

WELSH GOVERNMENT HR GUIDANCE AND PROCEDURES

EMPLOYEE SURPLUS AND REDUNDANCY AGREEMENT

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Employee Surplus and Redundancy Agreement

General

1. This agreement between the Management and Trade Union Side ('TUS') of the Welsh Government sets out a framework that will be followed in the event that a surplus of employees is anticipated in any business area of the Welsh Government.
2. All our policies are fully inclusive of all staff regardless of age, marriage and civil partnership (both same sex and opposite sex), pregnancy and maternity, race, religion or belief, sex, sexual orientation, whether they have an impairment or health condition, are neurodivergent or use British Sign Language, their gender identity or gender expression. We acknowledge that the terms 'gender identity' and 'gender expression' are not protected characteristics as defined by the Equality Act 2010, however, we believe that Government policy which includes provision for those persons who identify within the 'trans' umbrella (rather than on the basis of binary gender) is a more inclusive approach and one which ensures the Welsh Ministers are in a position to comply with all their statutory duties related to equality and the promotion of well-being in Wales. If you have any feedback on the inclusivity of this policy, please email EqualityintheWorkplaceTeam@gov.wales

Principles

3. It is the policy of the Welsh Government by careful forward planning to ensure as far as possible security of employment for its staff and to use best endeavours to avoid recourse to compulsory redundancies for those who wish to continue their Civil Service careers. This subject is recognised as being a matter for the closest co-operation between Management and the Trades Unions.
4. Whilst this agreement is intended to outline what would be done if there was a staff surplus which could potentially lead to a compulsory redundancy situation, the Welsh Government will also consider implementing a voluntary exit scheme if workforce planning activities suggest that this would be appropriate. In addition, there may be circumstances which bring the principles of this agreement into force that have not arisen directly from workforce planning activities but from the wider workforce strategy of the Welsh Government. If either situation arose, engagement would take place with TUS on all aspects of such a scheme. A full guide for staff on all aspects of any scheme would be produced and made available to all Welsh Government staff and not just those who might be within scope of such a scheme.

Consultation and information sharing arrangements

5. Management and Trade Union Side will hold regular meetings to consider workforce planning issues across the Welsh Government. Such meetings will consider the present and future work pattern of the Welsh Government and its constituent Directorates. The meetings are likely to be, but may not exclusively be, the means of early identification of a potential staff surplus or redundancy situation.
6. Any information provided or matters discussed during the course of workforce planning meetings will remain confidential to those who attend the meetings and should not be shared with any other parties unless it is agreed by all those in attendance that it is appropriate to do so. The aim will be to keep employees informed so far as that is compatible with effective planning.
7. As soon as a situation in a Business Area or Areas is identified that could lead to a surplus of employees, the need to take redundancy avoidance measures or ultimately compulsory redundancies, engagement between management and Trade Union Side representatives on suitable actions will begin immediately. Engagement will continue until all actions relating to surplus or redundancy activity have been concluded.

Terminology

8. A “Business Area” may be any unit or units of business in the Welsh Government, defined by function; and/or band; and/or location. For example, a Business Area may be defined as the staff employed in a particular location, branch, Division or Directorate or a particular functional specialism, or a combination of the above. Alternatively it may be the Welsh Government as a whole. Management will discuss and endeavour to agree with TUS the definition of the Business Area(s) in each case of potential surplus at the time that a potential surplus is identified.
9. The term “surplus” is used to refer to a situation where it is proposed to consider additional measures to secure suitable alternative posts for surplus employees with the Welsh Government, with other Civil Service Departments or secondments to other public sector employers. Such measures would be put in place if employees have not secured alternative posts within the employing Directorate in the first instance and then, if this has not addressed this issue, through normal movements of staff across the Welsh Government i.e. internal recruitment to new posts on lateral transfer or promotion, turnover achieved through natural wastage or placement into posts using the Welsh Government’s Solutions arrangements.
10. If suitable alternative posts are not secured, the Welsh Government may invite volunteers for early departure with compensation. This is referred to as “voluntary exit”. Voluntary exit encompasses compensation offered on the voluntary terms defined in the PCSPS

Compensation Scheme (or the equivalent in other relevant compensation schemes for employees who are not members of the PCSPS).

