

Pay Circular (AforC) 5/2010

Changes to NHS Terms and Conditions of Service Handbook (amendment 20): Section 2: Maintaining round the clock services: on-call: Section 17 and Annex M: mileage allowances and lease cars

To: All NHS employers

Summary

This pay circular informs employers of the NHS Staff Council's agreements on:

- Section 2: Maintaining round the clock services - on-call. This follows the consultation with the NHS on draft principles between 15 July and 10 September 2010; and
- Section 17: Mileage allowances - an amendment to the procedures which apply when lease cars are offered to employees. In Annex M there is an addition to the principles underpinning local lease car schemes.

Action

1. Section 2:- the current national on-call payment protection arrangements end on 31 March 2011. The NHS Staff Council has agreed that after this date the arrangements for staff providing on-call cover must be agreed locally in partnership in line with the definition and principles in the new Annex A3. Employers need to have plans for the conduct of local negotiations and the payment of on-call after the national pay protection ends.
2. Section 17:- employers should review the procedures they use when offering lease cars to employees.

On-call (Section 2)

3. The NHS Staff Council has agreed a set of principles to underpin local negotiations to harmonise on-call payments. This follows the review of on-call and the consultation on the draft principles between 15 July and 10 September 2010. Implementation guidance has been agreed to support local partnerships in the conduct of their negotiations.
4. Details of the changes made effective by this circular are in the Appendix attached.

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Lease cars (Section 17 and Annex M)

5. Paragraph 4 in Section 17 refers to the use of the public transport rate of reimbursement (PTR) when an employee declines the employer's offer of a lease car. This paragraph has been expanded to introduce a test of "reasonableness" and explain the need for discussions between the employer and employee to explore all the relevant circumstances applying to each before a decision is made.
6. In Annex M an additional principle has been added to the list of those underpinning local lease car policies. This confirms that lease car schemes should provide for cars to be accepted on the basis of either business only use or a combination of business and personal use. Leased vehicles which are for business use only are to be treated as "pool" cars.
7. Lease car policies and the arrangements for "pooled" and hire cars remain the responsibility of employers to determine locally using the principles in Annex M.

Enquiries

8. Employees must direct personal enquiries to their employer.
9. Employers should direct enquiries to: www.agendaforchange@nhsemployers.org
10. Copies of this circular can be downloaded from: www.nhsemployers.org
11. 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/PayAndContracts/AgendaForChange/Pages/Afc-AtAGlanceRP.aspx
12. 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:

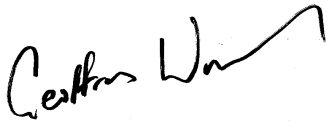
www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Advancedletters/index.htm

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Issued by

A handwritten signature in black ink, appearing to read 'Geoffrey Winnard', with a stylized flourish at the end.

Geoffrey Winnard
Head of Agenda for Change/Non-Medical Pay
NHS Employers

Annex

Pay circular (AforC) 5/2010

NHS Terms and Conditions of Service Handbook: amendment number 20

The changes made effective by this circular are:

Title page

“Amendment number 19” is deleted and replaced by **“Amendment number 20”**
“Pay circular (AforC) 4/2010” is deleted and replaced by **“Pay circular (AforC) 5/2010”**.

Contents

The words **“Annex A3 Principles for harmonised on-call arrangements”** are added at the end of the list of contents.

Section 2

Maintaining round the clock services

A new paragraph 2.1 is inserted which is:

“This Section is in three parts. Paragraphs 2.2 to 2.31 apply. Paragraphs 2.33 to 2.53 will apply until 31 March 2011. Paragraphs 2.54 to 2.57 apply from 1 April 2011.”

All the subsequent paragraphs in this Section are renumbered.

Paragraph 2.8: line 6: the words “paragraphs 2.8 to 2.30” are deleted and the words **“paragraphs 2.9 to 2.31”** are inserted”.

Paragraph 2.14: This is:

“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.”

It is amended so that it is:

“Any extra time worked in a week, above standard hours, will be treated as overtime and Section 3 will apply. Paragraphs 2.33 to 2.57 and Annex A3 set out the arrangements for on-call and other extended service cover. Staff cannot receive unsocial hours payments and payments for on-call and other extended service cover for the same hours of work.”

A new paragraph 2.32 is inserted which is:

“Paragraphs 2.33 to 2.53 describe the arrangements for on-call and other extended service provision which will apply until 31 March 2011. Paragraphs 2.54 to 2.57 describe the arrangements for on-call and other extended service provision which will apply from 1 April 2011.”

All subsequent paragraphs are renumbered.

Paragraph 2.36: line 2: the reference to paragraph 2.46 is deleted and replaced by **“paragraph 2.48”**.

In line 7 “paragraphs 2.35 to 2.40 are deleted” and replaced by “**paragraphs 2.37 to 2.42.**”

A new Heading “**On-call and other extended service cover from 1 April 2011**” is inserted after paragraph 2.53. Paragraphs 2.54 to 2.56 are new. They are:

- 2.54 On-call systems exist as part of arrangements to provide appropriate service cover across the NHS. A member of staff is on-call when, as part of an established arrangement with his/her employer, he/she is available outside his/her normal working hours – either at the workplace, at home or elsewhere – to work as and when required.**
- 2.55 Employees on-call are entitled to receive an on-call payment. This payment will be determined by local agreement on harmonised payments for on-call and other extended service cover. Local agreements need to be consistent with the 12 principles set out in Annex A3.**
- 2.56 The” interim regime” formerly set out in paragraphs 2.35 to 2.51 is consistent with these principles. It is now in Annex A3.**

The Heading “**Christmas and New Year holidays at weekends**” is inserted after paragraph 2.56 and the content of paragraph 2.52 is repeated in a new paragraph 2.57:

“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”

Section 3: Overtime payments

Paragraph 3.6 (line 2): “(see Section 2, paragraph 2.43)” is deleted and the words “**(see Section 2, paragraph 2.45)**” are inserted.

