

- To:
- ICB:
 - chief executives
 - chief operating officers
 - chairs
 - chief people officers / HR directors
 - Trust:
 - chief executives
 - chief operating officers
 - chief people officers / HR directors
 - directors of nursing

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- cc.
- Regional:
 - directors
 - directors of nursing
 - heads of EPRR

Dear Colleague

Industrial Action – derogations

The Royal College of Nursing (RCN) has announced that industrial action will be taking place on Thursday, 15 December and Tuesday, 20 December. This action will be taking place only at employers where the threshold was met as part of the RCN ballot. The RCN has notified employers where this threshold was met.

Patient safety will always remain paramount. It is important that the NHS is prepared for industrial action.

Unlike workers in other sectors during a strike, to make sure patients are safe some RCN members will continue their work in line with an agreement between employers and unions. One method of maintaining safe staffing levels is through derogations (an exemption provided to a member or service from taking part in strike action). Derogation discussions will be taking place nationally; however, it is vital that local discussions are also held with RCN representatives and other recognised unions.

To support a consistent approach to maintaining patient safety during industrial action, this letter sets out a common approach for these local discussions and to providing clarity to patients and staff around service provision on days of planned industrial action through early notification and communication. Providers should contact patients directly should their appointments need to be rescheduled.

It is important that local agreement is reached on the level of services that will continue to operate during strike action. These will be in line with the principles set out below and be at a minimum Bank Holiday level of service. Once this level of service is known, additional derogations will need to be agreed, over and above this.

Principles

The following principles should underpin the derogation discussions:

- Safety of delivery of NHS services - Ensuring minimum staff levels are available to deliver emergency, immediate life, limb or organ-saving intervention
- Safety of staff should be protected - For those working during industrial action
- Safety of the public is maintained - Ensuring appropriate staff levels are available to deliver care to the public in case of a major incident at national or local level
- Professional regulatory advice is provided and followed
- Life preserving services will continue - With the necessary number of professionals
- Derogations are to be agreed locally to reflect local population and service needs

Additional Derogations

As part of the preparations for industrial action a checklist has been shared with your organisation. This outlined the priority areas where plans and capabilities need to be in place to manage industrial action effectively and ensure patient safety. Annex 1 to this letter provides a risk stratification provided by a national clinical group for additional considerations above the basic level of service. This is split into two groups:

- Service areas where derogations may not be needed, provided the RCN locally are committed to providing a Bank Holiday level of service.
- Service areas where it is suggested that derogations should be sought in addition to a Bank Holiday level of service, or local mitigations put in place to ensure minimum service levels if derogations cannot be agreed.

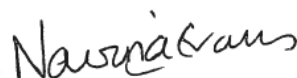
This risk stratification is to be used as guidance to inform your approach locally. However, there may be a degree of local variation depending upon the services your organisation provides. Discussions with representatives locally, if not already underway, should be taking place as soon as possible. It is important that these derogations are agreed as early as possible, with the local RCN strike committee to allow for planning around the operational impacts and to keep patients informed about appointments and the availability of care. The FAQs developed by [NHS Employers and Capsticks](#) offer further guidance on derogations (section 6.1 and 6.2).

Yours sincerely,



Mike Prentice

National Director for Emergency, Planning
and Incident Response
NHS England



Navina Evans

Chief Workforce Officer
NHS England

Annex 1 – Risk stratification for additional derogations

Derogation needed (agreement must be sought to ensure service levels are maintained above a Sunday / Bank Holiday / Xmas day service level)

1. System leadership and management to oversee safe care. - E.g. DON or support for advice at national level
2. Surgery P1 and P2 - Including post-operative care
3. Life sustaining therapies (e.g. satellite clinics)
 - Long term condition requiring acute treatment e.g. Renal Dialysis
 - Patient transport service for life sustaining therapies
4. Discharge of patients and the community services that support discharge
5. Inter hospital transfer to support specialist care and repatriation to ensure flow for life and limb care
 - Time sensitive (including immediate lifesaving or limb or organ-saving intervention and within the same organisation)
6. Time-sensitive Cancer treatment e.g. Chemotherapy and Radiotherapy
 - Part of immediate lifesaving or limb or organ-saving intervention
 - Radical / curative treatment
 - Radical category 1 radiotherapy
7. Diagnostics for urgent care
 - Dependable on emergency operational care, community service and time critical deterioration of patients (e.g. diagnostics necessary to delivery urgent operational care; community services that are time critical; end of life)
8. Pharmacy service to support all other derogated services
9. Inpatient Mental Health services (all ages) covered by Mental Health Act 1983, Section 136
 - Crisis response and emergency teams
 - All mental health in-patient services (all ages)
 - Mental health liaison teams (service available 24/7)
 - ECT therapy
10. Non clinical support services
 - Hard FM (facilities management, routine maintenance - urgent and high level)
11. Non clinical support services - Soft FM
 - Soft FM (inc. porters, catering, cleaning, security staff, switchboard)
 - Reception
 - Ward clerks
 - Linen and laundry service
 - IT server backup
 - Transport (conveyance of pathology samples, drug distribution, medical equipment, materials (restocks o2 - oxygen)
 - Food supply
12. Non clinical support services – Other

- Clinical and medical engineering
- Clinical waste and incinerator
- CSSD (sterilisation and decontamination)

Derogation not needed* (assumed expectation of Union agreement to continue with Sunday or Bank Holiday staffing levels)

1. Major incidents local or nation (as defined by EPRR guidance)
2. Palliative and end of life care
3. Virtual wards
 - Provide service 7 days/week
 - Including routine discharge on Sundays
4. 2-hour crisis response team in community (category 2)
 - Emergency service helping with decision if patient needs to go to Emergency Department
 - Complex children community care
5. Time critical transplants and associated services
 - Part of immediate lifesaving or limb or organ saving intervention
 - Transplant pathway (cross-organisation)
6. Blood donation and supply
7. Time critical medications in all settings
 - Community pharmacy
 - Trust pharmacy
8. Maternity
 - Delivery - Part of immediate lifesaving or limb or organ-saving intervention
 - Day Assessment Units
 - Maternity Day Units
 - Maternity Triage
9. ED, ICU / PICU / Neonatal ICU
 - HDUs and CCUs
 - Acute inpatient ward care
 - Psychiatric ICU
 - Emergency theatres
10. Child protection, child safeguarding and adult safeguarding functions within the SAAF (Safeguarding Accountability and Assurance Framework)

* These are assumptions. If these are wrong, there is a risk of these services needing to be derogated.

Please note: The Association of Ambulance Chief Executives IA Steering Group and the National Ambulance Service Partnership Forum to agree 999, 111 and Non-Emergency Patient Transport Service specific derogations with TU leads which, once agreed with National TU leads, will be enacted locally.