

## **Item: 18**

### **Human Resources Sub-committee: 31 August 2021.**

#### **1. Recommendations**

**It is recommended:**

##### **1.1.**

That the Committee approves the attached minute as a true record.

##### **1.2.**

That the Committee considers the recommendations at paragraphs 2.3 and 3.5.

#### **2. Appendix**

Draft Minute of the Meeting of the Human Resources Sub-committee held on 31 August 2021.

# Minute

## Human Resources Sub-committee

Tuesday, 31 August 2021, 14:15.

Microsoft Teams.



## Present

Councillors W Leslie Manson, Alexander G Cowie, Robin W Crichton, Steven B Heddle, John T Richards, Gwenda M Shearer, James W Stockan and Duncan A Tullock.

## Clerk

- Sandra Craigie, Committees Officer.

## In Attendance

- Gareth Waterson, Interim Executive Director of Finance, Regulatory, Marine and Transportation Services.
- James Wylie, Executive Director of Education, Leisure and Housing.
- Stephen Brown, Chief Officer/Executive Director, Orkney Health and Care.
- Gavin Mitchell, Head of Legal Services.
- Andrew Groundwater, Head of HR and Performance.

## Observing

- Hazel Flett, Senior Committees Officer.
- Lorraine Stout, Press Officer.

## Declarations of Interest

- No declarations of interest were intimated.

## Chair

- Councillor W Leslie Manson.

## 1. Form of Voting

The Sub-committee resolved that, should a vote be required in respect of the matters to be considered at this meeting, notwithstanding Standing Order 21.4, the form of voting should be by calling the roll (recorded vote).

## **2. Maternity and Paternity Policy**

After consideration of a report by the Executive Director of Education, Leisure and Housing, copies of which had been circulated, and after hearing a report from the Head of HR and Performance, the Sub-committee:

Noted:

**2.1.** That the Council's policy in respect of Maternity and Paternity provisions was last reviewed in April 2015.

**2.2.** The revised Maternity and Paternity Policy, attached as Appendix 1 to the report by the Executive Director of Education, Leisure and Housing, which had been amended to ensure it was fully compliant and up to date with relevant employment law, statutory provisions and existing terms and conditions of employment.

The Sub-committee resolved to **recommend to the Council:**

**2.3.** That the revised Maternity and Paternity Policy, attached as Appendix 1 to this Minute, be approved.

## **3. Policy on Overtime and Time off in Lieu (TOIL)**

After consideration of a report by the Executive Director of Education, Leisure and Housing, together with an Equality Impact Assessment, copies of which had been circulated, and after hearing a report from the Head of HR and Performance, the Sub-committee:

Noted:

**3.1.** That current overtime and time off in lieu (TOIL) provisions applicable to Council employees were governed by Scottish Joint Council agreements, however the specific terms were subject to local agreement and contained within the overarching local Single Status Terms and Conditions agreement and included in employees' contracts of employment.

**3.2.** That it was considered beneficial to have a specific policy document to clearly describe both employees' entitlements and also the principles and procedures that should be adhered to in terms of approval of overtime or TOIL by managers.

**3.3.** That, at this stage, should the proposed new policy, attached as Appendix 1 to the report by the Executive Director of Education, Leisure and Housing, be approved, it would be temporary in nature until 31 March 2023, pending consideration of a wider review of terms and conditions of employment.

**3.4.** That the proposed new policy included a recommendation to raise the threshold for which overtime could be claimed by employees from Single Status spinal column point 40 (£30,585) and below to Single Status spinal column point 50 (£38,195) and below.

The Sub-committee resolved to **recommend to the Council:**

**3.5.** That the Overtime and Time Off in Lieu (TOIL) Policy and Procedures, attached as Appendix 2 to this Minute, be approved on a temporary basis until 31 March 2023.

#### **4. Conclusion of Meeting**

At 14:44 the Chair declared the meeting concluded.

Signed: W Leslie Manson.



# **Maternity and Paternity Policy**

**August 2021**

## Contents.

1. Policy Statement .....	4
2. Scope of the Policy.....	4
3. Entitlement to Maternity Leave .....	4
4. Maternity Risk Assessment .....	5
5. Notification to take Maternity Leave .....	5
6. Maternity Pay .....	6
7. Exclusion from receiving Maternity Pay.....	7
8. Maternity Allowance .....	7
9. Employee who has reserved their position – Excluding SNCT employees .....	7
10. Employee on a temporary contract.....	7
11. Antenatal Care .....	8
12. Sickness during pregnancy .....	8
13. Beginning Maternity Leave.....	8
14. Notification of return to work after Maternity Leave .....	9
15. Right to return to the same or similar job.....	9
16. Keeping in touch days .....	9
17. Part-time and Flexible Working .....	10
18. Annual Leave / Public Holidays .....	10
19. Tax-Free Childcare.....	11
20. Returning to Work – Breastfeeding / Expressing Milk .....	11
21. Transfer of maternity leave.....	12
22. Stillbirth, miscarriage or if your baby dies.....	12
23. Ordinary Paternity Leave.....	12
24. Ordinary Paternity Pay .....	13
25. Notification to take Ordinary Paternity Leave .....	13
26. Parental Bereavement Leave (Statutory entitlement).....	13

## Document Control Sheet.

Review / approval history.