Section 13: Annual leave and general public holidays

Paragraph 13.4: line 4: the words “(see Section 2)” are deleted and replaced with **(see Section 2 and Annex A3)**”

Section 17: Mileage allowances

Paragraph 4 is:

“Employees who prefer to use their own car rather than accept the employer’s offer of a lease car shall be reimbursed at the rate of mileage allowance set out in paragraph 1 of Annex L”.

This is replaced by new paragraphs 4, 5 and 6 which are:

- “ 17.4 The rate of reimbursement in paragraph 1 in Annex L will apply if an employee unreasonably declines the employers’ offer of a lease car.**
- 17.5 In determining reasonableness the employer and employee should seek to reach a joint agreement as to whether a lease car is appropriate and the timeframe by which the new arrangements will apply. All the relevant circumstances of the employee and employer will be**

considered including an employees' personal need for a particular type of car and the employers' need to provide a cost effective option for business travel.

17.6 If the employee's circumstances subsequently change the original decision will be reviewed. The agreed principles underlying local lease car policies are in Annex M."

All subsequent paragraphs are renumbered.

Paragraph 17.7: line 5: the words "paragraph 17.9" are deleted and replaced by "**paragraph 17.11**"

Paragraph 17.15: line 2: the words "paragraph 17.12" are deleted and replaced by "**paragraph 17.14**".

Paragraph 17.21: line 3: the words "paragraph 17.7 and 17.8" are deleted and replaced by the words "**paragraph 17.9 and 17.10**".

Paragraph 17.25: line 1: the words "paragraphs 17.21 and 17.22" are deleted and replaced by "**paragraphs 17.23 and 17.24**"

Section 34: Flexible working arrangements

Paragraph 34.1: the words "**and Annex A3: Principles for harmonised on-call arrangements**" are added at the end of this paragraph.

Section 46: Assimilation and protection

Table 8: left hand column: line 16: the words "see paragraph 2.46" are deleted and replaced by "**see paragraph 2.48**".

Right hand column: line 12: the words "see paragraph 2.46" are deleted and replaced by "**see paragraph 2.48**".

Paragraph 46.22: line 7: the words "paragraph 46" are deleted and replaced by "**paragraph 48**".

Annex D: Working or providing emergency cover outside normal hours

Paragraph 1: line 3: the words "(see paragraph 31 in Section 2)" are deleted and replaced by "**(see paragraph 33, in Section 2)**".

Under the heading "Scientific and professional staff" in the right hand column: line 4: the words "no provision: see Section 2, paragraph 31" are deleted and replaced by "**see Section 2, paragraph 33.**"

Under the heading "Scientific and professional staff" in the right hand column: line 7: the words "no provision: see Section 2, paragraph 31" are deleted and replaced by "**see Section 2, paragraph 33.**"

Annex M: Lease car policies

A new third sub-clause is added to paragraph 1 which is:

iii. schemes should provide for lease cars to be accepted on the basis of business only use or a combination of business and private use. Where

cars are accepted for business use only these cars should be classed as “pool” cars.

Annex X: Working or providing emergency cover outside normal hours

Paragraph 4: line 7: the words “paragraphs 2.31 to 2.49” are deleted and replaced by **“paragraphs 2.33 to 2.51.”**

In the same sentence the words “of the Terms and Conditions of Service Handbook” are deleted.

A new sentence is inserted, starting at line 7, as follows:

“(See paragraphs 2.54 to 2.56 and Annex A3)”.

Annex A2: Guidance on frequently asked questions

The references to paragraphs in Section 2 in the questions which relate to this Section are amended to reflect the renumbering of paragraphs in the new Section 2. The changes are:

Part 2: Section 2: Maintaining round the clock services

~~Paragraph 2~~

Paragraph 3

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~~ **2.2 to 2.31**.

Part 2: Section 2: Maintaining round the clock services

~~Paragraph 5~~

Paragraph 6

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~~ **2.6** 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~~ **2.5** 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~~

Paragraphs 8, 33 and 48

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~~ **2.8**.

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~~ **2.8** and ~~2.46~~ **2.48**). 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~~

Paragraph 8

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~~ **2.8**?

In paragraph ~~2.7~~ **2.8** 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~~

Paragraphs 8, 33 and 48

Footnotes number 5, 6 and 8

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

The following text is added to the end of the Annex:

“Implementation annexes: Annex A3: Principles for harmonised on-call arrangements

Interim regime

Paragraph 48

Footnote number 1

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 2.8.

Yes, all current on-call arrangements may be protected for groups of employees irrespective of whether they were nationally or locally agreed (paragraphs 2.8 and 2.48). 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.

Implementation annexes: Annex A3: Principles for harmonised on-call arrangements

Interim regime

Paragraph 48

Footnote number 1

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).”

Annex A3: Principles for harmonised on-call arrangements is a new Annex.

NHS terms and conditions of service handbook

Amendment number 20
Pay Circular (AforC) 5/2010

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Section 2: Maintaining round the clock services

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

- 2.1 This Section is in three parts. Paragraphs 2.2 to 2.31 apply. Paragraphs 2.33 to 2.53 will apply until 31 March 2011. Paragraphs 2.54 to 2.57 apply from 1 April 2011.
- 2.2 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.
- 2.3 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.¹
- 2.4 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.
- 2.5 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.
- 2.6 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.² 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.

