



# National Offender Management Service

## ANNUAL LEAVE POLICY

|   |  |   |
|---|--|---|
| <b>This instruction applies to:-</b>  |  | <b>Reference:-</b>                      |
| NOMS Headquarters<br>Prisons  |  | <b>AI 24/2015</b><br><b>PSI 35/2015</b> |
| <b>Issue Date</b>   | <b>Effective Date</b>  | <b>Expiry Date</b>                      |
| 17 December 2015  | 17 December 2015   | N/A                                     |
| <b>Issued on the authority of</b>   | NOMS Agency Board  |   |
| <b>For action by</b>  | <p>All staff responsible for the development and publication of policy and instructions</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> NOMS HQ</li> <li><input checked="" type="checkbox"/> Public Sector Prisons</li> <li><input type="checkbox"/> Contracted Prisons*</li> <li><input type="checkbox"/> National Probation Service (NPS)</li> <li><input type="checkbox"/> Community Rehabilitation Companies (CRCs)</li> <li><input checked="" type="checkbox"/> NOMS Immigration Removal Centres (IRCs)</li> <li><input type="checkbox"/> Other Providers of Probation and Community Services</li> <li><input checked="" type="checkbox"/> Governors</li> <li><input checked="" type="checkbox"/> Heads of Groups</li> <li><input type="checkbox"/> NOMS Rehabilitation Contract Services Team</li> </ul> <p><b>* If this box is marked, then in this document the term Governor also applies to Directors of Contracted Prisons</b></p> |   |
| <b>Instruction type</b>   | HR function  |   |
| <b>For information</b>  | All staff with the exception of NPS Staff  |   |
| <b>Provide a summary of the policy aim and the reason for its development / revision</b>  | The Annual Leave policy has been updated to reflect the reduction in privilege days arising from the Civil Service reforms. Further guidance has been added to clarify management of the Queen's birthday privilege day where services remain operational e.g. NOMS HQ. The policy has been updated as appropriate to include references to Shared Parental Leave.   |   |
| <b>Contact</b>  | Shared Services HR Contact Centre<br>☎ <b>0845 010 3504</b>  |   |
| <b>Associated documents</b>   | NTS 02/2015 Public and Privilege Holidays 2015-2016<br><a href="#">My Services</a>   |   |
| <b>Replaces the following documents which are hereby cancelled:</b> PSI 16/2013, AI 06/2013   |  |   |
| <b>Audit/monitoring:</b> Mandatory elements of instructions must be subject to management checks and may be subject to self or peer audit by operational line management/HQ managers, as judged to be appropriate by the managers with responsibility for delivery. In addition, NOMS will have a corporate audit programme that will audit against mandatory requirements to an extent and at a frequency determined from time to time through the appropriate governance. |  |   |

**Introduces amendments to the following documents:** None

**Notes:** *All Mandatory Actions throughout this instruction are in italics and must be strictly adhered to.*

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## **1. Executive Summary**

### **Background**

- 1.1 The Annual Leave policy has been updated to reflect the correct entitlements to privilege days following the Civil Service reforms effective from 1 March 2014. Updates have also been made to include references to Shared Parental Leave and to clarify how leave in respect of the Queen's birthday privilege day should be managed where services remain operational, e.g. NOMS HQ.

### **Desired outcomes**

- 1.2 The revised policy document aims for an improved format and greater clarity. It takes into account present legislation and case law and provides a coherent approach to annual leave across the MoJ.

### **Application**

- 1.3 *All staff must be familiar with all sections of the annual leave policy.*
- 1.4 *All managers with line management responsibility are required to read and follow all sections of the annual leave policy as required.*

### **Mandatory actions**

- 1.5 *Governors and Heads of Group must make sure that staff and line managers apply annual leave arrangements as set out in this document.*
- 1.6 *Staff must be informed of their entitlement to annual, public and privilege leave and must be made aware of the process and procedures for applying for leave.*

### **Resource Impact**

- 1.7 Annual leave continues to accrue during periods of sickness and family leave which is likely to impact on carry-over of annual leave from one leave year to the next. In the event of long term sickness absence, payment for accrued leave will be made if the leave cannot be taken or where the employee has left the Service.