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2015.	General Meeting of the Council.	n/a.	Version 1.0.
TBC.	General Meeting of the Council	n/a.	Version 2.0.

Change Record Table.

Date.	Author.	Version.	Status.	Reason.
Next due for review in 2026.				

## **1. Policy Statement**

This policy sets out the statutory rights and responsibilities of employees who are pregnant or have recently given birth and gives details of the arrangements for antenatal care, pregnancy-related illness, and maternity leave and pay.

Orkney Islands Council recognises that, from time to time, employees may have questions or concerns relating to their maternity rights. It is the Council's policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. As the maternity / paternity provisions are complex, if an employee becomes pregnant they should clarify the relevant procedures with their Manager or Human Resources to ensure that they are followed correctly.

Executive Directors and the Head of Human Resources and Performance are responsible for arranging appropriate training and briefing on the use of this policy and the maintenance and updating of records to facilitate its smooth operation.

Employees should be made aware of the policy and have ready access to it.

This policy has been produced in line with existing best practice and the legislative requirements as well as the relevant provisions from National Conditions of Service including the Scottish Negotiating Committee for Teachers Handbook of Conditions of Service.

## **2. Scope of the Policy**

This policy will apply to all employees of Orkney Islands Council and its subsidiary companies including: Scottish Joint Council (SJC) / Single Status employees including Heads of Service, employees covered by Scottish Negotiating Committee for Teachers (SNCT) conditions of service, Orkney College Academic staff, Executive Directors and the Chief Executive.

The policy will be reviewed by the Head of Human Resources and Performance or their nominated representative in conjunction with recognised trade unions in line with the schedule for the review of all Council Human Resources Policies and Procedures, normally every 5 years. Should changes to employment law, best practice recommendations or schemes of Conditions of Service dictate, a review within this timescale can be carried out by agreement with the Head of Human Resources and Performance.

Where the provision differs for teaching and other employees covered by SNCT conditions of service this will be shown separately.

For the purpose of this policy, all "days" referred to within are calendar days.

## **3. Entitlement to Maternity Leave**

All employees, regardless of length of service or weekly hours, are entitled to 52 weeks maternity leave consisting of 26 weeks Ordinary Maternity Leave (OML) and 26 weeks Additional Maternity Leave (AML) or as much of that period as they wish to



take. However, a minimum of 2 weeks maternity leave must be taken. In the case of employees engaged in certain types of manual work a minimum of 4 weeks maternity leave must be taken.

If an employee has less than 26 weeks' continuous service by the beginning of the qualifying week, they will be entitled to 52 weeks leave (unpaid).

The qualifying week is the 15th week before the expected week of childbirth (EWC).

If an employee has 26 weeks or more continuous service by the beginning of the qualifying week, they may be entitled to 39 weeks paid leave and a further 13 weeks unpaid leave (immediately following the initial 39 weeks), provided they meet the criteria contained within paragraph 6 of this policy.

#### **4. Maternity Risk Assessment**

The workplace risk assessment should already consider any risks to employees of childbearing age and, in particular, risks to new and expectant mothers (for example, from working conditions, or the use of physical, chemical or biological agents). Any risks identified must be included and managed as part of the general workplace risk assessment.

When a manager is notified that an employee is pregnant, breastfeeding or has given birth within the last six months, they should check the workplace risk assessment to see if any new risks have arisen. If risks are identified during the pregnancy, in the first six months after birth or while the employee is still breastfeeding, they must take appropriate, sensible action to reduce, remove or control them.

While it is a legal obligation for employers to regularly review general workplace risks, there is actually no legal requirement to conduct a specific, separate risk assessment for new and expectant mothers.

#### **5. Notification to take Maternity Leave**

The notification of the intention to take maternity leave must be given in writing to the line manager by the employee no later than the first working day of 15th week before the EWC. This letter should also state the duration of maternity leave which the employee intends to take.

SNCT employees including Teachers:
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The notice must be given no less than 21 days before the intended date to commence maternity leave.
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The employee must provide medical evidence of their EWC in the form of a maternity certificate (MAT B1) which is available from their GP or midwife after the 21st week of pregnancy and must be sent to Human Resources as soon as possible.

The employee may change the date on which maternity leave commences by giving 28 days' notice if this is reasonably practicable.

