

BRANCH NEGOTIATING GUIDE:

ANNEX X – GUIDANCE ON WORKFORCE RE-PROFILING

for staff on Agenda for Change terms and conditions

(England Only)

September 2013



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BACKGROUND

Annex X is the new section of Agenda for Change that sets out the principles under which NHS organisations should approach workforce re-profiling.

The aims and objectives of the guidance on workforce re-profiling are outlined in Annex X.

“This Annex is intended to support organisations undertaking workforce re-profiling by highlighting how the NHS Staff Council agreement can support organisational, service and workforce change, including the development of new roles. It provides advice on how the principles and processes of the NHS Job Evaluation (JE) Scheme can assist organisations in developing and implementing new ways of working and revised job structures. It also provides advice on the consistent application of these principles locally and how local partnerships can benefit from the Staff Council agreement”.
(Annex X, Section 1)

Annex X was part of the agreed changes to Agenda for Change that came into effect in April 2013. Its introduction reflected the importance given by local staff sides to achieving a national agreement on down banding as part of the Agenda for Change negotiations. A survey of local lay committees during the negotiations found that 63% reported incidences of, or proposals on, down banding; 88% supported getting a re-commitment to the principles of job evaluation; 80% supported national principles to protect against down banding.

As a result the NHS trade unions, through the Staff Council, negotiated a set of national principles to be followed at local level where workforce re-profiling is being proposed. These principles emphasise the importance of local engagement, and the need to follow the principles and procedures set out in the Job Evaluation handbook to ensure that staff are not being asked to take lower graded jobs but, in effect, carry on doing the same job.

INTRODUCTION

The aim of this guidance is to make activists and negotiators familiar with the new Annex X on workforce re-profiling and arrangements that apply; to outline the principles that underpin this agreement and help negotiators feel confident if faced with a workforce re-profiling exercise.

During this guide we will refer to workforce re-profiling as a way for a Trust or organisation to “*examine the content of job role within a team or patient pathway to determine the most efficient distribution of bandings needed to deliver the required service*” (Annex X, Core Principles, Section 2).

Local policies on organisational change should be consistent with Annex X and should not be used by employers as a tool to simply change bandings and essentially get staff to undertake the same role for less pay. Downbanding in this way should be challenged using this guidance.

UNISON believes that ill-considered cuts to service, based on financial rather than service-need, will result in long-term detriment to the service received by patients and that the people who are most likely to be affected are the most vulnerable within our society.

We will outline the risks as well as positive steps that can be taken to challenge poor decisions and ensure the correct process and principles are applied. Public bodies, such as NHS organisations, need to comply with certain legal, contractual and statutory obligations as well as considering patients and the public in their decision making. For example, the closure of a diabetic clinic or wheel chair services would impact directly on groups of the public with protected characteristics and should be the subject of public consultation.

The guide will also look at how the principles of Annex X apply to staff who are providing NHS services in non-NHS organisations, especially those who are employed on Agenda for Change terms and conditions.

Finances within the NHS are increasingly stretched and employers will be looking at ways in which to drive efficiencies from services. Whole system reviews are a way of releasing efficiencies and should involve the staff delivering the service, remain clinically safe and be undertaken in partnership.

What is certain is that the pace of change will increase having a knock on effect to patients, staff and services. UNISON has a proven record of being involved early in decisions about their members and the services they provide. Where possible we safeguard services and jobs and, where the argument is convincing and in the interests of both patients and staff, we help to shape services working with our members to seek the best protections available through the process.

UNISON is developing training courses on safe staffing levels and reporting concerns to build on an existing course designed to help activists look at the financial information held by NHS organisations.

This guide is written in response to the agreed changes to Agenda for Change Annex X which applies to England only, however, many of the principles can be adopted across the devolved nations as good practice in local agreements.

ORGANISING PRIORITIES

This guidance has been developed to outline proactive steps that trade union representatives can take when engaged in work force re-profiling exercises. The core principles of Annex X contains commitments to partnership working throughout the workforce profiling exercise and should be used to ensure staff side involvement in decision making. (*Annex X, Core Principles, Section 2, i, iii and viii*).

The later sections in this guide are designed to give more detail to the following actions which can be taken at strategic points in any change process, starting with actions that should take place before any changes are proposed.

Pre change actions

These actions should be considered before change proposals are made by employers. They give some practical steps towards preparing for change.

- Get Job Evaluation on the agenda** – Job evaluation underpins Annex X and should support any change process where roles are changed or created. Get your employer to agree in advance that the principles of Annex X will be used and that any new or changed jobs will be subject to the NHS Job Evaluation scheme at a local partnership level.
- Assess health of JE scheme** – In your branch map the people who undertake Job Evaluations. This includes staff side and management side leads. Are there sufficient people and are there any training needs? See the **Job Evaluation** section for more detailed information on the JE scheme.
- Update Organisational Change policy to reflect Annex X principles** – As part of the updated Agenda for Change section it is essential that branches review their organisational change policies to ensure the principles in Annex X are incorporated, especially around Job Evaluation and the scope of the requirement to consult with trade unions.
- What change is being considered by your employer in the next financial year/s** – Ask for information on change proposals which your organisation are considering through the JNC machinery within your organisation. These should be included in your organisations financial planning assumptions and it is reasonable to request a presentation to the JNCC on a regular basis. Early identification allows branches to organise and recruit and get involved early in the process.

- Review pay protection entitlements** – It is important to understand the protections which are available to staff who are affected by change and may be at a financial detriment through organisational change. There is no need to open negotiations on an existing pay protection policy if this is agreed and in place – however, if there is no pay protection in place you should request one before changes are implemented. See the **pay protection** section for more details.

- Engage in UNISON Pay Protection Survey** – To help negotiators achieve the best possible outcomes from discussions on pay protection it is important for UNISON to build a national database on the current local pay protection policies. <https://www.surveymonkey.com/s/NL593P3>

- Who sits on JNCC in your branch – what training and briefings are needed?** – Consider the UNISON representatives who sit on joint negotiating committees and review what support and training would be beneficial to their development. This could be Job Evaluation, NHS Finances, Defending Agenda for Change training or briefings on UNISON’s branch negotiators’ guides. Discuss with your regional organiser what training would help meet the challenge of organisational change in advance of dealing with a workforce re-profiling exercise.

Actions when proposals are on the table

These actions should be considered once proposals are being considered by your employer. The earlier you can identify potential changes the better the response will be and the more time the branch will have to challenge poor decisions.

- Begin campaign planning** – The start of considering any proposals on workforce planning should be a campaign plan to raise the profile of the potential effects of the changes.

- What can members and activists do to support the branch? –** Consider the roles that each part of the union can take. Consider whether members are able to raise questions with patients, distribute newsletters and messages to colleagues. Activists can play a role through co-ordinating the collection of evidence to inform a response to the proposals. Branches should consider recruitment events to increase density in the affected areas.

