

Item: 4

Human Resources Sub-committee: 1 February 2022.

Annual Leave and Public Holidays – Policy and Procedure.

Report by Executive Director of Education, Leisure and Housing.

1. Purpose of Report

To consider a new staffing policy on Annual Leave and Public Holidays.

2. Recommendations

The Sub-committee is invited to note:

2.1.

That the Council currently has a range of varying terms and conditions of service, statutory requirements and guidance in relation to Annual Leave and Public Holidays, but no single policy and procedure.

It is recommended:

2.2.

That the Annual Leave and Public Holidays – Policy and Procedure, attached as Appendix 1 to this report, be approved.

3. Background

3.1.

The Council currently has a range of varying terms and conditions of service, statutory requirements and guidance in relation to Annual Leave and Public Holidays, but no single policy and procedure.

3.2.

The absence of a single formal policy and procedure increases the risk of an inconsistent approach to the calculation and management of annual leave across the Council, and potential inequitable treatment of staff.

3.3.

The proposed policy and procedure is, therefore, intended to ensure a consistent and equitable approach to annual leave and public holidays for all Council employees, whilst recognising that Council staff are employed under a variety of different terms and conditions of employment and working patterns.

4. Policy Proposals and Guidance

4.1.

The draft Annual Leave and Public Holidays – Policy and Procedure, attached as Appendix 1 to this report, brings together the range of different terms and conditions regarding annual leave and public holidays applicable for different staff groups within the Council into a single policy document.

4.2.

The draft Policy includes a position on how annual leave should be requested by staff and how it should be considered and responded to by managers, including guidance on what constitutes reasonable timescales for notice of a request and consequent response.

4.3.

Annexes 1 to 3 of the draft Policy provides further useful guidance and examples for managers and staff to consult in respect of leave entitlement.

4.4.

In addition, should the draft Policy be approved, a standard leave calculation spreadsheet will be circulated to further assist managers and staff to correctly calculate leave entitlement consistently across the Council.

5. Human Resources Implications

Human Resource implications are covered in the body of this report, the new policy and procedure is primarily reflective of statutory and conditions of service requirements on the Council as an employer.

6. Equalities Impact

An Equality Impact Assessment has been undertaken and is attached as Appendix 2 to this report.

7. Corporate Governance

This report relates to the Council complying with governance and its duties as an employer and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

8. Financial Implications

There are no direct financial implications as a result of approving this policy as the terms and conditions around annual leave entitlement that are outlined in the policy are already in place.

9. Legal Aspects

The Annual Leave and Public Holiday Policy and Procedure, attached as Appendix 1 to this report, has been written to ensure it is fully compliant and up to date with relevant employment law, statutory provisions, existing terms and conditions of employment and to provide a consistent procedure across the Council.

10. Contact Officers

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11. Appendices

Appendix 1: Draft Annual Leave and Public Holiday Policy and Procedure.

Appendix 2: Equality Impact Assessment.

Appendix 1



Annual Leave and Public Holidays

Policy and Procedure

March 2022

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1. Scope of Policy

The Annual Leave and Policy and Procedure will apply to all employees of Orkney Islands Council, including Scottish Joint Council (SJC)/Single Status employees, Teachers and other employees covered by Scottish Negotiating Committee for Teachers (SNCT) conditions of service, Orkney College Academic staff, Chief Officers including Heads of Service, Executive Directors, and the Chief Executive.

The Annual Leave and Public Holidays Policy and Procedure 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 five years. Should changes to employment law 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.

Annexes to this policy and procedure and subsequent guidance issued in respect of facilitating the proper use of this policy and procedure shall be revised and updated by the Head of Human Resources and Performance or their nominated representative as appropriate. Such revisions, other than where they would constitute substantive change to practice, shall not normally require further consultation with the recognised Trade Unions or that the policy is formally submitted to Council for approval.

2. General

This policy contains details of the Council's standard procedure for administering and recording the taking of annual leave.

Staff may be required to take any part of their annual leave entitlement on such dates as the Council may require.

All leave requested must be properly recorded and authorised by the Line Manager and must be within the exigencies of the service, prior to leave being taken. Managers are responsible for monitoring levels of annual leave taken and ensuring that leave is taken by their team members.

For the purposes of holiday pay, a reference working week is defined as Sunday to Saturday.

3. Statutory Leave Entitlement

There is a statutory entitlement to 20 days holiday and 8 public holidays, or 28 days (5.6 weeks) based on a full-time (35- or 37-hours contract and 52 weeks working per year). There is a pro-rata entitlement for part-time and part-week/year working.

Any reference to statutory leave entitlement within this document refers to this 28-day (5.6 weeks) entitlement.

Statutory leave entitlement must be taken by employees and payment in lieu of all or part of this cannot be made, other than where employment ends and the leave has not been able to be taken.

4. Council Staff - Scottish Joint Council (SJC) Conditions of Service

4.1. Leave Year

The leave year for staff covered by SJC conditions of service runs from 1 April to 31 March each year.

4.2. Annual Leave

4.2.1. Entitlement

The entitlement to annual leave is defined under contracts of employment for all staff. The entitlement is based on a full-time (35- or 37-hours contract and 52 weeks working per year). There is a pro-rata entitlement for part-time and part-week/year working.

Annual Leave Entitlement excluding Public Holidays			
	Entitlement in days	Entitlement in hours (35-hour FTE post)	Entitlement in hours (37-hour FTE post)
Less than 1 years' service at 1 April	23	161	170.2
More than 1 years' service at 1 April but less than 2	24	168	177.6
More than 2 years' service at 1 April but less than 3	25	175	185
More than 3 years' service at 1 April but less than 4	26	182	192.4
More than 4 years' service at 1 April but less than 5	27	189	199.8
5 years or more service at 1 April	28	196	207.2

A spreadsheet to automatically calculate pro-rata leave and public holiday entitlement for starters, leavers and part-time/part week or year is available from Human Resources and should be used as the default method of calculation.

4.2.2. Payment – Workers with fixed hours or pay

Payment for annual leave where an individual has fixed working hours or pay, i.e. full-time, or part-time contracted hours of work, is paid at the normal rate of pay for the post (grade and spinal column point for the individual employee). This will include fixed contractual allowances including Distant Islands Allowance and Unsocial Hours/Shift/Night Working payments.