Human Resources will reply in writing within 28 days to confirm receipt of notification and confirm with the employee their rights to leave and expected date of return from maternity leave.

## 6. Maternity Pay

If an employee has less than 26 weeks continuous service by the qualifying week, they will be entitled to 52 weeks leave, with no pay. The employee may, however, be entitled to Maternity Allowance (see paragraph 8).

To qualify for Statutory Maternity Pay (SMP) an employee must:

- Have average weekly earnings not less than the lower earnings limit for National Insurance contribution liability.
- Continue to be employed during all or part of the Qualifying Week.
- Have continuous employment with the Council, other local authority or other recognised body for at least 26 weeks before the end of the Qualifying Week.
- Continue to be pregnant at the 24th week of pregnancy.
- Have stopped work wholly or partly because of pregnancy or childbirth.
- Give appropriate notice of intention to take maternity leave.
- Submit a Maternity Certificate (MATB1) stating the expected week of childbirth.

An employee with at least 26 weeks' continuous service at the beginning of the 15th week before the EWC is entitled to be paid:

- First 6 weeks at 9/10ths of normal weekly pay (including SMP).
- Following 12 weeks at half pay (plus SMP) provided the total cost does not exceed the normal full pay.
- Following 21 weeks at SMP (or 90% of average weekly earnings (whichever is lower) with any further maternity leave with no pay (up to a maximum of 13 weeks).

Payments made by the Council during maternity leave will be made on the understanding that the employee will return to work for a period of at least 3 months and in the event of the employee not doing so, they will refund the monies paid excluding those elements of SMP. Periods of annual leave, sick leave or parental leave which directly follow maternity leave will count as a return to work.

Employees who have indicated that they will not be returning to work will be paid for the first 6 weeks at 9/10ths of normal weekly pay and then SMP for the remaining 33 weeks.

SNCT employees including Teachers:

Where an employee satisfies the conditions above and is eligible to receive SMP, they will be entitled to 39 weeks paid leave, as follows:

- First 13 weeks at full pay (including SMP).

- Following 26 weeks at SMP, with any further maternity leave with no pay (up to a maximum of 13 weeks).

## **7. Exclusion from receiving Maternity Pay**

An employee is excluded from receiving SMP if, at the beginning of the Maternity Pay Period, they fail to meet the qualifying conditions outlined above.

An employee would also be excluded from receiving SMP if, at any time during the Maternity Pay Period, they are in legal custody or work for another employer.

Those who do not qualify for SMP may be entitled to maternity allowance (see paragraph 8).

An employee will be advised of entitlement to maternity pay when notification of pregnancy is received.

## **8. Maternity Allowance**

If an employee is excluded from Statutory Maternity Pay for any reason, the Council will return the MATB1 certificate and an SMP1 form which explains the reason that Statutory Maternity Pay cannot be paid.

If the employee meets qualifying conditions based on recent employment and earnings they may receive up to 39 weeks Maternity Allowance. Further information on eligibility to claim Maternity Allowance is available from the Department for Work and Pensions.

## **9. Employee who has reserved their position – Excluding SNCT employees**

Where an employee wishes to reserve their position about returning to work, this should be confirmed in writing. The employee should also confirm the EWC and the date on which it is intended to commence maternity leave.

The employee will still be entitled to receive 90% of their salary for the first 6 weeks and 33 weeks at the lower rate of SMP but will not receive the additional 12 weeks at half pay. This will be paid in a lump sum on return to work, providing it is the intention to return to work for a period of at least 3 months.

Should the employee decide to resign, notice should be given as detailed in the employment contract and should run during the maternity leave period.

## **10. Employee on a temporary contract**

Where the employee is on a temporary contract with an end date which will not allow them to return to work for the required period of 3 months following maternity leave they will receive 90% of their salary for the first 6 weeks and 33 weeks at the lower rate of SMP as long as they meet the qualifying conditions but will not receive the additional 12 weeks at half pay.

If their contract is extended for a period which will allow them to return to work for a period of at least 3 months, then this will be paid in a lump sum on return to work.

## **11. Antenatal Care**

Employees are entitled to reasonable paid time off for ante-natal care during working hours, on the advice of a medical practitioner, midwife or registered health worker, to attend any appointments they have made for this purpose. Employees will need to produce their appointment card to their supervisor / manager so that the time off can be confirmed. Antenatal care may include relaxation and parent craft classes that the employee's doctor, midwife or health visitor has advised her to attend, in addition to medical examinations.

Time off will be granted for non-essential ante-natal care, for example aqua-natal classes, but this is dependent on the exigencies of the service. Any time taken in this respect should be deducted from annual leave or accrued flexitime.

The employee should endeavour to give her line manager as much notice as possible of antenatal appointments and, wherever possible, try to arrange them as near to the start or end of the working day as possible.

