

SPECIAL LEAVE POLICY – RESPONSE TO COMMENTS RECEIVED IN CONSULTATION FROM E.E.F.

January 2016

Section (in new policy)	Details of Change	Comment	Response
Introduction – section 1	Re-worded to reinforce that it is expected that there will be instances where annual/flexi leave is used and special leave can supplement this.	This has an impact on people who work condensed hours because of childcare or a caring role as they are unable to build up flexi leave. This group tends to be more women than men.	An employee who works condensed or flexible hours due to childcare/caring responsibilities is already benefiting from a more flexible approach put in place by NLC. Special Leave is still available but the new approach to the policy seeks to clarify that there will be instances where employees are expected to use their own time. It is important to be clear that access to special leave is not (with some exceptions) a contractual benefit.
Legislation – section 2	Updated to include new legislation		
Our position – section 3	Include reference to updated policies and link to relevant HR team.	Should also include reference to the Managing Attendance Policy as this policy deals with for instance disabled employees, reasonable adjustments and hospital visits.	A sentence will be added to state that the Special Leave policy should be read in conjunction with the Managing Attendance policy.
Scope – section 4	Include reference to eligibility criteria elsewhere in the policy.		
Bereavement – section 5	Gives clearer guidance on the number of days bereavement leave which will normally be provided; expands definition of close relationships to include grandparents and grandchildren; clarifies that all	There needs to be an element of flexibility within this, particularly in regard where the limit on the number of occasions to attend funerals is concerned. There should be room for	It is agreed that there needs to be an element of flexibility throughout the policy and employees are free to discuss their needs with their line manager. However, an entitlement of three occasions in 12 months is

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	<p>bereavement leave for part-time/job-share employees will be pro-rata and limits the number of occasions where leave to attend funerals will be given (other than where the funerals are for those of a close relationship).</p>	<p>discussion with line managers in special circumstances where e.g. there has been a tragic accident where some people have lost several family/friends.</p> <p>If you lose more than one close family member at the same time, for example two parents dying in a car crash, does bereavement leave run consecutively or concurrently? Do you get up to 5 days or up to 10 days in instances like this?</p>	<p>considered appropriate. Beyond this, employees will be able to use their own time or take unpaid leave. This does not apply to the funerals of anyone considered as a close relationship.</p> <p>With regard to multiple fatalities as set out in your example, it is important to make the distinction between bereavement leave and absence due to bereavement reaction. The special leave policy deals with bereavement leave as a time to make arrangements for funeral(s) or deal with the initial impact of a death. The guide of up to 5 days is for this purpose and not to be applied as a 5 days per person who passes away.</p>
Time Off for Dependants – section 6	<p>In line with the responsibilities of the Equality Act, the new policy ensures that special consideration is given to those employees who are required to support a person with a disability.</p> <p>Clarifies that paid leave will be to a maximum of contracted daily hours.</p>	<p>A definition of disability should be explicit within the policy (see. Attending Hospital with a Dependant – section 6.2 below)</p> <p>What may this special consideration include and how will a manager make a decision on whether to grant or not? Will this</p>	<p>Should an employee require more time to grieve, this will be considered bereavement reaction and be dealt with under the Managing Attendance policy.</p> <p>Agreed. A definition will be added to introductory text in section 6.</p> <p>This will be dependent on individual circumstances so it is impossible to be prescriptive and will be at the discretion of the line manager. HR</p>

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Support of Dependants – section 6.1	<p>Advises that it is not appropriate to make contact with the line manager by text or email.</p> <p>Provides a definition of “occasion”.</p> <p>Advises that an employee may also use flexi/annual leave in addition to the special leave available in this section.</p>	<p>be at the manager’s discretion?</p> <p>The policy requiring contact with a line manager by telephone would have an adverse impact on Deaf employees who may use text or e-mail as their main form of communication. Reasonable adjustments should be made in regard to this group of employees</p>	<p>teams will be able to offer advice. If an employee (supporting a dependant with a disability) would like advice or to raise concerns, they can do so by contacting their HR team.</p> <p>It is acknowledged that a disabled employee may use an alternative to the telephone as their main form of communication – presumably this may have been agreed as a reasonable adjustment (RA). In such circumstances, notification of absence may follow the pattern of this RA for those employees, however, it is important to note that the manager has a duty of care to the employee and a responsibility to effectively manage the absence. As such, it cannot be the case that the absence continues without any “verbal” contact. The manager may be required to speak to a relative or arrange to meet the employee to discuss an ongoing absence. Arrangements will be dependent on individual circumstances.</p> <p>A sentence will be added to explain that reasonable adjustments may apply to notification procedures.</p> <p>Comments on impact on females are noted and this will be monitored as the new policy is implemented, with</p>
	This section combines previous availability which offered up to 8 days special leave to support dependants.	As a higher percentage of women are the primary carers for children or other relatives, this will have a	

