

# NHS Wales

## Arrangements for Selling and the Carrying-over of Annual Leave

### Key points and FAQs

January 2022

#### **Importance of taking Annual Leave**

It is recognised that taking annual leave is an important contributor to an individual's physical health, mental health and wellbeing and their ability to undertake their duties in a safe and effective manner.

Notwithstanding the significant staffing pressures, it remains vitally important to ensure that employees are not working for too protracted a period of time, without a meaningful break. Employees are therefore encouraged and will be supported by their managers to continue to take their leave at regular intervals throughout their annual leave year.

Employees should ensure that their annual leave record is accurate and up to date (including any leave carried forward from previous leave years) and ensure that all leave is booked and authorised in accordance with organisational and departmental requirements.

Unless there are extenuating circumstances any new requests for annual leave should be approved, wherever possible. If an individual wishes to reschedule a period of annual leave, this should be discussed with the individual's manager and agreed wherever possible.

While employees will always be encouraged to plan and take their leave at regular intervals throughout the year, there continues to be challenges with the approval of leave. This is due to service constraints, which have and are resulting in individuals accruing annual leave, which they may be unable to take before the end of their leave year<sup>1</sup>.

#### **Accrual up of Annual Leave**

Given the significant service demands over the past two years, while employees have been supported and encouraged to take their leave, it has not always been possible. This has resulted in some staff accruing a considerable amount of outstanding annual leave, some of which was carried over from previous leave years. It is recognised that it may not always be possible for all outstanding leave to be taken during the remainder of the 2021/22 leave year. Therefore arrangements have been put in place for leave to be carried over and for this year to be sold under a Selling of Annual Leave Scheme.

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<sup>1</sup> Some staff have annual leave years which commence on the anniversary of their appointment or with a different cycle e.g. October - September. For the purposes of this document, the carry over and sale of leave will apply to leave at the end of the individual leave year that commenced in the 2021 calendar year (their individual 2021/22 leave year), rather than the April – March cycle. Where this leave year has already concluded (e.g. February – January), the individual will have the right to apply the provisions of this agreement retrospectively to the leave that remained at the end of the leave year which ended on or after 1 January 2022, regardless of previous agreements they may have made with their employer.

## **Carry-over of Annual Leave arrangements<sup>2</sup>**

Individuals may have been prevented from taking their leave or through having continued to make themselves available for work during the pandemic response or in support of the resetting services and the vaccination programme, they may have significant untaken leave.

Where employees have been unable to take their accrued annual leave allocation within the current leave year, they should discuss and agree with their manager, what leave can be taken in the foreseeable future. Such decisions must balance service delivery requirements with the need for employees to rest and recuperate. In so doing, the employee and their manager are required to identify where there may be a requirement to carry over any untaken leave.

It is recognised that it may not always be possible for all outstanding leave to be taken during the remainder of the current leave year and therefore, unless more favourable agreements are already in place, up to 10 days outstanding leave (pro rata for part time staff) can be carried forward into the next annual leave year. In exceptional circumstances managers may approve up to a further 10 days above this level, providing there is an agreed plan regarding how an individual intends to use the carried over leave, during the next leave year.

Managing and taking carried over annual leave may still be challenging during 2022/23. Therefore, individuals must work with their manager to plan how they will use the carried over leave during the 2022/23 leave year. It is expected that the usual carryover of annual leave arrangements will apply for untaken leave into the 2023/24 leave year. Individuals with leave to carry over may therefore wish to consider balancing the amount of leave to be carried over with selling a proportion of leave, through an application under the Selling of Annual Leave Scheme.

## **Selling of Annual Leave Scheme**

NHS organisations and Trade Union colleagues have worked in partnership to develop a scheme to allow individuals to sell unused annual leave within the current (2021/22) leave year.

The scheme will enable individuals to sell up to 10 days annual leave from their 2021/22 annual leave entitlement, inclusive of any leave carried over from previous annual leave years.

For Medical and Dental staff this will apply to the leave year, which commenced on or after 1 January 2021 (this may require some retrospective re-calculation of the leave, which was carried over, based on the carry forward provisions in this guidance). This leave may be carried over or be sold in accordance with this scheme and the timeline in place for applications for the selling of leave to be received.

In considering the selling of leave, all individuals must have taken or plan to take 20 days annual leave (or a pro rata equivalent) during their current leave year.