For part-time contracted staff an 8.3% premium is paid in lieu of leave entitlement for any ad-hoc additional hours worked and overtime, therefore these hours should not be considered when working out contractual leave entitlement.

Where part-time contracted employees are regularly working additional hours more than their contract (4 weeks or more consecutively), they have a right to have a temporary amendment to their contract progressed via a Change in Establishment. This will then adjust their annual leave and public holiday entitlement, rather than them being paid the 8.3% premium.

4.2.3. Payment – Workers without fixed hours or pay (casual/supply/relief)

Payment for annual leave where an individual has no fixed working hours or pay i.e., casual, supply or relief workers, is paid at the normal rate of pay for the post (grade and spinal column point for the individual employee), this will include fixed contractual allowances including Distant Islands Allowance and Unsocial Hours/Shift/Night Working payments.

Calculation of annual leave pay for workers without fixed hours of pay is subject to the following requirements:

- Holiday pay is calculated using an average taken from the last 52 weeks in which they have worked and earned pay.
- Weeks where no work has been carried out and no pay earned must be discounted, weeks covered by annual leave, public holidays, sick pay, paid maternity leave etc are included as weeks where work undertaken and pay given (weeks of no pay for sickness, maternity etc are not included).
- There is no requirement to look back more than 104 weeks (2 years) to get 52 weeks in which work has been done and pay earned.
- If there is no 52 weeks worked in last 104 weeks (2 years) then an average of the actual weeks worked will be used.

Where casual/supply or relief workers are regularly working (4 weeks or more consecutively), they have a right to have a temporary contract progressed via a Change in Establishment.

4.3. Public Holidays

4.3.1. Entitlement

There are 10 Council public holidays each year. The Council may require some or all the public holidays and up to 3 days annual leave to be taken during the Christmas/New Year period.

The Council public holiday days are:

- Easter Monday.
- May Day.
- Dounby Show Day.
- Christmas Day.
- Boxing Day.
- 3 days between Christmas and New Year.
- New Year's Day.
- 2 January.

Where the Christmas Day and New Year's Day fall on a Saturday or Sunday, the Christmas/Boxing Day and New Year/2 January holidays will be subject to replacement days as show below for employees with normal patterns of work of Monday to Friday.

Day of the week the 25th falls on:	Christmas	New Year
Monday	25 (Monday) and 26 December (Tuesday)	1 (Monday) and 2 January (Tuesday)
Tuesday	25 (Tuesday) and 26 December (Wednesday)	1 (Tuesday) and 2 January (Wednesday)
Wednesday	25 (Wednesday) and 26 December (Thursday)	1 (Wednesday) and 2 January (Thursday)
Thursday	25 (Thursday) and 26 December (Friday)	1 (Thursday) and 2 January (Friday)
Friday	25 (Friday) and 28 December (Monday)	1 (Friday) and 4 January (Monday)
Saturday	27 (Monday) and 28 December (Tuesday)	3 (Monday) and 4 January (Tuesday)
Sunday	26 (Monday) and 27 December (Tuesday)	2 (Monday) and 3 January (Tuesday)

Anyone commencing or finishing employment with the Council part way through the leave year will be entitled to a pro-rata entitlement of the 10 days public holiday, again based on the number of complete calendar weeks worked in that leave year. See section 4.5.2.

The public holiday days which fall on a working day during the contracted period must then be deducted from total public holiday entitlement for the year.

Where there is insufficient public holiday entitlement to cover the public holidays falling during an individual's working pattern, they are required to use annual leave entitlement to cover these. The use of time off in lieu (TOIL) or Flexi leave for this purpose is not permitted.

4.3.2. Payment - employees whose working pattern does not normally include public holiday working (i.e., their place of work is closed on a public holiday)

Work on a general or public holiday will be paid at the rate of double time in complete recompense or single time with equivalent TOIL. Overtime worked on 25 December, 26 December, 1 January and 2 January will be paid at the rate of double time with equivalent TOIL.

The TOIL entitlement is as follows:

- Where the time worked is up to 4 hours the TOIL will be 4 hours, or
- Where the time worked is more than 4 hours and up to 7 hours the TOIL will be 7 hours.
- Where the time worked is more than 7 hours, TOIL will be the actual hours worked.

4.3.3. Payment - employees whose working pattern normally includes public holiday working and are in receipt of unsocial hours allowances (i.e. their place of work remains open and operational on a public holiday)

Where the normal working pattern for an employee includes working on public holidays (e.g. residential care homes for older people or children) and the individual receives payment of an unsocial hour's allowance, there will be no separate recognition for contracted hours worked on public and general holidays except for hours worked on 25 December and 1 January (not the replacement days) which will attract double time.

Public holiday days for these employees will be added to the annual leave entitlement and can be requested through agreement by management in line with the provisions on requesting annual leave. Work on Christmas Day and New Year's Day will attract double time.

4.3.4. Payment – employees whose working pattern normally includes public holiday working and are NOT in receipt of unsocial hours allowances (i.e., their place of work remains open and operational on a public holiday)

Work on a general or public holiday will be paid at the rate of double time in complete recompense or single time with equivalent TOIL. Work on 25 December, 26 December, 1 January and 2 January will be paid at the rate of double time with equivalent TOIL.

The TOIL entitlement is as follows:

- Where the time worked is up to 4 hours the TOIL will be 4 hours, or
- Where the time worked is more than 4 hours and up to 7 hours the TOIL will be 7 hours.
- Where the time worked is more than 7 hours, TOIL will be the actual hours worked.

4.4. Shift Workers, Part-Time, Term-Time and other working patterns

4.4.1. Pro-rata Entitlement

Leave and public holiday entitlement for part-time, term-time staff is always pro-rata of the full-time entitlement. The entitlement is calculated pro-rata on both weekly contracted hours and the number of weeks worked in the year (including leave and public holidays).

See Annex 1 for Term Time Working Weeks.

Full-time working is defined as working the normal full-time hours for the post (either 35 or 37) for 52 weeks of the year.

A spreadsheet to automatically calculate pro-rata leave and public holiday entitlement for starters, leavers and part-time/part week or year is available from Human Resources and should be used as the preferred method of calculation.

