

# Pay Circular (AforC) 1/2010

## Changes to NHS Terms and Conditions of Service Handbook (amendment 16): on-call, equal opportunities, frequently asked questions and national bodies

To: All NHS employers

### Summary

This pay circular informs employers of agreed changes to the NHS Terms and Conditions of Service Handbook. In Section 2 the period of protection of current on-call arrangements is extended. In Part 5, equal opportunities, there are agreed changes reflecting current legislation and good practice. Guidance on frequently asked questions is in a new Annex A2 and the Handbook has been updated, in line with changes to the remit of the NHS Pay Review Body.

### Action

1. The NHS Staff Council is reviewing on-call allowances. The Council has agreed that employers should continue to use existing local and nationally agreed systems of remuneration of on-call until 31 March 2011. Changes to the NHS Staff Council's statement on equal opportunities have been agreed in the equality and diversity sub-group. There are some consequential changes to Section 34, Flexible Working Arrangements and Section 35, Balancing Work and Personal Life. Employers should review their equal opportunities policies to ensure they are in line with these provisions.

### Protection of on-call allowances

2. The Staff Council has agreed that employers should continue to use existing local and nationally agreed systems of remuneration of on-call until the national review is finished.
3. Unless agreed otherwise by local partnerships, existing payments under local and nationally agreed arrangements will continue until 31 March 2011 when any new arrangements agreed by the Staff Council would start. This extended protection applies to existing staff and new starters.

### Equal opportunities

4. Part of the remit of the Equalities and Diversity sub-group of the NHS Staff Council is to ensure that the national terms and conditions of service accurately reflect current legislation and good practice in the field of equality and diversity. To this end small working groups were established in 2007 to look at the Handbook from the perspective of the six main strands (age, disability, gender, race, religion or belief and sexual orientation). In addition a small group

looked at the wording in the general sections of the Handbook relating to equal opportunities. The changes proposed by the sub-group and agreed by the NHS Staff Council are in the revised Sections 30, 34 and 35, attached to this circular.

### Frequently asked questions

5. The Executive of the NHS Staff Council has agreed guidance on a number of frequently asked questions (FAQs) on the Handbook provisions. These have previously been published on the Agenda for Change part of the NHS Employer's web site. Each question and answer is cross referenced to the main text of the Handbook. The FAQs' contain guidance which is intended to help in situations where, locally, the joint partners have not been able to agree a suitable way forward on an issue.

### NHS Pay Review Body

6. The terms of reference of the NHS Pay Review Body have been extended to include all staff employed in the NHS, with the exception of doctors, dentists and very senior managers. This means there is no longer a role for the Pay Negotiating Council (PNC) which previously dealt with pay and conditions of service for non-medical staff not in the review body's remit. Section 40 has been revised to reflect these changes and there are consequential changes elsewhere in the Handbook, wherever there was reference to the Nursing and Other Health Professions Pay Review Body (NOHPRB) and the Pay Negotiating Council (PNC).
7. References to "Agenda for Change" have been replaced by references to the pay system set out in the Handbook. References to "workforce development confederations" have been removed"

### Effect of this amendment

8. This is amendment number 16 to the NHS Terms and Conditions of Service Handbook. The Sections attached to this pay circular have been revised and replace the existing sections in the Handbook.
9. Details of the changes made effective by this circular are in the Appendix attached.

### Enquiries

10. Employees must direct personal enquiries to their employer.
11. Employers should direct enquiries to: [agendaforchange@nhsemployers.org](mailto:agendaforchange@nhsemployers.org)
12. Copies of this circular can be downloaded from: [www.nhsemployers.org](http://www.nhsemployers.org)

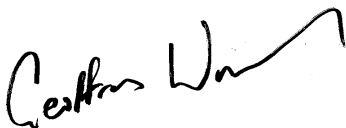
13. A copy of the NHS Terms and Conditions of Service Handbook can be downloaded from the NHS Employers website at the following web address

[www.nhsemployers.org/payandconditions/agendaforchnage.asp](http://www.nhsemployers.org/payandconditions/agendaforchnage.asp)

14. Prior to the establishment of NHS Employers in November 2004, responsibility to inform the NHS of changes to pay and allowances for staff on Agenda for Change contracts rested with the Department of Health. Changes were published in Advance Letters. Copies of previous Advance Letters going back to 1995 may be obtained from the Department of Health website at the following address:

[www.dh.gov.uk/letters](http://www.dh.gov.uk/letters)

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## Annex

### Pay circular (AforC) 1/2010

#### **NHS Terms and Conditions of Service Handbook**

The Sections attached to this pay circular and listed below replace the existing sections in the Handbook. The new Annex A2 becomes the new last Annex. Full details of all the textual changes are in the record of amendments, volume 2, published on the NHS Employers web site alongside the amended Handbook at:

[www.nhsemployers.org](http://www.nhsemployers.org)

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# NHS terms and conditions of service handbook

Amendment number 16  
Pay Circular (AforC) 1/2010



# Introduction

This Handbook is amended whenever new agreements are reached in the NHS Staff Council. Amendments to the Handbook are published in numbered pay circulars which set out details of the changes, including the effective date(s) of changes to pay and conditions. The title page shows the number of the latest amendment and the number of the pay circular which announced it. Footnotes refer to the pay circular which contained the last amendment to each Section.

The terms and conditions of service set out in this handbook apply in full to all staff directly employed by NHS organisations, except very senior managers and staff within the remit of the Doctors' and Dentists' Review Body. NHS organisations include Health and Personal Social Services organisations in Northern Ireland. References to the NHS throughout this document should be read as including these organisations where appropriate. Staff on contracts which incorporate national agreements will assimilate to the new system, and staff on local contracts will be offered the opportunity of transferring to it under the timetable it sets out.





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# Principles and partnership

1. All NHS employers are obliged to adhere to employment and tax law and other statutory provisions. The NHS Staff Council will review this Handbook periodically, taking account of changes to relevant legislation.
2. In Scotland, the statutory framework includes legislation on staff governance as set out in the NHS Reform (Scotland) Act 2004 and the Staff Governance Standard. Compliance with this standard includes implementation of Partnership Information Network (PIN) guidelines, which define a minimum standard of best employment practice. This handbook should be read in conjunction with the provisions of the PIN guidelines as listed in Annex V.
3. The provisions set out in this handbook are based on the need to ensure a fair system of pay for NHS employees which supports modernised working practices. The provisions recognise that modern forms of healthcare rely on flexible teams of staff providing patient care 24 hours a day, 7 days a week, 365 days a year and applying a wide range of skills.
4. Nationally, employer and trades union representatives have agreed to work in partnership to maintain an NHS pay system which supports NHS service modernisation and meets the reasonable aspirations of staff. The national partners have agreed to work together to meet the reasonable aspirations of all the parties to:
  - ensure that the pay system leads to more patients being treated, more quickly and being given higher quality care;
  - assist new ways of working which best deliver the range and quality of services required, in as efficient and effective a way as possible, and organised to best meet the needs of patients;
  - assist the goal of achieving a quality workforce with the right numbers of staff, with the right skills and diversity, and organised in the right way;
  - improve the recruitment, retention and morale of the NHS workforce;
  - improve all aspects of equal opportunity and diversity, especially in the areas of career and training opportunities and to ensure working patterns that are flexible and responsive to family commitments;

## Principles and partnership

- meet equal pay for work of equal value criteria, recognising that pay constitutes any benefits in cash or conditions;
- implement the new pay system within the management, financial and service constraints likely to be in place.

## Local partnership

5. Trades union and employer representatives at national level actively support, encourage and promote a partnership approach to the development of the pay system. Their aim is to ensure the pay system supports NHS service modernisation and meets the reasonable aspirations of staff. Employers and trades unions are expected to work in partnership to apply the pay system at local level.
6. To this end, employers should ensure that the representatives of trade unions and other staff organisations, recognised for purposes of collective bargaining at local level, are released appropriately to participate in the partnership process and that nominated officers of local staff representatives can be fully involved in the local partnership arrangements. The adequacy of facilities arrangements will be monitored by the NHS Staff Council.
7. Within NHSScotland the Staff Governance Standard applies. This can be found at:

[www.show.scot.nhs.uk/sehd/psu/documents/staffgovernancestandard.pdf](http://www.show.scot.nhs.uk/sehd/psu/documents/staffgovernancestandard.pdf)

## Wider human resources issues

8. Pay modernisation is an integral part of the human resource strategies of the NHS in England, Scotland, Wales and Northern Ireland. All parties recognise that the pay system should be consistent with the wider human resource policies set out in the relevant strategies.



# Part 2: Pay

## Section 1: Pay structure

### Pay spines

- 1.1 The NHS pay system as a whole will have two pay spines or series of pay bands: pay spine one for staff within the remit of the Doctors' and Dentists' Review Body and pay spine two for staff within the extended remit of the NHS Pay Review Body (NHSPRB).
- 1.2 Part 2 and Part 7 of this Handbook set out pay and conditions for staff within the remit of the NHSPRB. Section 40 (Part 6) explains the role of the NHS Staff Council, its Executive and the NHS pay review bodies. Annex P sets out the extended coverage of the NHSPRB. Pay and conditions for the most senior managers are outside the scope of this Handbook (see paragraph 1.7 below).
- 1.3 The pay spine for staff covered by the NHSPRB will be divided into nine pay bands. All staff covered by this pay system will, on assimilation, be assigned to one of these pay bands on the basis of job weight, as measured by the NHS Job Evaluation Scheme.
- 1.4 To assist this process, a set of NHS jobs have been evaluated and national job profiles drawn up where the job evaluation score is agreed. Staff whose jobs match these profiles will assimilate on the basis of the profile score. Other jobs will be evaluated locally on a partnership basis.
- 1.5 The NHS Job Evaluation Handbook<sup>1</sup> sets out the basis of job evaluation, which underpins the new pay system and includes the factor plan, the weighting and scoring document and a guide for matching posts locally. The process for assimilation is set out more fully in Section 46.

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<sup>1</sup> Available, together with the nationally evaluated job profiles, on the Agenda for Change web site at: [www.dh.gov.uk/PolicyAndGuidance/HumanResourcesAndTraining/ModernisingPay/AgendaForChange/fs/en](http://www.dh.gov.uk/PolicyAndGuidance/HumanResourcesAndTraining/ModernisingPay/AgendaForChange/fs/en)

- 1.6 The nine pay bands and their corresponding job evaluation scores are set out in Table 1 below.<sup>2</sup> Within this structure, pay band 8 is sub-divided into four ranges.

Table 1  
Pay bands and job weight

Review body spine	
Pay band	Job weight
1	0 – 160
2	161 – 215
3	216 – 270
4	271 – 325
5	326 – 395
6	396 – 465
7	466 – 539
8a	540 – 584
8b	585 – 629
8c	630 – 674
8d	675 – 720
9	721 – 765

- 1.7 There are separate arrangements for Chief Executives and directors at board level.<sup>3</sup> These may also apply to other senior manager posts with a job weight over 720 points.
- 1.8 Within each pay band there will be a number of pay points to allow pay progression in post. Staff will progress from point to point on an annual basis to the top point in their pay band or pay range, provided their performance is satisfactory and they demonstrate the agreed knowledge and skills appropriate to that part of the pay band or range. Staff joining pay band 5 as new entrants will have accelerated progression through the first two points in six monthly steps (that is, they will move up one pay point after six months and a further point after 12 months) providing those responsible for the relevant standards in the organisation are satisfied with their standard of practice. This 12-month period will be referred to as “Preceptorship”.
- 1.9 Section 6 sets out in more detail how the new system of career and pay progression will work and gives the details of the NHS Knowledge and Skills Framework which underpins it.
- 1.10 Annex B sets out the values of the pay points in the pay bands and the pay spine in full, effective from 1 October 2004. The latest values are in Annex C.

<sup>2</sup> See the question and answer guidance in Annex A2.

<sup>3</sup> See the question and answer guidance in Annex A2.

## Transitional arrangements

1.11 Further information on assimilation and protection arrangements is set out in Part 7, including information on:

- the process for assimilation;
- special transitional pay points for staff whose new pay band minimum was significantly above their rate of basic pay before their assimilation to Agenda for Change;
- the replacement of existing leads and allowances;
- existing bonus scheme payments;
- the payment of long-term recruitment and retention premia in the case of a number of jobs where market pressures require continuing special measures.



## Section 2: Maintaining round the clock services

### Supporting staff who work evenings, at night, weekends and on general public holidays

- 2.1 The NHS delivers patient services around the clock. Where staff are required to work to cover services in the evening, at night, over weekends and on general public holidays, the NHS Staff Council has agreed that percentage enhancements should be paid. Section 34 *Flexible working arrangements* and Section 35 *Balancing work and personal life* set out the principles underlying this.
- 2.2 This section is effective from 1 April 2008. It replaces paragraphs 2.1 to 2.12 of the previous agreement. It applies to all staff employed on the terms and conditions of service set out in this Handbook.<sup>1</sup>
- 2.3 The pay of staff working evenings, nights or weekends, on or after 1 April 2008, will be worked out in line with paragraphs 2.4 to 2.30 below. The incremental dates of staff paid under these arrangements will not change.
- 2.4 In recognition of the unique arrangements that apply in the former “Early Implementer” sites these organisations will be able to continue to use the Agenda for Change prototype system (Annexes E and F) for the first 12 months of operation of the new system. This will give these organisations time to collect the data needed to make comparisons between the old and new systems. In years two and three these organisations will move to the new system using Tables 21 and 22 in Annex X or by using their own arrangements, in partnership, for transferring staff from the Agenda for Change payment system to the new system of payments, subject to this being completed by 1 April 2011.
- 2.5 This agreement will not apply to ambulance staff who are employed by ambulance organisations in England and Northern Ireland. These are staff who would have been subject to the provisions of the Ambulance Whitley Council had they been employed on Whitley contracts before Agenda for Change.<sup>2</sup> They will continue to receive unsocial hours payments in accordance with Annex E and Annex F. All other staff in ambulance organisations in England and Northern Ireland will move to the system in Annexes E and F by 1 April 2011. The transitional arrangements will be worked out in partnership in ambulance organisations.

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<sup>1</sup> See the question and answer guidance in Annex A2.

<sup>2</sup> See the question and answer guidance in Annex A2.

- 2.6 The arrangements which will apply to ambulance staff in Scotland and Wales will be discussed and agreed in partnership in each country.
- 2.7 During the “interim regime” staff were able to retain their existing on-call provisions (both national and local).<sup>3</sup> This has been a particular feature in NHS pathology departments. These arrangements remain unaffected by this agreement. All pathology out of hours working provisions will be regarded as included in these arrangements and the provisions outlined in paragraphs 2.8 to 2.30 below will not apply.<sup>4</sup> Protection will continue up to 31 March 2010.<sup>5</sup>
- 2.8 The standard hours of work are set out in Section 10, paragraph 1.
- 2.9 Staff will receive a percentage enhancement for their work in standard hours which is done at the times shown in Table 2. Annex X contains arrangements for a phased transition to these percentage enhancements for some staff. These are staff in pay bands 2, 3, 4 and 5 who are moving to lower rates of unsocial hours payments (Table 21) and other staff in pay bands 2 and 3 only who are moving to higher levels of unsocial hours payments (Table 22) under the new arrangements.
- 2.10 Staff in these categories covered by paragraph 46.2 (second bullet) who have deferred their decision to move to Agenda for Change will move to the percentage premium in Annex X applying at the time they transfer.
- 2.11 Premium payments will be worked out using basic salary. This will include any long term recruitment and retention premia. It will not include short-term recruitment and retention premiums, high cost area supplements or any other payment.
- 2.12 The basic hourly rate for staff working more or less than the standard week will be worked out using tables 9 and 10 in Section 46.
- 2.13 Any extra time worked in a week, above standard hours, will be treated as overtime and Section 3 will apply. The agreement on on-call and other extended service cover is unchanged. It is now in paragraphs 2.31 to 2.50. Staff cannot receive percentage enhancements for unsocial hours and payments for on-call and other extended service cover for the same hours of work.

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<sup>3</sup> See the question and answer guidance in Annex A2.

<sup>4</sup> See the question and answer guidance in Annex A2.

<sup>5</sup> See the question and answer guidance in Annex A2.

Table 2

Column 1	Column 2	Column 3
<b>Pay band</b>	<b>All time on Saturday (midnight to midnight) and any week day after 8 pm and before 6 am</b>	<b>All time on Sundays and Public Holidays (midnight to midnight)</b>
1	Time plus 50%	Double Time
2	Time plus 44%	Time plus 88%
3	Time plus 37%	Time plus 74%
4 – 9	Time plus 30%	Time plus 60%

- 2.14 The enhanced rates shown in table 2, column 2 will be paid for all unsocial hours worked on a Saturday (midnight to midnight) or on weekdays between 8 pm and 6 am. The rates shown in column 3 will be paid for all hours worked on Sundays and public holidays (midnight to midnight).
- 2.15 Where a continuous night shift or evening shift on a weekday (other than a public holiday) includes hours outside the period of 8 pm to 6 am, the enhancements in column 2 should be applied to the whole shift if more than half of the time falls between 8 pm and 6 am.
- 2.16 Staff will only receive one rate of percentage enhancement for each hour worked.

### Promotion

- 2.17 If on promotion, the working pattern remains substantially the same, staff will move to the first incremental point producing an increase when basic pay, any long-term recruitment and retention premium and the percentage enhancement for unsocial hours, are combined. If the working pattern changes on promotion paragraph 6.33 will apply.

### Occupational sick pay

- 2.18 All percentage enhancements for unsocial hours will be pensionable and will count for occupational sick pay and contractual maternity pay, in line with paragraph 4 in Section 14. They will not be included in any part of the calculation of overtime payments, on-call payments nor any other payment described in this Handbook.

## Protection

- 2.19 On assimilation to the new unsocial hours system the overall level of pay will be recalculated using Table 8 and paragraphs 46.18 to 46.20. If the overall level of pay falls after assimilation to the new system of unsocial hours payments protection will apply in line with paragraphs 46.22 to 46.27. The period of protection will end on the dates in paragraph 46.25.

## Annual leave

- 2.20 Pay during annual leave is set out in Section 13 paragraph 13.9.

## Part time staff and other staff working non-standard hours

- 2.21 Part time staff working less than 37½ hours a week will be eligible for percentage enhancements for unsocial hours.
- 2.22 Staff whose basic week is more or less than 37½ hours will be eligible for percentage enhancements for unsocial hours for all their basic hours, as set out in Section 46, Tables 9 and 10.
- 2.23 Staff on annualised hours contracts will be eligible for percentage enhancements for unsocial hours as in Table 2.

## Staff working overtime

- 2.24 Staff working shifts which include overtime will be entitled to percentage enhancements for their work in standard hours. Their overtime will be paid in line with Section 3.

## Self-rostering schemes

- 2.25 Where teams of staff agree rosters among themselves, including who covers unsocial hours shifts, it will be for the team to decide how these shifts are allocated, provided the team continue to provide satisfactory levels of service cover.

## Prospective application

- 2.26 This agreement may be used retrospectively or prospectively. It will be for local partnerships to decide which option best meets local operational needs.



- 2.27 If this agreement is used prospectively it must comply with the principle of equal pay for work of equal value. It must produce broadly the same level of payments as a retrospective system, including for part-time staff. Local partnerships will need to agree a reference period that can be used to calculate the appropriate level of prospective payment.
- 2.28 Prospective systems are more likely to be satisfactory where work patterns are predictable. If rotas vary so much that it is not possible to predict working patterns accurately this is likely to be a good reason to choose to use the system retrospectively.
- 2.29 If operating the prospective system there will need to be periodic checks on the level of payments produced. These will need to be compared with the level of payments produced by the system in its retrospective form to ensure that the levels are broadly similar. This will allow early action to be taken in partnership if it does not.
- 2.30 Where the system is used prospectively an unforeseen change payment of £15 will be available. This will be used where it is necessary for employers to ask staff to change their shift within 24 hours of the scheduled work period. The payment is not applicable to shifts that staff agree to work as overtime, or that they swap with other staff members. It is not available, in any circumstances, in the retrospective system.

### On-call and other extended service cover

- 2.31 From 1 October 2004<sup>6</sup> groups of staff will be able to either retain their current on-call provisions (both national and local) where agreed locally, as set out in paragraph 2.46, or to use the on-call provisions set out below.<sup>7</sup> Annex D lists the relevant sections of the Whitley handbooks in relation to on-call. Staff for whom there is currently no on-call provision will be entitled to the arrangements set out below. Those staff previously covered by the PTA Whitley Council on the new pay band 5, who were paid at a higher grade for unsupervised work on-call, should be paid as a minimum on the fourth point of pay band 5 (pay spine point 20) when on-call.
- 2.32 The NHS Staff Council is reviewing on-call. The target date for new arrangements to be implemented is April 2011. The review will ensure that on-call arrangements are consistent with equal pay for work of equal value. Existing arrangements for on-call will remain in place until new arrangements are implemented. Paragraph 2.46 specifies the period of protection of on-call.

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<sup>6</sup> See the question and answer guidance in Annex A2.

<sup>7</sup> See the question and answer guidance in Annex A2.

## Interim regime

- 2.33 Employees who are required to be available to provide on-call cover outside their normal working hours will be entitled to receive a pay enhancement. This enhancement recognises both their availability to provide cover and any advice given by telephone during periods of on-call availability.
- 2.34 Subject to the provision for retention of current on-call provisions under the protection arrangements set out in paragraph 2.46, this enhancement will be based on the proportion of on-call periods in the rota when on-call cover is required. The on-call period in each week should be divided into nine periods of at least 12 hours. The enhancement for an individual staff member will be based on the proportion of these periods in which they are required to be on-call, as set out in paragraphs 2.35 to 2.40 below.

## Pay enhancements for on-call cover

- 2.35 An enhancement of 9.5 per cent will be paid to staff who are required to be on-call an average of one in three of the defined periods or more frequently.
- 2.36 An enhancement of 4.5 per cent will be paid to staff who are required to be on-call an average of between one in six and less than one in three of the defined periods.
- 2.37 An enhancement of 3 per cent will be paid to staff who are required to be on-call an average of between one in nine and less than one in six of the defined periods.
- 2.38 An enhancement of 2 per cent will be paid to staff who are required to be on-call an average of between one in twelve and less than one in 9 of the defined periods.
- 2.39 For these purposes, the average availability required will be measured over a full rota, or over a 13-week period if no standard pattern is applicable. The reference period will not include any periods when the employee is absent from work on either annual leave or sickness absence.
- 2.40 Where on-call cover is limited or very irregular (averaging less than one in 12) pay enhancements will be agreed locally. These may be fixed or variable, and based on actual or estimated frequencies of on-call work worked, subject to local agreement. To ensure fairness to all staff qualifying under the national rules set out above, locally agreed payments may not exceed the minimum percentage in the national provisions.