An individual who has a qualifying relationship with the employee, which includes the employee's husband or civil partner and the father of the expected child, is eligible to take unpaid time off to accompany the employee at up to two antenatal appointments.

## **12. Sickness during pregnancy**

If an employee is sick during pregnancy medical certificates should be submitted in accordance with normal sickness procedures.

However, if the employee is sick for any reason connected with pregnancy or childbirth after the beginning of the 4th week before the EWC, and has not yet started maternity leave, this period of sickness will automatically trigger the beginning of maternity leave for the employee. In this instance Human Resources should be informed as soon as is practicable, and a medical certificate should be submitted in the normal way.

## **13. Beginning Maternity Leave**

Maternity leave may not begin before the beginning of the 11th week before the EWC. The employee may choose when to begin maternity leave any time after this date.

The employee may continue to work up to the EWC provided that they are fit to carry out normal duties. This is subject to the requirements to undergo a medical examination if it is considered that the employee is prejudicing their health by continuing to work.

Maternity leave will automatically start on the day following childbirth if this occurs before the date on which the employee has notified they wish their maternity leave to commence.

#### **14. Notification of return to work after Maternity Leave**

If the employee wishes to change their return to work date, 8 weeks' notice of the change must be given.

SNCT employees including Teachers:
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Teaching and other employees covered by SNCT conditions of service wishing to return to work earlier than the end of the maternity leave period, a minimum of 28 days' notice is required.
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If an employee wishes to return to work early from OML, the Council should review the position carefully including carrying out a risk assessment. It may be necessary to ask the employee to seek medical clearance from their GP and / or Occupational Health to return early should there be any concerns over the employee's fitness to return.

It should be noted that an employee is required to take 2 weeks compulsory maternity leave immediately following the birth of their child.

#### **15. Right to return to the same or similar job**

Where the employee is taking OML only and is returning to work they will return to exactly the same job which they left.

If the employee is taking AML they will normally be entitled to return to the same job as they left. However, if it is not reasonably practicable, the employee will be offered another job on the same terms and conditions as the job they left.

The only instance where this is not the case is during organisational change in accordance with the Council's redundancy policy. However, employees on maternity leave will be considered preferentially for redeployment opportunities should this occur. Please refer to the Council's Redundancy and Redeployment Policies for further information.

#### **16. Keeping in touch days**

To assist employees to keep in touch with the workplace during their maternity leave, they can, in agreement with their line manager, arrange to work up to 10 days. These days can be used for specific events, training, or anything which has been previously agreed by both parties. No keeping in touch days can be taken during the 2 weeks immediately following the birth.

Keeping in touch days can only be worked during the maternity leave period and cannot be worked and claimed after the employee has returned to work or during a period of annual leave.

Any work carried out on a particular day, be it a few minutes or a full day, constitutes a whole keeping in touch day. Hours worked on these days will be paid following submission of an authorised timesheet.

Please note that the employee is not required to work these 10 days, nor is the employer obliged to offer them. The full 10 day entitlement applies and is not dependent on the duration of maternity leave. If work is performed on more than 10 days, entitlement to statutory maternity leave ends.

## **17. Part-time and Flexible Working**

Where an employee wishes to return to work but is unable to do so on a full-time basis, or wishes to work flexibly, serious consideration will be given to the request in line with the service requirements.

A request for flexible working should be made in writing to the Line Manager no later than 8 weeks before the expected return to work date.

In the event the request cannot be granted, an explanation will be given to the employee. Please see Flexible Working Policy for more information.

## **18. Annual Leave / Public Holidays**

Annual leave which is accrued prior to going on maternity leave should be taken before the maternity leave period commences wherever possible.

Entitlement to annual leave and public holidays is unaffected by maternity leave and it is accrued as if the employee was at work. These accrued holidays should be taken, wherever possible, prior to returning to work.

Should the employee return to work on reduced hours (i.e. on a part-time basis), the annual leave entitlement will be calculated based on a period of full-time service up to the date that they have returned from maternity leave, and then based on a period of part-time service, from the date that the employee commences part-time hours.

Should the employee not return to work after maternity leave, they will be entitled to a proportion of the year's annual leave up to the end of the maternity leave period and to any public holidays which arose before that date.

SNCT employees including Teachers:

Annual leave will continue to be accrued during ordinary and additional maternity leave.

On return from maternity the employee shall take any remaining statutory leave (28 days pro-rata for part-time) in that leave year. Where it is not practicable to take the leave in full or in part any balance, will be carried forward into the next leave year, but must be taken as leave.

The timing of this leave shall take account of the needs of the service and:

In the case of teachers and music instructors, should normally be taken in the terms in which the return to work takes place, or within the following term; or

In the case of education support officers, quality improvement officers and educational psychologists should normally be taken as soon as possible following the return to work.

