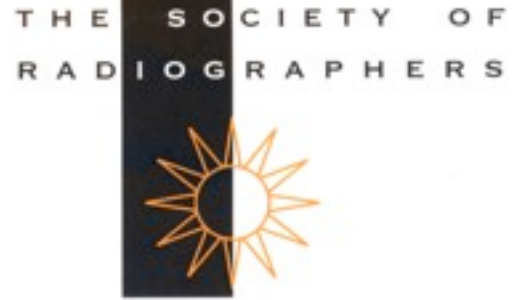


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# Negotiating Guide For New On-call Arrangements: England

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# Negotiating Guide for New On-Call Arrangements: England

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## INTRODUCTION

The NHS National Staff Council have agreed that national protection for current on-call schemes will end on March 31<sup>st</sup> 2011. After this date new local on-call schemes which apply to all staff groups within a particular employer will need to be negotiated, agreed and implemented in each trust.

In Scotland, N Ireland and Wales country wide agreements will be negotiated through the respective Partnership Forum.

Employers will need to review all current on-call arrangements for all staff groups within the employer, this includes all protected Whitley schemes, local schemes and any hybrid schemes currently in use. The aim is to harmonise on-call schemes across all staff groups (except medical and dental staff) in the interests of fairness and to meet Equal Pay legislation requirements. Currently arrangements and payments for different occupational groups can vary widely within trusts.

The NHS National Staff Council has agreed a new national (UK wide) definition of on-call along with 12 principles. These principles must be used as the framework upon which to develop and agree a new harmonised on-call scheme. [See Appendix 3]

It is essential that Reps are involved in the local negotiations to agree new on-call schemes, between now and in time for implementation in April 2011 when national protection arrangements for on-call will end.

### **Step by step guide**

#### **Initial scoping**

All employers have been asked to work in partnership with their staff sides to scope current on-call arrangements and costs. This means that **all** arrangements which are currently described as on-call should be included in the review. Other terminology such as stand-by or sleeping-in may also be used, as these are regarded as on-call unless they fall into the category of overtime or unsocial hours (definitions for unsocial hours and overtime are given in Appendix 1 of this briefing and in the NHS terms and conditions handbook).

It is important that all relevant costs are included such as time taken for compensatory rest. It can be difficult to establish this information from payroll as payments for work done are normally recorded as overtime rather than on-call. Therefore Reps need to be vigilant when considering the current costs as the overall costs will form the potential cost envelope for any new scheme as well as being the basis for any transitional (protection) arrangements.

## **Negotiations**

Some trusts may use smaller working groups of staff side to consider on-call. It is essential that representatives of all staff groups who undertake on-call are represented and it is expected that SoR Reps will be involved in any working party or negotiating group. The working group or staff side will need to consider how communications are sent out to all staff to keep them updated. In addition SoR Reps will need to consult members on the proposed changes and keep them informed separately. It is recommended that this is done via emails and member meetings where possible to seek their views and update as negotiations progress.

SoR will need to develop a favoured position along with members and make proposals to both the other unions and management. SoR Reps are encouraged to be pro-active in this regard and put forward proposals at an early stage. For example, members may feel that they would prefer to keep a system based on an availability payment for each session of on-call worked and a payment for work done when called into work. This approach is one which the internal SoR on-call group favoured. This would be an initial proposal which could be discussed and put forward on the structure of the scheme in advance of discussions on pay rates and other conditions.

As any new system will need to cover all staff within the employer so it is important that discussions take place among staff side unions, who may have alternative preferred options. Reps are encouraged to liaise with other unions and seek agreement where possible on the structure of any system in advance of meetings with management.

## **Definition**

The agreed definition of on-call is as follows:

“On-call systems exist as part of arrangements to provide appropriate service cover across the NHS. A member of staff is on-call when, as part of an established arrangement with his/her employer, he/she is available outside his/her normal working hours – either at the workplace, at home or elsewhere – to work as and when required.”

This definition is necessarily wide to cover all staff groups. It covers any work outside normal/contracted hours which is not overtime or unsocial hours and is part of an agreed arrangement. On-call arrangements exist for many reasons; sometimes because there are insufficient staff to provide cover for the service and to incentivise staff. In addition on-call has been widely used to cover gaps in the service. The definition above allows on-call to continue to be used flexibly as agreed.

### ***Principle 1 - Equal Pay***

*The guiding principle should be that the harmonised arrangements should be consistent with the principles of equal pay for work of equal value.*

*The effect of this should be that schemes agreed by local partnerships should provide consistent payments to staff at the same pay band available at the same on-call frequency.*

*All employing organisations will need to undertake an Equality Impact Assessment (EqIA) of their proposals.*

This means that the principle of equal pay for work of equal value should be applied. An individual should be in receipt of the same on-call pay arrangement as another employee working the same type of on-call at the same frequency.