Table 3

Frequency of on-call	Value of enhancements as percentage of basic pay
1 in 3 or more frequent	9.5%
1 in 6 or more but less than 1 in 3	4.5%
1 in 9 or more but less than 1 in 6	3.0%
1 in 12 or more but less than 1 in 9	2.0%
Less frequent than 1 in 12	By local agreement

### On-call payments for part-time staff or other staff working non-standard hours

- 2.41 For part-time staff and other staff working other than 37½ hours a week excluding meal breaks, the percentage added to basic pay on account of on-call availability will be adjusted to ensure that they are paid a fair percentage enhancement of salary for on-call working. This will be done by adjusting the payment in proportion to their part-time salary so that they receive the same payment for the same length of availability on-call as full-time staff.

### Employees called into work during an on-call period

- 2.42 Employees who are called into work during a period of on-call will receive payment for the period they are required to attend, including any travel time. Alternatively, staff may choose to take time off in lieu. However, if for operational reasons time off in lieu cannot be taken within three months, the hours worked must be paid for.
- 2.43 For work (including travel time) as a result of being called out the employee will receive a payment at time and a half, with the exception of work on general public holidays which will be at double time. Time off in lieu should be at plain time. There is no disqualification from this payment for bands 8 and 9, as a result of being called out.
- 2.44 By agreement between employers and staff, there may be local arrangements whereby the payment for hours worked during a given period of on-call is subject to a fixed minimum level, in place of separately recognising travel time.
- 2.45 In addition, where employers and staff agree it is appropriate, the amount paid for work and travel time during periods of on-call may be decided on a prospective basis (e.g. for a forward period of three months) based on the average work carried out during a prior reference period (e.g. of three months). Where these arrangements are agreed, the actual work carried

out during a given period would be monitored and, if the average amount assumed in the calculation of the payment is significantly different, the level of payment should be adjusted for the next period; there should be no retrospective adjustment to the amount paid in the previous period.

- 2.46 Unless locally, it is agreed otherwise, all current on-call arrangements will be protected for groups of employees up to 31 March 2011, irrespective of whether they were nationally or locally agreed.<sup>8</sup> This extended protection will apply to existing staff and new staff during the period of protection.
- 2.47 On-call payments made under such arrangements should be excluded from the pre and post assimilation pay used in the calculation of any protected level of pay (see Section 46).

### Other arrangements to provide extended service cover

- 2.48 Some staff are required to be on the premises to provide emergency cover but are allowed to rest, except for the times when they are required to carry out emergency work. Where employers consider this an essential arrangement to provide service cover, there should be an agreed local arrangement, at least equivalent to on-call payments, to recognise the type of cover provided.
- 2.49 A further group of staff, often in community services such as learning disabilities, have "sleeping-in arrangements" where they sleep on work premises but are seldom required to attend an incident during the night. In these circumstances, appropriate arrangements should be agreed locally.

### Christmas and New Year holidays at weekends

- 2.50 General and public holiday entitlements are in Section 13. These include Christmas Day, Boxing Day (26 December) and New Year's Day. When any of these holidays falls on a Saturday or Sunday arrangements will need to be made to ensure that the right of staff to three public holidays in the Christmas and New Year holiday period is preserved. Annex Y sets out what applies when staff work on general and public holidays in this holiday period. In Scotland there are four public holidays over the Christmas/New Year period. Further information is available from [paymodernisation.scot.nhs.uk](http://paymodernisation.scot.nhs.uk)

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<sup>8</sup> See the question and answer guidance in Annex A2.  
NHS terms and conditions of service handbook  
Pay circular (AforC) 1/2010: amendment number 16

## Transitional arrangements

2.51 See Section 46 for further information on assimilation and protection.



## Section 3: Overtime payments

- 3.1 All staff in pay bands 1 to 7 will be eligible for overtime payments. There is a single harmonised rate of time-and-a-half for all overtime, with the exception of work on general public holidays, which will be paid at double time.
- 3.2 Overtime payments will be based on the hourly rate provided by basic pay plus any long-term recruitment and retention premia.<sup>1</sup>
- 3.3 Part-time employees will receive payments for the additional hours at plain time rates until their hours exceed standard hours of 37½ hours a week.<sup>2</sup>
- 3.4 The single overtime rate will apply whenever excess hours are worked over full-time hours, unless time off in lieu is taken, provided the employee's line manager or team leader has agreed with the employee to this work being performed outside the standard hours.
- 3.5 Staff may request to take time off in lieu as an alternative to overtime payments. However, staff who, for operational reasons, are unable to take time off in lieu within three months must be paid at the overtime rate.
- 3.6 Senior staff paid in pay bands 8 or 9 will not be entitled to overtime payments (see Section 2, paragraph 2.43).
- 3.7 Time off in lieu of overtime payments will be at plain time rates.

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<sup>1</sup> See the question and answer guidance in Annex A2.

<sup>2</sup> See the question and answer guidance in Annex A2.





## Section 4: Pay in high cost areas

- 4.1 High cost area supplements will apply to all NHS staff groups in the areas concerned who are covered by this agreement. The supplements will be expressed as a proportion of basic pay (including the value of any long-term recruitment and retention premium), but subject to a minimum and maximum level of extra pay.
- 4.2 High cost area supplements will be pensionable. They will not count as basic pay for the purposes of calculating the rate of overtime payments, unsocial hours payments, on-call availability payments or any other payment, excluding sick pay.
- 4.3 The level of high cost area payments are set out in Annex I. The value of the supplement is reviewed annually, based on the recommendations of the NHS Pay Review Body (NHSPRB).
- 4.4 The definitions of the Inner London, Outer London and the fringe zones for high cost area payments are set out in Annex H. Where staff who were previously entitled to extra-territorially managed (ETM) payments do not fall within the inner, outer or fringe definitions, these payments should be converted into long-term recruitment and retention premia. If staff working in the designated inner, outer or fringe zones were previously in receipt of ETM payments, which have a higher value than the new high cost area payment applicable, the difference should be converted into a long-term recruitment and retention payment.
- 4.5 Current payments for London weighting, fringe allowances and cost of living supplements in these areas will be discontinued once the new arrangements are in force.
- 4.6 Employers who employ staff in more than one high cost area zone can agree locally a harmonised rate of payment across their organisation, provided they agree with neighbouring employers, if the proposed rate would exceed the average rate payable in their area.
- 4.7 Current entitlements for cost of living supplements in areas outside London and fringe zones will continue but will be re-expressed as long-term recruitment and retention premia.<sup>1</sup>
- 4.8 It will be open to the NHSPRB to make recommendations on the future geographic coverage of high cost area supplements and on the value of such supplements.

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<sup>1</sup> See the question and answer guidance in Annex A2.  
NHS terms and conditions of service handbook  
Pay circular (AforC) 1/2010: amendment number 16

- 4.9 It will be open to NHS employers or staff organisations in a specified geographic area, to propose an increase in the level of high cost area supplement for staff in that area – or (in the case of areas where no supplement exists) to introduce a supplement. But this can only be implemented where:
- there is evidence that costs for the majority of staff living in the travel to work area covered by the proposed new or higher supplement are greater than for the majority of staff living in the travel to work area of neighbouring employers and that this is reflected in comparative recruitment problems;
  - there is agreement amongst all the NHS employers in that area;
  - there is agreement with staff organisations;
  - there is consultation with strategic health authorities in England.
- 4.10 The payment of a high cost area supplement will not impinge on the ability of local NHS employers in that area, in consultation with staff representatives and strategic health authorities to award recruitment and retention premia for particular staff groups in particular localities (see Section 5).

### Transitional arrangements

- 4.11 Further information on assimilation and protection arrangements during the transition to the new system is set out in Part 7, including information on:
- the position on current payments for London weighting, fringe allowances and cost of living supplements;
  - the position of staff where the new level of supplement falls short of the combined entitlement to such former payments.

## Section 5: Recruitment and retention premia

- 5.1 A recruitment and retention premium is an addition to the pay of an individual post or specific group of posts where market pressures would otherwise prevent the employer from being able to recruit staff to and retain staff in, sufficient numbers for the posts concerned, at the normal salary for a job of that weight.
- 5.2 Subject to the provisions below, NHS employers may apply a recruitment and retention premium to posts of a specific class or type. Premiums may also be applied to individual posts where the post is unique within the organisation concerned (such as the head of a department or service).
- 5.3 Recruitment and retention premia may also be awarded on a national basis to particular groups of staff on the recommendation of the NHS Pay Review Body (NHSPRB) where there are national recruitment and retention pressures. The Review Body must seek evidence or advice from NHS employers, staff organisations and other stakeholders in considering the case for any such payments. Where it is agreed that a recruitment and retention payment is necessary for a particular group, the level of payment should be specified or, where the underlying problem is considered to vary across the country, guidance should be given to employers on the appropriate level of payment. Guidance on the application of national recruitment and retention premia is set out in Annex R.
- 5.4 Recruitment and retention premia will be supplementary payments over and above the pay that post holders receive by virtue of their position on their pay band, any high cost area supplements, or any payments for unsocial hours or on-call cover.
- 5.5 Recruitment and retention premia will apply to posts. Where an employee moves to a different post that does not attract a recruitment and retention premium, either within the same organisation or elsewhere in the NHS, their entitlement to any previous recruitment and retention premium will cease.
- 5.6 NHS employers and staff representatives, in partnership, will follow the procedure set out in Annex J in deciding the award of a recruitment and retention premium.

### Long-term and short-term recruitment and retention premia

- 5.7 The body responsible for awarding a recruitment and retention premium shall determine whether to award a long-term or short-term premium.
- 5.8 Short-term recruitment and retention premia will apply where the labour market conditions giving rise to recruitment and retention problems are expected to be short-term and where the need for the premium is expected to disappear or reduce in the foreseeable future.
- 5.9 Long-term recruitment and retention premia will apply where the relevant labour market conditions are more deep-rooted and the need for the premium is not expected to vary significantly in the foreseeable future.
- 5.10 Short-term recruitment and retention premia:
- may be awarded on a one-off basis or for a fixed-term;
  - will be regularly reviewed;
  - may be withdrawn or have the value adjusted, subject to a notice period of six months; and
  - will not be pensionable or count for purposes of overtime, unsocial hours payments or any other payments linked to basic pay.
- 5.11 Long-term recruitment and retention premia:
- will be awarded on a long-term basis;
  - will have their values regularly reviewed;
  - may be awarded to new staff at a different value to that which applies to existing staff; and
  - will be pensionable, and will count for the purposes of overtime, unsocial hours payments and any other payments linked to basic pay.
- 5.12 Both long-term and short-term recruitment and retention premia will be expressed as cash sums and will be separately identifiable from basic pay, any high cost area supplement and any other component of pay.
- 5.13 The combined value of any nationally awarded and any locally awarded recruitment and retention premium for a given post shall not normally exceed 30 per cent of basic salary. It will be the responsibility of employers to ensure that any premia awarded locally do not normally result in payments in excess of this amount, taking into account any national awards for the posts in question. See also the provisions concerning earned autonomy in Annex K.

### Transitional arrangements

- 5.14 Further information on assimilation and protection arrangements during the transition to the new system is set out in Part 7, including information on those jobs where it is agreed that there is prima facie evidence that a premium is necessary, to ensure the position of the NHS is maintained in relation to the relevant external labour market, during the transitional period (see Table 20 in Annex R).



## Section 6: Career and pay progression

- 6.1 A NHS Knowledge and Skills Framework<sup>1</sup> will be applied to all jobs covered by the pay system.
- 6.2 The output from the NHS Knowledge and Skills Framework for an individual job will be a list of descriptions and/or standards (KSF post outline) specifying the minimum applied knowledge and skills required for a job and how this should develop during a person's time in post. It will provide prompts for action by individuals and their managers to update or develop their knowledge and skills, or address areas for development in the application of knowledge and skills. Development review procedures should be jointly agreed by management and staff representatives locally.
- 6.3 It must be clear which elements, as identified in the NHS Knowledge and Skills Framework, should be demonstrated at both the foundation and second gateway (see paragraphs 6.14 to 6.18 below).
- 6.4 The KSF post outlines within an organisation will be available to all staff members to help them identify the knowledge and skills requirements likely to be needed for future career steps and identify the development needed to support them. These requirements are not, however, fixed and will be reviewed in partnership when posts become vacant or changes need to take place for service development and other reasons.

### Development review process

- 6.5 All staff will have annual development reviews against the NHS Knowledge and Skills Framework (KSF) which will result in the production of a personal development plan. Similar to current practice, development reviews will take place between staff and their manager or, where appropriate, their supervisor, a professional adviser or another appropriately trained senior team member. Development review procedures should be jointly agreed by management and staff representatives locally.
- 6.6 The main purpose of the development review will be to look at the way a member of staff is developing with reference to:
- how the duties and responsibilities of the job are being undertaken, based on current agreed objectives;
  - the application of knowledge and skills in the workplace;
  - the consequent development needs of the individual member of staff.

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<sup>1</sup> Available at: [www.dh.gov.uk/PolicyandGuidance/HumanResourcesandTraining/ModernisingPay/AgendaForChange/KnowledgeAndSkillsFramework.htm](http://www.dh.gov.uk/PolicyandGuidance/HumanResourcesandTraining/ModernisingPay/AgendaForChange/KnowledgeAndSkillsFramework.htm) and at [www.scot.nhs.uk/sehd/paymodernisation/afc.htm](http://www.scot.nhs.uk/sehd/paymodernisation/afc.htm)

- 6.7 The primary outputs of a development review for an employee will be a record of the above against the relevant KSF post outline and an individual personal development plan, which links to the needs of the employee in the post. During the development review process, discussion should cover the duties and responsibilities of the job that is being undertaken, as outlined in paragraph 6.6 above. This will help to define future objectives and learning needs.
- 6.8 The review of learning achievements demonstrated in the workplace will be demonstrated by reference to the current personal development plan.
- 6.9 Development will primarily focus on helping members of staff to carry out their current job to the standard specified in the KSF outline for the post, although personal interests and opportunities for career progression will also be taken into account. Approaches to development will not just consist of courses but will also involve distance learning, private study, opportunities to participate in particular projects or work areas, short secondments, work shadowing, peer review and other continuing professional development activities.
- 6.10 Development plans will distinguish between goals for the year ahead and those applying to the longer term. There will be a commitment from both parties to make all reasonable efforts to meet the developmental goals for the year ahead in that year and elements not completed through force of circumstance will be carried over to the following year, unless agreed otherwise.
- 6.11 Managers and staff will work together to fulfil agreed development plans. Employers will encourage staff members to progress and develop and, where training and/or development needs have been identified and agreed, employers will ensure sufficient financial support is provided. Where appropriate, employers should ensure that staff have appropriate time to fulfil training and/or development needs related to their current job and appropriate financial and other support. If an employer fails to do this, they cannot defer pay progression. Wherever possible, employers will also provide similar encouragement and support for elements of the personal development plan which reflect personal interests or help staff prepare for a more senior role or transfer to a different area of work within the NHS.
- 6.12 Staff members will contribute to undertaking the agreed personal development plan through their personal effort. They may individually choose, where appropriate, to commit personal time and resources, especially in those areas relating to longer-term career development. It is the employer's responsibility to support individuals and their personal efforts appropriately. Where development needs essential to the post are agreed with the employer, there will not normally be any requirement for the employee to use his or her unpaid personal time.



- 6.13 Local development and review processes must be designed to ensure that part-time staff and those working outside normal hours, have equal access to them.

### Gateways

- 6.14 Gateways are points on a pay band where assessment of the application of knowledge and skills necessary to progress will be made. There are two gateway points: the foundation gateway and the second gateway.

### Foundation gateway

- 6.15 The foundation gateway applies no later than 12 months after appointment to the pay band, regardless of the pay point to which the person is appointed.

### Second gateway

- 6.16 The foundation gateway will be followed by a second gateway which will vary between pay bands as set out in Table 4 below:

Table 4  
Position of second gateway

Pay band	Position of second gateway
Pay band 1	Before final point
Pay bands 2–4	Before first of last two points
Pay bands 5-7	Before first of last three points
Pay band 8, ranges A–D	Before final point
Pay band 9	Before final point

- 6.17 The review at the foundation gateway will be based on the agreed subset as specified in the KSF outline for the post. The review at the second gateway will be based on the relevant dimensions, levels and indicators, as specified in the full KSF outline for the post.
- 6.18 The gateway review should take place in time for staff to progress on their normal incremental date. Robust jointly agreed local arrangements must be in place to deal with cases where this is not possible (for example because the relevant manager is ill). These should ensure that there is no incentive to abuse the process.

## Pay progression

- 6.19 Newly appointed or promoted staff, joining a pay band under the new system, will serve an initial foundation period of up to 12 months. During this initial period all staff will have at least two discussions with their manager (or the person acting as their reviewer) to review progress, guided by the KSF foundation outline for the post. The first of these discussions should normally be during the induction period. The aim of these discussions and any resulting support and development will be to help staff make a success of the new job and confirm as quickly as possible that they are applying the basic knowledge and skills needed for the job, and can pass through the foundation gateway and commence progression up their pay band (see Annex T, Development of Professional Roles, paragraph 3).
- 6.20 Once progression has been agreed, a member of staff will normally progress to the next point on their pay band 12 months after appointment and to subsequent points every 12 months thereafter, subject to meeting the criteria for progression when they pass through the second gateway point.
- 6.21 Before moving through the second gateway there will be an assessment, as part of the process of development review, against the full KSF outline for the post. Staff will normally expect to move through the second gateway at this point but, subject to the safeguards set out below, progression may be deferred if the review indicates that they are not yet applying the full range of knowledge and skills required for the post.
- 6.22 The gateway system will only become fully operational when an employer has put in place reasonable arrangements to ensure that staff have access to development reviews, personal development plans and appropriate support for training and development to meet the applied knowledge and skills required at the gateway concerned.
- 6.23 Existing staff with at least 12 months experience in post will be assumed to have met the criteria for passing through the foundation gateway. Where the gateway system is operational they will, however, be subject to the normal operation of the new system at the second gateway.
- 6.24 The following safeguards will also apply:
- there will be a normal expectation of progression and no national or local quotas will apply. All staff must have an equal opportunity to demonstrate the required standard of knowledge and skills to progress through the gateways and pay points;
  - the applied skills and knowledge required at the foundation and second gateways should be clearly stated during recruitment;

- the KSF outlines may be changed subsequently by local agreement, within the work area concerned, where changes apply to a number of posts, or with the individual, where they apply only to a single post. They may also be changed where that is necessary to reflect a change in professional standards, as agreed by the relevant professional body or authority;
- the demonstration of knowledge and skills must be that used within each dimension, level and indicators in the KSF;
- employers must ensure there is a robust, jointly agreed process for checking managers' decisions and reviewing disagreements, with an agreed timescale for re-review;
- pay progression cannot be deferred unless there has been prior discussion between the individual and the person undertaking their review (which should be recorded) about the knowledge and skills that the individual needs to develop and apply and the member of staff has been given the opportunity to achieve the necessary development;
- employers and staff representatives acting in partnership, will monitor decisions on pay progression to ensure that there is no discrimination or bias in relation to race or ethnicity, gender, sexual orientation, disability, religion, age or trade union membership, or pattern of employment e.g. part-time, flexible and night workers.

## Development of Professional Roles

6.25 Guidance on the development of professional roles for healthcare professionals on pay band 5 is set out at Annex T.

## Exceptional grounds for deferral of pay progression

6.26 Where significant weaknesses in performance in the current post have been identified, discussed and documented with the staff member concerned and have not been resolved, despite opportunities for appropriate training/development and support, exceptionally, pay progression may be deferred at any pay point until the problems are resolved.

6.27 Significant weaknesses are those which prevent a staff member from continuing to apply consistently, across a recognised normal workload, the knowledge and skills specified under the KSF foundation post outline for the foundation gateway or, for staff above the second gateway, the full range of knowledge and skills specified under the full KSF post outline, without continued supervision and support inappropriate to the post.

### Career development moves

- 6.28 Where a member of staff moves to another job in the NHS covered by this agreement, where the necessary arrangements to support the operation of the gateways are in place, pay progression will normally depend on demonstrating the knowledge and skills specified in the KSF outline for the post, within the first twelve months of appointment.
- 6.29 Where, however, an individual re-trains in a different area of work, for wider service or operational reasons, with the explicit agreement of the employer concerned, their existing level of pay should be protected. Once protection is agreed, it may not be withdrawn until the person concerned has had a reasonable opportunity to complete their re-training and progress to a point where pay protection is no longer required. Explicit employer agreement in this context cannot, however, be deemed to have been given solely because the employer has agreed to re-employ someone following redundancy.

### Temporary movement into a higher pay band

- 6.30 Individuals may be moved into a higher pay band where it is necessary to fill a post on a temporary basis when a vacancy is unfilled, but being advertised, or the post is being held open for someone who is due to return, e.g. from long-term sick leave, maternity leave, or from extended training.
- 6.31 Pay should be set either at the minimum of the new pay band or, if this would result in no pay increase (by reference to basic pay plus any recruitment and retention premium, if applicable) the first pay point in the band which would deliver an increase in pay. Temporary movement into a new pay band should not normally last more than six months or less than one month, except in instances of maternity leave or long-term sick leave, where a longer period may be known at the outset. In circumstances where the individual is not required to carry out the full responsibilities of the post, pay will be determined by job evaluation.
- 6.32 Where temporary movement into a higher pay band results in only one extra pay point the incremental date remains the same. Where temporary movement results in more than one extra pay point the incremental date for the period of the temporary movement becomes the date the movement began.

## Pay on promotion

6.33 Pay on promotion should be set either at the minimum of the new pay band or, if this would result in no pay increase, the first pay point in the band which would deliver an increase in pay (by reference to basic pay plus any recruitment and retention premium, if applicable).

## Transitional arrangements

6.34 Further information on assimilation arrangements during the transition to the new system is set out in Part 7, including information on:

- the arrangements which need to be put in place before the gateway system can become fully operational;
- the position of existing staff in relation to the foundation and second gateways;
- the position of existing staff in relation to their current incremental date.



## Section 10: Hours of the working week

- 10.1 The standard hours of all full-time NHS staff covered by this pay system will be 37½ hours, excluding meal breaks, subject to the protection and assimilation arrangements set out in Section 46. Working time will be calculated exclusive of meal breaks, except where individuals are required to work during meal breaks, in which case such time should be counted as working time.
- 10.2 The standard hours may be worked over any reference period, e.g. 150 hours over four weeks or annualised hours, with due regard for compliance with employment legislation, such as the Working Time Regulations.

### Transitional arrangements

- 10.3 Part-time workers will suffer no detriment, either in terms of pay or pension rights. Where the full-time equivalent hours increase under the assimilation to new conditioned hours arrangements, as set out in Section 46, staff have the right to move to a new number of weekly hours that equates to the same proportion of the standard full-time hours as before assimilation (see also Section 11 and Section 46).
- 10.4 Further information on assimilation to these conditioned hours during the transition to the new system is set out in Part 7.