The balance of annual leave, in excess of statutory leave, accrued during the period of maternity leave shall be taken following the end of the maternity/adoption support leave period. The timing of this leave is subject to the overriding needs of the service; and

In the case of teachers and music instructors, the accrued leave can be directed to be taken during the days of school closure, with payment to be arranged in accordance with Section 5, Paragraph 5.7 of the SNCT Handbook, with any remaining leave to be taken in the term in which the return to work takes place, or within the following term; or

In the case of education support officers, quality improvement officers and educational psychologists should normally be taken as soon as possible following the return to work.

## **19. Tax-Free Childcare**

A scheme to help families in Scotland with childcare costs is available. Parents and carers that are either employed or self-employed with children aged up to the age of 12 years old or 17 years old if the child has disabilities.

To be eligible to use this scheme, you and your partner (if applicable) must earn a certain amount over the next 3 months. This is at least the National Minimum Wage or Living Wage for 16 hours a week on average. You are also eligible if you are on maternity leave, paternity leave, adoption leave or unable to work due to disability or caring responsibilities. You will not be eligible if you are earning £100,000 or more.

## **20. Returning to Work – Breastfeeding / Expressing Milk**

The Council will ensure that pregnant employees and new mothers are allowed reasonable flexibility in their working hours to allow them to make use of the organisation's facilities. An employee who wishes to request flexibility to, for example, go home to feed their baby (if they live close to the workplace), should speak to their line manager.

It is recommended that, where practical, and where the individual wishes, the following should be provided within work to support new mothers breast feeding/expressing milk:

- Access to a private room in which to express milk. A medical room or toilet is not considered appropriate for this due to the risk of contamination.
- Use of secure, clean refrigerators for storing expressed milk and facilities for washing, sterilising and storing receptacles.
- Reasonable time off (without loss of pay or benefits, and without fear of penalty) to express milk or breastfeed.

While the Council cannot guarantee that it will be able to agree to every request for flexibility, it will give favourable consideration to requests and endeavour, within reason, to accommodate employees' wishes.

## **21. Transfer of maternity leave**

### **Shared parental leave.**

Shared parental leave enables mothers to commit to ending their maternity leave and pay at a future date, and to share the untaken balance of leave and pay as shared parental leave with their partner.

To be able to take shared parental leave, an employee and their partner must meet various eligibility requirements and have complied with the relevant curtailment, notice and evidence requirements. This includes the mother curtailing her maternity leave.

The Council provides a separate policy on shared parental leave.

## **22. Stillbirth, miscarriage or if your baby dies**

Where a child is stillborn 24 weeks or more into the pregnancy, the employee will retain their entitlement to maternity leave and pay provided that they meet the qualifying conditions.

A stillbirth or miscarriage prior to this date will mean that the employee will not have the right to maternity leave or pay. Instead, the employee will be entitled to statutory sick pay provided that the qualifying conditions are met.

Where an employee gives birth early and the child lives for a short period of time only, the employee will retain their full rights to maternity leave and pay, irrespective of the timing of the birth.

If the child is unfortunately stillborn, the law regarding return to work after the birth still applies.

## **23. Ordinary Paternity Leave**

An employee whose wife, civil partner or partner gives birth to a child, or who is the biological father of the child, is entitled to two weeks' ordinary paternity leave (OPL) provided they:

- Have or expect to have responsibility for the child's upbringing; and
- Have 26 weeks' continuous service by the week ending with the 15th week before the baby is due.

OPL is also available to adoptive parents where a child is matched or newly placed with them for adoption. Either the adoptive father or the adoptive mother may take OPL where the other adoptive parent has elected to take adoption leave. In respect of an adopted child, the employee must have 26 weeks' continuous service by the



week in which the child's adopter is notified of having been matched with the child for adoption. Please see Adoption policy for further information.

OPL is granted in addition to an employee's normal annual holiday entitlement. OPL must be taken in a single block of one or two weeks within eight weeks of the birth or adoption of the child. If the child is born early, it can be taken from the time of the birth but within eight weeks of the expected date of childbirth. OPL can start either from the date the child is born or placed for adoption or from a chosen number of days or weeks after that date.

## **24. Ordinary Paternity Pay**

Employees will receive full pay for the period of OPL.

SNCT employees including Teachers:
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Teachers and other SNCT employees will receive full pay for the first week of OPL and the Statutory Paternity Pay rate for the second week.
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## **25. Notification to take Ordinary Paternity Leave**

The notification of the intention to take OPL in respect of a birth child must be given in writing to the line manager no later than 15 weeks before the date on which their partner's baby is due. This letter should include length of OPL they wish to take and the date on which they wish the leave to commence.

