

Response to Emergency Covid-19 Pandemic

Voluntary Scheme for the Extra-Ordinary Payment of Unused Contractual Leave Entitlement

1.0 Introduction and Background

- 1.1 COVID-19 has brought unprecedented challenges to all HSC Trust services and staff. Many of our staff have been very flexible in terms of their leave arrangements over the last number of months. Again within the current third surge, some staff are being asked to postpone leave to support service delivery and to maximise our staff capacity. Staff, across the region, may have been asked to revisit leave arrangements and postpone leave booked and approved during 2020/2021.
- 1.2 Staff health and well-being is of paramount importance to HSC employers and we are committed to ensuring staff can avail of leave for rest and recuperation. In some of our services, staff may have been able to take accrued leave throughout the year as normal. Where this has been possible, the normal discretionary carryover of 1 contractual week applies. Staff should be encouraged to continue to use their leave entitlement during this leave year where it is possible. (See Option 1 below)
- 1.3 However for some staff this will not be possible due to intense service pressures and we recognise that some staff will not be able to avail of all their leave entitlement within the current leave year.
- 1.4 For these staff, they can be assured that they will not lose leave as we move towards the end of the financial year. Under new measures introduced by Government aimed at alleviating the pressure on organisations employing key workers, staff who cannot take all their holiday entitlement due to COVID-19 will be able to carry over leave, into the next 2 leave years, 2021/2022 and 2022/2023. <https://www.gov.uk/government/news/rules-on-carrying-over-annual-leave-to-be-relaxed-to-support-key-industries-during-covid-19>
- 1.5 The European Working Time Regulations (WTR) outlines a statutory minimum requirement of 5.6 weeks (28 days) leave for all employees for rest which is a combination of contractual annual leave and general public holidays.

- 1.6 In each leave year, HSC staff are entitled to contractual annual leave and general public holidays. HSC contractual leave entitlement includes an element which increases based on length of service (pro-rata). *Appendix 1 sets out the leave entitlement for HSC staff.*
- 1.7 All HSC organisations have received requests from staff to be paid for accrued leave rather than carrying leave forward into subsequent leave years. The HSC organisations have given significant consideration to this matter and have consulted with trade unions to seek an agreed way forward.
- 1.8 Whilst it will not be possible for HSC organisations to pay staff in respect of untaken leave below the minimum statutory WTR leave requirements (i.e. 5.6 weeks leave), it is agreed that, as a one-off extra-ordinary option, given the current unprecedented circumstances, HSC organisations will offer payment for the balance of any contractual leave above the statutory minimum (i.e. above the 5.6 weeks) that staff have been unable to use during the 2020/2021 financial year (see option 2 and 3 below). Any untaken leave below the minimum statutory requirements may be carried forward into the next 2 leave years, i.e. 2021-2022 and 2022-2023 (see point 1.4 above and option 1 below).

2.0 Principles of the Voluntary Scheme

The principles for the extra-ordinary payment of unused contractual leave entitlement are:

- This scheme is voluntary and open to all employees of the Business Services Organisation.
- Where staff can avail of leave they should be encouraged to use their leave within the current leave year in line with normal annual leave provisions.
- The voluntary opportunity for payment of contractual leave is being offered to all staff as a one off to assist in managing workforce during ongoing pandemic pressures.
- Payment of leave applies only to contractual leave accrued during the 2020/2021 financial year only.
- No staff member will have a contractual right to receive any future payment in respect of contractual leave. As highlighted above, this proposal is in response to the very unique situation currently faced by HSC organisations in response to the pandemic.

3.0 Scheme Options Available to Staff

For staff unable to avail of leave in line with normal provisions due to service pressures, staff can be facilitated with the following extra-ordinary options in regards to their outstanding leave.

- Option 1: Carryover of leave into the next 2 leave years

Under the new Government Guidelines, those staff who have not used all of their leave, or have had leave cancelled due to the pandemic, can carry forward their unused leave into the next 2 leave years. All leave carried forward must be taken by 31 March 2023.

- Option 2: Payment of Contractual Leave

Staff can voluntarily opt to receive payment for unused leave above the statutory minimum of 5.6 weeks. See Appendix 1 for table of contractual leave entitlement.

- Option 3: Carryover and Payment of Contractual Leave

Staff can voluntarily opt to receive payment for some of their unused leave above the statutory minimum of 5.6 weeks and carry forward the remaining leave (for which a payment has not been made) into the next 2 years. All leave carried forward must be taken by 31 March 2023.

4.0 Payment of Contractual Leave

The principles for payment of contractual leave are:

- Staff can expect to be paid leave in line with their contractual arrangements (Band and Pay point) as of 31 March 2021 at the appropriate rate.
- This exceptional payment in lieu of taking contractual leave is non-pensionable.
- This exceptional payment in lieu of taking contractual leave is taxable and subject to National Insurance Contributions.
- All requests for payment of contractual leave must be agreed no later than 31 March 2021 to be processed for payment in a timely manner thereafter. The scheme will close for any new requests on 31 March 2021.
- Requests for payment of leave must be completed on the attached form in Appendix 2.

- Where leave is paid, it must be deducted from the overall 2020-2021 leave entitlement to ensure it is not credited to a staff member twice. This is the responsibility of both the line manager and the staff member.