## Section 11: Part-time employees and employees on fixed-term contracts

### Part-time employees

- 11.1 Part-time employees will receive the same entitlements on a pro-rata basis to full-time colleagues. (See paragraph 13.6 in Section 13 for the treatment of public holidays).

### Employees on fixed-term contracts

- 11.2 Employees on fixed-term contracts will receive pay and conditions of service equivalent to that of a comparable, permanent employee.



## Section 12: Contractual continuity of service

### Reckonable service

- 12.1 An employee's continuous previous service with any NHS employer counts as reckonable service in respect of NHS agreements on redundancy, maternity, sick pay and annual leave.
- 12.2 Employers have discretion to take into account any period or periods of employment with employers outside the NHS, where these are judged to be relevant to NHS employment.
- 12.3 When employees who have been transferred out of NHS employment to a non-NHS provider return to NHS employment, their continuous service with a new non-NHS employer providing NHS funded services, will be counted as reckonable in respect of NHS agreements on sick pay, annual leave and incremental credit.

### Re-appointment of previous NHS employees

- 12.4 On returning to NHS employment, a previous period or periods of NHS service will be counted towards the employee's entitlement to annual leave.<sup>1</sup>
- 12.5 On returning to NHS employment, a previous period or periods of NHS service will be counted towards the employee's entitlement to sick leave, where there has been a break or breaks in service of 12 months or less.

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<sup>1</sup> See the question and answer guidance in Annex A2.



## Section 13: Annual leave and general public holidays

- 13.1 Staff will receive the entitlement to annual leave and general public holidays as set out in Table 7 below (see Section 12 for provisions governing reckonable service).

Table 7  
Leave entitlements<sup>1</sup>

Length of service	Annual leave and general public holidays
On appointment	27 days + 8 days
After five years' service	29 days + 8 days
After ten years' service	33 days + 8 days

- 13.2 Local arrangements to consolidate some or all of the general public holidays into annual leave may operate, subject to agreement at local level.
- 13.3 These leave entitlements include the two extra-statutory days available in England and Wales in the past. Therefore, any local arrangements to add days on account of extra-statutory days will no longer apply. In Scotland this entitlement includes the two additional days that could previously be designated as either statutory days or annual leave. In Northern Ireland this entitlement also contains the two extra statutory days, however there are ten general public holidays.
- 13.4 Staff required to work or to be on-call on a general public holiday are entitled to equivalent time to be taken off in lieu at plain time rates, in addition to the appropriate payment for the duties undertaken (see Section 2).<sup>2</sup>
- 13.5 Where staff work standard shifts, other than 7½ hours excluding meal breaks, annual leave and general public holiday entitlements should be calculated on an hourly basis, to prevent staff on these shifts receiving greater or less leave than colleagues on standard shifts.<sup>3</sup>
- 13.6 Part-time workers will be entitled to paid public holidays no less than pro-rata to the number of public holidays for a full-time worker, rounded up to the nearest half day.

<sup>1</sup> See the question and answer guidance in Annex A2.

<sup>2</sup> See the question and answer guidance in Annex A2.

<sup>3</sup> See the question and answer guidance in Annex A2.

- 13.7 Part-time workers' public holiday entitlement shall be added to their annual leave entitlement, and they shall take public holidays they would normally work as annual leave.
- 13.8 An existing part-time worker who, prior to 1 October 2004, was in receipt of a public holiday entitlement in excess of pro-rata to a full-time worker, shall have their excess entitlement protected for a period of five years from the date of assimilation onto the new system.
- 13.9 Pay during annual leave will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. Pay is calculated on the basis of what the individual would have received had he/she been at work. This would be based on the previous three months at work or any other reference period that may be locally agreed.

### Transitional arrangements

- 13.10 Further information on the assimilation to these leave entitlements during the transition to the new system is set out in Part 7.

## Section 14: Sickness absence

14.1 These arrangements are intended to supplement statutory sick pay to provide additional payment during absence due to illness, injury or other disability. This section is supplemented by Annex Z, which sets out a framework to support employers and staff in the management of sickness absence and in managing the risk of premature and unnecessary ill health retirements.

### Scale of allowances

- 14.2 Employees absent from work owing to illness will be entitled, subject to the conditions of this agreement, to receive sick pay in accordance with the scale below (see Section 12 for provisions governing reckonable service):
- during the first year of service – one month's full pay and two months' half pay;
  - during the second year of service – two months' full pay and two months' half pay;
  - during the third year of service – four months' full pay and four months' half pay;
  - during the fourth and fifth years of service – five months' full pay and five months' half pay;
  - after completing five years of service – six months' full pay and six months' half pay.
- 14.3 In the event of employment coming to an end, entitlement to sick pay ceases from the last day of employment.
- 14.4 The definition of full pay will include regularly paid supplements, including any recruitment and retention premia, payments for work outside normal hours and high cost area supplements. Sick pay is calculated on the basis of what the individual would have received had he/she been at work.<sup>1</sup> This would be based on the previous three months at work or any other reference period that may be locally agreed.<sup>2</sup> Local partnerships can use virtual rotas showing what hours the employee would have worked in a reference period had he or she been at work.
- 14.5 Full pay needs to be inclusive of any statutory benefits (so as not to make sick pay greater than normal working pay). The combined addition of statutory sick pay to half pay must not exceed full pay.

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<sup>1</sup> See the question and answer guidance in Annex A2.

<sup>2</sup> See the question and answer guidance in Annex A2.

## Calculation of allowances

- 14.6 The period during which sick pay should be paid and the rate of sick pay for any period of absence is calculated, by deducting from the employee's entitlement on the first day of sickness, the aggregate periods of paid sickness absence during the 12 months immediately preceding that day. In aggregating periods of absence due to illness no account will be taken of:
- unpaid sick absence;
  - injuries or diseases sustained to members of staff in the actual discharge of their duties, through no fault of their own;
  - injury resulting from a crime of violence, not sustained on duty but connected with or arising from the employee's employment, where the injury has been the subject of payment by the Criminal Injuries Compensation Board (England and Wales), the Criminal Injuries Compensation Authority (Scotland) and the Compensation Agency (Northern Ireland) ;
  - as above, but an injury which has not been the subject of payment by the Board on grounds that it has not given rise to more than three weeks' loss of earnings or was not one for which compensation above the minimum would arise.
- 14.7 Sick pay paid to an employee under this scheme when added to any statutory sickness, injuries or compensation benefits, including any allowances for adult or child dependants, must not exceed full pay (see paragraph 14.4 above).

## Conditions for contractual sick pay

- 14.8 Employees will not be entitled to an additional day off if sick on a statutory holiday.
- 14.9 Sick pay for those who have exhausted sick pay entitlements should be reinstated at half pay, after 12 months of continuous sickness absence, in the following circumstances:
- staff with more than 5 years reckonable service:- sick pay will be reinstated if sick pay entitlement is exhausted before a final review meeting for long term absence has taken place;
  - staff with less than 5 years reckonable service: - sick pay will be reinstated if sick pay entitlement is exhausted and a final review does not take place within 12 months of the start of their sickness absence.



- 14.10 Reinstatement of sick pay should continue until the final review meeting has taken place. Reinstatement of sick pay is not retrospective for any period of zero pay in the preceding 12 months of continuous absence.
- 14.11 These arrangements will be in accordance with local sickness absence procedures, established in accordance with Annex Z, and will only apply where the failure to undertake the final review meeting is due to delay by the employer. This provision will not apply where a review is delayed due to reasons other than those caused by the employer.
- 14.12 Employers will also have discretion to extend the period of sick pay on full or half pay beyond the scale set out in 14.2:
- where there is the expectation of return to work in the short term and an extension would materially support a return and/or assist recovery, particular consideration should be given to those staff without full sick pay entitlements;
  - In any other circumstance that the employer deems reasonable
- 14.13 During the rehabilitation period employers should allow employees to return to work on reduced hours or, where possible, encourage employees to work from home without loss of pay. Any such arrangements need to be consistent with statutory sick pay rules.
- 14.14 Sick pay is not normally payable for an absence caused by an accident due to active participation in sport as a profession, or where contributable negligence is proved.
- 14.15 An employee who is absent as a result of an accident is not entitled to sick pay if damages are received from a third party. Employers will advance to an employee a sum not exceeding the amount of sick pay payable under this scheme, providing the employee repays the full amount of sickness allowance to the employer, when damages are received. Once received the absence shall not be taken into account for the purposes of the scale set out in paragraph 14.2 above.
- 14.16 Employers may, at any time, require an employee absent from work due to illness to attend an examination by a medical practitioner. Furthermore, staff do not need to be off sick to be referred by their employer for a medical. The employer will meet the cost of any medical examination.
- 14.17 After investigation, consultation and consideration of other alternative posts, and where there is no reasonable prospect of the employee returning to work, employers will have the option to terminate employment before the employee has reached the end of the contractual paid sick absence period, subject to the employers' agreed sickness absence policies and procedures.

- 14.18 Notification procedures and payment of sick absence pay when injuries are connected with other insured employment will be for local determination.
- 14.19 Payment of NHS Temporary Injury Allowance for workplace injuries or disease should be in accordance with the NHS Injury Benefit Scheme regulations.

## Section 15: Maternity leave and pay

### Introduction

- 15.1 All employees will have the right to take 52 weeks of maternity leave.
- 15.2 Paragraphs 15.7 to 15.55 of this section set out the maternity leave and pay entitlements of NHS employees under the NHS contractual maternity leave scheme.
- 15.3 Paragraphs 15.56 to 15.60 give information about the position of staff who are not covered by this scheme because they do not have the necessary service or do not intend to return to NHS employment.
- 15.4 Paragraphs 15.61 to 15.65 define the service that can be counted towards the 12 month continuous service qualification set out in paragraph 15.7 (i) below and which breaks in service may be disregarded for this purpose.
- 15.5 Paragraph 15.66 explains how to get further information about employees' statutory entitlements.
- 15.6 Where, locally, staff and employer representatives agree arrangements which provide benefits to staff beyond those provided by this section, those local arrangements will apply.

### Eligibility

- 15.7 An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the NHS contractual maternity pay scheme if:
- i) she has 12 months' continuous service (see paragraphs 15.61 to 15.65) with one or more NHS employers at the beginning of the 11<sup>th</sup> week before the expected week of childbirth;
  - ii) she notifies her employer in writing before the end of the 15<sup>th</sup> week before the expected date of childbirth (or if this is not possible, as soon as is reasonably practicable thereafter):
    - (a) of her intention to take maternity leave;
    - (b) of the date she wishes to start her maternity leave – she can choose when to start her maternity leave – this can usually be any date from the beginning of the 11<sup>th</sup> week before the baby is born (but see paragraph 15.8 below);
    - (c) that she intends to return to work with the same or another NHS employer for a minimum period of three months after her maternity leave has ended;

- (d) and provides a MATB1 form from her midwife or GP giving the expected date of childbirth.

### Changing the maternity leave start date

- 15.8 If the employee subsequently wants to change the date from which she wishes her leave to start, she should notify her employer at least 28 days beforehand (or, if this is not possible, as soon as is reasonably practicable beforehand).

### Confirming maternity leave and pay

- 15.9 Following discussion with the employee, the employer should confirm in writing:
- i) the employee's paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);
  - ii) unless an earlier return date has been given by the employee, her expected return date, based on her 52 weeks paid and unpaid leave entitlement under this agreement; and
  - iii) the length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal maternity leave period (see paragraphs 15.49 and 15.50 below);
  - iv) the need for the employee to give at least 28 days of notice if she wishes to return to work before the expected return date.

### Keeping in touch

- 15.10 Before going on leave, the employer and the employee should also discuss and agree any voluntary arrangements for keeping in touch during the employee's maternity leave, including:
- i) any voluntary arrangements that may help her keep in touch with developments at work and, nearer the time of her return, to help facilitate her return to work;
  - ii) keeping the employer in touch with any developments that may affect her intended date of return.

### Work during the maternity leave period

#### Keeping in touch days

- 15.11 To facilitate the process of keeping in touch, it is important that the employer and employee have early discussion to plan and make arrangements for "keeping in touch days" (KIT days) before the employee's maternity leave takes place.

- 15.12 To enable employees to take up the opportunity to work KIT days, employers should consider the scope for reimbursement of reasonable childcare costs or the provision of childcare facilities.
- 15.13 KIT days are intended to facilitate a smooth return to work for women returning from maternity leave.
- 15.14 An employee may work for up to a maximum of ten KIT days without bringing her maternity leave to an end. Any days of work will not extend the maternity leave period.
- 15.15 An employee may not work during the two weeks of compulsory maternity leave immediately after the birth of her baby.
- 15.16 The work can be consecutive or not and can include training or other activities which enable the employee to keep in touch with the workplace.
- 15.17 Any such work must be by agreement and neither the employer nor the employee can insist upon it.
- 15.18 The employee will be paid at their basic daily rate for the hours worked, less appropriate maternity leave payment for KIT days worked.
- 15.19 Working for part of any day will count as one KIT day.
- 15.20 Any employee who is breastfeeding must be risk assessed and facilities provided in accordance with paragraph 15.34.

### Paid maternity leave

#### Amount of pay

- 15.21 Where an employee intends to return to work the amount of contractual maternity pay receivable is as follows:
- i) for the first eight weeks of absence the employee will receive full pay, less any Statutory Maternity Pay or Maternity Allowance (including any dependents' allowances) receivable;
  - ii) for the next 18 weeks the employee will receive half of full pay, plus any Statutory Maternity Pay or Maternity Allowance (including any dependents' allowances) receivable, providing the total receivable does not exceed full pay;
  - iii) for the next 13 weeks, the employee will receive any Statutory Maternity Pay or Maternity Allowance that they are entitled to under the statutory scheme.

15.22 By prior agreement with the employer, occupational maternity pay may be paid in a different way, for example a combination of full pay and half pay or a fixed amount spread equally over the maternity leave period.

### Calculation of maternity pay

15.23 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Maternity Pay entitlements, subject to the following qualifications:

- i) in the event of a pay award or annual increment being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or annual increment had effect throughout the entire Statutory Maternity Pay calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;
- ii) in the event of a pay award or annual increment being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or annual increment should be increased accordingly. If such a pay award was agreed retrospectively the maternity pay should be re-calculated on the same basis;
- iii) in the case of an employee on unpaid sick absence or on sick absence attracting half pay during the whole or part of the period used for calculating average weekly earnings, in accordance with the earnings rules for Statutory Maternity Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay.

### Unpaid contractual leave

15.24 Employees are also entitled to take a further 13 weeks as unpaid leave to bring the total of leave to 52 weeks. However, this may be extended by local agreement in exceptional circumstances, for example, where employees have sick pre-term babies or multiple births.

### Commencement and duration of leave

15.25 An employee may begin her maternity leave at any time between 11 weeks before the expected week of childbirth and the expected week of childbirth, provided she gives the required notice.

### Sickness prior to childbirth

15.26 If an employee is off work ill, or becomes ill, with a pregnancy-related illness during the last four weeks before the expected week of childbirth, maternity leave will normally commence at the beginning of the 4th week before the expected week of childbirth or the beginning of the next week after the employee last worked, whichever is the later. Absence prior to

the last four weeks before the expected week of childbirth, supported by a medical statement of incapacity for work, or a self-certificate, shall be treated as sick leave in accordance with normal leave provisions.

- 15.27 Odd days of pregnancy-related illness during this period may be disregarded if the employee wishes to continue working till the maternity leave start date previously notified to the employer.

### Pre-term birth

- 15.28 Where an employee's baby is born alive prematurely, the employee will be entitled to the same amount of maternity leave and pay as if her baby was born at full term.
- 15.29 Where an employee's baby is born before the 11th week before the expected week of childbirth and the employee has worked during the actual week of childbirth, maternity leave will start on the first day of the employee's absence.
- 15.30 Where an employee's baby is born before the 11th week before the expected week of childbirth and the employee has been absent from work on certified sickness absence during the actual week of childbirth, maternity leave will start the day after the day of birth.
- 15.31 Where an employee's baby is born before the 11th week before the expected week of childbirth and the baby is in hospital, the employee may spilt her maternity leave entitlement, taking a minimum period of two weeks' leave immediately after childbirth and the rest of her leave following her baby's discharge from hospital.

### Still birth

- 15.32 Where an employee's baby is born dead after the 24<sup>th</sup> week of pregnancy, the employee will be entitled to the same amount of maternity leave and pay as if her baby was born alive.

### Miscarriage

- 15.33 Where an employee has a miscarriage before the 25<sup>th</sup> week of pregnancy, normal sick leave provisions will apply as necessary.

### Health and safety of employees pre and post birth

- 15.34 Where an employee is pregnant, has recently given birth or is breastfeeding, the employer must carry out a risk assessment of her working conditions. If it is found, or a medical practitioner considers, that an employee or her child would be at risk were she to continue with her normal duties, the employer should provide suitable alternative work for which the employee will receive her normal rate of pay. Where it is not

reasonably practicable to offer suitable alternative work, the employee should be suspended on full pay.

- 15.35 These provisions also apply to an employee who is breastfeeding if it is found that her normal duties would prevent her from successfully breastfeeding her child.

### Return to work

- 15.36 An employee who intends to return to work at the end of her full maternity leave will not be required to give any further notification to the employer, although if she wishes to return early, she must give at least 28 days' notice.
- 15.37 An employee has the right to return to her job under her original contract and on no less favourable terms and conditions.

### Returning on flexible working arrangements

- 15.38 If, at the end of maternity leave, the employee wishes to return to work on different hours, the NHS employer has a duty to facilitate this, wherever possible. The employee will return to work on different hours, in the same job. If this is not possible, the employer must provide written, objectively justifiable reasons for this and the employee should return to the same pay band and work of a similar nature and status, to that which they held prior to their maternity absence.
- 15.39 If it is agreed that the employee will return to work on a flexible basis, including changed or reduced hours, for an agreed temporary period, this will not affect the employee's right to return to her job under her original contract, at the end of the agreed period.

### Sickness following the end of maternity leave

- 15.40 In the event of illness following the date the employee was due to return to work, normal sick leave provisions will apply as necessary.

### Failure to return to work

- 15.41 If an employee who has notified her employer of her intention to return to work for the same or a different NHS employer, in accordance with paragraph 15.7 (ii) (c) above, fails to do so within 15 months of the beginning of her maternity leave, she will be liable to refund the whole of her maternity pay, less any Statutory Maternity Pay, received. In cases where the employer considers that to enforce this provision would cause undue hardship or distress, the employer will have the discretion to waive their rights to recovery.



## Miscellaneous provisions

### Fixed-term contracts or training contracts

- 15.42 Employees subject to fixed-term or training contracts which expire after the 11th week before the expected week of childbirth and who satisfy the conditions in paragraphs 15.7 (i), 15.7 (ii) (a), 15.7 (ii) (b) and 15.7 (ii) (d), shall have their contracts extended so as to allow them to receive the 52 weeks, which includes paid contractual and statutory maternity pay, and the remaining 13 weeks of unpaid maternity leave.
- 15.43 Absence on maternity leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service.
- 15.44 If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred, the repayment provisions set out in paragraph 15.41 above will not apply.
- 15.45 Employees on fixed-term contracts who do not meet the 12 months' continuous service condition set out in paragraph 15.7 (i) above, may still be entitled to Statutory Maternity Pay.

### Rotational training contracts

- 15.46 Where an employee is on a planned rotation of appointments with one or more NHS employers, as part of an agreed programme of training, she shall have the right to return to work in the same post or in the next planned post, irrespective of whether the contract would otherwise have ended if pregnancy and childbirth had not occurred. In such circumstances the employee's contract will be extended to enable the practitioner to complete the agreed programme of training.

### Contractual rights

- 15.47 During maternity leave (both paid and unpaid) an employee retains all of her contractual rights, except remuneration.

### Increments

- 15.48 Maternity leave, whether paid or unpaid, shall count as service for annual increments and for the purposes of any service qualification period for additional annual leave. The expectation is that an employee on maternity leave would progress through a KSF gateway on the due date, if concerns had not been raised about the ability to meet their KSF outline prior to maternity leave.

### Accrual of annual leave

- 15.49 Annual leave will continue to accrue during maternity leave, whether paid or unpaid, provided for by this agreement.
- 15.50 Where the amount of accrued annual leave would exceed normal carry over provisions, it may be mutually beneficial to both the employer and employee for the employee to take annual leave before and/or after the formal (paid and unpaid) maternity leave period. The amount of annual leave to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Payment in lieu may be considered as an option where accrual of annual leave exceeds normal carry over provisions.

### Pensions

- 15.51 Pension rights and contributions shall be dealt with in accordance with the provisions of the NHS Superannuation Regulations.

### Antenatal care

- 15.52 Pregnant employees have the right to paid time off for antenatal care. Antenatal care includes relaxation and parent-craft classes as well as appointments for antenatal care.

### Post-natal care and breastfeeding mothers

- 15.53 Women who have recently given birth should have paid time off for post-natal care e.g. attendance at health clinics.
- 15.54 Employers are required to undertake a risk assessment and to provide breastfeeding women with suitable private rest facilities. The Health and Safety Executive Guidance recommends that employers provide:
- a clean, healthy and safe environment for women who are breastfeeding;
  - suitable access to a private room to express and store milk in an appropriate refrigerator.
- 15.55 Employers are reminded that they should consider requests for flexible working arrangements to support breastfeeding women at work.

### Employees not returning to NHS employment

- 15.56 An employee who satisfies the conditions in paragraph 15.7, except that she does not intend to work with the same or another NHS employer for a minimum period of three months after her maternity leave is ended, will be entitled to pay equivalent to Statutory Maternity Pay, which is paid at

90 per cent of her average weekly earnings for the first six weeks of her maternity leave and to a flat rate sum for the following 33 weeks.

### Employees with less than 12 months' continuous service

- 15.57 If an employee does not satisfy the conditions in paragraph 15.7 for occupational maternity pay, she may be entitled to Statutory Maternity Pay. Statutory Maternity Pay will be paid regardless of whether she satisfies the conditions in paragraph 15.7.
- 15.58 If her earnings are too low for her to qualify for Statutory Maternity Pay, or she does not qualify for another reason, she should be advised to claim Maternity Allowance from her local Job Centre Plus or social security office.
- 15.59 All employees will have a right to take 52 weeks of maternity leave whether or not they return to NHS employment.
- 15.60 Paragraph 15.66 contains further information on statutory maternity entitlements.

### Continuous service

- 15.61 For the purposes of calculating whether the employee meets the qualification set out in paragraph 15.7 (i) to have had 12 months of continuous service with one or more NHS employers, the following provisions shall apply:
- i) NHS employers include health authorities, NHS boards, NHS trusts, primary care trusts and the Northern Ireland Health Service;
  - ii) a break in service of three months or less will be disregarded (though not count as service).
- 15.62 The following breaks in service will also be disregarded (though not count as service):
- i) employment under the terms of an honorary contract;
  - ii) employment as a locum with a general practitioner for a period not exceeding 12 months;
  - iii) a period of up to 12 months spent abroad as part of a definite programme of postgraduate training on the advice of the postgraduate dean or college or faculty advisor in the speciality concerned;
  - iv) a period of voluntary service overseas with a recognised international relief organisation for a period of 12 months, which may exceptionally be extended for 12 months at the discretion of the employer which recruits the employee on her return;

- v) absence on a employment break scheme in accordance with the provisions of Section 36 of this Handbook;
- vi) absence on maternity leave (paid or unpaid) as provided for under this agreement.

