On-call implementation guidance

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

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

Section one

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

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

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

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

Section two

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

2. Commitment or availability payment There needs to be a payment to reflect the availability for being called. There are three distinct types of on-call availability: (a) at home ready to be called out or to undertake work at the work place; (b) at work ready to undertake work; (c) sleeping in at a work place. Payment for these different types of availability – options include: (a) flat rate available for all staff; (b) flat rate by grade; (c) percentage of salary. This payment will reflect the frequency of commitment. If the partnership decides to use a flat rate they will need to agree arrangements for uprating this payment when pay increases. In setting the availability payment, local partnerships will need to take account of the commitment to work weekends and public holidays. Where tiered on-call systems are required, there should be no distinction between levels of commitment when setting the availability/commitment payment. Reference paragraph 2.26 to 2.27 in the NHS terms and conditions of service handbook, to allow the option of prospective calculation of the payments.	You will need to set a payment or payment formula for each of the three described types of on-call in place in your organisation, with reference to the standard frequencies in principle 3. Where on-call arrangements cover evenings and weekends with different frequencies, this will need to be taken into account in setting the payment (see principle 3). You will need to consider the pros and cons of each approach and particularly the cost implications of these options. If you agree to apply a flat rate for availability, it will be necessary to identify how and when these are uprated, for example, in line with pay uplifts to the Agenda for Change pay scales. Where on-call activity commonly includes staff from a range of pay bands, local partnerships may wish to consider a flat rate for the availability payment. On-call for supervisors of midwives is consistent with type 1 – on call at home ready to be called out to a workplace. The principles identify that the availability payment should not distinguish between different ‘tiers’ of on-call. Tiers mean arrangements where individuals are on first on-call, second on-call etc. The Principles identify that you can apply the availability payment prospectively as well as retrospectively – a prospective arrangement may be of most value where the on-call commitment does not vary.

3. Frequency That part of the week covered by on-call arrangements should be divided up into appropriate periods for the purposes of calculating the frequency of on-call availability. The Agenda for Change interim regime may provide a useful model.	It is important that frequency of on-call (e.g. 1 in 9 etc) is described by reference to defined periods, in order that availability payments are consistent. This principle makes reference to the model described in section 2 of the handbook[1] where the on-call periods are divided into 9 periods of at least 12 hours. However, demand for on-call provision varies considerably and local partnerships will need to agree what standard reference periods best meet service needs. When describing these periods, your arrangements will need to take into account the requirement to provide on-call cover which spans two or more on-call periods. For example, a 24 hour on-call period may count for 2 frequency periods using the model described above. Calculating and/or expressing the availability payment in hourly terms may be helpful where the length of on-call duties varies considerably.
4. Work done Payment for work done, including work done at home, should be made at the appropriate hourly rate with reference to the NHS terms and conditions of service handbook. Local partnerships may agree an appropriate minimum payment period for work done.	It is for local partnerships to determine the 'appropriate hourly rate' to be applied to work done. The appropriate work done rate should apply, irrespective of the type of availability. In setting this rate, local partnerships will need to be mindful of the provisions for fair treatment of part time workers as set out in section 11 of the handbook. Local partnerships will need to identify what rates apply for work done at weekends and on public holidays. In circumstances where there is a 'spot rate' for work done, it may be appropriate to consider the use of an appropriate point on the Agenda for Change pay scale as a basis for payment of work done, determined via the agreed process for application of the Job Evaluation Scheme. Undertaking work via telephone should attract payment for work done.

[1] This and all subsequent use of the term 'handbook' refers to the NHS terms and conditions of service handbook, available on the pay and contracts web pages at www.nhsemployers.org