In the case of an adopted child, the employee must give written notice of their intention to take OPL no later than 7 days after the date on which notification of the match with the child was given by the adoption agency. The notice must specify the date the child is expected to be placed for adoption, the date the employee intends to start OPL, the length of the intended OPL they wish to take and the date on which the adopter was notified of having been matched with the child.

The employee must also complete and sign a self-certificate declaring that they are entitled to OPL and ordinary statutory paternity pay.

The employee may change the date on which OPL commences by giving no less than 28 days' notice if this is reasonably practicable.

Please note that additional paternity leave and pay has been replaced with shared parental pay. Full details on shared parental leave are available in the shared parental leave policy.

## **26. Parental Bereavement Leave (Statutory entitlement)**

Parents and primary carers i.e. adopters, foster parents, guardians and those classed as kinship carers (those that have assumed responsibility for looking after a child in the absence of parents) who have lost a child under 18 and parents that have suffered a still birth (after 24 weeks of pregnancy) have a right to two weeks statutory parental bereavement leave. Please refer to the Leave of Absence Policy for further details.



# **Overtime and Time Off in Lieu (TOIL) Policy and Procedures**

**Temporary until March 2023**

## Contents.

1. Introduction .....	3
2. Scope of the Policy.....	3
3. Definitions .....	3
4. Principles.....	6
5. Standby Duty.....	7
6. Authorisation .....	7
7. Exceptional Cases.....	8
8. Working Time Regulations .....	8
9. Responsibilities .....	8
10. Misuse.....	9

## Document Control Sheet.

Review / approval history.

Date.	Name.	Position.	Version Approved.
TBC.	General Meeting of the Council.	n/a.	Version 1.0.

Change Record Table.

Date.	Author.	Version.	Status.	Reason.

## **1. Introduction**

1.1. Orkney Islands Council recognises that on occasion employees will be needed to work outside their normal working hours and outside the parameters of the flexi-time policy. As an employer, the Council is committed to protecting the health and safety of its employees by ensuring that they do not work excessive hours and that any additional hours are agreed in advance, monitored and used appropriately.

1.2. In order to deliver this objective, non-contractual overtime will be permitted only where all other options have been explored, considered and deemed not to meet clear service needs and where there is budget provision. Where contractual overtime is in place, this must be the subject of review at regular intervals, to ensure that working patterns do not impact detrimentally on the health and safety of employees and that it is the most appropriate and cost effective way of meeting service objectives.

1.3. In authorising the accrual and taking of Time Off In Lieu (TOIL) the Council requires that managers give regard to the work / life balance of employees, and the need to minimise disruption to service provision.

## **2. Scope of the Policy**

2.1. This policy outlines the payments made by Orkney Islands Council to employees who work overtime at the request of their manager, or where contractual overtime is in place. It, and the accompanying procedures, also set out the process for authorisation of non-contractual overtime and TOIL.

2.2. It applies to Orkney Islands Council employees covered by the Scottish Joint Council for Local Government Employees National Agreement on Pay and Conditions of Service.

2.3. Please note that employees in posts paid at Grade 11 and above are considered to work on an all-inclusive basis and are therefore not eligible to claim overtime through the normal application of this policy. Exceptional situations involving employees at this pay level may be considered through the Change in Establishment process.

## **3. Definitions**

### **Overtime.**

3.1. Overtime payments will be paid for all authorised overtime hours worked in excess of 37 hours per week. Hours worked in addition to an employee's contractual hours up to 37 in any one week, will be regarded as flat rate additional hours.

3.2. Employees are not obliged to work non-contractual overtime.

3.3. Overtime rates for employees paid at salary point 50 and below are an enhancement of half of an employee's basic hourly rate. That means that there is a single overtime rate of time-and-a-half for everyone, for authorised hours worked

beyond 37 hours per week and up to 45. For hours worked beyond 45 in one week then double time applies.

For example, if an employee's basic rate is £10 per hour they will be paid £15 per hour for any overtime worked up to 45 hours in a week, and £20 per hour for any hours beyond that.

3.4. Employees for whom it is a condition of their contract of employment that they are required to work a fixed number of hours in addition to the standard 37-hour week shall be entitled to payments for these hours. These contracted overtime hours will be paid as salary and used to calculate salary for pension, annual leave and sick pay entitlement.

3.5. Where authorised, as set out in the Single Status Collective Agreement, employees will work at least 15 continuous minutes extra for it to be considered overtime. Overtime will be counted in completed blocks of 15 minutes. Accordingly, if an employee works 20 minutes overtime, they will only be paid the overtime rate for the completed 15 minute block.

3.6. A week for overtime purposes runs from Monday to Sunday.

3.7. It is recognised that some services work a shift and / or rota system, which means for example that one week they are scheduled to work more than 37 hours per week and the next week they are scheduled to work less than 37 hours per week. Overtime rates should only be considered where work in excess of 37 hours per week is required and overtime authorised during the shift/rota reckoning period.