11. The term “redundancy” is used to refer to a compulsory redundancy situation, which would arise if a post or posts in a Business Area(s) are no longer required and the Welsh Government’s management are unable to offer suitable alternative employment. When a redundancy is declared, compensation will be offered on “compulsory” terms as defined in the PCSPS Compensation Scheme (or other relevant compensation scheme for employees who are not members of the PCSPS).

12. Detailed procedures support this Agreement.

Amendment of this Agreement

13. This Agreement may only be amended with the agreement of both Management and the Trade Union Side, following the consultation procedures set out in the Welsh Government Partnership Agreement.

Signed

.....
[Redacted Signature]
Director General PPCS
Date: 23 June 2011

.....
[Redacted Signature]
Chair – Trade Union Side
Date: 23 June 2011

Procedures supporting the Employee Surplus and Redundancy Agreement

1. Roles and Responsibilities for those involved in these procedures can be found at Annex A ([Roles and Responsibilities](#))

Action to be taken before a redundancy situation is declared

2. When robust and evidenced workforce planning¹ and/or organisational development activities in a Business Area(s) indicates there is potentially a surplus of employees in any Business Area(s), and that, following activities to address the situation within the employing Directorate(s), internal recruitment, Solutions and natural wastage are unlikely to address the surplus, then management will consult on and endeavour to agree with the TUS suitable redundancy avoidance measures, which will be subject to Equality Impact Assessment and monitoring. Cabinet Office and the Regional Co-ordinator will be informed of the situation.

3. If an employee surplus in a Business Area(s) is identified the Welsh Government, in discussion with the Trade Union Side, will determine the order of the process to be followed based on the considerations set out below and circumstances prevailing at the relevant time:

- (a) Identification of the Affected Business Area(s)
- (b) Identification of the scope for suitable alternative employment
- (c) Identification of the scope for other measures
- (d) Invitation for voluntary exit.

Details of these processes and considerations are set out below:

(a) Identification of the Affected Business Area(s)

4. Following discussions with the Trade Union Side, the Business Area(s) affected by surplus numbers will be determined and staff within the affected Business Area(s) will be notified.

(b) Identification of the scope for suitable alternative employment

5. There will be a review of the present and likely future business requirements of the Welsh Government as a whole, to determine whether a surplus of employees is unavoidable. This will include a review of the scope for transferring surplus employees to other Business Area(s) of the Welsh Government where suitable alternative employment may be available within their generic pay band. Wherever practicable, the Welsh Government will endeavour to offer suitable alternative employment to employees in order to avoid any surplus. This will include consideration of relocating posts or transferring work to the location at which surplus employees are currently

¹ At the time of signature of this agreement, both sides acknowledge that the workforce planning tool is in a development phase and will become more robust over time.

based. Employees who are required to transfer to other locations because of a surplus in their current Business Area may be eligible for relocation assistance. Only in very exceptional circumstances will staff be required to transfer to locations beyond daily travelling distance (defined as one hour's travel in each direction using a member of staff's usual mode of transport) or outside usual travel to work areas.

(c) Identification of the scope for other measures

6. Other measures to be considered alongside or before invitations to apply for voluntary exit are issued may include some or all of the following in no particular order:

- placing restrictions on recruitment and/or promotion;
- reviewing the use of casual and contract employees;
- reducing or limiting overtime working;
- flexible working/job share opportunities;
- “overbearing”, i.e. placing employees in posts of a lower pay band than their salary on a temporary basis (normally for not more than one year) until a vacancy at their substantive generic pay band becomes available;
- transfers to other Civil Service employers on compulsory transfer terms. Cabinet Office Protocols exist which require government departments to use suitable surplus staff to fill vacancies. Such vacancies are advertised on the [Civil Service Vacancies](#) website and staff who are potentially surplus would be allowed access to this information and supported in their job-search activities;
- access to packages such as the ADAPT programme² to assist surplus employees to gain new skills to enhance their opportunities for obtaining alternative employment;
- following consultation and endeavouring to agree arrangements with Trade Union Side, consideration should be given by senior staff to the temporary blocking of posts vacant in junior grades in the same class or occupational group or in another group so that those who are surplus may be absorbed into them. Posts should not normally be blocked for a period in excess of 12 months although this period may be extended in exceptional circumstances and subject to consultation and, if possible, agreement with Trade Union Side;
- retraining surplus employees to enable them to undertake other posts within the Civil Service and fringe bodies within the locality of the employee surplus outside their existing specialism;
- if there are insufficient volunteers for voluntary exit in the Welsh Government, volunteers from other Civil Service employers should be sought and, with the agreement of the Department concerned, employees who would otherwise have been offered voluntary exit in the Welsh Government will fill the resulting vacancies created by such