4.5. Annualised Hours Contracted Employees

Annualised hours contracted employee have the same entitlements to annual leave and public holidays on a pro-rata basis as other contracted staff. Given the specific nature of annualised hours working there are some specific provisions that will need to be taken into account in relation to the management of annual leave and public holidays.

Annual leave and Public Holiday entitlement should be calculated in hours. The following table gives the full-time equivalent figures.

Annualised Hours Annual Leave and Public Holiday Entitlement (1.0 FTE)			
	Entitlement in days	Entitlement in hours (35-hour FTE post)	Entitlement in hours (37-hour FTE post)
Less than 1 years' service at 1 April	33	231	244.2
More than 1 years' service at 1 April but less than 2	34	238	251.6
More than 2 years' service at 1 April but less than 3	35	245	259
More than 3 years' service at 1 April but less than 4	36	252	266.4
More than 4 years' service at 1 April but less than 5	37	259	273.8
5 years or more service at 1 April	38	266	281.2

Pro-rata combined annual leave and public holiday entitlement for annualised hours employees is calculated by aggregating annual leave entitlement, public holidays and floating hours, dividing the total by either 1824.9 (35 FTE) or 1929.18 (37 FTE) and multiplying by the number of annualised contracted hours.

Appropriate leave must be taken for public holidays that fall on days which an employee would normally work.

Annualised hours contracted hours **include** the relevant pro-rata number of hours for annual leave and public holiday each year. Timesheets are therefore not required to be submitted for annual leave and public holidays.

With the increase in annual leave and public holiday entitlement over the first 5 years continuous service, this will see the actual number of hours worked each year reduce slightly. As part of the annual review of annualised hours managers may wish to consider if a proportionate increase in overall annualised hours is necessary.

4.6. Casual/Supply/Relief Workers

Individuals working under casual/supply/relief arrangements, working ad-hoc hours for no more than 4 consecutive weeks, have an entitlement to pro-rata statutory annual leave and public holiday entitlement.

A spreadsheet to automatically calculate pro-rata annual leave and public holiday entitlement for starters, leavers, and part-time or part-week or part-year is available from Human Resources, as well as the Staff Intranet and the MyView HR/Payroll system portal. This should be the default method of calculation.

Casual/supply/relief staff should be advised of their annual leave entitlement on a regular basis, and they should then seek approval from their line manager as to when this annual leave can be taken. Normal timescales are quarterly, with the accrued leave being taken in the next quarter.

The annual leave should be recorded on staff rotas in hours for the agreed leave days. The corresponding hours for these days should be claimed on the employee's timesheets along with any other hours worked during the period.

It is important to note the annual leave days claimed on a casual/supply/relief member of staff's timesheet are classified statutory leave. This means no payment can be made in lieu of these days (other than on termination of employment) and staff cannot be asked to work in that role or in any other Council employment on these annual leave days.

4.7. Starters and Leavers

4.7.1. Annual Leave

Employees commencing or finishing employment with the Council part way through the annual leave year will be entitled to annual leave and public holidays on a pro-rata basis calculated from the date of commencement to 31 March or from 1 April to their last date of employment in that year as appropriate.

The pro-rata calculation is based on the complete number of calendar weeks worked in that annual leave year and is calculated using the following:

Number of complete calendar weeks worked / 52 (total number of weeks in the leave year)
X full year leave entitlement for a full time (35 or 37 hour) contract.

Calculations should always be rounded up to the nearest half day or nearest hour for calculations in hours.

Calculations in hours are based on a 7-hour day for 35-hour FTE week contract and a 7.4-hour day for 37-hour FTE week contract.

A spreadsheet to automatically calculate pro-rata leave and public holiday entitlement for starters, leavers, and part-time part-week or year is available from Human Resources and on My View. This should be the default method of calculation.

On leaving employment with the Council where annual leave (and public holiday entitlement) taken is more than the entitlement, the excess leave taken will normally be deducted from the final salary payment.

On leaving employment, any outstanding annual leave (and public holiday entitlement) that is still due should normally be taken prior to leaving employment. Line Managers must ensure deductions are notified to payroll on termination of employment form.

Payment in lieu of outstanding annual leave entitlement on leaving employment will only be made where it is not possible for that leave to be taken prior to leaving employment.

4.7.2. Public Holidays

Employees commencing or finishing employment with the Council part way through the leave year will be entitled to a pro-rata entitlement of the 10 days public holiday, again based on the number of complete calendar weeks worked in that leave year.

The pro-rata calculation is based on number of complete calendar weeks worked in that leave year and is calculated using the following:

Number of complete weeks worked / 52 total number of weeks in the leave year X 10 public holiday days or 70 or 74 public holiday hours.

Calculations should always be rounded up to the nearest half day or nearest hour for calculations in hours.

Calculations in hours are based on 7-hour day for 35-hour FTE week contract and 7.4-hour day for 37-hour FTE week contract.

A spread sheet to automatically calculate pro-rata leave and public holiday entitlement for starters, leavers, and part-time part-week or year is available from Human Resources and on My View. This should be the default method of calculation.

Public Holidays which fall on a working day during the contracted period must then be deducted from total days due. Where there is insufficient public holiday entitlement to cover the public holidays falling during an individual's working pattern, annual leave entitlement will require to be used to cover these. The use of Time off in lieu (TOIL) of Flexi leave for this purpose is not permitted.

Example annual leave and public holiday entitlements are attached as Annex 2.

4.8. Requesting and Approval of Leave

Employees should make requests to take annual leave to their line manager.

Annual Leave approval is subject to the needs of the Council and cannot be guaranteed. However, the Council will not unreasonably refuse a request for annual leave.

Employees are reminded that they should not book travel or any other arrangements prior to their request for annual leave being granted. The Council will not accept responsibility for any costs associated with pre-existing bookings being amended or cancelled where annual leave is declined.

Employees should plan and make annual leave requests as early in the leave year as possible. This will ensure that line managers can consider requests equitably and ensure adequate cover is always in place. Requests are considered on a first come first served basis.

Employees are requested to give as much notice as possible in relation to annual leave requests. Normally the minimum notice expected to request annual leave is a period of twice the period of annual leave being requested. e.g. a request for two weeks annual leave should normally be submitted no later than four weeks before the first day of leave.

Line Managers should consider requests and confirm approval or not as soon as reasonably possible to allow employees adequate time to make their holiday arrangements.

