

Item: 5

Human Resources Sub-committee: 31 August 2021.

Temporary Policy on Overtime and Time off in Lieu (TOIL).

Report by Executive Director of Education, Leisure and Housing.

1. Purpose of Report

To consider a temporary policy on staff overtime and time off in lieu (TOIL).

2. Recommendations

The Sub-committee is invited to note:

2.1.

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

2.2.

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

2.3.

That, at this stage, should the new policy be approved it would be temporary in nature until 31 March 2023 pending consideration of a wider review of terms and conditions of employment.

2.4.

That the new policy includes a recommendation to raise the threshold for which overtime can be claimed by employees from Single Status Spinal column point 40 (£30,585) and below to Point 50 (£38,195) and below.

It is recommended:

2.5.

That the Overtime and Time off in Lieu (TOIL) Policy and Procedures, attached as Appendix 1 to this report, be approved on a temporary basis until 31 March 2023.

3. Background

3.1.

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

3.2.

During the response to the COVID-19 pandemic, it was a requirement of many employees to work exceptional hours in order to support the Council's response which led to a more frequent requirement to consider the use of overtime and TOIL.

3.3.

Some employees who had to undertake exceptional hours of work, including weekends and evenings, were employees paid at Spinal Column Point (SCP) 41 (£31,078) and above. Under the current terms and conditions of employment, they were not permitted to claim overtime or TOIL in normal circumstances. Therefore exceptional approval for such payments had to be sought via the Chief Executive and Senior Management Team.

3.4.

The existence of a pay threshold up to which overtime can be claimed is common place amongst local authority terms and conditions. However, the threshold the Council has locally agreed is significantly behind other authorities. This prompted the Senior Management Team and Human Resources section to reconsider the appropriateness of these arrangements.

3.5.

In addition, it was clear that a more robust statement and policy around the principles and procedures should be followed in respect of overtime and TOIL would be beneficial. This would help ensure that proper consideration of all options was made prior to overtime being approved, that consistency across different services was improved, and that employees and managers were clearer on their expectations and responsibilities in terms of overtime and TOIL.

4. Terms of the Policy

4.1.

A significant change that this temporary policy would bring about is that employees paid on SCP 41 to 50 (£31,078 – £38,195) would now be eligible to be paid overtime or receive TOIL via the correct pre-approval from their manager. Previously the threshold was set at SCP 40 (£30,585).

4.2.

The change is considered reasonable and prudent in light of the range of employees being required to work overtime from time to time, to reduce bureaucracy around these situations, and to bring the Council closer to the general level of threshold set by comparator councils.

4.3.

The two other island authorities, for example, currently have overtime thresholds set at salary levels of approximately £39,000 and £46,000, not including Distant Islands Allowance. The change in the threshold would move the Council's to £38,195.

4.4.

The Policy also sets out clear principles and expectations of how overtime and TOIL should be approved, when necessary, and what considerations should be made for alternatives to avoid the payment of overtime in particular.

4.5.

Primarily, the Council does not want its employees to be working additional hours on a regular basis to ensure the protection of employees' health and wellbeing, and also to avoid excessive costs associated with such working.

4.6.

The proposals around how overtime should be considered and approved do not represent a fundamental change to the approach taken by the Council. However, the creation of the policy sets them out more robustly and ensures managers and employees have a clear guidance document which should assist in safeguarding consistency of application.

4.7.

The clarity on the use of TOIL should be enhanced by the Policy. In particular, the setting of expectations for timescale on how quickly any accrued TOIL should be used up.

4.8.

The Policy is being sought as a temporary position until 31 March 2023 initially to allow consideration of a wider review of employee terms and conditions in due course. This is due to the requirement to look at pay and grading models as a result of the Living Wage and other related factors. As part of that it may well be sensible to look at terms and conditions as part of the wider pay model and overtime could be one area that may be revisited as part of that.

5. Human Resources Implications

5.1.

Should the Overtime and Time off in Lieu (TOIL) policy be approved, some minor corresponding changes to the wording around overtime would be required in employee contracts of employment, and this would be undertaken by HR.

5.2.

Subject to approval, communication of the policy would be undertaken via a Human Resources Information Briefing and the policy would be made available for staff via the Intranet.

6. Equality Impact Assessment

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.

8. Financial Implications

8.1.

The present maximum threshold for the approval overtime is set at SCP 40 (£30,585) and the terms of this policy would move that to SCP 50 (£38,195).

8.2.

It is reasonable to assume that the changing of this threshold may lead to increased overtime claims from employees previously above the threshold, however costing of this is not possible due to the unknown nature of extra hours undertaken, and how much of this would be covered by TOIL and flexi-time arrangements in any case.

8.3.

In addition, the clearer expectations in the policy and in particular the principles that should be followed before managers approve overtime, may assist in the consideration of other options and the reduction of overtime in some cases.

9. Legal Aspects

The Council has a duty to ensure compliance with the Working Time Regulations 1998 as these contain provisions that relate to a variety of health and safety issues including working times, rest periods and breaks.

10. Contact Officers

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11. Appendices

Appendix 1: Temporary Overtime and TOIL Policy.

Appendix 2: Equality Impact Assessment.



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.

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

4.8. 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.

4.9. 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.



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.	Temporary Overtime and TOIL Policy
Service / service area responsible.	HR and Performance
Name of person carrying out the assessment and contact details.	Andrew Groundwater
Date of assessment.	19.08.21
Is the function / policy / plan new or existing? (Please indicate also if the service is to be deleted, reduced or changed significantly).	New policy

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 overtime and TOIL by managers and employees who work for Orkney islands Council
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 impacted by the policy within their employment if they ever have to additional hours.
How have stakeholders been involved in the development of	Trade Unions have been consulted.

this function / policy / plan?	
<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>No. Overtime is specifically excluded from consideration in Equality data around the gender pay gap for example.</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>Not that I am aware of.</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>The majority of overtime undertaken within the organisation is undertaken by frontline staff who are at the lower end of our pay and grading model. We know that the majority of our staff (70%) are female, however the policy does not make any changes from current practice for staff in this area. Staff on Grades 9 and 10 who are now eligible to be paid overtime are split evenly between men and women.</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>


5. Pregnancy and maternity.	No differential impact anticipated.
6. Age: people of different ages.	No differential impact anticipated.
7. Religion or beliefs or none (atheists).	No differential impact anticipated.
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.
13. Isles-proofing.	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:	19.08.21
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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 hrsupport@orkney.gov.uk