

Employee handbook



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Commissioner

Signed:

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Section 1 - Introduction: About the Scottish Information Commissioner

1. The Scottish Information Commissioner is a public official appointed by Her Majesty the Queen on the nomination of the Scottish Parliament. The Commissioner is not subject to the direction or control of the Parliamentary Corporation, of any member of the Scottish Government or of the Parliament.
2. The Scottish Information Commissioner is responsible for providing quality services and for best practice in the operation of her organisation. The Commissioner is also under the same duty as all other Scottish public authorities to respond to requests for information that she holds.

Purpose

3. The Commissioner is responsible for enforcing and promoting the right to access information held by public authorities, created by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs), both of which came into force on 1 January 2005. FOISA and the EIRs give anyone, anywhere in the world, important rights to access the information held by more than 10,000 public authorities in Scotland. The Commissioner also has specific responsibilities under the INSPIRE (Scotland) Regulations 2010 and the Re-use of Public Sector Information Regulations 2005.

Values

4. The Commissioner has adopted the Nolan Committee's Seven Principles as the guiding framework for the Code of Conduct. These are:

Selflessness

5. Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

6. Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

7. In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

8. Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.



Openness

9. Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

10. Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

11. Holders of public office should promote and support these principles by leadership and example.

Terminology Used in this Handbook

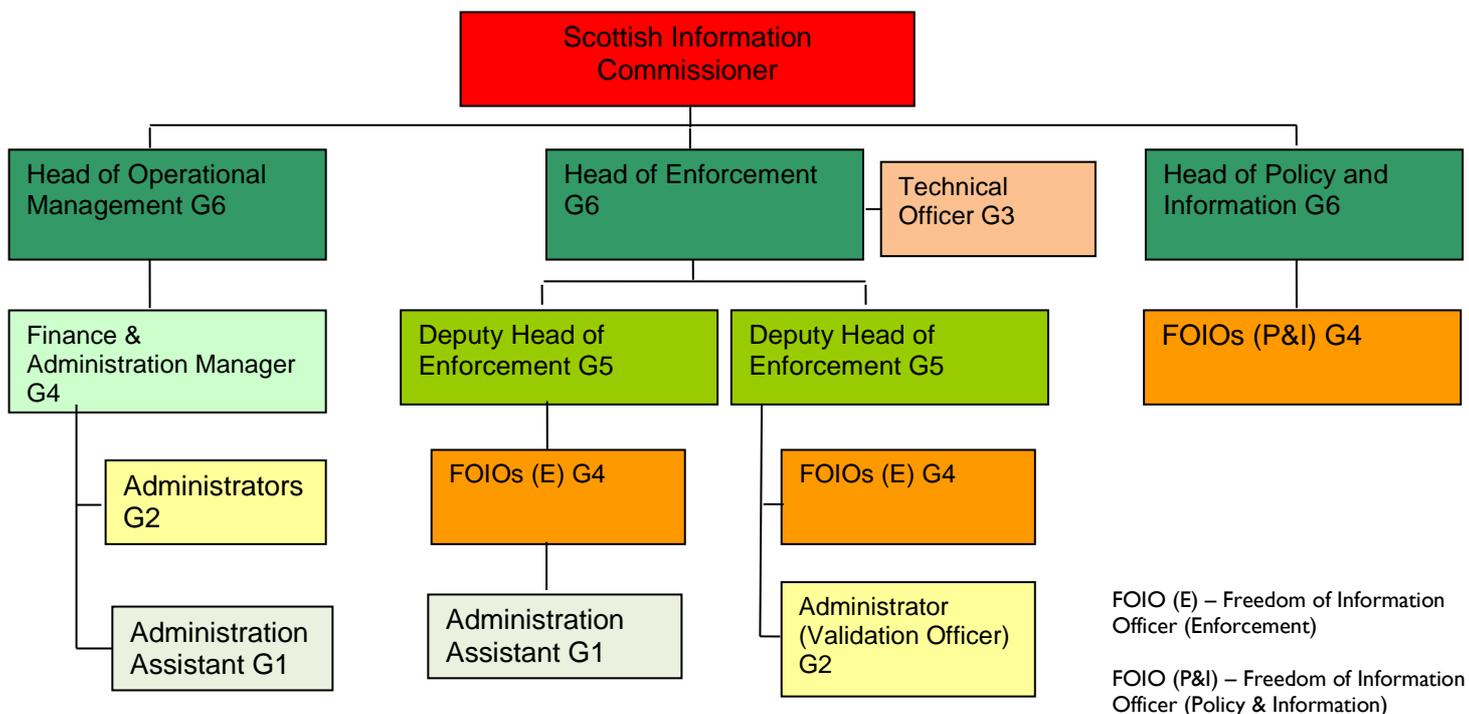
12. Your employer, the Scottish Information Commissioner, is both an individual and a public authority. The Freedom of Information (Scotland) Act 2002 prescribes how the Commissioner's functions must be performed and the Commissioner's relationship with the Scottish Parliamentary Corporate Body (SPCB). The Scottish Parliamentary Commissions and Commissioners Act 2010 amends FOISA, including changes to aspects of her relationship with the SPCB.
13. The references in this handbook to the Commissioner may refer to her role as your employer or her function as a public authority. Although we sometimes refer, for convenience, to the Office of the Scottish Information Commissioner (OSIC), this is not a legal entity.
14. **Management/the Management Team** – The Commissioner and the Heads of Department.
HOD – Head of Department.
HOOM – Head of Operational Management.
FAM – Finance and Administration Manager.

Enquiries

15. Please refer any enquiries regarding the contents of this Handbook to the HOOM.



Section 1.1 – Organisational chart





Section 2 - Equalities and diversity

16. The Commissioner's Equality Policy can be found at VC19231. The policy reflects the introduction of the Equality Act 2010, which came into effect on 1 October 2010.
17. The Commissioner is committed to promoting equality of opportunity and treatment and to eliminating unfair discrimination in her employment practices. The Commissioner will seek to ensure that all job applicants and members of staff are treated fairly, with respect and without bias at all times.
18. No job applicant or member of staff will receive less favourable treatment than others because of her or his age, disability, gender reassignment, marital or civil partnership status, pregnancy or maternity, race (which includes colour, nationality and ethnic or national origins), religion or belief, sex or sexual orientation. The Equality Policy applies to all aspects of employment including:
 - jobs, recruitment and appointment
 - promotion
 - training and development
 - terms and conditions of work
 - performance management
 - pay
 - termination of employment
 - any references issued
 - all terms and conditions of employment and related benefits
 - every other aspect of employment by the Commissioner.
19. The Policy applies to all job applicants and staff employed by the Commissioner irrespective of length of service, hours worked or whether the employment is on a temporary or permanent basis.
20. The following associated policies are also applicable:
 - VC 48666 Anti-harassment, - bullying and -victimisation Policy.
 - VC 40932 Recruitment Policy and Handbook
21. The Policy also applies to the treatment of all of our stakeholders including our service users, suppliers, job applicants and former members of staff.



Section 3 - Health and safety at work

Introduction

22. This section sets out our policy on Health and Safety (H&S) at Work, and provides a basic guide to procedures. The Policy and complete Health and Safety Manual can be found at VC 39358.

Policy

23. Health and safety at work is a priority for the Commissioner and an integral part of OSIC's culture and values. The Commissioner has established a management system aimed at ensuring that building users and others who may be affected by OSIC's activities are not exposed to risks to their health and safety. There are clear personal and business benefits from good health and safety management, including fire safety, avoiding or reducing injuries, ill health and absence as well as loss, damage and liabilities. Recognising that accidents and ill health may stem from organisational failings, the Commissioner is committed to ensuring high safety standards and takes full management responsibility for controlling risks.
24. The H&S management system has the full support of the Commissioner and senior management, but it is dependent on the support of all staff to ensure its success.

Responsibilities

25. The effective implementation of the Commissioner's H&S management system requires participation by everyone. The main responsibilities for health and safety are summarised as follows:

The Commissioner has overall responsibility for health and safety. In particular, the Commissioner is responsible for:

- approval of the H&S management system – the H&S policy, arrangements, responsibilities and safety procedures
- approval of the H&S management system – the H&S policy, arrangements, responsibilities and safety procedures
- promoting the health and safety message and ensuring that its organisational requirements are communicated to all who work in the building
- ensuring that the organisational training programme includes appropriate health and safety training
- working with management to ensure that safety is considered in relation to all operational activities
- working with management to monitor the implementation of the H&S policy and management system and to review it periodically to ensure it remains valid and fit for purpose.

The Management Team has responsibility for:

- ensuring that a H&S management system is in place and operating effectively to ensure compliance with statutory duties



- monitoring the implementation of the H&S policy and management system and periodically reviewing it to ensure it remains valid and fit for purpose in all spheres of operation.

The HOOM has delegated the implementation of the H&S procedures to the FAM, whilst still retaining responsibility for:

- ensuring that corrective actions identified by the H&S adviser during audits are implemented
- arranging for risk assessments to be carried out on work activities which are not adequately described by the generic risk assessments
- ensuring all activities within the office are carried out in accordance with the relevant safe system of work, and in accordance with the preventive and protective measures identified by the relevant risk assessment
- ensuring that staff are aware of safe systems of work and preventive/protective measures
- maintaining adequate health and safety records within the office
- ensuring that new staff receive induction training in accordance with the office induction pack
- ensuring the welfare of staff with particular reference to staff with special requirements, (e.g. disabled staff, new and expectant mothers)
- preparing a report for presentation at the Quarterly Management Team Meeting (QMTM).

The FAM, reporting to the HOOM, is responsible for:

- maintaining and reviewing the H&S policy and management system
- assisting the HOOM in the development of plans for the implementation of the H&S management system
- maintaining an awareness of the generic risk assessments
- carrying out office-specific risk assessments, where applicable
- reviewing the specific risk assessments on an annual basis, or carrying out any new risk assessments which may be required
- assessing lifting and handling duties, where applicable
- advising senior management of any health and safety concerns
- bringing safety concerns arising out of inspections or risk assessments to the attention of the Management Team
- ensuring monthly office and buildings inspections are carried out
- assisting in any accident/near miss remedial actions.

Line managers should:

- ensure that they are aware of and familiar with the relevant parts of the H&S management system
- take appropriate action when a H&S issue is reported to them by staff.

Every staff member has a responsibility to:

- take reasonable care of themselves and others who may be affected by their actions or inaction
- work safely and report any hazard, defect, malfunction or faulty equipment to the FAM and take appropriate steps to warn others who may be affected



- report any accident or near miss to the FAM
- adhere to established safe systems of work and avoid taking actions that could be hazardous
- familiarise themselves with fire evacuation procedures and the position of fire equipment, alarms, evacuation routes and assembly points.

Training

26. The Commissioner offers a programme of general health and safety awareness training and training on specific health and safety topics, such as
- DSE user
 - DSE assessor
 - Fire Safety
 - Manual handling
 - First aid.
27. General health and safety awareness training will be provided as part of the induction programme.

Housekeeping

28. It is important that workstations and the working environment are kept in a clean and tidy condition, free from clutter. Items must be stored where they can be retrieved safely and where they will not cause obstruction or trip hazards. Please ensure cables and electrical equipment are kept away from areas where they could become damaged or cause trips and falls. No goods of any kind should be stored in corridors, as this may give rise to a risk of fire and may impede access and egress. Damaged work equipment or anything appearing unsafe should be reported to the FAM.

First Aid

29. OSIC has trained first aiders who are able to provide first aid treatment when it is required. First aid supplies are kept in Bell.

Occupational Health

30. The Commissioner is committed to ensuring your health should not be adversely affected by work, and that you should be given the necessary support to help maintain health at work. The Commissioner has a contract with an external H&S specialist to provide help and advice. Any issues should, in the first instance, be reported to your Line Manager. If appropriate, issues will be escalated to the H&S support provider, or to an Occupational Health specialist.

Accidents and Near Misses

31. Reporting and investigation of accidents and near misses provides a valuable opportunity to improve safety and reduce the likelihood of future injury, ill health and loss. There is also a legal duty on the Commissioner to record and report certain categories of injury and ill health. If you



suffer an accident no matter how minor, or are involved in a near miss (an event which could have resulted in injury or damage), you must report it to the FAM or your line manager.

Consultation

32. The Commissioner has a legal duty to consult with employees on matters of health and safety. Proper communication of health and safety concerns and arrangements is key to ensuring effective health and safety management. In practice “consultation” will involve communication of updates via All Staff Meetings, the notice board in the staff room, emailed information, the internal blog, staff involvement in H&S risk assessments and at 1:1s and appraisals as appropriate.

Contact

33. If you wish to find out more about Health and Safety in OSIC, please contact the FAM.

Fire Safety Policy

34. The Commissioner aims to achieve the highest standard of fire safety for occupants, structures and contents whilst having due regard for operational efficiency and the desire to facilitate ready access for the public.
35. The FAM is responsible for maintaining the fire safety strategy, acting as the "competent person" under Part 3 of The Fire (Scotland) Act 2005 (as amended) and The Fire Safety (Scotland) Regulations 2006.
36. The Fire Safety Awareness Policy (incorporated into the Health and Safety Policy at VC 39358) and associated procedures have been developed following the guidance provided in The Fire (Scotland) Act 2005.
37. The FAM will report to Management any issues identified during a Fire Safety Audit. Management in turn will review these and take any appropriate action.



Section 4 - Conduct: principles and rules

Principles

38. As an employee of the Commissioner you must be, and be seen to be, honest and impartial in the exercise of your duties. You must not allow your judgement or integrity to be compromised in fact or by reasonable implication. In particular you must not:
- misuse information which you acquire in the course of your duties, or disclose information which is held in confidence within OSIC
 - seek to frustrate the policies, decisions or actions of the Commissioner either by declining to take, or abstaining from, action which flows from decisions of the Commissioner or by unauthorised, improper or premature disclosure outside OSIC of any information to which you have had access as an employee of the Commissioner
 - take part in any political or public activity which compromises, or might be seen to compromise, your impartial service to the Commissioner
 - misuse your official position, or information acquired in the course of your official duties, to further your private interests or those of others. Conflicts of interest may arise from financial interests and more broadly from official dealings with, or decisions in respect of, individuals who share your private interests (for example freemasonry, membership of societies, clubs and other organisations, and family.). Where a conflict of interest arises, you must declare your interest to the HOOM so that a decision can be made on how best to proceed
 - accept gifts, hospitality or benefits of any kind from a third party which might be seen to compromise your personal judgement or integrity.

Rules

39. Full conduct rules can be found below as follows:
- [Section 4.1- Confidentiality and Official Information.](#)
 - [Section 4.2 - Standards of Propriety.](#)
 - [Section 4.3 - Political Neutrality.](#)
 - [Section 4.4 – General Standards of Behaviour.](#)

Breach of Conduct Rules

40. If you breach any of the conduct rules, or through negligence on your part, other people breach these rules, you may be subject to disciplinary action.



Conduct of Other Members of Staff

41. If you have sufficient grounds for believing that the conduct of another member of staff may be in breach of any of these rules, or that an unlawful act has been committed, you should bring the matter to the attention of the HOOM.

Enquiries

42. If you require further advice about our conduct rules, you should contact the HOOM.



Section 4.1 - Confidentiality and official information

43. The Commissioner is committed to making OSIC open, accountable and transparent. The Commissioner's Publication Scheme provides a list of all available information about the Commissioner and OSIC and how to get it. Wherever possible, information will be provided on the website www.itspublicknowledge.info.
44. The Commissioner and her staff will also make available information about their contacts where it is not exempt from disclosure under Part 2 of FOISA. In the case of public bodies, the information to be made available is likely to include information such as names of contact people, copies of correspondence and links to their website. In the case of the public, this is likely to include names of people or organisations who have applied to the Commissioner for a decision, although where names are published this will usually only happen after the decision has been published.
45. The Commissioner has a duty under FOISA and the EIRs to make decisions as to whether public authorities have complied with the legislation. This involves accessing information held by public authorities which they consider to be exempt or excepted from disclosure. Section 45 of FOISA (which also applies to investigations etc. carried out under the EIRs) makes it a criminal offence for the Commissioner and OSIC staff to disclose, without lawful authority, information which has been obtained by or furnished to the Commissioner for the purposes of FOISA and the EIRs and which is not, or has not been, otherwise publicly available. You must not, therefore, knowingly or deliberately take part in activities or make public statements which might involve the disclosure of such information, or in any other way disclose it contrary to section 45 of FOISA.
46. The Commissioner may disclose information gathered in the course of an investigation to the Scottish Public Services Ombudsman if that information could be the subject of an investigation by the Ombudsman. The Commissioner may also release information gathered in the course of an investigation to the Information Commissioner.
47. Further to this, you have a contractual duty not to misuse information that you acquire in the course of your work or disclose information that is received in confidence from others. This applies even after you leave the Commissioner's employment.
48. Nothing in this policy is intended to prevent you making a protected disclosure under the Public Interest Disclosure Act 1998.



Section 4.2 - Standards of propriety

Standards of Propriety - Procurement

Relationship with suppliers

49. The Commissioner and OSIC staff who are involved in the procurement process must always be honest, fair and impartial in their dealings with suppliers. Relationships with suppliers must always be conducted on a professional basis, with proper regard to ethics and propriety.

Declaration of interest/potential conflict of interest

50. The Commissioner and OSIC staff must declare and record any personal interest that might influence, or be seen by others to influence, their impartiality in arriving at a procurement decision. Those who have business or personal relationships with, or friends/relatives employed by, outside organisations bidding for contracts with the Commissioner must inform the HOOM at the outset.

Personal gain, business gifts, corruption and bribery

51. Staff involved in procurement activity, or others who may be perceived to be in a position of influencing purchasing decisions, may not solicit or accept contributions of any kind from suppliers. The Commissioner and OSIC staff should only accept gifts or hospitality of a trivial nature. Records of all gifts and hospitality offered and whether or not they were accepted must be kept in the Declaration of Gifts (VC 48521). If there is any doubt over whether a gift / hospitality should be accepted, the HOOM should be contacted for advice.
52. Under the terms of the Bribery Act 2010, it is an offence to offer or accept any inducement or reward in order to gain any commercial, contractual, regulatory or personal advantage.
53. Staff suspected of engaging in any such activity may be subject to disciplinary action.

Hospitality

54. Modest hospitality (e.g. lunch, sandwiches, dinner) may be accepted from a supplier, provided it is for a legitimate reason, is infrequent and that a situation is not reached where impartiality may be influenced, or be perceived by others to be influenced.
55. Invitations from suppliers or potential suppliers to attend social functions or events must not be accepted without receiving the prior consent of the HOOM. Records of all hospitality offered and whether or not accepted must be kept in the Declaration of Gifts (VC 48521).



Standards of propriety - general

Declaration of interest/potential conflict of interest

56. The Commissioner and OSIC staff must declare and record any personal interest that might influence, or be seen by others to influence, their impartiality in conducting an investigation of an application made under FOISA or the EIRs. Should such a situation arise you should raise this immediately with your Deputy Head of Enforcement or the Head of Enforcement.

Bankruptcy or insolvency

57. If you become bankrupt or insolvent you must report a full statement of the facts to the HOOM.

Outside employment

58. You must seek permission from the Commissioner before accepting any outside employment which might affect your work either directly or indirectly. You should, in the first instance, discuss this matter with your HOD.



Section 4.3 - Political neutrality

59. As individual citizens, staff have the right to hold their own political views and to be active members of political parties. You will not, however, take part in any political or public activity (including campaigning) that compromises your professional impartiality. As a member of OSIC staff you will work with all members of the public and with public authorities in a politically neutral way. You will not take part in any surveys or research projects if they deal with attitudes or opinions on political matters or matters of policy.
60. The post of Commissioner is a politically sensitive one, which means that the Commissioner is completely barred from taking part in either national or local political activities. Furthermore the Commissioner may not take part in any activity which would in any way conflict with the Commissioner's responsibilities to the Parliament or be inconsistent with her official position.



Section 4.4 - General Standards of Behaviour

61. As a member of the Commissioner's staff you are expected to behave within the common values set out below:
- Integrity - Demonstrate high standards of honesty and reliability.
 - Impartiality - Be fair and even-handed in dealing with the public and one another.
 - Professionalism - Provide high quality professional advice and support services.
 - Client focus - Be responsive to the needs of the public and one another.
 - Efficiency - Use resources responsibly and cost-effectively.
 - Mutual respect - Treat everyone with respect and courtesy and take full account of equal opportunities issues at all times.
 - Equality - Work together to embed principles of equality and diversity and promote a culture of openness and fairness in everything we do.
62. As a member of staff you are also expected to behave in a manner that will not bring OSIC into disrepute, or cause embarrassment to the Commissioner.



Section 5 – Disciplinary Procedures

Introduction

63. It is essential that certain standards of conduct, performance and attendance are maintained to protect the smooth running of OSIC and the well-being of the Commissioner's staff. You are required to undertake your role in a professional manner and to conduct yourself in accordance with the rules, policies and procedures set by the Commissioner as your employer.
64. The SIC reserves the right not to follow the disciplinary procedure if employees have less than two years' service.
65. The procedures set out in this section apply only to sections 4.1 to 4.4 of the Employee Handbook, which set out the standards of conduct expected of you.
66. You are also required to meet other standards set out in the Employee Handbook. These are:
 - Standards of performance (Section 6).
 - Standards of attendance (Section 9.6).
67. The Disciplinary Procedures detail the action which will be followed should you digress from the standards of conduct expected by the Commissioner, with a view to assisting you to improve your behaviour satisfactorily. You will find examples of behaviour which is normally regarded as misconduct and gross misconduct as Annex A and Annex B respectively. The Disciplinary Procedures do not form part of your contract of employment.
68. The procedures which will apply should you digress from the required standards of performance and attendance are set out in Section 6.3 and 9.6 respectively.

Purpose

69. The Disciplinary Procedures are principally intended as an aid to good management and are designed to ensure that you are encouraged to improve if your standard of conduct is unsatisfactory. You should not, therefore, see them as being primarily punitive in nature, although particular circumstances may result in disciplinary sanctions being imposed. These procedures set out a clear framework to enable disciplinary matters to be dealt with in a fair and consistent manner and without undue delay.
70. The Disciplinary Procedures reflect the requirements of the ACAS Code of Practice on Disciplinary and Grievance Procedures, relevant case law and recognised good practice.

