



ANNUAL LEAVE BUY BACK AND CARRY OVER 2021-22

1. The Scottish Government recognises the significant challenges currently facing NHS Scotland in terms of moving beyond the COVID-19 pandemic and into remobilisation.
2. Due to these service pressures, it has been decided to put in place a buy back provision for any untaken leave which goes beyond the 28 day per year statutory entitlement.

Background

3. [DL\(2020\)9](#), [DL\(2020\)16](#), [DL\(2020\)22](#) and [DL\(2021\)3](#) all provide guidance on the issue of Annual Leave and Public Holidays in NHS Scotland during the pandemic. The provisions in those letters continue to apply except for the amendment set out in this current letter.
4. [DL\(2020\)9](#) allowed staff to carry over untaken leave from the 2019-20 leave year, then gave them two years to either take it or sell it back to the service at “paid as if at work” rates.
5. [DL\(2021\)3](#) allowed staff to carry over any leave which they had not been able to take because of service pressures from the 2020-21 leave year into the 2021-22 leave year.
6. Many staff may therefore currently have large amounts of accumulated leave. It should be emphasised that, wherever possible, all accumulated leave should be taken.

Statutory Leave

7. Where it is not possible to take the entirety of the accumulated leave, all staff should, as in 2020-21, at least take their statutory leave of 28 days (20 days of annual leave and 8 days public holiday for Agenda for Change and Executive and Senior Manager staff and 18 days of annual leave and 10 public holidays for most Medical and Dental staff) in the 2021-22 leave year.

DL (2021) 35

3 November 2021

(Re-issued subsequently to include FAQ section)

Addresses

For action:

Chief Executives, Directors of Human Resources and Directors of Finance, NHS Boards and Special Health Boards and NHS National Services Scotland (Common Services Agency)

For information:

Members, Scottish Partnership Forum, Scottish Terms and Conditions Committee and Scottish Workforce and Governance Group

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Buy Back Option

8. From the date of this circular, however, staff who find themselves unable to take all of their accumulated leave because of pressure on the service will have the option to **accept payment in exchange for up to 10 days of leave** at a rate of time and a half.

9. **This is an entirely voluntary scheme and no pressure** should be put on any staff member by management to sell leave in this way, and the preference remains for managers and staff to work together to ensure all leave is taken where this is feasible. But where it is not possible to do this because of service pressures, staff will be free to choose to accept payment for up to 10 days of leave on the basis set out above for the rest of the current leave year. This will be until 31 March 2022 for Agenda for Change and Executive and Senior Manager staff and their personal 2021-22 leave year for Medical and Dental staff.

Governance

10. As with the previous buy back scheme, Health Boards should oversee the fair application of these arrangements through their Area Partnership Forum.

Carry Over into 2022-23

11. Staff who do not wish to sell their leave will be able to carry over any leave which they have not been able to take because of service pressures into the 2022-23 leave year on the same basis that untaken leave was carried over from 2020-21 to 2021-22, which was set out in [DL\(2021\)3](#).

Action

12. NHS Boards and Special Health Boards should note the provisions set out above and ensure that staff are aware of the options available.

Yours sincerely



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ANNUAL LEAVE BUY BACK AND CARRY OVER 2021-22: FREQUENTLY ASKED QUESTIONS

Q1 – Do I now automatically have the right to sell leave back?

A1 – No. DL(2021)35 sets out the parameters of the scheme. The preference remains for staff to take all annual leave which has been accumulated. Staff and managers are expected to work together in an effort to achieve that, where possible. Where this is not possible because of service pressures, then staff can make an application to their employing Board to sell up to 10 days of their accumulated leave. Approval of the application will be at the Board's discretion.

Q2 – How do I make an application to sell leave?

A2 – Your Board will advise of their process to apply to sell your leave.

Q3– What is the cut-off date for making an application to sell back leave?