Applications to sell annual leave must be made in hours or sessions. For staff on [NHS Terms and Conditions of Service \(AfC\), the document Guidance – Calculation](#)

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<sup>2</sup> This document refers to contractual annual leave and does not include bank holidays.

[of Annual Leave and Statutory Bank Holidays](#) is a useful reference document to determine annual leave entitlements in hours.

### **Additional Annual Leave Day**

The Pay Letter AFC, M&D & ESP (W) 01/2021 confirmed that an additional day's annual leave would be added to the current contractual entitlements for all staff. The limits outlined in this document for the carrying over of annual leave and the scheme for the Selling of Annual Leave, are inclusive of the additional day's leave.

For staff on NHS Terms and Conditions of Service (AfC), the document [Guidance – Calculation of Annual Leave and Statutory Bank Holidays](#) is a useful reference document. In particular the column “Hourly Entitlement on each Bank Holiday as it Occurs” in Table 3 in the document can be used to determine, in hours, the value of the additional annual leave day based on an individual's contracted hours/FTE additional hourly entitlement

### **Summary**

In summary, there are three options for individuals regarding any outstanding annual leave, for their current annual leave year. These are:

1. Using any outstanding leave within the annual leave year (2021/2022)/ current leave year, including the additional annual leave day.
2. Carrying over the balance from the current annual leave year to the next leave year (subject to the limits on the carry-over of annual leave)
3. Selling unused leave (subject to the upper limit of 10 days).

Individuals may choose to use a combination of all of the above and a number of worked examples are included in Appendix 1.

**The Selling of Annual Leave scheme will initially be open from 1 February 2022 – 28 February 2022.**

**Organisations may need to extend the above application timeframe and communications will be issued to inform staff of the specific organisational submission deadlines.**

# **Selling of Annual Leave Scheme**

## **Frequently Asked Questions for managers and employees**

### **Who is eligible to use the scheme to sell annual leave?**

*All NHS Wales employees in post at 1 December 2021 are eligible to use the scheme to sell (a proportion) of their untaken annual leave.*

### **How many days/hours can an individual sell?**

*An individual can sell 10 days / 75 hours (pro rata for part time staff) providing, during the leave year commencing 1 April 2021, or for Medical and Dental staff their leave year, which commenced on or after 1 January 2021, and they have taken or plan to take 20 days annual leave (or a pro rata equivalent), during the 2021/22 leave year.*

### **Is an individual allowed to sell the additional day's annual leave awarded to all staff as referenced in Pay Letter AFC, M&D & ESP (W) 01/2021?**

*Yes, an individual can sell the additional day's/ hours leave awarded during the current 2021/22 leave year if they wish as part of the 10 days / 75 hours.*

### **What will be the rate at which an individual can sell their annual leave?**

*The payment for annual leave sold will be calculated using an individual's basic pay rate. (i.e. the current hourly/sessional rate at the time of calculation).*

### **What happens if an individual is on maternity leave? Will the amount of leave they can sell vary?**

*An individual continues to accrue paid holiday on maternity leave as if they were at work and if they are not able to take their statutory minimum annual leave within the annual leave year because their maternity leave overlaps with their annual leave year, they will be allowed to carry forward up to the statutory entitlement of 20 days (of which up to 10 days can be sold in line with the scheme).*

### **What happens if an individual is on long term sickness? Will the amount of leave they can sell vary?**

*The Managing Attendance at Work policy states that during an employee's sickness absence, annual leave continues to accrue. Every effort must be made to utilise the annual leave whilst absent. However, if the accrued annual leave spans over two or more leave years and the leave has not been utilised the employee may carry over to the new leave year. This annual leave is based on the statutory entitlement and not contractual. Therefore, the statutory entitlement of annual leave per annum is 20 days if working full time, and pro rata for part time staff. In these circumstances, an individual will be allowed to carry forward up to the statutory entitlement of 20 days (of which up to 10 days can be sold in line with the scheme).*

## **Are there other considerations for individuals who are on long term sickness absence or other long term authorised absence?**

*With regard to individuals on long term sickness absence and long term authorised absence, consideration should be given, in the first instance to using any carry forward to support a phased return to work. As outlined above, those who are on sickness or maternity leave will be entitled to carry over their leave, in accordance with the legal/contractual requirements and the amount that can be sold will not differ for these individuals.*