Application

71. The disciplinary procedures apply to all staff employed by the Commissioner.

Principles



72. The main principles governing the Disciplinary Procedures are that:

- where appropriate, attempts will be made to resolve matters informally in the first instance and guidance will be provided to help you improve
- no formal disciplinary action will be taken against you until the matter has been fully investigated and a Disciplinary Hearing has taken place
- you will be advised of the nature of any complaint against you and be given the opportunity to put forward your case before any decision is made
- the Commissioner will not discriminate in the application of these procedures in respect of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender identity, sexual orientation, trade union membership or lack thereof. Reasonable adjustments will be put in place, as appropriate, to support staff with a disability
- at all formal stages of the Disciplinary Procedures, you will have the right to be accompanied by a trade union representative or work colleague. “Accompanied by” means that your companion may put your case forward on your behalf, sum up your case on your behalf and respond on your behalf to any view expressed at any formal meeting or hearing, including the appeal. However, the person hearing the case or the appeal has the right to put questions directly to you and to receive responses directly from you
- you will not be dismissed for a first offence except in the case of gross misconduct when the penalty will normally be dismissal without notice or compensation in lieu of notice
- all timescales stipulated in this policy may be varied by mutual consent
- you will have the right to appeal against any disciplinary action imposed, in accordance with the procedures set out in paragraph 17 of the Disciplinary Procedures below
- the Commissioner reserves the right to invoke the procedure at any stage in the process and to miss out a step or steps in the process if it is considered appropriate in the circumstances. If this occurs, reasons will be given. HODs will keep the Commissioner apprised of proposed and ongoing disciplinary matters.



Section 5.1 - Procedures

73. The Commissioner is committed to following a full and fair process dealing with disciplinary matters to ensure consistency of treatment for all employees. Set out below is the process the Commissioner will normally follow¹. Please note, however, that the Commissioner reserves the right to change or amend this policy from time to time.
74. Managers may seek advice about the Disciplinary Procedures from the HOOM at any time. However, managers must consult the HOOM for advice and guidance prior to taking any formal disciplinary action.

Informal Stage

75. Minor conduct issues will normally be dealt with by your line manager and may take the form of advice, counselling or a reprimand. The aim of the informal stage is to meet, discuss areas of concern and to agree the action required to avoid further disciplinary sanction.
76. A note of the informal meeting will be taken and a review period set during which an improvement in conduct should be evident.
77. The informal approach does not constitute disciplinary action.
78. In cases where your conduct has not improved, or in the case of a more serious breach of conduct being alleged, your line manager will discuss the issues with the HOD. Action may be taken in accordance with the formal stages outlined below.

Formal Stages of the Disciplinary Procedure

Stage 1 – Disciplinary Investigation

79. Where the HOD considers that formal action may be appropriate, a proper and thorough investigation of the facts will be undertaken as promptly as is reasonably practicable in the circumstances. The HOOM will determine who is appropriate to carry out the investigation.
80. Before the investigation begins, you will be advised in writing by your HOD that your conduct is being investigated and you will normally be invited to attend an investigatory interview where you are entitled to be assisted by a trade union representative or work colleague. In accordance with Paragraph 10 below you may be suspended, normally on full pay whilst the investigation is carried out.
81. Following the investigation, you will be informed in writing whether the HOD considers the case merits progression to a formal Disciplinary Hearing. If there appear to be grounds for disciplinary action you will be invited to attend a Disciplinary Hearing and you will be provided in

¹ In the event that a HOD is the subject of disciplinary proceedings, the Commissioner will normally undertake the role ascribed to the HOD in these procedures.



advance with a written statement setting out the full details of the allegations against you, together with a copy of the investigatory report and any accompanying evidence.

Suspension

82. In cases of serious misconduct, the Commissioner may elect to suspend you, normally on full pay, to allow an investigation to take place. The period of the suspension will be kept to a minimum, and will not be viewed or treated as a punishment.
83. Where you are absent from work due to sickness during any period of suspension, the suspension will automatically come to an end, and you will be treated as on sickness absence, and will receive your sick pay entitlement.
84. In very exceptional circumstances, pay may be withdrawn during a period of suspension. This may occur, for example, where circumstances outwith the control of the Commissioner - such as criminal proceedings or a police investigation - have an impact on the progress of the Commissioner's internal Disciplinary Procedures, thereby leading to a necessarily protracted period of suspension.
85. Suspension will only apply for the length of time which is deemed strictly necessary and will be confirmed in writing.

Stage 2 – Disciplinary Hearing

86. A Disciplinary Hearing will be set up and you will be given a minimum of 2 working days' notice of the Hearing. At the Hearing, you may make oral and/or written representations and you will be entitled to be assisted by a trade union representative or work colleague. If the date and time of the Hearing are unsuitable for you and/or your companion, you can suggest an alternative date and time within 5 working days from the date originally proposed. You must take all reasonable steps to attend the Hearing.
87. Your HOD will normally hear the case. Where your HOD is unavailable or has had prior formal involvement in the case, another HOD will hear the case. The HOOM will normally be in attendance at the Hearing to provide procedural advice.
88. Having heard your representations, the HOD will adjourn to consider the evidence and to determine whether the disciplinary case has been made and, if so, whether a disciplinary sanction is appropriate. If the latter, the appropriate level of sanction to be imposed will be discussed with the HOOM. Levels of sanction are set out in Annex C. When a decision is made, the HOD will reconvene the Hearing, on the same day if possible, and inform you of the decision, the reasons for the decision, the sanction where appropriate and the procedures for lodging an appeal including details of to whom the appeal should be addressed. You will receive confirmation of these details in writing normally within five working days of the date on which you were informed of the decision. If the sanction is dismissal, the Commissioner will ultimately make the decision and sign any letter of dismissal.

Stage 3 - Appeal



89. If you wish to appeal the outcome of a Disciplinary Hearing, you must intimate your intention to do so within 5 working days of the date on which you receive written confirmation of the decision. You should then set out your reasons for appeal clearly in writing and submit this to the Commissioner within five working days of the date on which you receive written confirmation of the decision.
90. You will be invited to attend an Appeal Hearing at which you may make oral and/or written representations. You may be assisted at the Appeal Hearing by a trade union representative or work colleague. You will be given a minimum of 2 working days' notice of the Appeal Hearing. If the date and/or time of the Appeal Hearing are unsuitable for you and/or your companion, you can suggest an alternative date and time within 5 working days from the day originally proposed. You and your companion must take all reasonable steps to attend the Appeal Hearing.
91. Appeals will be heard by the Commissioner, or she will nominate a HOD other than the HOD who heard the Disciplinary Hearing.
92. Having heard the representations, the member of the Management Team hearing the Appeal will adjourn to consider the evidence and to determine whether a sanction is appropriate. The sanctions are set out in Annex C. When a decision is made; the member of the Management Team will reconvene the Hearing, on the same day if practicable, and will inform you of the decision, the reasons for the decision, and the sanction where appropriate. Those details will then be confirmed in writing, normally within five working days of the date on which you were informed of the decision. If the sanction is dismissal, the Commissioner will ultimately make the decision and sign any letter of dismissal in which case the decision of the Commissioner will be final.
93. You will receive confirmation of these details in writing within 5 working days of the Hearing.

Order of Events

94. Ordinarily the disciplinary process will follow the sequence outlined above. However, the Commissioner reserves the right to invoke the procedure at any stage in the process where the circumstances are deemed sufficiently serious to merit this and to miss out a step or steps in the process if she considers it appropriate in the circumstances. If this occurs, reasons will be given.

Criminal Proceedings

95. Disciplinary action may be taken in parallel with criminal proceedings concerning the same circumstances.

Records

96. A record of any disciplinary action taken against you will be kept on your personal file in accordance with the Data Protection Policy and will be expunged where appropriate after the specified time limit has elapsed.



Monitoring and Review

97. The Commissioner's Disciplinary Procedures will be reviewed and monitored on an ongoing basis, taking into account legislative requirements, recommendations and identified good practice.

Employees with less than two years' service

98. In relation to employees who commence employment with the Commissioner on or after 6 April 2012, the Commissioner reserves the right not to follow the disciplinary procedure if those employees have less than two years' service.
99. In relation to employees who commence employment with the Commissioner on or before 5 April 2012, the Commissioner reserves the right not to follow the disciplinary procedure if those employees have less than one year's service.

Section 5.1 Annex A: Examples of Misconduct

- Unauthorised absence from work without good reason.
- Abuse of the flexible working hours system e.g. not recording working time accurately, not checking in timesheets as required.
- Minor breaches of security.
- Breach of conduct rules including standards of behaviour.
- Inappropriate behaviour e.g. being rude to a work colleague or member of the public.
- Failure to follow office security procedures.
- Compromising the security of OSIC such as failing to ensure alarms are set and doors properly locked.
- Damage to OSIC property.
- Breach of any of the Commissioner's Employment Policies (see Section 12).
- Refusal to give consent to allow access to personal or private e-mails or files during the investigation of a suspected disciplinary offence or following any other reasonable request from management.
- Negligence which causes financial loss, damage to property or injury to people.
- Failure to report fraud or suspected fraud as soon as it is discovered or suspected.
- Failure to report a police charge which may impact on your employment.
- Refusal to work in accordance with Health & Safety rules and procedures.
- Refusal to obey a legitimate instruction.
- Insubordination.
- Action which might bring the Commissioner into disrepute.
- Breach of procurement policies.

This list is for illustrative purposes only; it is not exhaustive. The gravity of the act will determine whether it is dealt with as a minor or more serious offence.



Section 5.1 Annex B: Examples of Offences normally regarded as Gross Misconduct

- Serious breach of security.
- Theft.
- Fraud.
- Disclosure of information in contravention of section 45 of FOISA.
- Deliberate falsification of any records including deliberate abuse of the flexible working hours system.
- Abuse of official information or position.
- Discrimination or harassment on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender identity, sexual orientation or any other grounds referred to in the policies listed in the Equalities and Diversity section (2) of this handbook.
- Assault.
- Being under the influence of and/or incapacity through alcohol whilst at work or on OSIC premises or acting in an official capacity.
- Being under the influence of, taking, possessing, or selling illegal drugs, or any drugs (except over-the-counter remedies) which have not been prescribed to you on medical grounds, whilst at work or on OSIC premises or acting in an official capacity.
- Selling prescription drugs whilst on duty or on OSIC premises or acting in an official capacity.
- Deliberate damage to OSIC property.
- Serious breach of conduct rules.
- Negligence which causes financial loss, damage to property or injury to people.
- The intentional viewing or downloading of pornographic or other derogatory, defamatory, obscene or inappropriate material from internet or e-mail systems.
- Serious breach of Health & Safety rules and procedures.
- Serious breach of any of the Commissioner's Employment Policies (see section 12).
- Knowingly giving false information or deliberately omitting relevant information on a job application form or any other document or report.
- Performing, arranging or carrying out work or activity which could be considered to be in serious conflict with or which adversely affects in any way the Commissioner's interest, for example, being a member of a lobbying group, leaking information or running a business from the office.
- Conviction for a criminal offence which is related to your employment.
- Accepting or soliciting gifts or hospitality as an inducement to show favour.
- Deliberate misuse of procurement and corporate credit cards.
- Serious breach of procurement policies.
- Serious action that may bring the Commissioner into disrepute.

This list is not exhaustive and other offences, if they are considered to be serious enough, may be regarded as gross misconduct.



Section 5.1 Annex C: Disciplinary Penalties

100. The level of the sanction imposed will depend upon the nature of the misconduct. In exceptional circumstances, disciplinary penalties applied under this procedure may be referred to after they have elapsed. It may be a matter for the HOOM to advise the HOD whether such exceptional circumstances arise in any particular case. It will be for the HOD to decide whether or not to take that into account when deciding on an appropriate sanction.
101. In the event that a HOD considers dismissal is warranted, the HOD will make a recommendation to the Commissioner who has sole authority to dismiss a member of her staff. You have the right of appeal against any disciplinary penalty imposed (see paragraph 17 above).

Sanction	Information	Normal Expiry Period
Recorded verbal warning	This may be the initial action imposed in a case of misconduct. Your conduct will be monitored and further action may be taken if improvements are not realised. This warning will be confirmed in writing and will be retained on the personal file.	6 months
First written warning	This sanction will normally be imposed in the case of more serious misconduct, if there have been further minor breaches during the period when a verbal warning is live, or where there have been a number of attempts to address the issue informally. A first written warning will be held on the personal file.	12 months
Final written warning	This sanction will be imposed if there has been a further act of misconduct during the period when a first written warning is live, or if a single act of misconduct has been sufficiently serious. The final written warning will specify that any further breaches of discipline may result in your dismissal.	18 months
Dismissal	Where further breaches of discipline or performance standards occur after a final written warning, or where you breach any of the rules set out in the gross misconduct section above, the Commissioner may dismiss you either with or without notice. In cases of gross misconduct, normally no notice will be given or paid by the Commissioner.	Not applicable

102. You should bear in mind, however, that the Commissioner reserves the right to invoke the procedure at any stage in the process and to miss out a step or steps in the process if it is considered appropriate in the circumstances. If this occurs, reasons will be given.
103. Any act of gross misconduct will normally result in the termination of your employment.



Section 6 – Management and Development

Section 6.1 - Job description and grading structure

Job Description

104. You will have received a separate document describing the main duties of your post. As stated in your Main Terms and Conditions, you may occasionally be asked to carry out tasks which, although within your capability, are not detailed in your job description. Apart from sometimes meeting short term operational needs, these alternative duties may provide you with opportunities to develop your skills and knowledge and enable the Management Team to see how you perform these tasks in order to facilitate the development of your career. Wherever possible, these changes to your duties will be planned, explained and discussed with you in advance. We believe that this flexibility is an important feature of our culture and that this practice can operate to our mutual advantage.

Grading structure

Grade	Description
Grade 2	Administrator Administrator (Validation Officer)
Grade 4	Finance and Administration Manager Freedom of Information Officer
Grade 5	Deputy Head of Enforcement
Grade 6	Head of Enforcement Head of Operational Management Head of Policy and Information

105. The application of this grading structure is comparable to that applying to similar grades within the Scottish Parliament grading structure.



Section 6.2 - Performance Management

106. Our Performance and Quality Framework (P&QF) uses a developmental approach which is designed to ensure:
- OSIC's objectives are achieved by linking our job roles and individual objectives to the organisational objectives and priorities set out in our Operational Plan
 - we are clear how to demonstrate the skills, knowledge and behaviours that are expected of us
 - all managers agree and review objectives, priorities and developmental needs with team members
 - we review performance against objectives and areas of competence to ensure that we are making the best possible contribution to the organisation's overall aims
 - poor performance is identified quickly and support provided to eliminate it
 - we recognise good performance and build upon achievements
 - all team members receive constructive feedback in order to develop and improve performance.
107. The P&QF focuses on what we do and how we do it and we set objectives for each of these aspects.
108. You will find more detailed information and guidance, including a description of the standards of performance required of you, in our P&QF Guidance at VC 45564.



Section 6.3 - Policy for dealing with unacceptable performance

Introduction

109. As an employer, the Commissioner is committed to providing a working environment and fostering a culture which actively encourages, facilitates and recognises effective performance. The Commissioner values the provision of high quality professional advice and support services and recognises that it is essential that staff maintain certain standards of performance.
110. You are required to undertake your role in a professional manner and in accordance with the performance expectations established by the Commissioner as your employer. The standards of performance required of you will be communicated to you by your line manager and reinforced through the operation of the PMS. If you require any clarification as to the standards of performance expected of you, you should consult your line manager.
111. This Policy details the procedures which will be followed if you do not meet the standards of performance expected by the Commissioner, with a view to assisting you to improve your performance to a level that is acceptable. These procedures do not form part of your contract of employment.
112. The procedures associated with this policy are set out in [Annex A](#) and a list of potential sanctions is at [Annex B](#).

Purpose

- The procedures are intended as an aid to good management and are designed to ensure that if your standard of performance is not acceptable, you are encouraged and assisted to improve your performance through positive management intervention and support. You should not, therefore, see them as being primarily punitive in nature, although particular circumstances may result in sanctions being imposed, up to and including dismissal. The procedures set out a clear framework to enable managers to deal with unacceptable performance in a fair and consistent manner and without undue delay.
 - These procedures are not part of the PMS. The PMS enforces expectations of performance standards relevant to each role and reflects management's assessment of individual staff performance. If your performance falls below an acceptable standard this will be addressed separately from the operation of the PMS through the procedures at Annex A to this Policy, and issues will be dealt with promptly as and when they arise.
113. The Policy for Dealing with Unacceptable Performance reflects legislative requirements and takes account of relevant Codes of Practice, case law and recognised good practice.



Application

114. The Policy for Dealing with Unacceptable Performance applies to all staff employed by the Commissioner, with the exception of those staff in a temporary role. If you are in a temporary role, please see the Temporary Roles section below

Definition

115. “Performance” is your ability to carry out your duties in order to meet your responsibilities and objectives and the way in which you do this. Your performance may be considered unacceptable if you do not demonstrate the skills, competences and/or abilities required to effectively fulfil all, or a significant portion of, the requirements of your role. This may occur if your performance is assessed in a performance appraisal report as “Unacceptable” or if your performance has not improved following attempts to resolve the matter through the Performance Management System. Your line manager does not need to wait until the end of the reporting year to complete an appraisal report. He or she may complete one at any time if your performance deteriorates during the reporting year. If such an unscheduled report is completed under the performance management system, this will normally trigger the unacceptable performance procedures set out at Annex A.
116. If your performance is unacceptable as a result of negligence, careless failure, wilful lack of application or wilful disregard for performance standards, then this will be regarded as a conduct issue and will be dealt with through the disciplinary procedures. Similarly, if you are able to meet the requirements of your role but choose not to, the matter will be dealt with in accordance with the disciplinary procedures.
117. In particular circumstances, it might be appropriate to transfer the management of performance difficulties from the procedures under this policy to an alternative procedure. This may arise, for example, if it becomes clear during the operation of the procedures that the issue is not one of unacceptable performance but is actually one of conduct or attendance. In such situations, you will be advised in writing which procedure is to be followed. The circumstances and action already progressed will be taken into account in determining the appropriate level at which to enter the new procedure.

Principles

118. The main principles governing the Policy for Dealing with Unacceptable Performance are that:
- The Commissioner will ensure that a range of appropriate measures is in place to minimise the potential for performance below an acceptable level. This includes effective processes in relation to recruitment and selection, induction, performance management, and training and development.
 - You will be made aware of the standards of performance expected of you. Aims, objectives and training to meet development needs will be discussed with your line manager through the operation of the PMS and will form your job role and objectives for the appraisal year in question.



- You will be advised at the earliest opportunity, normally within the context of the performance management arrangements, if your performance is unacceptable and you will be given the opportunity to put forward your case before any decision is made to proceed to use the formal Unacceptable Performance procedures.
- Where appropriate, attempts will be made to resolve matters informally in the first instance and support will be provided to help you to improve your performance within the context of the performance management arrangements.
- Performance below an acceptable standard will be managed in a way that is sensitive to both your needs and the needs of OSIC. Information relating to the management of individual performance cases will be strictly restricted to those who need to know it in order to carry out the responsibilities of their role.
- The Commissioner will not discriminate in the application of these procedures in respect of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender identity, sexual orientation, trade union membership or non-trade union membership. Reasonable adjustments will be put in place, as appropriate, to support staff with a disability.
- At all formal stages of the procedures set out in Annex A, you will have the right to be assisted by a trade union representative or work colleague.
- The procedures set out in Annex A will be progressed without any unnecessary delay
- You will have the right to appeal against any sanction imposed, in accordance with the procedures set out in Stage 3.
- The Commissioner reserves the right to invoke the procedures set out in Annex A at any stage and to miss out a step or steps in the procedure if she considers it appropriate in the circumstances. If this occurs, reasons will be given. HODs will keep the Commissioner apprised of proposed and ongoing disciplinary matters.



Section 6.3 Annex A: Procedures for dealing with unacceptable performance

119. The Commissioner is committed to following a full and fair process dealing with performance matters to ensure consistency of treatment for all employees. Set out below is the process that the Commissioner will normally follow². Please note, however, that the Commissioner reserves the right to change or amend this policy from time to time.
120. The SIC reserves the right not to follow this procedure if employees have less than two years' service.
121. Managers may seek advice about the Disciplinary Procedures from the HOOM at any time. However, managers must consult the HOOM for advice and guidance prior to taking any formal disciplinary action.

Informal Stage

122. Prior to any formal procedures commencing your line manager will normally deal with any performance issues on an informal basis when the line manager will advise you of the performance issue, counsel and/or coach you on what must be done to improve, and give you the opportunity to make such improvement(s). This stage falls under the normal Performance Management System (PMS) where managers should ensure that a member of staff has been given the proper support, training and opportunity to improve before they decide to invoke the formal procedure.
123. Managers should be alert to the fact that if a member of staff's performance deteriorates or is not as good as it should be, they should always consider the possibility that the member of staff may have a disability. Managers must give due regard to the requirements of the Equality Act 2010 and provide "reasonable adjustments" that would enable the member of staff to perform adequately in his/her role.
124. Managers should also ensure that these and any other mitigating factors are seriously considered during the normal PMS before they decide to invoke formal procedures.
125. If your performance has been assessed in a performance appraisal form as "Unacceptable", or if your performance has not improved following attempts to resolve the matter through the PMS, the formal stages (as opposed to the informal stage) of these procedures will be invoked.
126. If the formal procedures are invoked, you will no longer be assessed through the PMS guidance or timetable whilst going through these procedures, although performance appraisal forms will still be used to record your actual performance and achievements at the end of the review period.

² In the event that a HOD is the subject of the Procedures for Dealing with Unacceptable Performance, the Commissioner will normally undertake the role ascribed to the HOD in these procedures.



Formal Stage

127. Your line manager will provide you with a performance appraisal worksheet, which clearly sets out the unacceptable areas of performance and the HOD will invite you, in writing, to attend a formal meeting. You will be given a minimum of 2 working days' notice of the Hearing which will be chaired by your HOD. The HOOM will normally be in attendance at the Hearing to provide procedural advice. The letter will set out the possible outcome of the meeting, i.e. that it could result in a first (or final) written warning. You are entitled to be assisted at this meeting by a trade union representative or a work colleague. If the date and time of the meeting are unsuitable for you and/or your companion, you can suggest an alternative date and time within 5 working days from the date originally proposed. You and your companion must take all reasonable steps to attend the meeting.
128. At this meeting, the areas where the performance is considered to fall below an acceptable standard will be discussed and a Performance Improvement Plan and review period will be put in place, together with any necessary support measures to give you the opportunity to improve. The review period will normally be 3 months but this may vary according to the nature of the unacceptable performance identified and the individual circumstances of the case.
129. Your HOD will issue a letter confirming the outcome of the meeting. A copy of the Performance Improvement Plan will be enclosed. The letter will normally confirm the following:
- this represents the first stage in the formal procedure
 - it is a first written warning (or a final written warning depending on the circumstances)
 - your performance remains unacceptable
 - failure to improve your performance to an acceptable level within the established review period could lead to further sanctions being applied, including a final written warning and, ultimately, dismissal.
- The letter will also inform you of the right to appeal against the written warning and the procedures for doing so, including details of to whom the appeal should be made.
130. At the end of the review period, you will be invited to attend a review meeting chaired by your HOD to consider if the required level of performance has been achieved. You will be given a minimum of 2 working days' notice of the hearing. Your line manager will prepare an appraisal report using the standard form and will provide his or her assessment of performance during the review period. The outcome of the review meeting will be confirmed in writing. You may be assisted at this meeting by a trade union representative or a work colleague. If the date and time of the meeting are unsuitable for either you and/or your companion, you can suggest an alternative date and time within 5 working days from the date originally proposed. You and your companion must take all reasonable steps to attend the meeting.
131. If your performance is now considered to be of an acceptable level, the formal procedure will end at this stage and your line manager will provide reasonable guidance to help you maintain this improvement.