## **Principle 2 - Commitment or Availability Payment**

*As an example, a band 5 member of staff working on-call from home on a Saturday night should get the same remuneration as another band 5 member of staff working a Saturday night in another service or profession.*

*There needs to be a payment to reflect the availability for being called. There are three distinct types of on-call availability:*

- 1. At home ready to be called out or to undertake work at the work place*
- 2. At work ready to undertake work*
- 3. Sleeping in at a work place*

*Payment for these different types of availability options include:*

- flat rate available for all staff*
- flat rate by grade*
- percentage of salary*

*This payment will reflect the frequency of commitment.*

*If the partnership decides to use a flat rate they will need to agree arrangements for uprating this payment when pay increases.*

*In setting the availability payment, local partnerships will need to take account of the commitment to work weekends and public holidays.*

*Where tiered on-call systems are required, there should be no distinction between levels of commitment when setting the availability/commitment payment.*

*Reference paragraphs 2.27-2.31 in the NHS terms and conditions of service handbook, to allow the option of prospective calculation of the payments.*

You will need to agree a payment formula for each of the 3 types of on-call listed above. You may apply the same formula to each type of on-call or you may feel that availability payments should vary depending on where you are required to be. For example, you may set a different commitment fee for on-call from home and on-call from place of work. You may also wish to apply a higher payment in respect of weekends and public holidays as currently exists under the "protected" Whitley arrangements. The principles state that there should be no variation in the availability payments for first on-call, second on-call (a tiered on-call system).

Following consultation the SoR concluded that we do not favour flat rate payment by grade as we believe that the inconvenience factor of being on-call is the same irrespective of the grade. Currently radiographers on protected Whitley conditions receive the same availability payment in the form of a fixed rate allowance regardless of their grade and we believe this is fair and equitable.

The SoR consultation also revealed little or no support for a percentage of salary system. This was due to concerns regarding the simplicity and fairness of such a scheme. It was felt that radiography rotas are very flexible and subject to change. This could make it very difficult and time consuming for both staff and employers to operate either a prospective or retrospective scheme.

### **Principle 3 - Frequency**

*That part of the week covered by on-call arrangements should be divided up into appropriate periods for the purposes of calculating the frequency of on-call availability.*

*The Agenda for Change interim regime may provide a useful model.*

The current interim system divides the week into 9 periods of at least 12 hours and the enhancement is based on the proportion of these periods worked. We believe that a frequency system could act as a disincentive to staff, particularly if it is based on the current interim arrangements in AfC such as a frequency payment for 1-3 periods, 1-6 periods etc. The current interim arrangements also do not specify a payment for less than 1-12 periods. Members who work on-call once every fortnight would not be entitled to any payment under the current AFC scheme<sup>ii</sup>. The SoR recommends a flat rate is available to all staff, which is updated annually (either linked to any PRB recommendations or the rate of inflation (RPI) as at 1 April each year) and based on agreed on-call periods worked.

Where there is greater support for a frequency-based payment scheme we would suggest that there is a percentage attached to each single period worked. The current AfC scheme was not extended further due to the difficulties in administering the scheme and incentivising staff. We would suggest that the interim regime would need to be adapted if it were to be used more widely. For example, it could be adapted by rewarding each period of on-call worked with a percentage enhancement. If a frequency scheme is proposed Reps will also need to gather information on the frequency that radiographers working on-call within the trust are on the on-call rota. This should enable you to work out an acceptable percentage payment.

Defined periods are helpful for ensuring consistency of availability payments. These periods could be based on the current 12 hourly periods in the interim AfC scheme or could be based on other periods such as hourly periods if this is a better fit for your service.

### **Principle 4 - Work Done**

*Payment for work done, including work done at home, should be made at the appropriate hourly rate with reference to the NHS terms and conditions of service handbook.*

*Local partnerships may agree an appropriate minimum payment period for work done.*

The SoR suggests that the appropriate hourly rate should be **at least** the overtime rate that the member of staff would normally get under AfC terms and conditions; this would be 1.5 on weekdays/ Saturdays/Sundays and double time on public holidays<sup>iii</sup>. However this could be additionally enhanced to account for the difficulties of covering Saturday and Sunday shifts. Some trusts have introduced higher rates for both Saturdays and Sundays to ensure consistent weekend cover. Remuneration for working on-call and for working overtime must be kept separate. This is particularly important for schemes where the hourly rate payable for working on-call is based on overtime rates. On-call must not be classified as overtime, to ensure that the on-call rates of pay remain available to part time staff as well as band 8 and 9. Currently these staff are not normally entitled to overtime payments<sup>iv</sup> but for on-call purposes it is only the overtime rate that is being used therefore **overtime conditions do not apply**.

In addition Band 5 radiographers currently receive pay at the minimum of the fourth point of the band in recognition of the fact that they are working unsupervised when undertaking on-call<sup>v</sup>. The SoR group supported retention of this element of the scheme.

