affected by injury or disease that is wholly or mainly attributable to their work on or before 30 March 2013 and this includes Temporary Injury Benefit, Permanent Injury Benefit or Death Benefits. The application process for this scheme remains unchanged and will be administered by the Scottish Public Pensions Agency. Further details on making such an application can be found on the SPPA website – www.sppa.gov.uk
- 8.3 Employees already in receipt of a Temporary or Permanent Injury Benefit on or before 30 March 2013 will not be affected by the introduction of the new arrangements for Injury Allowance.

9. Review

- 9.1 This process will be subject to ongoing monitoring and review.

May 2015

**NHS EDUCATION FOR SCOTLAND
INJURY ALLOWANCE
APPLICATION FORM**

This form should only be completed for an injury or disease occurring on or after **31 March 2013**.

Please note that injury allowance will not be payable if the accident or illness was wholly or mainly due to, or seriously aggravated by, your own culpable negligence or misconduct.

Please complete all sections of part 1 and forward to your manager who will complete part 2 and submit to Depute Director of HR.

PART 1 – TO BE COMPLETED BY THE APPLICANT

SECTION 1 – PERSONAL DETAILS (to be completed in all cases)

Surname

Contact address

Forenames (in full)

Post code

Title

Dr Mr Mrs Miss Ms

Date of birth (e.g. 18/07/1954)

 / /

Pay Number

Telephone/mobile number

National Insurance number

Email address

What is your place of employment in NES? (Please provide department and site)

What was your job title at the time of your injury?

Date the injury occurred? (after 31/03/2013)

 / /

SECTION 2 – FURTHER INFORMATION

1. Please give details of all your previous employment showing where you have worked, with dates if possible (continue on a separate sheet if necessary).

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2. Please give a description of the incident(s) leading to your injury or illness and the type of injury or illness suffered (continue on a separate sheet if necessary).

3. Are you receiving or applying for a NHS Superannuation Pension due to ill health? Yes No

4. Have you applied or are you in receipt of any DWP benefits as a result of your injury? Yes No

If the answer is "NO" to question 4 but you later claim DWP benefits you must notify the Payroll Dept immediately.

Please read and sign the declaration on page 4, enclosing copies of any DWP awarding letters you have received, where possible.

I have included the following documents with my application (please specify below) Do not send us originals unless you have to, copies are preferred. Please ensure all documents are marked with your payroll number.

SECTION 3 – DAMAGES OR COMPENSATION CLAIMS

SPPA reference - your superannuation number
(if member of the NHS Superannuation Scheme (Scotland))

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Please tick the appropriate box.

1. I am currently pursuing a claim for compensation in connection with my work related injury/disease. I authorise NES to approach my legal representative who can be contacted at the address below.

2. Legal Representative name:

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My Reference number is:

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Address

Post code

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3. I am not pursuing a compensation claim at this time. I will notify NES if I decide to pursue such a claim in the future

I understand that my Injury allowance can be affected by an award of compensation and I may be required to repay some or all of any Injury Allowance paid to me. I will notify NES if I have received or receive a damages or compensation payment in respect of the same injury.

Signature

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Print name

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Date

		/			/				
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SECTION 4 – DECLARATION (please read before signing)

(Without a signed declaration we cannot accept your application)

- I hereby apply for NHS Injury Allowance due to an injury/disease which I consider to be wholly or mainly attributable to the duties of my NHS employment.
- I understand that certain DWP benefits paid in relation to my injury are taken into account with NHS injury allowance awards.
- I will notify NES if I have claimed or intend to claim any DWP benefits or if my DWP benefits change in amount or cease to be paid.
- I understand responsibility lies with me to keep NES informed of any changes in benefits.
- I agree to provide NES with copies of any awarding documents for DWP benefits and any subsequent changes to benefit awards (other than those relating to the cost of living increase applied in April of each year).
- I authorise NES to obtain medical evidence from OHS connected to my Injury Allowance Claim and/or monetary details of my DWP benefits, and any subsequent changes from the DWP.
- I am willing to undergo a medical examination by OHS if asked to do so.
- I understand that any payments of Injury Allowance are subject to tax and national insurance deductions but not pension contribution deductions.
- I understand that any overpayment of my injury allowance will be recovered and must be repaid by me.
- I declare the details I have given in this form are correct to the best of my knowledge.

Signature

Print name

Date / /

PART 2 – TO BE COMPLETED BY LINE MANAGER

This form should only be completed for an injury or condition occurring on or after 31 March 2013.

1. In your opinion was the injury or disease wholly or mainly due to, or seriously aggravated by the claimant's own culpable negligence or misconduct? If the answer is yes, please provide all relevant details. Yes No

2. In order to avoid delay in processing, the following information should, where possible accompany this application form. Tick the boxes to indicate which papers are being enclosed.

Occupational Health Reports

Job description

Other papers included. Please specify below (for example - witness statements)

3. DETAILS OF SICK LEAVE, PAID OR UNPAID, DURING THE LAST 5 YEARS OF NHS EMPLOYMENT

Period to which entry relates (if applicant is still absent please state "ongoing")		Reason for Absence (Required)
From (start date)	To (return date or ongoing)	

Please sign and date the form and return to the Depute Director of HR at the address below.

Signature

Print

Job title

Date / /

Please return to:
 Depute Director of HR
 NES Central Offices
 Westport 102
 Westport
 EDINBURGH
 EH3 9DN

TO BE COMPLETED BY PANEL

1.	Panel Membership Name	Job Title
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>

2.	Approved / Not Approved *									
	Reason for non approval									
	Signature									
	Name (Print)									
	Date:	<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>

* Delete as appropriate

**INJURY BENEFIT / ALLOWANCE
FLOWCHART**

Is the injury / disease / other health condition wholly or mainly attributable to NES job?
BUT NOT

- injury whilst on a normal journey to / from work
- sickness absence as a result of dispute relating to employment, conduct or job application.
- injury, disease or other health condition due to or seriously aggravated by employees own negligence / misconduct

Yes
↓
Refer to chart below for what applies

No
↓
No entitlement

Date of Injury / Disease and onset	Current Date		
	Pre 31.03.18	Post 31.03.18 But Pre 31.03.38	Post 31.03.38
Injury / disease occurred on or pre 30.03.13 and (a) on set pre 31.03.18 (b) on set post 31.03.18	INJ BENEFIT N / A	INJ BENEFIT INJ BENEFIT	N / A INJ BENEFIT
Injury / disease occurred on or post 31.03.13	INJ ALLOWANCE	INJ ALLOWANCE	INJ ALLOWANCE

INJURY BENEFIT Claims are made to SPPA via Board
 INJURY ALLOWANCE Claims are made to the Board