15.63 Employers may at their discretion extend the period specified in paragraphs 15.61 (ii) and 15.62.

15.64 Employment as a trainee with a general medical practitioner in accordance with the provisions of the Trainee Practitioner Scheme, shall similarly be disregarded and count as service.

15.65 Employers have the discretion to count other previous NHS service or service with other employers.

### Information about statutory maternity/adoption and paternity leave and pay

15.66 There are occasions when employees are entitled to other statutory benefits/allowances and Information about all statutory maternity/adoption and paternity rights can be found using the following links:

[www.dti.gov.uk/employment/workandfamilies/maternity-leave-pay/guidance/page21116.html](http://www.dti.gov.uk/employment/workandfamilies/maternity-leave-pay/guidance/page21116.html)

[www.dwp.gov.uk/lifeevent/benefits/statutory\\_maternity\\_pay.asp](http://www.dwp.gov.uk/lifeevent/benefits/statutory_maternity_pay.asp)

<http://jobcentreplus.gov.uk/JCP/Customers/WorkingAgeBenefits/Dev008115.xml.html>

Information about health and safety for new and expectant mothers at work can be found using the following link:

[www.hse.gov.uk](http://www.hse.gov.uk)

## Section 16: Redundancy pay

### Introduction

16.1 This section sets out the arrangements for redundancy pay for employees dismissed by reason of redundancy who, at the date of termination of their contract, have at least 104 weeks of continuous full-time or part-time service. These take effect from 1 October 2006. It also sets out the arrangements for early retirement on grounds of redundancy and in the interests of the service, for those who are members of the NHS Pension Scheme and have at least two years of continuous full-time or part-time service and two years of qualifying membership in the NHS Pension Scheme. Pension changes take effect from 1 December 2006. It further sets out transitional arrangements from 1 December 2006 to 30 September 2011 for staff aged over 50 at the time of redundancy, who are members of the NHS Pension Scheme with at least five year's pensionable service.<sup>1</sup>

### Definition of redundancy

16.2 The Employment Rights Act 1996 Section 139 states that redundancy arises when employees are dismissed in the following circumstances:

- “where the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed; or where the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed; or
- where the requirements of the business for employees to carry out work of a particular kind, in the place where they were so employed, have ceased or diminished or are expected to cease or diminish.”

### Qualification for a redundancy payment

16.3 To qualify for a redundancy payment the member of staff must be an employee, working under a contract of employment for an NHS employer. ‘NHS employer’ means any of the organisations listed at Annex A in this Handbook and any predecessor or successor body. Non-executive directors of NHS organisations do not qualify. Contracts of employment may be written or verbal, and can be for a fixed period or be continuous. In law, employees have a contract as soon as they start work and in accepting and undertaking the work required they accept the terms and conditions offered by the employer. To qualify for a redundancy payment

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<sup>1</sup> There is currently a consultation underway on the NHS Pension Scheme. It is expected that new pension arrangements will be in place effective from December 2007. Once final agreement has been reached the Agenda for Change redundancy arrangements will be amended to take into consideration the new arrangements.

the employee must also have at least 104 weeks of continuous full-time or part-time service.

### Definition of continuous service

16.4 “Continuous service” means full-time or part-time employment with the present or any previous NHS Employer. If with more than one NHS employer, there must not have been a break of more than a week (measured Sunday to Saturday) between employments.

### Definition of reckonable service

16.5 “Reckonable service” for the purposes of an NHS redundancy payment, which is calculated on the basis of the service up to the date of termination of the contract, means continuous full-time or part-time employment with the present or any previous NHS employer but with the following additions:

- where there has been a break in service of 12 months or less, the period of employment prior to the break will count as reckonable service;
- periods of employment as a trainee with a general medical practitioner, in accordance with the provisions of the Trainee Practitioner Scheme, will count as reckonable service;
- at employer discretion, any period or periods of employment with employers outside the NHS, where these are judged to be relevant to NHS employment, can be included in reckonable service – see Section 12 of the handbook.

16.6 The following employment will not count as reckonable service:

- employment that has been taken into account for the purposes of a previous redundancy, or loss of office payment by an NHS employer;
- where the employee has previously been given pension benefits, any employment that has been taken into account for the purposes of those pension benefits.

### Definition of a month's pay

16.7 “Month's pay” means whichever is the more beneficial of the following calculations:

- 4.35 times a week's pay, calculated in accordance with the provisions of Section 221 to 229 of the Employment Rights Act 1996;
- an amount equal to 1/12<sup>th</sup> of the annual salary in payment at the date of termination of employment.

## Calculation of redundancy payment

16.8 The redundancy payment will take the form of a lump sum, dependent on the employee's reckonable service at the date of termination of employment. The lump sum will be calculated on the basis of one month's pay for each complete year of reckonable service, subject to a minimum of two years' (104 weeks') continuous service and a maximum of 24 years' reckonable service being counted.

16.9 Fractions of a year of reckonable service will not be taken into account.

## Early retirement on grounds of redundancy for employees entitled to pension benefits

### Qualification criteria

16.10 Members of the NHS Pension Scheme who are made redundant and meet the conditions set out above in Paragraphs 3 to 6, may choose to retire early without reduction in the value of pension benefits, as an alternative to receiving the full lump sum benefit set out in Paragraph 8. To qualify for early retirement the member of staff must:

- be a member of the NHS Pension Scheme;
- have at least two years' continuous service and two years' qualifying membership;
- have reached the minimum pension age. The Finance Act 2004 allows for protection of a minimum pension age of 50, for members who had the right to take reduced benefits at that age on 5 April 2006. This protection may continue as long as members retiring early after 6 April 2010 take all their benefits payable under scheme rules. In the NHS Pension Scheme, for those without this protection, members who first joined and some who returned to the scheme after 6 April 2006, minimum pension age will change from 50 to 55 from 6 April 2010.<sup>2</sup>

### Definition of qualifying membership

16.11 'Qualifying membership' is membership that counts towards entitlement for benefits. Pensionable membership is membership that counts when benefits are calculated. This may be different from reckonable service for the purposes of a redundancy payment as it can include pensionable service from previous periods of employment with the NHS or another employer, and periods of part-time working.

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<sup>2</sup> Subject to consultation, for those who are in the new pension scheme (with a normal pension age of 65), minimum pension age will be 55 from when the scheme is set up.

## Use of redundancy payment to pay for early retirement

- 16.12 If the redundant member of staff chooses to take early retirement with an unreduced pension under these arrangements, they will receive immediately the full value of their qualifying pension benefits at the point of redundancy, without the actuarial reduction that would occur with voluntary early retirement. Their employer will pay the relevant NHS pension scheme a sum equivalent to the capitalised cost of paying the pension and lump sum early; either as one payment or in five instalments.<sup>3</sup>
- 16.13 This sum will be paid from the lump sum redundancy payment that otherwise would have been paid to the employee. If the cost to the employer of paying by single payment for early retirement is less than the value of the redundancy payment that the member would have received under Paragraph 8, then the redundant employee will also receive from the employer a redundancy payment equivalent to the difference between the two sums. The cost to the employer would therefore normally be the same as if the employee had chosen to take a redundancy payment without unreduced early retirement. However, if the cost of early retirement is more than the redundancy payment due, the employer will pay the additional cost. If the employer chooses to pay in five instalments, the employer is responsible for the additional interest charge.

## Treatment of concurrent pensionable employment

- 16.14 Where there is concurrent pensionable employment, members may choose between:
- ceasing all pensionable employment and taking early retirement on the terms set out below in respect of each employment, in which case they cannot be pensionable again in the current scheme (normal pension age of 60). (An employment may continue if it is not more than 16 hours a week, without affecting the payment of enhanced benefits, but it will not be pensionable in the scheme); and
  - taking benefits only in respect of the employment that is being terminated, in which case they can continue being pensionable in other employments. After 6 April 2010 this will not apply if taking benefits under the age of 55.
- 16.15 Members with concurrent practitioner and non-practitioner employments, who choose to cease all pensionable employments, will receive only their non-practitioner benefits on redundancy grounds. Where appropriate,

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<sup>3</sup> It is open to qualifying members to take early retirement under the normal scheme arrangements for voluntary early retirement or normal age retirement.



benefits for practitioner membership may be taken on an early retirement basis with an actuarial reduction or preserved for payment at age 60.<sup>4 5</sup>

16.16 The employer who authorises early retirement will be responsible for the pension costs accruing from other terminating employment. If a member returns to work after taking their pension, their pension will be abated, if the combined value of their pension and salary is greater than they earned prior to retirement. This will continue until they reach their normal pension age.

### Exclusion from eligibility

16.17 Employees shall not be entitled to redundancy payments or early retirement on grounds of redundancy if:

- they are dismissed for reasons of misconduct, with or without notice; or
- at the date of the termination of the contract have obtained without a break, or with a break not exceeding four weeks, suitable alternative employment with the same or another NHS employer; or
- unreasonably refuse to accept or apply for suitable alternative employment with the same or another NHS employer; or
- leave their employment before expiry of notice, except if they are being released early (see Paragraphs 20 to 21 below); or
- they offered a renewal of contract (with the substitution of the new employer for the previous NHS one); and
- where their employment is transferred to another public service employer who is not an NHS employer.

### Suitable alternative employment

16.18 Employers have a responsibility, before making a member of staff redundant or agreeing early retirement on grounds of redundancy, to seek suitable alternative employment for that person, either in their own organisation or through arrangements with another NHS employer. Employers should avoid the loss of staff through redundancy wherever possible, to retain valuable skills and experience where appropriate within the local health economy.

16.19 'Suitable alternative employment', for the purposes of paragraph 17, should be determined by reference to Sections 138 and 141 of the

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<sup>4</sup> Where practitioner membership ended 12 months or more before the date of non-practitioner retirement on redundancy, and all other posts have ceased, practitioner benefits will be paid at the same time as the redundancy benefits and associated pension costs will be met by the NHS employer authorising retirement.

<sup>5</sup> Practitioners are general medical and general dental practitioners.

Employment Rights Act 1996. In considering whether a post is suitable alternative employment, regard should be had to the personal circumstances of the employee. Employees will, however, be expected to show some flexibility.

16.20 For the purposes of this scheme any suitable alternative employment must be brought to the employee's notice in writing or by electronic means agreed with the employee, before the date of termination of contract and with reasonable time for the employee to consider it. The employment should be available not later than four weeks from that date. Where this is done, but the employee fails to make any necessary application, the employee shall be deemed to have refused suitable alternative employment. Where an employee accepts suitable alternative employment the 'trial period' provisions in Section 138 (3) of the Employment Rights Act 1996 will apply.

### Early release of redundant employees

16.21 Employees who have been notified of the termination of their employment on grounds of redundancy, and for whom no suitable alternative employment in the NHS is available, may, during the period of notice, obtain other employment outside the NHS.

16.22 If they wish to take this up before the period of notice of redundancy expires the employer will, unless there are compelling reasons to the contrary, release such employees at their request on a mutually agreeable date. That date will become the revised date of redundancy for the purpose of calculating any entitlement to a redundancy payment under this agreement.

### Claim for redundancy payment

16.23 Claims for redundancy payment or retirement on grounds of redundancy must be submitted within six months of the date of termination of employment. Before payment is made the employee will certify that:

- they had not obtained, been offered or unreasonably refused to apply for or accept, suitable alternative health service employment within four weeks of the termination date;
- they understand that payment is made only on this condition and undertake to refund it if this condition is not satisfied.

### Retrospective pay awards

16.24 If a retrospective pay award is notified after the date of termination of employment, then the redundancy payment and/or pension will be recalculated, and any arrears due paid.

## Disputes

16.25 An employee who disagrees with the employer's calculation of the amount of redundancy payment or the rejection of a claim for redundancy payment, should make representations to the employer via local grievance procedures. See also paragraph 22 about making a claim for a redundancy payment.

## Early retirement in the interests of the efficiency of the service

16.26 Members of the NHS Pension Scheme will receive payment of benefits without reduction if they retire early in the interests of the efficiency of the service, and they satisfy the qualifying conditions set out in paragraph 10. Retiring early in the interests of the service is a flexibility available at employer discretion. In these cases, no redundancy payment is due. In agreeing to retirement in the interests of the service, the employer undertakes to pay the costs of paying the pension and lump sum early. Employers will need to ensure that they exercise this discretion appropriately and will be conscious of the implications of any potential discrimination on grounds of age, sex, race, religion or disability.

16.27 These arrangements are aimed at employees who have given valuable NHS service in the past but are no longer capable of doing so. This might be because of new or expanded duties or a decline in the ability to perform existing duties efficiently but not so as to qualify them for ill health retirement. Employers would be expected to consider alternatives before agreeing to early retirement.

16.28 The relevant NHS pension scheme certifies the grounds on which early retirement is taking place. The scheme does so on the basis of the information provided by the employer. In each case, therefore, an appropriate senior manager should authorise the early retirement, ensuring that the relevant criteria have been met.

## Employer responsibilities

16.29 Employer contributions to the NHS Pension Scheme do not cover the costs of early retirement benefits. There is a requirement for NHS employers to pay these costs if they retire staff early on grounds of redundancy or in the interests of the service.

## Transitional arrangements: 1 October 2006 to 30 September 2011

16.30 There will be transitional arrangements in place from 1 December 2006 to 30 September 2011. These transitional arrangements apply to staff:

- whose continuous NHS service and/or Pension Scheme membership began before 1 October 2006;

- who are aged over 50 on 30 September 2006 or who reach 50 during the transition period - 1 October 2004 until 30 September 2011 (after 6 April 2010 subject to the rules on minimum pension age set out in paragraph 10);
- who are members of the NHS Pension Scheme and have at least five years' qualifying membership in the scheme at the date of redundancy.

16.31 Employees who are made redundant and qualify for transitional protection can choose between a redundancy payment under the new arrangements and payment under transitional protection. The transitional arrangements for early retirement (but not the redundancy payment) will also apply to staff given early retirement in the interests of the service and who meet the qualifying conditions in paragraph 29.

16.32 Transitional protection has two phases. The first phase applies from 1 December 2006 to 30 June 2007. During this phase the maximum pension that an employee can receive on taking redundancy retirement is that to which they would have been entitled had they been made redundant under the old agreement on 30 September 2006.

16.33 The second phase is from 1 July 2007 to 30 September 2011. During this phase, as well as freezing the maximum enhanced pension at that which would have been available on 30 September 2006, there will be a further reduction so that all enhancements are removed by 30 September 2011.

16.34 The date used to calculate the level of both final pensionable pay and of salary for redundancy payment under the transition will be set by reference to the actual date of redundancy.

### Calculation of baseline entitlement during transition

16.35 For employees taking advantage of the transitional arrangements, and subject to a maximum of 20 years of reckonable service being counted, the lump sum redundancy payment will be calculated based on the arrangements in place before 1 October 2006 as follows. Based on service at 30 September 2006:

- 1<sup>1/2</sup> weeks' pay for each complete year of reckonable service at age 41 or over;
- one week's pay for each complete year of reckonable service at age 22 or over but under 41;
- 1/2 week's pay for each complete year of reckonable service at age 18 or over but under 22;
- overall maximum 30 weeks' pay.

16.36 Fractions of a year of reckonable service will not be taken into account except that they may be aggregated under paragraph 34 above to make complete years. The lowest weeks' pay multiplier relevant to the employee's calculation will apply to the complete year aggregated.

### Reduction to baseline entitlement

16.37 Redundant employees who are entitled to an enhancement of their pension benefits on ceasing to be employed will, if the enhancement of service if they had been made redundant on 30 September 2006 is less than ten years, be entitled to receive a redundancy payment. Where the enhancement of service does not exceed  $6^{2/3}$  years they will be paid in full. Where the enhancement of service exceeds  $6^{2/3}$  years their redundancy payment will be reduced by 30 per cent in respect of each year of enhanced service over  $6^{2/3}$  years, with pro-rata reduction for part years.

16.38 The redundancy payment made under these transitional arrangements will be based on the number of weeks of service applicable for a redundancy on 30 September 2006, along with the reduction for enhancement greater than  $6^{2/3}$  years that would have been made had the redundancy taken place on that date. If there has been a break in continuous service between 1 October 2006 and the date of redundancy, then the payment would be based on the number of years of continuous service at the date of redundancy.

16.39 As a baseline calculation for transitional protection all employees eligible for premature payment of pension and compensation benefits under the terms of this agreement on transition shall have their reckonable years in the NHS scheme at 30 September 2006 doubled, subject to a maximum enhancement of ten added years. Total reckonable years (including enhancements) will, in all cases, be limited to the lesser of:

- the total reckonable service that would have been attained by continuing in service to retirement age; or
- 40 years, provided that:
- the enhancement of reckonable service for employees with relevant optant service shall be based on the aggregate of their reckonable NHS service and their relevant optant service.

### Transition Phase One: 1 October 2006 to 30 June 2007

16.40 For redundancies from 1 October 2006 until 1 December 2006, when the regulations to give effect to the transition are introduced, employees will receive enhanced pension based on the pre 1 October arrangements, including the calculation of redundancy payment.

16.41 From 1 December 2006 to 30 June 2007, the enhancement that the employee will be eligible to receive will be the enhancement on which the pension would have been based had they been made redundant on 30 September 2006, less the number of days since 30 September 2006. For those who have any part-time membership, the reduction in enhancement will be scaled down according to the scaling factor applicable at 30 September 2006.

#### Transition Phase Two: 1 July 2007 to 30 September 2011

16.42 During this phase, maximum enhancement available to the employee made redundant will continue to be the enhancement available on 30 September 2006, less the number of days since 30 September 2006. There will be a further reduction in entitlement to enhancement. For those whose enhancement on 30 September 2006 would have been greater than five years, the additional amount of service enhancement over five years should be reduced by  $1/60^{\text{th}}$  for each whole month that has elapsed between 30 September 2006 and the date of redundancy. The effect of the two transition elements together is that after each year of transition, the maximum enhancement would be reduced by two years, until no enhancement is available from 1 October 2011.

16.43 Paragraphs 29 to 42 will be removed from this agreement on 1 October 2011.

## Section 19: Other terms and conditions

- 19.1 Other terms and conditions, not covered in this handbook, will be determined locally following consultation with staff representatives, with a view to reaching agreement on such terms and conditions or any changes to them (see Annex O).<sup>1</sup>
- 19.2 The same terms and conditions should apply to all staff groups, unless there are significant reasons why this is not appropriate and these reasons are justifiable in relation to the principles of equal pay for work of equal value.

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<sup>1</sup> See the question and answer guidance in Annex A2.  
NHS terms and conditions of service handbook  
Pay circular (AforC) 1/2010: amendment number 16





## Section 30: General equality and diversity statement

30.1 All parties to this agreement commit to building a NHS workforce which is valued and whose diversity reflects the communities it serves, enabling it to deliver the best possible healthcare service to those communities. The NHS will strive to be a leader in good employment practice, able to attract and retain staff from diverse backgrounds and communities.

30.2 The parties will strive to ensure that:

- everyone working in the NHS should be able to achieve his or her full potential, in an environment characterised by dignity and mutual respect;
- the past effects of institutional discrimination are identified and remedial action taken;
- equality of opportunity is guaranteed;
- Individual difference and the unique contribution that individual experience, knowledge and skills can make is viewed positively;
- job descriptions, person specifications and the terms and conditions of service fit with the needs of the service and those who work in it, regardless of age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trades union membership.

### Making it happen

30.3 To achieve these goals all parties to this agreement will ensure that:

- everyone who works in the NHS knows about these agreements and what they say;
- everyone knows what their responsibilities are in relation to equality and diversity and these are reflected in individual KSF outlines and development reviews;
- steps taken to promote equality and diversity are monitored;
- appropriate training is provided. This will include appropriate equality and diversity training for all staff and relevant skills based training for line managers and others who play a key role in implementing equality and diversity policy;

- appropriate resources where appropriate, are made available to achieve these aims;
- the boards of NHS trusts (of NHS boards in Scotland) and other NHS organisations and senior managers will demonstrate their commitment and accountability for implementing these aims by measuring and monitoring progress through their equality schemes;
- the NHS will encourage other organisations, such as local authorities, education providers, contractors and recruitment agencies, to work in partnership with the service to achieve the aims of this agreement, including the application of its commissioning and procurement activities.

### Monitoring and review

- 30.4 The NHS Staff Council will keep this agreement under review against best practice, as it develops, inside the NHS and elsewhere.
- 30.5 NHS employers and local staff representatives should review their local arrangements to ensure they produce outcomes that are consistent with this agreement. Annual 'equality audits' are recommended, and these should include a review of:
- workforce data by race, sex, age, disability and contract status (i.e. part time);
  - existing equality policies and procedures and any gaps requiring the development of new arrangements;
  - data on pay and grading by race, sex, age, disability and contract status i.e. part-time.
- 30.6 Where under-representation of particular groups is identified, employers should take advantage of the positive action provisions in the discrimination legislation, assuming that the detailed conditions in the legislation are met.

### Definitions

- 30.7 Where the term "requires" is used in this agreement, this denotes a requirement set down in law.
- 30.8 Where "should" is used, this denotes that there is a national agreement to that effect.
- 30.9 The agreements contained in this Part of the Handbook should be taken as policy by NHS employers. Any advice on best practice should be taken as being recommended by the NHS Staff Council.

30.10 Where it is recommended that employers and local staff representatives agree arrangements, any advice on best practice is there for guidance.

### Scope

30.11 Each of the key areas to be addressed are contained in this handbook at Sections 31 to 36, as follows:

- Section 31: Recruitment, promotion and staff development;
- Section 32: Dignity at work;
- Section 33: Caring for children and adults;
- Section 34: Flexible working arrangements;
- Section 35: Balancing work and personal life;
- Section 36: Employment break scheme.

30.12 This agreement has been developed based on the legal minima and best practice and policy, thereby anticipating the need for change. There still remains significant scope to develop local procedures to inform action.

30.13 Some NHS employers will have established procedures which have been agreed with their local staff representatives. Where such procedures are consistent with the principles outlined in this agreement, these should not be disturbed. However, local agreements should be reviewed and updated in light of legal and best practice.