#### **Principle 5 - TOIL**

*Staff should have the option to take TOIL rather than payment for work done in line with Section 3 paragraph 3.5 in the NHS terms and conditions of service handbook.*

TOIL should always be offered as a genuine choice, staff may prefer this option due to tax credit thresholds, or to maintain work life balance. Staff should be able to take TOIL within three months as outlined in Section 3: Paragraph 3.5 of the Agenda for Change terms and conditions handbook<sup>vi</sup> or to be paid if this does not prove possible.

#### **Principle 6 – Compensatory Rest**

*Individuals will receive compensatory rest for work done, in accordance with Section 27 of the NHS terms and conditions of service handbook.*

Compensatory rest should continue to be taken where appropriate in line with the Working Time Regulations. Reps may wish to refer to the SoR Guide “Around The Clock” on the Working Time Regulations<sup>vii</sup> for further guidance. Where local agreements do not currently exist on-call discussions may offer an opportunity to agree local guidelines.

#### **Principle 7 – Travel to Work**

*As per current arrangements. Travel time should be paid at the rate agreed for on-call work done and local partnerships will need to identify if there is a minimum and/or maximum time claim identified.*

*Where travelling expenses are reimbursed, Section 17 in the NHS terms and conditions of service handbook will apply.*

Travel to work time should be paid at work done rates. Mileage rates should continue to be paid in line with section 17.

**Principle 8 – Public Holidays**

*Covering a PH will attract a day in lieu in accordance with paragraph 13.4 of the NHS terms and conditions of service handbook, irrespective of work done.*

*Work done on public holidays would attract payment at the appropriate rates as identified in paragraph 13.4 of the NHS terms and conditions of service handbook.*

This principle carries forward the existing provision for staff available on call on a public holiday to receive a day off in lieu in addition to the relevant payments.

**Principle 9 – Sleeping in**

*A sleeping-in session will often incorporate the following elements:*

- *hours of wakefulness*
- *sleep*
- *work done*

*The term “sleeping-in” does not refer to individuals who are on-call from the workplace and are able to sleep between periods of work.*

*Under the Working Time Regulations if an individual is required to sleep in at a work place this counts as working time. However, time asleep does not count for the purposes of the minimum wage.*

*Under the Minimum Wage Regulations, the availability payment should be at least the same as a calculation for (hours of expected wakefulness x minimum wage). Local partnerships will need to consider if it is more appropriate to base this calculation on the bottom point of the Agenda for Change pay scales, as described in Annex C of the NHS terms and conditions of service handbook.*

*In those situations where a sleeping-in session includes what the National Minimum Wage Regulations would classify as work, or when the individual is woken during a sleeping-in duty, this should be paid as work done at the appropriate hourly rate.*

*Local partnerships may agree a minimum payment period for work done.*

This principle is unlikely to be applicable to many radiographers; it is most likely to be a feature of work in residential care settings. It does not apply to staff that are required to be on-call from the workplace and are able to sleep or relax between periods of work. Nor does it apply to staff that elect to use the on-call room due to the travelling time between their home and the workplace. If Reps are representing staff who sleep in it may be useful to refer to the implementation guidance (See Appendix 3).



**Principle 10 – Pensions**

*Local partnerships should always seek advice from the NHS Pensions on any questions relating to the NHS Pensions Scheme and on-call payments. It is the responsibility of the employer to determine which payments are pensionable, according to the criteria provided by NHS Pensions. Guidance on “pensionable pay” can be found on NHS Pensions website at [www.nhsbsa.nhs.uk/pensions](http://www.nhsbsa.nhs.uk/pensions)*

Currently the NHS Pensions guidance says that ‘pensionable pay’ means all regular payments including salary, fees and wages. For a payment to be pensionable it must be a regular and continuing feature of the job, the member must have a reasonable expectation of being able to earn the payment on a regular basis (yearly is considered regular) through performance of their normal day to day duties.

**Principle 11 – Agenda for Change Interim regime**

*The arrangements in the Agenda for Change interim regime are consistent with these principles.*

Some staff such as senior managers and chaplains did not have access to pre-Agenda for Change on-call payments and have been using the interim arrangement set out in Chapter 2, paragraphs 2.35 – 2.51 of the NHS terms and conditions handbook. This interim regime is set out in Section 2 and also in Annex A3 of the NHS terms and conditions handbook together with the agreed principles for new on-call arrangements has now been moved to Annex A3 of the NHS terms and conditions handbook. This principle confirms that these arrangements are consistent with the framework; however this does not necessarily mean that these agreements will not need to be reviewed and harmonised.

In some trusts (such as ambulance trusts) the interim regime will be the only system in place, in this situation there will not be an expectation that the arrangements are reviewed, this is because payments within the employer will already be harmonised. However, where the interim regime is one of a range of on-call systems in place, arrangements will need to be reviewed and included in any new scheme agreed to ensure consistency.

The interim regime is not a favoured option or a default option; it is one of many systems in operation and has been extended due to a number of potential difficulties identified. See principle 2.