3.8. If employees have to travel to their work to carry out authorised non-contractual overtime, outwith their normal travel pattern, they will be entitled to mileage (and to reclaim any travel expenses such as air or ferry fares) to and from work at the appropriate rate. Overtime payments, where authorised, start when an employee arrives at their place of work.

3.9. The overtime entitlements from the Council's collective agreements are as follows:

Work in excess of the Standard Working Week will be discouraged and in particular employees will not be required consistently to work overtime unless where subparagraph (iii) below applies. Part time workers shall not be entitled to any enhanced rate for overtime until their hours exceed 37 in any one week or reference period (see below).

Employees paid at salary point 51 and above shall be regarded as working on an all-inclusive basis and shall not be entitled to separate recognition for any overtime worked as pay or time off in lieu.

The standard hours may be worked over any reference period e.g. one week, 148 hours over four weeks or annualised hours, with due regard for compliance with employment legislation such as the Working Time Regulations and wider social considerations such as the work life balance.

Where overtime is found to be unavoidable and previous approval has been given by a senior officer to whom this power has been delegated, payment shall be calculated on the following basis:

(i) The hourly overtime rate of pay will be derived from an employee's spinal column hourly rate.

(ii) Extra time of less than 15 minutes on any day shall not rank for overtime.

(iii) Employees for whom it is a condition in their contract of employment that they shall work a fixed number of hours in addition to the standard 37 hour week shall be entitled to overtime payments for those hours. Contracted hours will be regarded as permanent unless they are specifically approved for a temporary period, and will be paid as salary and be used to calculate final salary for pension purposes.

(iv) Employees for whom it is not a condition of their contract of employment that they work fixed hours longer than the standard 37 per week, and are required to work overtime, compensatory leave (Time Off In Lieu) (TOIL) on a straight time basis may be agreed with the individual as an alternative to payment.

(v) Hours worked between 37 and up to and including 45 in any one week (or averaged as above) will be paid at the rate of time and one half.

(vi) Hours worked beyond 45 in any one week (or averaged as above) will be paid at the rate of double time.

(vii) Overtime worked on a general or public holiday will be paid at the rate of double time in complete recompense except where that work takes place on Christmas Day and New Year 's Day when they fall on 25th December and 1st January respectively. No other enhancements will be paid for work on a general or public holiday and where the Christmas and New Year's Day holidays are transferred to other days in the week.

3.10. When an employee makes a timesheet claim for non-contractual overtime, and this is authorised, a top-up payment of 8.4% will be applied to compensate for the accrual of holiday pay for that work. This 8.4% top up will not be paid when the overtime is worked on a public holiday.

3.11. Overtime can only be claimed, where authorised, for each post that it is worked in. For instance, if an employee has two jobs or more with the Council, overtime is only payable, where authorised, for the post in which they work more than 37 hours per week.

3.12. Where a part-time employee is required to work additional hours these can be claimed by timesheet at the standard hourly rate, up to 37 hours per week, or taken as TOIL, where flexi-time is not appropriate, subject to the agreement of the manager.

## **Time Off in Lieu (TOIL).**

3.13. TOIL is time off granted with pay. This is time off granted with pay at straight time to compensate when additional hours are worked outwith normal working hours or outwith the parameters of the flexi-time scheme. Managers should ensure that TOIL can be used appropriately and service needs can still be met. TOIL hours should be authorised in advance.

3.14. Any TOIL that has been accrued by an employee should be used within 2 months of the date on which it was accrued, or it shall be deemed as lost.

3.15. Employees must ensure that they have a nil TOIL balance when they resign from the post in which it was accrued. This applies when the employee leaves the Council's employment or if they transfer to another post within the Council.

## **4. Principles**

4.1. Non-contractual overtime should only be considered by a manager when all other options have been explored and considered. These alternatives include:

- Rescheduling workloads.
- Increasing the hours of part-time employees.
- Using relief staff (where appropriate).
- Recruiting or seconding staff on a temporary or permanent basis.
- Introduction of alternative working arrangements / patterns.
- Using flexi time and / or TOIL.

4.2. Services should ensure that the working of non-contractual overtime is on a short term basis and is driven by the urgent needs of the service. Non-contractual overtime should not be worked on a routine basis, or seen as a default option.

4.3. Therefore, agreement to permit overtime working/payment must be sought in advance. An operational line manager at a designated level (e.g. Head Teacher, Team Leader or equivalent manager who is the authorised budget holder) may authorise overtime for a fixed period. The maximum period allowed for ongoing overtime should be one month with the need reviewed thereafter.