## Section 34: Flexible working arrangements

### General

- 34.1 NHS employers, in partnership with staff organisations, will develop positive flexible working arrangements which allow people to balance work responsibilities with other aspects of their lives. In considering the provisions of this paragraph employers should also have regard to the provisions in Section 2, *Maintaining round the clock services*.
- 34.2 Employers are required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff and job applicants, under the Disability Discrimination Act, and staff returning from maternity leave (see Section 15). In addition, unless there are clear, demonstrable reasons why it is not practicable, flexible working arrangements (in line with the Employment Equality (Religion or belief) Regulations 2003) should, wherever possible, be made available to employees who undertake daily religious observance or a holy day.
- 34.3 New working arrangements should only be introduced by mutual agreement, whether sought by the employee or the employer.
- 34.4 Flexible working should be part of an integrated approach to the organisation of work and the healthy work/life balance of staff.
- 34.5 Policies for flexible working should be made clear to all employees.
- 34.6 Employers should develop policies on flexible working which, as far as is practicable, should include:
- part-time working, where a person works to a pattern and number of hours by mutual agreement;
  - job sharing, where two or more people share the responsibilities of one or more full-time job(s), dividing the hours, duties and pay between them;
  - flexi-time, where employees can choose their own start and finish time around fixed core hours;
  - annual hours contracts, where people work a specific number of hours each year, with the hours being unevenly distributed throughout the year;
  - flexible rostering, using periods of work of differing lengths within an agreed overall period;

- term-time working, where people work during the school term but not during school holidays;
- school-time contracts;
- tele-working, where people work from home for all or part of their hours with a computer or telecommunication link to their organisation;
- voluntary reduced working time, where people work reduced hours by agreement at a reduced salary;
- fixed work patterns where, by agreement, days off can be irregular to enable, for example, separated parents to have access to their children and flexible rostering;
- flexible retirement.

34.7 Flexible working arrangements should be available to all employees.

34.8 All jobs should be considered for flexible working; if this is not possible the employer must provide written, objectively justifiable reasons for this and give a clear, demonstrable operational reason why this is not practicable.

34.9 There should be a clear procedure for application for flexible working, agreed by employers and local staff representatives.

34.10 All people with flexible working arrangements should have access to standard terms and conditions of employment, on an equal or pro-rata basis, unless different treatment can be justified for operational reasons.

### Monitoring and review

34.11 Applications and outcomes should be monitored annually, in partnership with local staff representatives.

34.12 Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness.

34.13 Applications and outcomes, from both employer and employees, should be recorded and kept for a minimum of one year

## Section 35: Balancing work and personal life

### General

- 35.1 NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments. This form of leave should cover a wide range of needs from genuine domestic emergencies through to bereavement and should take into account all religion or belief obligations and associated activities.
- 35.2 Leave arrangements should be part of an integrated policy of efficient and employee friendly employment practices, and this Section should be seen as operating in conjunction with other provisions, particularly the Employment Break Scheme, Flexing Work Positively and the Caring for Children and Adults Sections.
- 35.3 Arrangements should be agreed between employers and local staff representatives.
- 35.4 A dependent is someone who is married to, or is a partner or civil partner, "a near relative" or someone who lives at the same address as the employee. A relative for this purpose includes: parents, parents-in-law, adult children, adopted adult children, siblings (including those who are in-laws), uncles, aunts, grandparents and step relatives or is someone who relies on the employee in a particular emergency.

### Forms of leave

#### Parental leave

- 35.5 This should be a separate provision from either maternity or maternity support leave and should provide a non transferable individual right to at least 13 weeks' leave (18 weeks if child is disabled). Leave is normally unpaid, but may be paid by local agreement.
- 35.6 Parental leave should be applicable to any employee in the NHS who has nominated caring responsibility for a child under age 14 (18 in cases of adoption or disabled children).
- 35.7 Leave arrangements need to be as flexible as possible, so that the leave may be taken in a variety of ways, by local agreement. Parental leave can be added to periods of maternity support or maternity leave.

- 35.8 Notice periods should not be unnecessarily lengthy and should reflect the period of leave required. Employers should only postpone leave in exceptional circumstances and give written reasons. Employees may also postpone or cancel leave that has been booked with local agreement.
- 35.9 During parental leave the employee retains all of his/her contractual rights, except remuneration and should return to the same job after it. Pension rights and contributions shall be dealt with in accordance with NHS Superannuation Regulations. Periods of parental leave should be regarded as continuous service.
- 35.10 It is good practice for employers to maintain contact (within agreed protocols) with employees while they are on parental leave.

### Maternity support (paternity) leave and pay and ante-natal leave

- 35.11 This will apply to biological and adoptive fathers, nominated carers and same-sex partners.
- 35.12 There will be an entitlement to two weeks' occupational maternity support pay. Full pay will be calculated on the basis of the average weekly earnings rules used for calculating occupational maternity pay entitlements. The employee will receive full pay less any statutory paternity pay receivable. Only one period of occupational paternity pay is ordinarily available when there is a multiple birth. However, NHS organisations have scope for agreeing locally more favourable arrangements where they consider it necessary, or further periods of unpaid leave.
- 35.13 Eligibility for occupational paid maternity support pay will be 12 months' continuous service with one or more NHS employers at the beginning of the week in which the baby is due. More favourable local arrangements may be agreed with staff representatives and/or may be already in place.
- 35.14 Local arrangements should specify the period during which leave can be taken and whether it must be taken in a continuous block or may be split up over a specific period.
- 35.15 An employee must give his/her employer a completed form SC3 "Becoming a Parent" at least 28 days before they want leave to start. The employer should accept later notification if there is good reason.
- 35.16 Reasonable paid time off to attend ante-natal classes will also be given.
- 35.17 All employees are entitled to two weeks' maternity support leave. Employees who are not eligible for occupational maternity support pay



may still be entitled to statutory paternity pay (SPP) subject to the qualifying conditions. The rate of SPP is the same as for statutory maternity pay (SMP).

## Adoption leave and pay

- 35.18 All employees are entitled to take 52 weeks' adoption leave.
- 35.19 There will be entitlement to paid occupational adoption leave for employees wishing to adopt a child who is newly placed for adoption.
- 35.20 It will be available to people wishing to adopt a child who has primary carer responsibilities for that child.
- 35.21 Where the child is below the age of 18 adoption leave and pay will be in line with the maternity leave and pay provisions set out in this agreement.
- 35.22 Eligibility for occupational adoption pay will be 12 months' continuous NHS service ending with the week in which they are notified of being matched with the child for adoption. This will cover the circumstances where employees are newly matched with the child by an adoption agency.
- 35.23 If there is an established relationship with the child, such as fostering, prior to the adoption, or when a step-parent is adopting a partner's children, there is scope for local arrangements on the amount of leave and pay in addition to time off for official meetings.
- 35.24 If the same employer employs both parents, the period of leave and pay may be shared. One parent should be identified as the primary carer and be entitled to the majority of the leave. The partner of the primary carer is entitled to occupational maternity support leave and pay.
- 35.25 Reasonable time off to attend official meetings in the adoption process should also be given.
- 35.26 Employees who are not eligible for occupational adoption pay may still be entitled to statutory adoption pay (SAP) subject to the qualifying conditions. The rate of SAP is the same as for statutory maternity pay.

## Keeping in touch

### Work during the adoption leave period

### Keeping in touch days

35.27 Employees will be entitled to keep in touch days (KIT days) in line with the maternity leave and pay provisions as set out in Section 15 of this agreement.

### Leave/time off for domestic reasons

35.28 This form of leave should cover a range of needs, from genuine domestic emergencies through to bereavement.

35.29 These provisions should cover all employees.

35.30 Payment may be made by local agreement, but the expectation is that relatively short periods of leave for emergencies will be paid.

35.31 If the need for time off continues, other options may be considered, such as a career break.

35.32 Applicants for the above forms of leave should be entitled to a written explanation if the application is declined.

35.33 Appeals against decisions to decline an application for leave should be made through the grievance procedure.

### Monitoring and review

35.34 All applications and outcomes should be recorded, and each leave provision should be annually reviewed by employers in partnership with local staff representatives.

35.35 Applications and outcomes should be monitored annually, in partnership with local staff representatives.

35.36 Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness.

35.37 Applications and outcomes, from both employer and employees should be recorded and kept for a minimum of one year.

## Section 36: Employment break scheme

### General

- 36.1 NHS employers should provide all staff with access to an employment break scheme.
- 36.2 The scheme should be agreed between employers and local staff representatives.
- 36.3 The scheme should be viewed with other sections in this handbook, particularly those relating to flexible working, balancing work and personal life and provisions for carers, as part of the commitment to arrangements which enable employees to balance paid work with their other commitments and responsibilities.
- 36.4 The scheme should also enable employers to attract and retain the experience of staff, consistent with the NHS commitment to the provision of high quality healthcare.
- 36.5 The scheme should provide for people to take a longer period away from work than that provided for by the parental leave and other leave arrangements.

### Scope

- 36.6 The scheme should explicitly cover the main reasons for which employment breaks can be used, including childcare, eldercare, care for another dependant, training, study leave or work abroad. It should also indicate that other reasons will be considered on their merits.
- 36.7 People on employment breaks will not normally be allowed to take up paid employment with another employer, except where, for example, work overseas or charitable work could broaden experience. In such circumstances written authority from the employer would be necessary.

### Eligibility

- 36.8 The employment break scheme should normally be open to all employees who have a minimum of 12 months of service.
- 36.9 Applications should be submitted in writing and notice periods should be clearly stated in an agreement between the employee and employer.

## Length of break

- 36.10 The maximum length of break should be five years.
- 36.11 It should be possible to take breaks, either as a single period or as more than one period.
- 36.12 The minimum length of break should be three months.
- 36.13 The length of any break should balance the needs of the applicant with the needs of the service.
- 36.14 The scheme should have provision for breaks to be extended with appropriate notice, or for early return from breaks.
- 36.15 All breaks should be subject to an agreement between the employer and applicant before the break begins (see also separate provisions in Section 12). The agreement should cover:
- the effect of the break on various entitlements related to length of service;
  - a guarantee that, if the applicant returns to work within one year, the same job will be available, as far as is reasonably practicable;
  - if the break is longer than one year, the applicant may return to as similar a job as possible;
  - return to work at the equivalent salary level, reflecting increases awarded during the break;
  - the notice period required before the return to work should be two months if the break is less than a year and six months if the break is more than a year;
  - arrangements for keeping in touch during the break;
  - requirements on the applicant to keep up to date with their relevant professional registration needs, including attendance at specified training courses and conferences, and any assistance the employer may give in the support of this;
  - training arrangements for re-induction to work;
  - any other conditions required either by the employer or the applicant.

## Return to work

- 36.16 Applicants should not have to resign to take an employment break, although there will be a change to the contract of employment.

- 36.17 The period of the break should count toward continuous employment for statutory purposes.
- 36.18 Other provisions depending upon length of service, i.e. pensions, contractual redundancy payments, leave entitlements etc, should be suspended for the period of the break (see also separate provisions in Section 12).

### Appeals

- 36.19 Applicants should be entitled to a written reason for the refusal of any application.
- 36.20 Applicants may resort to the grievance procedure if a request for a break is refused.

### Monitoring and review

- 36.21 All records of applications and decisions should be kept for a minimum of twelve months.
- 36.22 The operation of the scheme should be monitored annually by employers, in partnership with local staff representatives.



# Part 6: Operating the system

## Section 40: National bodies and procedures

40.1 This section describes the roles and functions of the following national bodies:

- the NHS Staff Council
- NHS Pay Review Bodies

### The NHS Staff Council

40.2 The NHS Staff Council has overall responsibility for the system of pay and conditions of service described in this handbook.

40.3 Its remit includes:

- maintenance of the system of pay and conditions of service, including any variations to the national agreements;
- the negotiation of any variations in the harmonised national core conditions of service across the NHS, as set out in Part 3 of this handbook;
- the negotiation of any enabling agreements or variations in any enabling agreements, in respect of conditions of service which are not harmonised;
- the content of the national agreement and the general operation of the modernised NHS pay system, including any concerns about equal pay for work of equal value.
- the discussion of any other general issues of common concern on pay and terms and conditions of service.

40.4 The NHS Staff Council will not negotiate pay settlements. However, the Government, employers and representatives of staff organisations, may initiate consultation in the Council where they believe recommendations by the NHS Pay Review Body may have brought pay out of line, for jobs of broadly equal weight, in a way which may not be justifiable under the relevant legislation. The NHS Staff Council may then draw this to the

attention of the NHS Pay Review Body to consider possible corrective action.

- 40.5 The four UK Health Departments, all organisations representing NHS employers and all the nationally recognised staff organisations should have the right to be represented in this forum.
- 40.6 The NHS Staff Council will operate in a spirit of social partnership and will have joint chairs, one from representatives of staff organisations and one from representatives of employers. When both chairs are present, the functional chair will alternate each year.
- 40.7 There will be sufficient permanent members to ensure representation of all the groups described in paragraph 40.5. (Irrespective of the number of permanent members, decisions may only be reached by agreement between the two representative groups). Meetings of the Council will be hosted by agreement between the two representative groups, and the expenses of individual members will be borne by the organisations nominating them.
- 40.8 The employer representatives will include the employer representatives' chair and representatives of the UK Health Departments, the NHS Confederation, the Ambulance Services Association, and other employer representatives, including a primary care representative, a health authority or health board nominee and a representative of NHS foundation trusts. The employer representatives may invite one or more additional persons who appear to them to have special expertise or involvement in any of the items under discussion, to attend for the discussion of those items.
- 40.9 The staff representatives should both reflect membership in the NHS but also make some provision to ensure that smaller staff organisations have a voice in the new system. The weighting of membership among the staff representatives will be a matter for them to determine. The staff representatives may invite one or more additional persons who appear to them to have special expertise or involvement in any of the items under discussion, to attend for the discussion of those items.
- 40.10 The NHS Staff Council will not consider individual cases, which will continue to be resolved at individual employer level.
- 40.11 The NHS Staff Council will be scheduled to meet at least twice yearly but meetings may be cancelled by agreement if there is not enough business to justify a meeting.
- 40.12 The NHS Staff Council may form sub-groups to discuss analysis, evidence and issues with significant implications for a particular group, or to



oversee particular parts of the system and make recommendations on them to the Council.

- 40.13 All decisions of the Council will require the formal agreement of the Secretary of State for Health and the Ministers of Health for Scotland, Northern Ireland and the National Assembly for Wales. Decisions of the NHS Staff Council will be reached by agreement of both employer and staff representatives.
- 40.14 An executive committee of the NHS Staff Council will meet at least four times a year, or more frequently if agreed necessary, to take forward the day-to-day business of the Council and to hear reports from any technical working groups that may be established.
- 40.15 The staff organisations with national recognition for the purposes of the NHS Staff Council are:
- UNISON
  - The Royal College of Nursing (RCN)
  - The Royal College of Midwives (RCM)
  - Unite
  - GMB
  - The Union of Shop, Allied and Distributive Workers (USDAW)
  - The Chartered Society of Physiotherapy (CSP)
  - The Community and District Nursing Association (CDNA)
  - The Society of Radiographers (SoR)
  - The Federation of Clinical Scientists (FCS)
  - The British Association of Occupational Therapists (BAOT)
  - The Union of Construction Allied Trades and Technicians (UCATT)
  - The British Orthoptic Society (BOS)
  - The Society of Chiropractors and Podiatrists (SoCP)
  - The British Dietetic Association (BDA).

### NHS pay review bodies

- 40.16 Changes to the operation of the NHS pay review bodies are approved by the Prime Minister, the Secretary of State for Health, the First Ministers for Scotland and Wales and the First Minister, Deputy First Minister and Minister for Health, Social Services and Public Safety in Northern Ireland.

40.17 The NHS pay review bodies are independent.

### NHS Pay Review Body

- 40.18 The NHS Pay Review Body will make recommendations on the remuneration of all staff employed in the NHS on the pay spine in Annexes B and C.
- 40.19 The terms of reference for the NHS Pay Review Body include all staff employed in the NHS with the exception of doctors, dentists and very senior managers.
- 40.20 The NHS Pay Review Body is to have regard to the principle of equal pay for work of equal value in the NHS.
- 40.21 It will be open to the Government, the organisations representing staff or to employer organisations to make a case to the NHS Pay Review Body for awarding differential pay increases to staff with comparable job weights, or to make a case for national recruitment and retention premia, where they consider that this can be justified by differential labour market pressures and their impact on recruitment and retention. It will also be open to the Government, the organisations representing staff or employer organisations to make a case for adjusting the differentials between pay bands.
- 40.22 Where, based on material factors, the NHS Pay Review Body recommends differential awards of these kinds, it should make explicit in its report the reasons for such recommendations.
- 40.23 Where higher awards to particular groups are justified by reference to material factors, the additional award should be separately identifiable and may typically take the form of a recruitment and retention premium. Any such additions should be periodically reviewed by the NHS Pay Review Body and may, over time, be adjusted or withdrawn to reflect changes in the relevant material factors. For instance, in the scale of labour market pressures and their impact on recruitment and retention.

### Review Body on Doctors' and Dentists' Remuneration

- 40.24 The remuneration of medical and dental staff on the first pay spine is recommended by the Review Body on Doctors' and Dentists' Remuneration.

## Implementation of review body recommendations

40.25 Final decisions on implementation of recommendations of either pay review body are a matter for the Prime Minister and relevant health ministers.



# Part 7: Transitional arrangements

## Section 46: Assimilation and protection

### Assimilation to new pay structure

- 46.1 Staff on national contracts and other contracts which incorporate, or permit employers to incorporate, national agreements on pay and conditions of service, will assimilate to the new pay system on the effective date determined below.
- 46.2 Staff on local contracts not incorporating national agreements on pay and conditions of service will be offered the opportunity to assimilate to the new pay system with the same effective date, subject to them giving their employer reasonable notice of their decision.<sup>1</sup> If these staff do not exercise this right within the initial notice period, they may:
- do so later and the effective date of assimilation will be the start of the next pay period after they have notified the employer of their decision;
  - or
  - defer their decision on moving to the new pay system until the outcome of the review of unsocial hours payments is known and providing they have given their employer reasonable notice, their effective date of assimilation will be the effective date of the new arrangements.<sup>2</sup>
- 46.3 Staff on local contracts may move on to the new pay system after this when their effective date will be the start of the next pay period after they have notified the employer of their decision.
- 46.4 Where organisations have normally adopted senior manager pay contracts, these should be regarded as “national agreements” for the purposes of this provision.

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<sup>1</sup> See the question and answer guidance in Annex A2.

<sup>2</sup> See the question and answer guidance in Annex A2.

46.5 Newly appointed or promoted staff should be appointed or promoted on the new terms. However, if during the implementation phase employees are recruited after 1 October 2004, on pre-Agenda for Change terms and conditions, pending assimilation of their posts to the new pay system, then the protection arrangements set out in this agreement will apply.<sup>3</sup>

### Effective dates and operational dates

46.6 The operational date for national roll out will be 1 December 2004, with an effective date for any changes in pay and conditions of 1 October 2004, except for hours of the working week where staff will retain their existing hours until 30 November 2004, after which the new hours will apply, subject to the transitional arrangements set out in paragraphs 46.30 to 46.32 below.<sup>4</sup>

46.7 For staff returning from secondment to their substantive post on the same contract of employment after the time of assimilation, the protection arrangements set out in this section will apply. For example, staff currently working less than 37½ hours will have their hours protected for a phased protection period as set out in Table 10.

46.8 To support the smooth transfer of staff onto new contracts, employers may agree locally, through their joint negotiating machinery, a series of operational dates for staff to move in practice to the new system. These operational dates may vary for different categories of staff. Where this provision is used locally, the aim should be to have matched most staff to their new pay bands by 31 March 2005 and to have completed the assimilation of staff no later than the end of September 2005. Any member of staff whose assimilation to the new system is deferred for operational reasons under this provision will have any pay increase and any other improvement in terms and conditions back-dated to the effective date, subject to the qualification in relation to the retention of existing hours until 30 November 2004, set out in paragraph 46.6 above.

### Assimilation to the new pay spine and pay bands

46.9 Employee's current pay for the purpose of assimilation to the new pay spine and bands, referred to below as "basic pay before assimilation", is their annual full-time equivalent basic pay on the effective assimilation date, plus the annual value of any job evaluation related allowances (see Annex Q) plus the average value of any bonus payments under schemes which are discontinued (see paragraph 46.42 below).<sup>5</sup>

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<sup>3</sup> See the question and answer guidance in Annex A2.

<sup>4</sup> See the question and answer guidance in Annex A2.

<sup>5</sup> See the question and answer guidance in Annex A2.

46.10 Where the employee's basic pay is already subject to protection at the point of assimilation, the protected level of basic pay should be used in this calculation.

46.11 For staff returning from career breaks, maternity leave or other special leave, current pay shall be calculated as in paragraph 46.9 above but by reference to the current values of the pay and allowances received in the post they held prior to the break.

46.12 The rules for assimilating staff to the new pay bands are as follows:

- where basic pay before assimilation is between the new minimum and maximum of the new pay band, staff will assimilate to the next equal or higher pay point in the new pay band;
- in pay band 1, where basic pay before assimilation is below the new minimum, staff in pay band 1 will all move straight onto the minimum. Most staff in other pay bands will assimilate either at the new minimum or, if they are significantly below the minimum, on to special transitional points.<sup>6</sup> Staff will then progress automatically through the special transitional points in annual steps until they reach the minimum of their new pay band, when the normal rules on pay progression will apply, subject to the special provision in Section 6, paragraph 22. Special arrangements for staff approaching retirement age are set out below in paragraph 46.17;
- in a minority of cases, basic pay before assimilation will be above the maximum of the new pay band. In some instances this situation has been addressed by agreeing that it is appropriate to pay a recruitment and retention premium (see Section 5 and Annex R) from the outset. Where a difference remains, pay protection will apply;
- in the case of staff with an incremental date of 1 October 2004 under their pre-Agenda for Change pay arrangements, their basic pay for the purpose of any assimilation calculation will include the incremental increase payable on that date.

46.13 The special transitional points referred to above are set out in Annex B and Annex C. These special transitional points can only be used during assimilation and will be removed once assimilation is complete.

46.14 Subject to paragraph 46.15 below, special transitional points will be available for use as follows:

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<sup>6</sup> See the question and answer guidance in Annex A2.

- for staff in early implementer sites the minimum transitional points available are:
  - from 1 June 2003 to 31 May 2004, the lowest point;
  - from 1 June 2004 to 31 May 2005, the second lowest point;
  - from 1 June 2005 to 31 May 2006, the highest transitional point.
- for all other NHS staff the dates are as follows:
  - from 1 October 2004 to 30 September 2005, the lowest point;
  - from 1 October 2005 to 30 September 2006, the second lowest point;
  - from 1 October 2006 to 30 September 2007, the highest transitional point.

46.15 During any period when the special transitional points are in use in respect of any member of staff in a given unit or equivalent work area, new appointees to the same pay band in that unit or work area, who would normally join at the minimum pay for the job, should be appointed on the lowest special transitional point currently in use.<sup>7</sup>

46.16 Where a special transitional point is in use:

- all new appointees appointed on it during the year will move up a point on the 1 October following appointment and their incremental date will be 1 October, regardless of when in the year they were appointed;
- where existing staff assimilate to a special transitional point, they will progress on their normal incremental date to the next point.