¹ See the question and answer guidance in Annex A2.

² See the question and answer guidance in Annex A2.

- 2.7 The arrangements which will apply to ambulance staff in Scotland and Wales will be discussed and agreed in partnership in each country.
- 2.8 During the “interim regime” staff were able to retain their existing on-call provisions (both national and local).³ 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 2.9 to 2.31 below will not apply.⁴ Protection will continue up to 31 March 2011.⁵
- 2.9 The standard hours of work are set out in Section 10, paragraph 1.
- 2.10 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.
- 2.11 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.
- 2.12 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.
- 2.13 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.
- 2.14 Any extra time worked in a week, above standard hours, will be treated as overtime and Section 3 will apply. Paragraphs 2.33 to 2.57 and Annex A3 set out the arrangements for on-call and other extended service cover. Staff cannot receive unsocial hours payments and payments for on-call and other extended service cover for the same hours of work.

³ See the question and answer guidance in Annex A2.

⁴ See the question and answer guidance in Annex A2.

⁵ See the question and answer guidance in Annex A2.

Table 2

Column 1	Column 2	Column 3
Pay band	All time on Saturday (midnight to midnight) and any week day after 8 pm and before 6 am	All time on Sundays and Public Holidays (midnight to midnight)
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%

- 2.15 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).
- 2.16 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.
- 2.17 Staff will only receive one rate of percentage enhancement for each hour worked.

Promotion

- 2.18 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

- 2.19 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

- 2.20 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

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

Part time staff and other staff working non-standard hours

2.22 Part time staff working less than 37½ hours a week will be eligible for percentage enhancements for unsocial hours.

2.23 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.

2.24 Staff on annualised hours contracts will be eligible for percentage enhancements for unsocial hours as in Table 2.

Staff working overtime

2.25 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

2.26 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

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

2.28 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.

2.29 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.

- 2.30 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.
- 2.31 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

- 2.32 Paragraphs 2.33 to 2.53 describe the arrangements for on-call and other extended service provision which will apply until 31 March 2011. Paragraphs 2.54 to 2.57 describe the arrangements for on-call and other extended service provision which will apply from 1 April 2011.
- 2.33 From 1 October 2004⁶ 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 2.48, or to use the on-call provisions set out below.⁷ 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.
- 2.34 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 2.48 specifies the period of protection of on-call.

Interim regime

- 2.35 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

⁶ See the question and answer guidance in Annex A2.

⁷ See the question and answer guidance in Annex A2.

provide cover and any advice given by telephone during periods of on-call availability.

- 2.36 Subject to the provision for retention of current on-call provisions under the protection arrangements set out in paragraph 2.48, 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 2.37 to 2.42 below.

Pay enhancements for on-call cover

- 2.37 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.
- 2.38 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.
- 2.39 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.
- 2.40 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.
- 2.41 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.
- 2.42 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

- 2.43 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

- 2.44 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.
- 2.45 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.
- 2.46 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.
- 2.47 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.

- 2.48 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.⁸ This extended protection will apply to existing staff and new staff during the period of protection.
- 2.49 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

- 2.50 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.
- 2.51 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

- 2.52 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

Transitional arrangements

- 2.53 See Section 46 for further information on assimilation and protection.

⁸ See the question and answer guidance in Annex A2.
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On-call and other extended service cover from 1 April 2011

- 2.54 On-call systems exist as part of arrangements to provide appropriate service cover across the NHS. A member of staff is on-call when, as part of an established arrangement with his/her employer, he/she is available outside his/her normal working hours – either at the workplace, at home or elsewhere – to work as and when required.
- 2.55 Employees on-call are entitled to receive an on-call payment. This payment will be determined by local agreement on harmonised payments for on-call and other extended service cover. Local agreements need to be consistent with the 12 principles set out in Annex A3.
- 2.56 The “ interim regime ” formerly set out in paragraphs 2.35 to 2.51 is consistent with these principles. It is now in Annex A3.

Christmas and New Year holidays at weekends

- 2.57 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

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.¹
- 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.²
- 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 2.45).
- 3.7 Time off in lieu of overtime payments will be at plain time rates.

¹ See the question and answer guidance in Annex A2.

² 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 entitlements¹

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 and Annex A3).²
- 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.³
- 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.

¹ See the question and answer guidance in Annex A2.

² See the question and answer guidance in Annex A2.

³ 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 17: Mileage allowances¹

Lease cars

- 17.1 Where locally, staff and employer representatives agree arrangements which provide benefits to staff beyond those provided by this section or are agreed as operationally preferable, those local arrangements will apply.
- 17.2 Employers may offer lease cars² to employees whom they require to be mobile and where they deem it in the interest of the service to do so.
- 17.3 The base vehicle (i.e. the employer's assessment of the particular size or type of vehicle appropriate to the post or its financial equivalent) should have an engine capacity no larger than 1800cc. However, this shall not prevent an employee who is willing to pay the excess costs (e.g. of a larger engine capacity or a better equipped car) from choosing a car other than the base vehicle, where the option of contracting for private use is exercised.
- 17.4 The rate of reimbursement in paragraph 1 in Annex L will apply if an employee unreasonably declines the employers' offer of a lease car.
- 17.5 In determining reasonableness the employer and employee should seek to reach a joint agreement as to whether a lease car is appropriate and the timeframe by which the new arrangements will apply. All the relevant circumstances of the employee and employer will be considered including an employee's personal need for a particular type of car and the employers' need to provide a cost effective option for business travel.
- 17.6 If the employee's circumstances subsequently change the original decision will be reviewed. The agreed principles underlying local lease car policies are in Annex M.

