

Your response

Please give us your views in the response boxes for each of the draft principles. We would advise that you read all the [principles](#) first, before you complete the form. Your response should indicate either your broad support for the principle(s) as a basis for your negotiations of harmonised on-call arrangements, or indicate which principle(s) may cause difficulty and why, by identifying:

1. any terms or wording which are confusing and may need further explanation
2. any unintended consequences of the principle
3. any reasons why this may hinder local negotiations.

We are keen to hear the views of employers and the NHS trade unions on the draft principles, ideally in partnership. We have also included a response option for staff, who are unable to respond via their staff side representative.

The deadline for all responses is 12 noon on Friday **10 September**. Unfortunately we are unable to consider any responses that are received after this deadline.

Issue 1: Definition

Draft principle(s):

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 standard working hours – either at the workplace, at home or elsewhere – to work as and when required.

We agree that on call should be an agreement to provide a service outside of an individual's standard hours. The important point here is it is the individual's standard hours and not the standard hours of a service. This allows part time staff to receive the same payments as full time staff for undertaking on call duties as long as they undertake on call duties with the same frequency. This could be clarified by using the term normal hours rather than standard hours.

The statement 'to work as and when required' requires further clarification. The purpose of on call should be to respond to unforeseen circumstances and not deliver routine work out of hours. This should be managed using other systems available under agenda for change and not on call. The danger of using on call systems to deliver routine services out of hours is that the staffing levels are unlikely to be sufficient enough to provide a safe service.

Additionally there should be some clarification as to who makes the decision that there is a requirement for the work to be performed outside standard hours. To ensure cost effective use of on call services, the individual who is on call must be able to make a professional decision that the work is not

urgent and can legitimately wait until the service is operational before it is completed. This degree of professional decision making needs to be incorporated into the 'as and when required' statement.

Issue 2: Equal pay

Draft principle(s):

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 on the same on-call pattern

We will need to Equality Impact Assess (EIA) our own work

Will need to include the principle that all employing organisations will need to undertake an EIA of their proposals

Implementation guidance will identify areas that local partnerships should consider in undertaking EIAs of their potential arrangements.

Whilst we agree with the concept of equal pay for work of equal value, staff on different pay bands undertaking on call duties with the same frequency should receive the same level of payment for their commitment to undertake on call. Similarly, staff on different pay bands performing the same duties whilst on call should receive the same level of pay irrespective of their pay band.

Clarification of 'same on call pattern' would be helpful. Is this solely based on frequency? If not, is there scope for individual employing organisations to have more than one on call agreement for different groups of staff based on the nature of the duties undertaken. If this is the case, examples of what constitute different on call patterns would be useful. If each employing organisation has to have only 1 agreement for on call, this needs to be stated as part of the equality principle.

Each employing organisation having to undertake an EIA for all proposals will be onerous and time consuming and will result in much duplication of effort.

Issue 3: Commitment or availability payment

Draft principle(s):

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

1. At home ready to be called out or to undertake work at home
2. At work ready to undertake work
3. Sleeping in at work

Payment for these different types of availability – options include:

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

If the partnership decides to use a flat rate they will need to agree arrangements for uprating this payment when pay increases. This payment will vary according to the frequency of commitment – the principle being that higher payments are set for greater commitment.

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 2.26-7 in the NHS terms and conditions of service handbook, to allow the option of prospective calculation of the payments.

We agree there should be a payment that is made to individuals who commit to undertake on call duties. However, as outlined in (2) above, this should be the same for all staff, irrespective of pay band. We would support a flat rate payment to all individuals and this should not be affected by the frequency of the commitment. Part time staff who provide the same commitment level for on call as full time staff should receive the same level of pay as full time staff. In other words the commitment payment should not be adjusted pro rata if the same level of commitment is undertaken.

If the payment is based on frequency, there will be a large administrative burden in delivering this and ensuring payments are amended each time the frequency of on call duties change for example due to staffing numbers.