Examples of what would be considered reasonable management response times are outlined below:

- Where the request for leave is for a week and, subject to the minimum two weeks' notice being given, managers should normally look to respond within a week.
- Where annual leave requests are submitted well in advance of the requested leave, it is expected that managers will normally look to provide a response to the request within two weeks.
- Where an annual leave request is for a short duration e.g. one or two days' where notice of the request is only a few days, managers will normally look to provide a response to the request within one day.
- In exceptional circumstances where the minimum notice period has not been provided, managers should look to respond as soon as possible.

There is no formal appeal mechanism in respect of requests for annual leave being declined. However, individuals would have recourse to the Council's Grievance Policy and Procedure where they consider that they have been treated unfairly or unreasonably and the matter has been unable to be resolved through informal methods.

4.9. Carry Forward of Leave

4.9.1. General Provisions

An employee may carry over up to a maximum of five days annual leave entitlement, from one leave year to the next without the authorisation of their manager. Employees working part-time or part-year may carry over the pro-rata equivalent to five days annual leave entitlement from one leave year to the next without the authorisation of their line manager. This leave is required to be taken by 30 June of the next leave year, otherwise it will be lost.

Any leave above the allowed limit of five days which is not taken by the end of the leave year will be lost unless there is an exceptional reason why the employee needs to carry this annual leave over in the next leave year.

Where an employee wishes to carry over annual leave allocation above the allowed limit, the Annual Leave Exceptional Carry Forward Request form, (Annex 3), must be completed for consideration by the line manager and approval by Executive Director before the end of the leave year for which carry forward is being sought.

Leave approved under exceptional carry forward is required to be taken by 30 June within the next leave year, otherwise it shall be lost.

Where exceptional carry forward is approved there is an expectation that a line manager should ensure that an employee should take their following year's leave entitlement including the exceptional carry forward and that there is no requirement for exceptional carry forward for a second, consecutive year.

4.9.2. Carry Forward – Long Term Sickness

Employees returning from periods of long-term sickness absence should be encouraged to take all outstanding annual leave entitlement before the end of the current leave year providing that there is sufficient time remaining in the current leave year for them to do so.

Employees who do not take all their outstanding annual leave in the current leave year, even though there is sufficient time remaining to do so, will normally only be allowed to carry forward 5 days annual leave to the following leave year (pro-rata for part-time, part-week and part-year working employees).

Where a period of long-term sickness absence continues over two separate leave years, or a return to work in one year does not allow for time to take all outstanding leave, carry forward of the minimum level of annual leave entitlement should be allowed. No separate approval process is required where the amount of leave carried forward exceeds five days.

Where an employee has been off sick for a period exceeding 18 months, statutory legislation dictates that only annual leave accrued in the first 18 months of sick leave can be carried forward. Annual leave accrued after the first 18-month period of sick leave cannot be taken and a payment will be made to the employee in lieu of the amount of annual leave days lost.

4.9.3. Carry Forward – Maternity, Adoption, Surrogacy Leave

During a period of maternity, adoption or surrogacy leave an employee will accrue their full normal entitlement to annual leave and public holidays.

Employees returning from periods of maternity, adoption or surrogacy leave should be encouraged to take all outstanding annual leave entitlement, including public holiday entitlement, before the end of the current leave year in which the return-to-work falls providing that there is sufficient time remaining in the current leave year for them to do so.

Where there is insufficient time remaining in the current leave year for an employee to take all their outstanding annual leave entitlement, including public holiday entitlement, carry forward of any outstanding annual leave will be automatic and will not require exceptional approval.

Exceptional carry forward for leave will not normally be given where the reasons for this relate to taking accrued leave from maternity, adoption, or surrogacy leave, a 12-month period is considered more than reasonable time to be able to take such accrued leave.

4.10. Annual Leave/Public Holidays and Sickness

4.10.1. Pro-rata Annual Leave and Public Holidays for Long Term Sickness

Where an employee has been absent from work due to illness for a continuous period of more than 3 months (12 weeks), annual leave entitlement must be recalculated so that the employee is only awarded an amount of annual leave which is proportionate to the period they have attended work in the leave year.

For example, if an employee has been absent from work for a continuous period of 4 months during the leave year, they should only be awarded 8/12ths of their normal annual leave entitlement. However, it should be noted that an employee's annual leave entitlement **cannot** drop below the statutory minimum of 5.6 weeks (28 days) (pro-rata for part-time, part-week and part-year working employees) after any recalculation has taken place.

Annual leave entitlement should not be recalculated if an employee has already used all their annual leave entitlement prior to being absent from work for a continuous period of more than 3 months.

If the period of continuous sickness absence overlaps two leave years, a separate recalculation must be carried out for each leave year based on the actual period of sickness absence occurring in each leave year.

For example, an employee could have a continuous period of sickness absence for 5 months from 1 February to 30 June. In this case, 2 months of the sickness absence have occurred in the first leave year and 3 months have occurred in the second leave year.

The employee's annual leave entitlement for the first leave year would be recalculated as 10/12ths of their normal annual leave entitlement and the employee's annual leave entitlement for the second leave year would be recalculated as 9/12ths of their normal annual leave entitlement.

Again, it should be noted that an employee's annual leave entitlement **cannot** drop below the statutory minimum of 5.6 weeks (28 days) (pro-rata for part-time, part-week and part-year working employees) after the recalculation has taken place. Employees are entitled to, and must take, the statutory minimum leave entitlement in each leave year.

In calculating remaining leave entitlement, the statutory leave minimum shall include the following:

- All annual leave days taken within the current leave year prior sickness absence.
- All annual leave days taken within the current leave year during sickness absence.
- Any public holiday days within the current leave year that fell prior to or during the period of sickness absence.
- Any public holiday days remaining within the current leave year on return from sickness absence.

4.10.2. Sickness on a Public Holiday

Sickness absence on one of the Council recognised public holiday days will not entitle an employee to take the public holiday day at a later date. This is in accordance with nationally agreed SJC conditions of service.

4.10.3. Requesting Annual Leave during periods of Sickness Absence

If an employee wishes to take annual leave during a period of sickness absence, it must be requested and approved in the normal manner specified in Section 4.7. In these circumstances, an employee does not have to provide evidence of their fitness to return to work. They must, however, provide the relevant certification, for example a doctor's note, to cover the continuing period of sickness absence after their period of annual leave entitlement.