*Managers should ensure that they contact those individuals absent from the workplace to discuss the scheme and establish whether they would like to sell a proportion of their annual leave as outlined within the scheme.*

## **Will the payment be subject to Tax, National Insurance and Pension contributions?**

*The payment will be treated as income and subject to Tax and National Insurance deductions. Members of the NHS Pension Scheme who participate in the selling of annual leave will have the cash value of the annual leave treated on a non-pensionable basis. This cash value will be paid as a one-off lump sum and will not be included in the calculation of pension scheme contributions, for the relevant pay period.*

## **How will the scheme apply to part time staff?**

*Any payment to part time employees will be calculated and made on a pro rata basis.*

## **What is the timeframe in which an individual needs to decide?**

*Any applications to sell leave will need to be made between 1– 28 February 2022. **This deadline may however be extended within organisations and in such circumstances communications will be issued to clarify any specific organisational submission deadline.***

## **If an individual decides to sell a proportion of their annual leave, what do they need to do?**

*The individual should check how much annual leave entitlement they have left for the 2021/22 year and complete a request form or follow the specific organisational process. An application template has been issued to organisations and the process for application will be communicated within organisations. All applications will have to be submitted via line managers and not direct to payroll.*

## **If an individual decides to sell when will the payment be received?**

*The earliest that payments can be made will be as part of the April 2022 pay run although given the potential volume of requests which organisations are likely to have to process and submit to payroll this may mean that payments will be made in*

*May or June 2022 pay and local communications will clarify specific organisational timelines and deadlines.*

**Will the scheme be in place permanently or does it just apply to the 2021/22 leave year?**

*This is a one off scheme. Once the scheme has concluded employers and trade union colleagues will review how the scheme has operated and consider under what circumstances further scheme(s) to sell annual leave could be put in place in the future, subject to available funding.*

**What will the position be for Medical and Dental staff whose leave years do not run from 1 April to 31 March?**

*Any Medical and Dental staff with a personal leave year, which differs from 1 April – 31 March will still be able to access the scheme. It will apply for the leave year which began on or after 1 January 2021, i.e. their 2021/22 leave year. Where this leave year has concluded and the individual is now in their 2022/23 leave year, they should have a discussion with their manager about any remaining leave at the end of their 2021/22 annual leave year, in line with local or national agreements, whichever were more favourable. Given this new national agreement, individuals in this position are able to revisit their decision (for instance, having had to forfeit some leave, or carrying over leave they would now rather sell) during their organisation's timeframe for the selling of annual leave and inform their manager retrospectively of their wishes.*

**If an individual still has outstanding annual leave carried forward from the 2020/21 leave year, can this be sold?**

*Yes, the scheme allows for the amount, which individuals can sell to include a proportion of unused annual leave from the current leave year and leave which was carried over from the 2020/21 leave year. This is subject to individuals taking a minimum of 20 days (pro rata for part time staff) during the leave current year and the maximum amount of leave, which the scheme allows to be sold i.e. 10 days / 75 hours (pro rata for part time staff). For example if an individual has an entitlement to 28 days / 210 hours leave and they carried forward 5 days / 27.5 hours, from 2020/21, they would have been able to take 33 days / 247.5 hours during the 2021/22 annual leave year. If the individual has taken 23 days / 172.5 hours then it is possible for the individual to sell all 10 days / 75 hours, as this is within the amount of leave which can be sold.*

**If an individual has leave to sell but they are scheduled to leave the organisation on or before 31 March 2022, can they be paid for the leave in April even if their employment has ended?**

*Any outstanding leave on termination should be included in leaving form, so individuals should not participate in the scheme.*

**If an individual is retiring on 31 March 2022 and returning on 2 April 2022 and still has leave to take, can they sell this and this be paid when they return?**

*Yes, provided their application has been submitted and agreed within the timeframe and there is no impact on the information provided to the NHSBSA (NHS Pensions), on which their pension will to be calculated.*

**What is the situation regarding individuals who left their employment in NHS Wales earlier in the 2021/22 leave year?**

*Any leavers will have been paid any outstanding leave when they left their NHS employment. This scheme will only apply to current staff employed in NHS Wales at the 1 December 2021.*