132. If your performance does not meet an acceptable standard and, provided a final written warning has not already been given, your HOD will normally invite you, in writing, to attend a second formal Hearing. You will be given a minimum of 2 working days' notice of the meeting. The letter should record the possible outcome of the meeting, i.e. that it is likely to result in a final written warning. You may be assisted at this meeting by a trade union representative or a work colleague. If the date and time of the meeting are unsuitable for either you and/or your companion, you can suggest an alternative date and time within 5 working days from the date originally proposed. You and your companion must take all reasonable steps to attend the meeting.
133. In most circumstances, a final review period will normally be set and the Performance Improvement Plan will be updated to capture any additional support which has been agreed for the final review period. This review period will normally be for 3 months but this may vary according to individual circumstances. Your line manager will confirm the outcome of this meeting in writing and attach the previously completed appraisal report and the updated Performance Improvement Plan. The letter will normally confirm that:
- your performance remains unacceptable
 - this is a final written warning
 - if, at the end of the final review period your performance is still not at an acceptable level, you may be dismissed on grounds of capability.
- The letter will also inform you of the right of appeal against the final written warning and of the procedures for doing so, including to whom the appeal should be made.
134. If your performance continues to be unacceptable at the end of this final review period, and there are no mitigating factors to be taken into account, your line manager will normally provide the HOD with an up to date appraisal report, and a copy of the previous Performance Improvement Plan. You will be invited by the HOD to attend a formal Hearing and will be provided in advance with a written statement which sets out the reasons why your performance is not acceptable together with a copy of the appraisal report, the Final Improvement Plan and any other accompanying evidence.
135. A Hearing will be set up and you will be given a minimum of 2 working days' notice of the Hearing. At the Hearing, you may make oral and/or written representations and you will be entitled to be assisted by a trade union representative or work colleague. If the date and time of the Hearing are unsuitable for you and/or your companion, you can suggest an alternative date and time within 5 working days from the date originally proposed. You must take all reasonable steps to attend the Hearing which will be chaired by your HOD.
136. Having heard your representations, the HOD will adjourn to consider the evidence and to determine whether the disciplinary case has been made. If your performance does not meet an acceptable standard and, in the event that the HOD considers dismissal is warranted, the HOD will make a recommendation to the Commissioner who has sole authority to dismiss a member of her staff. When a decision is made, the HOD will reconvene the Hearing, on the same day if possible, and inform you of the decision, the reasons for the decision, the penalty where appropriate and the procedures for lodging an appeal including details of to whom the appeal



should be addressed. You will receive confirmation of these details in writing normally within 5 working days of the date on which you were informed of the decision.

Appeal

137. You can appeal against any sanction under the formal stages of the Procedures. If you wish to appeal, you must intimate your intention to do so within 5 working days of the date on which you receive written confirmation of the decision. You should then set out your reasons for appeal clearly in writing and submit this to the Commissioner within five working days of the date on which you receive written confirmation of the decision.
138. You will be invited to attend an Appeal Hearing at which you may make oral and/or written representations. You may be assisted at the Appeal Hearing by a trade union representative or work colleague. You will be given a minimum of 2 working days' notice of the Appeal Hearing. If the date and/or time of the Appeal Hearing are unsuitable for you and/or your companion, you can suggest an alternative date and time within 5 working days from the day originally proposed. You and your companion must take all reasonable steps to attend the Appeal Hearing.
139. Appeals will be heard by a member of the Management Team, as determined by the Commissioner. Having heard the representations, the member of the Management Team hearing the Appeal will adjourn to consider the evidence and to determine whether a sanction is appropriate. The sanctions are set out in Annex B. When a decision is made, the member of the Management Team will reconvene the Hearing, on the same day if practicable, and will inform you of the decision, the reasons for the decision, the sanction where appropriate. Those details will then be confirmed in writing, normally within 5 working days of the date on which you were informed of the decision. If the sanction is dismissal, the Commissioner will ultimately make the decision and sign any letter of dismissal.
140. You will receive confirmation of these details in writing within 5 working days of the Hearing. The decision of the Commissioner will be final.

Order of Events

141. Ordinarily the Procedures for Dealing with Unacceptable Performance will follow the sequence outlined above. **However, the Commissioner reserves the right to invoke these procedures at any stage in the process where the circumstances are deemed sufficiently serious to merit this and to miss out a step or steps (but not any of the stages) in the procedure if it is considered appropriate in the circumstances.** For example, it may be appropriate to go straight to a final written warning, or even dismissal, without issuing a first written warning if your performance has been assessed in a performance appraisal report as "Unsatisfactory". If this situation occurs, reasons will be given. If you have previously been subject to the Procedures for Dealing with Unacceptable Performance and there is a further lapse in performance within the period of a live warning, the Procedures will be invoked at the same stage as the last action taken, i.e. will not revert to the beginning.
142. If at any stage during the formal procedures it has been identified that you have a disability for which a reasonable adjustment has not already been made, the procedures will be temporarily



suspended to establish whether the performance is related to disability and whether any reasonable adjustments need to be put in place.

Temporary Roles: Promotions, Secondments and Redeployment

143. If you are in a temporary role and have been doing the job for more than 6 months during the appraisal year, you will be assessed against the competence profile of the temporary role by the line manager of that post. Otherwise, your temporary line manager will request a report from the line manager of your substantive role.
144. The Unacceptable Performance procedures above will not apply to performance issues for staff in a temporary role. The procedure in paragraphs 26 – 28 will apply.
145. If your line manager considers that your performance does not meet the requirements of the temporary role, then he or she will meet with you to discuss:
- the substance of the performance issues
 - the standards required in the temporary role
 - the action required to help you achieve those standards.
146. You will then be given a reasonable amount of time to achieve those standards, during which you will receive appropriate support to help you improve your performance to the standard required.
147. At the end of that period, your line manager will meet with you to review your performance. If your line manager's decision is that your performance does not meet the requirements of the role then your temporary promotion will come to an end.

Records

148. A record of any action taken and/or any sanction applied in relation to the Procedures for Dealing with Unacceptable Performance will be kept on your personnel file in accordance with the Data Protection Policy and will be removed where appropriate after the specified time limit has elapsed.

Monitoring and Review

149. The Commissioner will review and monitor these procedures on an ongoing basis, taking into account legislative requirements, recommendations and identified good practice. The Managers involved in a case will conduct debriefing sessions with the other members of the Management team on the conclusion of each case to inform the continuous review and enhancement of these procedures.

Employees with less than two years' service

150. In relation to employees who commence employment with the Commissioner on or after 6 April 2012, the Commissioner reserves the right not to follow the disciplinary procedure if those employees have less than two years' service.



151. In relation to employees who commence employment with the Commissioner on or before 5 April 2012, the Commissioner reserves the right not to follow the disciplinary procedure if those employees have less than one year's service.



Section 6.3 Annex B: Sanctions

151. The level of the sanction imposed will depend upon the circumstances of each case, for example if there has been a history of unacceptable performance and in particular, if there is an extant warning on the record. In exceptional circumstances, sanctions applied under these Procedures may be referred to even after they have elapsed. It may be a matter for the HOOM to advise the HOD whether such exceptional circumstances arise in any particular case. It will be for the HOD to decide whether or not to take these into account when deciding on an appropriate sanction.

Sanction	Information	Normal Expiry Period
Recorded verbal warning	This may be the initial action imposed in a case of unacceptable performance. This warning will be confirmed in writing and will be retained on the personal file.	6 months
First written warning	This sanction will normally be imposed if you are not able to demonstrate the full requirements of the role or your performance has been assessed in the performance appraisal report as "Unacceptable".	12 months
Final written warning	This sanction will normally be imposed if: you have failed to bring your performance up to an acceptable level following a first written warning or performance drops below an acceptable standard during the period when a first written warning is live.	18 months
Termination of employment, whether with notice or with payment in lieu of notice	This sanction will normally apply if: You have failed to bring your performance up to an acceptable level following a final written warning or performance drops below an acceptable standard during the period when a final written warning is live.	Not applicable

152. Staff should bear in mind, however, that the Commissioner reserves the right to invoke the Procedures for Dealing with Unacceptable Performance at any stage in the process and to miss out a step or steps if it is considered appropriate in the circumstances. If this occurs, reasons will be given.



Section 6.4 - Career Opportunities

153. Serving staff may apply for any advertised vacancy. The majority of posts will be advertised externally. However, where this can be justified and to encourage career development, vacancies may be advertised internally to OSIC staff only.
154. When an opportunity arises, the Management Team will consider whether the post should be advertised internally to OSIC staff only or advertised externally through open recruitment.
155. Posts which are advertised externally are subject to the normal recruitment procedures.

The Principles

156. The following principles will apply:
- The Commissioner will not discriminate in the application of these procedures in respect of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender identity, sexual orientation, trade union membership or non-trade union membership.
 - All selections will be based on merit and will follow a considered decision regarding the ability of the individual to undertake the duties of the post.
 - The eligibility criteria will be specified and publicised in the advertisement.
 - Unsuccessful applicants may ask for feedback about the reason for their lack of success.
157. The Commissioner is committed to providing maximum opportunity for career development within the organisation.

Learning and Capability Development

158. The Commissioner is also committed to providing maximum opportunity for training and personal development within the organisation.

Secondments

159. Internal secondments can be used to fill skill gaps or vacancies within OSIC. They can also provide the opportunity for career or personal development. Secondment opportunities for more than three months will be advertised internally and the arrangements for application and selection will be specified in the advertisement.
160. The opportunity to work for other organisations on a secondment basis may arise from time to time. The Commissioner will consider each such case on its merits.



Section 7 – Pay, allowances and benefits

161. This section forms part of your contract of employment.

Salary Payment and Salary Scale

162. You will be paid monthly in arrears by bank transfer directly into your bank or building society account on the last working day of the month. You will be issued with a payslip before pay day showing details of payments and deductions. The salary spine is as follows:

SALARY SPINE w.e.f. 1 APRIL 2015

Point	Value	Grade
1	£16,149	1
2	£17,656	1
3	£19,161	1
4	£20,287	2
5	£22,005	2
6	£23,923	2
7	£25,120	3
8	£26,925	3
9	£28,730	3
10	£30,536	3
11	£32,064	4
12	£34,370	4
13	£36,676	4
14	£38,984	4
15	£40,827	5
16	£42,766	5
17	£44,797	5
18	£46,924	5
19	£49,157	5
20	£51,123	6
21	£53,167	6
22	£55,294	6
23	£57,506	6
24	£59,807	6
25	£62,199	6



Starting Salary

163. You will normally start on the minimum of the salary scale. However, if you have proven relevant experience above the minimum published in the recruitment literature you may, exceptionally, be given a higher starting salary to reflect that experience.

Progression

164. You will normally progress at the rate of one scale point per year until you reach the top of your grade, provided a sanction which remains extant has not been imposed under the formal stages of the Disciplinary Procedures, the Procedures for Dealing with Unacceptable Performance or the Procedures for Dealing with Unacceptable Attendance. Your progression date will be the anniversary of taking up appointment or being promoted to a higher grade. If the formal stages of any of the Procedures are in progress but a decision has not yet been reached at the progression date the additional scale point will be suspended pending the outcome of the Hearing.

Salary Reviews

165. The salary scales will be reviewed annually on 1 August. In carrying out the review the Commissioner will have regard to

- The SPCB's corresponding pay award.
- Affordability in relation to the resources of the Commissioner.

Payment of Travel Time

166. If you are required to travel on official business outwith your normal bandwidth, you may be paid for the time spent travelling. You will not be paid for time spent travelling between your home and normal place of work except where you are travelling to and from work at the weekend or on public and privilege holidays to work at the request of your line manager.

Starting Pay on Promotion

167. If you are promoted to a higher grade your starting pay on promotion will be the minimum of the scale of the higher grade.

Pay on Temporary Promotion

168. If you are covering the duties of a vacant post in a higher grade, you will be paid the rate you would be paid on promotion. Temporary promotion will be available to cover vacancies, career breaks, maternity leave and long-term sick leave, but no other purpose. It will not be granted to cover annual leave or the absence of a colleague on official business. A minimum qualifying period of 4 weeks will apply.



Overpayments

169. We will make every effort to ensure that you are paid the correct salary and allowances. However, occasionally, overpayments may occur and it is your responsibility to draw any discrepancies to the attention of the FAM. If you have accepted an overpayment in good faith, we will recover the overpayment at a rate reasonably convenient to you. If you fail to disclose an overpayment once you are aware of it, you may be subject to disciplinary action.

Statutory Deductions from Pay

170. As an employer, the Commissioner is required to make certain statutory deductions from your pay e.g. income tax, national insurance and pension contributions.

Other Authorised Deductions from Pay

171. The Commissioner may deduct from your pay any sum which you may owe us during the course of your employment. Such deductions include overpayments of salary (see paragraph 7), overpayments of expenses, overpayments of benefits and any other money you may owe during the course of your employment.
172. Before any such deduction is made we will notify you of the total amount owed and the rate at which we intend to recover the sum. If you leave our employment before the total amount you owe us has been repaid the outstanding balance due will be recovered from your final salary.
173. If, when you leave our employment, you have taken in excess of your accrued holiday entitlement or have a flexi debit, we will deduct from your salary the monetary value of the excess holiday taken and/or flexi debit.

Advance of Salary for Season Tickets or Bicycles

174. If you wish to purchase an annual season ticket or a bicycle to travel to and from work, you may apply for an interest-free advance of salary to do so. Please contact the FAM.

Childcare Vouchers

175. You may be eligible for the cost of some of your childcare expenses. Further details on eligibility and how to apply are available from the FAM.



Section 8 - Expenses

176. This section should be read in conjunction with the Commissioner's full Travel and Expenses Policy at VC 35080.

Reimbursement of Expenses

177. If you have to travel on official business, you will be reimbursed for the cost of any travel and expenses which you actually and necessarily incur. You will also be reimbursed for any necessary expenditure incurred by you if you have to stay away from home overnight, up to the limit set out in the Travel and Expenses Policy.

178. Any claims for reimbursement of travelling expenses **must** be accompanied by a receipt and submitted to the FAM, having been approved and signed in the first instance by your line manager. The expenses claim form is an Excel spreadsheet template in VC entitled Expense Claim Form.

179. If you claim Motor Mileage or Motor Cycle Mileage, you must ensure that you are insured for business travel.

Foreign travel

180. If you are required to travel abroad on official business, you should contact the FAM to find out what you will be entitled to claim.

181. The Travel and Expenses Policy forms part of your contract of employment.



Section 9 – Hours, holidays and attendance

Section 9.1 - Hours of Work

182. The Commissioner recognises that achievement and enjoyment at work are a critical part of your work-life balance. She aims to help you achieve your work-life balance by being a supportive employer, recognising your individual needs and promoting a healthy, balanced and flexible approach to providing a high quality service and meeting business and personal objectives. The Commissioner's Work Life Balance Policy is at Section 9.2.
183. You are required to work in accordance with the Flexible Working Hours (FWH) arrangements, full details of which are at Section 9.2, Annex A.
184. If you are employed on a full-time basis, you are contracted to work the equivalent of an average 37-hour week, excluding annual leave and public and privilege holidays. If you work on a part-time basis you are required to work the number of hours specified in your appointment letter or revised terms and conditions.
185. This section 9.1 forms part of your contract of employment.

Recording number of hours worked

186. Timesheets must be completed on a daily basis, recording your actual hours worked for that day. Timesheets are checked by your line manager and the HOOM to ensure that you are working within the provisions of the FWH arrangements and the Working Time Regulations.
187. You must comply with other arrangements for time recording including signing in and out of the office.



Section 9.1 Annex A: Flexible Working Hours (FWH)

Hours

188. The standard number of hours worked annually by full-time staff will be 1,631 hours per annum. This is equivalent to an average 37-hour week.

Monitoring and Record Keeping

189. You will keep a daily record of your hours worked using the Excel timesheet provided in VC templates. This should be saved in VC and be checked in each Friday. It is your responsibility to monitor your time and ensure that excessive credits and debits do not occur. You will also comply with other time recording arrangements including those for signing in and out of the office.
190. All hours worked within your bandwidth, or outwith your bandwidth and at the request of, or agreed in advance with, line management should be recorded on your timesheet for the purposes of ensuring compliance with the Working Time Regulations.
191. You should note in the comments section of your timesheet when you work hours outwith the bandwidth so they can be easily identified by your line manager.
192. Hours worked of your own accord outwith the bandwidth i.e. not at the request of, or agreed in advance with, line management should not be recorded.
193. Your line manager will review your timesheet regularly to ensure the above arrangements are complied with.

Bandwidths

194. Bandwidths are the hours within which staff may work and accrue time under the FWH arrangements. The current bandwidth is from 7:00 am to 8:00 pm.
195. The Office of the Scottish Information Commissioner is open to the public from 9.00 am to 5.00 pm.

Core hours

196. Although the FWH scheme does not specify core hours during which all staff must attend work, you should let your line manager know in advance if you intend to start work after 10:00 am.



Standard hours and carry-over procedure

197. You may carry a maximum credit or deficit of 14 hours 48 minutes into the next recording period without reference to your line manager.
198. Your credit or debit at the end of a recording period is calculated automatically by formulae on your timesheet.
199. You and your line manager must ensure that your attendance is managed to keep your FWH within plus or minus 14 hours 48 minutes, and that your job responsibilities are fulfilled. Special arrangements for a higher level of carry-over of a credit balance can be made where you have been prevented from taking time off because of management requirements. Your line manager should authorise such a carry-over and notify the FAM who will amend your timesheet accordingly.

Working Time

200. Unless you are absent on leave (including sick leave, annual leave and other types of leave) or other officially approved circumstances apply, you must be present each working day you are scheduled to work. You are expected to manage your time to ensure you are able to attend meetings including for example, All Staff Meetings, team meetings, case/project reviews, appraisals and 1:1s.

Breaks

201. It is important for your health and wellbeing that you take an uninterrupted break at some time during the day. You **must** take a break of at least 30 minutes if you work more than six hours per day. This does not necessarily have to be over the lunch period³. You may take breaks at times other than over the lunch period so long as they comply with our breaks policy, i.e. they must not be recorded as working time. All breaks contribute towards the 30 minutes mandatory break period.

Recording Periods

202. Each recording period lasts for 4 weeks, as detailed on your timesheet.
203. Your line manager will monitor your timesheets at the end of each 4-week period to ensure that any credit or debit hours are within reasonable limits. This means the credit is not so great that it will not be possible to take time off in lieu of the extra hours worked (flexi time), nor the debit so great that the hours cannot be made up.

Arranging Meetings and Providing Office Cover

204. All staff should expect to be available for meetings, particularly with other organisations, within the office opening hours of 9.00 am to 5.00 pm.

³ The lunch period is generally recognised as being between midday and 2pm.



205. The reception, press and enquiry teams must be available throughout office opening hours, including the lunch period. At least 2 members of the enquiry team should be available at all times and this number of staff may be increased to meet any additional demand. Staff are responsible for making arrangements with their colleagues to provide cover, including staggering lunch breaks.

Office In/Out Form

206. We operate a 'Signing In/Out' form which is held in reception. This is in place to satisfy Health & Safety and Fire regulations and also forms part of the time recording arrangements. You must complete this form on entering and leaving the building, whether you are actually working or not.

N.B. You should be marked as 'in' the office if you remain in the building during breaks.

207. It is important that reception staff are aware of who is going to be in the office each day so they can respond efficiently to phone calls and other enquiries. If you are not going to be in the office because of external meetings, holiday, appointments etc. you must inform the reception staff by completing the Signing In/Out form appropriately in advance of your absence. Please also ensure your Outlook calendar is kept up to date.

Authorised Absence from Office

FWH Time Off

208. FWH credits can be used on working days when you will not be present.

209. FWH time off may be taken without the formal approval of your line manager. You should, however, discuss any proposed time off with your team colleagues and your line manager as you must ensure adequate cover is in place.

210. You should also enter any FWH absences of a full day or more into both your own Outlook calendar **and that of your line manager**. This will enable your line manager to ensure there is adequate staffing within the team on any given day. Your line manager's acceptance of your calendar invitation will also confirm that he/she is aware you are taking the time off.

Annual Leave

211. If you work full time, a full day's absence attracts a credit of 7 hours 24 minutes, and a half-day a credit of 3 hours 42 minutes. If you work on a flexible working pattern your absence should reflect the appropriate number of hours relevant to your specific circumstances. .

212. You should request annual leave through SP, selecting 'annual leave' as the holiday category type.



Sick Leave

213. If you work full time and are absent on sick leave for a whole day, you will be credited with 7 hours 24 minutes. If you are sent home during the day your actual hours of attendance will be made up to 7 hours 24 minutes. If you work a flexible working pattern e.g. part-time, compressed hours, etc, the credit will be for the number of hours you were due to work that day.
214. The full sickness absence policy can be found in Section 9.6 Attendance Management Policy and Procedure.

Hospital, medical, dental appointments etc

215. You are expected to make every effort to make these appointments in your own time. If this is not possible, however, a credit equal to the duration of the absence will be given for authorised absences. Women must be given credit for attending ante-natal care.

Employee Relations

216. A credit equal to the duration of the absence, including those working on a part-time basis if they attend longer than their contracted hours, will be given to employees who are union members for a reasonable amount of time during working hours when the employee is:
- taking part in any activities of the union of which the employee is a member
 - taking part in activities, in relation to which the employee is representing such a union
 - accessing the services of a trade union learning representative

but excluding activities which consist of industrial action.

Health and Safety at Work Activities

217. A credit equal to the duration of the absence, including those working on a part-time basis if they attend longer than their contracted hours, will be given to members of staff who are appointed as safety representatives, to allow them to:
- carry out their prescribed duties
 - attend appropriate training courses to help them in the performance of these duties.

218. If you are a Health and Safety representative, you should clear any such absences in advance with your line manager.