² ADAPT was launched in 2011 to assist those who were under notice of redundancy, made redundant or currently unemployed to access training to enable them to return to the workplace. It is a time-limited programme, the end date of which is not clear at the time of signing this agreement.

volunteers. The latter would be retired on public interest terms even though in such circumstances a state of redundancy had not been established;

- subject to Trade Union views, after all other options have been exhausted and circumstances considered, consideration should be given to the exercising of contractual mobility clauses supported by contractual financial assistance.

(d) Invitations for volunteers for voluntary exit

7. If it is not practicable for the Welsh Government to offer suitable alternative employment to a sufficient number of employees to absorb the surplus in the Business Area(s), employees may be invited to apply for voluntary exit. Any proposals to implement a voluntary exit programme would be subject to Ministerial agreement. The Welsh Government will retain sole discretion to accept or refuse any applications from eligible employees to an invitation for voluntary exit.

8. The Welsh Government will discuss with the Trade Union Side and, where appropriate, employee representatives the terms and scope of any invitation for voluntary exit.

Where an Invitation is to be limited to the Business Area(s) affected

9. In the first instance, an invitation for volunteers for voluntary exit may be limited to employees in the Business Area(s) where there is a likely surplus. When such an invitation is issued, the Welsh Government will also publish:

- a) a definition of eligibility for applications, which will include a specification of the Business Area(s) included in the invitation, and any other limiting factors (such as, for example, pay band, location, role and skills);
- b) an estimate of the number of volunteers being sought, including where practicable the location, pay band etc.;
- c) details of the terms of compensation to be offered to the employees selected for voluntary exit. The terms to be offered will be subject to consultation with the Trade Union Side and we will endeavour to reach agreement;
- d) the composition of a selection panel(s) which will be appointed to consider applications. The selection panel(s) will include senior management from the affected Business Area(s), representation from the Welsh Government's FCS Directorate and observers³ from TUS;
- e) the criteria which will be used to select applicants (in the event that the number of applicants exceeds the number of volunteers being sought).

³ Although TUS representatives have observer status they are able to make comments which may inform the discussion. They are not however part of the decision making process.

These criteria will be developed, in consultation with TUS, taking account of the circumstances prevailing at the time and employment legislation. Criteria may include (but may not be limited to) consideration of:

- cost and payback period;
- business continuity issues;
- replaceability; and,
- the cost of training and developing any replacement.

Volunteers may have the opportunity to indicate any special personal reasons that they consider may have a bearing on the selection process but any selection panel will have the discretion to decide whether and how this may support the volunteer's application for voluntary exit.

- f) Decisions on how criteria are to be applied may take into account (but may not be limited to):

Higher priority being given to employees who:

- are in pay bands at or above the levels where the surplus is greatest;
- are in posts, roles or functional areas which are no longer required in the affected Business Area(s) or the Welsh Government as a whole;
- have skills and experience which are less likely to be of continuing value in the affected Business Area(s) or elsewhere in the Welsh Government;
- would be more difficult to post to alternative suitable employment in the Welsh Government.

Lower priority being given to employees who:

- are in posts, roles or functional areas which will continue to be business critical or of high value in the affected Business Area(s);
- have skills and experience which would continue to be of value in the affected Business Area(s) or elsewhere in the Welsh Government;
- could be offered suitable alternative employment in the Welsh Government;
- have benefited from significant investment by the Welsh Government in their training and/or have been selected for training and development programmes

As it will be necessary, when considering applications, to weigh up a number of criteria, it may be appropriate to adopt a weighted scoring system. The mechanism of any such system will be discussed and

agreed with TUS before being communicated to staff. The proposals will be subject to equality impact assessment before they are applied.

10. Applicants who are not selected for voluntary exit will be notified of the reasons why. An equality audit will be conducted at the end of any such early release scheme and the outcomes shared with the TUS.