	<p>This has now been combined to offer up to 3 occasions over a rolling 12 month period.</p> <p>Under this category of special leave, employees will be able to use the 3 occasions over consecutive days, subject to exigencies of the service. Changes made clarify contact and authorisation arrangements.</p>	<p>greater impact on this group.</p> <p>For those LG employees with school age children who need to take time off through annual leave, as they've reached the maximum 3 days, this will eat into AL needed for school holiday periods.</p>	<p>action taken as appropriate.</p> <p>It is recognised that a reduction in special leave will mean that employees may be required to use their own time more frequently in future. However, the proposed changes bring this Council into line with other local authority partners, and is made in recognition that existing levels of special leave taken cannot be maintained.</p>
<p>Attending Hospital with a Dependant – section 6.2</p>	<p>Clarifies that leave will be available over a rolling 12 month period, up to a maximum of one day on each occasion.</p>	<p>A definition of disability should be explicit within the policy. For instance a dependent of an employee who needs to attend hospital for cancer treatment. There has been recent instances when an employee has had to take annual leave after the special leave ran out as there was a lack of understanding about what conditions are classed as a disability and no 'special consideration' was given.</p>	<p>As above, a definition of disability will be added.</p> <p>All circumstances are different and it is not possible for a policy to cover all eventualities. Likewise, it is not appropriate to assume that your employer can always provide paid leave to cover <u>all</u> aspects of time required to support personal commitments. If an employee feels they have been treated unfairly, this should be raised with their HR team or trade union representation (if appropriate).</p>
<p>Carers' Leave – section 6.3</p>	<p>This is the area of the policy which attracted most comment. The changes to the approach have kept Carers Leave at a maximum of 26 weeks availability, but the focus of what Carers Leave will be granted for has changed to apply to support required for those with terminal or serious illnesses.</p>	<p>How will it be decided which conditions come under 'permanent or degenerative and ongoing' or whether this is classed as a disability? This is vague and requires clearer guidance for managers.</p> <p>What may this special</p>	<p>The requirement is to provide medical advice (from GP or hospital) that the condition has a finite duration in terms of treatment, recovery or life expectancy. Where conditions are permanent or degenerative, employees may be able to benefit from other temporary</p>

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	<p>Special consideration will be given where the person who requires support has a disability.</p> <p>The changes clarify support which will be available for employees who wish to provide support to those recovering from short term illness.</p> <p>Clarifies the medical evidence which will be needed to support applications.</p> <p>Provides information for managers on the approval process for Carers Leave and the contact arrangements when applications are granted.</p>	<p>consideration include and how will a manager make a decision on whether to grant or not? Will this be at the manager's discretion?</p> <p>Is the medical evidence for the carer or the cared for person? Would there be a contravention of data protection legislation?</p> <p>What will happen in circumstances where there is more than one primary carer e.g. where partners share the care of a disabled child or two siblings share the care of a parent?</p> <p>What if the primary carers are both Council employees?</p> <p>Again this policy will impact mostly on women, lone parents and people with school age children or elderly parents.</p>	<p>or permanent flexible options which allow them to provide support. If the individual who requires support has a disability and the employee wishes to apply for carers leave, they too must provide medical evidence which sets out what level of support/time is required.</p> <p>Ultimately, this will be the manager's decision although the manager must speak to HR before making a decision. HR will provide appropriate advice to allow a decision to be made in context. As above, any concerns should be raised to HR in the first instance.</p> <p>Medical evidence – Legal advice has been sought. The Council is required to seek confirmation/evidence of the time required by an employee to support a dependant. It is the responsibility of the medical professional who provides the information (which will ultimately be passed to the Council) to ensure that they provide only as much as is required to allow the Council to make a decision. There is no data protection risk to the Council.</p> <p>Where there are 2 carers, the Council is only concerned with the employee and the amount of time</p>
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Attending Court with a Dependant Minor – section 6.4	Clarifies that leave will be available over a rolling 12 month period, up to a maximum of one day on each occasion.		
Maternity Support/Adoption Support Leave – section 7.1	<p>This section now includes Adoption Leave.</p> <p>Clarifies that all leave will be pro-rata.</p> <p>Clarifies when MSL/ASL will be</p>		