Transport Disruption

219. In cases of general transport disruption, the FWH arrangements should be used. Heads of Department, after discussion with the HOOM, have discretion to allow credits where exceptional disruption of transport significantly affects attendance. A credit for the duration of the delay should be given.



Other Authorised Absence

220. Heads of Department also have discretion to authorise absences for other purposes. A credit for the duration of any other authorised absence, including those working on a part-time basis if they attend longer than their contracted hours, should be given.

Leavers

221. If you have a deficit in your hours at the time of leaving your employment with the Commissioner, you will have that debit offset either against any balance of annual leave due or through a reduction in final pay.

222. Any credit in your hours will either be paid in your final salary or can be taken as FWH credits in the normal way before you leave.

Misuse of FWH

223. Misuse of FWH, e.g. recording hours as having been worked that have not been worked, is a disciplinary offence.



Section 9.2 – Work-Life Balance Policy

What is work-life balance?

224. Work-life balance will mean different things to different people. In general terms, it is about having meaningful achievement and enjoyment in your everyday life. In the context of work, there are many ways in which you can be supported in achieving your chosen balance. It is not always about working fewer hours; it is also about having an influence over when and where you perform your role so it fits with the rest of your life. This could mean, for example, time off to have children, to care for a dependant, to update your skills or gain a qualification, to become involved in your local community, to attend cultural celebrations or to pursue interests and hobbies.

How can the Commissioner help me to achieve my work-life balance?

225. The Commissioner recognises that achievement and enjoyment at work are a critical part of your work-life balance. She will help you to achieve your work-life balance by being a supportive employer, recognising your individual needs and promoting a healthy, balanced and flexible approach to providing a high quality service and meeting business and personal objectives.

What will this mean in practice?

226. The Commissioner is committed to developing a culture that encourages diverse ways of working and to creating a framework that will allow you to select your work-life balance option whilst still providing a high quality service and meeting business and personal objectives. To enable this the Management Team will:

- ensure you are made aware of and understand how different working arrangements can benefit the organisation whilst meeting your individual needs at various stages in your life
- enable you to make a personal choice so that you have the opportunity, in consultation with your HOD and your Line Manager, to agree the balance you wish to strike between work and other aspects of your life
- ensure you are not treated less favourably in terms of recruitment, promotion or training opportunities as a result of making changes under this policy to improve your work-life balance
- monitor the uptake and impact of these arrangements
- review and look for opportunities to improve our current working arrangements and introduce new ways of working as required.

Is the policy open to all staff?

227. The overarching policy is open to all staff. However, it will not be possible for all staff to access some of the individual arrangements. For example, if you work in reception, you will be able to apply to be considered for part-time working, a career break and job-share arrangements, but clearly it will not be possible for you to work from home. Similarly if you are on call for example,



if you have media responsibilities, you will have access to all of the options but particular arrangements will have to be agreed to ensure that out of hours business needs are met.

What are the various working arrangements and benefits?

228. You can find out more about the different arrangements by referring to the following sections in other parts of the handbook:

- Flexible working hours.
- 30 days annual leave plus 10.5 days public and privilege holidays.
- Healthy living and well-being policy.
- Special leave.
- Enhanced maternity, paternity and adoption pay.
- Childcare voucher scheme.
- Part-time working.
- Job share.
- Other flexible working arrangements.
- Career break.
- Home working.
- Employee assistance programme.

Are all of these arrangements open to me?

229. Not necessarily. The concept of work-life balance is to be flexible enough to respond to individual needs but also to the needs of the organisation. The arrangements will not, therefore, be open to everyone at the same time and access to them will depend on your individual circumstances and life choices and the needs of your job.

230. There might, therefore, be legitimate reasons why particular arrangements might not be open to you. However, at the same time, it is important to note that it will not be acceptable for any member of staff to be refused access to any of the arrangements on grounds of her or his gender, gender identity, sexual orientation, marital, civil partnership, family or part-time status, racial group (includes colour, race, nationality, national or ethnic origin), religion, disability (unless objectively justified), age or trade union membership/activities (except as permitted by law).

231. If you wish to discuss your individual needs and circumstances, please contact the HOOM who will be happy to discuss these with you in confidence.

How do I apply?

232. Clearly, some of these benefits do not require you to make a formal application; for example, for enhanced maternity/paternity/adoption pay. You should, therefore, look at the individual working arrangements to check whether you need to make a formal application through your HOD to the HOOM.



How do I make a formal flexible working application?

233. If a formal application is required, you should follow the procedures set out in Section 9.2 Annex A below. Before you make your application you may want to discuss this in confidence with the HOOM. All applications will be considered on their merit, taking account of your desired working pattern and the reasons for your request, together with the business needs of the organisation, if appropriate.
234. Please ensure the time you allow between the date you make your application and the date you would like the requested flexible working arrangements to commence is sufficient to take into account the timescales set out at Section 9.2 Annex A. Please note the timescales may be extended when considering applications for home working.
235. Please note under exceptional circumstances it may not always be possible to complete a particular part of the procedure within the specified timescale. Any extension of the timescales requires the specific agreement of the HOOM.
236. In order to make a request for the statutory right to request flexible working an individual must:
- i. be an employee
 - ii. have worked for the SIC continuously for a minimum of 26 weeks at the date the application is made
 - iii. not have made another application to work flexibly under the right during the past 12 months.

Scope of a request

237. Eligible employees are entitled to request the following:
- i. a change to the hours they work
 - ii. a change to the times when they are required to work
 - iii. to work from a different location e.g. from home
238. It is important for Employees to recognise that their right to request a change in their contractual working patterns refers to a **permanent** change to their contracted terms. Whilst every effort will be made to accommodate requests to revert to the original working pattern, this cannot be guaranteed in the first year of the change to the contract of employment. A fresh application to revert to the original terms cannot be considered under the statutory scheme until 12 months have elapsed from the initial application.

The Procedure

239. Any requests for flexible working must be made by the Employee in writing. The written request should set out the working patterns that the Employee is requesting (and a proposed start date), outline the impact the requested change will have on the Employee's workplace and suggest how the change may be accommodated by the Company.



240. The Company shall deal with the application reasonably and shall notify the Employee of its decision within 3 months following receipt of the request. The decision period may be extended by agreement in advance of the expiry of the 3 month time frame or retrospectively.

Appeals

241. An Employee can appeal against the Company's decision to refuse an application by giving written notice of the grounds of appeal within 14 days after the date on which notice of the decision is given.

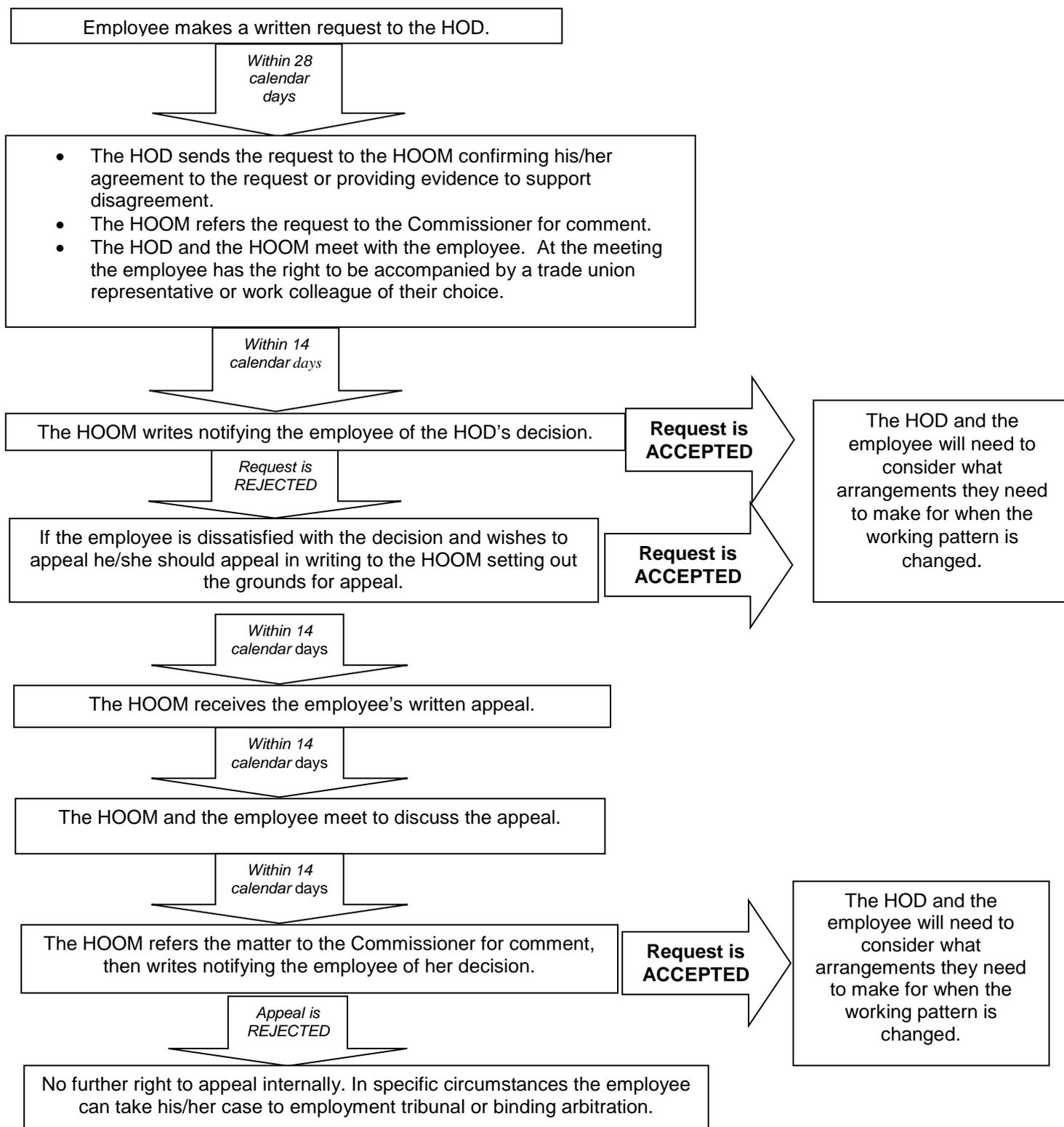
242. All requests, including any appeals, will be considered and decided upon within three months of receipt of the application.

243.

244.



Section 9.2 Annex A: Flexible Working Flowchart





Section 9.2 Annex B: Holidays and Attendance

245. This policy on Annual Leave forms part of your contract of employment.

Annual Leave

246. The annual leave year runs from 1 September until 31 August. If working full time, your annual leave allowance is 30 days per annum. Entitlement to annual holiday will accrue at the rate of one-twelfth of your annual entitlement for each complete calendar month worked.

247. You may only take annual leave if this is authorised in advance by your line manager. Where the leave exceeds 15 consecutive days, you must give at least 3 months' notice.

248. You may carry up to 10 days' annual leave into the next leave year without prior approval. If you wish to carry over more than 10 days' annual leave, you may only do this at the discretion of your HOD. You may also anticipate up to 10 days' annual leave with the express approval of your HOD.

Public and Privilege Holidays

249. The Commissioner will, until further notice, observe the following public and privilege holidays:

- Good Friday
- Easter Monday
- Christmas Eve
- Christmas Day
- Boxing Day
- Three days between Boxing Day and New Year's Day
- New Year's Day
- Day following New Year's Day.

250. You will be notified of the dates on which these holidays actually fall at the beginning of each leave year.

251. This leaves a half-day privilege holiday free for you to take at a time of your own choosing and in agreement with your Line Manager.



Section 9.2 Annex C: Special Leave

252. Special leave is not a right and does not, therefore, form part of your contract of employment. You are expected to use your normal annual leave or the FWH arrangements to attend to your private affairs. Under certain circumstances, however, you may be granted special leave with or without pay. This is in addition to your statutory rights, including the right to unpaid leave for time off for dependants (see Section 9.5).
253. You may apply to your HOD for up to 5 days' paid special leave in any 12-month period to deal with domestic arrangements. The Commissioner acknowledges that emergencies vary in their complexity and more than one event may arise in a short period of time. If you consider you have a case for a longer period of paid special leave, which will require the Commissioner's approval, you should apply via your HOD in the normal way. Special leave with pay will normally be granted:
- to deal with a domestic crisis such as the serious illness or death of a close relative or dependant, sickness of a child (depending on particular circumstances), unavoidable severe damage or disruption to property which requires you to be at home
 - to foster-parents for support
 - for short-term care at home of a close relative or dependant
 - for study leave, if the course of study is supported by the HOOM
 - for trade union activities
 - to participate in public duties
 - to participate in reserve and cadet forces training
 - for attendance at court as a witness or a juror.
254. Special leave without pay may be granted:
- to look after dependant children during school holidays
 - to care for elderly or infirm dependants or relatives
 - for study leave
 - to participate in sporting events.
255. Special leave with or without pay may also be granted for other reasons not covered above.

Applications for Special Leave

256. If you wish to apply for special leave, you should normally do so in advance. It is accepted that in the case of domestic emergencies it may not be possible to seek advance agreement. In such cases, you should telephone your HOD as soon as practicable.
257. Your HoD will record in your SP record any special leave granted.



Enquiries

258. If you have any enquiries or wish any further information about special leave, please contact the HOOM.



Section 9.2 Annex D: Maternity Arrangements

Introduction

259. If you are pregnant, regardless of your length of service, you are entitled to take up to 52 weeks maternity leave. For those meeting the qualifying conditions for statutory maternity pay this will equate to 39 weeks' paid maternity leave and a further 13 weeks' unpaid leave. Appendix 1 to this section explains the Commissioner's **contractual** maternity arrangements and Appendix 2 outlines your main **statutory** rights as they apply to maternity leave, absence and pay.

260. You will find details of your statutory rights on the Directgov website at:

http://www.direct.gov.uk/en/parents/moneyandworkentitlements/workandfamilies/dg_10026556

261. If you are eligible under both the contractual and statutory schemes, you may choose whichever elements are more favourable to you.

262. You may also be entitled to take Shared Parental Leave either in addition to or instead of Maternity Leave. Please see the Shared Parental Leave Policy for more information.

Enquiries

263. If you have any enquiries about your maternity rights, you should contact the HOOM.



Section 9.2 Annex D Appendix 1: the Commissioner's Contractual Maternity Arrangements

Notification

264. If you wish to take advantage of the Commissioner's Contractual Maternity Arrangements it would be helpful if you would let your HOD and the HOOM know the following as soon as possible:
- your expected date of childbirth (which must be notified no later than 15 weeks prior to the expected week of confinement (EWC)).
 - the date on which you would wish to commence your maternity leave
 - whether you wish to extend your period of paid maternity leave with a period of unpaid leave.
265. Once you have visited a registered medical practitioner or a certified midwife please send your maternity certificate (form MATB1), or another statement giving the EWC, to the FAM for processing. Your GP will be able to give you the MATB1 form any time after 20 weeks prior to your EWC.

Ante-Natal Care

266. You are entitled to a reasonable amount of paid time off to attend appointments you have made for ante-natal care. You should clear any absences from the office with your line manager in the normal way.

Health and Safety

267. We will carry out a risk assessment to ensure you are not exposed to pregnancy-related health and safety risk whilst at work. If such a risk is identified, we will try to alter your working conditions to avoid the risk or, if this does not avoid the risk, we will try to identify suitable alternative work for you. If none is available, you may be suspended, at your existing rate of pay, on maternity grounds.

Paid Maternity Leave

268. Under the contractual arrangements, you will be allowed 39 weeks' paid maternity leave for the period of continuous absence before and after your EWC. This is made up of 26 weeks' contractual full pay and 13 weeks at the statutory maternity pay provided you are in paid service with the Commissioner at the time your maternity leave begins and have been so for at least one year.
269. If you wish to come back to work before the end of your period of paid maternity leave, you must give the HOOM 8 weeks' notice of the date on which you intend to return to work.



270. You will continue to receive all of your contractual benefits whilst on a period of paid maternity leave. This means that your employment will continue to qualify you for pension benefits and for all other purposes including pay progression, accrual of annual leave, public and privilege holidays, childcare vouchers, healthy living allowance etc. You should note, however, that you must use up annual leave before returning to work since you will only be allowed to carry over to the new leave year a maximum of 10 days' leave, including public and privilege holidays.

Unpaid Maternity Leave

271. If you qualify under the contractual arrangements for paid maternity leave, you will also qualify for unpaid maternity leave up to a combined maximum of 52 weeks. Unpaid maternity leave does not qualify for pension benefits although the period is counted towards your continuous period of employment, service reckonable for pay progression, accrual of annual leave and towards public and privilege holidays that fall during the period of your maternity leave. You will also continue to receive the healthy living allowance. You should note, however, that you must use up annual leave before returning to work since you will only be allowed to carry over to the new leave year a maximum of 10 days' leave, including public and privilege holidays.

Timing of Leave

272. Your maternity leave may start on any day of the working week subject to the following restrictions:

- you must notify the HOOM and your line manager at least 28 days before you would like to start your leave
- paid maternity leave cannot start more than 11 weeks before your EWC
- paid maternity leave must start from the date your baby is born if this is earlier than your EWC or the date you intended to start your leave.

273. Special leave with or without pay may be granted for any exceptional circumstances occurring outside of these restrictions.

274. If you are on pregnancy-related sickness absence before you are due to go on maternity leave, then your paid maternity absence will start on the first day of absence after the beginning of the 4th week before your EWC.

Right to return to work

275. Unless you notify us otherwise, you should return to work on the first working day after the end of your period of maternity leave. You have the right to return to work after paid maternity leave to the same job and on the same terms and conditions of employment as if you had not been absent. After your unpaid maternity leave, you have the right to return to the same job, or if that is not reasonably practicable, to a similar job. This also applies if you take more than four weeks' parental leave immediately after your maternity leave period, or four weeks' or less parental leave after additional unpaid maternity leave.



Minimum Maternity Leave

276. You may not return to work within two weeks of the birth of your child.

Keeping in Touch Days

277. You are encouraged to keep in touch during your maternity leave period. The purpose of Keeping in Touch Days (KIT) is for you to be involved in:

- training and development activities
- meetings designed to update staff about changes to the business
- other activities designed to keep you up to date.

278. Your participation in such work activities should not exceed 10 days during your maternity leave period and is done on a purely voluntary basis.

279. You will be paid at your normal rate for attending on a KIT day. Any activity in a day will count as a whole day towards the number of KIT days available to you.

280. Under law, you must not participate in any KIT days during the two week period following the day your baby was born.



Section 9.2 Annex D Appendix 2: Statutory Maternity Rights

281. This policy is simply a summary and is not intended to change your statutory rights. Regardless of the terms of this policy, the Commissioner will comply with your statutory rights as they may be amended from time to time.

Ordinary Maternity Leave (OML)

282. If you are pregnant, you are entitled to 26 weeks' OML regardless of your length of service or hours worked.

Additional Maternity Leave (AML)

283. You are also able to take a further 26 weeks' maternity leave, making a total of 52 weeks' leave. AML starts at the end of ordinary maternity leave and finishes 26 weeks after that period.

Pay and Benefits

284. During the period of OML and AML, Statutory Maternity Pay (SMP) will be payable for a 39-week period. The remaining period of maternity leave is unpaid. You will continue to receive all your contractual benefits, except pay, that would have applied had you not been absent. This means that holiday rights will accrue and the period will count towards the calculation of continuous employment, including pay progression.

285. SMP is paid to eligible employees at the rate of 90% of your average earnings for the first 6 weeks then a flat rate (set by the Department for Work and Pensions) for the remaining 33 weeks (unless the 90% is less than the flat rate in which case you will get that for the whole time). Tax and NI are payable on SMP.

286. The unpaid period of statutory maternity leave does not count for pension benefits. You will not receive your contractual benefits during unpaid maternity leave. The break will, however, be treated as continuous for all other purposes, including pay progression.

Notification

287. Once you have visited a registered medical practitioner, or a certified midwife, please send your maternity certificate (form MATB1), or another statement giving the expected week of confinement (EWC), to the FAM for processing.

Starting Maternity Leave

288. You may start maternity leave any time after the eleventh week before your EWC, provided you have notified the HOOM in writing and at least 28 days before you want to start your period of maternity leave, and no later than the end of the 15th week before your EWC

- that you are pregnant
- the EWC



- the date you wish your maternity leave to start.

Returning to Work After Maternity Leave

289. Unless you notify us otherwise you should return to work the first working day after the end of your full entitlement to paid and unpaid maternity leave.
290. If you wish to return to work before the end of your full maternity leave entitlement you must notify the HOOM, in writing, 8 weeks before you wish to return to work. You may not return to work within two weeks of the birth of your child.

Ante-Natal Care

291. You are entitled to a reasonable amount of paid time off to attend appointments for ante-natal care. You should clear any absences from the office with your line manager in the normal way.

Sickness Trigger

292. Your period of paid maternity leave will start automatically if you are absent from work for a pregnancy-related illness during the 4 weeks before the start of your EWC.

Right to return to work

293. You have the right to return to work after your paid maternity leave to the same job and to have the same terms and conditions of employment as if you had not been absent. After your unpaid maternity leave, you have the right to return to the same job, or if that is not reasonably practicable, a job which is both suitable and appropriate. This also applies if you take more than 4 weeks' parental leave immediately after paid or unpaid maternity leave, or 4 weeks' or less parental leave after unpaid maternity leave.

Health and Safety

294. If you are prevented from doing your job for health and safety reasons, we will try to identify suitable alternative employment. If none is available, you may be suspended, at your existing rate of pay, on maternity grounds.



Keeping in Touch Days (KIT)

295. You are encouraged to keep in touch during your maternity leave period. The purpose of Keeping in Touch Days (KIT) is for you to be involved in:
- training and development activities
 - meetings designed to update staff about changes to the business
 - other activities designed to keep you up to date.
296. Your participation in such work activities should not exceed 10 days during your maternity leave period and is done on a purely voluntary basis.
297. No additional payment will be made for these days and regardless of the length of work undertaken, any activity in a day will count as a whole day.
298. Under law, you must not participate in any KIT days during the two week period following the day your baby was born.



Section 9.2 Annex E: Paternity Leave

299. Eligible employees have a statutory right to paternity leave. The Commissioner will comply with employees' statutory rights in this respect.
300. If your partner has given birth, or a child has been placed with you through an adoption agency, and in either case you have parental responsibility for that child, you are entitled to two weeks' paternity leave.
301. You may take this leave at or around the time of the baby's birth or the child's placement. Paternity leave must be taken as either one week in total or as two consecutive weeks.
302. In the case of adoption, this leave may be taken by either partner, instead of, but not in addition to, adoption leave.
303. Applications for paternity leave should be made to the HOOM via your HOD.
304. Employees may also be entitled to take Shared Parental Leave in addition to or instead of Paternity Leave. For more details, please see the Shared Parental Leave policy.