Any annual leave entitlement taken during a period of sickness absence is paid at an employee's normal salary rate including Distant Islands Allowance and any relevant contractual allowances such as a weekend enhancement.

The Payroll Section and Human Resources must both be notified when an employee is to be paid annual leave entitlement during a period of sickness absence. This is so that the correct payments can be made to the employee and the correct sickness absence can be recorded against their payroll record.

4.10.4. Reclaiming pre-booked annual leave due to Sickness Absence

If an employee has a period of sickness absence during authorised annual leave, the line manager can credit the employee with the number of days/hours annual leave which coincides with the period of sickness absence.

In order for this to happen the employee must have satisfied the following provisions:

- Correct notification of the sickness absence must have been given by the employee in accordance with Section 8 of the Council's Sickness Absence Policy and Procedure i.e. on the first day of absence, the fourth day of absence; and
- The employee must provide a medical certificate covering the entire period of annual leave that they want to be credited with (self-certification is not sufficient for these purposes).

It should be noted that this position does not in any way conflict with the statutory sickness certification process, a GP Fit Note is not required, a formal letter or similar correspondence confirming sickness will be sufficient.

Any costs associated with the provision of a medical certificate in respect of this provision are the employee's responsibility and will not be paid by the Council and cannot be reclaimed from the Council. The Council's Occupational Health Adviser will not be used for the purpose of confirming sickness so that an employee can reclaim leave entitlement.

4.11. Annual Leave/Public Holidays and Unpaid Leave of Absence

Where unpaid leave of absence is granted for an employee totalling 1 week or more (either 1 full week or a series of individual days totalling a normal working week for that individual) in any annual leave year, a pro-rata reduction in annual leave and public holiday entitlement shall apply.

4.12. Annual Leave, Public Holiday, and Other work/employment

Annual Leave and Public Holidays are, under statute, a break from work/employment. The Council, therefore, has an obligation to ensure that all employees must take statutory breaks from any work/employment. Consequently, an employee must not take annual leave/public holidays so that they can participate in other work/employment, either within or out with the Council.

4.13. Annual Leave/Public Holidays and Related Policies

Further specific provisions relating to annual leave and public holidays which are linked to other Council HR Policies and Procedures including Maternity, Adoption, Surrogacy and Leave of Absence are included within these Policies and Procedures.

5. SNCT Staff (including Teachers, Music Instructors and Educational Psychologists)

5.1. Leave Year

For Teachers and Music Instructors the leave year shall run in conjunction with the school year for Orkney Islands Council. Dates for each school year are agreed by the Orkney Joint Negotiating Committee for Teachers (OJNCT).

For Educational Psychologists, Education Support Officers and Quality Improvement Officers and Quality Improvement Managers (or roles paid as these), the leave year runs from 1 April to 31 March.

5.2. Annual Leave and Public Holiday Entitlement

5.2.1. Teachers and Music Instructors

The annual leave entitlement of a full-time teacher or music instructor shall be 40 days, inclusive of public holidays.

Pro rata arrangements shall apply to part time staff and those employed for any part of the leave year.

The placement of the 40 days annual leave within the school holiday periods shall be determined by OJNCT. Allocation of the leave days shall be in a broadly proportionate manner across the four main school holiday periods Autumn, Winter, Spring and Summer.

Teachers and music instructors will accrue paid leave of 0.20513 of a day for each day worked in the school session and pro-rata for each part day worked in the school session.

'Days worked' include any period of family leave, any period of sickness absence and any other form of paid leave, except for annual leave. Accrued annual leave because of family leave will count as 'days worked'.

5.2.2. Educational Psychologists, Education Support Officers and Quality Improvement Officers and Quality Improvement Managers (or roles paid as these)

For employees with less than 5 years continuous service at the beginning of a leave year, leave entitlement is 35 days, inclusive of public holidays.

For employees with 5 years or more continuous service at the beginning of a leave year, leave entitlement is 40 days, inclusive of public holidays

5.3. Entitlement – Starters and Leavers

5.3.1. Teachers and Music Instructors - Leave on Commencement of Employment

A teacher or music instructor working for an entire school session will accrue full leave entitlement of 40 days inclusive of public holidays, pro-rata for part-time teachers or music instructors.

Where a teacher or music instructor joins from another Scottish Council mid-way through a leave year, their combined leave entitlement across the two Councils shall total 40 days inclusive of public holidays, pro-rata for part-time teachers or music instructors.

Where a teacher or music instructor joins from an organisation other than a Scottish Council midway through a leave year, leave entitlement shall be calculated as 0.20513 for each day worked for Orkney Islands Council in that leave year.

5.3.2 Teachers and Music Instructors - Leave on Termination of Employment

Where a teacher or music instructor leaves to join another Scottish Council mid-way through a leave year, their combined leave entitlement across the two Councils shall total 40 days inclusive of public holidays, pro-rata for part-time teachers or music instructors.

Where a teacher or music instructor leaves midway through a leave year to join an organisation other than another Scottish Council, or leaves employment altogether, leave entitlement shall be calculated as 0.20513 for each day worked for Orkney Islands Council in that leave year.

Where a teacher or music instructor leaves employment, their outstanding leave entitlement is calculated by taking the number of days leave accrued within the school session and deducting the number of days leave they have already taken.

On leaving employment, if it transpires that a teacher or music instructor has taken more leave entitlement than they have accrued, a day's pay shall be recovered from the teacher or music instructor's final salary payment for each day taken more than the accrued entitlement.

If it transpires that the teacher or music instructor has taken less annual leave entitlement than they have accrued, and the balance of annual leave cannot be taken, a day's pay for each unused day of leave should be paid along with the teacher or music instructor's final salary payment.

5.3.3. Educational Psychologist/Education Support Officer, Quality Improvement Officer or Quality Improvement Manager (or roles paid as these)

Where an Educational Psychologist/Education Support Officer, Quality Improvement Officer or Quality Improvement Manager (or roles paid as these) commences or leaves employment part way through a leave year, they will have pro-rata entitlement to either 35 or 40 days leave inclusive of public holiday for that leave year.