General Invitation to Welsh Government employees

11. If an invitation limited to the affected Business Area(s) where there is a likely surplus does not produce sufficient selected applicants to meet the requirement, a general invitation to apply for voluntary exit may be issued to the Welsh Government as a whole. The process to be followed will be as described above, though new criteria for selection of applicants would be published and a new selection panel would be appointed. The criteria for selection could include whether the applicant, if offered a voluntary exit, would vacate a post that could be offered to an employee in the Business Area(s) where the surplus has been identified.

Appeals

12. Employees not selected for voluntary exit will have the right of appeal. They can exercise this right by following the Welsh Government's [Grievance Policy and Procedures](#).

Assistance to staff who have chosen to accept an offer of voluntary exit

13. An [Employee Assistance Programme](#) exists to provide guidance and assistance to employees seeking alternative employment etc. This provides advice on:

- finding alternative employment;
- the financial effects of voluntary exit on the individual (investment of the compensation payment and state benefits);
- stress management;
- how to complete application forms and present themselves at job interviews;
- family implications of voluntary exit etc;
- CV preparation.

Period of Notice

14. Any employee offered a voluntary exit will be entitled to a period of notice of three months. All applicants will be notified in advance of the date on which those who are successful will be expected to leave the Welsh Government.

15. Voluntary exit benefits will be paid in accordance with the Civil Service Compensation Scheme unless the employee is entitled to compensation under an alternative scheme.

Pause and Review

16. After all pre-redundancy measures have been implemented and prior to the declaration of a compulsory redundancy situation, if it has not been possible to reach a negotiated agreement on future actions with local full-time officers of unions recognised in the Welsh Government, management will hold a pause and review meeting with the national officers of the recognised trade unions to aim to resolve matters.

Compulsory Redundancies

17. If the measures described above are insufficient to absorb all the surplus employees and compulsory redundancies are necessary, Welsh Government management will consult Trade Union Side on the unit of redundancy and the criteria to be used in selecting the employees who will be made redundant. Full consultation with Trade Union Side and employees will comply with statutory requirements and will be as set out in Annex B. Any proposals to implement compulsory redundancies will be subject to ministerial approval. Cabinet Office will be notified of such proposals in accordance with the requirements of the joint Cabinet Office and National Trade Union Committee Protocol for handling surplus staff situations.

Action To Be Taken

18. A redundancy situation will be declared when robust and evidenced workforce planning (see footnote 1, page 5) and/or organisational development activities in a Business Area(s) identify that more posts exist than will be required in the future and employees are not able to find alternative roles via the measures set out above. The declaration will be made six months before the anticipated departure date. In addition:

- Management and Trade Union Side will enter a 90 day Meaningful Consultation Period during which robust efforts will be made to avoid recourse to compulsory redundancies. (This period may be varied by mutual agreement);
- A Period of Reflection meeting will take place at least six weeks before any planned redundancy notices are issued. Welsh Government Management, Cabinet Office, National Trade Union Side and Welsh Government Trade Union Side will participate; and,
- If redundancy notices are to be issued, Cabinet Office and Trade Union Side will be notified at least two weeks before issue.

Unit of Redundancy

19. The unit of redundancy (that is the group of staff within which decisions about redundancy may have to be made) and the criteria for selecting staff for redundancy will be agreed between management and the Trade Union Side. The selection criteria to be used in determining the unit of redundancy will be

published. In exceptional circumstances the criteria can be changed in agreement with TUS.

Selection Criteria

20. Objective criteria will be used and consultation will take place between management and TUS to consider the selection of staff for compulsory redundancy. Although the following list is not exhaustive, criteria may include (in no particular order):

- a) *Pay Band*;
- b) *Geographical location*;
- c) *Skills or qualifications (based on objective evidence)*: in order to ensure the retention of a workforce appropriate to future needs and in a particular discipline(s);
- d) *Functional area of work*: in order to ensure the retention of a workforce appropriate to future needs;
- e) *Individual ability*: ability or specialist knowledge acquired as a result of special training, or an individual's value to the objectives of the Welsh Government;
- f) *Standard of work performance*: based on evidence which is as objective as possible, such as appraisal assessments.
- g) *Attendance and disciplinary records*: based on accurate records with clear standards about discipline, absence, and timekeeping. Attendance records will exclude any period of absence relating to industrial accident, impairment, maternity/paternity/adoption, annual leave, bereavement, career breaks or special leave. In addition, as a general rule, one continuous lengthy bout of sickness should not count.
- h) any other relevant factor, depending on current and anticipated future operational needs.