- Establish consultation timing and scope** – In line with Annex X, ensure that the process for consultation is agreed in advance outlining who is involved, the timings for the consultation and the role of the JNCC in reviewing the final consultation. Consultation is about seeking views to inform proposals and should reflect the opinions and views of staff.

- **Get written proposals** – It is important to get written proposals to back up verbal reports on changes. The written proposals should highlight the impact of the changes on staff, patients and the public. It should outline who is involved and set the timescale for the change. If it is deemed to have an impact on services which the public use then this could require public consultation.

- **Hold workplace meetings with members** – Workplace meetings and workshops will help get views on the proposals direct from affected staff and allow you to recruit non-members. This will help you get a sense of whether the staffs supports the changes or wish to oppose them. With any service change it is important to consider whether there are knock on effects to other departments/services who may also want to support a campaign to change proposals.

- **Equality Impact Assessments (EIA) on proposals** – The impact of changes to service delivery need to be considered against any groups with protected characteristics. There is a requirement that Equality Impact Assessments are undertaken by public sector organisations including NHS organisations. More information can be found in the **Equality** section.

- **Discuss with SOGs, reps, branch, public – stakeholders & allies** – Part of any campaign is to consider who would be an ally and provide backing for arguments made against ill conceived proposals. These could include Non-Executive Directors, Foundation Trust Governors, Patient Groups and other campaign groups. Branches will have specialist reps who can also be involved such as H&S reps, Union Learning Reps and Equality reps.

- **Review UNISON Guidance on Defending the NHS** – You may wish to review UNISON’s guidance on Influencing the NHS and other campaigning advice available at: <http://www.unison.org.uk/at-work/health-care/key-issues/defending-the-nhs-in-england/resources/>

- **Consider clinical services? Professional Standards and Duty of Care** – Staff on the register of the HPC, NMC, GPC or other regulatory body should ensure that their revised role does not contravene their agreed code of practice or ethics, paying particular attention to their responsibility to quality assure tasks which are delegated.

- **Mitigate the worst affects** – Ensure that natural wastage is used before redundancies are considered (this is supported by Annex Section 4 (i)) and, where this is not possible, ensure that staff receive the correct level of redundancy. Where staff are moved into lower banded roles ensure that pay protection is available and applied consistently. See the section on challenging downbanding and the practical steps for more information.

- **Review the impact of the changes** – Branches should monitor the changes following the work-force re-profiling exercise, especially where downbanding occurred to establish whether staff are doing the same role but for less pay, and the effects on the service users. Once the changes have bedded in the branch should encourage the postholders to request a Job Evaluation review of any new posts. Clinical and quality audits can also be requested to review the impact on services and service users.

JOB EVALUATION

Background

Four decades ago the Equal Pay Act (1970) gave women the right to equal pay with men and that right has been strengthened with the Equality Act 2010.

The NHS wanted to ensure that all its staff were paid on a fair and non-discriminatory basis and developed a tailor made job evaluation scheme to cover the full range of jobs employed within the health service. A fair and non-discriminatory job evaluation scheme can also contribute towards fairness and equity within an organisation, which in turn enables the organisation to be recognised as a good employer.

Following good practice guidelines and legislative decisions, an analytical JE scheme was decided on as this method could assess the demands of each job fairly and also act as a defence in the event of an equal pay challenge, as long as it has been designed and implemented fairly and objectively (*Bromley v Quick* 1988). The NHS Job Evaluation Scheme applies to all NHS staff across the UK.

The NHS Job Evaluation Scheme (JES) has been tested in the courts and the scheme was found to meet equality legislative requirements (*Hartley v Northumbria NHS Foundation Trust*). It is important however that it is implemented in accordance with agreed procedures otherwise there could be legal challenges by staff claiming unfair implementation. These procedures are described in detail in the Job Evaluation Handbook (4th Edition) which is available on the NHS Employers website:

<http://www.nhsemployers.org/Aboutus/Publications/Pages/NHSJobEvaluationHandbook.aspx>

The NHS Staff Council has recently published an equal pay audit tool, where employers can analyse whether job have been banded in accordance with equal pay legislation. The toolkit aims to guide employers and their local staff side organisations through their legal responsibilities in relation to equal pay audits. Whilst it is not a stated legal requirement under the Equality Act 2010, NHS organisations would find it very difficult to fully comply with their responsibilities under the Act without undertaking equal pay audits. The toolkit has been designed and produced for these purposes and can be used following restructuring or re-profiling exercises to review the impact as part of the equality impact assessment analysis.

Why the Job Evaluation Scheme is important

The NHS JES is an integral part of Agenda for Change. It underpinned the assimilation of NHS staff to the new harmonised pay system in 2005-07, and has been legally tested to provide a basis for delivery of fair and equal pay in NHS organisations. It applies to all NHS staff on Agenda for Change contracts. At national level, the Job Evaluation Group has continued to provide updates to the Job Evaluation Handbook, training and advice, in

order that this important element of the Agenda for Change agreement stays 'live'.

Correct application of the NHS JES:

- Is the basis for fair and transparent placement of jobs on the NHS pay bands.
- Provides for consistency and comparison of job roles within and across occupational groups and different employing organisations.
- Protects your employer from equal pay claims.

Job evaluation can also be used as a tool for supporting planned changes to the way NHS services are provided and for ensuring that equal pay risks are minimised when efficiency-based workforce reviews take place.

What do threats to the NHS Job Evaluation Scheme look like?

Many UNISON stewards are reporting factors that are threatening the integrity of the NHS JES.

These include:

- Changes to the way the NHS is organised in particular the dissolution of the English Strategic Health Authorities. This could allow inconsistency in banding across different organisations to creep in.
- Pressure of work (plus job cuts) resulting in fewer staff side job evaluation practitioners to participate in local JE processes and preventing full partnership working on JE issues
- Pressure on finances and time, resulting in fewer training courses being delivered for new HR managers and staff side reps
- Ambitious cost improvement plans resulting in reports of 'downbanding' exercises – skill mix reviews not based on or consistent with the principles of the Job Evaluation Scheme

Checklist: How healthy is Job Evaluation in your workplace?

Make sure you have the following elements in place to defend the NHS JES in your workplace:

1. **A trained Job Evaluation lead for the staff side** – having a nominated JE lead who attends your regular JNC meetings makes it more likely that workforce changes which contain risks to the job evaluation scheme are flagged up at an early stage. Having a staff side JE lead can also be helpful in ensuring that new JE reps are recruited and trained and that there is a consistent point of contact for HR on JE issues.
2. **Partnership in Job Evaluation** – The various processes within the JES should all take place in partnership. If pressure of work and organisational change have led to a lack of partnership, you need to address this as a priority and make sure you nominate stewards who are prepared to take part in Job Evaluation activities in your workplace.