**Principle 12 – Transition**

*There are currently a range of payments for on-call, which form a regular part of income for some individuals. Local partnerships will therefore need to agree transitional arrangements for the movement of staff from current to future on-call payment systems. This includes all on-call arrangements within the scope of the review of on-call.*

*Such transitional arrangements could include one or more of the following elements:*

- *Introduction of increased payments in one or more stages over a fixed period of time*
- *Introduction of reduced payments in one or more stages over a fixed period of time*
- *Postponement of increased and/or reduced payments for a fixed period*
- *Movement to reduced payments over a period on a “mark time” basis*
- *Payment of a one-off lump sum to staff if their on-call payments are reduced.*

*As an example of some of the above elements in practice, Section 2 and Annex X of the NHS terms and conditions of service handbook set out how transition was approached when new unsocial hours provisions were introduced.*

*Where service changes are linked to the harmonisation of on-call payments local partnerships may also wish to consider the use of agreements reached under Annex O of the NHS Terms and Conditions of Service Handbook*

Reps will need to agree a preferred method and agree over what time frame any transition should operate. Annex X of the NHS terms and conditions handbook relates to the arrangements made for the transition to unsocial hours which were over a four year period.

Transition arrangements will usually be the final issue to consider as the full costs of any new scheme will need to be known in order to determine the level of protection that will be required and the number of employees affected.

Consideration will also need to be given to any local policies on pay protection or otherwise which may be more beneficial/suitable to apply. Other issues such as what will happen to staff who change jobs will need to be agreed in advance.

Staff should be given adequate notice of any change to their on-call pay and arrangements. Staff Sides will need to agree a minimum notice period (3 months is suggested) and advise staff accordingly.

**Due to the short time available for negotiations to take place, it is recognised that negotiations may not be concluded in time for a new scheme to be in place by 1<sup>st</sup> of April 2011. In this situation it is recommended in the FAQs (see the attached Appendix 2 , Qs 6 and 9) that local partnerships agree interim arrangements. The SoR policy is that local and national, where appropriate, partnerships should extend protection of existing arrangements until a new scheme is finalised.**

**Further jointly agreed advice and information is available in the attached documents:**

- **Appendix2: The NHS Staff Council FAQs – on-call.**
- **Appendix 3: The NHS Staff Council On-call Implementation Guidance**

**Both documents and further information about the on-call review and negotiations are available from the NHS Employers website: [www.nhsemployers.org](http://www.nhsemployers.org)**

## APPENDIX 1

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### CHECKLIST FOR REPS

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Inform members that the current on-call protection pay arrangements are currently being re-negotiated and that national protection for on-call arrangements will end on the 31 March 2011.

Make sure the SoR has a seat on the primary negotiating group or committee.

Ensure that arrangements are in place to ensure that a SoR Rep attends all or most of the meetings of the on-call negotiation group and there is a clear system of alternates.

Ensure that you receive all the documentation produced by the trust and the negotiating committee.

Organise a system which will allow SoR Reps to communicate and consult with members taking account of trust size and geographical spread.

Speak to managers to see if they can provide you with accurate information on the following:

- Total cost of on-call
- Cost of on-call per grade
- Rota's and frequency of staff on the rota
- A list of the services that have on-call payments and systems.

Ensure that pay protection and interim arrangements are agreed as a core part of the negotiations.

Check what contractual obligations currently exist for members undertaking on-call and establish whether these will change as a result of the negotiations. For example, a requirement to provide on-call cover outside of a member's existing specialty.

Check with your Regional Officer to see if there are any useful information or discussions that can help you and also to keep you informed of what is going on in other employers.

Keep your Regional Officer informed.

### Definition of Overtime and Unsocial Hours

#### Overtime

Radiographic staff on bands 1 – 7 are entitled to be paid overtime for all hours worked beyond standard hours. Standard hours are classified as 37.5 hours per week. This means that all hours worked in excess of 37.5 hours are paid at set overtime rates.

Part-time staff who are asked to work extra hours, are paid at plain time rates until they have worked 37.5 hours

On-call working is not classified as overtime and so is excluded from these arrangements. See Chapter 3: Overtime payments, AfC terms and conditions Handbook

## **Unsocial Hours**

Unsocial hours are hours worked that are classified as 'unsocial' which is currently hours worked as after 8pm and before 8am and which are part of the normal working hours of the post holder. Working patterns that attract unsocial hours are shift working, night working and extended days.

See Chapter 2: Maintaining round the clock services AfC terms and conditions Handbook

## APPENDIX 2

### THE NHS STAFF COUNCIL WORKING IN PARTNERSHIP

#### Frequently asked questions (FAQs) – on-call

These FAQs have been agreed by the NHS Staff Council.

##### **1. Why isn't there a new national system of on-call payments?**

In March 2010 the Staff Council agreed that the priority for this work should be to support local partnerships to deliver harmonised arrangements, consistent with the equal pay principles in Agenda for Change, before current pay protection ends on 31 March 2011. It was agreed that the on-call review group should create an 'enabling provision' to support local partnerships in harmonising the on-call arrangements in their organisation.