### Staff approaching retirement age

46.17 During the period of assimilation the following rules will apply for staff approaching retirement age<sup>8</sup> whose basic pay before assimilation is below their new minimum:

- assimilation for staff two years or less from their normal retirement age on the effective date of assimilation, should be no lower than the normal minimum;

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<sup>7</sup> See the question and answer guidance in Annex A2.

<sup>8</sup> In accordance with the relevant NHS pension provisions, including those relating to any special classes. (In Scotland information about pensions is in Superannuation (Health Services) Circular No 1995/4). See the question and answer guidance in the Appendix.



- for staff three years or less from their normal retirement age on the effective date of assimilation, should be to a point no lower than the highest special transitional point
- for staff four years or less from their normal retirement age on the effective date of assimilation, should be to a point no lower than the second highest special transitional point
- for staff five years or less from their normal retirement age on the effective date of assimilation, should be to a point no lower than the lowest special transitional point.

## Pay protection

### Calculating pay before and after assimilation

46.18 In the case of the minority of individual staff whose regular pay might otherwise be lower under the new system, the following arrangements will apply to ensure that any such staff will be no worse off on assimilation.

46.19 The level of pay before and after assimilation should be calculated taking account of the payments set out in Table 8 below, subject to the qualifications set out in paragraph 46.20.<sup>9</sup>

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<sup>9</sup> See the question and answer guidance in Annex A2.  
NHS terms and conditions of service handbook  
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Table 8

Payment before assimilation	Payment after assimilation
<p>Basic pay, including any contractual overtime: <b>plus</b></p> <p>Leads and allowances measured in the Job Evaluation Scheme, or taken into account in any recruitment and retention premia (see Annex Q): <b>plus</b></p> <p>London weighting, fringe allowances and cost of living supplements: <b>plus</b></p> <p>Shift allowances and other payments related to unsocial hours (see Annex Q): <b>plus</b></p> <p>On-call payments (unless special transitional arrangements are in force – see paragraph 2.46) (That is where it is agreed locally to retain existing on-call arrangements for a transitional period from the effective date of assimilation. In such cases, on-call payments should be excluded from the calculation): <b>plus</b></p> <p>Bonus payments from schemes discontinued following implementation of the new pay system: <b>plus</b></p> <p>Other leads and allowances paid as part of regular pay which will cease on assimilation (see paragraph 46.40 below).</p>	<p>Basic pay, including any contractual overtime: <b>plus</b></p> <p>Recruitment and retention premia: <b>plus</b></p> <p>High cost area supplements: <b>plus</b></p> <p>Shift allowances and other payments related to working outside normal hours (see Section 2 and Annex Q): <b>plus</b></p> <p>On-call payments (unless special transitional arrangements are in force – see paragraph 2.46): <b>plus</b></p> <p>Any new bonus schemes authorised under the new system.</p>
Total	Total

46.20 The level of pay before assimilation for the purpose of this calculation will be the average level of the payments in the left-hand column of Table 8, over a reference period of 12 weeks or three months ending at the assimilation date, except:

- where this period includes the annual pay award due in April 2005 or an annual increment, the protected amount should be adjusted as if that award or increment had applied throughout the reference period;
- where the shift allowances or payments for working outside normal hours vary over a rota which is longer than three months, the average over the full rota should be used;
- where bonuses are paid less frequently than monthly an average over the last 12 months should be used.

### Accelerated progression for staff in high cost areas

46.21 In the case of staff in high cost areas, as defined in Section 4, where the combined value of the payments before assimilation is greater than the combined value of payments after assimilation, the latter should be recalculated using the first or second available higher pay point within the pay band to that indicated in paragraph 46.12, if that will obviate the need for protection. In such cases the employee's next incremental increase will be payable on 1 October 2005 and 1 October will be the employee's incremental date.

### Pay protection arrangements<sup>10</sup>

46.22 Where the combined value of the payments before assimilation remains greater than the combined value of the payments after assimilation, the former level of pay will be protected. These protection arrangements apply to the combined value of payments before and after assimilation, not to individual pay components, excepting the provisions relating to retention of existing on-call arrangements (see Table 8 above and paragraph 46 in Section 2).

46.23 The level of protected pay will be re-calculated for staff assimilating after April 2004, taking into account the 3.225 per cent uplift in April 2005 in respect of all payments to which it applies.

46.24 If standard hours change during the period of protection, other than under the rules for assimilation to new standard hours below (for example, where a member of staff changes from full-time to part-time employment, or if a staff member reduces his or her hours of work or level of unsocial hours working) the protected level of pay will be re-calculated.

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<sup>10</sup> See the question and answer guidance in Annex A2.

- 46.25 The period of protection will end when the total level of payments under the new system exceeds the level of protected pay, or when the protected person changes job voluntarily, or at the latest on 30 September 2009 for staff in early implementer sites and 31 March 2011 for staff in national roll-out. For protection arrangements in NHSScotland, please refer to the pay protection section of the pay and modernisation website: [www.show.scot.nhs.uk/sehd/paymodernisation/afc.htm](http://www.show.scot.nhs.uk/sehd/paymodernisation/afc.htm)
- 46.26 As soon as possible during the period of protection, the skills, knowledge and role of staff subject to protection will be reviewed to establish whether they could be re-assigned to a higher weighted job or offered development and training to fit them for a higher weighted job.
- 46.27 Staff with pay protection arising from changes unrelated to this agreement, who are also eligible for protection under this agreement may, at the time of assimilation, elect either to continue with their existing protection agreement or move to this protection agreement. When the agreement concerned expires they will move onto the normal terms and conditions under this agreement.

### Incremental dates

- 46.28 Subject to the special provisions set out in Section 6, paragraph 32 relating to temporary movement into a higher pay band, paragraph 46.16 for staff on special transitional points and paragraph 46.21 in relation to accelerated progression for staff in high cost areas, incremental dates will be determined as follows:
- for existing staff on spot salaries (i.e. in posts with a single salary rate and no increments) or staff who are on or above the maximum of their current pay scale, the incremental date will be the anniversary of the effective date of assimilation;
  - for newly appointed or promoted staff the incremental date will be the date they take up their post.

- 46.29 All other staff will retain their current incremental date.

### Assimilation to new conditioned hours

- 46.30 For staff who currently work more than 37½ hours, excluding meal breaks, there is a two year transitional period during which the new contracted hours will be phased in, as set out in Table 9 below, and during which staff may be required to work up to their old contracted

hours, with overtime payable for any hours in excess of their standard hours.<sup>11</sup> Pro-rata arrangements will apply to part-time staff.

Table 9:  
Assimilation of working hours for those currently working more than 37½ hours

Current standard hours	New standard hours
Up to 39	37½ from 1 December 2004
More than 39, up to 41	39 from 1 December 2004 37½ from 1 December 2005
More than 41	40½ from 1 December 2004 39 from 1 December 2005 37½ from 1 December 2006

- 46.31 Staff currently working less than 37½ hours, excluding meal breaks, will have their hours protected for a phased protection period as set out in Table 10, below. These protection arrangements will continue to apply where staff move to a post with the same hours under the old pay system during the protection period.<sup>12</sup>
- 46.32 Part-time staff whose hours of work change under Agenda for Change may opt to either retain the same number of hours they currently work or have their part-time hours altered to represent the same percentage of full time hours as is currently the case.

<sup>11</sup> See the question and answer guidance in Annex A2.

<sup>12</sup> See the question and answer guidance in Annex A2.

Table 10:  
Assimilation of working hours for those currently working  
less than 37½ hours

Current full-time standard hours	New standard hours (years from 1 December 2004)
37 hours	<ul style="list-style-type: none"> <li>• Three years on 37 hours</li> </ul>
36½ hours	<ul style="list-style-type: none"> <li>• Three years on 36½ hours</li> <li>• One year on 37 hours</li> </ul>
36 hours	<ul style="list-style-type: none"> <li>• Three years on 36 hours</li> <li>• Two years on 37 hours</li> </ul>
35 hours	<ul style="list-style-type: none"> <li>• Four years on 35 hours</li> <li>• Two years on 36 hours</li> <li>• One year on 37 hours</li> </ul>
33 hours	<ul style="list-style-type: none"> <li>• Four years on 33 hours</li> <li>• Two years on 35 hours</li> <li>• One year on 37 hours</li> </ul>

### Assimilation to new annual leave or general public holiday arrangements

46.33 Any additional leave and general public holiday entitlements set out in Section 13 will begin to accrue from the effective date of assimilation. This will be 1 October 2004 for national roll-out sites. If the staff member remains in post for the remainder of the leave year, the additional leave available in that year will be calculated pro-rata to the proportion of the leave year falling after the date of assimilation.

46.34 Any member of staff whose leave entitlement is reduced under Agenda for Change will have their existing entitlement protected for five years from the date of assimilation onto the new system. During this period staff may continue to claim existing entitlements.<sup>13</sup>

46.35 Length of service for the purposes of calculating the additional leave entitlements set out in Section 13 includes service prior to the effective date of assimilation (see Section 12 for provisions governing reckonable service).

### Leads and allowances

46.36 Within the new pay structure all leads and allowances will be replaced by higher basic pay for the majority of staff. This supports simplification of

<sup>13</sup> See the question and answer guidance in Annex A2.

the pay system and is consistent with the principle of equal pay for work of equal value. Employers may use their discretion, subject to partnership arrangements, to reward staff undertaking statutory, regulatory duties performed outside of those required by the job description and/or measured by the NHS Job Evaluation Scheme. Current examples of such statutory regulatory duties include midwifery supervision.

- 46.37 The current value of national leads and allowances or other special payments, which compensate staff for elements of their work which are valued within the NHS Job Evaluation Scheme, have been taken into account in setting levels of basic pay in the new system. The allowances it is agreed fall in this category are listed at Annex Q.
- 46.38 The current value of national leads and allowances and other special payments which reflect continuing special recruitment and retention needs such as London allowances, the chaplains' accommodation allowance, the special hospital lead and the regional secure unit allowance, have been taken into account in either new payments in high cost areas or in new recruitment and retention payments (see Section 4 and Annex Q).
- 46.39 Local allowances and other special local payments intended to enable NHS employers to respond to high market wages for staff in particular occupations or with particular skills, will be reviewed under the rules for recruitment and retention premia in Agenda for Change. Where they continue to be justified, the resources concerned will be taken into account in new recruitment and retention premia under the new system. See Section 5 and Annex Q.
- 46.40 All other leads and allowances paid when staff are assimilated onto the new system, whether agreed nationally or locally, will cease. The value of any such payments made as part of regular pay before assimilation will, however, be taken into account in assimilation and in the calculation of any pay protection for the minority of individual staff whose regular pay may otherwise be lower, under the new system. See the pay protection provisions above in paragraphs 46.22 to 46.27.

### Trainees

- 46.41 The arrangements for the pay and banding of trainees are set out in Annex U.

### Bonus payments

- 46.42 Agenda for Change does not preclude bonus schemes, provided they are related to genuinely measurable targets (and not part of regular pay) and provide fair and equal opportunities for all staff in the organisation or unit

or work area concerned to participate. However, it is agreed that most existing bonus schemes/performance agreements are unlikely to be compatible with these principles. All existing schemes, excepting any local schemes that do meet these requirements will, therefore, cease at the date of assimilation. If they cease then the value of the bonus payments should be included in the calculation of regular pay for assimilation purposes or, if agreement can be reached locally, the resources reinvested in a properly constituted scheme offering fair access to all staff.<sup>14</sup>

### High cost area supplements

- 46.43 Current payments for London weighting, fringe allowances and cost of living supplements will be discontinued once the new arrangements are in force.
- 46.44 For existing staff, where the new level of supplement falls short of the combined entitlement to these former payments, the former level of payment will be included in the calculation of any protected level of pay (see the pay protection provisions above), provided they remain in a job in which they would have received the former payment.
- 46.45 Current entitlements for cost of living supplements in areas outside London and fringe zones will continue but will be re-expressed as long-term recruitment and retention premia.

### Nationally agreed recruitment and retention premia

- 46.46 The use of job evaluation to ensure fair pay between NHS jobs has revealed a number of jobs with relatively high levels of pay in relation to job weight, which appear to reflect past responses to external labour market pressures. In some cases these market pressures require continuing special measures.
- 46.47 Table 11 below, lists a number of jobs for which there is prima facie evidence from both the work on the job evaluation scheme and consultation with management and staff representatives, that a premium is necessary to ensure the position of the NHS is maintained during the transitional period.

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<sup>14</sup> See the question and answer guidance in Annex A2.  
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Table 11:  
Jobs subject to nationally agreed recruitment premia

Chaplains
Clinical coding officers
Cytology screeners
Dental nurses, technicians, therapists and hygienists
Estates officers/works officers
Financial accountants
Invoice clerks
Biomedical scientists
Payroll team leaders
Pharmacists
Qualified maintenance craftspersons
Qualified maintenance technicians
Qualified medical technical officers
Qualified midwives (new entrant)
Qualified perfusionists

46.48 Initial guidance to employers in setting appropriate levels of premia in these cases and the arrangements for their review is included at Annex R. It requires the level of premium payable to be set locally on assimilation, in cash terms, at a level at least sufficient to ensure that at assimilation an existing member of staff will be no worse off than now, and that these premia should be uprated by 3.225 per cent in April 2005. The guidance may be revised by the NHS Staff Council and any uprating of these premia beyond 2005 will be by agreement at national or local level.

### Career and pay progression

46.49 The gateway system set out in Section 6 will only become fully operational when an employer has put in place reasonable arrangements to ensure that staff have access to development reviews, personal development plans and appropriate support for training and development to meet the applied knowledge and skills required at the gateway concerned. This must be done for all posts covered by this agreement no later than October 2006.

46.50 Existing staff with at least 12 months' experience in post will be assumed to have met the criteria for passing through the foundation gateway. Where the gateway system is operational, they will however, be subject to the normal operation of the new system at the second gateway.



# Annexes

## Annex A NHS Employers

Unless the text indicates otherwise, any reference to NHS employers in this Handbook shall mean any of the following organisations:

### Early implementer sites (since June 2003)

James Paget Healthcare NHS Trust  
Guy's and St Thomas' Hospital NHS Trust  
City Hospitals Sunderland NHS Trust  
Papworth Hospital NHS Trust  
Aintree Hospitals NHS Trust  
Avon and Wiltshire Mental Health Partnership NHS Trust  
South West London and St George's Mental Health NHS Trust  
West Kent NHS and Social Care Trust  
Herefordshire NHS Primary Care Trust  
Central Cheshire Primary Care Trust  
North East Ambulance Service NHS Trust  
East Anglian Ambulance NHS Trust

### National roll-out – from December 2004

#### **England**

NHS trusts including Foundation Trusts  
Primary care trusts  
Strategic health authorities  
Special health authorities

#### **Northern Ireland**

HSS health boards  
HSS trusts  
HSS special agencies

**Scotland**

Health boards  
Special health boards

**Wales**

NHS trusts  
Local health boards

## Annex B

This Annex is an archive of pay bands and pay points in England since 1 October 2004. Current pay bands and pay points are in Annex C.

### Scotland, Wales and Northern Ireland

Pay bands and pay points in Scotland can be found at:

[www.show.scot.nhs.uk](http://www.show.scot.nhs.uk)

in Wales at:

[www.wales.gov.uk](http://www.wales.gov.uk)

and in Northern Ireland at:

[www.dhsspsni.gov.uk](http://www.dhsspsni.gov.uk)

## Annex B

Table 12  
Pay bands and pay points on the second pay spine in England at 1  
October 2004

Point	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6	Band 7	Band 8				Band 9
								Range A	Range B	Range C	Range D	
1	11,135	<i>11,135</i>										
2	11,508	11,508	<i>11,668</i>									
3	11,827	11,827										
4	12,147	12,147	<i>12,147</i>									
5		12,520										
6		12,893	<i>12,733</i>									
7		13,266	13,266	<i>13,479</i>								
8		13,745	13,745									
9		14,278	<i>14,278</i>	<i>14,278</i>								
10			14,598									
11			15,024	<i>14,811</i>								
12			15,504	15,504								
13			15,877	<i>15,877</i>	<i>15,877</i>							
14				16,463	<i>16,516</i>							
15				17,049	<i>17,049</i>							
16				17,581								
17				18,114	18,114							
18				18,647	18,647	<i>18,913</i>						
19					19,180							
20					19,819	<i>19,819</i>						
21					20,458							
22					21,044	<i>20,778</i>						
23					21,630	21,630						
24					22,483	22,483	<i>22,057</i>					
25					23,442	<i>23,442</i>	<i>23,442</i>					
26						24,401						
27						25,253	<i>24,827</i>					
28						26,106	26,106					
29						26,958	26,958					
30						27,917	27,917					
31						29,302	29,302					
32							30,155	<i>30,155</i>				
33							31,114	<i>31,114</i>				
34							32,179	<i>32,179</i>				
35							33,298	33,298				
36							34,417	<i>34,417</i>	<i>34,417</i>			
37								35,802	<i>35,802</i>			
38								37,187	<i>37,187</i>			
39								38,786	38,786			
40								39,958	39,958	<i>39,958</i>		
41									41,982	<i>41,982</i>		
42									44,326	<i>44,326</i>		
43									46,671	46,671		
44									47,949	47,949	<i>47,949</i>	
45										50,080	<i>50,080</i>	
46										52,425	<i>52,425</i>	
47										55,941	55,941	
48										57,539	57,539	<i>57,539</i>
49										59,937	<i>59,937</i>	
50										62,867	62,867	
51										66,063	66,063	
52										69,260	69,260	
53											72,584	
54											76,068	
55											79,720	
56											83,546	

\*Pay rates in italic are special transitional points which apply only during assimilation to the new system. They are shown here for convenience. They are explained more fully in Section 46.

## Annex B

Table 12a

Pay bands and pay points on the second pay spine in England from 1 April 2005

Point	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6	Band 7	Band 8				Band 9
								Range A	Range B	Range C	Range D	
1	11,494	<i>11,494</i>										
2	11,879	11,879	<i>12,044</i>									
3	12,209	12,209										
4	12,539	12,539	<i>12,539</i>									
5		12,924										
6		13,309	<i>13,144</i>									
7		13,694	13,694	<i>13,914</i>								
8		14,189	14,189									
9		14,739	<i>14,739</i>	<i>14,739</i>								
10			15,069									
11			15,509	<i>15,289</i>								
12			16,004	16,004								
13			16,389	16,389	<i>16,389</i>							
14				16,994	<i>17,049</i>							
15				17,598	<i>17,598</i>							
16				18,148								
17				18,698	18,698							
18				19,248	19,248	<i>19,523</i>						
19					19,798							
20					20,458	<i>20,458</i>						
21					21,118							
22					21,723	<i>21,448</i>						
23					22,328	22,328						
24					23,208	23,208	<i>22,768</i>					
25					24,198	24,198	<i>24,198</i>					
26						25,188						
27						26,068	<i>25,628</i>					
28						26,948	26,948					
29						27,828	<i>27,828</i>					
30						28,817	28,817					
31						30,247	<i>30,247</i>					
32							31,127	<i>31,127</i>				
33							32,117	<i>32,117</i>				
34							33,217	<i>33,217</i>				
35							34,372	<i>34,372</i>				
36							35,527	<i>35,527</i>	<i>35,527</i>			
37								36,957	<i>36,957</i>			
38								38,387	<i>38,387</i>			
39								40,036	<i>40,036</i>			
40								41,246	<i>41,246</i>	<i>41,246</i>		
41								43,336	<i>43,336</i>			
42								45,756	<i>45,756</i>			
43								48,176	<i>48,176</i>			
44								49,496	<i>49,496</i>	<i>49,496</i>		
45									51,695	<i>51,695</i>		
46									54,115	<i>54,115</i>		
47									57,745	<i>57,745</i>		
48									59,395	<i>59,395</i>	<i>59,395</i>	
49										61,870	<i>61,870</i>	
50										64,894	<i>64,894</i>	
51										68,194	<i>68,194</i>	
52										71,494	<i>71,494</i>	
53											74,925	
54											78,521	
55											82,291	
56											86,240	

\*Pay rates in italic are special transitional points which apply only during assimilation to the new system. They are shown here for convenience. They are explained more fully in Section 46.

## Annex B

Table 12b

Pay bands and pay points on the second pay spine in England from 1 April 2006

Point	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6	Band 7	Band 8				Band 9
								Range A	Range B	Range C	Range D	
1	11,782											
2	12,177	12,177										
3	12,514	12,514										
4	12,853	12,853	12,853									
5		13,247										
6		13,642	13,473									
7		14,037	14,037									
8		14,543	14,543									
9		15,107	15,107	15,107								
10			15,446									
11			15,897	15,671								
12			16,405	16,405								
13			16,799	16,799								
14				17,419	17,475							
15				18,039	18,039							
16				18,602								
17				19,166	19,166							
18				19,730	19,730							
19					20,294							
20					20,970	20,970						
21					21,646							
22					22,266	21,985						
23					22,886	22,886						
24					23,789	23,789						
25					24,803	24,803	24,803					
26						25,818						
27						26,720	26,269					
28						27,622	27,622					
29						28,524	28,524					
30						29,538	29,538					
31						31,004	31,004					
32							31,906					
33							32,921	32,921				
34							34,048	34,048				
35							35,232	35,232				
36							36,416	36,416				
37								37,881	37,881			
38								39,346	39,346			
39								41,038	41,038			
40								42,278	42,278			
41								44,420	44,420			
42								46,900	46,900			
43								49,381	49,381			
44								50,733	50,733			
45									52,988	52,988		
46									55,469	55,469		
47									59,189	59,189		
48									60,880	60,880		
49										63,417	63,417	
50										66,517	66,517	
51										69,899	69,899	
52										73,281	73,281	
53											76,798	
54											80,485	
55											84,349	
56											88,397	

\*Pay rates in italic are special transitional points which apply only during assimilation to the new system. They are shown here for convenience. They are explained more fully in Section 46.



## Annex B

Table 12c

Pay bands and pay points on the second pay spine in England from 1 April 2007

Point	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6	Band 7	Band 8				Band 9
								Range A	Range B	Range C	Range D	
1	11,959											
2	12,359	12,359										
3	12,702	12,702										
4	13,045	13,045										
5		13,446										
6		13,847	13,675									
7		14,247	14,247									
8		14,762	14,762									
9		15,334	15,334									
10			15,678									
11			16,135	15,906								
12			16,651	16,651								
13			17,051	17,051								
14				17,681								
15				18,310	18,310							
16				18,881								
17				19,454	19,454							
18				20,026	20,026							
19					20,598							
20					21,285							
21					21,971							
22					22,600	22,315						
23					23,230	23,230						
24					24,146	24,146						
25					25,175	25,175						
26						26,205						
27						27,120	26,663					
28						28,036	28,036					
29						28,951	28,951					
30						29,981	29,981					
31						31,469	31,469					
32							32,385					
33							33,415					
34							34,558	34,558				
35							35,760	35,760				
36							36,962	36,962				
37								38,449				
38								39,937	39,937			
39								41,654	41,654			
40								42,912	42,912			
41									45,086			
42									47,603	47,603		
43									50,122	50,122		
44									51,494	51,494		
45									53,783			
46									56,301	56,301		
47									60,077	60,077		
48									61,793	61,793		
49										64,368		
50										67,515	67,515	
51										70,947	70,947	
52										74,381	74,381	
53											77,950	
54											81,692	
55											85,614	
56											89,723	

\*Pay rates in italic are special transitional points which apply only during assimilation to the new system. They are shown here for convenience. They are explained more fully in Section 46.