Withdrawal of lease car

- 17.7 Where, after joint consideration of the current options, including the alternative means of mobility, the employer decides not to continue to offer the use of a lease car to a lease car user, the employee shall be entitled to the regular user allowances and lump sums set out in Annex L, provided the qualifications set out in paragraph 17.11 below apply, or to the standard rate of mileage allowance as set out in Annex L.

¹ This is an abbreviated version of the Section 24 of the GWC Handbook and is not intended to replace provisions that are in place at local level.

² Lease cars for the purposes of this agreement shall be taken to include pool cars, i.e. a car leased or owned by the employer and available for NHS business use only.

Other arrangements

- 17.8 Detailed arrangements governing the provision, use, reimbursement of costs, and charges for private use of lease cars shall be decided locally, taking account of the principles set out at Annex M. Where the employer withdraws the offer of the private use of a lease car, the employee is entitled to full mileage rates.

Mileage and other allowances

- 17.9 For the purpose of this agreement the term 'motor cycles' includes motor cycle combinations, motor scooters and motor-assisted bicycles.

Public transport mileage rate

- 17.10 Standard or regular user rates of mileage allowance shall not apply if an employee uses a private motor vehicle in circumstances where travel by public transport would be appropriate. For such journeys the public transport rate set out in Annex L shall be paid, unless this is higher than the standard or regular user rate for the appropriate engine band, when that lower rate should be paid.

Regular user allowances

- 17.11 The allowances set out in paragraph 2 of Annex L shall be paid to those employees who are classified by their employer as a regular car user and for whom their employer has deemed it uneconomic, or is unable, to offer them a lease car, even though they are required by their employer to travel on NHS business and, in so doing, either:

- travel an average of more than 3,500 miles a year;
- or
- travel an average of at least 1,250 miles a year, **and**
 - necessarily use their car an average of three days a week;
 - or
 - spend an average of at least 50 per cent of their time on such travel, including the duties performed during the visits;
 - or
- travel an average of at least 1,000 miles a year and spend an average of at least four days a week on such travel, including the duties performed during the visits.

- 17.12 If there is a change in an employee's duties, or if the annual official mileage falls below that on which a regular user classification was based, the continued application to the employee of the regular user provisions

shall be reconsidered. Any decreases in the annual official mileage or the frequency of travel, which is attributable to either prolonged sick leave or the temporary closure of one place of duty, should be ignored for this purpose.

- 17.13 Payments of the annual lump sum allowances shall be made in equal monthly instalments over a period from 1 April in any year to 31 March in the succeeding year.
- 17.14 In the case of employees who take up an appointment or leave the employment of their employer after 1 April in any year, the total allowance payable should be so calculated that the amount payable is directly proportionate to a full year's allowance. The calculation of the mileage allowance should thus be in accordance with the following procedure:
- the mileage allowance to be paid at the higher rate would, at 9,000 miles per annum, be equivalent to 750 miles per month of service. The excess over 750 miles per month of service would be paid at the reduced rate. For example, where the total service in the period 1 April in any year to 31 March in the succeeding year is five months, up to 3,750 miles would be paid at the higher rate and any excess at the lower rate. Similarly, the lump sum should be divided into 12 monthly payments;
 - when employees leave the employment of their employer a calculation shall be made in respect of their entitlement for the portion of the year served with the employer and any adjustments made thereafter.
- 17.15 Part months of service shall be regarded as complete months for the purposes of paragraph 17.14 above. However, a regular user who leaves the service of one NHS employer and enters the employment of another during the same month, shall receive only one lump sum instalment for that month, payable by the former employer.
- 17.16 Where employees entitled to the regular user allowance do not use their car as a result of mechanical defect or absence through illness, the lump sum payment should be paid for the remainder of the month in which the car was out of use and for a further three months thereafter. For the following three months payment should be made at the rate of 50 per cent of the lump sum payment. No further payments should be made if the car is out of use for six months or longer.
- 17.17 During the period when the car is 'off the road' for repairs, out of pocket expenses in respect of travel by other forms of transport should be borne by the employer.
- 17.18 Where maternity leave is granted under Section 15, the lump sum payment should be paid for the remainder of the month in which the car was out of use and for a further three months thereafter. Payment should

be made at the rate of 50 per cent of the lump sum payment for a further three months or until the end of maternity leave, whichever is less. No further payment should be made if the car is out of use for six months or longer. Employees not intending to return to work should have their payment limited to the period of paid maternity leave granted under Section 15.

- 17.19 Where employees entitled to the regular user allowance do not use their car as a result of attendance on an approved training course, the lump sum payment shall continue to be paid throughout the period of attendance on the approved training course.

Protection of the regular user allowances resulting from the 1992 agreement

- 17.20 Staff with existing protection of regular user allowances as a result of the 1992 agreement on the date on which this agreement comes into operation may continue to receive the regular lump sum payments and allowances as set out in paragraph 2 of Annex L to this handbook for so long as they remain in the same post or until they voluntarily accept a lease car.

Standard mileage rates

- 17.21 The standard mileage allowances set out in Annex L shall be paid to employees who use their own vehicles for official journeys other than in the circumstances described at paragraphs 17.9 and 17.10 above.