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	available to eligible employees. Explains the link to paternity leave and how this is paid. Provides details on how to apply for MSL/ASL.		
Statutory Paternity Leave – section 7.2	Provides details on who is eligible for Statutory Paternity Leave (wording taken from legislation).		
Shared Parental Leave – section 7.3	Reference to SPL included as an update, with signposting to more details in Maternity Policy and Adoption Policy.		
Leave for Non Medical Purposes: Non-Emergency Medical/GP Appointments – section 8.1	<p>This section combines what was previously 2 sections – Routine medical treatment and GP appointments.</p> <p>Clarifies that it is expected that that appointments will be made outwith working hours. If this is not possible, appointments must be made at the beginning or end of the working day.</p>	<p>Need clarity on non-urgent medical appointments that are made at the beginning or end of the working day. Will time off simply be given outwith Special Leave?</p> <p>What of other non-emergency appointments that aren't opticians, dentist G.Ps or hospital appointments e.g physiotherapy, counselling, well- woman/ family planning clinics etc?</p>	<p>Agreed – this section will be expanded. To clarify, special leave will not be provided for routine medical appointments such as dental checkups. Such appointments are generally made in advance and every effort should be made to arrange for outwith working hours. If this is not possible, employees can use flexi for this purpose to attend appointments at the beginning or end of the working day (a flexi adjustment should not be made). Employees not on the flexi system should discuss with their manager any requests for leave – again at the start or end of the working day.</p> <p>Requests for time off for “other” appointments may be supported under the Special Leave policy but this should be discussed with the line</p>

		manager in the first instance.
Hospital Appointments – section 8.2	<p>Clarifies paid leave will be to a maximum of contracted daily hours.</p> <p>Previous sections on Elective Surgery and Leave for Fertility Treatment have been removed.</p>	<p>It is recognised that reasonable adjustments may be required for disabled employees at this and other areas of the policy, and a general statement to that effect will be made at the start of the policy.</p> <p>However, all special leave must be monitored/managed and it is important that employees who require greater flexibility have this discussion with their line manager. As above, any employee who feels they have been treated unfairly should raise their concerns with their HR team or trade union representation (if appropriate).</p> <p>Managers who require guidance can refer to the Special Leave guidance note or speak to the relevant HR team for advice.</p> <p>It is important to stress that the policy does <u>not</u> state that there will be no more than 4 paid occasions for special leave for this purpose. However, it is recognised that there are examples where unacceptable levels of special leave are taken as the current policy is seen to allow this. The purpose of setting a guide of 4 occasions is to ensure the</p>
	<p>This will have a greater impact on disabled staff members who might have to attend hospital several times in a 12 month period. The policy leaves this open to individual managers' interpretation, with some managers being more supportive than others.</p> <p>There needs to be reference here to attendance for hospital appointments for disabled employees and reasonable adjustment if it is linked to their disability. This should be explicit for both employees and managers – link to managing attendance policy.</p> <p>What guidance will be given to managers regarding any decision to grant or not – how will an employee be able to appeal against a refusal?</p> <p>Women are represented disproportionately at hospital outpatient appointments with first average appointment being at age 25. For men this is at age 50. This, outwith antenatal and post natal appointments, is mostly</p>	

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		<p>concerning fertility and gynaecological treatment. This therefore has an adverse impact on women because they are women – less favourable treatment for women as no regard has been given to women's needs.</p> <p>What consideration has been given for an employee requiring medical gender re-assignment treatment for medical and non-medical intervention? Will they use the special leave policy and be bound by 4 hospital visits?</p>	<p>manager is alert to the ongoing need for special leave and can discuss requirements with the employee to ensure any time granted away from work is appropriate.</p> <p>No policy can ever cover every situation that may arise. An individual who requires significant medical or non-medical intervention will be required to discuss the time required from work with their line manager in the first instance.</p>	
Participation in Sporting Events – section 9	Clarifies the number of days which may be available and that all leave will be pro-rata.			
Jury Service – section 10	<p>Wording updated in paragraph.</p> <p>Text added to clarify that a jury citation letter must be shown before leave can be authorised.</p>			
Service as a Witness – section 11	Previous wording combined to show Employment Tribunal and Attendance at Court in Course of Duties in one section.			
Election Duties – section 12	No change			
Election Agents – section 13	Clarifies all leave will be pro-rata	Why is leave given as pro-rata here and not consistent throughout the policy (section 6 – 'in all circumstances paid leave will be up to a maximum of	Agreed. A consistent message will be made re payment up to a maximum of contracted daily hours.	