Local negotiations involving staff representatives and managers, with first-hand knowledge and experience of on-call in operational situations, are the best way for local partnerships to ensure that agreements meet local needs.

##### **2. When should local partnerships complete their negotiations?**

By 31 March 2011, when the national protection of on-call payments ends.

##### **3. Why don't the principles state what on-call payments should be in future?**

The principles identify the basic shape of new on-call arrangements but local partnerships will need to set appropriate payment rates and other parameters to help them in this.

##### **4. How will local partnerships ensure their proposals meet equal pay principles?**

Equal pay requirements are based on the statutory provisions to prevent differences in pay between men and women doing work of equal value. The principles and implementation guidance make clear that harmonised on-call pay rates will need to be consistent with the principle of 'equal pay for work of equal value' and explain the effect of this, so that an individual should receive the same on-call pay arrangement as another employee at the same pay band, working the same type of on-call at the same frequency. The principles also identify that an Equality Impact Assessment will need to be undertaken on proposals, prior to them being implemented.

##### **5. When can local negotiations start?**

Now, based on the agreed principles. Employing organisations were advised in July to start working in partnership to prepare for this work.

##### **6. Can organisations implement current Agenda for Change 'interim regime' in Section 2 of the NHS terms and conditions of service handbook, as a default position?**

No. From 1 April 2011, on-call arrangements will be subject to local agreement, based on the principles in annex A3 of the NHS terms and conditions of service handbook. Local partnerships can agree to use the interim regime as part of the harmonised arrangements (see the implementation guidance for more information) but it should not be applied as a default option in lieu of local agreement.

**7. What will happen if local partnerships decide that some staff should move to different levels of on-call payments?**

The principles make clear that payments need to be harmonised so they are in line with 'equal pay for work of equal value' and equality principles more generally. How this is achieved is for local partnerships to determine. The principles provide some suggestions on how discussions on transition may be approached locally.

**8. Are there any extra resources to support the NHS in this?**

No, local partnerships will need to work within existing resources.

**9. What happens if local negotiations are not completed by 31 March 2011?**

Local partnerships will need to decide what arrangements will apply in their organisation from 1 April 2011 until they do reach agreement (see question 6 above).

**10. On-call works well in the NHS. Why are we changing it?**

The current payment systems described in the on-call sub-group's report on the review produce different levels of payments to staff in different groups who make similar on-call commitments. This is not in line with equal pay and Agenda for Change principles. Arrangements now need to be harmonised to comply with equality principles.

**11. What happens to staff working hybrid/shift systems and getting on-call payments?**

Local partnerships will need to give particular consideration to transitional arrangements for staff currently working shift or hybrid/shift on-call systems. The joint implementation guidance identifies different models for transitional arrangements. Sections 2 and 3 in the NHS terms and conditions of service handbook provide unsocial hours and overtime payments and describe the circumstances in which these will apply.

**12. What happens if an individual moves to a new job where their on-call commitments are different?**

That will be for local partnerships to determine.

**13. Which on-call schemes fall within the scope of harmonised on-call arrangements and any arrangements put in place for transition?**

Harmonised schemes and transitional arrangements should take into account those arrangements described in the terms of reference for the review of on-call. These are available in the full report on the review at [www.nhsemployers.org](http://www.nhsemployers.org)

## APPENDIX 3

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### THE NHS STAFF COUNCIL WORKING IN PARTNERSHIP

#### On-call implementation guidance

This implementation guidance has been produced to accompany the agreed principles in annex A3 of the NHS terms and conditions of service handbook for harmonised on-call arrangements, to support local partnerships in their negotiations and to provide clarity on terms and references.

Where possible, the guidance takes into account the feedback from the consultation on the principles, and seeks to clarify issues raised in those responses. The on-call working group of the NHS Staff Council will review this guidance periodically, between now and April 2011 and will issue updates as required.

#### Section one

It is expected that employing organisations will work in partnership with recognised NHS trade unions via the relevant forum to undertake both the collection of data on current on-call systems and negotiations to develop and agree harmonised arrangements.

A range of terminology is used to describe what is covered by the scope of the 'on-call review'. It is important that information is collected about all of those schemes or arrangements which are currently designated as 'on-call' including those described as 'sleeping-in'. It is for local partnerships to determine appropriate arrangements for involvement and governance for the project - to identify who is going to undertake the various elements of the work and how the involvement of representatives from all staff groups will be secured, especially from those where on-call working is common. Partners will need to identify:

- What structures need to be put in place to gather data and negotiate new arrangements
- What communications need to be prepared to ensure consistent messages are communicated to staff
- How staff will be consulted on any agreed proposals
- How affected staff will be notified of new pay arrangements and rates for on-call, that are agreed locally
- What arrangements will apply if negotiations are not completed in time to process new payments from 1 April 2011
- What ongoing monitoring will be put in place following the introduction of an agreed scheme, and who will be involved in this

Along with collecting data on current on-call schemes, local partnerships will also need to take into account any service specifications for particular types of work which may impose particular service requirements for the way that on-call is provided.