Passengers

- 17.22 With the exception of lease car users, where other employees or members of an NHS organisation are conveyed in the same vehicle on NHS business and their fares would otherwise be payable by the employer, passenger allowances at the rates set out at Annex L shall be paid.

Journeys between home and headquarters or place visited

- 17.23 Employees who are based at a designated headquarters shall be paid the regular user, standard rate or public transport rate as appropriate, limited to the distance which would have been travelled if the journey had started and finished at the designated headquarters, or the distance actually travelled, if less.
- 17.24 Employees who are based at home for mileage purposes shall be paid the regular user, standard rate or public transport rate as appropriate for all journeys by the most direct route from their home to all places necessarily visited on duty and back to their home.

17.25 Paragraphs 17.23 and 17.24 do not apply to lease car users.

Other allowances

17.26 Subject to the production of vouchers wherever possible, employees using their private motor vehicles on an official journey at the standard or regular user rates of mileage allowances, shall be refunded reasonable garage and parking expenses and charges for tolls and ferries necessarily incurred, except that charges for overnight garaging or parking shall not be reimbursed, unless the employee is entitled to night subsistence allowance for overnight absence. Similar expenses may also be refunded to employees only entitled to the public transport rate of mileage allowance, provided that the total reimbursement for an official journey does not exceed the cost which would otherwise have been incurred on public transport, including the fares of any official passengers.

17.27 Reimbursement for employees using pedal cycles for official journeys will be for local agreement, subject to the minimum rate set out in Annex L.

17.28 Where, at the requirement of the employer, an employee carries heavy or bulky equipment in a private car, an allowance at half the passenger rate, set out in Annex L, shall be paid for journeys on which the equipment is carried, provided that either:

- the equipment exceeds a weight which could reasonably be carried by hand; or
- the equipment cannot be carried in the boot of the car and is so bulky as to reduce the seating capacity of the vehicle.

Change of base of work resulting from amalgamation of NHS employers or from acceptance of another post in consequence of redundancy

17.29 Employees who are required to change their base of work as a result of a merger of NHS employers or their acceptance of another post as an alternative to redundancy, may be reimbursed their extra daily travelling expenses for a period of four years from the date of transfer. The excess shall be calculated on the basis of the bus fares or standard rail travel or, if the employee travels by private motor vehicle, on the basis of the public transport mileage rate.

Attendance at place of employment outside normal hours

17.30 This paragraph applies to employees who are required to return to or to attend their place of employment outside their normal hours of duty. This will be in circumstances where they would be entitled to overtime or time off in lieu. In these circumstances any expenses which are in excess of the expenses they incur as a result of their normal attendance at work, and which are actually and necessarily incurred in travelling to and from

home, shall be reimbursed. This will be on the basis of the public transport mileage rate (Annex L). Claims for expenses should not be met when no additional expenditure is incurred e.g. when the employees concerned have a season ticket, or where the time lapse between two consecutive periods is sufficiently short for it to be considered reasonable for the employee to remain at or near their place of employment.

Temporary transfer

17.31 Employees who are required by their employer to carry out temporary duties at a place other than their permanent place of employment, and who travel daily to their temporary headquarters, whilst continuing to live near their permanent headquarters, may be reimbursed their excess travelling expenses in accordance with locally determined provisions for expenses incurred in connection with removals.

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 and Annex A3: Principles for harmonised on-call arrangements.
- 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

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.¹ 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.²
- 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.

¹ See the question and answer guidance in Annex A2.

² 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.¹

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.²
- 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).³

¹ See the question and answer guidance in Annex A2.

² See the question and answer guidance in Annex A2.

³ 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.⁴ 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:
- for staff in early implementer sites the minimum transitional points available are:
 - from 1 June 2003 to 31 May 2004, the lowest point;

⁴ See the question and answer guidance in Annex A2.

- 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.⁵

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 age⁶ 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;
- 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;

⁵ See the question and answer guidance in Annex A2.

⁶ 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 Annex.

- 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 46.20.⁷

⁷ See the question and answer guidance in Annex A2.
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Table 8

Payment before assimilation	Payment after assimilation
<p>Basic pay, including any contractual overtime: plus</p> <p>Leads and allowances measured in the Job Evaluation Scheme, or taken into account in any recruitment and retention premia (see Annex Q): plus</p> <p>London weighting, fringe allowances and cost of living supplements: plus</p> <p>Shift allowances and other payments related to unsocial hours (see Annex Q): plus</p> <p>On-call payments (unless special transitional arrangements are in force – see paragraph 2.48) (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): plus</p> <p>Bonus payments from schemes discontinued following implementation of the new pay system: plus</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: plus</p> <p>Recruitment and retention premia: plus</p> <p>High cost area supplements: plus</p> <p>Shift allowances and other payments related to working outside normal hours (see Section 2 and Annex Q): plus</p> <p>On-call payments (unless special transitional arrangements are in force – see paragraph 2.48): plus</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 arrangements⁸

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 48 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.

⁸ 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
- 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.⁹ Pro-rata arrangements will apply to part-time staff.

⁹ See the question and answer guidance in Annex A2.
NHS terms and conditions of service handbook
Pay circular (AforC) 5/2010: amendment number 20

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.¹⁰
- 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.

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"> • Three years on 37 hours
36½ hours	<ul style="list-style-type: none"> • Three years on 36½ hours • One year on 37 hours
36 hours	<ul style="list-style-type: none"> • Three years on 36 hours • Two years on 37 hours
35 hours	<ul style="list-style-type: none"> • Four years on 35 hours • Two years on 36 hours • One year on 37 hours
33 hours	<ul style="list-style-type: none"> • Four years on 33 hours • Two years on 35 hours • One year on 37 hours

¹⁰ See the question and answer guidance in Annex A2.
NHS terms and conditions of service handbook
Pay circular (AforC) 5/2010: amendment number 20

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.¹¹
- 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 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).