**What are the exceptional circumstances that may apply to allow more than 10 days leave to be carry forward?**

*This might be where an individual has not been able to visit family abroad for some time and wishes to carry forward an amount of annual leave in order to visit family. However, all circumstances should be considered. As noted for such additional carry over to be agreed, there will need to be an agreed plan regarding how an individual intends to use the carried over leave during the next leave year.*

**For some medical and dental staff, their 2021/22 leave year will only have commenced relatively recently (e.g. in December 2021). How do they make a decision about the carry over or sale of their leave when they may not have planned out their leave throughout their remaining leave year?**

*All staff must take or plan to take their 20 statutory days of annual leave. Individuals in the position described above may want to consider selling leave they have carried over from their 2020/21 leave year, to reduce their overall accrued annual leave to a more manageable level. While these individuals will not be prevented from selling more annual leave than this, subject to the general limits of the scheme, we would stress that the purpose of contractual annual leave is for rest, relaxation and recuperation. Therefore, they should think carefully before selling leave from their current leave year, if it is not clear they will be unable to take it during the current leave year.*

**How will the carry over of leave work for medical and dental staff whose leave years vary from the April to March cycle?**

*Processes are already in place for managers to approve requests from medical and dental staff, to carry over leave between leave years in line with the arrangements in place for each respective leave year. These existing processes remain in place. The 10 days limit as outlined in the "Carry-over of Annual Leave arrangements" as set out in this document for any carry over from the 2021/22 leave year will therefore apply for leave to be carried over into the leave year which commences in the 2022 calendar year.*

## **For organisational leads and managers**

### ***How will organisations notify payroll to make the payment for staff who choose to sell some annual leave?***

*Due to the complexity and the volume of work NWSSP Payroll can only process one proforma per Health Board/Trust/Strategic Health Authority and an Excel proforma has been created and issued to all NHS Wales organisations for this purpose. There should be one submission for all staff in each Health Board/Trust/Strategic Health Authority submitted to Payroll on the Excel proforma. The amount of annual leave will need to be recorded in hours (or sessions in the case of some medical staff).*

### ***Who will undertake the carry-over of days into ESR, rostering or departmental/organisational records?***

*It has always been the responsibility of the Health Board/Trust/Strategic Health Authority to update any carry over leave. This is not changing and it will continue to be the responsibility of individual organisations to manage this in the relevant recording systems which are used e.g. ESR, Health Roster/Intrepid etc.*

### ***Once an individual has decided to sell annual leave, how will their entitlement in ESR be reduced?***

*NWSSP Payroll teams have agreed to assist organisations at this busy period. When NWSSP Payroll pay the annual leave, they will also amend an individual's outstanding leave balance in ESR to reflect their selling of annual leave. This will be done automatically as a "one off" by NWSSP Payroll unless the organisation advises that they wish to undertake this themselves. It is the responsibility of the individual organisation to ensure other workforce management systems are updated to reflect the revised annual leave position.*

### ***If an individual wants to carry over some annual leave and sell some annual leave, what needs to happen in ESR?***

*Where ESR is used to record leave the amount that the individual has left at the end of the year must always be carried forward into ESR regardless of whether they have sold any leave or not (subject to the upper levels for the carryover of annual leave). If the individual decides to sell annual leave, their Annual Leave Balance in ESR will be reduced by the number of hours/sessions (for doctors) stated on the pro forma, once they have been paid for this leave.*

### ***When a manager approves an individual's application to sell an amount of leave, what happens next?***

*The Health Board/Trust/Strategic Health Authority will need to have a robust procedure in place for staff to authorise each request to sell annual leave, this needs to be accurate and auditable (an application/approval form is attached at Appendix 2). Once it has been agreed that the employee can sell the leave, the Health Board/Trust/Strategic Health Authority will need to include the employee and the number of hours/sessions to be paid on the one pro forma which will be submitted to payroll for the whole to the Health Board/Trust/Strategic Health Authority. The line*



*manager must advise the individual with regard to how many hours/sessions have been approved and authorised and which are to be paid by NWSSP Payroll.*

***How should the information be listed in the submission to payroll? Is the Annual Leave to be sold listed in Days, Hours or Sessions?***

*This will depend on the staff group, in the majority of cases submissions will be recorded in hours, this will apply to AfC staff and for Junior Doctors. For doctors whose time is recorded in Sessions, the returns to payroll will need to be in sessions.*