A3 – This depends on the staff group. For Agenda for Change staff, the current leave year ends on 31 March 2022 and Agenda for Change staff have until 31 March 2022 to inform their employer that they wish to sell up to 10 days of Annual Leave. This rule also applies to staff in the Executive and Senior Manager cohorts. Staff on Medical and Dental terms and conditions have individual leave years so for them the cut off will be the last day of their personal 2021-22 leave year. However, staff looking to make an application should discuss it with their manager at the first opportunity and avoid leaving it to the last minute.

Q4 – Is the 10 days leave pro-rata for part time staff?

A4 – Yes.

Q5 - Is it 10 days per year?

A5 - No. It is 10 days (pro rata for part time staff) in total across the leave years 2019-20, 2020-21 and 2021-22.

Q6 - Do the 10 days have to be from one leave year?

A6 - No. The 10 days can be made up of a combination of leave from any of the leave years 2019-20, 2020-21 and 2021-22. However, leave should be sold back oldest to newest i.e. leave from 2019-20, followed by leave from 2020-21 then 2021-22, up to the maximum of 10 (pro rata for part time staff).

Q7 – What hourly rates should be used as the reference for the “time and a half” payment?

A7 – The hourly rate used should be basic pay applied according to the following methodology:

- For 2019-20 leave not already sold back, the payment should be based on the March 2020 hourly rate.
- For 2020-21 leave, the payment should be based on the March 2021 hourly rate.
- For 2021/22 leave, the payment should be based on the hourly rate at the time the request is made.

Q8 - I am paid an allowance that increases my basic hourly rate for overtime e.g. Long Term RRP, Medium Secure Unit, Discretionary Points, Merit Awards. Does this increase the basic hourly rate that would be used for buy back of my leave?

A8 – Yes.

Q9 - [DL\(2020\)9](#) allowed staff to sell back untaken 2019-20 leave at paid as if at work rates. What rates should apply now?

A9 - Untaken leave from the 2019-20 leave year which has not yet been sold back can now be sold back at time and a half, subject to the rest of the provisions in DL(2021)35.

Q10 – Are payments for annual leave sold back superannuable?

A10 – No.

Q11 – Should people on long term sick leave be able to carry over any untaken leave?

A11 – Where people have been prevented from taking leave because of sick leave rather than service pressures the provision of [CEL\(2009\)17](#) will continue to apply.

Q12 – Is leave accumulated whilst off on long term sick leave included in this provision?

A12 – The provision is about building capacity so someone coming back to work from an extended period of sick leave would be able to sell back up to 10 days of their accumulated leave, including anything accumulated whilst on sick leave, providing that leave could not be accommodated due to service demands. Staff wellbeing remains paramount. The [Managing Health and Work Partnership Information Network Policy](#) continues to apply and any manager in that situation must be satisfied that the staff member has had sufficient time to rest and recuperate before an application to sell back leave should be accepted. For staff leaving the service on ill health ground, the normal provisions would apply and they will not be able to sell accumulated leave back at time and a half.

Q13 – Is leave accumulated whilst shielding included in this provision?

A13 – Managers and shielding staff should have worked together to ensure that staff in this situation were able to take leave, as per [DL\(2020\)22](#). However, if this has not been possible due to service demands then leave accumulated whilst shielding is included in this provision.

Q14 – If I do not want to sell leave I still have from 2019-20 or 2020-21, can I carry that over into 2022-23?

A14 – As outlined above, leave must be sold in order starting with 2019-20 then moving forward. It is therefore not possible to sell 2021-22 leave whilst keeping all accumulated leave from previous years. Within those constraints, staff can now choose to carry over any accumulated leave they have into 2022-23. It should be emphasised once again, however, that managers and staff are expected to work together to, wherever possible, ensure that all outstanding leave is taken as soon as possible. Whilst the COVID-19 pandemic has created exceptional circumstances, the goal will be to move back to a position where all leave is taken within the present leave year and normal carry over rules apply.

Q15 – How do I know the provisions will be applied fairly?

A15 – Your Board's Area Partnership Forum will oversee application of the process and your Board will keep a record of uptake of the scheme. Also, data will be gathered at a national level in due course in order to assess how the provisions in DL(2021)35 have been accessed across Scotland.