3. **Training and refresher courses on the Job Evaluation Scheme** – it is essential that reps who have a role in negotiating on Agenda for Change issues understand the JE system. Any reps who are asked to participate in Job Matching or Evaluation Panels must receive the official training courses, but you can also run the UNISON Job Evaluation course as a way of familiarising new reps with the Scheme. The national Job Evaluation Group (JEG) provides a range of courses to train new JE practitioners and to refresh skills of existing JE reps. You should also make sure that those HR staff who work on Agenda for Change issues have also been trained, ideally in partnership.
4. **Changes to skill mix supported by Job Evaluation** – changes to the way that work is organised or care is given should be undertaken with involvement of trained Job Evaluation practitioners and carried out in a way which is consistent with the principles of the scheme.

The NHS Job Evaluation Scheme and Annex X

One of the principles of the new Annex X is that:

“the re-profiling exercise should be supported by, and comply with, the process and guidance contained in the NHS Job Evaluation Scheme or the appropriate system for staff outside Agenda for Change groups” (Annex X, Core Principles, Section 2, vii).

The requirement to use the Job Evaluation is further emphasised in Annex X as the way to determine the pay band for the new role.

*“3. (ii) **What AfC Bands will the new roles be in?** Revised job documentation for all roles should be put through the established job matching/evaluation process consistent with the Job Evaluation Handbook.” (Annex X, Practical Implications, Section 3, ii).*

Therefore, before any re-profiling exercise is undertaken it is important for staff in the organisation to have the knowledge, skills and experience to undertake Job Evaluations. JE training is delivered to organisations through the JEG by trade union and employer representatives in partnership. It is really important that the training is undertaken in a similar partnership approach as it will help to build shared understanding and trust in the processes.

It is a basic principle that if a role, or roles, are found to be evaluated into lower pay bands then the staff should not be expected to work at the previous band level. This is in effect downbanding at its worst and should be challenged. More detail is contained in the section on challenging downbanding.

More information on agreed job evaluation procedures can be obtained on the NHS Employers website and from the JE Handbook 4th Edition which is also available online.

Actions

- Promote the Job Evaluation scheme and its importance in workforce re-profiling
- Check the status of your local job evaluation processes
- Find out who your JE leads are (management and staff side)
- Raise the issue of JE training at your negotiating forums
- Organise joint training with your employer
- Organise refresher courses for those that received their training some time ago
- Use the Equal Pay Toolkit following re-profiling to assess the impact

CONSULTATION PRINCIPLES

Agenda for Change provides a framework where partnership is emphasised from the very beginning. The expectation is that partnership working is part of the fabric of NHS employment and the new Annex X should further enhance this partnership. In practice this may not reflect current working relationships in all areas in which case this guide should be used to establish the requirements to consult with staff and trade unions over change.

Your organisational change policy should set out how consultation will work in the event of change, including the role of the Joint Negotiating Committee, trade union representatives, timescales and sharing of information. Branches need to ensure there is a link with the new Annex X and their organisational change policy so that the principles are embedded in their collective agreement. In some cases change will be significant and affect services used by the public, in which case there may be a requirement to instigate a public consultation.

This section outlines some important points on consultation and your rights to be involved in decision making.

Consultation involves not only getting information from your employer but also them listening and taking account of what it said before making any decisions. For any consultation to be “meaningful” the original proposals should be affected by the consultation responses and whenever employees' views are rejected the reasons for doing so should be carefully explained. Equally, where the views and ideas of employees help to improve a decision due credit and recognition should be given.

There are a number of legal, contractual, statutory and moral obligations on public sector employers to consult over changes. This advice is not designed to be a legal briefing but should highlight areas of the law and contacts which can help develop strong arguments for the need to consult as well as participating in a meaningful consultation process.

The law states that employers must consult ‘in good time’. In practice, this means they have to allow enough time for employees and their representatives to consider the matters being raised and provide them with informed responses.

Most of the legal rights to be consulted are related to redundancies and transfers of services. With some re-profiling this may be relevant but in other circumstances there may be no transfer or overall reduction in staff meaning that legal requirements do not apply.

AGENDA FOR CHANGE

Agenda for Change outlines the contractual principles of consultation:

25.7 *Subject to the needs of the service and adequate notification, accredited representatives should be permitted paid time off, including time to prepare for meetings and disseminate information and outcomes to members during working hours, to carry out duties that are concerned with any aspect of:*

negotiation and/or consultation on matters relating to terms and conditions of employment or agreed partnership processes – examples include:

- *terms and conditions of employment;*
- *engagement or termination of employment;*
- *allocation of work;*
- *matters of discipline;*
- *grievances and disputes;*
- *union membership or non-membership;*
- *facilities for trades union representatives;*
- *machinery for negotiation or consultation or other procedures;*
- *meetings with members;*

Agenda for Change Section 26 outlines the role of the joint consultation machinery to discuss significant change as early as possible. There is also a reference to the ACAS advisory booklet - Employee communications and consultation which contains useful information on consultation and expectations on employers.

<http://www.acas.org.uk/index.aspx?articleid=663>

Agenda for Change is written in the context of partnership working. The very first section of the Handbook contains principles under which this partnership operates. The new Annex X further promotes the obligations on employers to consult on any workforce re-profiling exercises and gives the principles under which such a review should happen. Annex X states that;

“as well as being actively involved in the re-profiling exercise, staff should be made aware of the timing for – and encouraged to respond to – the relevant formal consultations on the proposed structures and new ways of working”.

(Annex X, Practical Implications 3 (iii)).

PUBLIC SECTOR EQUALITY DUTY

Public Sector bodies are required to consult with the public through the Public Sector Equality Duties which were created by the Equality Act 2010. This can be a useful tool if a proposed change of services would have a negative impact on a group of people with a protected characteristic, such as gender or religious belief.

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/>

NHS CONSTITUTION

The NHS constitution, which is a legally enforceable agreement and covers the rights for patients and staff and their representatives to be involved in the decisions about the services they use and provide, is a really useful tool when changes to services are proposed. It contains legal rights and pledges to be involved in the development of services.

<http://www.nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Pages/Overview.aspx>

INFORMATION AND CONSULTATION OF EMPLOYEES REGULATIONS 2004

The European Union Directive for Informing and Consulting Employees Directive was implemented into UK law by the Information and Consultation of Employees regulations 2004. This gives employees the right to be:

- informed about the business's economic situation
- informed and consulted about employment prospects, and
- informed and consulted about decisions likely to lead to substantial changes in work organisation or contractual relations, including redundancies and transfers.

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<http://www.legislation.gov.uk/uksi/2004/3426/contents/made>

HEALTH AND SAFETY

It is essential that any workforce changes or restructuring do not negatively impact on the health and safety of staff. Some examples of relevant health and safety issues may include lone working, heavy lifting, safe record keeping, increased workload, morale, stress and staff leaving the service.