(Approved for Publication)

**Carol Carpenter**  
**Director of Human Resources, NOMS**

## **2. Annual Leave Policy**

### Policy Statement

- 2.1 NOMS is committed to all its staff being able to enjoy a quality of life. The annual leave policy and procedure supports employee choice and helps staff achieve work-life balance. NOMS recognises the good practice guidance set out in the Working Time Regulations related to annual leave which is reflected throughout this policy. NOMS encourages staff and their managers to apply good practice when applying for, and granting, annual leave.

### The Main Principles

- 2.2 This policy is intended to ensure that annual leave is accrued and used appropriately and fairly. Annual leave entitlements are issued annually in a Notice to Staff and guidance on calculating annual leave entitlements is held on [My Services](#).
- 2.3 The NOMS annual leave year runs from the 1<sup>st</sup> March to the end of February. Annual leave allowances vary depending upon grade, length of service and number of hours worked. Where a member of staff joins or leaves the Service part way through a leave year their annual leave entitlement will be calculated in direct proportion to their period of employment during that leave year.
- 2.4 Employees are expected to take their full annual leave allowance during the leave year and, subject to operational requirements, management will seek to accommodate staff preferences as far as possible.
- 2.5 Employees will only be recalled from annual leave when it is essential for operational reasons to do so.

### Public holidays and privilege holidays

- 2.6 Employees are entitled to public holidays and privilege holidays, which are in addition to annual leave entitlement.

#### **Public Holidays**

- 2.7 There are eight public holidays:

New Year's Day  
 Good Friday  
 Easter Monday  
 May Day Bank Holiday  
 Late May Bank Holiday  
 Late Summer Bank Holiday  
 Christmas Day  
 Boxing Day

#### **Privilege days**

- 2.8 Employees are also entitled to 1 privilege day for the Queen's birthday with the following exceptions:
- staff on NHS pay and related conditions of service are entitled to a total of 2 days in addition to their annual leave and public holiday allowance;

- prison officer (closed), senior officer (excluding promotees from PO2), principal officer (closed), operational support grades, night patrols and ex prison governor grades who joined Phase One on 1<sup>st</sup> July 2000, who are entitled to 3 days in addition to their annual leave and public holiday allowance;

2.9 Staff in offices, units or establishments that remain open on the Queen's birthday will need to ensure appropriate cover is maintained and if necessary take an alternative days leave. For staff in HQ and non-operational units that remain open, the day should normally be taken on either the Friday preceding or the Tuesday after the Spring Bank Holiday. Where this is not possible due to operational reasons, the day will normally be taken within 4 weeks following the Queen's birthday. Where business need exceptionally requires a variation to these norms, this may be agreed by the line manager.

2.10 For prison officer and related support grades, operational managers and Industrial and Agricultural grades (Pattern B and C), public and privilege days are added to their annual leave allowance in recognition of their requirement to work on public, Bank and privilege holidays. When a public or privilege holiday occurs during their absence on leave, the holiday is reckoned against their total leave allowance.

#### **Public and privilege holiday entitlement for staff who work reduced hours**

2.11 Employees who work reduced hours will be entitled to proportionate time off for public and privilege holidays according to their weekly hours of work.

#### Taking Annual Leave

2.12 *At the beginning of each leave year, or upon entry to the Service where joining part way through the leave year, employees must be given a form by their manager showing their annual leave allowance as days or hours (available on [My Services](#)). They must use this form in order to request annual leave, and to record line management approval.*

2.13 *Staff must not take annual leave without prior permission and may not insist on taking leave at any particular period of the year. However, subject to the needs of the Service, line management will provide as much flexibility as is possible, and must always ensure that leave requests are reasonably considered. Staff must be encouraged to take all of their leave allowance within the appropriate leave period.*

#### Responsibilities

2.14 Managers have a responsibility to:

- Take account of employee needs whilst bearing in mind the business needs, when considering annual leave applications.
- Allow employees to take approved annual leave undisturbed unless it is essential for operational reasons to cancel or postpone it.
- Take any necessary steps to ensure employees take their annual leave entitlement within their leave year. At the end of the leave year, confirm the amount of leave available for the next year.
- Check that leave allowances are not being exceeded.
- Allow employees the opportunity, subject to entitlement and business needs, to take two weeks' leave during the summer months.