The pro-rata calculation is done on the complete number of weeks worked in that leave year as per Section 4.6.1.

On leaving employment, if it transpires that an Educational Psychologist/Education Support Officer, Quality Improvement Officer or Quality Improvement Manager (or roles paid as these) has taken more leave entitlement than they have accrued, a day's pay shall be recovered from the Educational Psychologist/Education Support Officer, Quality Improvement Officer or Quality Improvement Manager (or roles paid as these) final salary payment for each day taken more than the accrued entitlement.

If it transpires that the Educational Psychologist/Education Support Officer, Quality Improvement Officer or Quality Improvement Manager (or roles paid as these) has taken less annual leave entitlement than they have accrued, and the balance of annual leave cannot be taken, a day's pay for each unused day of leave should be paid along with the Educational Psychologist/Education Support Officer, Quality Improvement Officer or Quality Improvement Manager (or roles paid as these) final salary payment.

5.4. Annual Leave/Public Holidays and Sickness

5.4.1. Teachers and Music Instructors

If a teacher or music instructor has been incapacitated for a continuous period of 8 consecutive days or more and the period of sickness is fully covered by a medical certificate, compensatory leave will accrue as follows:

For each certified period of sickness absence, the teacher or music instructor will accrue compensatory leave of 2 days for every 5 days of designated annual leave which cannot be taken, subject to a maximum credit of 8 such days accruing in any one leave year.

In agreement with their Head Teacher/Manager, compensatory leave entitlement shall be taken following the teacher or music instructor's return to work. The timing of this leave is subject to the overriding needs of the service and should normally be taken in the term in which the employee returns to work or, if this is not possible, in the following term.

Where a teacher or music instructor has not taken, or will be unable to take, their statutory leave entitlement (28 days) within a leave year because of certified sickness, they shall receive the appropriate balance of leave to bring their total leave to the statutory leave entitlement for that leave year.

Such leave will normally be carried forward into the following leave year. Pro rata arrangements shall apply to part time staff and those employed for any part of the leave year.

Where a teacher or music instructor is carrying forward compensatory leave entitlement and statutory leave entitlement the total of such leave shall not exceed the maximum statutory leave entitlement.

A teacher or music instructor is entitled to take, in full or in part, the appropriate balance of leave up to the statutory leave provision during a period of sickness absence. Where such leave is taken during a period of sickness absence, pay shall be the normal pay for each day (inclusive of Statutory Sick Pay and replacing Sickness Allowance).

Any leave up to the statutory leave entitlement which remains untaken at the end of the leave year, shall be carried forward into the next leave year and shall be taken following the employee's return to work. The timing of this leave shall take account of the needs of the service and should normally be taken in the term in which the return to work takes place or within the following term.

5.4.2. Educational Psychologists, Education Support Officers and Quality Improvement Officers and Quality Improvement Managers (or roles paid as these)

Any period of sickness absence which coincides with a period of annual leave should be regarded as sickness absence if the appropriate self-certificate or statement of fitness for work is submitted.

If the period of sickness absence exceeds 3 months during a leave year, the Council has discretion to either give the employee full annual leave entitlement or to limit it to an amount of annual leave which is proportionate to the period they have attended work in the leave year (subject to the minimum statutory leave provisions).

Where statutory leave provision has not been taken within a leave year owing to certified sickness, the appropriate balance of leave to bring the total leave to the statutory leave provision for that leave year should be provided. Pro rata arrangements shall apply to part time staff and those employed for any part of the leave year.

Any untaken leave up to the statutory leave provision which remains untaken at the end of the leave year, shall be carried forward into the next leave year and shall be taken following the employee's return to work. The timing of this leave shall take account of the needs of the service and should normally be taken as soon as possible following the return to work.

5.5. Annual Leave/Public Holidays and Related Policies

Further specific provisions relating to annual leave and public holidays which are linked to other Council HR Policies and Procedures including Maternity, Adoption and Leave of Absence are included within these Policies and Procedures and within SNCT Conditions of Service (<http://www.snct.org.uk>).

6. Orkney College Staff (Academic and Support staff)

6.1. Leave Year

The Leave Year for Orkney College is from 1 September to 31 August.

6.2. Entitlement – Annual Leave

6.2.1. College Academic Staff

Leave entitlement is 55 days inclusive of all public holidays.

College Academic staff shall be entitled to a minimum 25 days' continuous leave (5 weeks), excluding Saturdays and Sundays, during the months of June, July and August.

The Council may require some or all the annual leave entitlement to be taken during the Christmas/New Year period.

6.2.2. College Support Staff

Annual Leave and Public Holiday entitlements and provisions for College Support Staff are the same as those for Council Staff (SJC Conditions of Service), see section 4.3.

6.3. Entitlement – Public Holidays

6.3.1. College Academic Staff

Public holiday days for Orkney College Academic Staff are the same as those for Council staff (see Section 4.3) and are included within their inclusive leave entitlement as detailed in section 6.2.1.

6.3.2. College Support Staff

Annual Leave and Public Holiday entitlements and provisions for Orkney College Support Staff are the same as those for Council Staff (SJC Conditions of Service), see section 4.

6.4. Other Provisions

All other provisions in respect of annual leave and public holidays for Orkney College Academic and Support staff are in line with those outlined in this policy and procedures under Section 4 Council Staff (SJC).

6.5. NJNC National Bargaining for Scottish Colleges

At the time of writing and approval of this Policy, Orkney Islands Council is not a signatory to the National Recognition and Procedures Agreement for Staff in Scottish Colleges in respect of Terms and Conditions (including annual leave and public holidays) for College Academic Staff or Pay and Terms and Conditions (including annual leave and public holidays) for College Support staff.

Should that position change in the future it may be necessary to review and amend this section should annual leave and public holiday entitlements or provisions be different to those detailed in this policy.

7. Chief Officers (SJNC Chief Officials Conditions of Service)

Annual Leave Entitlement for Chief Officers is 30 days per annum. In all other respects annual leave and public holiday policy and provisions is the same as SJC staff, as covered in Section 4 of this policy.

Annex 1

Term Time Working Weeks including Annual Leave and Public Holiday Entitlement

*Figures are comparative working weeks to a full year 52 week working pattern and are inclusive of leave and public holiday entitlement.