		contracted daily hours)?	
Candidates for Election – section 14	Clarifies all leave will be pro-rata		
Service in Non-Regular Forces – section 15	Clarifies all leave will be pro-rata		
Community Emergency Services – section 16	No change		
Holidays or Festivals of Religious or Ethnic Groups – section 17	Removes the right to request paid leave on 2 occasions for all LGE employees with the exception of those on fixed annual leave (e.g. term-time).	This may be open to challenge as it is not universal and one group of employees may be seen to be given 2 days extra leave.	At present, several groups of employees are given 2 extra days over the majority of the workforce. Unfortunately, it is not possible to ask for flexibility in a group who have fixed public holidays or this option may have been removed completely.
Interviews – section 18	Clarifies that employees attending interviews for all posts outwith NLC will be required to use annual or flexi leave for this purpose.		The purpose of the consultation process is to address such concerns and will be considered should a challenge be received.
Training Connected with Course of Study – section 19	Updates the name of the appropriate policy to refer to for more information.		
Career Breaks – section 20	Clarifies that employees must specify the benefits for the individual and the Council in making their application. Advises on “normal” rules on taking on employment while on a career break. Clarifies position on early return from a career break.		

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Other Special Leave – section 21	Clarifies all leave will be pro-rata	Are there any examples of what would be considered as an exceptional circumstance? What will the process be now the Exec Director posts will no longer exist in the new operational structure of the Council? Would someone seeking time off to undergo gender re-assignment apply via this section.	All situations will be considered on their merits. It is not possible to give examples. The new policy will be updated to reflect proposed changes in structure. As above. An individual who requires significant leave will be required to discuss the time required from work with their line manager in the first instance. Following discussion, a decision can be made on the most appropriate way forward.
Process of Applying for Special Leave – section 22	No change	The guidance should include information on the steps an employee can take if an application is refused. Will there be an appeal process?	There is no appeals process built into the Special Leave policy. However, any employee who is unable to resolve their concerns informally will have the right to revert to the Grievance Policy.
		The guidance note accompanying the policy will require to have: a definition of disability otherwise the manager may not know that the employee's condition or the employee's dependent is protected by the Equality Act Where disability is the issue for the employee as a disabled person or carer then the policy should mention reasonable	As above, a definition will be provided in the policy. Disability and the need for reasonable adjustments will be covered in the policy but the wording quoted will also remain.

		<p>adjustments within section 6,,6.3 and 8.1 and 8.2. as opposed to the position in section 6 and 6.3 ... special consideration to appropriate provision must be made where the person for whom the employee is providing support has a disability”</p> <p>Disability is only mentioned in section 6 and 6.3 in relation to dependents who are disabled. There needs to be mention in section 8 in regard to disabled employees themselves.</p> <p>How will this policy link to new legislation e.g The Carers Bill that is going through the Scottish Parliament.</p>	<p>A general statement will be provided but it is important to note that this is a policy for all employees.</p> <p>The Special Leave policy deals with time away from work for NLC employees. There is no link to the Carers Bill.</p>
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Additional Comment

	Details of Request	Background	Proposed Response
Request from CMT for consideration.	<p>Following a request from Police Scotland for employees to sign up as Special Constables, a request was made to consider this project as part of arrangements for Special Leave. It was recognised that such a project must be seen within the context of time off for all volunteering. Any employee who becomes a Special Constable will require a minimum of 10 days special</p>	<p>All local authorities in Scotland were asked about their approach to employee volunteering and whether or not the Council had a volunteering policy. A response was received from 12 councils. Of the 12 respondents, only 2 councils had a volunteering policy. Both offered one day of paid leave for volunteering on the</p>	<p>Given the wish to reduce the overall availability of special leave in some categories and in a context where NLC's position is consistent with our local authority partners, it is not proposed to make any changes to the Council's approach to volunteering. Where one off events require an increased</p>

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	leave per annum on a paid basis.	condition that the employee used one day of their own time. All other Councils mirrored the current approach in NLC where paid time is offered only to community service volunteers.	number of volunteers, the Council will continue to have the option to offer paid leave to employees who match this with their own annual leave (as happened with the Commonwealth Games). In relation to the Special Constables project, it is understood that there is a strong interest at a senior level in participating in this project. Any commitment or future decisions on this topic will be outwith the scope of the Special Leave policy.
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