#### Section two

<p><b>Definition</b> On-call systems exist as part of arrangements to provide appropriate service cover across the NHS. A member of staff is on-call when, as part of an established arrangement with his/her employer, he/she is available outside his/her normal working hours – either at the workplace, at home or elsewhere – to work as and when required.</p>	<p>This definition emphasises that the core element of on-call is the agreement to be available outside normal working hours. Normal working hours are those which are regularly worked and/or fixed by contract of employment. Time worked as overtime is not normal work unless an employee's contract fixes a minimum number of hours.</p>
<p><b>Principle</b></p>	<p><b>Guidance</b></p>
<p><b>1. Equal pay</b> The guiding principle should be that the harmonized arrangements should be consistent with the principles of equal pay for work of equal value. The effect of this should be that schemes agreed by local partnerships should provide consistent payments to staff at the same pay band available at the same on-call frequency.</p>	<p>Once local negotiations have been completed, it will be necessary to undertake an Equality Impact Assessment before agreeing any final "policy". It may be helpful to identify at the outset of the project the model that it is intended to be used for this purpose. More information and a guide to conducting impact assessments is available from: <a href="http://www.nhsemployers.org/Aboutus/Publications/Pages/EqIA-briefing.aspx">http://www.nhsemployers.org/Aboutus/Publications/Pages/EqIA-briefing.aspx</a></p>



<p><b>2. Commitment or availability payment</b></p> <p>There needs to be a payment to reflect the availability for being called. There are three distinct types of on-call availability:</p> <p>(a) at home ready to be called out or to undertake work at the work place;</p> <p>(b) at work ready to undertake work;</p> <p>(c ) sleeping in at a work place.</p> <p>Payment for these different types of availability – options include:</p> <p>(a) flat rate available for all staff;</p> <p>(b) flat rate by grade;</p> <p>(c ) percentage of salary.</p> <p>This payment will reflect the frequency of commitment.</p> <p>If the partnership decides to use a flat rate they will need to agree arrangements for uprating this payment when pay increases.</p> <p>In setting the availability payment, local partnerships will need to take account of the commitment to work weekends and public holidays.</p> <p>Where tiered on-call systems are required, there should be no distinction between levels of commitment when setting the availability/commitment payment.</p> <p>Reference paragraph 2.26 to 2.27 in the NHS terms and conditions of service handbook, to allow the option of prospective calculation of the payments.</p>	<p>You will need to set a payment or payment formula for each of the three described types of on-call in place in your organisation, with reference to the standard frequencies in principle 3.</p> <p>Where on-call arrangements cover evenings and weekends with different frequencies, this will need to be taken into account in setting the payment (see principle 3).</p> <p>You will need to consider the pros and cons of each approach and particularly the cost implications of these options.</p> <p>If you agree to apply a flat rate for availability, it will be necessary to identify how and when these are uprated, for example, in line with pay uplifts to the Agenda for Change pay scales.</p> <p>Where on-call activity commonly includes staff from a range of pay bands, local partnerships may wish to consider a flat rate for the availability payment. On-call for supervisors of midwives is</p> <p>consistent with type 1 – on call at home ready to be called out to a workplace.</p> <p>The principles identify that the availability payment should not distinguish between different ‘tiers’ of on-call. Tiers mean arrangements where individuals are on first on-call, second on-call etc.</p> <p>The Principles identify that you can apply the availability payment prospectively as well as retrospectively – a prospective arrangement may be of most value where the on-call commitment does not vary.</p>
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<p><b>3. Frequency</b> That part of the week covered by on-call arrangements should be divided up into appropriate periods for the purposes of calculating the frequency of on-call availability. The Agenda for Change interim regime may provide a useful model.</p>	<p>It is important that frequency of on-call (e.g. 1 in 9 etc) is described by reference to defined periods, in order that availability payments are consistent.</p> <p>This principle makes reference to the model described in section 2 of the handbook<sup>1</sup> where the on-call periods are divided into 9 periods of at least 12 hours. However, demand for on-call provision varies considerably and local partnerships will need to agree what standard reference periods best meet service needs.</p> <p>When describing these periods, your arrangements will need to take into account the requirement to provide on-call cover which spans two or more on-call periods. For example, a 24 hour on-call period may count for 2 frequency periods using the model described above.</p> <p>Calculating and/or expressing the availability payment in hourly terms may be helpful where the length of on-call duties varies considerably.</p>
<p><b>4. Work done</b> Payment for work done, including work done at home, should be made at the appropriate hourly rate with reference to the NHS terms and conditions of service handbook. Local partnerships may agree an appropriate minimum payment period for work done.</p>	<p>It is for local partnerships to determine the 'appropriate hourly rate' to be applied to work done. The appropriate work done rate should apply, irrespective of the type of availability. In setting this rate, local partnerships will need to be mindful of the provisions for fair treatment of part time workers as set out in section 11 of the handbook.</p> <p>Local partnerships will need to identify what rates apply for work done at weekends and on public holidays. In circumstances where there is a 'spot rate' for work done, it may be appropriate to consider the use of an appropriate point on the Agenda for Change pay scale as a basis for payment of work done, determined via the agreed process for application of the Job Evaluation Scheme.</p> <p>Undertaking work via telephone should attract payment for work done.</p>
<p><b>5. Time of in Lieu (TOIL)</b> Staff should have the option to take TOIL rather than payment for work done in line with paragraph 3.5 in the NHS terms and conditions of service handbook.</p>	<p>Due to personal circumstances including tax credit thresholds, or maintaining a good work/life balance, some staff may prefer to take TOIL rather than payment for work done. On-call agreements will need to say that this should be a genuine choice on the part of the individual and identify that TOIL should be taken in accordance with section 3.5 of the handbook.</p>