21. The criteria to be used will be weighted, objective, non-discriminatory and in line with the Welsh Government's commitment to equal opportunities and will not be based solely on the opinion of an individual's immediate line manager. They will cover all employees in the unit of redundancy, including those absent for any reason. Selection procedures will be examined carefully and an equality impact assessment undertaken to ensure that unlawful discrimination does not result directly or indirectly. Where necessary, adjustment will be made to the criteria to ensure their fair and objective application.

22. No one will be selected for compulsory redundancy on grounds of their sex, race, impairment or health condition, sexual orientation, religion or

religious belief, age, part-time working status or any other protected characteristic.

Appeals

23. Employees selected for redundancy will have the right of appeal if they feel that the selection criteria have been unfairly applied in their case. They can exercise this right by following the Welsh Government [Grievance Policy and Procedures](#).

24. Employees will be informed of their right of appeal in their notice of redundancy letter. Further details of the Welsh Government's appeals mechanism can be found in the [Appeals Policy](#).

Assistance to staff

25. Employees selected for redundancy may be assisted in the following ways:

a) Alternative work at the same grade:

If suitable alternative work is available, employees will be given sufficient details to enable them to decide whether or not to accept. Any offer will be made in writing and will be made before the previous contract ends. If an employee unreasonably refuses an offer of suitable alternative employment they may lose any entitlement to redundancy pay. An employee will have a maximum trial period of 12 weeks in an alternative job unless this trial period is reduced by mutual agreement. This will give the Welsh Government and the employee a chance to decide whether the new job is suitable without the employee necessarily losing the right to a redundancy payment. Upon completion of the trial, either the employee or the line manager may deem the post not to be suitable, following consultation with the HR Adviser.

b) Re-grading/Downgrading:

Employees may request or be offered re-grading or downgrading as a suitable alternative to redundancy. Employees who accept re-grading or downgrading subject to an agreed trial period will receive the appropriate level of pay at the new pay band, except that where their existing pay is more favourable than starting pay on re-grading/downgrading, staff may retain their existing pay on a mark time basis. Where re-grading has been accepted, a maximum trial of 12 weeks will apply unless this trial period is reduced by mutual agreement. The effect of this is to give both the employee and his/her manager an opportunity to assess whether or not the alternative employment is suitable. An employee would not lose the right to be treated as redundant if the trial period results in the alternative employment proving unsuitable. The pension of the re-graded/ downgraded

employee will be protected at the higher salary level wherever possible and in line with the pension scheme. Upon completion of the trial, either the employee or the line manager may deem the post not to be suitable, following consultation with the HR Adviser.

c) Job Seeking/Training:

Employees who have been given notice of redundancy will be allowed reasonable time off on full pay before the expiry of the period of notice to look for alternative employment or arrange training. Specific guidance on paid time off will be agreed with Trade Union Side at the time, taking account of the scale of redundancies. The Welsh Government will contact the local Department for Work and Pensions' JobCentre Plus Office and local employers, including other Government Departments, to canvass for any vacancies which may be offered to redundant staff.

d) Employee Assistance Programme:

An Employee Assistance Programme exists to provide guidance and assistance to employees in a redundancy situation. This would include advice on:

- finding alternative employment;
- the financial effects of redundancy on the individual (redundancy pay, investment of redundancy compensation and state benefits);
- stress management;
- how to complete application forms and present themselves at job interviews;
- family implications of redundancy etc.;
- CV preparation.

Period of Notice

26. Any employee to be made redundant will be entitled to at least such period of notice as is contained in their statement of terms and conditions of employment. The minimum period of notice for all staff declared redundant will be three months.

27. Redundancy benefits will be paid in accordance with the Civil Service Compensation Scheme unless the employee is entitled to compensation under an alternative scheme.

ROLES AND RESPONSIBILITIES

Line managers are responsible for:

Providing accurate information, when requested, to feed into workforce planning and forecasting

- Working with HR Adviser Teams in dealing with any potential staff surplus or redundancy situation in accordance with agreements reached with TUS and the policy and supporting procedures.