The basis of UK health and safety law is the Health and Safety at Work Act 1974. The Act (and the various regulations and approved codes of practice made under it) put a duty on employers to ensure the safety, health and welfare at work of their employees and to ensure their activities do not endanger others.

Employers are required to carry out risk assessments, i.e. a careful examination of what, in a workplace, could cause harm to people, so that measures can be identified that eliminate or significantly reduce the risk of harm.

Health and safety law requires that employers must consult with employees on health and safety at work matters. Where an employee recognises a trade union which has appointed, or is about to appoint, safety representatives under the Safety Representatives and Safety Committees Regulations 1977, then the employer must consult those safety representatives on matters affecting the group or groups of employees they represent.

Employers must consult with employees or their representatives about the following:

- the introduction of any measure which may substantially affect their health and safety at work, e.g. the introduction of new equipment or

- new systems of work, such as the speed of a process line or shift-work arrangements;
- arrangements for getting competent people to help them comply with health and safety laws (a competent person is someone who has the necessary knowledge, skills and experience to help an employer meet the requirements of health and safety law);
 - the information you must give your employees on the risks and dangers arising from their work, measures to reduce or get rid of these risks and what employees should do if they are exposed to a risk;
 - the planning and organisation of health and safety training; and
 - the health and safety consequences of introducing new technology

Some useful resources include:

The Health and Safety Executive (HSE) is responsible for health and safety policy and the enforcement of health and safety law. Detailed information and guidance on the legislation is available from the HSE website www.hse.gov.uk

UNISON Health and Safety guidance briefings on a range of relevant topics are available at: www.unison.org.uk/safety

The TUC has resources available including the booklet on the Safety Representative and Safety Committees regulations (Brown Book):

<http://www.tuc.org.uk/workplace/tuc-18484-f0.cfm>

UNION LEARNING REPRESENTATIVES

Union representatives play an important role in a workforce re-profiling exercise. They, like health and safety representatives, also have specific rights to be consulted and time off to help with work place learning. This can be especially important if training needs are established during a systematic review of services. They should be involved at the earliest stage possible to help retain skills and experience and look at ways to improve education and training to benefit services and the staff that provide them.

Annex X states the following on training:

“are staff prepared for an expansion or diminution of their role and/or to undertake new roles with new competencies? Plans should be put in place to ensure that staff undertaking new tasks are fully trained before the commencement of their new duties”
(Annex X, Section 3 Practical Implications, v)

THE TRADE UNION AND LABOUR RELATIONS (CONSOLIDATION) ACT (TULRCA) 1992

The Trade Union and Labour Relations (Consolidation) Act 1992, as amended, requires employers to consult with appropriate representatives of trade unions about redundancies in circumstances where it is proposed to dismiss 20 or more employees at one establishment over a period of 90 days or less. Trade unions / appropriate representatives are entitled to meaningful consultation and should be provided with the following information, in writing, in accordance with Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992:

- a. the reasons for the proposals,
- b. the numbers and descriptions of employees you propose to dismiss as redundant,
- c. the total number of employees of any such description employed by you at the establishment in question,
- d. the proposed method of selecting the employees who may be dismissed,
- e. the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect, and
- f. the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed.
- g. Information relating to agency workers as specified in s.188(4) (g-i)

<http://www.legislation.gov.uk/ukpga/1992/52/contents>

TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”). Regulation 13 of TUPE sets out the obligations upon parties to a relevant transfer to inform and consult in respect of those members affected by the transfer, or by measures taken in connection with the transfer.

Regulation 13(2) places an obligation upon the transferor to inform the appropriate representatives of any affected employees of (amongst other things) the legal, economic and social implications of the transfer for any affected employees. This includes the question of the effect of the relevant transfer upon the contracts of employment of the affected employees and, in particular, whether the transferor considers that particular employees will or will not transfer. The Transferor must provide the following information, “long enough before a relevant transfer to enable the employer of any affected employees to consult the appropriate representatives of any affected employees”:

- a) The fact that a transfer has or is to take place to the Transferee.
- b) When it did or will take place.
- c) The reasons for the transfer to the new companies
- d) The legal, economic, and social implications of the transfer for any affected employees
- e) Any measures that you or the new employers (i.e. the transferee) envisage taking
- f) A full list of those employees that are due to transfer.
- g) Information relating to agency workers under r.13 (2A) TUPE

<http://www.legislation.gov.uk/uksi/2006/246/made>

UNISON branches are encouraged to review their organisational change policies in light of Annex X to ensure they are compliant with the principles contained within the new annex. Organisational change policies are there to provide structure and process to changes to the workforce. Most policies

have time periods for consultations and a clear process for managing the change such as fair and consistent treatment and the sharing of information as part of the consultation. In the absence of such a policy it will be for the Joint Negotiating Committee to detail the process including timescales and what protections will be available for staff.

There are specific legal requirements to consult over redundancies but where there is no reduction in the overall number of staff this may change the requirement to consult. It is important therefore that organisational change policies outline the requirement to consult on all changes, the timeframes involved, the role of representatives and the joint negotiating machinery and the use of the NHS Job Evaluation scheme. Most organisations also have pay protection policies which protect the earnings of those who may be offered roles at a lower banding and are explored in more detail in the pay protection section later in the guide.

Where NHS Trusts have become NHS Foundation Trusts there is also a requirement to consult with the Foundation Trust board of governors (staff, public and patient) about changes to services. UNISON branches can have influence through these routes either directly as staff governors or through members who hold these positions.

The contractual rights to be consulted also apply to staff who have been transferred from the NHS to private, voluntary or charity organisations. The timing of the transfer will be key to understanding the requirements on the employer to use Annex X. If the transfer happened before 1 April 2013 then Annex X is not included within the Agenda for Change agreement as it would have been transferred with staff and protected at the point of transfer under the Transfer of Undertaking (Protection of Employment) (TUPE) Regulations. Nevertheless, there is still a legal right to be consulted over significant changes which could lead to reductions in the workforce.

If the transfer happened after 1 April 2013 then Annex X will be included as part of the transfer. The exception to this are the staff who were moved on 1 April 2013 in the NHS Transition exercise (decommissioning of Primary Care Trusts, Strategic Health Authorities and Arms Length Bodies) as the changes were accepted as part of the national negotiations along with the 2013 pay award and transferred across.

As each transfer will be different, advice is recommended to establish the requirements for each set of circumstances. UNISON branches with members who have transferred to private, voluntary or charity organisations are encouraged to try and get Annex X agreed as a local agreement to get the benefit of the principles in place.

Apart from these legal and contractual obligations it should be remembered that partnership working is good employment practice which helps to get staff buy-in for change, shares decision making and avoids disputes and challenges.