Time off for antenatal appointments

305. Partners of pregnant women are entitled to take unpaid time off to accompany the woman to two antenatal appointments. The time taken to attend appointments should be no more than six and a half hours per appointment, including travelling and waiting time. If possible, appointments should be made close to the beginning or end of the working day to minimise disruption, and the employee's line manager should be given as much notice as possible of forthcoming appointments. If the employee intends to make a request, he should provide a certificate confirming that his partner is pregnant and an appointment card or other relevant documentation confirming the date and time of the appointment. Requests for time off may be refused if it is reasonable to do so.

Paternity Leave

306. You can choose to take either one week or two consecutive weeks' leave. This can be taken during a 56-day period beginning with the date on which the child is born.
307. You will qualify for paternity leave on the birth of a baby if you:
- have, or expect to have, the main responsibility for the baby's upbringing (apart from the mother) and
 - are the biological father of the baby and/or the mother's husband or partner (including same-sex partner or civil partner). A partner is someone who lives with the mother of the baby in an enduring family relationship, but is not an immediate relative.



308. In addition, you must:

- have at least 26 weeks' continuous employment ending with the 15th week before the EWC - the qualifying week.
- be working from the qualifying week up to the date of birth. If your contract ends before the birth, you do not qualify for leave. If your contract ends after the birth, you retain the right to leave (and pay if you meet the qualifying conditions, see below).
- be taking the time off to support the mother and/or care for the baby.

309. You should notify the HOOM, via your HOD, in writing of your intention to take OPL; and

- whether you wish to take one or two weeks' leave
- when you want the leave to start. You may choose to start your leave on:
 - the day the child is born or
 - a day which falls a certain number of days after the child is born, as specified by you to the HOOM before the child is born or
 - a pre-determined day which falls after the first day of the week that the child is due, which you should specify to the HOOM
- you should notify the HOOM in writing
 - in or before the 15th week of the expected week of the child's birth or
 - if this is not reasonably practicable, then as soon as is reasonably practicable.
- you must provide to the HOOM a copy of your partner's Maternity Certificate (MATB1) at least 3 weeks in advance of taking OPL
- you must give notice to the HOOM in writing of the child's actual date of birth. This should be provided as soon as is reasonably practicable.

Changing the Start Date of Paternity Leave

310. If you want to change the start date of your paternity leave you must give the following notice:

- to change the leave to start on the date of birth, at least 28 days before the first day of the EWC
- to change the leave to start on a particular date, 28 days before that date
- to change the leave to start a specified number of days after the birth, at least 28 days before the date on which leave is to commence.

Terms and Conditions during Paternity Leave

311. During your paternity leave period you are entitled to the benefit of all of the terms and conditions of employment, excluding pay, which would have applied had you not been absent.

312. Employees who return to work after a period of paternity leave are normally entitled to return to the job in which they were employed before the period of leave.

Contractual Paternity Pay

313. Paternity leave shall be paid at the full rate of pay. This is an enhancement on the statutory pay allowance.



Keeping In Touch

314. You are encouraged to keep in touch during your paternity leave period. The purpose of Keeping in Touch Days (KIT) is for you to be involved in:
- training and development activities
 - meetings designed to update staff about changes to the business
 - other activities designed to keep you up to date.
315. Your participation in such work activities should not exceed 10 days during your paternity leave period and is done on a purely voluntary basis.
316. You will be paid at your normal rate for attending on a KIT day. Any activity in a day will count as a whole day towards the number of KIT days available to you.



Section 9.2 Annex F: The Commissioner's Contractual Arrangements for Adoption Leave

Notification

317. If you wish to take advantage of the Commissioner's contractual arrangements for adoption leave, please contact the HOOM within 7 days of being notified by the adoption agency. You will be expected to let us know:
- when you expect your child to be placed with you (or in the case of a child from overseas, the date the child is expected to enter the UK)
 - the date on which you would wish to commence your adoption leave
 - whether you wish to extend your period of paid adoption leave with a period of unpaid leave.
318. Employees may also be entitled to take Shared Parental Leave either in addition to or instead of adoption leave. Please see the Shared Parental Leave policy for more information.

Evidence of Adoption

319. You will be given a Matching Certificate from your adoption agency. The definition of "matched for adoption" includes arrangements under the "fostering for adoption" scheme, whereby a child is placed with prospective adopters by a local authority. Please copy this to the HOOM within 7 days of receiving it. If you are adopting a child from overseas, you will receive official notification confirming your eligibility to adopt and that you have been assessed as being suitable as an adoptive parent. Please copy this to the HOOM within 28 days of receiving it. In addition, within 28 days of the child entering the UK, you must provide further evidence of the child's date of entry e.g. a plane ticket or copies of entry clearance documents. You are only entitled to Adoption Leave if you are adopting through an adoption agency. It does not apply where there is no agency involved such as if you are formally adopting a stepchild or other relative.

Time Off to Attend Appointments

320. If an employee is adopting a child alone, he/she is entitled to paid time off to attend up to five adoption appointments. If an employee is adopting a child with their partner, they may elect for one of the two to take paid time off for up to five appointments while the other person may take unpaid time off to attend up to two appointments. The employee may be required to provide a signed declaration stating which of the two adopters has elected to take paid / unpaid time off.
321. The maximum time off for each appointment is six and a half hours, including travelling and waiting time. If possible, appointments should be made close to the beginning or end of the working day to minimise disruption, and the employee's line manager should be given as much notice as possible of forthcoming appointments. If an employee intends to make a request, they should provide an appointment card or other relevant documentation confirming the date and time of the appointment. Requests for time off may be refused if it is reasonable to do so.



Paid Adoption Leave

322. Under the contractual arrangements, you will be allowed 39 weeks' paid adoption leave, made up of 26 weeks' full pay and 13 weeks at the Statutory Adoption Pay (SAP) rate, for the period of continuous absence provided that you:
- are in paid employment with the Commissioner at the time your adoption leave begins and have been so for least 1 year
 - remain in our employment during your period of adoption leave.
323. Adoption leave is available to the primary carer of the child. The partner of the primary carer (where a couple is adopting jointly) will be entitled to two weeks' paid paternity leave.



Unpaid Adoption Leave

324. You are also able to take a further 13 weeks' unpaid adoption leave. Unpaid adoption leave does not qualify for pension benefits, although the period is counted towards your continuous period of employment for all other purposes, including pay progression.

Timing of Leave

325. Your adoption leave may start on any day of the working week from, in the case of a child from the UK:

- the date of the child's placement (whether this is earlier or later than expected) or
- a fixed date which can be up to 14 days before the expected date of placement.

326. Or, in the case of a child from overseas:

- the date the child enters the UK or
- a fixed date which can be up to 28 days after the date the child enters the UK.

327. Special leave with or without pay may be granted for any exceptional circumstances that occur outside of these restrictions.

328. If the child's placement ends during the adoption leave period, the adopter will be able to continue adoption leave for up to 8 weeks after the end of the placement.

Returning to Work After Adoption Leave

329. You have the right to return to work after your paid adoption leave to the same job and to have the same terms and conditions of employment as if you had not been absent. After your unpaid adoption leave, you have the right to return to the same job, or if that is not reasonably practicable, a similar job. This also applies if you take more than 4 weeks' parental leave immediately after paid or unpaid adoption leave, or 4 weeks' or less parental leave after unpaid adoption leave.

330. If you wish to return to work **before** the end of your paid and unpaid adoption leave, you must notify the HOOM, in writing, 8 weeks before you wish to return to work.

Keeping in Touch Days

331. You are encouraged to keep in touch during your adoption leave period. The purpose of Keeping in Touch Days (KIT) is for you to be involved in:

- training and development activities
- meetings designed to update staff about changes to the business
- other activities designed to keep you up to date.



332. Your participation in such work activities should not exceed 10 days during your adoption leave period and is done on a purely voluntary basis.
333. You will be paid at your normal rate for attending on a KIT day. Any activity in a day will count as a whole day towards the number of KIT days available to you.



Section 9.2 Annex F Appendix 1: Statutory Rights for Adoption Leave

334. This is simply a summary and is not intended to change your statutory rights. Regardless of the terms of this policy, the Commissioner will comply with your statutory rights as they may be amended from time to time. You will find full details of your statutory rights in the Directgov website's section on Adoption Rights in the Workplace:

<http://www.direct.gov.uk/en/Parents/Moneyandworkentitlements/WorkAndFamilies/Adoptionrightsintheworkplace/index.htm>

335. To qualify for adoption leave you must:

- be newly matched with a child for adoption by an approved adoption agency and
- have worked continuously for the Commissioner for 26 weeks leading into the week on which you are notified of being matched with a child for adoption.

336. Adoption leave is not available in circumstances where a child is not newly matched for adoption, for example when a step-parent is adopting a partner's child.

337. Only one period of adoption leave will be available, irrespective of whether more than one child is placed for adoption as part of the same arrangement.

Length of Adoption Leave

338. If you qualify for adoption leave, you will be entitled to up to 39 weeks' paid adoption leave followed immediately by up to 13 weeks' unpaid adoption leave.

Contractual Benefits

339. During paid adoption leave you will continue to receive all your contractual benefits, except pay, that would have applied had you not been absent. This means that holiday rights will accrue and the period will count towards the calculation of continuous employment.

340. Unpaid adoption leave does not count for pension benefits. You will not receive your contractual benefits during unpaid adoption leave. The break will, however, be treated as continuous for all other purposes, including pay progression.

Timing of Leave

341. Your adoption leave may start on any day of the working week from:

- the date of the child's placement (whether this is earlier or later than expected) or
- a fixed date which can be up to 14 days before the expected date of placement.

342. Special leave with or without pay may be granted for any exceptional circumstances that occur outside of these restrictions.

343. If the child's placement ends during the adoption leave period, the adopter will be able to continue adoption leave for up to 8 weeks after the end of the placement.



Returning to Work After Adoption Leave

344. You have the right to return to work after your paid adoption leave to the same job and to have the same terms and conditions of employment as if you had not been absent. After your period of unpaid adoption leave, you have the right to return to the same job, or if that is not reasonably practicable, a similar job. This also applies if you take more than 4 weeks' parental leave immediately after paid or unpaid adoption leave, or 4 weeks' or less parental leave after unpaid adoption leave.
345. If you wish to return to work **before** the end of paid and unpaid adoption leave, you must notify the HOOM, in writing, 8 weeks before you wish to return to work.

Statutory Adoption Pay

346. You are entitled to receive statutory adoption pay for a continuous period of 39 weeks if you are entitled to adoption leave. You must give 28 days' notice in writing of your intention to take leave.
347. The weekly rate of statutory adoption pay is the lower of either 90% of your normal weekly earnings or the rate set by the Department of Work and Pensions.

Keeping in Touch Days

348. You are encouraged to keep in touch during your adoption leave period. The purpose of Keeping in Touch Days (KIT) is for you to be involved in:
- training and development activities
 - meetings designed to update staff about changes to the business
 - other activities designed to keep you up to date.
349. Your participation in such work activities should not exceed 10 days during your adoption leave period and is done on a purely voluntary basis.
350. No additional payment will be made for these days and regardless of the length of work undertaken, any activity in a day will count as a whole day towards the number of KIT days available to you.



Shared Parental Leave Policy

Introduction

The purpose of this policy is to set out employees' statutory rights and responsibilities in relation to shared parental leave and pay in respect of the birth of a child.

What is Shared Parental Leave (SPL)?

SPL is leave available to working parents in the year following a child's birth. It applies to parents of children due to be born on or after 5th April 2015.

The total amount of SPL available is 52 weeks less the weeks spent by the child's mother on maternity leave (or weeks when the mother has been in receipt of statutory maternity pay or maternity allowance if she is not entitled to maternity leave).

The mother of the child cannot start SPL until after the compulsory maternity leave period, which lasts until two weeks after birth.

The SPL scheme is entirely optional. The default position is that the child's mother will take 52 weeks' maternity leave. Accordingly, if an employee wishes to utilise the scheme, she must opt-in to it and fulfil all of the notification requirements set out in this policy.

Entitlement to SPL

For the purposes of this policy:

- **Expected Week of Childbirth** or EWC is the week, beginning on a Sunday, in which the doctor or midwife expects the child to be born; and
- **Partner** means spouse, civil partner or someone living with another person in an enduring family relationship, but not a sibling, child, parent, grandparent, grandchild, aunt, uncle, niece or nephew.
- **Qualifying Week** is the fifteenth week before the EWC.

An employee is entitled to SPL in relation to the birth of a child if:

- a) the employee is the child's mother, and shares the main responsibility for the care of the child with the child's father (or their partner, if their partner is not the child's father);
- b) the employee is the child's father and shares the main responsibility for the care of the child with the child's mother; or
- c) the employee is the mother's partner and shares the main responsibility for the care of the child with



the mother (where the child's father does not share main responsibility with the mother).

The following conditions must also be fulfilled:

- a) the employee must have at least 26 weeks' continuous employment with the Company by the end of the Qualifying Week and still be employed by the Company in the week before the leave is to be taken;
- b) the other parent must have worked (in an employed or self-employed capacity) in at least 26 out of the 66 weeks before the Expected Week of Childbirth (EWC) and had minimum average earnings in 13 of those weeks; and
- c) the employee and the other parent must give the necessary statutory notices and declarations summarised below, including notice to end any maternity leave, statutory maternity pay (SMP) or maternity allowance (MA) periods.

SPL entitlement is in addition to paternity leave entitlement. However, once an employee starts SPL, the employee loses any untaken paternity leave entitlement.

Opting in to SPL scheme

In order to opt-in to the SPL scheme, the employee must provide the Company with an opt-in notice which contains the information specified below. If the employee opts-in to the scheme then the balance of the mother's maternity leave is converted into SPL.

The opt-in notice must contain the following information:

- a) the employee's name and the name of the other parent;
- b) if the employee is the child's mother, the start and end dates of her maternity leave;
- c) if the employee is the child's father or the mother's partner, the start and end dates of the mother's maternity leave, or if she is not entitled to maternity leave, the start and end dates of any SMP or MA period;
- d) the total SPL available (which, as above, is 52 weeks minus the number of weeks' maternity leave, SMP or MA period taken or to be taken);
- e) how much of that will be allocated to the employee and how much will be allocated to the other parent;
- f) if the employee is claiming statutory shared parental pay (SHPP), the total SHPP available (which is 39 weeks' minus the number of weeks of the SMP or MA period taken or to be taken);
- g) how much of that will be allocated to the employee and how much will be allocated to the other parent;
- h) an indication of the pattern of leave the employee is thinking of taking including suggested start and end dates for each period of leave. This indication will not be binding at this stage but please provide as much information as possible regarding your arrangements; and



- i) declarations by the employee and the other parent that they meet the statutory conditions for entitlement to SPL and SHPP.

Curtailing maternity leave

In order for a period of SPL to be taken, the child's mother must either have returned from maternity leave or served a notice to curtail (i.e. bring to an end) her maternity leave at a specified point in the future.

If the employee is the child's mother and she wishes to curtail her maternity leave, she must serve a curtailment notice at least eight weeks in advance of the date on which she wishes to curtail your maternity leave. The curtailment notice must specify the date on which maternity leave will end. The curtailment notice can be served before or after birth but she cannot end her maternity leave until at least two weeks after birth.

At the same time as the mother serves the curtailment notice, she must also serve the opt-in notice referred to above, or a written declaration that the child's father or her partner has given his or her employer an opt-in notice, and that she has given the necessary declarations in that notice.

The curtailment notice is usually binding. It can only be revoked if maternity leave has not yet ended and one of the following situations applies:

- a) if the employee realises that neither s/he nor the other parent are, in fact, eligible for SPL or SHPP, the curtailment notice can be revoked in writing up to eight weeks after it was given;
- b) if the employee served the curtailment notice before giving birth, it can be revoked in writing up to eight weeks after it was given, or up to six weeks after birth, whichever is later; or
- c) if the other parent has died.

Once an employee revokes a curtailment notice, another curtailment notice cannot be served unless the revocation was given in the circumstances specified at (b) above.

If the employee is the child's father or the mother's partner, s/he will only be able to take SPL once the mother has either:

- a) returned to work;
- b) given her employer a curtailment notice to end her maternity leave;
- c) given her employer a curtailment notice to end her SMP (if she is entitled to SMP but not to maternity leave); or



- d) given a curtailment notice to the benefits office to end her MA (if she is not entitled to maternity leave or SMP).

We may ask an employee to provide a copy of the birth certificate and/or the name and address of the other parent's employer.

Notifying the Company of an Employee's SPL dates

In addition to serving the opt-in notice on us, an employee will need to serve a period of leave notice specifying the start and end dates of your SPL, at least eight weeks in advance of the start date. The employee may find it simplest to serve the opt-in notice and the period of leave notice at the same time. The period of leave notice should also state the dates on which the employee intends to claim statutory shared parental pay, if applicable. Up to three period of leave notices can be served.

If the period of leave notice gives dates for single continuous period of leave the employee will be entitled to take the leave requested.

If the employee requests discontinuous blocks of leave (i.e. blocks of at least a week with periods of work between them) then we will consider the request but we are not obliged to agree to it.

Changing or cancelling SPL

An employee can cancel a period of SPL by notifying us in writing at least eight weeks before the start date specified in the period of leave notice.

An employee can change the dates for a period of leave by giving us at least eight weeks' notice before both the original start date and the new start date.

Shared parental pay

Statutory shared parental pay (SHPP) of up to 39 weeks (less any weeks of statutory maternity pay or adoption pay claimed by you or the other parent) may be available provided an employee has at least 26 weeks' continuous service with us at the end of the Qualifying Week and average earnings are not less than the lower earnings limit set by the Government each year. SHPP is paid at a flat weekly rate set by the Government each year.

[If the organisation operates an enhanced shared parental pay scheme, insert details, including qualifying conditions (e.g. length of service) and any other relevant rules (e.g. repayment of enhancement if employee



does not return to work after SPL, or returns to work but leaves within a particular period). If the organisation can reclaim SHPP from the Government then you should also think about whether payment of enhanced shared parental pay should be conditional upon the employee opting to take SHPP in the same period so that the organisation can benefit from the offset. Please speak to your Legal Manager for further details].

Keeping in touch

The law provides that each parent can work (including attending training) for up to 20 days during SPL without bringing your SPL or SHPP to an end (known as keeping in touch or “KIT” days). This is in addition to the 10 KIT days that can be taken during maternity leave. Employees are under no obligation to take KIT days. The arrangements for keeping in touch days (including payment or time off in lieu) are a matter for discussion between an employee and the Company.

Terms and conditions during Shared Parental Leave

All terms and conditions of employment remain in force during SPL, except for terms relating to pay.

Annual leave

Annual leave entitlement will continue to accrue during periods of SPL. Please discuss holiday plans with a manager in good time before starting SPL.

Returning to work

If an employee wants to end a period of SPL early, s/he must give at least eight weeks’ notice of the new return date. It is helpful if that notice is in writing.

If an employee wishes to extend SPL, s/he must submit a new period of leave notice at least eight weeks before s/he is due to return to work, assuming s/he still have SPL entitlement remaining and have not already submitted three period of leave notices.



Section 9.2 Annex G: Part-time Working Arrangements

What is part-time working?

351. Part-time working is when you are contracted to work less than full-time hours (which are the equivalent of 37 hours per week). Attendance is not necessarily required on every working day and working patterns can vary to suit your preferences and the needs of the organisation.
352. Part-time working also occurs when you are occupying a full-time post and when you have agreed with your HOD a temporary reduction in your hours for a specified period of time. Such an arrangement allows you to return to full-time working without having to apply for a full-time post or to extend the reduced hours arrangement if this has been operating. The reduced hours arrangement may be taken in a variety of ways; for example, by reducing the working day or the working week or by taking a block of time off during the year (e.g. working only during school term-time).
353. If you want to work particular hours and/or days, we will try our best to accommodate your request. However, if we are unable to do so while you are in your current role, you may have to consider whether you are prepared to change your job and/or work area in order to achieve your desired result. Again, whether or not such a change will be possible will depend on your needs and on the needs of the organisation.
354. If you wish to work on a part-time basis, therefore, you must apply to reduce the number of hours you work and, if appropriate, apply to share the job with someone else who wishes to work on a job-share basis.

Specific conditions of service for part-time staff

Pay

355. If you work part-time hours you will be paid monthly in arrears for the number of hours you are contracted to work.

Annual Leave

356. Your annual leave will be calculated on a pro-rata basis based on the number of hours worked and will be expressed in hours to take account of the variety of working patterns available. A revised annual leave allowance will be calculated for you by the FAM who will be happy to explain the calculation to you.



Public and privilege holidays

357. We use the same formula to calculate the part-time allowance for public and privilege holidays. Again, this is expressed in hours and will be calculated for you by the FAM.

Pension

358. Your pension also accrues on a pro-rata basis according to the number of hours worked.

Attendance on non-work days

359. If you are asked to work, or if you attend a training course, at a time when you would not normally work you may take time off in lieu of those hours.

360. If attendance on non-work days requires you to arrange extra child care cover, you should let your line manager know immediately what the extra cost will be. If your line manager confirms that you are required to attend these extra hours, you will be reimbursed for the extra child care costs.

361. All other terms and conditions remain unchanged.

Application

362. If you wish to apply to work part-time hours in your current job, you should do so via your HOD in the same way as that set out above in the flowchart at Section 9.2 Annex A.

363. Please ensure the time you allow between the date you make your application and the date you would like the requested flexible working arrangements to commence is sufficient to take into account the timescales set out at Section 9.2 Annex A.

364. Alternatively, you may apply for any job-share or part-time post that is advertised either internally or externally. Posts which are advertised externally are subject to the normal recruitment procedures.

365. You are welcome to discuss your application or prospective application, in confidence, with the HOOM.



Section 9.2 Annex H: Job-Share Arrangements

What is job sharing?

366. Job sharing is a form of part-time working. Job sharing is when two or more people are appointed to share the tasks and responsibilities of one full-time job. The job share can be divided on the basis of hours worked, days worked, the tasks covered, or any combination of these.
367. Unless stated otherwise, all job vacancies will be considered suitable for job share and will normally be advertised, either internally or externally. However, if you are currently working in a full-time job and you wish to job share, you should discuss the possibility of working in your current job on a job-share basis with your HOD. You may also discuss this, in confidence, at any stage with the HOOM.

Job-share arrangements

368. When it has been agreed that a particular post is suitable for job sharing and a partner is needed, the remaining part of the post will normally be advertised, either internally or externally, unless a suitable partner has been identified in some other way, for example if someone has requested job-sharing or part-time working on return from maternity leave.
369. Once a suitable partner is identified, contracts will be offered on the basis that all job-share partners accept the terms of the contract. This means that if your partner(s) reject(s) our offer, the offer made to you will be withdrawn and you will be required to return to full-time working until such time as another partner can be identified.