We agree that commitment payments need to be uprated with pay increases and this should form part of the principles in section 2 of the Agenda for Change handbook and not left to local agreement.

The level of pay will be crucial in ensuring current on call systems are maintained and should reflect the impact on work life balance that providing an on call commitment can have. The current levels of pay in the interim on call agreement (section 2 of the Agenda for Change handbook 2.35-2.40) do not meet this remit.

One unintended consequence of any new agreement could be a significant loss of staff participating in voluntary agreements which may compromise out of hours cover and patient safety.

For some groups of staff, current on call payments are seen as a recruitment and retention premium and a significant drop in the value of these payments could have adverse effects on staffing levels and lead to increased vacancies.

Issue 4: frequency

Draft principle(s)

The week should be divided up into appropriate standard periods (outside the hours of the standard working week) for the purposes of calculating the frequency of on-call availability.

The nine periods described in paragraph 2.34 of the NHS terms and conditions of service handbook provide a useful model.

Paragraph 2.34 does not clearly detail the nine periods, it simply states '9 periods of at least 12 hours'. Further clarification of these nine periods is required.

Issue 5: Work done

Draft principle(s)

Payment for work done, including work done at home, should be made at the appropriate hourly rate with reference to Section 2 in the NHS terms and conditions of service handbook.

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

Clarification should be given to 'work done at home' to say, for example, this would include telephone advice.

Further clarification of the hourly rate referred to in section 2 should be made within the principles. Is this the hourly rate specified for unsocial hours? If so, is it applicable to all bands of staff providing on call duties? Also is it applicable to part time staff irrespective of whether or not they have worked 37.5 hours during the week when the payments are accrued?

Issue 6: Time of in Lieu (TOIL)

Draft principle(s)

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.

Agree

Issue 7: Compensatory rest

Draft principle(s)

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

Agree. However, one of the unintended consequences of this will be service disruption where the individual on call is due into work the following morning if they are called into work within the 11 hour rest period. This would need careful monitoring to prevent an abuse of the compensatory rest period provisions.

Issue 8: Travel to work

Draft principle(s)

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.

Agree

Issue 9: Public holidays (PH)

Defined principle(s)

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.

Agree

Issue 10: Sleeping in

Draft principle(s)

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

- Hours of wakefulness
- Sleep
- Work done

The term "sleeping-in" does not refer to individuals who are on-call from the

workplace and are able to sleep between periods of work.

Legal situation – if required to be at place of work, then it is working time.

If asleep, this working time does not count for the purposes of the minimum wage.

Legally, the availability fee 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 elements of what the National Minimum Wage (NMWA) 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.

[Unable to comment as unlikely to affect our members.](#)

Issue 11: Pensions

Draft principle(s)

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 the NHS Pensions website at www.nhsbsa.nhs.uk/pensions

[Further generic guidance should be given. An overall position within the NHS as to whether or not on call is pensionable would save a large amount of duplication between different employing organisations. Our view, based on the current arrangement for pharmacists is that on call payments should be pensionable.](#)

Issue 12: Section 2

Draft principle(s)

Arrangements agreed under the current Section 2 of the NHS terms and conditions of service handbook are consistent with the framework above.

[Is this a statement of fact or is it supposed to relate to any new changes to section 2 resulting from local negotiations?](#)

Issue 13: Transition

Draft principle(s)

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.

This will potentially be critical for large numbers of employees who may see their salaries significantly reduced under any new local arrangements. There should be a minimum protection period stipulated, as was the case when the original Agenda for Change agreement was implemented and when the new unsocial hours arrangements were implemented?

We would suggest a period of protection that ends when the total level of payments under the new system exceeds the level of protected pay up to a maximum 3 year protection period, as was the case with unsocial hours (unless local arrangements allow for longer than this).

Please give details of any common features of your on-call agreements which are not included in the draft principles.

Nil

Are there any other issues or general comments that you wish to be taken into consideration?

Nil