Actions

- Review Organisational Change Policies to ensure they are aligned with the principles contained in Annex X and other pieces of legislation
- Build the argument for consultation and partnership working
- Discuss any proposed changes with health and safety, union learning and equality representatives
- Consider discussing proposals with other representatives and wider groups such as Foundation Trust governors, patient and public bodies and community groups
- Discuss proposed changes with your UNISON region

EQUALITY

Public authorities are legally bound to carry out equality impact assessments on all new and existing policies, including proposals for restructuring, cuts and redundancies. It is their legal responsibility to ensure that no staff groups or groups in the community are disadvantaged as a result of an organisation's policies, procedures and practices.

Equality Impact Assessments (EIAs) should be used to assess the relative impact of proposals on the terms and conditions of the relevant target groups with respect to: gender, race, disability, sexual orientation, religion or belief and age. Staff have the right to challenge their organisation/employer if they feel that they are not undertaking a thorough and systematic analysis of a policy to ensure it is not discriminating against any particular group.

Annex X outlines the requirement to assess any equality impact of proposed changes:

“The potential impact of the re-profiles structure on different groups of staff/patients/services users should be assessed using the agreed local procedure”
(Annex X, Practical Implications, Section 3 iv).

Equality should be at the heart of the decision making and careful analysis of the groups of staff involved is vital to ensuring that there is no discriminatory effect. Most organisations will have Equality Policies which should cover the requirement to undertake an Equality Impact Assessment (EIA) using data from the organisation.

Careful analysis and a systematic approach will help to mitigate any risks. For instance, selecting a mainly female group of Nurses for re-profiling while not selecting a mainly male group of doctors for the same review could be discriminatory. Annex X is clear that:

“all functions across the organisation should be subject to re-profiling on a regular basis to ensure that the potential efficiencies within a system are identified”
(Annex X, Core Principles 2 ii);

It further it states:

“all roles within a function should be subject to re-profiling, not just those in the most populous pay bands and should also include staff outside groups covered by Agenda for Change”
(Annex X, Core Principles 2 iv).

Annex X states that pay protection will apply:

“where staff move to a post at a lower level in the revised structure, the local organisational change policy or a local agreement will apply. In the absence of such as policy, local partnerships should seek to agree an appropriate period during which the higher rate of pay will be protected”
(Annex X, Practical Implications Section 5).

Care should be taken to ensure that pay protection does not worsen an equal pay situation. Advice should be sought on the application of pay protection – see also the section of this guide on pay protection.

UNISON equality guidance is available at www.unison.org.uk/equality. This includes guidance on how to ensure employers are fulfilling their obligation to undertake a full equality impact assessment on a proposed course of action as well as links to UNISON Self Organised Groups.

Actions

- At the beginning of any proposed re-profiling establish what equality data is required from the employer
- Determine how this data will be captured and which process will be used to assess the impact of the changes
- Develop in partnership a robust Equality Impact Assessment and review regularly throughout the exercise
- Discuss changes and the EIA with UNISON Equality representatives and Self Organised Groups
- Agree actions to remove areas of potential discrimination or mitigate where there is a justified reason

PAY PROTECTION

Purpose of pay protection

The aim of this chapter is to explain how pay protection is linked to workforce re-profiling and outline the key elements that need to be negotiated in a pay protection policy.

Pay protection is a way to enable change, which affects the pay of staff, without that change having an immediate detrimental impact on the staff involved. Pay protection provides a cushion to the impact of these changes, which is often time limited, and allows the individual to find a post at their original pay band or adjust their lifestyles to their lower salary within the protection period.

Pay protection is closely linked to, and should be read in conjunction with, organisational change policies. Pay protection should apply to any employee who, as a consequence of organisational change, is required to move to a new post; or suffers a reduction in basic hours within their working week or a reduction in earnings.

Pay protection falls under Annex O of the NHS terms and conditions handbook meaning policies must be negotiated at a local level. As a result, discrepancies exist between the periods of pay protection that have been negotiated; this can range from as little as one month to life-time protection.

Settlements on protection periods are also influenced by the decisions of employment tribunals which found that the application of some pay protection policies had breached equal pay legislation. This was the case where local government job evaluation processes found an inequality in pay between groups of male dominated jobs and female dominated jobs and the male staff were offered lifetime pay protection when their posts were evaluated. This was found to breach the equal pay legislation and furthered the inequality as the pay gap would not be levelled.

Employer's regularly try to use this to limit protection periods. However, if a competent equal impact assessment has been conducted the protection period negotiated should not have any equal pay implications.

If your trust is reviewing their pay protection policy and you require assistance please contact the health group on h.group@unison.co.uk.

Scope and provisions of pay protection

Pay protection policies are likely to be applied to all staff who are directly employed by NHS organisations. The policy normally applies to staff, on a marked time basis, that hold permanent or fixed term positions. Normally, those exempt from the provisions of pay provision provisions include; staff on temporary contracts; staff who have been redeployed as a result of disciplinary action, for capability reasons or as a result of sickness absence management (see note below); staff on bank contracts or where other policies are in place for affected staff who have transferred into the Trust

under a TUPE (Transfer of Undertakings (Protection of Employment) regulations) transfer.

The exception to this is covered in the new Section 22 of Agenda for Change on Injury Benefit which states the following:

“22.14 Eligible employees who have to change jobs permanently to a position on lower pay due to a work related injury, illness and/or other health condition, will receive a period of protected pay that is the same as local provision for pay protection during organisational change.”

Pay protection periods may cease to apply once the maximum protection period is reached or one the following occurs:

- if the employee retires or leaves the organisation;
- if an employee refuses redeployment to a suitable alternative post;
- if an employee moves on their own application to a post with a lower basic salary; or
- if an employee moves to a post where the post is greater or equal to the current post.

Definitions and common terms

The following section outlines definitions and common terms that relate to, and are used in, pay protection policies:

Organisational change – means any structural or managerial change in an organisation. This may include a re-organisation, changes to rotas or working arrangements, ward or department closures or the amalgamation/transfer of a service.

Basic wage/salary – is the sum due in respect of basic hours worked in the post by the employee concerned within the standard working week in the substantive post. It should include contractual overtime, plus any payment made for statutory regulatory duties and any long-term recruitment and retention premia. It does not include enhancements, on call, non contractual overtime or additional hours worked by part time staff.

Marked time - means that the protected basic pay will be frozen and will not be increased by pay awards for a given period. Some marked time arrangements still allow for annual incremental progression.

Downgrading – occurs when the new post, irrespective of its band, grade or title has a salary scale with a maximum annual salary lower than the maximum annual salary for the current post.

Protectable earnings – is the value of basic pay immediately prior to down grading.