- *For AfC the maximum leave which can be sold will be up to 75 hours based on 37½ Hours (10 days equivalent)*
- *For Junior Doctors the maximum leave which can be sold will be 80 hours (10 days Equivalent)*
- *For Other medical staff whose leave is recorded in Sessions, the maximum leave which can be sold will be 20 Sessions (10 days equivalent)*
- *Some staff may have contracts which vary above the standard full time contractual hours, in such cases these staff will be paid up to 10 days equivalent based on their contracted hours.*
- *Where staff may be working a pattern which differs from a standard working week, the principle is that the 10 days/20 sessions refers to the equivalent of 2 weeks leave which can be sold.*

***What if staff have any queries?***

*All queries should be directed to and handled the Health Board/Trust/Strategic Health Authority. NWSP Payroll & ESR Support Hub will direct any calls to the Health Board should they receive any.*

## Worked Examples

### Scenario 1

In February 2022, an individual has 5 days (37.5 hours) annual leave entitlement left to take in the 2021/22 leave year. They decide they want to take 5 days off in the middle of March 2022 and agree this with their line manager. All their leave will then have been used and they will not have any leave to carry forward to 2022/23 or to sell.

### Scenario 2

In February 2022, an individual has 6 days (45 hours) annual leave entitlement left to take in the 2021/22 leave year. They decide that they do not want to take any leave before the end of March 2022, but would like to carry 2 (15 hours) days forward to 2022/23 and sell 4 days (30 hours). In these circumstances, following agreement with their line manager, their annual leave entitlement for 2022/23 will increase by 2 days (15 hours) and they will be paid for 4 days (30 hours), at plain time rate.

### Scenario 3

In February 2022, an individual has 5 days (37.5 hours) annual leave entitlement left to take in the 2021/22 leave year. They decide that they want to sell all 5 days (37.5 hours). In these circumstances, following agreement with their line manager, they will be paid for 5 days (37.5 hours), at plain time rate.

### Scenario 4

In February 2022, an individual has 6 days (45 hours) annual leave entitlement left to take in the 2021/22 leave year. They decide that they want to take 2 days (15 hours) off in March 2022, carry forward 2 days (15 hours) to 2022/23 and to sell 2 days (15 hours). In these circumstances, following agreement with their line manager, their annual leave entitlement for 2022/23 will increase by 2 days (15 hours) and they will be paid for 2 days (15 hours), at plain time rate in their April pay.

### Scenario 5

In February 2022, an individual has 15 days (112.5 hours) annual leave entitlement left to take in the 2021/22 leave year. They want to carry forward all these days to the 2022/23 leave year, to visit family abroad and do not wish to participate in the selling of leave scheme. While this is outside the parameters of the carry over of annual leave (10 days / pro rata for part time staff), this should be considered as an exceptional circumstance by the individual's line manager. Following discussion about how the individual intends to utilise the carried over leave and when, with their line manager, they will be permitted to carry the leave over to the 2022/23 leave year.

## Scenario 6

A doctor / consultant has an annual leave year of 10 January – 9 January, which means they are already in their 2022/23 leave year. Based on local policy in place at January 2022, the doctor / consultant was only entitled to carry over 5 days of annual leave, from the 2021/22 leave year, to the current 2022/23 leave year, despite having 10 days leave outstanding for their 2021/22 leave year. Based on this new national agreement, the doctor / consultant will now be able to apply retrospectively to carry over 10 days leave from the 2021/22 leave year and this leave may be considered under the selling of annual leave scheme or to be taken as leave during the 2022/23 leave year.

## Scenario 7

A doctor / consultant with an entitlement to 30 days annual leave has an annual leave year of 1 December – 30 November, which means they will still be in their 2021/22 leave year, until 1 December 2022. Based on the previous national agreement, the doctor consultant would have been able to carry over up to 20 days of annual leave from the 2020/21 leave year, to the 2021/22 leave year (assuming local agreements were not more favourable).

The doctor / consultant carried over 7 days annual leave year from their 2020/21 leave year, resulting in 37 days of leave to use before 30 November 2022. Based on this agreement, the doctor may elect to sell all 7 leave days they carried over and 3 further days from their 2021/22 contractual entitlement, up to a maximum of 10 days of leave. However, we would stress that the purpose of contractual annual leave is for rest, relaxation and recuperation and they should think carefully before selling leave from their current leave year, if it is not clear that they will be unable to take it during their leave year.