¹¹ See the question and answer guidance in Annex A2.
NHS terms and conditions of service handbook
Pay circular (AforC) 5/2010: amendment number 20

- 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.¹²

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.

¹² See the question and answer guidance in Annex A2.
NHS terms and conditions of service handbook
Pay circular (AforC) 5/2010: amendment number 20

- 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.

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.

Annex D

Working or providing emergency cover outside normal hours

On-call and other extended service cover

1. From 1 October 2004, where agreed locally, all current on-call arrangements may be protected for groups of employees irrespective of whether they were nationally or locally agreed (see paragraph 33 in Section 2).
2. In order to assist local partnerships who have already opted to stay with Whitley the location of each of the Whitley on-call systems, in the Handbooks and Advance Letters of the functional Whitley Councils, is indicated below.

Nurses and midwives:

Section 5: Stand-by and On-Call allowances – Emergency Duties Nursing and Midwifery Staffs Negotiating Council Handbook

Professions Allied to Medicine (PAMS):

Section 3: Emergency Duty Payments: Professions Allied to Medicine and Related Grades of Staff (PTA) Council Handbook

NHS Staff covered by the Maintenance Advisory Panel (MAP):

Section 4: On-call duty: Maintenance Staff Pay and Conditions of Service Handbook

Administrative and Clerical staff:

Section 22: Emergency Duty Payments: Administrative and Clerical Staffs' Council Pay and Conditions of Service Handbook

Ancillary staff:

Section II: On-call Duty: Ancillary Staffs Council Handbook

Professional and technical Staff (estate officers; MTOs; ATOs; biomedical scientists; pathology support

Section 4: Emergency Duties PTB Council Handbook (the "green" book)

and dental auxiliaries):

Scientific and professional staff

Whole-time healthcare
chaplains and whole-
time healthcare chaplains'
assistants

Appendix E to Advance Letter (SP)
3/2002: local out of hours
arrangements

Speech and language
therapists

No provision: see Section 2,
paragraph 33

Clinical psychologists and
child psychotherapists

No provision: see Section 2,
paragraph 33

Healthcare pharmacists:

Advance Letter (PH) 1/86
Paragraph 4: emergency duty service
and Appendix C to Advance Letter
(PH) 1/2004 emergency duty
commitment allowance

Healthcare scientists and
optometrists

Appendix D to Advance Letter (SP)
2/2002

Annex M

Lease car policies

1. Local lease car schemes should take into account the following principles:
 - i. the scheme is voluntary and is offered to eligible employees;
 - ii. employees shall be charged the full cost for private use.
 - iii. schemes should provide for lease cars to be accepted on the basis of business only use or a combination of business and private use. Where cars are accepted for business use only these cars should be classed as “pool” cars.
2. There should be transparent arrangements for meeting the cost of NHS business use. Where arrangements are based on reimbursement of fuel paid for by the employee on a mileage basis, mileage rates should be subject to regular review to take account of significant changes in fuel costs.
3. Employees shall be made aware as fully as possible of any tax implications of having a lease car.
4. Local policies shall set out details of early termination costs and the circumstances in which these would apply, and where these would not apply, such as death in service. Wherever possible, provision should be made for options to be explored to obviate the need for the return of the car and early termination costs following a change in the employee’s circumstances e.g. on transfer to another employer.
5. The employer will be responsible for any excess insurance charges incurred during business use of the vehicle.
6. The base cars of lease schemes shall be consistent with the proper use of public monies, NHS business needs and wider environmental considerations. Any employee choosing a car larger than the base car shall pay the additional full costs of this.

Annex X

Working or providing emergency cover outside normal hours

1. During the first three years of the new system of payments transitional rates will apply to some staff in pay bands 2, 3, 4 and 5. The percentage enhancements applicable to these staff will change in the second and third year of operation of the new system. From 1 April 2011 the percentage enhancements for these staff will be the same as those for all other staff, as set out in Table 2 in Section 2.
2. Table 21 below shows the transitional rates for staff in pay bands 2, 3, 4 and 5 who were previously in the remit of the Ancillary Staffs Whitley Council (ASC), staff previously in the remit of the Maintenance Staffs Advisory Panel (MAP) and those previously in the Administrative and Clerical Staffs Council who are moving to lower levels of unsocial hours payments.

Table 21
Ancillary staff, healthcare maintenance staff and administrative and clerical staff in pay bands 2, 3, 4 and 5

Column 1	Column 2	Column 3	Column 4
Year	Pay band(s)	All time on Saturday (midnight to midnight) and any week day after 8 pm and before 6 am	All time on Sundays and Public Holidays (midnight to midnight)
1 April 2008 to 31 March 2009	2 to 5 inclusive	Time plus 50%	Double Time
1 April 2009 to 31 March 2010	2	Time plus 48%	Time plus 96%
	3	Time plus 46%	Time plus 92%
	4 and 5	Time plus 44%	Time plus 88%
1 April 2010 to 31 March 2011	2	Time plus 46%	Time plus 92%
	3	Time plus 42%	Time plus 84%
	4 and 5	Time plus 37%	Time plus 74%
1 April 2011	2	Time plus 44%	Time plus 88%
	3	Time plus 37%	Time plus 74%
	4 and 5	Time plus 30%	Time plus 60%

3. Support staff in pay bands 2 and 3, transferring from the nurses' and midwives' Whitley system of unsocial hours payments, will move to the new payment system in accordance with Table 22 below.