Specific conditions attached to job share arrangements

370. When a partner is identified and the split of work is agreed with the HOD, the job-share contract will be issued subject to certain conditions (see paragraphs 13 to 19 below).
371. Your agreed working pattern may be changed only in consultation and with the agreement of your job-share partner and your HOD.
372. To maintain continuity of the whole role, you will be responsible for communicating effectively with your job-share partner. The best way to do this might be to build a period of overlap into the working arrangements if your HOD agrees.
373. It is also important that you and your line manager and/or HOD agree individual targets and clearly define your areas of responsibility and objectives. This will ensure that you are accountable only for the delivery of your own objectives.
374. You may be offered the opportunity to cover your partner's part of the job if they are absent for any reason. If you do not wish to, or are not able to, provide such cover then other arrangements may be made. Any extra hours worked under this arrangement will be paid at your normal rate.



375. The job-share arrangements will continue until your job-share partner resigns or returns to full-time work, or until your HOD can demonstrate that the job-sharing arrangement is no longer viable.
376. If your job-share partner resigns or takes up another full-time post within OSIC, your line manager and/or HOD will assess whether there is an ongoing requirement for full-time cover. If there is such a requirement, you may be offered the post on a full-time basis. If you are unable to, or do not wish to work on a full-time basis, we will advertise the job-share post, either internally or externally. If this is unsuccessful, we will attempt to find you an alternative suitable job-share or part-time post.
377. In exceptional circumstances, where all of our options have been completely exhausted and it is still not possible to find you a replacement job-share partner or a suitable part-time or full-time post, there may be no alternative to terminating your employment. We will use this option only as a last resort.

Terms and conditions of service for job-share staff

Pay

378. You will be paid monthly in arrears for the number of hours you are contracted to work.

Annual leave

379. Your annual leave will be calculated on a pro-rata basis based on the number of hours worked and will be expressed in hours to take account of the variety of working patterns available. A revised annual leave allowance will be calculated for you by the FAM who will be happy to explain the calculation to you.

Public and privilege holidays

380. We use the same formula to calculate the part-time allowance for public and privilege holidays. Again, this is expressed in hours and will be calculated for you by the FAM.

Pension

381. Your pension also accrues on a pro-rata basis according to the number of hours worked.

Attendance on non-work days

382. If you are asked to work, or if you attend a training course, at a time when you would not normally work you will be paid for the extra hours involved or you may take time off in lieu of those hours.
383. If attendance on non-work days requires you to arrange extra child care cover, you should let your Line Manager know immediately what the extra cost will be. If your Line Manager confirms that you are required to attend these extra hours, you will be reimbursed for the extra child care costs.



384. All other terms and conditions remain unchanged.

Application

385. If you wish to apply to job share in your current job, you should do so via your HOD in the same way as that set out above in the flowchart at Section 9.2 Annex A.

386. Please ensure the time you allow between the date you make your application and the date you would like the requested flexible working arrangements to commence is sufficient to take into account the timescales set out at Section 9.2 Annex A.

387. Alternatively, you may apply for any job-share or part-time post that is advertised either internally or externally. Posts which are advertised externally are subject to the normal recruitment procedures.

388. You are welcome to discuss your application or prospective application, in confidence, with the HOOM.



Section 9.2 Annex I: Other Flexible Working Arrangements

What other flexible working arrangements are open to me without involving a reduction in hours?

389. We are willing to consider any suggestions for flexible working patterns.

Compressed Hours

390. Compressed hours is where you can work more hours each day but fewer days of the week. For example, you can compress your 37-hour week into 4 days, a 9-day fortnight, etc. This type of working pattern can be accommodated within our existing flexible working hours system, provided your HOD agrees to the change. However, if you wish to formalise the change in working pattern you should do so via your HOD in the same way as that set out above in the flowchart at Section 9.2 Annex A.

Term-time working

391. Term-time working is where you are contracted to work during term time and not during the school holidays.



Section 9.2 Annex J: Career Break Arrangements

What is a Career Break?

392. A Career Break is an extended period of unpaid leave for a specified period of between 3 months and 2 years. The purpose of a career break is to give you a break away from work for a variety of reasons whilst retaining the right to return to the same, or a similar, job, at the end of the period of the break.
393. Career Breaks can have a significant impact on the operations of a small organisation such as OSIC, and it may not be possible to approve a request if the impact would prove disruptive or uneconomic.
394. Some of the reasons for a career break might be to enable you to:
- carry out voluntary/charitable work in the UK or abroad
 - travel/live abroad
 - undertake activities beneficial to your perceived career development (but see paragraph 4 below)
 - undertake a period of secondment with another organisation
 - undertake further education not sponsored by the Commissioner
 - take extended leave for religious or other cultural reasons
 - accompany your partner to another place of work or study in the UK or abroad
 - extend your period of maternity leave, paternity leave, adoptive leave or parental leave
 - manage your personal/domestic affairs without detriment to your career
 - take time out to look after children, parents or other dependants.
395. A career break will not be permitted for the primary purpose of taking up alternative salaried or wage-earning employment. However, a career break may be granted as an alternative to a formal secondment.

Eligibility

396. To be eligible you must have been in continuous employment with the Commissioner for at least 3 years at the date of your application. You must also be performing at the standard required for your role in accordance with the Commissioner's Performance Management System.
397. Each application will be considered on its merits. The Commissioner will not discriminate in respect of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender identity, sexual orientation, trade union membership or lack thereof.
398. You will not normally be granted a second career break until at least 3 years after the completion of your previous career break. However, this 3-year restriction does not apply to applications for a career break following maternity leave where the reason for the career break is to enable you to look after a child. If you wish to take a further career break under these circumstances, you should discuss this with the HOOM in the first instance.



Conditions attached to a career break

Pay progression/Pension/Annual Leave during career breaks

399. We will treat your break as continuous employment as far as employment protection legislation is concerned. Your break will also count as reckonable service for incremental pay progression. However it will not count as reckonable for annual leave or pension purposes.

Conduct during career breaks

400. During the period of your career break, you will continue to be subject to all the normal requirements of the Commissioner relating to conduct. This means that if you breach the Commissioner's rules of conduct, you may be subject to disciplinary action in line with the arrangements set out in Section 5 above.

Vacancies

401. You may apply for all advertised vacancies during your career break. However, if you are successful you will be required to take up your new job at the time of the offer and terminate your career break at that time.

Keeping in touch

402. During your break, you will be invited to the office for important meetings, training and social events. If you are required to attend the office for anything (e.g. attending an office away day or for training etc purposes) we will pay you for the appropriate hours. Clearly, in the case of a sabbatical abroad it may not be possible for you to attend the office during your break. The HOOM is happy to discuss any alternative arrangements which could be put in place.

Returning to Work

403. As far as is reasonably practicable, you will return to the same post in which you were employed prior to the career break. Where this is not reasonably practicable, you will return to a similar job at the same grade to that held before your break.

404. You must contact the HOOM one month before the end of your break to confirm your intention to return to work.

405. If you wish to return to work before your agreed date of return, this may not be possible. However, in such circumstances, you should contact the HOOM at least 8 weeks before the date on which you would like to return to work in order to discuss your situation.

Applications

406. If you wish to apply for a career break, you should do so via your HOD in the same way as that set out in the flowchart at Section 9.2 Annex A.



407. Please ensure the time you allow between the date you make your application and the date you would like the requested flexible working arrangements to commence is sufficient to take into account the timescales set out at Section 9.2 Annex A.
408. You are also welcome to discuss your application or prospective application, in confidence, with the HOOM.



Section 9.2 Annex K: Home Working Arrangements

What is home-working?

- 409. Home-working is an arrangement whereby you work from home for all or part of your working day or week on an ad hoc or contractual basis. The Commissioner does not currently offer the option of contractual home working.
- 410. Whilst you are working at home, you will continue to be covered by the employment policies of the Commissioner, including the terms and conditions set out within this Handbook and the Data Protection Act 1998.
- 411. Home-working is not an alternative to childcare and other care arrangements. You should ensure that you are able to work uninterrupted and not whilst looking after a dependant. This may mean changing your working pattern, e.g. working in the evening when your child is asleep. If your preferred working pattern extends beyond the FWH bandwidth, you should clear any changes you wish to make with your HOD.
- 412. It is important to note that only certain Microsoft Office applications (Word, Excel, PowerPoint) will be available to home workers and corporate applications (e.g. Workpro, VC etc) are not currently home-worker enabled.

Ad hoc home-working

- 413. There may be particular circumstances where you need to work from home for a short time, on an ad hoc basis, to complete reports, or to work free from distraction. This type of home working will not require a variation to your terms and conditions of service and can be done without reference to the HOOM provided you have the prior approval of your line manager. When you are working from home you must use an OSIC supplied laptop and encrypted memory stick.

Health and safety for ad-hoc home working

- 414. The Administrators will normally provide you with guidance on how to set up your temporary working area comfortably and safely.
- 415. As in the office, you have a responsibility to report all accidents and near misses to the FAM. You also have a responsibility to record all accidents or near misses using an Incident Report form obtainable from the FAM, to whom you should return the completed form.

Security for ad hoc home working

- 416. When you are working from home on an ad hoc basis, you will be responsible for the security and safekeeping of records in your care. You must obtain your line manager's permission if you wish to take records home, and enter details into the book held in Ferrier.



Section 9.2 Annex K Appendix 1: Confidentiality and data protection

417. The Staff Manual (INV21053) provides instructions on the action required in the event that a memory stick is lost.
418. When you are working from home, you will be responsible for the security and safekeeping of records in your care. This applies to records held on all necessary electrical equipment including, for example, files and e-mails held on laptops, information held on mobile phones and memory sticks, and records printed in hard copy format. If you do print hard copy files at home, you should bring them back to the office to ensure that they are disposed of appropriately. This requirement applies especially to records containing sensitive information and personal data. “Personal data” means information relating to living individuals held either electronically or manually, and special requirements apply to the way in which it is handled.
419. Sensitive information in electronic format must only be removed from the office using an encrypted memory stick and/or an encrypted laptop.
420. If you take a laptop or any other electrical equipment containing information home, you should:
- ensure that you do not leave the laptop unattended or in use during transport
 - keep your memory stick secure
 - ensure that the information you are working with is not accessible to your family or friends and is backed up
 - copy to your laptop only the minimum of records that you require to work with at home
 - remember that you are responsible for removing data from laptops when you return them.
421. When you are working from home you must be mindful that Section 45 of FOISA (which also applies to investigations etc carried out under the EIRs) makes it a criminal offence for the Commissioner and her staff to disclose, without lawful authority, information which has been obtained by or furnished to the Commissioner for the purposes of FOISA and the EIRs and which is not, or has not been, otherwise publicly available.
422. If you need any further advice on data protection issues, please contact the HOE or DHOE.





Section 9.4 - Parental Leave

423. This is simply a summary and is not intended to change your statutory rights. Regardless of the terms of this policy, the Commissioner will comply with your statutory rights as they may be amended from time to time.
424. Unpaid parental leave of up to 18 weeks is granted to Employees for the purpose of caring for a child. These parental leave provisions comply with relevant legislation.
425. Employees are entitled to parental leave if;
- they have at least one year's continuous service with the Company and/or an associated employer and
 - they are the parent of a child under the age of 18 or have or have acquired formal parenting responsibilities for a child under 18, or
 - have adopted a child under 18 years.
 - and they have - or expect to have - parental responsibility for the child.
426. Employees who qualify for parental leave are entitled to have a maximum of 18 weeks' leave per child. The leave must be taken prior to the child's 18th birthday.
427. Leave may be taken in blocks of one week (or one day in the case of a disabled child), and a maximum of 4 weeks' leave is permitted in any one year. Leave taken with previous employers will count towards calculating the maximum entitlement.
428. Part-time Employees are permitted parental leave on a pro-rata basis
429. If you wish to apply for parental leave you must give a minimum of 21 days' notice to your HOD stating how much parental leave you wish to take and when you would like to take it. Your line manager may postpone the leave for up to 6 months where the business of the office would be particularly disrupted if the leave were taken at the time requested. If your leave has to be postponed you will be given written confirmation of the reasons for the postponement and the dates on which you may take leave. This confirmation will be given within 7 days of receipt of your application. However, your leave will not be postponed if you give notice to take it immediately after the time your child is born or placed with your family for adoption.
430. Further information on parental leave can be found on the Directgov website:

<http://www.direct.gov.uk/en/Parents/Moneyandworkentitlements/WorkAndFamilies/index.htm>



Section 9.5 - Time off for Dependants

431. You have the right to take a reasonable period of time off work to deal with an emergency involving a dependant. This is to enable you to deal with an unexpected or sudden problem and make any necessary longer-term arrangements. Examples of when you could take time off include:
- if a dependant falls ill or has been involved in an accident or assaulted, including where the victim is hurt or distressed rather than injured physically;
 - when a partner goes into labour unexpectedly
 - to make longer-term care arrangements for a dependant who is ill or injured
 - to deal with the death of a dependant
 - to deal with an unexpected disruption or breakdown in care arrangements for a dependant for example, when the childminder or nurse fails to turn up
 - to deal with an incident involving a child during school hours, for example; if the child has been involved in a fight or is being suspended from school.
432. A dependant is your partner, child or parent, or someone who lives with you as part of your family. For example, this could be an elderly aunt or grandparent who lives in the household. It does not include tenants or boarders living in the family home, or someone who lives in your home as an employee.
433. In cases of illness, injury or where care arrangements break down, a dependant may also be someone who reasonably relies on you for assistance. This may be where you are the primary carer or the only person who can help in an emergency.
434. Reasonable time off means 2 to 3 days. However, you may be able to take a longer period if this is agreed with your line manager.
435. If you know in advance that you will need time off, arrangements should be made with us to, for example, take annual leave, or parental leave, where applicable.
436. The statutory right to time off for dependants does not include a right to be paid. However, you may qualify for some paid time off if you qualify for paid special leave - see Section 9.2, Annex C.
437. You must tell your line manager as soon as possible about your absence, the reason for it and how long you expect to be away from work. If you are prevented from telling your line manager because of the nature of the emergency, you must tell him or her the reason for the absence on your return to work.



Section 9.6 - Attendance Management Policy and Procedure

Introduction

438. The Commissioner is committed to providing high-quality professional advice and support services focused on meeting the needs of applicants and its staff. The Commissioner recognises that a healthy, highly skilled and motivated workforce can contribute to that and has in place progressive employment policies and practices, one of which is an effective Attendance Management Policy to help achieve the organisation's goal.
439. The Commissioner will be sympathetic to staff who experience ill-health and will treat staff in a fair, responsible and caring manner.

Aims

440. The aim of this policy is to ensure that a clear framework is in place in order that:
- staff and managers are aware of the standards of attendance required and recognise their responsibilities in relation to attendance at work
 - a proactive approach to the management of attendance is adopted so that any possible issues or underlying causes are identified and addressed at an early stage
 - attendance is managed in a fair and consistent manner.

Scope

441. This policy and procedure applies to all members of staff employed by the Commissioner.

General principles

442. The main principles governing the attendance management procedures are that:
- In accordance with the Health and Safety Policy, the Commissioner will provide a safe working environment for you. Arrangements are regularly reviewed and appropriate information and training provided to ensure that safe methods of work are adhered to and risks minimised.
 - The Commissioner will provide you with information and support to help you to adopt a healthy and balanced lifestyle through a range of health and wellbeing services, including a confidential Employee Assistance Programme.
 - The Commissioner will not discriminate in the application of these procedures in respect of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender identity, sexual orientation, trade union membership or non-trade union membership. Reasonable adjustments will be put in place, as appropriate, to support staff with a disability.
 - The Commissioner will provide managers with regular training and guidance to support the application of this policy and to help them motivate staff to achieve high levels of attendance.



- The Commissioner encourages you to share with your managers any relevant information which may affect your work to enable any appropriate support to overcome these issues to be provided.
- The Commissioner will collect and analyse information on absence levels, including the reasons for the absence, to provide regular management information reports and will take action to identify and resolve the root cause of any emerging trends of unacceptable attendance.

Roles and Responsibilities

443. We will achieve a positive attendance culture and effective attendance management through the combined efforts of the following:

- The Commissioner has overall responsibility for providing a safe working environment.
- The HOOM has responsibility for providing professional guidance and advice in relation to the application of this policy and procedure and for organising health assessments and liaising with medical professionals as appropriate.
- Line Managers have responsibility for:
 - Directing positive action to support staff wellbeing and optimum attendance.
 - Supporting staff to achieve high levels of attendance and for managing absence in accordance with this policy and procedure.
 - Monitoring attendance within their teams and for taking early action in response to any issues identified. They will also actively contribute to the management of systems and practices that help to minimise absence levels.
 - Analysing absence data.
- The FAM is responsible for collecting and reporting absence data.
- LawAtWork will provide impartial advice, support and guidance to management.
- The Employee Assistance Programme will provide impartial advice, support and guidance to staff on health and wellbeing issues.
- You are responsible for attending work in accordance with your terms and conditions of employment, unless prevented from doing so by illness or another reason. It is up to you to ensure that your lifestyle does not adversely affect your ability to attend work. You are required to comply with the terms of this policy and procedure, including notification of absence arrangements and absence certification requirements.

Absence Notification Arrangements

444. If you are prevented from attending work through ill health, you must arrange to speak to your line manager before 10 a.m. on the day of absence indicating the reason for absence and the likely duration. It is important that you speak to your line manager as early as reasonably practicable so that he or she can reassign your workload if necessary. In exceptional circumstances, it may be necessary for you to make contact through a different route or for a relative or friend to speak to your manager on your behalf. If your line manager is not available, you should speak to the next most senior manager in the office.

445. Your line manager will enter your absence into Simply Personnel detailing dates and reasons for absence. For illness, a sickness code will be recorded. This will be used for statistical reporting purposes only. No individuals will be identified in such reports.



446. You must keep in regular contact with your manager during your absence and keep them informed about the expected length of your absence and your progress.



Absence Certification Arrangements

447. A self-certification form must be completed promptly on your return to work to cover any absence from 1 to 7 calendar days. You should pass this to your line manager on your return to work. Your line manager will then hold a return to work discussion with you as soon as is practicable, complete the form and pass it to the FAM to confirm that you have self-certified for your absence.
448. If you are absent for 8 calendar days or more, you will be required to submit a fit note from your General Practitioner or hospital covering any absence from the eighth calendar day. It is important that you submit the fit note on the day your preceding certificate runs out, to ensure that your absence is properly authorised and that you receive the correct rate and type of payment.

Statutory and Occupational Sick pay

449. If you are unable to attend work due to ill health, you are normally entitled to sick pay.
450. Provided that there is a reasonable prospect of eventual recovery and return to duty, the Commissioner may grant you sickness absence on full pay for a maximum of six months in total during any period of 12 months. You may also be paid sickness absence at half pay subject to a maximum of 12 months' sickness absence in any period of four years or less. Depending on the level of sickness absence you have incurred over the previous four years or less, half-pay or no-pay rate may commence at any time during a particular period of sick absence. You should contact the HOOM if you need any further information in relation to your particular circumstances.
451. Each normal workday you are sick (Monday to Friday) counts as a day's sickness absence. Weekends, public and privilege holidays and rest days also count if your absence begins before them and continues after them. For example, in the case of a weekend, if you are absent on both Friday and Monday you will be recorded as being absent for four days, not two. On the other hand, if you are absent on a Friday but return to work on the following Monday, you will be recorded as being absent on only one day. However, absences on weekends, public and privilege holidays and rest days are not regarded as workdays for the purposes of the Commissioner's internal sickness absence reporting figures.
452. If you fail to comply with absence notification and certification requirements, payment of statutory or occupational sick pay may be stopped and you may be subject to disciplinary action. Disciplinary action will also be considered if you are absent without authority, provide false information to a manager in relation to a self certificate or on a medical certification form, or take sick absence without legitimate reason. If you are absent from work without authority, your salary will be reduced accordingly and you may be subject to disciplinary action.



Contact

453. Your line manager will arrange to maintain contact with you at agreed regular intervals in order to:
- check on your wellbeing
 - assess what support he or she can provide
 - discuss with you a likely return to work date
 - get information to help him or her plan to cover your absence
 - check your understanding of the Attendance Management Procedures and
 - keep you abreast of developments at work.
454. You have a responsibility to respond to contact from your manager and to provide him or her with reasonable information to allow your absence to be managed effectively.
455. If your absence extends beyond a period of four weeks, your line manager and/or HOD will normally arrange to meet you, either at your home or at another mutually agreed location. The purpose of the meeting is to find out your current state of wellbeing and progress, to offer support and to discuss a timeframe for your return to work.

Return to Work Discussions

456. After each period of absence, regardless of length, your line manager and/or HOD will arrange a return to work discussion with you at the earliest opportunity. A return to work discussion provides an opportunity for your manager to:
- establish that you are well and fit to return to work
 - acknowledge your absence and confirm that your contribution has been missed
 - confirm that the record of your absence is accurate
 - determine whether there is any underlying medical condition or other contributory factor to your absence, including work-related factors
 - gather sufficient information to enable him or her to complete your sickness absence form and pass it to the FAM
 - review your attendance record and highlight any concerns
 - consider what support is appropriate, including any reasonable adjustments
 - explore the impact your absence has on work and establish priorities of work
 - confirm the details of an agreed return to work plan, if applicable.
457. Your line manager or HOD will record a summary of the discussion on the self-certification form or on the return to work discussion form and pass it to the FAM in a sealed envelope. The form will be stored in your personal file.
458. If your levels of attendance give your line manager or HOD cause for concern, he or she will bring this to your attention at the return to work discussion and arrange a further meeting with you to explore matters in further depth. It is at this stage that managers should ensure that medical information, any known disability and any other mitigating factors are taken into



consideration before they decide to invoke the formal procedures. This further discussion will be recorded, together with a note of any changes/ improvements you require to make to bring your attendance to an acceptable level. You will be asked to confirm that it is a true record of your discussion. This meeting will constitute the informal stage of the Procedures for Dealing with Unacceptable Attendance.

Phased Return to Work

459. The Phased Return to Work Policy (Annex C below) is available to support staff who have experienced a prolonged period of absence from work to return to their normal hours and duties of work in an effective and productive way that does not compromise their recovery or long-term health. The Phased Return to Work policy and procedure sets out the broad parameters within which a phased return to work programme will be supported and managed.
460. Staff who have not been absent for a prolonged period and who have medical advice recommending a phased return to work are also eligible for consideration under this policy, at the Commissioner's discretion.