2.15 Employees have a responsibility to:

- Ensure they take their full annual leave entitlement each year. All full time employees are required to take at least 20 days' paid leave annually (pro rata for part time employees). The 20 days is in addition to any public holidays taken.

- Try to make annual leave applications in good time and in line with minimum requirements of notice detailed in 'Annual Leave Requests' section.

### Annual leave requests

- 2.16 *NOMS recognises good practice guidance prescribed in the Working Time Regulations where notice of leave requested must be twice as long as the period of leave requested. As an example, employees requesting one week's annual leave, need to give two weeks' notice.*
- 2.17 A manager who is not able to honour a request for annual leave will, wherever possible, give notice at least as long as the leave requested of their decision. For example, for a request of one week's annual leave, the manager will give one week's notice.
- 2.18 Employees are encouraged to use the above guidance when requesting leave. When employees are unable to give the prescribed notice, for unforeseen circumstances, managers should adopt a flexible approach to requests and take account of employee needs whilst bearing in mind the business needs.
- 2.19 Half a day's leave is reckoned as half the net hours (i.e. excluding meal breaks for staff conditioned to gross hours) which the member of staff would normally work on the day concerned.

### Annual Leave for Religious Observance

- 2.20 Due to their religious beliefs some employees may not wish to take the expected bank holidays during March/April (Easter) and December (Christmas), when they would otherwise be expected to take these days on the day that they fall. Where possible staff should be allowed to exchange these dates for appropriate other religious festival dates. Where an exchange of bank holiday dates can be facilitated there will be no subsequent enhanced payment for working on a day that would otherwise be a bank holiday.

### Part-time Staff and Non-Standard Working Patterns

- 2.21 Part-time staff should be given a pro-rata entitlement to the corresponding full-time annual leave allowance.
- 2.22 *Annual leave for part-time staff who work full days may be calculated in days. However where the member of staff already has their annual leave recorded in hours as a shift worker (see below), or where the working pattern is variable, making it impractical to calculate it in days, it must be recorded in hours. For example where staff work days of different lengths or the length of the day they work is not the same length as standard full time day, annual leave (including public and privilege days) must be recorded in hours. For exceptions to this please see paragraph 2.25.*
- 2.23 Part-time staff who work a reduced number of days compared with the corresponding full-time working pattern will have their public and privilege holiday entitlement based upon the proportion of the full-time equivalent (guidance on the calculation of pro-rata entitlements is set out on [My Services](#)). If staff simply took the public and privilege holidays that fall on the days they normally work, it would be likely to result in them taking more or less than the proportion to which they are actually entitled to. Where part-time staff work days of different lengths, public and privilege holiday entitlement should be calculated and recorded in hours rather than days. When the member of staff is due to attend work on a day designated as a public or privilege holiday, and they do not attend work on that day, they should take annual leave.

- 2.24 *Full-time staff who work a non-standard working pattern (i.e. compressed hours, or less than an average of 5 days per week) must have their entitlement to annual leave and public and privilege holidays calculated and recorded in hours rather than days, and added to their annual leave entitlement. When the member of staff is due to attend work on a day designated as a public and privilege holiday, and they do not attend work on that day, they should take annual leave. When taking a day's annual leave the member of staff should deduct from their leave form the number of hours of annual leave that they were due to work on that day.*

### Shift Workers

- 2.25 *All Operational Support Grades and those Prison Officers appointed on or after the 1<sup>st</sup> March 1996\* who are categorised as shift workers must have their annual leave entitlement calculated and recorded in hours rather than days.*

**\* Prison Officers employed before the 1<sup>st</sup> March 1996 have their annual leave entitlement calculated and recorded in days except where they agreed to the new conditions. This information is held locally. For information on abatement please see [My Services](#).**

- 2.26 Where a public and/or privilege holiday falls during a period of annual leave, the absence will reckon against the leave allowance.
- 2.27 Where staff are deemed to be on call, annual leave should be considered as starting at 00:00 hours, ensuring that the entire annual leave period is free of duty.