## Annex B

Table 12d

Pay bands and pay points on the second pay spine in England from 1 November 2007

Point	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6	Band 7	Band 8				Band 9
								Range A	Range B	Range C	Range D	
1	12,182											
2	12,577	12,577										
3	12,914	12,914										
4	13,253	13,253										
5		13,647										
6		14,042										
7		14,437	14,437									
8		14,945	14,945									
9		15,523	15,523									
10			15,870									
11			16,332									
12			16,853	16,853								
13			17,257	17,257								
14				17,893								
15				18,528								
16				19,105								
17				19,683	19,683							
18				20,261	20,261							
19					20,801							
20					21,494							
21					22,187							
22					22,823							
23					23,458	23,458						
24					24,383	24,383						
25					25,424	25,424						
26						26,464						
27						27,388						
28						28,313	28,313					
29						29,237	29,237					
30						30,277	30,277					
31						31,779	31,779					
32							32,704					
33							33,744					
34							34,899					
35							36,112	36,112				
36							37,326	37,326				
37								38,828				
38								40,330				
39								42,064	42,064			
40								43,335	43,335			
41									45,530			
42									48,072			
43									50,616	50,616		
44									52,002	52,002		
45										54,313		
46										56,856		
47										60,669	60,669	
48										62,402	62,402	
49											65,003	
50											68,180	
51											71,646	71,646
52											75,114	75,114
53												78,718
54												82,497
55												86,457
56												90,607

## Annex B

Table 12e

Pay bands and pay points on the second pay spine in England from 1 April 2008

Point	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6	Band 7	Band 8				Band 9
								Range A	Range B	Range C	Range D	
1	12,517											
2	12,922	12,922										
3	13,269	13,269										
4	13,617	13,617										
5		14,023										
6		14,428										
7		14,834	14,834									
8		15,356	15,356									
9		15,950	15,950									
10			16,307									
11			16,781									
12			17,316	17,316								
13			17,732	17,732								
14				18,385								
15				19,038								
16				19,631								
17				20,225	20,225							
18				20,818	20,818							
19					21,373							
20					22,085							
21					22,797							
22					23,450							
23					24,103	24,103						
24					25,054	25,054						
25					26,123	26,123						
26						27,191						
27						28,141						
28						29,091	29,091					
29						30,041	30,041					
30						31,109	31,109					
31						32,653	32,653					
32							33,603					
33							34,672					
34							35,859					
35							37,106	37,106				
36							38,352	38,352				
37								39,896				
38								41,439				
39								43,221	43,221			
40								44,527	44,527			
41									46,782			
42									49,394			
43									52,007	52,007		
44									53,432	53,432		
45										55,806		
46										58,419		
47										62,337	62,337	
48										64,118	64,118	
49											66,790	
50											70,055	
51											73,617	73,617
52											77,179	77,179
53												80,883
54												84,765
55												88,835
56												93,098



## Annex C

Table 13

Pay bands and pay points on the second pay spine in England from 1 April 2009

Point	Band 1	Band 2	Band 3	Band 4	Band 5	Band 6	Band 7	Band 8				Band 9
								Range A	Range B	Range C	Range D	
1	13,233	13,233										
2	13,588	13,588										
3	13,944	13,944										
4		14,359										
5		14,774										
6		15,190	15,190									
7		15,725	15,725									
8		16,333	16,333									
9			16,698									
10			17,184									
11			17,732	17,732								
12			18,157	18,157								
13				18,826								
14				19,495								
15				20,102								
16				20,710	20,710							
17				21,318	21,318							
18					22,152							
19					23,019							
20					23,345							
21					24,013							
22					24,831	24,831						
23					25,829	25,829						
24					26,839	26,839						
25						27,844						
26						28,816						
27						29,789	29,789					
28						30,762	30,762					
29						31,856	31,856					
30						33,436	33,436					
31							34,410					
32							35,504					
33							36,719					
34							37,996	37,996				
35							39,273	39,273				
36								40,853				
37								42,434				
38								44,258	44,258			
39								45,596	45,596			
40									47,905			
41									50,580			
42									53,256	53,256		
43									54,714	54,714		
44										57,146		
45										59,821		
46										63,833	63,833	
47										65,657	65,657	
48											68,393	
49											71,736	
50											75,383	75,383
51											79,031	79,031
52												82,824
53												86,800
54												90,967
55												95,333

Note: with effect from 1 April 2009 Band 1 will consist of three spine points only. Employees who are on the minimum of Band 1 as at 31 March 2009 will transfer to the new minimum point with effect from 1 April 2009 and their incremental point will become 1 April 2010. All the pay points have now been renumbered and the total scale is reduced from 56 to 55 points.



## Annex J

### Local recruitment and retention premium criteria

1. To ensure consistency in the application and payment of recruitment and retention premia, local employers should adhere to the following protocol.

#### Recruitment

2. All new vacancies should be advertised in relevant local, regional, national and/or professional media.
3. Where adverts have produced no suitable applicants, HR personnel service/department managers and staff representatives should consider the reasons for this. Account should be taken of the number of applicants, relevant national vacancy data and local labour market information, the media used and any non-pay improvements which could be made to the employment package (e.g. training opportunities, childcare, relocation), or any expected increase in the supply of staff suitable for the post.
4. If it could be reasonably assumed that vacancies could be filled through, for example, advertising in different media or by waiting for an expected increase in supply (for example from new trainees) then vacant posts should be re-advertised.
5. However, if on the basis of paragraphs 2 and 3 above, it is decided that the vacancy problem can be addressed most effectively only through payment of a recruitment and retention premium, the employer should decide in partnership with local staff representatives whether the problem is likely to be resolved in the foreseeable future (in which case any premium should be short-term) or whether it is likely to continue indefinitely (in which case any premium should be long-term (see Section 5)).
6. The employer should then consult with neighbouring employers, the strategic health authority, staff organisations and other stakeholders, before implementing any premium.

#### Retention

7. Before consideration is given to paying recruitment and retention premia to increase retention of staff, HR personnel, service/department heads and relevant staff representatives should ensure non-pay benefits (e.g. childcare support, training and development) are sufficiently developed. Where possible, local turnover rates should be compared with national rates. Employers are also advised to undertake regular exit surveys to

assess how far pay is a factor in employees' decisions to leave the organisation.

8. However, if it is decided that a retention problem can be addressed most effectively only through payment of a recruitment and retention premium, the employer should decide whether the problem is likely to be resolved in the foreseeable future (in which case any premium should be short-term) or whether it is likely to continue indefinitely (in which case any premium should be long-term (see Section 5).
9. The employer should then consult with neighbouring employers, the strategic health authority, relevant staff organisations and other stakeholders.

## Review

10. Once recruitment and retention premia are awarded, they should be reviewed annually. This review should be done by HR personnel, relevant service/department heads and staff representatives.
11. The review should consider, amongst other factors:
  - how far the recruitment and retention premia have allowed the NHS organisation to reduce its vacancy rates and turnover;
  - the likely impact on vacancies of removing or reducing a recruitment and retention premium;
  - any changes in labour market circumstances.
12. The principle consistent with equal pay for work of equal value should be that where the need for a recruitment and retention premium is reduced or has ended, short-term premia should be reduced or withdrawn as soon as possible, consistent with the protection period in Section 5. Long-term premia should be adjusted or withdrawn for anyone offered a qualifying post after the decision to withdraw or reduce the premium has been made.



## Annex P

# Coverage of NHS Pay Review Body

The NHSPRB's recommendations currently apply to all staff employed in the NHS on the pay spine and pay bands in Annexes B and C with the exception of doctors, dentists and very senior managers. (See Appendix A in the twenty third report of the Review Body [www.ome.uk.com](http://www.ome.uk.com) ).



## Annex R

# Guidance on the application of nationally agreed recruitment and retention premia

1. This note provides initial guidance on setting the levels of long-term recruitment and retention premia which have been agreed in principle at national level under the new NHS pay system.

### Background

2. Recruitment and retention premia are additions to the pay of a post or group of similar posts, where market pressures would otherwise prevent the employer from being able to recruit or retain staff in sufficient numbers, at the normal salary for jobs of that weight. The new system provides for them to be awarded on either a national or local basis. But where it is agreed nationally that a recruitment and retention payment is necessary for a particular group the level of the payment should be specified or, where the underlying problem is considered to vary across the country, guidance should be given to employers on the appropriate level of payment.
3. This guidance therefore covers the award of long-term recruitment and retention premia for staff in the limited number of posts for which the payment of a premium has been pre-agreed. This does not mean that other premia cannot be agreed locally, provided the correct procedure for determining a premium is followed as set out in Annex J, including consultation with staff representatives and other local NHS employers.

### Posts to which this guidance applies

4. The use of job evaluation to ensure fair pay between NHS jobs has revealed a number of jobs with relatively high levels of pay in relation to job weight which appear to reflect past responses to external labour market pressures. In some cases employers have used higher grades than would appear appropriate on the basis of a strict interpretation of grading definitions, in order to recruit or retain staff. In other cases there have been national agreements to improve the pay of particular grades or groups because of concerns about recruitment and retention.
5. Under normal circumstances, when the new pay system is fully operational, evidence would be sought that it is not possible to recruit or retain staff at the normal job-evaluated pay level before agreeing a recruitment and retention premium. However, this process cannot be safely applied to the transitional period in which the new system is being implemented, because data on recruitment at the new pay levels cannot be sought until the new pay rates are in force. That could result in the withdrawal of all past local and national measures aimed at dealing with recruitment problems for a period of several months and possibly longer,

while data on recruitment at the new pay levels was gathered, which could severely disadvantage the NHS in the labour market.

6. The negotiators of Agenda for Change have, therefore, agreed a list of jobs for which there is prima facie evidence from both the work on the job evaluation scheme and consultation with management and staff representatives, that a premium is necessary to ensure the position of the NHS is maintained during the transitional period. The jobs concerned are listed in Table 20, below.

Table 20

Type of post
Chaplains
Clinical coding officers
Cytology screeners
Dental nurses, technicians, therapists and hygienists
Estates officers/works officers
Financial accountants
Invoice clerks
Biomedical scientists
Payroll team leaders
Pharmacists
Qualified maintenance craftspersons
Qualified maintenance technicians
Qualified medical technical officers
Qualified midwives (new entrant)
Qualified perfusionists

7. Under these circumstances, however, it is difficult, and in most cases would be inappropriate, to determine a national rate for the premium. The agreement, therefore, provides in these cases only that the premium must be sufficient to ensure no loss (in line with the principle that the NHS should not be disadvantaged in the labour market during the transitional period) while requiring employers working in partnership with staff representatives to review the evidence available locally. The exception dealt with below is that of staff who require full electrical, plumbing or mechanical crafts qualifications, where there is a high degree of consistency in NHS rates and readily available published market rates, on the basis of which an initial rate for the premium has been set.
8. The following paragraphs provide guidance on how the no loss guarantee should be interpreted, the constraints within the new system on the maximum level of premium which may be paid and specific guidance on some of the groups concerned where additional considerations apply, including the agreed rate in the case of staff who require full electrical, plumbing or mechanical crafts qualifications.

### Minimum level of premium

9. The level of premium payable should be set locally on assimilation in cash terms, at a level at least sufficient to ensure that, at assimilation, an existing member of staff will be no worse off. The level of premium agreed locally should, therefore, be at least sufficient to ensure that the staff in these posts do not require protection under the separate protection arrangements.
10. As set out in paragraph 2 of Section 5, employers may establish different premia for different classes or types of post, provided there is evidence that the recruitment and retention position is different, for example, because they have significantly different job descriptions and are in different pay bands under the new system.

### Maximum level of premium

11. Unless necessary to ensure no loss as described above, no premium may exceed 30 per cent, except as set out below.
12. Premia in excess of 30 per cent may be paid where justified under the criteria in Annex J.

### Further guidance on specific cases

#### Qualified maintenance crafts persons and qualified maintenance technicians

13. Given the high degree of consistency in NHS rates and the existence of published market rates, it is appropriate to specify a single level of premium for staff who require full electrical, plumbing or mechanical crafts qualifications of £3,205 a year, from 1 April 2009. Premia should only exceed this rate, or the equivalent rate as uplifted under the provisions below, where that is necessary to ensure no loss under the rules in paragraphs 4 to 7, above.<sup>1</sup>
14. Premia may also be agreed locally for building crafts, subject to the guidance above on minimum and maximum rates.

### Chaplains

15. The agreement instituting the new pay system includes agreement that the chaplains' accommodation allowance should be replaced by a recruitment and retention premium. In the case of chaplains, therefore, any premium agreed, in addition to meeting the normal rules on the minimum level of allowance set out above, must not be less than the level of any accommodation allowance already in payment.

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<sup>1</sup> See the question and answer guidance in Annex A2.

### Qualified midwife (new entrant)

16. Premia should be set at the level necessary to ensure that newly qualified midwives in post, on assimilation to pay band 5, suffer no loss under the rules in paragraph 9, above. Trusts should then apply the same premium to other newly qualified midwives in pay band 5, appointed after the effective date for assimilation. No premium should be paid to midwives in more senior jobs at pay band 6 and above on the basis of this guidance. Employers are, however, free (as with all other jobs) to agree local recruitment and retention premia for other midwives locally under the new system, where the criteria are met.

### Uprating of nationally agreed premia

17. The value of the premium in paragraph 13 is the value effective from 1 April 2009. Any premia paid prior to this date should be uplifted at that date to this amount. Any uprating of premia thereafter will be by either national or local agreement.

### Review of this guidance

18. This initial guidance on the level of nationally agreed recruitment and retention premia has been drafted to allow flexibility for the service during assimilation to the new system, taking account of the fact that the current grading of posts varies widely. Future reviews of the guidance should seek to introduce greater consistency in rates of premium for newly appointed staff, unless variation is justified by the evidence.<sup>2</sup>

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<sup>2</sup> See the question and answer guidance in Annex A2.

## Annex T

### Development of professional roles

1. The NHS Job Evaluation Scheme recognises that all healthcare professionals who have, as a base level, graduate qualification, evaluate at a similar level. Whilst there may be differences, these are unlikely to be sufficient to justify a different pay band. This means that it is very likely that they will be placed on pay band 5. Thereafter, most professionals will spend a period of several years in pay band 5, developing their role.
2. It is the case thereafter, that for a minority of staff there is some divergence, as different professions follow different career pathways. There are also often different organisational structures in place to deliver healthcare.
3. There are groups of staff (such as midwives) who tend to move quickly to operate in roles that demand a level of autonomous decision making, in the overall delivery of care, that exceeds that normally associated with jobs allocated to pay band 5. Typically, these roles operate without the influence of other professional groups. Where supervision operates, it is generally management supervision and does not normally impinge upon clinical practice. In such circumstances job size should be reviewed no earlier than one year and no later than two years from the date of qualification, using the NHS Job Evaluation Scheme. If the evaluation demonstrates that the post holder's job weight is of sufficient size to move to the next pay band (pay band 6) this should be effected without the need for application for a post at a higher level. It is not expected that the review will be widespread practice as the majority of staff will work in circumstances in which there is regular clinical supervision and the delivery of care and treatment is subject to control or influence from other healthcare professionals. There is no facility for this provision to operate in any other part of the pay structure.<sup>1</sup>

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<sup>1</sup> See the question and answer guidance in Annex A2.





## Annex U

### Arrangements for pay and banding of trainees

1. The NHS has a wide range of people described as trainees, working and studying within its services. The arrangements set out below describe how those trainees employed by the NHS should be dealt with.
2. Trainees fall into three broad categories:
  - (i) trainees studying and/or working in the NHS, who are already in possession of qualifications at a high level. Such staff are often studying for a higher level qualification and undertaking a role that can be assessed using the NHS Job Evaluation Scheme. An example of this category is a trainee psychologist;
  - (ii) trainees who are undertaking a short period of learning on the job, usually less than 12 months. Typically, these staff enter whilst already in possession of the basic skills and knowledge to undertake the role. This type of trainee can also be evaluated using the NHS Job Evaluation Scheme. If profiles for this role exist, the lowest banded profile will be appropriate. During the period of traineeship the post holder should not move through the KSF foundation gateway. An example of this type of trainee is a trainee secretary;
  - (iii) trainees who enter the NHS and undertake all their training whilst an employee. Typically, these staff develop their knowledge and skills significantly during a period of time measured in years. Given the significant change in knowledge and skills during the training period the use of job evaluation is not appropriate. Pay should be determined as a percentage of the pay for qualified staff.<sup>1</sup>
3. For trainees covered by paragraph 2(iii) above, where periods of training last for between one and four years, pay will be adjusted as follows:
  - (i) up to 12 months prior to completion of training: 75 per cent of the pay band maximum of the fully qualified rate;
  - (ii) more than one but less than two years prior to completion of training: 70 per cent of the pay band maximum of the qualified rate;
  - (iii) more than two but less than three years prior to completion of training: 65 per cent of the pay band maximum for the qualified rate;
  - (iv) more than three years from completion of training: 60 per cent of the pay band maximum for the qualified rate.
4. Starting pay for any trainee must be no less than the rate of the main (adult) rate of the National Minimum Wage. Where the calculation above

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<sup>1</sup> See the question and answer guidance in Annex A2.

results in the National Minimum Wage being payable for year two and beyond, an addition to pay should be made on top of the minimum wage. The addition should be equal to the cash value of the difference between the percentages of maximum pay in the year of payment and the previous year. For example, the supplement in payment in year two would be the value of 65 per cent of pay band maximum minus 60 per cent of maximum pay for the band.

5. On assimilation to the pay band following completion of training, the trainee should enter either on the first pay point of the appropriate pay band or the next pay point above their training salary.

## Annex Z

### Managing sickness absences – developing local policies and procedures

1. The management of ill health within the NHS is challenging, but provides opportunities to improve the overall health and wellbeing in the workplace, which will ultimately boost organisational productivity and support service improvements for patients.
2. The arrangements set out in this annex are intended to support employers and staff in the management of sickness absence and in managing the risk of premature and unnecessary ill health retirements. It is intended that employers will amend, in partnership with local staff sides, their local policies and procedures consistent with the provisions of this agreement.
  1. This agreement details the responsibilities of both staff and employers in the management of ill health in the NHS.
  2. This annex should be read in conjunction with:
    - Section 14 Sickness Absence
    - Section 30 General statement on Equality and Diversity
    - Section 32 Dignity at Work
    - Section 34 Flexible working arrangements

### Local sickness absence procedures

5. Effective partnership working is crucial in achieving the effective management of sickness absences. Employers therefore, in partnership with local staff side representatives, should ensure that their local sickness absence procedure and working arrangements incorporate the minimum standards set out below, to minimise the risk of premature and unnecessary ill health retirements. This will ensure that, where possible, staff are able to continue working despite experiencing periods of ill health or disability. **The minimum standards are:**

*legal responsibilities;* including mutual responsibilities of employers and staff to comply with health and safety requirements, reporting of injuries and dangerous occurrences (RIDDOR), disability discrimination and other relevant legislation;

*key employer responsibilities;* employers are expected to:

- communicate appropriately with absent staff
- manage absences under the locally agreed sickness absence procedure;
- provide support and advice through the use of occupational health services where appropriate;

- develop reporting arrangements, recognising that high levels of sickness absence are a financial risk to the organisation;
- have appropriate management systems in place to collect good quality data on sickness absence;
- in partnership with Trade Union representatives, regularly monitor and review arrangements to identify where and how policies can be improved.

*key employee responsibilities;* employees are expected to:

- ensure regular attendance at work;
  - communicate appropriately with their employer when absent from work;
  - co-operate fully in the use of the locally agreed sickness absence procedures.
6. Partnership arrangements should also ensure the regular monitoring and review of local policies and procedures is undertaken, to identify where and how policies can be improved.

## Key elements of local procedures

### A structured review process

7. Regular reviews should be carried out to assess and monitor staff when they are off sick, and determine what action is needed at each stage. Where a member of staff is unlikely to return to work this would culminate in a final review where a decision on the appropriate way forward is made i.e. return to substantive employment or redeployment or termination of contract. It is assumed that as part of this process, that reasonable adjustments have been considered. Medical evidence should be made available to support the review process and occupational health advice should be sought on the likelihood of:
- the prospects of a likely return to the previous employment with or without adjustments;
  - a phased return with or without a need for adjustments;
  - redeployment;
  - a successful ill health retirement application.

### Early interventions

8. In order to avoid premature and unnecessary ill health retirements employers should also consider the following interventions as early as is practically possible and at the latest within one month of an employee going sick:
- *rehabilitation* – identifying appropriate ways of supporting staff to remain in work or return to work at the earliest opportunity,

through intervention with appropriate treatment. This will mean providing staff with direct access through appropriate dedicated resources, such as physiotherapy and cognitive behavioural therapy;

- *phased return* - enabling staff to work towards fulfilling all their duties and responsibilities within a defined and appropriate time period, through interim flexible working arrangements, whilst receiving their normal pay;
- *redeployment* - enabling the retention of staff unable to do their own job through ill health or injury as an alternative to ill health retirement or termination. Staff should be made aware of the provisions within the NHS Pension scheme to assist this process through "step down and wind down" arrangements;
- *sick pay entitlements* – review and decision dates should be determined taking account of the individual's sick pay entitlements and there should be a review before their sick pay ends. Procedures should make reference to the NHS Injury Benefit Scheme and, in particular, the circumstances when NHS Temporary Injury Allowance should be paid.
- *occupational health support* – Occupational health services have a responsibility to provide advice and support to both the individual and the employer. Line managers should seek advice on long term sickness cases from their occupational health service as early as reasonably practical. Individuals may also self-refer for advice and support about the best way of seeking a return to work.

## Termination

9. Where termination of the contract of employment on the grounds of incapacity is considered, all reasonable efforts should be made to obtain appropriate medical evidence via the occupational health service, including occupational health advice on the likely outcome of a successful ill health retirement application. Before a decision to terminate is made all other options should meaningfully be considered, including:
  - rehabilitation;
  - phased return;
  - a return to work with or without adjustments;
  - redeployment with or without adjustments.
10. Contractual notice must be given to a member of staff whose contract is being terminated on grounds of ill-health.