HR Business Partner Teams are responsible for:

- Working with TUS and Directorate or Departmental Project Teams on any staff surplus or redundancy situation.
- Ensuring compliance with this agreement and with employment law relating to redundancy.
- Working with line managers and staff affected by a staff surplus or redundancy situation.
- Issuing appropriate guidance, letters etc in consultation with FCS

FCS is responsible for:

- In consultation with TUS, complying with the provisions of the joint Cabinet Office and National Trade Union Committee “Protocol for Handling Surplus Staff Situations” (July 2014), in particular providing Cabinet Office with an overview of surplus staff situations as soon as they are forecast and, if compulsory redundancies appear unavoidable, informing Cabinet Office and arranging the Period of Reflection meeting during the Meaningful Consultation period.

REDUNDANCY CONSULTATION PROCESS

NB This note describes the process laid down by the Department for Business, Innovation and Skills (BIS) for consultation on and notification of any potential reduction in posts. BIS use the term 'redundancy' to refer to both voluntary and compulsory situations.

1. *Informal Consultation with TUS/employee representatives*
Wherever possible, a minimum of 6 months' notice to TUS of all likely and actual redundancy programmes will be given. Staff will only be declared redundant after full and proper consultation with TUS and employee representatives with a view to reaching agreement about ways to avoid redundancy. The informal consultation will begin as soon as practicable and will be in advance of any public announcement of the redundancy programme.

2. *Formal Consultation with TUS/employee representatives*

This will commence following a decision that posts are to be reduced and may as a consequence cause voluntary and/or compulsory redundancies.

Advance Notification of Redundancies (HR1 Procedure)

If 20 or more employees are at risk of redundancy within the next 90 day period or less an HR1 will be submitted to the Department for Business, Innovation and Skills in accordance with statutory notification requirements. The issuing of an HR1 does not mean that dismissals have to occur.

Employment legislation requires consultation with staff through either trade unions or elected employment representatives on any potential redundancy. Consultation should begin in good time and must begin:

- at least 30 days before the first dismissal takes effect if 20 to 99 employees are to be made redundant at one establishment over a period of 90 days or less;
- at least 45 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment over a period of 90 days or less.

In the Welsh Government's case, one establishment refers to the whole Welsh Government and not individual locations.

No dismissal can take effect until the expiry of the formal consultation period i.e. the 30 or 45 day period which commences with the date of the formal consultation letter.

The formal notification in writing will take place simultaneously with the HR1 notification and will include:

- the reasons for the proposals;
- the number and descriptions of staff it is proposed to make redundant;
- the total number of staff of any such description employed at the relevant location(s);
- determination of the unit of redundancy;
- the criteria to be used in the selecting of staff in redundancy;
- arrangements for travel, removal and related expenses where a post is accepted in a different location;
- whether a redundant employee may leave during their notice period, or postpone the expiry of notice without losing any entitlement to compensatory payment;
- the effect on earnings where transfer or re-grading is accepted in preference to redundancy;
- the method of calculating the amount of redundancy payments;
- the timetable and phasing to be used;
- the arrangements to be adopted to ensure that the rules are applied fairly and consistently;
- a copy of the HR1.

3. Consultation with employees

It will be the policy of the Welsh Government that no letter of redundancy is issued until at least one month from the date of the relevant decision on a potential redundancy situation. The purpose of this one month period is to ensure consultation has taken place and to try and find suitable redeployment opportunities. No employee will be considered for redeployment until consideration of slotting in has been given (see below).

- a) if a whole Business Area(s) has closed then those employees affected will be issued with a letter stating that they are at risk of redundancy and that their particular jobs are affected;
- b) if a restructure is agreed as part of the redundancy process, a plan for filling the posts will be produced which will involve slotting in employees to similar posts. Once slotting in has taken place, employees without a post will be expected to apply for appropriate posts within the ringfence of those posts that are within the affected Business Area at their existing levels (or at a lower level if the employee agrees) and will receive a letter notifying them that they are at risk of redundancy.
- c) employees must at all times during the redundancy process be consulted by their line manager and HR Business Partner;

- d) no notice of redundancy will be given until after the expiry of the formal consultation process i.e. until the expiry of the 30 or 45 day consultation period.