### Annual Leave for Staff moving to a grade or pay band with a different annual leave entitlement or for staff who are re-employed

- 2.28 Employees who move to a grade with a different annual leave entitlement, through promotion, re-grading, conversion or external recruitment, or who formally retire or take partial retirement and are re-employed in a new grade, will have their annual leave allowance determined in accordance with the new grade or pay band entitlement and working pattern (pro rata where appropriate). If the new working arrangements result in a non-standard working pattern annual leave will be calculated and recorded in hours.

### Qualifying Service

- 2.29 Staff who voluntarily transfer from another Government department or agency with a higher annual leave entitlement will on appointment be allocated the annual leave entitlement applicable to NOMS staff with the same amount of service. Staff who transfer on grounds other than voluntary will have their annual leave entitlement determined as part of the terms of the transfer.
- 2.30 *In order to reckon as qualifying service for the purposes of determining annual leave allowances (for voluntary transfer), previous service must be within a department or agency that was subject to the provisions of the Principal Civil Service Pension Scheme. It is the responsibility of staff to provide appropriate evidence of the previous service that they wish to be recognised for annual leave purposes.*
- 2.31 During the period of a career break or unpaid special leave annual leave is not accrued. A career break does not count towards continuous employment for qualifying service for the purpose of determining annual leave allowances which will work on a stop the clock principle.

- 2.32 NOMS staff who are temporarily absent on Secondment or Loan are not treated as breaking continuous service for the purpose of determining annual leave allowances, irrespective of whether they remain on NOMS payroll.

#### Annual Leave and Sick Absence

- 2.33 *Annual leave must not be used as an alternative to sickness absence.*
- 2.34 Where an employee falls ill during annual leave they may have the period of sickness recorded as sick leave rather than annual leave. The relevant period of annual leave will be re-credited and converted to sick leave providing that:
- Line management are notified immediately in accordance with the attendance management procedure; and
  - The period of incapacity significantly interrupts the period of leave; and
  - *A self-certificate or a statement by a qualified medical practitioner is provided confirming the illness and significant interruption to annual leave. Where the period of sickness is for a period exceeding 7 calendar days a statement by a qualified medical practitioner must be provided.*
- 2.35 Employees who fail to follow these procedures will not be able to reclaim annual leave.
- 2.36 Annual leave may follow a period of sickness absence providing that the member of staff confirms their fitness to return to duty before the leave period commences.

#### Public and Privilege Holidays and Sick Absence

- 2.37 For those employees not usually required to work on public or privilege holidays, any such day which falls during a period of sickness absence will be recorded as sickness absence and the employee will not be entitled to time off in lieu.
- 2.38 Staff that do not take public and privilege holidays on the day that they fall have an additional annual leave allowance in recognition of this and so are unaffected by the paragraph above.

#### Accrual of Annual Leave during Sickness Absence

- 2.39 Annual leave will be accrued during paid sickness absence at contractual rates. Paid sickness absence includes absences at full pay and at half pay.
- 2.40 Annual leave will be accrued during unpaid sickness absence (whether at nil rate or pensionable rate of pay) so that a member of staff has a total entitlement for the annual leave year that is no less than the current minimum entitlement under the Working Time Regulations 1998. This is 28 days per year including public holidays (20 working days plus 8 public holidays). Where the employee has already accrued leave during that year which reaches or exceeds that minimum entitlement no additional annual leave will be accrued during unpaid sickness absence. The remainder of the year's entitlement will be calculated pro-rata.
- 2.41 Where a member of staff returns from long-term sickness absence they are entitled to the annual leave they have accrued during their absence, as identified above. This is subject to the normal rules relating to application and use of annual leave.