<p><b>6. Compensatory rest</b> Individuals will receive compensatory rest for work done, in accordance with Section 27 of the NHS terms and conditions of service handbook.</p>	<p>You will need to reference Section 27 of the handbook in your agreement, along with any locally agreed protocols on the application of the Working Time Regulations provisions for Compensatory Rest.</p>
<p><b>7. Travel to work</b> As per current arrangements. Travel time should be paid at the rate agreed for on-call work done and local partnerships will need to identify if there is a minimum and/or maximum time claim identified. Where travelling expenses are reimbursed, Section 17 in the NHS terms and conditions of service handbook will apply.</p>	<p>Travel time should be paid as for work done for those staff who are available at home to go to a workplace when called. This should be considered when setting any minimum work done period.</p>

<p><b>8. Public holidays (PH)</b> Covering a PH will attract a day in lieu in accordance with paragraph 13.4 of the NHS terms and conditions of service handbook, irrespective of work done. Work done on public holidays would attract payment at the appropriate rates as identified in paragraph 13.4 of the NHS terms and conditions of service handbook.</p>	<p>Section 13 of the handbook identifies the entitlement to general public holidays. This principle carries forward the existing provision in paragraph 13.4 for those available on-call on a public holiday to receive TOIL in addition to the relevant payments.</p>
<p><b>9. Sleeping in</b> A sleeping-in session will often incorporate the following elements: (a) hours of wakefulness; (b) sleep; (c ) work done. The term “sleeping-in” does not refer to individuals who are on-call from the workplace and are able to sleep between periods of work. Under the Working Time Regulations if an individual is required to sleep in at a work place this counts as working time. However, time asleep does not count for the purposes of the minimum wage. If asleep, this working time does not count for the purposes of the minimum wage. Under the Minimum Wage Regulations, the availability payment should be at least the same as a calculation for (hours of expected wakefulness x minimum wage). Local partnerships will need to consider if it is more appropriate to base this calculation on the bottom point of the Agenda for Change pay scales, as described in Annex C of the NHS terms and conditions of service handbook. In those situations where a sleeping-in session includes what the  National Minimum Wage Regulations would classify as work, or when the individual is woken during a sleeping-in duty, this should be paid as work done at the appropriate hourly rate. Local partnerships may agree a minimum payment period for work done.</p>	<p>Sleeping-in is most likely to be a feature of work in residential care settings such as nursing homes, learning disability campuses or integrated social care settings. These principles distinguish between sleeping-in and those arrangements where staff are required to be on-call from the workplace and are able to sleep or relax between periods of work. This principle identifies the legal minimum calculation on which to base pay for sleeping in availability – you will need to agree what the reasonable expectation of wakefulness is within the sleeping-in duty. For example, a common sleeping in shift could incorporate: 20.00 – 21.00 1 hour of work 21.00 – 24.00 Wakefulness for 3 hours 24.00 – 07.00 Sleep for 7 hours 07.00 – 08.00 Wakefulness for 1 hour In this example, the minimum calculation for availability would be 4 x (National Minimum Wage or AfC minimum hourly rate); with one hour of work done paid at the relevant hourly rate. Once calculated, it may be more clear to express the sleeping-in payment as a ‘per oncall duty’ rate, incorporating both the availability payment and any regular work done.</p>