Table 22

Support staff in pay bands 2 and 3 transferring from the nurses' and midwives' Whitley system of unsocial hours payments

Column 1	Column 2	Column 3	Column 4
Year	Pay band	All time on Saturday (midnight to midnight) and any week day after 8 pm and before 6 am	All time on Sundays and Public Holidays (midnight to midnight)
1 April 2008 to 31 March 2009	2	Time plus 39%	Time plus 78%
	3	Time plus 35%	Time plus 70%
1 April 2009 to 31 March 2010	2	Time plus 42%	Time plus 84%
	3	Time plus 36%	Time plus 72%
1 April 2010 to 31 March 2011	2	Time plus 43%	Time plus 86%
	3	Time plus 37%	Time plus 74%
1 April 2011	2	Time plus 44%	Time plus 88%
	3	Time plus 37%	Time plus 74%

4. In the interim regime staff who were previously employed on Whitley terms and conditions, without provision for unsocial hours payments, normally received entitlements according to the rules applicable to nurses and midwives. Exceptionally, some staff remained on local arrangements. In these cases local partnerships will need to decide if these staff should move to the new system of payments or retain their existing entitlements, pending full implementation of paragraphs 2.33 to 2.51. (See paragraphs 2.54 to 2.56 and Annex A3). If it is decided to transfer these staff to the new system this may be by moving them immediately to the new levels of payments in Table 2 in Section 2 on the effective date. Alternatively, local partnerships may decide to use tables 21 and 22 in this Annex or design their own arrangements for transferring these staff from their existing

entitlements to the new system of payments. This should be completed by 1 April 2011.

5. The shift allowances paid to Ancillary (ASC) staff, health service maintenance staff previously in the remit of the Maintenance Staff's Advisory Panel (MAP) and Administrative and Clerical (A&C) Staff during the "*interim regime*", have been replaced by the allowances in Table 2 in Section 2.
6. Ancillary (ASC) Staff working alternating shifts as defined in paragraph 168 (a) of the Ancillary Staffs Whitley Council Handbook, who were regularly receiving the annual alternating shift allowance of £581 during the six months ending on 31 December 2007, and who are still employed on 1 April 2008, will receive a single payment of £3,000.
7. Paragraph 107.2 of the Maintenance Staff's Handbook sets out the conditions for the payment of "Alternative Shift Allowance" of thirty five pence per hour. Maintenance staff who were regularly receiving this allowance during the six months ending on 31 December 2007, and who are still employed on 1 April 2008, will receive a single payment of £3,000.
8. Some Administrative and Clerical (A and C) Staff working alternating shifts as defined in paragraph 741 of the Administrative and Clerical Staffs Whitley Council Handbook, have been receiving the 10 per cent addition to basic pay in paragraph 742 (iii). A and C staff regularly receiving this allowance during the six months ending on 31 December 2007, and who are still employed on 1 April 2008, will receive a single payment of 30% of their basic pay, calculated on the rate effective from 1 April 2008.
9. The provisions for pay protection in paragraph 2.19 will not apply to staff who receive one of the single payments in paragraphs 6, 7 and 8 of this Annex. Part-time employees will receive the single payments on a pro-rata basis to full-time colleagues.

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.
1. 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.
2. 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 3

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 2.2 to 2.31.

Part 2: Section 2: Maintaining round the clock services

Paragraph 6

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 2.6 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 2.5 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 8, 33 and 48

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 2.8.

Yes, all current on-call arrangements may be protected for groups of employees irrespective of whether they were nationally or locally agreed (paragraphs 2.8 and 2.48). 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 8

Footnote number 4

Are other groups of staff who might have had similar on-call arrangements to pathology covered by the protection offered in 2.8?

In paragraph 2.8 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 8, 33 and 48

Footnotes number 5, 6 and 8

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 RRPs 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 RRPs 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.

NHS terms and conditions of service handbook

Pay circular (AforC) 5/2010: amendment number 20

The NHS Staff Council

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.

Implementation annexes: Annex A3: Principles for harmonised on-call arrangements

Interim regime

Paragraph and 48

Footnote number 1

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 2.8.

Yes, all current on-call arrangements may be protected for groups of employees irrespective of whether they were nationally or locally agreed (paragraphs 2.8 and 2.48). 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.

Implementation annexes: Annex A3: Principles for harmonised on-call arrangements

Interim regime

Paragraph 48

Footnote number 1

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).

Annex A3

Principles for harmonised on-call arrangements

1. Paragraphs 2.1 and 2.32 identify that from 1 April 2011, payments for on-call will need to be agreed locally and consistent with the principles set out below.
2. Paragraph 2.54 defines on-call as part of arrangements to provide appropriate service cover across the NHS. A member of staff is on-call when, as part of an established arrangement with his/her employer, he/she is available outside his/her normal working hours – either at the workplace, at home or elsewhere – to work as and when required.

Table 26
Principles for harmonised on-call arrangements

Issues	Principles
1. Equal pay	<ul style="list-style-type: none"> • The guiding principle should be that the harmonised arrangements should be consistent with the principles of equal pay for work of equal value. <p>The effect of this should be that schemes agreed by local partnerships should provide consistent payments to staff at the same pay band available at the same on-call frequency.</p> <ul style="list-style-type: none"> • All employing organisations will need to undertake an Equality Impact Assessment (EqIA) of their proposals.