#### Anticipating and Carrying Over Annual Leave

- 2.42 It is expected that staff will take their full annual leave entitlement during the leave year. However with the agreement of line management, up to seven days' annual leave can be

anticipated from the following year's leave allowance and up to a maximum of nine days' annual leave can be carried over from one leave year to the next (or an equivalent amount in hours).

- 2.43 The limits on carry over and anticipation apply pro-rata to staff whose leave entitlement is not the full leave entitlement for full time staff (whether by reason of part time work or otherwise). For those staff who have their annual leave calculated and recorded in hours these limits will be an equivalent amount in hours based on the average hours worked per day.
- 2.44 Where a member of staff is prevented from taking annual leave for operational reasons, and this results in the individual having more than nine days' annual leave accrued but untaken at the end of the leave year, this can be carried over with prior management agreement.
- 2.45 Employees who are/have been on long term sickness absence or on maternity, adoption or paternity/maternity support leave can, in certain circumstances, carry forward more annual leave than these limits. The following rules apply:
- If an employee returns to work too near to the end of the leave year to take all their accrued annual leave (e.g. they return two weeks before the end of the leave year, and have accrued four weeks leave), they will not have had the opportunity to use all the leave before the end of the leave year and may carry forward all the remaining accrued leave. In these circumstances, they are not subject to the normal carry forward limits.
  - Employees are not obliged to take accrued annual leave before their return to work. However, if they return to work and have had the opportunity to take the leave before the end of their leave year, but did not ask to do so, then any excess over normal carry over limits will be lost.
  - Managers can also ask employees to take accrued annual leave, subject to giving the required notice. Managers have a shared responsibility to ensure that accrued annual leave is used as soon as practicable, however, if employees have the opportunity to take annual leave but do not do so, any excess over normal carry over limits will be lost.
  - Employees who request to take annual leave, but whose request is refused to meet a business need, and the leave cannot be rescheduled by the end of the leave year, may carry forward the unused balance, and are not subject to the normal carry forward limits.
  - Employees who have been absent for the whole leave year can carry forward into the next leave year all leave that they are eligible to accrue and have not taken. The carry forward of annual leave in excess of the limits can only be granted for one year following the employees return to work.

#### Accrual of Annual Leave

- 2.46 Where an employee becomes eligible for a higher annual leave allowance part way through a leave year, the amount of the additional allowance applicable is calculated in proportion to the period of the leave year remaining.
- 2.47 Where an employee changes from full-time to part-time working, or vice-versa, part way through a leave year, the leave allowance will be recalculated as the sum of the proportion of the allowance related to the period of full-time work, and the proportion related to the period of part-time work. The value of a day's leave is determined by the period when it is earned (with untaken leave being carried over into or leave taken in excess being deducted from the second period).

- 2.48 Employees on fixed term and casual contracts are entitled to the same amount of annual leave as permanent staff. Their allowance should be proportionate to the length of their contracts.
- 2.49 Annual leave continues to be accrued during:
- Periods of paid sick leave, including sickness absence at full pay and half pay (see paragraphs 2.39 – 2.41 for rules relating to unpaid sickness absence);
  - Maternity Leave, including Ordinary Maternity Leave and Additional Maternity Leave;
  - Adoption Leave, including Ordinary Adoption Leave and Additional Adoption Leave;
  - Paternity/Maternity Support Leave, including Ordinary Paternity/Maternity Support Leave and Additional Paternity/Maternity Support Leave;
  - Shared Parental Leave;
  - Paid Special Leave (including Jury Service);
  - Periods of Secondment or Loan;
  - Periods of paid suspension.
- 2.50 Annual leave will not be accrued during:
- Periods of Special Leave without pay;
  - Career Breaks;
  - Periods of unpaid suspension;
  - Periods of unauthorised absence or absence as part of Industrial Action;
  - Periods of absence due to Reserve Forces call-up.