5.0 Process

- All requests for payment of contractual leave must be agreed no later than 31 March 2021 to be processed for payment in a timely manner thereafter. The scheme will close for any new requests on 31 March 2021
- Payment will only be considered for leave in excess of the statutory 210 hours required under WTR
- Staff members should speak to their line manager in the first instance about their outstanding leave and how they may be facilitated to take their leave
- A clear record of accrued leave entitlement, used leave and outstanding leave must be kept
- Where a request for payment is being made, it must be agreed with your line manager and completed on the attached form in Appendix 2
- Where leave is paid – the manager must deduct the hours paid from the staff member's 2020/21 leave entitlement to ensure this is not credited to the staff member twice

Appendix 1

Table of Contractual Leave (in Hours)

Table 1: Staff Paid on Agenda for Change and Senior Executive Terms & Conditions (based on 7.5 hour day)

Contractual Leave Entitlement (Full-time equivalent)	Statutory Annual Leave Entitlement (including Public Holidays)	Potential Unused Contractual Leave Available for Payment (Full-time equivalent)
27 days Annual Leave plus 10 days Public Holidays i.e. 277.5 hours	28 days i.e. 210 hours	9 days i.e. 67.5 hours
29 days Annual Leave plus 10 days Public Holidays i.e. 292.5 hours	28 days i.e. 210 hours	11 days i.e. 82.5 hours
33 days Annual Leave plus 10 days Public Holidays i.e. 322.5 hours	28 days i.e. 210 hours	15 days i.e. 112.5 hours

Table 2: Medical & Dental Staff (based on 8 hour day)

Contractual Leave Entitlement (Full-time equivalent)	Statutory Annual Leave Entitlement (including Public Holidays)	Potential Unused Contractual Leave Available for Payment (Full-time equivalent)
25 days Annual Leave plus 12 days Public Holidays i.e. 296 hours	28 days i.e. 224 hours	9 days i.e. 72 hours
30 days Annual Leave plus 12 days Public Holidays i.e. 336 hours	28 days i.e. 224 hours	14 days i.e. 112 hours
32 days Annual Leave plus 10 days Public Holidays i.e. 336 hours	28 days i.e. 224 hours	14 days i.e. 112 hours
34 days Annual Leave plus 10 days Public Holidays i.e. 352 hours	28 days i.e. 224 hours	16 days i.e. 128 hours

Appendix 2

RESPONSE TO EMERGENCY COVID-19 PANDEMIC

REQUEST FOR PAYMENT OF UNUSED CONTRACTUAL LEAVE

Employee Information <i>To be completed by employee</i>	
Name	Click here to enter text.
Staff No	Click here to enter text.
Job	Click here to enter text.
Department	Click here to enter text.
Location	Click here to enter text.

Details of leave <i>To be completed by employee</i>	
Number of Leave Hours to be paid (<u>must be stated in hours</u>). Cannot include payment for untaken leave below the 5.6 week statutory minimum provisions	Click here to enter text.
<u>Employee Declaration</u> I acknowledge that, by signing this request for payment of unused contractual leave that I confirm my agreement to the temporary variation to my terms and conditions of employment as outlined in the Regional Proposal (of which this is a copy). I acknowledge that this temporary variation is as a result of the exceptional circumstances which the HSC organisations have faced in light of the covid-19 pandemic and is a one-off payment. I acknowledge that this scheme closes on 31 March 2021 and, following that date, I will have no contractual right to request payment in respect of my leave entitlement.	
Employee Signature	Click here to enter text.
Date	Click here to enter a date.

Manager Authorisation <i>To be completed by Direct Line Manager</i>	
Request Approved	Yes <input type="checkbox"/> No <input type="checkbox"/>
If no, please detail reason	Click here to enter text.
Number of Leave Hours approved for payment	Click here to enter text.
Manager Signature	Click here to enter text.
Date	Click here to enter a date.

NOTES

- Payment of leave applies to contractual leave accrued and untaken during the 2020/2021 financial year only.
- All requests for payment of contractual leave must be agreed no later than 31 March 2021. The scheme will close for any new requests at this date.
- Where leave is paid - the manager must deduct the hours paid from the staff members 2020-2021 leave entitlement to ensure this is not credited to the staff member twice.

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Appendix 3

Examples – Guide for Managers and Staff

Example 1:

Anne has been working on a busy ward and has been asked a number of times through the year to postpone her planned leave. As a result Anne has 20 accrued days at 31 March 2021. Anne works full time and has 3 years service. What are Anne's options?

- Anne is entitled to 27 days of contractual annual leave plus 10 public holidays which is 277.5 hours.
- Anne is required as a statutory minimum to take 210 hours leave.
- Anne has been able to take 127.5 hours during the leave year to date.
- She has 150 hours remaining as at end January 2021.
- The WTR statutory minimum requirement is 210 hours in the year.

What happens to the 150 hours remaining?

- Anne should be encouraged to use accrued leave during February and March 2021 to ensure appropriate rest and to comply with WTR statutory minimum requirements i.e. she should be facilitated to use a minimum of 82.5 hours during February and March.
- Where this is not possible for service reasons to take part or all of her outstanding leave she can:
 - Carry forward all of the outstanding accrued leave for 2 years
 - Seek to be paid for part of her leave and carry forward the remainder
 - She can only be paid for hours owing over 210 hours i.e. 67.5 hours
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Example 2:

Barry has been able to avail of leave during the year. However he still has 9 accrued days at 31 March 2021. Barry works full time and has 15 years service. What are Barry's options?

- Barry is entitled to 33 days of contractual annual leave plus 10 public holidays which is 322.5 hours.
- Barry is required as a statutory minimum to take 210 hours leave.
- He has been able to take 255 hours during the leave year to date.
- He has 67.5 hours remaining as at end January 2021.
- The WTR statutory minimum requirement is 210 hours in the year.
- Barry has 37.5 hours of leave booked and approved during March 2021.

What happens to the 67.5 hours remaining?

- Barry will be facilitated to take his leave during March as it is booked and approved. He will have 30 hours owing at end March 2021.
- Barry has the option to:
 - Carry forward all of the outstanding accrued leave for 2 years
 - Be paid for all of his outstanding leave
 - Seek to be paid for part of his leave and carry forward the remainder