Reckonable service – pay protection will be based on ‘reckonable service’ at the point at which protection takes effect. ‘Reckonable service’ for the purposes of calculating entitlement to pay protection should be consistent with the NHS terms and conditions handbook definition for calculating

entitlement to redundancy pay. This is outlined in Section 16.5 of the handbook.

Continuous service – for the purposes of calculating entitlement to pay protection should be consistent with Section 16.4 of the NHS terms and conditions handbook.

Break in Service – is defined in the redundancy provisions of section 16.5 of the NHS terms and conditions.

Forms of pay protection

Pay protection policies should include short term protection where downgrading is not involved; long term protection where downgrading is involved and the protection of other terms and conditions of service.

Short term protection

Short term pay protection should apply where organisational change leads to any loss of enhancements due to a change in working pattern including overtime, on-call and unsocial hours payments. Depending on the local agreement the protection period will be based on reckonable or continuous service. The length of the protection period is also dependent on the local agreement.

Long term protection

Long term pay protection will apply where organisational change leads to a member of staff being downgraded. Depending on the local agreement the protection period can be based on reckonable or continuous service. The length of the protection period is also dependent on the local agreement. Staff sides should negotiate reasonable opportunities for downgraded staff to retain and/or develop the skills and knowledge to apply for posts at their former level, when available.

Protection of other terms and conditions

Pay protection policies can include the protection of non-pay related terms and conditions that are adversely affected as a result of organisational change.

Impact on pensions

It is possible for staff who move to a lower banded post under a local agreement to preserve their benefits earned on their higher pay if they are members of the NHS Pension Scheme. The NHS Pension Scheme requires at least two years in the scheme to qualify. Specific details should be obtained from your organisation's Pensions Officer and the NHS Pensions Agency as a lot will depend upon individual circumstances. The NHS Pensions Agency website has more information and your local UNISON branch may also have a pension officer.

<http://www.nhsbsa.nhs.uk/pensions>

Survey on pay protection

In order to gain a clearer picture on the pay protection policies that have been negotiated locally. UNISON is conducting a branch survey on pay protection. Please follow the link <https://www.surveymonkey.com/s/NL593P3> and fill out the survey as this will play a key role in advising branches in the future.

Actions

- Ensure that your Trust has a pay protection policy in place
- If your Trust is reviewing its pay protection policies ensure the points outlined above are covered in the policy
- Ensure pay protection policy complies with equal pay legislation through EIA
- Ensure members affected by downgrading are aware of their rights to have their pension preserved at the higher pay rate
- Complete UNISON branch survey on pay protection
<https://www.surveymonkey.com/s/NL593P3>

CHALLENGING DOWN BANDING

The need to save money has propelled many organisations into asking departmental managers to review the distribution of roles across the Agenda for Change pay bands. Undertaken correctly, planned re-profiling can be a useful way of making savings over time – ensuring that taxpayers' money is used as efficiently as possible in the NHS. However without proper planning, consultation and active use of the NHS JE scheme as a supporting tool, these reviews can lead to:

- Loss of morale as staff feel their service has had a review 'done to' them rather than engaging them in the process.
- Staff being expected to carry out exactly the same role as before the review but on a lower band.
- A lack of clarity about clinical governance and supervisory roles.
- Staff being expected to take on enhanced roles without appropriate training or commensurate pay.

Over time, these issues will contribute to a weakening of the equal pay-proofed system which Agenda for Change delivered in the NHS, undoing the investment that was made to implement the system and allowing unequal pay creep back in. Lack of clarity about appropriate supervision and inability to ensure correct delegation of tasks can also pose serious risks to the quality of service that your organisation provides to patients/service users.

Annex X: Principles guiding workforce re-profiling

Where services are subject to organisational change, it is vital that consideration is given to staff and service users. Annex X provides employers and staff sides with a set of guiding principles to help manage workforce re-profiling.

If a re-profiling exercise highlights that a lower distribution of roles within a function could deliver a safe service to the expected standard of quality the new structure should be considered in light of the following principles in Annex X Section 3:

Annex X Section 3

- (i) **Does the proposed re-distribution of roles pose any risk to good practice?** A risk assessment of the new structure should be undertaken at an early stage of the exercise. A check should be made of the relevant professional codes of conduct and ethics (including those for non-clinical job groups) in addition to agreed local policies or protocols, to ensure that removing a task and/or group of tasks from a role does not compromise good practice or pose risks to patient care. There is a requirement on Employers to identify the precise differences between the jobs and make an explicit statement of what will no longer be done or done differently under the new structure;

- (ii) **What AfC Bands will the new roles be in?** Revised job documentation for all roles should be put through the established joint job matching/evaluation process consistent with the Job Evaluation Handbook;
 - (iii) **Has the proposed structure been subject to consultation with staff?** As well as being actively involved in the re-profiling exercise, staff should be made aware of the timing for - and encouraged to respond to - the relevant formal consultations on the proposed structure and new ways of working;
 - (iv) **Do the changes have any discriminatory impact?** The potential impact of the re-profiled structure on different groups of staff/patients/service users should be assessed using the agreed local procedure;
 - (v) **Are staff prepared for an expansion or diminution of their role and/or to undertake new roles with new competencies?** Plans should be put in place to ensure that staff undertaking new tasks are fully trained before the commencement of their new duties;
 - (vi) **Is it obvious what each member of the team is responsible for and who is providing supervisory support?** Clear lines of accountability and governance should be identified within the function and any elements of risk clearly highlighted and appropriate action agreed. Registered staff have a duty to ensure that staff to whom they are delegating tasks are appropriately trained and can deliver the task to the expected standard.
4. In cases where the re-profiling exercise identifies that fewer staff are needed at particular pay bands, local partnerships will need to apply the following principles:
- (i) natural wastage should normally be the preferred means by which the number of posts are reduced;
 - (ii) if it is not anticipated that there will be natural wastage of a level sufficient to move to the new structure within the agreed timeframe, agreement should be reached on plans to apply the relevant process for consultation on redundancy (see Section 16) or, in cases where more staff are required to work at lower bands, to agree the process for redeployment to new roles.
5. Where staff move to a post at a lower level in the revised structure, the local organisational change policy or a local agreement will apply. In the absence of such a policy, local partnerships should seek to agree, (in line with Annex O), an appropriate period during which the higher rate of pay will be protected¹.

¹ Annex A2 (a) Part 3: Section 19 states that where a local partnerships are unable to reach agreement on a local pay protection policies the previous contractual arrangements for those on national contracts will apply.