Working 20 weeks per year (excluding Leave and Public Holiday Entitlement)		
Continuous Service at Start of Leave Year	Leave and Public Holidays (weeks)	Total Working Weeks incl. Leave and Public Holidays*
Up to 1 year	2.90	22.90
1 year but less than 2 years	3.00	23.00
2 year but less than 3 years	3.10	23.10
3 year but less than 4 years	3.20	23.20
4 year but less than 5 years	3.31	23.31
5 years or more	3.41	23.41

Working 26 weeks per year (excluding Leave and Public Holiday Entitlement)		
Continuous Service at Start of Leave Year	Leave and Public Holidays (weeks)	Total Working Weeks incl. Leave and Public Holidays*
Up to 1 year	3.77	29.77
1 year but less than 2 years	3.90	29.90
2 year but less than 3 years	4.03	30.03
3 year but less than 4 years	4.17	30.17
4 year but less than 5 years	4.30	30.30
5 years or more	4.44	30.44

Working 36 weeks per year (excluding Leave and Public Holiday Entitlement)		
Continuous Service at Start of Leave Year	Leave and Public Holidays (weeks)	Total Working Weeks incl. Leave and Public Holidays*
Up to 1 year	5.51	41.51
1 year but less than 2 years	5.70	41.70
2 year but less than 3 years	5.89	41.89
3 year but less than 4 years	6.09	42.09
4 year but less than 5 years	6.29	42.29
5 years or more	6.48	42.48

Working 38 weeks per year (excluding Leave and Public Holiday Entitlement)		
Continuous Service at Start of Leave Year	Leave and Public Holidays (weeks)	Total Working Weeks incl. Leave and Public Holidays*
Up to 1 year	5.51	43.51
1 year but less than 2 years	5.70	43.70
2 year but less than 3 years	5.89	43.89
3 year but less than 4 years	6.09	44.09
4 year but less than 5 years	6.29	44.29
5 years or more	6.48	44.48

Working 39 weeks per year (excluding Leave and Public Holiday Entitlement)		
Continuous Service at Start of Leave Year	Leave and Public Holidays (weeks)	Total Working Weeks incl. Leave and Public Holidays*
Up to 1 year	5.65	44.65
1 year but less than 2 years	5.85	44.85
2 year but less than 3 years	6.05	45.05
3 year but less than 4 years	6.25	45.25
4 year but less than 5 years	6.45	45.45
5 years or more	6.65	45.65

Working 40 weeks per year (excluding Leave and Public Holiday Entitlement)		
Continuous Service at Start of Leave Year	Leave and Public Holidays (weeks)	Total Working Weeks incl. Leave and Public Holidays*
Up to 1 year	5.80	45.80
1 year but less than 2 years	6.00	46.00
2 year but less than 3 years	6.20	46.20
3 year but less than 4 years	6.41	46.41
4 year but less than 5 years	6.62	46.62
5 years or more	6.83	46.83

Working 41 weeks per year (excluding Leave and Public Holiday Entitlement)

Continuous Service at Start of Leave Year	Leave and Public Holidays (weeks)	Total Working Weeks incl. Leave and Public Holidays*
Up to 1 year	5.94	46.94
1 year but less than 2 years	6.15	47.15
2 year but less than 3 years	6.36	47.36
3 year but less than 4 years	6.57	47.57
4 year but less than 5 years	6.78	47.78
5 years or more	7.00	48.00

Working 42 weeks per year (excluding Leave and Public Holiday Entitlement)

Continuous Service at Start of Leave Year	Leave and Public Holidays (weeks)	Total Working Weeks incl. Leave and Public Holidays*
Up to 1 year	6.09	48.09
1 year but less than 2 years	6.30	48.30
2 year but less than 3 years	6.51	48.51
3 year but less than 4 years	6.73	48.73
4 year but less than 5 years	6.95	48.95
5 years or more	7.17	49.17

Working 43 weeks per year (excluding Leave and Public Holiday Entitlement)

Continuous Service at Start of Leave Year	Leave and Public Holidays (weeks)	Total Working Weeks incl. Leave and Public Holidays*
Up to 1 year	6.23	49.23
1 year but less than 2 years	6.45	49.45
2 year but less than 3 years	6.67	49.67
3 year but less than 4 years	6.89	49.89
4 year but less than 5 years	7.11	50.11
5 years or more	7.34	50.34

Working 44 weeks per year (excluding Leave and Public Holiday Entitlement)		
Continuous Service at Start of Leave Year	Leave and Public Holidays (weeks)	Total Working Weeks incl. Leave and Public Holidays*
Up to 1 year	6.38	50.38
1 year but less than 2 years	6.60	50.60
2 year but less than 3 years	6.82	50.82
3 year but less than 4 years	7.05	51.05
4 year but less than 5 years	7.28	51.28
5 years or more	7.51	51.51

Annex 2

Example SJC Starter and Leaver calculations

Example 1

John commenced employment as a Social Care Assistant on 6 January 2020, working 37 hours per week for 52 weeks per year. He does not have continuous service with another Council so his full annual leave entitlement for a year is 33 days, i.e., 23 days plus 10 public holidays as he has less than 1 years' service.

In his first year of employment John will work 12 complete weeks from 6 January 2020 to 31 March 2020. This will entitle him to 8 days annual leave entitlement, i.e. $(12 \text{ weeks} \div 52 \text{ weeks}) \times 33 \text{ days} = 7.6 \text{ days}$, rounded up to 8 days.

Example 2

Mary leaves employment on 28 August 2020 after working for the Council for 25 years as a part-time Clerical Assistant on a contract of 21 hours per week, or 0.60 FTE. As she has more than 5 years' service at her date of leaving her full annual leave entitlement for a year is 160 hours i.e. $(196 \text{ hours annual leave plus } 70 \text{ public holiday hours}) \times 0.60 \text{ FTE} = 159.60 \text{ hours}$ rounded up to 160 hours.

In her last year of employment Mary will have worked for 21 complete weeks from 1 April 2020 to 28 August 2020 so her annual leave entitlement for her final year will be 65 hours, i.e. $(21 \text{ weeks} \div 52 \text{ weeks}) \times 160 \text{ hours} = 64.61 \text{ hours}$, rounded up to 65 hours.