5. Time of in Lieu (TOIL) Staff should have the option to take TOIL rather than payment for work done in line with paragraph 3.5 in the NHS terms and conditions of service handbook.	Due to personal circumstances including tax credit thresholds, or maintaining a good work/life balance, some staff may prefer to take TOIL rather than payment for work done. On-call agreements will need to say that this should be a genuine choice on the part of the individual and identify that TOIL should be taken in accordance with section 3.5 of the handbook.
6. Compensatory rest Individuals will receive compensatory rest for work done, in accordance with Section 27 of the NHS terms and conditions of service handbook.	You will need to reference Section 27 of the handbook in your agreement, along with any locally agreed protocols on the application of the Working Time Regulations provisions for Compensatory Rest.
7. Travel to work As per current arrangements. Travel time should be paid at the rate agreed for on-call work done and local partnerships will need to identify if there is a minimum and/or maximum time claim identified. Where travelling expenses are reimbursed, Section 17 in the NHS terms and conditions of service handbook will apply.	Travel time should be paid as for work done for those staff who are available at home to go to a workplace when called. This should be considered when setting any minimum work done period.
8. Public holidays (PH) Covering a PH will attract a day in lieu in accordance with paragraph 13.4 of the NHS terms and conditions of service handbook, irrespective of work done. Work done on public holidays would attract payment at the appropriate rates as identified in paragraph 13.4 of the NHS terms and conditions of service handbook.	Section 13 of the handbook identifies the entitlement to general public holidays. This principle carries forward the existing provision in paragraph 13.4 for those available on-call on a public holiday to receive TOIL in addition to the relevant payments.

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

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.	Local partnerships should always seek advice from the NHS Pensions Agency on any questions relating to the NHS Pensions Scheme and on-call payments. It is the responsibility of the employer to determine which payments are pensionable. Guidance on "*pensionable pay*" can be found 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. - the guidance says that "*pensionable pay*" means all salary, wages, fees and other regular payments payable to a member of the NHS Pension Scheme, in respect of pensionable employment. The relevant guidelines include: - the main considerations are that for a payment to be pensionable it must be a regular and continuing feature of the job, and the member must have a reasonable expectation of at least being able to earn the payment on a regular basis (yearly is considered regular) through performance of their normal day to day duties; - payments which are considered once only payments or relate to hours above the standard whole time for the post, are not pensionable.
11. Agenda for Change interim regime The arrangements in the Agenda for Change interim regime are consistent with these principles.	Certain groups of staff (including chaplains and senior managers) did not have access to pre-Agenda for Change on-call payments and have been using the Interim Regime set out in paragraphs 2.33 – 2.50 and Annex A3 of the handbook. The interim regime is consistent with these principles. Where the interim regime is the only on-call arrangement in place (e.g. in parts of the ambulance service), there is no expectation that the section 2 arrangements be disturbed. However, where this is one of a range of on-call schemes in place, local partnerships will need to ensure that payments (including any locally agreed payments for staff working less frequently than 1 in 12) are consistent with those for staff on other on-call arrangements of the same type. Where the 'interim arrangements' are determined by the local partnership as the desired model for all staff available on-call from home, the link between frequency and percentage payments may need to be adapted to better reflect local needs and working patterns.

12. Transition • There are currently a range of payments for on-call, which form a regular part of income for some individuals. Local partnerships will therefore need to agree transitional arrangements for the movement of staff from current to future on-call payment systems. This includes all on-call arrangements within the scope of the review of on-call. • Such transitional arrangements could include one or more of the following elements: – introduction of increased payments in one or more stages over a fixed period of time – introduction of reduced payments in one or more stages over a fixed period of time – postponement of increased and/or reduced payments for a fixed period – movement to reduced payments over a period on a "mark time" basis – payment of a one-off lump sum to staff if their on-call payments are reduced. • As an example of some of the above elements in practice, Section 2 and Annex X of the NHS terms and conditions of service handbook set out how transition was approached when new unsocial hours provisions were introduced. • Where service changes are linked to the harmonisation of on-call payments local partnerships may also wish to consider the use of agreements reached under Annex O of the NHS terms and conditions of service handbook.	Principle 12 identifies options for you to consider when moving individuals from current to new on-call arrangements. [2] You will also need to consider • How any transitional payments for on-call are identified separate to those for other protected areas, e.g. organisational change, and the interaction between this and any transitional arrangements. • How affected staff will be notified of new pay arrangements and rates and any transitional arrangements agreed locally

[2] All current on-call arrangements should be included in the scope of your agreement and transitional arrangements – see Section 2 of the handbook for more information.