<p>2. Commitment or availability payment</p>	<ul style="list-style-type: none"> • There needs to be a payment to reflect the availability for being called. There are three distinct types of on-call availability: <ol style="list-style-type: none"> 1. At home ready to be called out or to undertake work at the work place. 2. At work ready to undertake work. 3. Sleeping in at a work place. <p>Payment for these different types of availability – options include:</p> <ul style="list-style-type: none"> • flat rate available for all staff • flat rate by grade • percentage of salary <p>This payment will reflect the frequency of commitment.</p> <p>If the partnership decides to use a flat rate they will need to agree arrangements for uprating this payment when pay increases.</p> <p>In setting the availability payment, local partnerships will need to take account of the commitment to work weekends and public holidays.</p> <p>Where tiered on-call systems are required, there should be no distinction between levels of commitment when setting the availability/commitment payment.</p> <p>Reference paragraph 2.27 to 2.28 in the NHS terms and conditions of service handbook, to allow the option of prospective calculation of the payments.</p>
<p>3. Frequency</p>	<ul style="list-style-type: none"> • That part of the week covered by on-call arrangements should be divided up into appropriate periods for the purposes of calculating the frequency of on-call availability. <p>The Agenda for Change interim regime may provide a useful model.</p>

4. Work done	<ul style="list-style-type: none"> • Payment for work done, including work done at home, should be made at the appropriate hourly rate with reference to this Handbook. • Local partnerships may agree an appropriate minimum payment period for work done.
5. Time of in Lieu (TOIL)	<ul style="list-style-type: none"> • Staff should have the option to take TOIL rather than payment for work done in line with paragraph 3.5.
6. Compensatory rest	<ul style="list-style-type: none"> • Individuals will receive compensatory rest for work done, in accordance with Section 27.
7. Travel to work	<ul style="list-style-type: none"> • As per current arrangements. Travel time should be paid at the rate agreed for on-call work done and local partnerships will need to identify if there is a minimum and/or maximum time claim identified. • Where travelling expenses are reimbursed, Section 17 will apply.
8. Public holidays (PH)	<ul style="list-style-type: none"> • Covering a PH will attract a day in lieu in accordance with paragraph 13.4, irrespective of work done. <p>Work done on public holidays would attract payment at the appropriate rates as identified in paragraph 13.4.</p>

<p>9. Sleeping in</p>	<ul style="list-style-type: none"> • A sleeping-in session will often incorporate the following elements: <ul style="list-style-type: none"> – hours of wakefulness – sleep – work done • The term “sleeping-in” does not refer to individuals who are on-call from the workplace and are able to sleep between periods of work. • Under the Working Time Regulations if an individual is required to sleep in at a work place this counts as working time. However, time asleep does not count for the purposes of the minimum wage. • If asleep, this working time does not count for the purposes of the minimum wage. • Under the Minimum Wage Regulations, the availability payment should be at least the same as a calculation for (hours of expected wakefulness x minimum wage). Local partnerships will need to consider if it is more appropriate to base this calculation on the bottom point of the Agenda for Change pay scales, as described in Annex C. • In those situations where a sleeping-in session includes what the National Minimum Wage Regulations would classify as work, or when the individual is woken during a sleeping-in duty, this should be paid as work done at the appropriate hourly rate. • Local partnerships may agree a minimum payment period for work done.
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10. Pensions	Local partnerships should always seek advice from the NHS Pensions on any questions relating to the NHS Pensions Scheme and on-call payments. It is the responsibility of the employer to determine which payments are pensionable, according to the criteria provided by NHS Pensions. Guidance on “pensionable pay” can be found on NHS Pensions websites at: www.nhsbsa.nhs.uk/pensions for staff and employers in England and Wales; www.hscpensions.hscni.net in Northern Ireland; and www.sppa.gov.uk/nhs/home.htm in Scotland.
11. Agenda for Change interim regime	<ul style="list-style-type: none">• The arrangements in the Agenda for Change interim regime are consistent with these principles.

12. Transition	<ul style="list-style-type: none"> • There are currently a range of payments for on-call, which form a regular part of income for some individuals. Local partnerships will therefore need to agree transitional arrangements for the movement of staff from current to future on-call payment systems. This includes all on-call arrangements within the scope of the review of on-call. • Such transitional arrangements could include one or more of the following elements: <ul style="list-style-type: none"> - introduction of increased payments in one or more stages over a fixed period of time; - introduction of reduced payments in one or more stages over a fixed period of time; - postponement of increased and/or reduced payments for a fixed period; - movement to reduced payments over a period on a “mark time” basis; - payment of a one-off lump sum to staff if their on-call payments are reduced. • As an example of some of the above elements in practice, Section 2 and Annex X set out how transition was approached when new unsocial hours provisions were introduced. • Where service changes are linked to the harmonisation of on-call payments local partnerships may also wish to consider the use of agreements reached under Annex O.
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Interim regime

2.35 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.

- 2.36. Subject to the provision for retention of current on-call provisions under the protection arrangements set out in paragraph 2.48, 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 2.37 to 2.42 below.

Pay enhancements for on-call cover

- 2.37 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.
- 2.38 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.
- 2.39 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.
- 2.40 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.
- 2.41 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.
- 2.42 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
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	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

- 2.43 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

- 2.44 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.
- 2.45 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.
- 2.46 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.
- 2.47 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.

- 2.48 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.¹ This extended protection will apply to existing staff and new staff during the period of protection.
- 2.49 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

- 2.50 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.
- 2.51 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.

¹ See the question and answer guidance in Annex A2.
NHS terms and conditions of service handbook
Pay circular (AforC) 5/2010: amendment number 20