Practical steps to protect against down banding

Reorganising the structure of a department is never an easy exercise, but there are ways that you can make sure it is done in a way which involves and ensure fair treatment of staff and minimises the risks above. You should have an agreement with your employer about how re-profiling will be done, incorporating the following elements:

- Timeframe and consultation process, incorporating any formal notice periods;
- Involvement of the recognised trade unions and staff in affected departments in developing the new structures;
- A commitment to using the job evaluation scheme to support any resulting changes to roles in the affected department, including agreement that revised job documentation for all roles will be agreed and subject to the usual matching/evaluation process;
- Clarity as to how roles which are subject to change will be treated including:
 - a) Posts to be removed from the structure or replaced at a lower band through natural wastage as a first option (i.e. for an agreed period of time).
 - b) An agreed period of pay protection which will apply if natural wastage does not remove sufficient posts within the agreed period of time.
 - c) Agreement (checked with your regional office) about when the redundancy policy should be applied to roles which are removed from the structure if natural wastage does not remove sufficient roles within the agreed period of time.
 - d) Equality impact assessment conducted to flag up any discriminatory effects that the new structure may have on particular groups of patients, service users or staff.
 - e) The new structure will be subject to a thorough clinical or quality audit to make sure that there is adequate supervision and oversight in place to protect the quality of the service.
 - f) Staff accepting posts at lower bands should be clear about the duties and tasks which they are no longer expected to perform.
 - g) Staff who are expected to take on additional duties or increase their workload should be given adequate training to ensure that they can deliver a safe service and are aware of how to flag up risks to quality and standards.
 - h) Staff on the register of the HPC, NMC, GPC or other regulatory body should ensure that their revised role does not contravene their agreed code of practice or ethics, paying particular attention to their responsibility to quality assure tasks which are delegated.

Evidence

In order to support your case, it is helpful to gather evidence which can demonstrate the impact of any negative changes to structures or services.

When gathering your evidence you might want to consider:

- Locally collected info on the effectiveness of the service, e.g. statistics on readmissions, testimonials from services users
- Profession-based research which demonstrates your profession's value to health outcomes
- Code of ethics and professional conduct for regulated professions
- Professional standards for practice within regulated professions
- Health and Safety Inspections or Risk Assessments
- Adverse or Serious Incidents
- Trust Board papers and risk registers on the proposals
- Equality Impact Assessments (EIA)
- Previous Inspections from outside agencies, HSE, CQC, Monitor etc
- Linking your evidence to the organisational priorities described in relevant service frameworks (i.e. the priorities or objectives set out by your organisation or by local or national government strategies)

The following sections of this briefing may provide you with a useful summary of some areas to consider in your response. Your response will have more weight if you include good examples within each section.

Services to patients/service users

Consider how patients/service users may be affected by any proposed changes, such as increased health inequalities, lowering standards, unmanageable caseloads or decreased patient engagement in decisions about the service.

Some questions you may want to consider include:

- Q** What kind of roles are being threatened/displaced? Was there a clear rationale for the development of these posts (i.e. to respond to a National Service Framework (NSF) or other clinical need?) Does the rationale still count? For example, if specialist skills were developed among staff to support the needs of particular patients/service users, do those types of patients/service users still exist within the local health economy?
- Q** Is the service/activity being reduced as a result of this planned restructuring? If so, which patients/clients will be affected by the service reduction? Will this lead to creation or worsening of health inequalities within the service? Are the patients/clients aware of the proposed restructuring?
- Q** If the service or activity is not being reduced, then how is the organisation planning to deliver this with fewer staff? How will caseloads be affected? Are standards going to be lowered/waiting time increased and/or patients/service users put at risk? What organisational key performance indicators or targets will this have a negative impact on? Has the risk of these proposals been assessed and reported to the Trust Board?

- Q** Will this have a knock-on effect on other NHS or social care services? For example, if specialist posts in the community are being cut, this is likely to have an impact on the ability of hospital teams to discharge patients within the target times?
- Q** How will the proposals affect plans to implement new policy directives or Government strategies?

Actions

- Ensure workforce re-profiling exercise is in line with the principles of Annex X.
- Research the impact an organisational restructure will have on patients/service users.
- Use the duty of care and professional standards set by professional bodies when arguing against down banding.
- If a job re-profiling exercise results in a lower distribution of posts, ensure the employer does not expect the same job to be delivered at a lower grade.
- Ensure the use of the NHS Job Evaluation Scheme throughout the process.
- Use the practical steps included in the guide to explore the impact of proposals

RECRUITING AND ORGANISING

Any re-profiling exercise provides an opportunity to organise and recruit. This is especially important in departments or teams where there is a low membership density. Increasing membership and recruiting contacts and activists will enhance engagement with consultation and strengthen any challenge to proposals which are not in the best interests of patients, staff and the public.

Workplace meetings and workshops are a great way to get members involved and recruit non-members. It is also important to consider the impact of any changes on other departments. If staffing levels are changed in one area this can increase the workload on another and you may be able to get support in challenging or responding to proposals.

UNISON offers briefings and training to help activists and members face re-profiling exercises.

UNISON's "Understanding NHS Finances" course is a one day training intended to provide Branch Secretaries and stewards who are on Joint Negotiating Committees with assistance in dealing with the financial challenges in the NHS. The training will look at the challenges being faced by Branches, how to challenge the employer's narrative and how to influence decisions around cuts from inside the system.

The course aims are:-

- To outline the context we are experiencing in the NHS;
- Using the online toolkit around NHS cuts;
- To develop confidence for branch negotiators to challenge the employers financial narrative;
- To understand the importance of various financial statements and to know where to find key documents;
- To be able to interpret information confidently;
- To develop a practical action plan, which includes bargaining and organising outcomes
- Know where to go for further advice/ info
- Influencing the new NHS structures

UNISON Be Safe has resource available on duty of care and safe staffing levels and is being considered for a new training course early next year. The guide can be found at:

<http://www.unison.org.uk/at-work/health-care/key-issues/be-safe/resources/>

As stated in the section on Job Evaluation, this new Annex gives an opportunity to review the organisation's job evaluation processes and training, therefore before any re-profiling exercise is undertaken it is important for branches to review their arrangements for JE. All branches should have at least one JE lead who has the knowledge, skills and experience to undertake Job Evaluations and ensure there is organisational consistency. However, branches should ensure there are sufficient JE practitioners trained to undertake any re-profiling exercise. JE training is delivered to organisations through the Job Evaluation Group (JEG) by trade union and employer representatives in partnership.