Absence Flags for Consideration for Formal Management Action

461. To ensure that absence is managed in a fair and consistent manner, your manager will consider whether he or she should take further action in accordance with this policy and procedure if:
- you have had more than ten days' self-certificated absence in total within a rolling twelve-month period
 - you have had four periods of absence (including single days) within a rolling six-month period
 - any unacceptable patterns of absence emerge, for example, regular absences on Mondays and/or Fridays; absences occurring in the same week each year; absences that fall during months when no public holidays/annual leave are taken
 - you have had a continuous period of absence exceeding four weeks.
462. These flags may be adjusted for staff whose absence is related to disability. Pregnancy related illness will not be counted towards the flags.
463. The primary purpose of setting flags is to allow your manager to manage any unacceptable attendance including investigating the cause and frequency of the absences at an early stage to see whether there is any underlying medical condition. It is not to try to prove that the absences are not genuine. If there is an underlying medical condition, your manager will work to establish whether any support mechanisms can be put in place to help you to attend work to a level that is acceptable. That may include seeking professional advice from the Commissioner's external Occupational Health Adviser.
464. The Occupational Health Adviser may wish to seek information from your General Practitioner or other medical adviser and will do so only with your informed consent in accordance with the Access to Medical Reports Act 1988.



465. You should be aware that if you do not give consent, your manager will have no choice but to proceed based on the information available. You should also bear in mind that if you refuse to co-operate in the application of any the Commissioner's policies or procedures, including the Attendance Management Policy and Procedure, this may be treated as misconduct and dealt with under the disciplinary procedures.

Absence Recording

466. The FAM maintains an individual attendance record for each member of staff to enable levels of attendance to be monitored and to facilitate the identification of any particular absence patterns. Information recorded includes duration and frequency of absence. Accurate records assist with an early assessment of potential issues and allow your manager to determine what action he or she should take, in partnership with you, to improve attendance. Your manager may also use the data to initiate formal action under the procedures for dealing with unacceptable attendance if necessary. Information relating to your health will be restricted to staff who require access to the data in fulfilling the responsibilities of their job roles.

467. In accordance with the Data Protection Policy at Section 13.3, you may request access to your attendance record. If you wish to exercise that right, you should contact the FAM.

Absence Statistics

468. The FAM provides the Management Team with statistical information to monitor absence levels and trends in OSIC as a whole and to consider whether there is any need for a wider programme of positive action to address any areas of concern. Regular statistical analysis also facilitates measurement of the impact of any absence reduction initiatives and provides a useful means of benchmarking absence levels against national averages.

469. HODs are also responsible for monitoring and reviewing attendance levels within their functional areas on a regular basis and the statistical data will assist in that process and allow your managers to identify and take prompt action on any incidence of unacceptable attendance.

Monitoring and Review

470. The Commissioner will review and monitor this policy on an ongoing basis, taking into account legislative requirements and identified good practice.



Section 9.6 Annex A: The Scottish Information Commissioner's Sick Pay Scheme

Entitlement to Sick Leave

471. If you are employed by the Commissioner, you are entitled to paid sick leave. Previous service in an earlier appointment will not be aggregated with your current appointment for the purpose of determining sick absence allowance, but can be for Statutory Sick Pay purposes.

Pay during Absences on Sick Leave

472. Provided that there is a reasonable prospect of eventual recovery and return to duty, sick absence on full pay may be granted for a maximum of 6 months in total during any period of 12 months. Payment of sick absence at half pay is granted subject to a maximum of 12 months' sick absence in any period of 4 years or less. Depending on the level of sick absence incurred over the previous 4 years or less, half-pay or no-pay rate may kick in at any time during a particular period of sick absence.

473. Each normal workday you are sick (Monday to Friday) counts as a day's sick absence. Weekends, public and privilege holidays and rest days also count if your absence begins before them and continues after them. For example in the case of a weekend, if you are absent on Friday and Monday you will be recorded as being absent for 4 days and not 2. On the other hand if you are absent on Friday but return to work the following Monday you will be recorded as being absent only on one day. However, absences on weekends, public and privilege holidays and rest days are not regarded as workdays for the purposes of the Commissioner's internal sickness absence reporting figures.

Absence due to Injury, Disease or Assault at Work

474. If you are absent due to an injury sustained or a disease contracted at work, you should report the matter immediately to the HOOM since special arrangements may apply in certain cases.



Section 9.6 Annex B: Policy for Dealing with Unacceptable Attendance

Introduction

475. As an employer, the Commissioner is committed to providing a working environment and fostering a culture which actively encourages positive staff health and wellbeing and promotes work-life balance to facilitate optimum levels of staff attendance. The Commissioner values the effective and efficient provision of high quality professional advisory and support services and recognises that it is essential that staff maintain certain standards of attendance.
476. You are required to undertake your role in a professional and responsible manner and in accordance with the attendance expectations established by the Commissioner as your employer. Your line manager will inform you of the standards of attendance required of you and these will be monitored in accordance with the Attendance Management Policy above. If you are not sure about the standards of attendance expected of you, you should consult your line manager.
477. This Policy details the procedures which will be followed if you do not meet the standards of attendance expected by the Commissioner, with a view to assisting you, if appropriate, to improve your attendance to a level that is acceptable to us. These procedures do not form part of your contract of employment.
478. The procedures associated with this Policy are set out below in Annex A and a list of potential sanctions is below at Annex B.

Purpose

479. The procedures are intended as an aid to good management and are designed to ensure that if your standard of attendance is not acceptable, you are given the appropriate guidance and support to help you to improve your attendance through positive management intervention and support; or to manage, appropriately, your exit from the organisation if you are unable, through long-term illness, to meet the required standards. You should not, therefore, see them as being primarily punitive in nature, although particular circumstances may result in sanctions being imposed, up to and including dismissal. The procedures set out a clear framework to enable managers to resolve issues relating to unacceptable attendance in a fair and consistent manner and without undue delay.
480. These procedures link to the Attendance Management Policy above which is designed to ensure that managers take a proactive approach to attendance management and to identify and address any concerns at an early stage. If your attendance falls below an acceptable standard, your manager will normally address that informally in the first instance through the Attendance Management Policy. If you fail to make the necessary improvements, your attendance will be managed through the procedures attached at Annex A to this Policy. If you are unable, through long-term absence, to meet the required standards of attendance, then your absence will be managed under the Attendance Management Policy. Ultimately, however, a hearing may be



convened to consider whether you should be retired on grounds of ill-health (if you have refused to accept ill-health retirement) or dismissed on grounds of capability.

Application

481. The Policy for Dealing with Unacceptable Attendance reflects legislative requirements and takes account of relevant Codes of Practice, case law and recognised good practice. It applies to all staff employed by the Commissioner.

Definition

482. Your written terms and conditions of employment set out your normal working pattern and the hours you are required to work to meet your contractual obligations to the Commissioner as your employer. The Commissioner recognises that circumstances may arise which prevent staff from attending work due to ill-health and will approach such matters in a sympathetic and fair manner and in accordance with statutory responsibilities.

483. Unacceptable attendance may result from long-term or persistent short-term sickness absence. As an aid to consistency, the Attendance Management Policy sets out flags which, if breached, will normally result in formal action being taken under the Procedures for Dealing with Unacceptable Attendance. These flags may be adjusted to accommodate particular individual circumstances, for example, in relation to disability-related absences, pregnancy-related illness (which should be recorded but not counted towards the flags) or a history of unacceptable attendance.

484. If you are absent from work without authorisation or if there is evidence to suggest that your absence is not the result of genuine ill-health, this will be treated as misconduct and will be dealt with through the Disciplinary Procedures (see section 5).

Principles

485. The main principles governing the Policy for Dealing with Unacceptable Attendance are that:

- the Commissioner will ensure that a range of appropriate measures is in place to minimise the potential for unacceptable attendance. They include effective processes in relation to induction, probation and attendance management as well as proactive measures to support positive staff health and wellbeing
- you will be made aware of the standards of attendance expected of you through the operation of the Attendance Management Policy and discussions with your line manager
- you will be advised at the earliest opportunity, normally within the context of the attendance management arrangements, if you breach the flags set out in the Attendance Management Policy and/or your attendance is unacceptable and you will be given the opportunity to discuss this with your manager before any decision is made to use the formal unacceptable attendance procedures
- where appropriate, attempts will be made to resolve matters informally in the first instance and appropriate support will be provided to help you to improve your attendance within the context of the attendance management arrangements



- attendance which breaches the flags and/or which is below an acceptable level will be managed in a way that is sensitive to both your needs and the needs of the business. Information relating to the management of individual attendance cases will be strictly restricted and accessible only to those who need to know it in order to carry out the responsibilities of their role
- the Commissioner will not discriminate in the application of these procedures in respect of age, disability, race, nationality, ethnic or national origin, religion or belief, sexual orientation, gender identity, trade union membership or non-trade union membership. Reasonable adjustments will be put in place, as appropriate, to support staff with a disability
- at all formal stages of the procedures set out below in Annex A of this Policy, you will have the right to be assisted by a trade union representative or work colleague. “Assisted by” means that your companion may put your case forward on your behalf, sum up your case on your behalf and respond on your behalf to any view expressed at any formal meeting or hearing, including the appeal. However, the person hearing the case or the appeal has the right to put questions directly to you and to receive responses directly from you
- the procedures set out below in Annex A will be progressed without any unnecessary delay
- you will have the right to appeal against any sanction imposed, in accordance with the procedures set out in paragraphs 13 - 15 and
- the Commissioner reserves the right to invoke the procedures set out below in Annex A at any stage and to miss out a step or steps in the procedure if it is considered appropriate in the circumstances. If that occurs, reasons will be given. HODs will keep the Commissioner apprised of proposed and ongoing disciplinary matters.



Section 9.6 Annex B Appendix A: Policy for Dealing with Unacceptable Attendance

Procedures for Dealing with Unacceptable Attendance

486. In applying these procedures, managers should always consider the possibility that the member of staff may have a disability. The Commissioner must give due regard to the requirements of the Equality Act 2010 and provide “reasonable adjustments” that would enable the member of staff to perform adequately in his/her role. If a manager knows or thinks that a member of staff has a disability, he or she should contact the HOOM. Specific, tailored advice will be given on how to ensure that the individual’s needs are taken into account. Set out below is the process the Commissioner will normally follow⁴. Please note, however, that the Commissioner reserves the right to change or amend this policy from time to time.

Informal Stage

487. Prior to taking formal action, and, where appropriate, the line manager will normally deal with any attendance issues on an informal basis by taking the opportunity, normally through a return to work discussion, to:

- advise the member of staff of the attendance issue
- counsel and/or coach the member of staff on what must be done to improve and
- give the member of staff the opportunity and time to make such improvement(s).

488. This stage falls under the Attendance Management Policy where line managers should ensure that a member of staff has been given the proper support, opportunity and time to improve before they decide to invoke the formal procedure.

489. It is at this stage that line managers should ensure that medical information, any known disability and any other mitigating factors are taken into consideration before they decide to invoke the formal procedures. Where appropriate, consideration will be given to and support provided for reasonable adjustments that may be implemented on a temporary or permanent basis, depending on the circumstances.

490. Line managers may seek advice about the Procedures for Dealing with Unacceptable Attendance from the HOOM at any time. However, managers must consult the HOOM for advice and guidance prior to taking any formal action under these procedures. Line Managers will consult the HOOM if attendance levels:

- reach a flag set out in the Attendance Management Policy
- reach a flag which has been set according to particular individual circumstances and
- if attendance has not improved following attempts to resolve the matter informally.

⁴ In the event that a HOD is the subject of the Procedures for Dealing with Unacceptable Attendance, the Commissioner will normally undertake the role ascribed to the HOD in these procedures



491. If it is decided that the formal stages (as opposed to the informal stages embedded in the Attendance Management Policy) of these procedures should be invoked, then as part of Stage 1 – Investigation (below), the HOOM may seek professional advice from the Commissioner’s external Occupational Health provider. The Occupational Health adviser may wish to obtain medical information from the member of staff’s General Practitioner in accordance with the Access to Medical Reports Act 1988.
492. The informal stage will not normally apply to long-term absence caused by ill-health since this type of absence will be managed through regular contact with the member of staff throughout the absence.

Formal Stages

Stage 1 – Investigation

493. Where a line manager considers that formal action may be appropriate, he or she will provide the member of staff with a note of his or her absence record and invite him or her, in writing, to attend a formal meeting. This meeting is to allow the line manager to assess whether there is a need for the matter to progress to a formal Hearing. If the member of staff refuses to attend the meeting or is unable to attend after the line manager has made two attempts to convene it, the line manager may proceed in the member of staff’s absence. The HOOM will advise the line manager on the content of the letter inviting the member of staff to attend the formal meeting. The letter will set out clearly the reasons why attendance is unacceptable, with reference to the particular flag reached, the history of unacceptable attendance (if appropriate) and the impact on the organisation of the member of staff’s non-attendance. The member of staff is entitled to be assisted at this meeting by a trade union representative or a work colleague. “Assisted” means that your companion may put your case forward on your behalf, sum up your case on your behalf and respond on your behalf to any view expressed at any formal meeting or hearing, including the appeal. However, the person hearing the case or the appeal has the right to put questions directly to you and to receive responses directly from you.
494. Following that meeting, the line manager will produce a full report for the HOOM. If the HOOM concludes that a Hearing should be arranged, the member of staff will be invited to attend a meeting which will be chaired by the HOD.

Stage 2 – The Formal Hearing

495. The HOD will give the member of staff a minimum of 2 working days’ notice of the Hearing. At the Hearing, the member of staff may make oral and/or written representations and he or she will be entitled to be assisted by a trade union representative or work colleague. “Assisted by” means that your companion may put your case forward on your behalf, sum up your case on your behalf and respond on your behalf to any view expressed at any formal meeting or hearing, including the appeal. However, the person hearing the case or the appeal has the right to put questions directly to you and to receive responses directly from you. If the date and time of the Hearing are unsuitable for the member of staff and/or the companion, he or she can suggest an alternative date and time within 5 working days of the date originally proposed. The member of staff and his or her companion must take all reasonable steps to attend the Hearing.



496. The Hearing will normally be conducted by the staff member's HOD. When the HOD is unavailable or has had prior formal involvement in the case another HOD will hear the case. The HOOM will normally be in attendance at the hearing to provide procedural advice.
497. Having heard your representations, the HOD will adjourn to consider the evidence and to determine whether the disciplinary case has been made and, if so, whether a disciplinary sanction is appropriate. In the latter case, the appropriate level of sanction to be imposed will be discussed with the HOOM. Levels of sanction are set out in Annex B. When a decision is made, the HOD will reconvene the Hearing, on the same day if possible, and inform you of the decision, the reasons for the decision, the sanction where appropriate and the procedures for lodging an appeal including details of to whom the appeal should be addressed. You will receive confirmation of these details in writing normally within five working days of the date on which you were informed of the decision. If the sanction is dismissal, the Commissioner will ultimately make the decision and sign any letter of dismissal.

Stage 3 – Appeal

498. The member of staff can appeal against any sanction under Stage 2 of these procedures. If the member of staff wishes to appeal, he or she must set out the reasons for the appeal in writing and submit it to the HOOM within five working days of the date of written confirmation of the decision.
499. An Appeal Hearing will be arranged at which the member of staff may make oral and/or written representations and may be assisted by a trade union representative or work colleague. "Assisted by" means that your companion may put your case forward on your behalf, sum up your case on your behalf and respond on your behalf to any view expressed at any formal meeting or hearing, including the appeal. However, the person hearing the case or the appeal has the right to put questions directly to you and to receive responses directly from you. A minimum of 2 working days' notice of the appeal will be given. If the date and/or time of the Appeal Hearing are unsuitable for the member of staff and/or the companion, he or she can suggest an alternative date and time which must be within 5 working days of the day originally proposed. The member of staff and his or her companion must take all reasonable steps to attend the Appeal Hearing.
500. Appeals will be heard by the Commissioner, or she will nominate a HOD other than the HOD who conducted the Hearing.
501. Having heard the representations, the member of the Management Team hearing the Appeal will adjourn to consider the evidence and to determine whether a sanction is appropriate. The sanctions are set out in Annex B. When a decision is made, the member of the Management Team will reconvene the Hearing, on the same day if practicable, and will inform you of the decision, the reasons for the decision, the sanction where appropriate. Those details will then be confirmed in writing, normally within 5 working days of the date on which you were informed of the decision. If the sanction is dismissal, the Commissioner will ultimately make the decision and sign any letter of dismissal.
502. You will receive confirmation of these details in writing within 5 working days of the Hearing. The decision of the Commissioner will be final.



Order of Events

503. Ordinarily the Procedures for Dealing with Unacceptable Attendance will follow the sequence outlined. **However, the Commissioner reserves the right to invoke these procedures at any stage in the process where the circumstances are deemed sufficiently serious to merit it and to miss out an individual sanction or sanctions (but not any of the stages) in the procedure if it is considered appropriate in the circumstances.**
504. If at any stage during the formal procedures it has been identified that the member of staff has a disability for which a reasonable adjustment has not already been made, the procedures will be temporarily suspended to establish whether absence is related to disability and whether any reasonable adjustments need to be put in place.

Records

505. A record of any action taken and/or any sanction applied in relation to the Procedures for Dealing with Unacceptable Attendance will be kept on the member of staff's personal file in accordance with the Data Protection Policy and will be removed where appropriate after the specified time limit has elapsed.

Monitoring and Review

506. The Commissioner will review and monitor these procedures on an ongoing basis, taking into account legislative requirements, recommendations and identified good practice. The HOOM will conduct debriefing sessions with managers on the conclusion of each case to inform the continuous review and enhancement of these procedures.



Section 9.6 Annex B Appendix B: Policy for Dealing with Unacceptable Attendance

Sanctions

507. The level of sanction imposed will depend upon the circumstances of each case, for example if there has been a history of unacceptable attendance and, in particular, if there is an extant warning on the record. In exceptional circumstances, sanctions applied under these procedures may be referred to even after they have elapsed. It may be a matter for the HOOM to advise the HOD whether such exceptional circumstances arise in any particular case. It will be for the HOD to decide whether to take that into account when deciding on an appropriate sanction.

Sanction	Information	Expiry Period
Recorded verbal warning	This may be the initial action imposed in a case of unacceptable attendance. This warning will be confirmed in writing and will be retained on the personal file.	6 months
First written warning	This sanction will normally be imposed if the member of staff is not able to meet the required standards of attendance and will specify the expected standard of attendance and timescale for reaching the required standard. A first written warning will be held on the personal file.	12 months
Final written warning	This sanction will normally be imposed if the member of staff: fails to bring their attendance up to the required standard within the timescale specified in a first written warning or does not maintain the required standard of attendance during the period when a first written warning is live. and will specify a further period of time within which the member of staff must reach the required standard of attendance. The final written warning will also specify that any further breaches of attendance standards may result in dismissal.	18 months
Dismissal	This sanction will normally apply if the member of staff has: failed to bring their attendance up to the	Not applicable



	<p>required standard within the timescale specified in a final written warning or</p> <p>does not maintain the required standard during the period when a final written warning is live;</p> <p>OR</p> <p>if the member of staff has an underlying medical condition and medical advice is that he or she is unfit to do his or her job and alternatives to dismissal have been fully explored and cannot be put in place.</p>	
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508. **Staff should bear in mind, however, that the Commissioner reserves the right to invoke the Procedures for Dealing with Unacceptable Performance at any stage in the process and to miss out a step or steps if it is considered appropriate in the circumstances. If that occurs, reasons will be given.**



Section 9.6 Annex B Appendix C: Policy for Dealing with Unacceptable Attendance

Absence Management – Policy and Procedure on Phased Return to Work

509. The Commissioner is committed to providing a safe and healthy working environment for all staff. She recognises that staff who have experienced a prolonged period of absence from work due to illness or injury may require particular support in returning to their normal hours and duties of work. She aims to assist staff in such circumstances to return to work in an effective and productive way which does not compromise their recovery or long-term health, by facilitating appropriate measures to support rehabilitation. This may involve a phased return to work programme.
510. The Commissioner recognises that a phased return to work may be appropriate for staff who have not been absent for a prolonged period. Staff who have medical advice recommending a phased return to work are eligible for consideration under this policy, at the Commissioner's discretion.
511. The Commissioner recognises that the circumstances of each case of long-term absence will differ and she will deal with rehabilitation arrangements in a sensitive and flexible manner. This policy and procedure sets out the broad parameters in which a phased return to work programme will be supported and managed. This policy should be read in conjunction with the Attendance Management Policy and Procedure.
512. The Commissioner will not discriminate in the application of these procedures in respect of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender identity, sexual orientation, trade union membership or lack thereof. Reasonable adjustments will be put in place, as appropriate, to support staff with a disability.

What is a phased return to work programme?

513. A phased return to work is a supportive arrangement which may be put in place to assist your rehabilitation if you have had a period of long-term absence from work as a result of illness or injury. Long-term absence is defined as a period of 4 or more weeks continuous absence. At the Commissioner's discretion, a phased return to work may also be considered for absences of less than 4 weeks. The purpose of a phased return to work is to rehabilitate you to your full duties and to enable you to progress gradually to undertake your full normal working hours within an agreed timescale.

In what circumstances will a phased return to work programme be supported?

514. A phased return to work is only one of a range of measures which could be adopted to support your rehabilitation. The appropriateness of a phased return to work to your circumstances will depend on the nature of your illness/injury and the stage of your recovery. The Commissioner will facilitate a phased return to work programme where this is supported by medical advice, for



example, from the Commissioner's external Occupational Health Adviser, your General Practitioner or specialist.



What are the timescales involved in a phased return to work programme?

515. Any agreed phased return to work programme will be time-limited and will normally not exceed a period of six weeks. In exceptional circumstances, this timeframe may be extended, for example, where medical advice suggests this is appropriate.

How will the particular arrangement of each phased return to work programme be agreed?

516. To ensure a successful outcome, all elements of an agreed phased return to work programme require prior assessment and appropriate planning. This includes timescales, attendance patterns and duties. You and your manager will work together to establish a plan which supports your full recovery and return to your normal duties and hours on a sustainable basis. The following process will normally apply:

Medical Advice

517. Your long-term absence will be managed in accordance with Paragraphs 18-21 of the Attendance Management Policy and Procedure. In some cases, prior to your anticipated return to work, a report from the Commissioner's external Occupational Health Adviser may be obtained. The report will outline recommendations as to potential measures the Commissioner could adopt to support your rehabilitation into the workplace. This might include, for example, temporary reallocation of duties within your business area, adjustments to your working environment and/or a phased return to work. Specific advice will be provided as to the most effective application of such support measures in relation to your individual circumstances. You will be issued with a copy of the Occupational Health Adviser's report along with a copy of this policy and the associated guidance for staff.

Meeting

518. Your line manager and the HOOM will arrange to meet with you to discuss and agree arrangements for your return. Your return to work programme will be planned with reference to this policy and, where applicable, the specific advice or recommendations from the external Occupational Health Adviser.