## Annex A2

### Guidance on frequently asked questions (faqs)

1. The Agenda for Change partners will make every effort to continue to support, encourage and promote a partnership approach to the operation of the pay system at local level.
2. The agreement to work in partnership to deliver an NHS pay system which supports NHS service modernisation and meets the reasonable aspirations of staff should, therefore, be replicated at local level.
3. This guidance has been jointly agreed in partnership by the NHS Staff Council Executive and is intended to help in situations where, locally, the joint partners have not so far been able to agree a suitable way forward. These answers reflect the final Agenda for Change agreement. They were previously published on the Agenda for Change website.
4. Questions relating to the NHS job evaluation scheme are in the NHS Job Evaluation Handbook.

#### Part 2: Pay

##### Part 2: Section 1: Pay Structure

###### Paragraph 6

###### Footnote number 2

**Where a post holder's role has been determined (based on one contract of employment) and it includes specialist responsibilities – is it permissible for an employee to be paid at the specialist pay band on days when they do specialist duties and at a lower pay band when they do not?**

No, the higher specialist pay band applies for all of their service.

##### Part 2: Section 1: Pay Structure

###### Paragraph 7

###### Footnote number 3

**Which senior managers in England are covered by Agenda for Change?**

The NHS Terms and Conditions of Service Handbook makes clear that there will be separate arrangements for the most senior managers working in the NHS. These will be defined as chief executives and those senior managers at board level who report directly to them. The Agenda for Change provisions will be available to all other managers who should be offered the opportunity to move onto Agenda for Change pay and terms and conditions, backdated to 1 October 2004.

## Part 2: Section 2: Maintaining round the clock services

### Paragraph 2

#### Footnote number 1

#### **What happens for staff who, before the implementation of Agenda for Change, did not receive unsocial hours payments (USH) for work in standard hours that fell within an USH period?**

Under Agenda for Change all staff who work unsocial hours within their standard working week will receive unsocial hours payments under the provisions in paragraph 2.1 to 2.30.

## Part 2: Section 2: Maintaining round the clock services

### Paragraph 5

#### Footnote number 2

#### **Do the provisions for unsocial hours payments in Annex E apply just to staff working on ambulances or to all staff?**

Paragraph 2.5 makes clear that the arrangements in Annex E should apply to ambulance staff (i.e. those who would have been subject to the provisions of the Ambulance Whitley Council had they been on national contracts). Paragraph 2.4 describes arrangements for transferring staff in former EI sites from the Annex E payments to the new payments in Section 2.

## Part 2: Section 2: Maintaining round the clock services

### Paragraphs 7, 31 and 46

#### Footnotes number 3, 7 and 8

#### **Does the protection for on-call arrangements include protection for the "rate of pay". For example, if the local protected agreement says that Sunday is double time is this protected under 2.7.**

Yes, all current on-call arrangements may be protected for groups of employees irrespective of whether they were nationally or locally agreed (paragraphs 2.7 and 2.46). It is the totality of the local national on-call agreement that is protected. Pay circular (AforC) 1/2009 announced that where flat rate on-call allowances continue to be paid in accordance with Section 2, these should be increased by 2.4%. This protection does not prevent local agreements on alterations to working patterns to meet changing service needs.

## Part 2: Section 2: Maintaining round the clock services

### Paragraph 7

#### Footnote number 4

#### **Are other groups of staff who might have had similar on-call arrangements to pathology covered by the protection offered in 2.7.**

In paragraph 2.7 the protection of on-call arrangements during the "*interim regime*" are described as "*a particular feature of NHS pathology departments.*" All out of hours working in pathology is defined as "*on-call*". However, other staff groups (including radiographers, physiotherapists and clinical scientists) who may also work similar "*out of hours*" arrangements are protected until new Agenda for Change on-call arrangements are negotiated.



## Part 2: Section 2: Maintaining round the clock services

Paragraphs 7, 31 and 46

Footnotes number 5, 6 and 8

### **On what date does the period of protection of current on-call arrangements start?**

It starts from 1 October 2004 – the effective date for new pay and conditions, except hours of work (see paragraph 46.6).

## Part 2: Section 3: Overtime payments

Paragraph 2

Footnote number 1

### **How is overtime pay calculated for staff on “protected pay”? As an example: if staff are on Agenda for Change pay point £18,000 but the protected level of pay is £20,000, is overtime paid on £20,000.**

Yes, overtime is not off-set against protected pay. Overtime payments are calculated by taking the annual rate of basic pay and working out the rate of pay per hour. In this case the annual rate of pay used will be £20,000. All overtime is payable at one and a half times the hourly rate, except overtime worked on general public holidays which is payable at twice the hourly rate (paragraph 3.1).

## Part 2: Section 3: Overtime payments

Paragraph 3

Footnote number 2

### **Under Agenda for Change when does overtime start for a part-time member of staff?**

For staff working a portion of the standard 37½ hours, overtime starts when these staff work over 37½ hours (paragraph 3.3). Where standard hours are as in Tables 9 and 10 in Section 46 overtime starts when the hours in the right-hand column in each table are exceeded.

## Part 2: Section 4: Pay in high cost areas

Paragraph 7 (see also paragraph 46.5)

Footnote number 1

### **Where a member of staff is in receipt of a COLs based RRP (4.7 and 46.5) and is promoted within the same Trust does he or she retain the RRP?**

Yes, providing the person is still in a staff group meeting the eligibility criteria.

## Part 3: Terms and conditions

### Part 3: Section 12: Contractual continuity of service

Paragraph 4

Footnote number 1

### **When calculating entitlements to annual leave should I take account of a single period of previous service or should I aggregate several periods?**

An employer must include all reckonable service when calculating annual leave entitlement (12.3). 12.2 gives discretion to employers to decide what previous (non-NHS) employment can count towards annual leave entitlement.

### Part 3: Section 13: Annual leave and general public holidays

Paragraph 1, Table 7: Leave entitlements

Footnote number 1

**What happens to my two public holiday days when Easter is in March and when, therefore, if Easter was in April the previous year, I have already had two days for Easter in the current twelve-month period?**

The Agenda for Change annual leave and general public holiday entitlements are set out in Section 13. In normal circumstances all staff are entitled to 8 general public holidays in a twelve-month period. Sometimes Easter will fall in March. This may mean that in some organisations there will, in effect, be two Easter holidays in the same twelve-month period. In such circumstances the local partners will need to decide on the appropriate action to take. Pragmatically, this might mean anticipating the two public holidays falling in the next twelve-month period.

### Part 3: Section 13: Annual leave and general public holidays

Paragraph 4

Footnote number 2

**Does paragraph 13.4 provide an entitlement to equivalent time off at plain time rates, plus the appropriate payment, on top of the standard entitlement to 8 general and public holidays (see table 7).**

No – paragraph 13.4 preserves the right to 8 general public holidays. It does not provide additional entitlements.

### Part 3: Section 13: Annual leave and general public holidays

Paragraph 4

Footnote number 2

**How is pay and time off in lieu (TOIL) calculated when staff work on general public holidays?**

Staff required to work or to be on-call on a general public holiday are entitled to time off in lieu at plain time rate in addition to the appropriate payment for the duties undertaken (paragraph 13.4).

Staff who are required to work more than 60 hours (8x7½ hours) on general public holidays, in their personal leave year, will receive TOIL at plain time rate for all of the hours worked and the appropriate payment for all of the hours worked. The 60 hour threshold will be set on a pro-rata basis for part-time staff. E.g. if staff were required to work 70 hours per year on public holidays they would receive 70 hours TOIL, plus the appropriate payment.

Staff who volunteer to work more than 60 hours in their personal leave year will receive TOIL at plain time rate up to the 60 hour threshold and the appropriate payment for the duties they undertake. For any time worked over the 60 hour threshold they will receive payment only.

Guidance on what to do when Easter falls in March and entitlements to public holiday leave exceed 8 days in a leave year is in another Q and A.

### Part 3: Section 13: Annual leave and general public holidays

Paragraph 5

Footnote number 3

#### **Which staff (working non-standard shifts), under 13.5, would require their annual leave to be calculated in hours?**

*"Where staff work standard shifts other than 7½ hours excluding meal breaks, annual leave and general public holiday entitlements should be calculated on an hourly basis to prevent staff on these shifts receiving more or less leave than colleagues on standard shifts."* This applies to all staff working standard shifts other than 7½ hours, excluding meal breaks.

### Part 3: Section 14: Sickness absence

Paragraph 4

Footnote number 1

#### **Are on-call allowances and on-call payments included in pay during sickness absence?**

Paragraph 14.4 allows regularly paid supplements to be included in pay during sickness absence. This will include on-call allowances and on-call payments where these are normally paid at regular intervals. An allowance which is paid only occasionally will not count.

### Part 3: Section 14: Sickness absence

Paragraph 4

Footnote number 2

#### **How is the reference period for calculating sick pay determined under Section 14?**

This is the average pay for the three month period ending on the day before an employee commences sick leave – or any other locally agreed reference period.

### Part 3: Section 19: Other terms and conditions

Paragraph 1

Footnote number 1

#### **What happens to "MUFTI" allowances in Agenda for Change?**

There is no national provision for this within Agenda for Change. MUFTI is not part of the evaluation scheme and is, therefore, not an allowance replaced by the scheme. It is our view that any discussion on the provisions of MUFTI allowances are for local partnerships. The partners to any such discussion should give careful consideration to the equal pay implications of any MUFTI provisions that they might contemplate.

### Part 3: Section 19: Other terms and conditions

Paragraph 1

Footnote number 1

#### **What happens when local partnerships are not able to reach agreement on "other" terms and conditions of service not covered in the NHS Terms and Conditions of Service Handbook (see paragraph 19.1)?**

Paragraph 19.1 of the Handbook states *“Other terms and conditions not covered in this Handbook will be determined locally following consultation with staff representatives with a view to reaching agreement on such terms and conditions or any changes to them (see Annex O).”* In the absence of a local agreement the previous contractual arrangements for those on national contracts will apply.

## Part 7: Transitional arrangements

### Part 7: Section 46: Assimilation and protection

#### Paragraph 2

##### Footnote number 1

**Paragraph 46.2 provides for staff on local contracts, not incorporating national agreements on pay and conditions of service the opportunity to assimilate to Agenda for Change. Can staff whose NHS contract of employment arises from a TUPE transfer into the NHS prior to 1 October 2004 exercise the right to assimilate or not to assimilate to Agenda for Change terms and conditions.**

Yes, staff who have transferred into the NHS who are not on Whitley or shadow Whitley contracts will be deemed to be NHS employees for the purposes of Agenda for Change implementation. For the purposes of paragraph 46.2 staff on local contracts will have the right to opt for Agenda for Change assimilation or remain on their existing terms and conditions.

### Part 7: Section 46: Assimilation and protection

#### Paragraph 2

##### Footnote number 1

**If a member of staff on a local contract is offered assimilation to a pay band where the matching or evaluation outcome is subject to review, can the post holder defer a decision until the outcome of the review is known, but still maintain the original effective date of assimilation?**

Yes.

### Part 7: Section 46: Assimilation and protection

#### Paragraph 2: second bullet

##### Footnote number 2

**Is the effect of the second sub-clause in paragraph 46.2 to give staff who defer their decision until the outcome of the review, the right to backdating to 1 October 2004?**

No – providing these staff give their employer reasonable notice their effective date of assimilation and the effective date for Agenda for Change pay and conditions will be the effective date of the new unsocial hours arrangements.

### Part 7: Section 46: Assimilation and protection

#### Paragraph 5

##### Footnote number 3

**Are new staff to be recruited to the new conditions, including new standard hours of 37½, from 1 December 2004?**

Yes – subject to the provision in paragraph 46.5 allowing recruitment on pre-Agenda for Change terms. In accordance with this paragraph the protection provisions apply, including those on hours of work, Tables 9 and 10. Where a staff group is increasing hours under Agenda for Change (e.g. radiographers) if recruiting new starters at 37½ hours causes problems the local parties would have to agree in partnership how to proceed.

Part 7: Section 46: Assimilation and protection

Paragraph 6

Footnote number 4

**Do we recover money overpaid as a result of a gap between implementing specific parts of Agenda for Change and the final assimilation to the whole package?**

Where partners agree locally to implement the new Agenda for Change overtime rates at the same time as assimilation the following method should be applied:

- a calculation commencing October 1 should take the total earnings for an individual under the original conditions and a similar calculation for total earnings that would have applied had Agenda for Change been operational;
- (a) total earnings from 1 October 2004 to personal assimilation date under original conditions ;
- (b) total earnings under Agenda for Change conditions from 1 October 2004;
- (c) (b) minus (a) = positive or negative figure.

Subject to this calculation a positive figure would not be recovered (unless it is as a result of any cause other than the implementation of Agenda for Change).

Part 7: Section 46: Assimilation and protection

Paragraph 9

Footnote number 5

**Do staff continue to receive pay increments on their Whitley basic pay past 1 October and 1 December 2004 and until they are assimilated to Agenda for Change pay?**

Yes – and the basic pay on the effective assimilation date is to be calculated as in paragraph 46.9.

Part 7: Section 46: Assimilation and protection

Paragraph 12 second bullet point

Footnote number 6

**What is meant by, “ . . . . significantly below the minimum . . . .” in relation to assimilation to transitional points on the pay scale (para 46.12, second bullet point)?**

This was not specified in the agreement and was left for those assimilating to conclude for themselves. We are aware that in many cases local partnerships have already reached agreements on how to apply this clause and we have no

wish to disturb these arrangements. However, those local partnerships still interpreting this clause should be aware that the intention of the Agenda for Change negotiators was that transitional points would apply where salary before assimilation was below both the minimum of the new pay band and one of the transitional points. In these circumstances the normal rules for assimilation should apply and assimilation would be made to the next highest point. This is demonstrated by the following examples, using band 3:

- an individual matched to Band 3 on a pre-assimilation salary of £12,000 would assimilate to the first Band 3 transitional point i.e. £12,044;
- while an individual on a pre-assimilation salary of £12,050 would assimilate to the second Band 3 transitional point i.e. £12,539.

### Part 7: Section 46: Assimilation and protection

#### Paragraph 15

##### Footnote number 7

#### **Can a new appointee be placed on a transitional point when there are no other members of their job/professional group in that unit (or equivalent work area) on a transitional point in their pay band?**

Paragraph 46.15 is clear on this point. Staff can only be appointed to a transitional point where there are already other staff in their job/professional group in that unit (or equivalent work area) on a transitional point.

### Part 7: Section 46: Assimilation and protection

#### Paragraph 17

##### Footnote number 8

#### **Are there any special arrangements for the assimilation of staff who are approaching retirement age?**

Paragraph 46.17 provides rules for staff whose basic pay before assimilation is below their new minimum. There are no other special provisions for staff approaching retirement age, who assimilate according to the provisions in Section 46, including the provisions for protection.

### Part 7: Section 46: Assimilation and protection

#### Paragraph 19 and Table 8.

##### Footnote number 9

#### **Will student training allowance be taken into account when assimilating staff onto Agenda for Change?**

For assimilation purposes the value of any student training allowance (STA) received by staff in the year prior to the effective date of the agreement will be the amount taken into account for assimilation purposes. There may be cases where staff have previously regularly taken students but during the year prior to the effective date of the agreement were prevented from doing so. Such circumstances may include absence due to maternity or carer leave, career break, secondments, union representatives preparing for Agenda for Change implementation, or where the individual agreed, at the request of their employer, to undertake other duties which did not attract a STA. In such cases the intention is not to penalise staff on assimilation and staff in the

circumstances above should therefore have the values of any allowance received, in any one year, during the period 1 October 2001 to 30 September 2003, included for assimilation purposes. Finally, when assimilating part-time staff who received STA, the whole-time value of the allowance should be added to the whole-time value of the basic pay and other relevant payments and then pro-rated.

## Part 7: Section 46: Assimilation and protection

Paragraph 19 and Table 8

Footnote number 9

### **How are arrears of pay to be calculated when someone “acts up” and works in a role at a higher level of responsibility for a period between 1 October 2004 and their date of assimilation to Agenda for Change?**

Two pay histories need to be constructed. Each will start on 1 October 2004 and finish on the day before assimilation. Table 8 in Section 46 of the Handbook sets out what items should be included in each pay history.

One history details actual pay and all changes to pay under Whitley “before assimilation” and will include details of any changes to pay reflecting the period of “acting up.” The second pay history details what would have been paid if the employee had been receiving Agenda for Change pay on 1 October 2004 and throughout the rest of the period. In this pay history Agenda for Change pay for the period of the “acting up” needs to be determined using paragraphs 6.30 to 6.32 in the Handbook. Paragraph 31 says that when the person acting up is not required to carry out the full responsibilities of the post, pay will be determined by job evaluation. Both parties will need to agree the two pay histories. A comparison of the two totals produced when all the calculations in each pay history have been done will show if arrears of pay, including any arrears of pay attributable to the period of “acting up”, are due. Paragraph 3.6 in the NHS job evaluation Handbook describes the jointly agreed procedures when jobs change.

## Part 7: Transitional arrangements

### Part 7: Section 46: Assimilation and protection

#### Pay protection arrangements

Paragraph 22

Footnote number 10

### **How does pension protection work for employees whose pay is subject to the Agenda for Change pay protection provisions in Section 46?**

Individual members of staff will not be required to make applications for the protection of their pensions. Employers will identify staff whose pay is protected and provide the relevant details to the NHSBSA Pensions Division. The NHSBSA will provide the employee with a letter confirming that pension benefits have been protected.



## Part 7: Section 46: Assimilation and protection

Paragraphs 30 and Table 9.

Footnote number 11

### **When does overtime start for staff moving down from their current contracted hours to the new standard hours in Agenda for Change?**

Overtime starts when staff begin working more than their new standard hours set out in Table 9 in Section 46. For example, for someone working more than 41 hours before Agenda for Change overtime would start when, after 1 December 2004, they work more than 40½ hours in a week.

## Part 7: Section 46: Assimilation and protection

Paragraphs 31 and Table 10.

Footnote number 12

### **When does overtime start for staff moving up from their current contracted hours to the new standard hours in Agenda for Change?**

Overtime starts when staff begin working more than their standard hours set out in Table 10 in Section 46. For example, for someone working more than 33 hours before Agenda for Change this would be when they work more than 33 hours from 1 December 2004.

## Part 7: Section 46: Assimilation and protection

Paragraph 31 and Table 10.

Footnote number 12

### **When does protection of hours apply?**

Paragraph 46.31 of the NHS Terms and Conditions of Service Handbook states “staff currently working less than 37½ hours, excluding meal breaks, will have their hours protected for a phased protection period as set out in Table 10.

These protection arrangements will continue to apply where staff move to a post with the same hours under the old pay system during the protection period.” The following examples provide advice on when protection does and does not apply. An employee remaining in the same post will keep their protected hours for the period set out in Table 10. An employee who moves to a new post, within the same job family, on the same pay band, either within the same organisation or to another NHS employer, continues to receive protection for the period set out in Table 10. An employee who is recruited into another post prior to assimilation within the same job family, on a higher pay band, continues to receive protection for the period set out in Table 10. Protection will be lost if an employee moves to a new post within the same job family, on a higher pay band, after assimilation to Agenda for Change. Protection will be lost if an employee either moves to a new post outside their job family or leaves the NHS. The Executive does not intend that this guidance should disturb any local agreements on protection of hours reached on a partnership basis.

## Part 7: Section 46: Assimilation and protection

Paragraph 34.

Footnote number 13



**How is the leave entitlement pre-assimilation determined to establish whether protection is required?**

Where an entitlement to annual leave is reduced under Agenda for Change paragraph 46.34 provides that the previous entitlement can be protected for five years from the date of assimilation. Leave pre-assimilation is the total of Whitley or locally agreed leave plus the two statutory leave days, if they have not already been converted into annual leave.

Part 7: Section 46: Assimilation and protection

Paragraph 34.

Footnote number 13

**What happens when an employee, who has their annual leave entitlement protected moves employer/post? Do they retain the protection?**

Paragraph 46.34 applies. "Any member of staff whose leave entitlement is reduced under Agenda for Change will have their existing entitlement protected for five years from the date of assimilation onto the new system." Individuals would retain their protection, subject to continuity of service. Where there is a break in service, however, protection no longer applies.

Part 7: Section 46: Assimilation and protection

Paragraph 42.

Footnote number 14

**Do PRP payments continue under Agenda for Change?**

Such schemes cease at the date of implementation. Any new scheme must be such that all staff in the organisation, or unit or work area concerned have fair access to it.

Implementation annexes: Annex R: Guidance on the application of nationally agreed recruitment and retention premia

Paragraph 13

Footnote number 1

**Are trusts that employ maintenance crafts persons and qualified maintenance technicians required to pay the specified amount of national recruitment and retention premia or can this be varied to a lower rate or not paid at all?**

The amount specified in Annex R should be paid to all staff so designated. RRP cannot be paid at less than the agreed national rate (£3,205). The nationally agreed rate can be increased "where it is necessary to ensure no loss under the rules in paragraphs 4 to 7 in Annex R (paragraph 13). The minimum level of RRP in Annex R should be paid until it is otherwise varied by the Staff Council.

Implementation annexes: Annex R: Guidance on the application of nationally agreed recruitment and retention premia

Paragraph 13

Footnote number 1

**Will the recruitment and retention premium for qualified maintenance crafts persons and technicians be updated?**

Yes – the value of the premium is £3,205 from 1 April 2009. (See also paragraph 17 in Annex R).

Implementation annexes: Annex R: Guidance on the application of nationally agreed recruitment and retention premia

Paragraph 18 in Annex R: National Long-Term Recruitment and Retention Premia  
Footnote number 2

**How long do the national long-term RRP for posts in the list in Table 20 in Annex R continue?**

On assimilation the minimum level of premium for posts listed in Table 20 should be set locally. During the transition period the level of premium should be at least sufficient to ensure that staff do not require pay protection (paragraph 9 in Annex R). After the transition period local partnerships will need to review the value of any continuing RRP in accordance with the provisions in Section 5. This does not apply to RRP for qualified maintenance craft persons, qualified maintenance technicians and chaplains in Annex R.

Implementation annexes: Annex T: Development of professional roles  
Paragraph 3

Footnote number 1

**Does the provision for movement into pay band 6 apply to staff groups other than midwives?**

This provision is not restricted to midwives. Annex T applies to all staff groups meeting the criteria in paragraph 3. In the circumstances described, job size should be reviewed no earlier than one year and no later than two years from the date of qualification, using the NHS Job Evaluation Scheme.

Implementation annexes: Annex T: Development of professional roles  
Paragraph 3

Footnote number 1

**Will guidance be provided (in partnership) in respect of the application of paragraph 3 other than that which is already described?**

There are no plans for further guidance on Annex T.

Implementation annexes: Annex U: Arrangements for pay and banding of trainees

Paragraph 2 (iii)

Footnote number 1

**Are trainees who are covered by Annex U (paragraph 2 (iii)) subject to the foundation and second gateway?**

There are no agreed pay bands or pay scales for trainees under 2 (iii). It follows that there is no point identified in their pay where there is an agreed second gateway. All staff who have served less than one year in their post are subject to the foundation gateway.