More details can be found from the NHS Employers website:

<http://www.nhsemployers.org/PayAndContracts/AgendaForChange/JobEvaluation/Pages/JobEvaluationHOMEPAGE.aspx>

Actions

- Organise and recruit around any workplace changes or proposals on re-profiling
- Build density in departments where change is proposed
- Discuss branch training courses with your regional organiser or regional education officer
- Review current branch Job Evaluation training and organise new training or refresher training as appropriate

RESOURCES

Agenda for Change

<http://www.nhsemployers.org/payandcontracts/agendaforchange/pages/afc-homepage.aspx>

(AfC Section 26, AfC Annex O, AfC Annex X)

Job Evaluation Scheme Handbook

<http://www.nhsemployers.org/Aboutus/Publications/Pages/NHSJobEvaluationHandbook.aspx>

Public Sector Equality Duties

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/>

NHS Constitution

<http://www.nhs.uk/choiceintheNHS/Rightsandpledges/NHSConstitution/Pages/Overview.aspx>

Information and Consultation of Employees regulations 2004

<http://www.legislation.gov.uk/ukxi/2004/3426/contents/made>

Health and Safety Executive (HSE)

www.hse.gov.uk

UNISON Health and Safety guidance briefings

www.unison.org.uk/safety

TUC Safety Representative Resources (including the Brown Book – SRCR regs)

<http://www.tuc.org.uk/workplace/tuc-18484-f0.cfm>

The Trade Union and Labour Relations (Consolidation) Act 1992

<http://www.legislation.gov.uk/ukpga/1992/52/contents>

The Transfer of Undertakings (Protection of Employment) Regulations 2006

<http://www.legislation.gov.uk/uksi/2006/246/made>

ACAS advisory booklet - Employee communications and consultation

<http://www.acas.org.uk/index.aspx?articleid=663>

UNISON equality guidance

www.unison.org.uk/equality

NHS Pensions Agency

<http://www.nhsbsa.nhs.uk/pensions>

Health and Care Professions Council (HCPC)

www.hcpc-uk.org

Nursing and Midwifery Council (NMC)

www.nmc-uk.org

UNISON Be Safe Website

<http://www.unison.org.uk/at-work/health-care/key-issues/be-safe/resources/>

UNISON Defending the NHS (including guide to influencing the new NHS)

<http://www.unison.org.uk/at-work/health-care/key-issues/defending-the-nhs-in-england/resources/>

NHS Employers website Job evaluation training

<http://www.nhsemployers.org/PayAndContracts/AgendaForChange/JobEvaluation/Pages/JobEvaluationHOMEPAGE.aspx>

UNISON Pay Protection Survey

<https://www.surveymonkey.com/s/NL593P3>

Annex X (England): Guidance on workforce re-profiling

1. This Annex is intended to support organisations undertaking workforce re-profiling by highlighting how the NHS Staff Council agreement can support organisational, service and workforce change, including the development of new roles. It provides advice on how the principles and processes of the NHS Job Evaluation (JE) Scheme can assist organisations in developing and implementing new ways of working and revised job structures. It also provides advice on the consistent application of these principles locally and how local partnerships can benefit from the Staff Council agreement.

Core principles

2. Re-profiling is a means of examining the content of job roles within a team or a patient pathway to determine the most efficient distribution of bandings needed to deliver the required service. Re-profiling should be undertaken in line with the following principles:
 - (i) as a joint exercise between the managers and staff working in that function and with the involvement of their Trade Union representative/s;
 - (ii) all functions across the organisation should be subject to re-profiling on a regular basis to ensure that the potential efficiencies within a system are identified. Explicit and documented consideration may need to be given to Extended Scope Practitioner roles, non-medical Consultant roles, and New Ways of Working;
 - (iii) the process and timeframe for undertaking re-profiling (either across the whole workforce or within particular functions) should normally be agreed with staff and their representative/s from the beginning of the review process;
 - (iv) all roles within a function should be subject to re-profiling, not just those in the most populous pay bands and should also include staff outside groups covered by Agenda for Change;
 - (v) the re-profiling exercise should look first at the skills, tasks and responsibilities needed to carry out roles rather than the bands required;
 - (vi) it should not be assumed that re-profiling will automatically result in a lower distribution of bands - a re-profiling exercise may well confirm that the current distribution of tasks and roles is the most efficient possible to deliver a clinically safe service to the expected standards of quality;

- (vii) the re-profiling exercise should be supported by and comply with the processes and guidance contained in the NHS Job Evaluation Scheme (or the appropriate system for staff outside Agenda for Change groups);
- (viii) before the re-profiling starts, agreement should normally be sought with staff and their representatives about the principles for managing the transition to any new structure, in line with the principles in 3 (i) to 3 (ii) below;
- (ix) where a workforce re-profiling exercise results in a member of staff being paid at a lower pay band, as established through job evaluation, then the member of staff should see a commensurate change in their role (or the work they undertake).

Practical implications

3. If a re-profiling exercise highlights that a different distribution of roles within a function could deliver a safe service to the expected standard of quality, the proposed new structure should be considered in light of the following:
 - (i) **does the proposed re-distribution of roles pose any risk to good practice?** A risk assessment of the new structure should be undertaken at an early stage of the exercise. A check should be made of the relevant professional codes of conduct and ethics (including those for non-clinical job groups) in addition to agreed local policies or protocols, to ensure that removing a task and/or group of tasks from a role does not compromise good practice or pose risks to patient care. There is a requirement on Employers to identify the precise differences between the jobs and make an explicit statement of what will no longer be done or done differently under the new structure;
 - (ii) **what AfC Bands will the new roles be in?** Revised job documentation for all roles should be put through the established joint job matching/evaluation process consistent with the Job Evaluation Handbook;
 - (iii) **has the proposed structure been subject to consultation with staff?** As well as being actively involved in the re-profiling exercise, staff should be made aware of the timing for - and encouraged to respond to - the relevant formal consultations on the proposed structure and new ways of working;
 - (iv) **do the changes have any discriminatory impact?** The potential impact of the re-profiled structure on different groups staff/patients/service users should be assessed using the agreed local procedure;

- (v) **are staff prepared for an expansion or diminution of their role and/or to undertake new roles with new competencies?** Plans should be put in place to ensure that staff undertaking new tasks are fully trained before the commencement of their new duties;
 - (vi) **is it obvious what each member of the team is responsible for and who is providing supervisory support?** Clear lines of accountability and governance should be identified within the function and any elements of risk clearly highlighted and appropriate action agreed. Registered staff have a duty to ensure that staff to whom they are delegating tasks are appropriately trained and can deliver the task to the expected standard.
4. Principle 2 (viii) above identifies that local partnerships should seek to agree a process for managing the transition to new structures. In cases where the re-profiling exercise identifies that fewer staff are needed at particular pay bands, local partnerships will need to apply the following principles:
- (i) natural wastage should normally be the preferred means by which the number of posts are reduced;
 - (ii) if it is not anticipated that there will be natural wastage of a level sufficient to move to the new structure within the agreed timeframe, agreement should be reached on plans to apply the relevant process for consultation on redundancy (see Section 16) or, in cases where more staff are required to work at lower bands, to agree the process for redeployment to new roles.
5. Where staff move to a post at a lower level in the revised structure, the local organisational change policy or a local agreement will apply. In the absence of such a policy, local partnerships should seek to agree an appropriate period during which the higher rate of pay will be protected (see paragraph 19.1).