Accrual of Annual Leave during Maternity Leave, Paternity/Maternity Support Leave, Adoption Leave and Shared Parental Leave

- 2.51 During the entire period of maternity, adoption, paternity/maternity support leave and shared parental leave, members of staff accrue their normal contractual entitlement to annual leave. This also applies to the entitlement to public and privilege holidays that fall within the period of maternity, adoption, paternity/maternity support or shared parental leave.
- 2.52 The expectation is that before members of staff commence their period of maternity, adoption, additional paternity/maternity support or shared parental leave they will take all of their annual leave accrued up to the day they are due to commence their maternity, adoption, additional paternity/maternity support or shared parental leave. However, if this has not been possible, normal carry over rules apply (see paragraphs 2.42 – 2.45). The member of staff may also arrange to take anticipated annual leave which will accrue during the maternity, adoption, additional paternity/maternity support or shared parental leave period directly before commencing maternity, adoption, additional paternity/maternity support or shared parental leave.
- 2.53 Annual leave and privilege holidays cannot be taken during Ordinary and Additional Maternity Leave, Ordinary and Additional Paternity/Maternity Support Leave, Ordinary and Additional Adoption Leave, or Shared Parental Leave. Line management have discretion to allow annual leave to be taken immediately before returning to work.
- 2.54 Where a period of ordinary or additional maternity, adoption, paternity/maternity support or shared parental leave continues into a new leave year, carry forward of the entire leave accrued whilst on ordinary or additional maternity, adoption, paternity/maternity support or shared parental leave into the new leave year will be allowed. The carry forward of annual leave in excess of the limits can only be granted for one year.

- 2.55 Non-operational staff who normally take their bank holidays on the days when they actually fall will accrue any bank and privilege holidays which fall within periods of maternity leave, adoption leave, paternity/maternity support leave or shared parental leave.
- 2.56 Operational staff whose annual leave allowance already includes bank and privilege holidays simply accrue their annual leave, because the annual leave calculation already includes their bank and privilege holiday allowance.
- 2.57 Where a member of staff who has been absent on a period of maternity, adoption, additional paternity/maternity support or shared parental leave subsequently decides to leave the Service, payment in lieu for any outstanding annual leave and privilege holidays will be made. This will be in accordance with the normal rules for staff leaving the Service as set out below.

#### Annual Leave and Career Breaks

- 2.58 When an employee is on a career break they will not accrue annual leave. They will also not be entitled to be paid for bank holidays and privilege days.
- 2.59 *Any accrued but untaken annual leave must be taken before a career break commences.* If the employee has over-taken leave, the appropriate deduction will be made from salary before the career break commences.

#### Annual Leave and Suspension

- 2.60 Members of staff who have been suspended from duty will be expected to take their annual leave in the normal way during the period of their suspension. Normal carry over rules apply.

#### Staff Leaving the Service

- 2.61 Where staff leave the Service prior to the end of the annual leave period, their annual leave entitlement should be recalculated to reflect the proportion of the leave year which they will have worked.
- 2.62 Staff who are leaving the Service should wherever possible be encouraged to take whatever leave is owed. In exceptional circumstances, payment in lieu will be made for any untaken annual leave where it has not been allowed to be taken for operational reasons. The additional considerations also apply:
- Staff who leave the Service through Ill Health Retirement or dismissal following a period of sickness absence will receive payment in lieu of the annual leave accrued but untaken during sickness absence. Accrual and carry forward of excess annual leave is calculated in the same way as for staff returning to work following sickness absence.
  - Staff who are under notice of dismissal should be required to take all outstanding leave within the period before their last day of service. In exceptional circumstances staff will receive payment in lieu for the annual leave outstanding.
  - Where staff die in service, payment in lieu of any accrued but untaken annual leave up to the date of death will be made to their estate.
- 2.63 Staff leaving the Service who have exceeded their annual leave allowance will be required to refund from salary an amount equivalent to the number of extra days taken. In cases of death in service, recovery of any excess annual leave will be waived.
- 2.64 Staff who are under notice of dismissal or have given notice of resignation will not be allowed any further annual leave if the proposed absence, together with any leave already taken, would exceed the total allowance for the proportion of the annual leave year up to the leaving date.