4.4. It is acknowledged that there may be exceptional circumstances where additional hours are required to be worked at short notice and there is insufficient time for an employee or supervisor to request approval through the normal route. Where this cannot be delivered through flexitime, overtime / accrual of TOIL can be permitted.

4.5. Anticipated circumstances where prior approval may not be possible is:

- When emergency work must be done without delay because of circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by the employee during their normal hours of work.

- Other emergency works, including health and safety related work.
- Protecting the safety of vulnerable people.
- Ensuring the continuation of services required in support of essential or life line services.

4.6. Approval arrangements for these circumstances must be sought retrospectively and at the earliest opportunity.

4.7. Managers should be mindful that where employees take part in standby or on-call systems, that hours worked may result in an employee working overtime. Where this is applicable, managers should ensure that the principles of this policy are adhered to.

4.8. All claims must be made using the appropriate payroll timesheet.

## **5. Standby Duty**

5.1. The nature of the post held by certain employees makes it necessary for them to be prepared to carry out standby duties. Such employees will therefore be contractually required to undertake standby duty on a roster if so requested by the authority and to carry out emergency work as and when the need arises. Those employees who receive a standby allowance will have it included in their contract of employment that they will have specific responsibilities when being called in.

5.2. Standby employees are under an obligation outside their normal working hours (including Saturdays, Sundays and Public Holidays) to remain on call and to be available to be consulted and if necessary to be called out for emergency duty.

5.3. Employees who are required to undertake standby duty, will be entitled to payment in accordance with the applicable standby rates, as varied by local and national collective agreements.

5.4. All overtime undertaken whilst on Standby shall be paid as follows:

- Up to 37 hours in any one week: Flat rate.
- Hours 37 to 45 in any one week: Time and one half.
- Hours beyond 45 in any one week: Double Time.

## **6. Authorisation**

6.1. Overtime must be approved in advance by the relevant manager / budget holder.

6.2. Once overtime has been authorised managers who have relevant budget holder responsibilities have the authority to approve overtime claims submitted on the relevant Payroll timesheet.

6.3. Managers also have the authority to pre-authorise TOIL and the authority to authorise when the time off is taken within the limits set out in the policy.



## **7. Exceptional Cases**

7.1. It is acknowledged that in very exceptional cases there may be requirements for staff who are paid at Grade 11 and above to undertake specific pieces of work where the working time required will be well above and beyond usual contracted hours, and involve extensive weekend and evening work outwith and in addition to normal hours.

7.2. The most appropriate way to deal with such situations will be considered on their individual circumstances. The provision of TOIL in agreement with the Service Director should be the first option.

7.3. Where TOIL is not considered practical, advance approval for overtime may be sought via the exceptional overtime route. This involves completing a Change in Establishment form which must be signed off by the Service Director, HR, Finance and the Chief Executive before any overtime can be claimed.

## **8. Working Time Regulations**

8.1. Managers and employees should adhere to the Working Time Regulations 1998 as there are conditions that relate to a variety of health and safety issues including working times, rest periods and breaks.

## **9. Responsibilities**

### **9.1. Employee Responsibilities**

- To be aware of the working time regulations and take responsibility for ensuring that s/he takes breaks and does not exceed working hours.
- To accurately complete the overtime / TOIL claim forms.
- To claim overtime or take TOIL only where this work has been requested by the Line Manager, and within the prior authorisation set out above.
- To ensure that s/he has a nil TOIL balance when leaving the post in which it was accrued.

### **9.2. Manager Responsibilities**

- To ensure that all overtime / accrual of TOIL has been agreed in advance by a designated manager.
- To ensure that any overtime / TOIL requested and authorised is in the interest of the Council and that the benefits outweighs the costs.
- To ensure that there is equality of opportunity in the management and approval of overtime / TOIL.
- To be aware of the working time regulations and take responsibility for ensuring that staff are taking required breaks and do not exceed working hours.
- To review any contractual overtime arrangements regularly, and at least annually, to ensure it meets the principles of the overtime policy.
- To adhere to the provisions set out in the Overtime and TOIL policy and procedures and ensure that the policy is applied consistently.

### **9.3. Human Resources Responsibilities**

- To provide advice and guidance to employees and managers on the consistent and fair application of the policy and procedure.
- To ensure the policy is made available to staff and communicated widely including via electronic means.
- To regularly review the policy and how it functions and to make any recommendations for change to the Senior Management Team.

## **10. Misuse**

10.1. The Overtime and TOIL policy and procedure and its operation depend on mutual trust. An employee or manager who is found to have abused the scheme may have it withdrawn and may be subject to disciplinary action up to and including dismissal. Managers should refer to the Disciplinary Procedure or contact Human Resources for further guidance and advice.

10.2. Overall levels of overtime undertaken within the Council will be subject to monitoring via Human Resources and the Senior Management Team.