Example 3

Karen commences employment as a school cook on 17 August 2020 working 25 hours per week term-time for 43.51 weeks per year, or 0.5654 FTE i.e. $(25 \text{ hours} \times 43.51 \text{ weeks}) \div (37 \text{ hours} \times 52 \text{ weeks})$. She does not have continuous service with another Council so her full annual leave entitlement for a year is 138 hours i.e. $(170 \text{ hours annual leave plus } 74 \text{ public holiday hours}) \times 0.5654 \text{ FTE} = 137.95 \text{ hours}$ rounded up to 138 hours.

In her first year of employment Karen will have worked 32 complete weeks from 17 August 2020 to 31 March 2021 so her annual leave entitlement for her first year will be 85 hours, i.e. $(32 \text{ weeks} \div 52 \text{ weeks}) \times 138 \text{ hours} = 84.92 \text{ hours}$, rounded up to 85 hours.

Example 4

Ken commences employment as a seasonal road worker on 18 May 2020 on a short-term contract until 28 August 2020, working 37 hours per week. He does not have continuous service with another Council so his full annual leave entitlement for a year is 33 days, i.e., 23 days plus 10 public holidays as he has less than 1 years' service.

During his short-term contract Ken will work 15 complete weeks from 18 May 2020 to 28 August 2020. This will entitle him to 10 days annual leave entitlement, i.e. $(15 \text{ weeks} \div 52 \text{ weeks}) \times 33 \text{ days} = 9.52 \text{ days}$, rounded up to 10 days.

Annex 3

Annual Leave Exceptional Carry Forward Request



(Form is to be submitted prior to end of leave year from which carry forward is being requested)

Employee Name	
Job Title	
Work Location	

Number of days requested to be carried forward from previous year:* _____

** Total number is to include the 5 days that can be carried over without authorisation and any additional days that require authorisation.*

Explanation for seeking exceptional carry forward:
--

I confirm that I understand that if approved this leave must be taken by 30 June in the next leave year or it will be lost and if exceptional carry forward leave is not approved, I will be able to carry forward only 5 days pro-rata.

Employee : _____ Date: _____

Line Manager Agreement In Agreement Not in Agreement

Comments:

Employee : _____ Date: _____

Executive Director Approval Approved Not Approved

Comments:

Employee : _____ Date: _____
Copy to Employee with original to Employee Personal File



Equality Impact Assessment

The purpose of an Equality Impact Assessment (EqIA) is to improve the work of Orkney Islands Council by making sure it promotes equality and does not discriminate. This assessment records the likely impact of any changes to a function, policy or plan by anticipating the consequences, and making sure that any negative impacts are eliminated or minimised and positive impacts are maximised.

1. Identification of Function, Policy or Plan	
Name of function / policy / plan to be assessed.	Annual leave and Public Holiday Policy and Procedure
Service / service area responsible.	HR and Performance
Name of person carrying out the assessment and contact details.	Andrew Groundwater
Date of assessment.	07.01.2022
Is the function / policy / plan new or existing? (Please indicate also if the service is to be deleted, reduced or changed significantly).	New policy document but the majority of the provisions are existing via terms and conditions of employment.


2. Initial Screening	
What are the intended outcomes of the function / policy / plan?	To ensure a clear, consistent and equitable approach to the use and approval of annual leave.
Is the function / policy / plan strategically important?	Not strategically important but operationally important.
State who is, or may be affected by this function / policy / plan, and how.	Employees will be affected by the policy within their employment.
How have stakeholders been involved in the development of this function / policy / plan?	Trade Unions have been consulted.

<p>Is there any existing data and / or research relating to equalities issues in this policy area? Please summarise.</p> <p>E.g. consultations, national surveys, performance data, complaints, service user feedback, academic / consultants' reports, benchmarking (see equalities resources on OIC information portal).</p>	<p>Not as such but annual leave generally has been the subject of many employment claims and continues to be. Most of these focus on what employees should be paid for periods of annual leave, and/or whether statutory provisions have been met. Many of these cases results in subtle changes to the way legislation requires to be applied to ensure equity and fairness of treatment generally.</p>
<p>Is there any existing evidence relating to socio-economic disadvantage and inequalities of outcome in this policy area? Please summarise.</p> <p>E.g. For people living in poverty or for people of low income. See The Fairer Scotland Duty Interim Guidance for Public Bodies for further information.</p>	<p>No</p>
<p>Could the function / policy have a differential impact on any of the following equality strands?</p>	<p>(Please provide any evidence – positive impacts / benefits, negative impacts and reasons).</p>
<p>1. Race: this includes ethnic or national groups, colour and nationality.</p>	<p>No differential impact anticipated.</p>
<p>2. Sex: a man or a woman.</p>	<p>Potential positive benefit for female staff in terms of ensuring equity. The majority of our staff are female (70%) and many work part time, and this is one particular area where inconsistency of treatment can be more prevalent.</p>
<p>3. Sexual Orientation: whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.</p>	<p>No differential impact anticipated.</p>
<p>4. Gender Reassignment: the process of transitioning from one gender to another.</p>	<p>No differential impact anticipated.</p>
<p>5. Pregnancy and maternity.</p>	<p>No differential impact anticipated.</p>
<p>6. Age: people of different ages.</p>	<p>No differential impact anticipated.</p>
<p>7. Religion or beliefs or none (atheists).</p>	<p>No differential impact anticipated.</p>

8. Caring responsibilities.	No differential impact anticipated.
9. Care experienced.	No differential impact anticipated.
10. Marriage and Civil Partnerships.	No differential impact anticipated.
11. Disability: people with disabilities (whether registered or not).	No differential impact anticipated.
12. Socio-economic disadvantage.	No differential impact anticipated.

3. Impact Assessment	
Does the analysis above identify any differential impacts which need to be addressed?	No
How could you minimise or remove any potential negative impacts?	N/A
Do you have enough information to make a judgement? If no, what information do you require?	Yes

4. Conclusions and Planned Action	
Is further work required?	No
What action is to be taken?	N/A
Who will undertake it?	N/A
When will it be done?	N/A
How will it be monitored? (e.g. through service plans).	N/A

Signature:		Date:	07.01.22
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Please sign and date this form, keep one copy and send a copy to HR and Performance. A Word version should also be emailed to HR and Performance at hrrsupport@orkney.gov.uk