<p><b>10. Pensions</b></p> <p>Local partnerships should always seek advice from the NHS Pensions on any questions relating to the NHS Pensions Scheme and on-call payments. It is the responsibility of the employer to determine which payments are pensionable, according to the criteria provided by NHS Pensions. Guidance on “<i>pensionable pay</i>” can be found on NHS Pensions websites at: <a href="http://www.nhsbsa.nhs.uk/pensions">www.nhsbsa.nhs.uk/pensions</a> for staff and employers in England and Wales; <a href="http://www.hscpensions.hscni.net">www.hscpensions.hscni.net</a> in Northern Ireland; and <a href="http://www.sppa.gov.uk/nhs/home.htm">www.sppa.gov.uk/nhs/home.htm</a> in Scotland.</p>	<p>Local partnerships should always seek advice from the NHS Pensions Agency on any questions relating to the NHS Pensions Scheme and on-call payments. It is the responsibility of the employer to determine which payments are pensionable. Guidance on “<i>pensionable pay</i>” can be found at: <a href="http://www.nhsbsa.nhs.uk/pensions">www.nhsbsa.nhs.uk/pensions</a> for staff and employers in England and Wales; <a href="http://www.hscpensions.hscni.net">www.hscpensions.hscni.net</a> in Northern Ireland; and <a href="http://www.sppa.gov.uk/nhs/home.htm">www.sppa.gov.uk/nhs/home.htm</a> in Scotland.</p> <p>– the guidance says that “<i>pensionable pay</i>” means all salary, wages, fees and other regular payments payable to a member of the NHS Pension Scheme, in respect of pensionable employment. The relevant guidelines include:</p> <ul style="list-style-type: none"> <li>– the main considerations are that for a payment to be pensionable it must be a regular and continuing feature of the job, and the member must have a reasonable expectation of at least being able to earn the payment on a regular basis (yearly is considered regular) through performance of their normal day to day duties;</li> <li>– payments which are considered once only payments or relate to hours above the standard whole time for the post, are not pensionable.</li> </ul>
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<p><b>11. Agenda for Change interim regime</b></p>	<p>Certain groups of staff (including chaplains and senior managers) did not have access to pre-Agenda for Change on-call payments and have been using the Interim Regime set out in paragraphs 2.33 – 2.50 and Annex A3 of the handbook. The interim regime is</p>
<p>The arrangements in the Agenda for Change interim regime are consistent with these principles.</p>	<p>consistent with these principles. Where the interim regime is the only on-call arrangement in place (e.g. in parts of the ambulance service), there is no expectation that the section 2 arrangements be disturbed. However, where this is one of a range of on-call schemes in place, local partnerships will need to ensure that payments (including any locally agreed payments for staff working less frequently than 1 in 12) are consistent with those for staff on other on-call arrangements of the same type. Where the 'interim arrangements' are determined by the local partnership as the desired model for all staff available on-call from home, the link between frequency and percentage payments may need to be adapted to better reflect local needs and working patterns.</p>

<p><b>12. Transition</b></p> <ul style="list-style-type: none"> <li>• There are currently a range of payments for on-call, which form a regular part of income for some individuals. Local partnerships will therefore need to agree transitional arrangements for the movement of staff from current to future on-call payment systems. This includes all on-call arrangements within the scope of the review of on-call.</li> <li>• Such transitional arrangements could include one or more of the following elements: <ul style="list-style-type: none"> <li>– introduction of increased payments in one or more stages over a fixed period of time</li> <li>– introduction of reduced payments in one or more stages over a fixed period of time</li> <li>– postponement of increased and/or reduced payments for a fixed period</li> <li>– movement to reduced payments over a period on a “mark time” basis</li> <li>– payment of a one-off lump sum to staff if their on-call payments are reduced.</li> </ul> </li> <li>• As an example of some of the above elements in practice, Section 2 and Annex X of the NHS terms and conditions of service handbook set out how transition was approached when new unsocial hours provisions were introduced.</li> <li>• Where service changes are linked to the harmonisation of oncall payments local partnerships may also wish to consider the use of agreements reached under Annex O of the NHS terms and conditions of service handbook.</li> </ul>	<p>Principle 12 identifies options for you to consider when moving individuals from current to new on-call arrangements. 2</p> <p>You will also need to consider</p> <ul style="list-style-type: none"> <li>• How any transitional payments for on-call are identified separate to those for other protected areas, e.g. organisational change, and the interaction between this and any transitional arrangements.</li> <li>• How affected staff will be notified of new pay arrangements and rates and any transitional arrangements agreed locally</li> </ul>
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## REFERENCES

1.Reps in Scotland,N Ireland and Wales will be advised by their National Officers.

i

2.NHS Terms and Conditions Handbook Amendment number 20. Pay Circular (AforC) 5/2010 Section 2: Maintaining round the clock services.

<sup>ii</sup>section 2: Maintaining round the clock services. Paragraph 2.35 to 2.51 NHS Terms and Conditions Handbook

<sup>iii</sup> Section3: Overtime Payments. NHS Terms and Conditions Handbook.

<sup>iv</sup> Section 3: Overtime payments. Paragraph 3.6 NHS Terms and Conditions Handbook

<sup>v</sup> Section 2. Maintaining round the clock services paragraph 2.33 NHS Terms and Conditions Handbook

<sup>vi</sup> Section 3: Overtime payments paragraph 3.5. NHS Terms and Conditions Handbook.

<sup>vii</sup> Around The Clock.

**Web Addresses:**

**NHS Terms and Conditions Handbook is available from: [www.nhsemployers.org](http://www.nhsemployers.org)**

**NHS Staff Council jointly agreed FAQs and On-call implementation guidance is available from [www.nhsemployers.org](http://www.nhsemployers.org)**

**SoR information and up-dates on the negotiating on-call will be posted on the SoR website: [www.sor.org](http://www.sor.org)**