Return to Work Plan

519. The agreed arrangements for your phased return to work programme will be detailed in a Return to Work Plan. This will include:

- the start and end date of your phased return to work programme
- your attendance pattern (your hours of work should increase incrementally over the period of your phased return to work programme)
- the arrangements for managing non-attendance associated with your return to work programme
- the duties you will undertake during your return to work programme
- any additional support which the Commissioner can provide to assist your rehabilitation



- the date for a formal review of your return to work arrangements.

520. Your Return to Work Plan is provisional at this stage, pending confirmation from your General Practitioner that you are fit to return to work.

Medical certification

521. You will have been issued with a Statement of Fitness for Work (“Fit Note”) by your General Practitioner, confirming that you are not fit for work. Once this expires, you will be deemed fit to return to work unless another Fit Note is issued which states otherwise. At this stage, the detail of your Return to Work Plan will normally be confirmed.

522. Alternatively, your General Practitioner may issue you with a Fit Note which indicates that you “may be fit for work”, subject to his or her recommendations. Consideration will be given to the suitability of implementing any such recommendations which, for example, may relate to temporary adjustments to your working conditions. Where appropriate, your Return to Work Plan will be adjusted to reflect any recommendations which are accepted.

523. If you visit your General Practitioner in advance of your Fit Note’s expiry, it would be helpful if you would show him or her a copy of your provisional Return To Work Plan to inform his or her recommendation that you may be fit for work (subject to adjustments to your working conditions). Further medical certificates will not be required relative to your phased return to work programme as you will no longer be classified as being on sick leave and sick pay will not apply.

Return to Work Discussion

524. Your line manager will have a Return to Work discussion with you on the first day of your return. This is an opportunity for your line manager to understand your state of wellbeing, bring you up-to-date with developments and to determine if there is any training or other support you might need as a result of any changes which may have been implemented in your absence. At this meeting, your line manager will also confirm the details of your Return to Work Plan with you. You should both sign the Return to Work Plan at this stage to confirm your commitment to the agreed arrangements. You should both retain a copy for future reference. A copy will be forwarded to the FAM for retention in your personal file.

What impact will a phased return to work have on my pay?

525. You will be paid at the rate of your normal contractual salary for an element of non-attendance associated with an agreed phased return to work programme. Payment will not normally exceed a total of six days non-attendance.

526. If your Return to Work Plan involves more than six days non-attendance, agreement will be reached with you as to how these additional days will be managed. Potential options include use of annual leave, flexi-time, homeworking and unpaid leave. A mixture of these options might be appropriate to your individual circumstances. Any arrangements agreed will take account of both your personal health needs and the needs of the Commissioner.



How will non-attendance associated with a phased return to work programme be recorded?

527. Days of non-attendance for which you are eligible to receive full contractual salary in relation to your phased return to work will be recorded as 'Rehabilitation Leave' in the comments column of your flexible working hours sheet.
528. If you are absent due to illness during your phased return to work, you will be classified as being on sick leave.

What happens if I am experiencing any difficulties in following my Return to Work Plan?

529. During the period of a phased return to work, your line manager will regularly discuss your progress with you on an informal basis to ensure your wellbeing and to identify any possible problems. If you are experiencing any difficulty in undertaking your phased return to work, you should bring this to the attention of your line manager at the earliest opportunity in order that adjustments to your programme can be agreed. In circumstances where major adjustments are being considered, your line manager will consult with the HOOM.
530. Your line manager will hold a formal review meeting with you at the mid-point of your agreed period of rehabilitation and a note of this meeting will be taken and shared with the HOOM. If at this stage you are experiencing difficulties relating to your recovery which impact on the Return to Work plan, the external Occupational Health Adviser may be asked to meet with you to review the situation and provide further advice. This may result in a further time-limited extension of your phased return. If it is unlikely that you will be able to return to full normal working hours and duties at the end of your agreed return to work programme, consideration will be given to a temporary contractual reduction in your working hours.

What will happen if I am not fit to return to full working hours and/or duties after the agreed period of my phased return to work programme?

531. In these circumstances, the HOOM may seek advice from the external Occupational Health Adviser. A meeting will be arranged with you, your Head of Department and the HOOM to discuss potential options. You may be accompanied by your Trade Union representative if you wish. Options to be considered may include a further time-limited extension of the phased return programme based on medical advice or a temporary contractual reduction in your working hours.
532. Ultimately, if your health difficulties mean that you are unable to resume your normal working hours and duties within a reasonable timescale despite the support measures put in place, the Commissioner will need to consider options which may include a permanent variation to your contractual hours or redeployment. Where none of these measures is appropriate due to the severity of your illness, consideration may have to be given to an application for early retirement on the grounds of ill-health, provided this is supported by the external Occupational Health Adviser.



What if I do not want to reduce my contractual working hours?

533. If you are not fit to return to your full working hours despite measures to support your rehabilitation and you do not wish to reduce your contractual working hours, you will be considered unfit for work and your sick leave will resume. Your absence will be managed in accordance with the Attendance Management Policy and Procedure and Poor Attendance procedures will be invoked should your levels of absence reach the relevant thresholds.

Policy Monitoring and Review

534. The Commissioner will monitor this policy on a regular basis and review it as necessary in light of experience and in order to reflect legislative change and best practice.



Section 10 – Leaving the Scottish Information Commissioner

Section 10.1 - Notices and reference

535. Section 10.1 forms part of your contract of employment.

Notice

536. Subject to the exceptions below, and to your contract of employment which will prevail if there is any inconsistency, you will be given the following minimum periods of notice if your appointment is terminated:

Continuous service for:

Up to 4 years	5 weeks
Over 4 years	1 week plus 1 week for every year continuous service up to a maximum of 13 weeks

537. Your employment may, however, be terminated without notice or payment in lieu of notice should you be dismissed for gross misconduct.

Ill-health retirement

538. If you are retired on medical grounds (see Section 10.2), you will be given the following minimum period of notice:

- 9 weeks, unless you agree a shorter period.

Compulsory termination of appointment

539. You will be given 6 months' notice if your appointment is terminated by reason of compulsory redundancy. This does not apply if:

- you accept flexible or approved early retirement or voluntary redundancy, where the date of termination is agreed or
- you are summarily dismissed on grounds of gross misconduct.

Compensation in lieu of notice

540. Where you are not required to work for all or part of the minimum period of notice to which you are entitled (except where you leave voluntarily before the end of the period of notice), the Commissioner reserves the right to pay you in lieu of the unworked period of notice.



Resignation

541. If you resign, you are required to give one month's notice unless a longer period is set out in your contract of employment.



Section 10.2 - Early Retirement or Severance

Introduction

542. The Commissioner will not unlawfully discriminate on grounds of age when making decisions in redundancy or severance situations. However, the benefits available under the Civil Service Pensions Scheme (CSPS) and the Civil Service Compensation Scheme (CSCS)⁵ to employees in the event of redundancy, early retirement or severance vary according to the age of the employee and their length of service.

543. This Section 10.2 does not form part of your contract of employment.

544. You can retire, or be retired early, under the following categories

- Compulsory Early Retirement or Severance.
- Flexible Early Retirement or Severance.
- Approved Early Retirement.
- Actuarially Reduced Retirement.
- Medical Retirement.

Benefits Payable on Early Retirement or Severance

545. You will find full details of the benefits payable under the various categories in the Civil Service Compensation Scheme (CSCS) and the rules of the Civil Service Pensions Scheme (CSPS) on the Civil Service Pension Website: www.civilservice-pensions.gov.uk/pensions This Section simply summarises these benefits and is not intended to change your rights in terms of these schemes.

Eligibility

546. You are eligible to receive the Early Retirement Benefits under the CSPS arrangements provided you are pensionable under one of those schemes.

547. If you choose to opt out of the CSPS, you may still be eligible for certain compensation payments if you are retired early. For further information you should contact the HOOM.

548. There is a range of schemes which provide for early retirement or severance under different circumstances and as defined by the CSCS. These are:

- **Compulsory Schemes:** the Commissioner takes the initiative under these schemes. Compulsory schemes provide for early retirement or severance on grounds of:
 - redundancy, including voluntary redundancy
 - limited efficiency (as defined in the CSCS)
 - structure.

⁵ Applies to Classic Plus, Premium and Partnership members



- **Flexible schemes:** under these schemes early retirement or severance is voluntary. Flexible schemes provide for early retirement or severance on grounds of structure to help with management problems, caused, for example, by organisational changes.
- **Approved schemes:** where volunteers might be invited if this would help solve management problems and improve overall efficiency.
- **Actuarially reduced:** if you are aged 50 or over you have the right to retire subject to giving 6 months' notice and to your actuarially reduced pension not being less than the guaranteed minimum pension.
- **Medical retirement:** you may retire voluntarily, or be retired compulsorily, on health grounds on the advice of our medical adviser in liaison with the scheme's medical adviser.

Appeals

549. You have the right of appeal against compulsory early retirement or severance. You also have the right of appeal against a refusal to retire you on medical grounds. You will be given full details of the appeal procedure if and when appropriate.



Section 10.3 - Compulsory Redundancy

General

550. Section 10.3 does not form part of your contract of employment.

Principles

551. Redundancies will be handled in a fair, consistent and sympathetic manner. All practicable steps will be taken to minimise the risk of hardship, and good employee relations practice and statutory employment requirements will be observed.

Definition of redundancy

552. Redundancy, as defined by Section 139 of the Employment Rights Act 1996, occurs where a dismissal is wholly or mainly attributable to:

- the fact that the employer has ceased or intends to cease:
 - to carry on the business for the purposes of which the employee was employed, or
 - to carry on that business in the place where the employee was so employed, or
- the fact that the requirements of the business:
 - for employees to carry out work of a particular kind, or
 - for employees to carry out work of a particular kind in the place where the employee was employed by the employerhave ceased or diminished or are expected to cease or diminish.

“Cease” and “diminish” mean cease and diminish either permanently or temporarily and for whatever reason.

Measures to avoid or minimise compulsory redundancies

553. All appropriate measures to avoid or minimise the need for compulsory redundancy will be considered. Such measures will be in accordance with the overall commitment to take all sensible steps to avoid compulsory redundancy amongst permanent staff. Measures to be considered will include (in no particular order):

- Transfer of staff to other areas of work.
- Restrictions on recruitment and/or promotion.
- Review of the use of contractors.
- Retraining of staff for redeployment to other work where vacancies exist.
- Surplus staff being allowed to block vacant posts at a lower level.
- Inviting staff to volunteer for redundancy on compulsory early retirement/severance terms.

This list is not exhaustive.



554. Where, after thorough consideration and consultation, these measures do not avoid the need for compulsory redundancy other measures may be considered.

Procedure for less than 20 affected staff

555. If the Commissioner has no alternative but to reduce the staff complement, you will be consulted on an individual basis. At these meetings you may be assisted by a trade union representative or work colleague. "Assisted by" means that your companion may put your case forward on your behalf, sum up your case on your behalf and respond on your behalf to any view expressed at any formal meeting or hearing, including the appeal. However, the person hearing the case or the appeal has the right to put questions directly to you and to receive responses directly from you.

Procedure for more than 20 affected staff

556. If the Commissioner has no alternative but to reduce the staff complement by more than 20 staff, collective consultation will commence with the appropriate representatives in accordance with obligations under statute.

Selection for redundancy

557. The group of staff within which decisions about redundancy may have to be made and the criteria for selecting staff for redundancy will be decided by the Commissioner. The criteria to be used in determining the unit of redundancy may include (in no particular order):

- Specialism or discipline.
- Functional area of work.
- Any other relevant factor.

558. In considering the selection of staff for compulsory redundancy, the criteria to be considered will include length of service and may also include others, for example and in no particular order:

- Skills or qualifications based on objective evidence: in order to ensure the retention of a balanced workforce appropriate to future needs. It may be appropriate for other aptitudes to be taken into account.
- Individual ability: ability or specialist knowledge acquired as a result of special training, or an individual's value to the objectives of the organisation.
- Standard of work performance: selection on this basis must be supported by objective evidence e.g. by appraisal assessments.
- Attendance or disciplinary records - based on records of absence which are accurate and where the reasons have been fully investigated.

559. The criteria to be used will be objective and non-discriminatory. They will be applied consistently to all employees including anyone absent from the office for whatever reason. Selection procedures will be examined carefully to ensure that unlawful discrimination does not result directly or indirectly.



Appeals

560. Staff selected for redundancy will have the right of appeal to the Commissioner against unfair application of the selection criteria.
561. If you wish to appeal you should do so in writing within 10 working days of the date of your notice of redundancy setting out clearly the grounds for the appeal. You will be given the opportunity of an oral hearing at which you may be assisted by a trade union representative or colleague. "Assisted by" means that your companion may put your case forward on your behalf, sum up your case on your behalf and respond on your behalf to any view expressed at any formal meeting or hearing, including the appeal. However, the person hearing the case or the appeal has the right to put questions directly to you and to receive responses directly from you.

Period of Notice

562. Staff will be given at least 6 months' notice if selected for redundancy. If it is not possible to give this minimum period of notice compensation in lieu of that notice, or part thereof, will be paid.

Alternative to Redundancy

563. Where vacancies exist, you may be offered a post at a different level as an alternative to redundancy. Where the pay rate for the alternative post is lower than your current salary:
- you will have your pay protected for a period of 18 months, i.e. "the protected period" during which time you will continue to progress up the pay scale for the higher grade
 - the protected period will commence on the date on which you take up your new post and will include any trial period, regardless of length and
 - at the end of the protected period you will immediately be placed on the maximum of the salary scale of the lower grade and will receive a non-consolidated compensation payment equal to 3 months' salary, based on the maximum of the salary scale of the higher grade.
564. During the protected period you will continue to be eligible to apply for a job in your old grade either through internal or external competition. In such cases you will be guaranteed an interview.
565. If you move to a post that is substantially different either in the work that is required or the grade of the post, you will be entitled to a trial period up to a maximum of nine months. The benefit of a trial period is that it gives you and your new manager an opportunity to assess whether the new role is suitable whilst protecting your right to a redundancy payment.

Pension treatment following a move to a post at a lower grade

566. A member of staff who moves from a higher to a lower paid post will receive, on retirement, whichever of the following produces the larger total pension:
- an award calculated in the normal way based on total reckonable service or



- two separate awards in respect of reckonable service before and after the change of post.

Assistance to staff

567. Staff selected for redundancy may be assisted in the following ways:

- **Retraining:** the HOOM will consider whether retraining is appropriate in individual circumstances. Retraining may be appropriate where a member of staff has served most of their career in a specialised area and needs to develop additional skills to make them more attractive to other employers.
- **Outplacement counselling:** this could include advice on finding alternative employment, investment of redundancy compensation, stress management etc.
- **Time off during notice:** Staff serving notice of redundancy will be allowed reasonable time off on full pay to look for alternative employment. Where staff obtain alternative employment sympathetic consideration will be given to allowing them to leave before the expiry of their period of notice if possible.

Compensation

568. Redundancy benefits are paid under the CSCS⁶ as provided for in the CSPA arrangements.

⁶ Applies to Classic Plus, Premium and Partnership members



Section 11 – Appeals and grievances

Definition of a grievance

569. A grievance is a complaint that you may have in relation to your work: your terms and conditions of employment, your working conditions or your working relationships and which affects you personally.
570. This grievance procedure will enable you to raise an issue with an appropriate manager and ensure that your grievance is dealt with fairly, consistently and within a reasonable timescale. The procedure reflects the ACAS Code of Practice on Discipline and Grievance which came into effect on 6 April 2009. This procedure does not form part of your contract of employment.
571. Dedicated complaint or appeals procedures exist for particular concerns including:
- harassment, bullying and victimisation
 - dismissal
 - disciplinary decisions
 - performance management issues
 - promotion, including temporary promotion
 - special leave.
572. Complaints regarding harassment, bullying and/or victimisation are taken forward under the Anti-harassment, -bullying and -victimisation policy (VC 48666) and not under these procedures.
573. Further details on all specific complaints and appeals procedures are provided in paragraph 11 below. If your complaint relates to one of the areas detailed in paragraph 11, you should follow the procedure set out in the Employee Handbook entry relating to the issue. These dedicated appeals procedures also comply with the ACAS code of practice. The grievance procedure is not to be used as an alternative to or in addition to the dedicated appeals procedures.
574. You may find yourself in the position where a particular decision affects more than one individual. In these circumstances you may raise the grievance collectively. If required, you should contact the HOOM for advice on how best to proceed. A collective grievance may be appropriate where a decision is not in the gift of the manager hearing the grievance, for example a change to working hours that affects the whole Office.
575. If the issue causing you concern is not something that could be resolved through a collective agreement, your grievance should specify how any decision affects you personally.

Raising a Complaint on an Informal Basis

576. Where possible, you should aim initially to raise any concerns or complaints you have about your work on an informal basis with your line manager or directly with the individual who has caused you to feel concerned. This may resolve the problem quickly and preserve working relationships. If resolution of the grievance requires a decision to be taken which is outwith the remit of your line manager, he or she will refer it to the appropriate person. If your grievance



relates to your immediate line manager, you may wish to raise your concerns with your HOD⁷. If your grievance is against your HOD or the Commissioner, you should seek advice from the HOOM who will arrange for your grievance to be considered by a different HOD.

Formal Grievance Procedure

577. If you consider that an informal approach is not appropriate in the circumstances or if you feel that your attempt to raise the grievance informally has not resolved your concern satisfactorily, you may wish to raise your grievance formally, in writing. If applicable, your grievance should provide details of any attempts you have taken to resolve the issue informally. The formal process is in place to:

- provide you with a course of action if you have a complaint which you are unable to resolve on an informal basis
- provide points of contact and timescales to resolve issues of concern
- try to resolve matters without recourse to an Employment Tribunal.

578. The formal grievance procedure is in three stages.

Stage 1 – statement of grievance

579. You must set out your grievance in writing making clear you are raising a formal grievance, the nature of your complaint and, where applicable, detailing any attempts you have made to try to resolve the issue on an informal basis. You should also provide an indication of what outcome you wish to be achieved. Your written grievance should normally be submitted to your HOD. If the grievance relates to your HOD and (unless you feel unable to) you have tried to resolve the matter informally with him or her, you may wish to proceed to this formal stage by raising your concern with the HOOM.

Stage 2 – the meeting

580. Grievances will be heard by a member of the Management Team, as determined by the Commissioner. The manager hearing the grievance will invite you to attend a meeting to discuss the grievance and to try to come to a solution.

581. This meeting will be held within a reasonable time and normally within 10 working days of receiving your written statement. However, the meeting may be delayed and/or a second meeting held with you, if the manager concerned needs to carry out an investigation into your complaint in order to make a reasonable response to it.

582. You have the right to be assisted at this meeting by a trade union representative or colleague.

583. Ideally, the manager concerned will inform you of his or her decision verbally and this will be confirmed in writing normally within 10 working days of the meeting. If it is not appropriate for

⁷ In the event that the Commissioner or a HOD is the subject of grievance proceedings, the Commissioner will normally undertake the role ascribed to the HOD in these procedures.



the manager to inform you of the decision verbally he or she will write to you, normally within 10 working days of the meeting, to confirm the decision and the reasons for it.

584. The manager concerned will also inform you of your right of appeal if you are not satisfied with the decision.

Stage 3 – Appeal, if necessary

585. If you do not consider that your grievance has been resolved satisfactorily, you have the right to appeal to the Commissioner.

586. If you wish to appeal, you should set out the grounds for your appeal in writing and submit it to the Commissioner within 10 working days of the date you were notified of the outcome of the formal grievance hearing. Your appeal must cover all of the relevant issues including, if appropriate, the process followed by the manager at the first stage of the procedure.

587. Appeals will be heard by the Commissioner, or she will nominate a HOD other than the HOD who heard the Grievance. You will be invited to attend a meeting to consider the grounds of your appeal. The HOOM will normally attend to provide procedural advice.

588. This meeting will be held within a reasonable time and normally within 10 working days of receiving your written statement of appeal. However, the meeting may be delayed and/or a second meeting held with you, if the appeal manager needs to carry out any investigation into your complaint in order to make a reasonable response to it.

589. You have the right to be assisted at this meeting by a trade union representative or colleague.

590. Following the appeal meeting, you will be notified of the appeal manager’s decision in writing and normally within 10 working days of the meeting.

591. The grievance procedure is complete at this stage.

Dedicated Complaint or Appeals Procedures

592. The dedicated appeals procedures referred to in paragraph 3 above are set out in the appropriate sections of the Employee Handbook, as follows:

Nature of Appeal	Section/paragraph number
Disciplinary Penalties: – Conduct – Performance – Attendance	Section 5.1, paragraphs 17 - 21 Section 6.3, Annex A, paragraphs 17 - 20 Section 9.6 Annex A, paragraphs 13 - 15
Dismissal by reason of redundancy	Section 10.5, paragraphs 13 - 14
Harassment, bullying or victimisation	See VC 48666 Anti -harassment, -bullying and -victimisation policy
Grievance	Section 11 – Stage 3



Section 11.1 - Legal Representation at Public Expense

593. You may be involved in legal proceedings or formal enquiries as a consequence of your employment. The Commissioner has discretion to grant you some or all of your legal representation or to pay for some or all of your legal costs. In deciding whether to exercise this discretion, the Commissioner will take into account the following considerations:
- Whether or not it is in the Commissioner's interest to grant assistance.
 - Whether the act in question was committed or suffered within the scope of your employment.
594. The Commissioner will provide legal representation if you are sued for damages as a result of actions carried out in the course of your employment. This representation will be by the solicitor acting for the Commissioner. Any damages and/or liability for the other side's costs will also be met from public funds. This right does not apply if:
- The Commissioner considers that you were acting outside the scope of your employment.
 - You have contravened section 45 or section 65 of FOISA.
 - You refuse to instruct the solicitor in terms required by the solicitor.
595. The Commissioner will also:
- provide legal advice if you are assaulted in the course of your official duty and give assistance with any subsequent proceedings
 - allow you to be represented by the Commissioner's legal representatives if you are involved in an inquest or fatal accident inquiry as a result of your official duty, provided there is no conflict of interest
 - when a formal enquiry might lead to you being blamed, consider, after taking legal advice, whether you should be given legal representation at public expense and
 - provide legal representation if you are sued as a result of the findings of the inquiry for actions carried out in the course of your official duty, unless you appear to have been guilty of wilful or gross negligence.



Section 12 - Employment Policies

Section 12.1 - The Commissioner's Smoke-Free Policy

596. The Commissioner is committed to providing a safe and healthy working environment for all staff. Part of this commitment will include minimising the risks caused by passive smoking. The Commissioner also has a legal responsibility to ensure, so far as is reasonably practicable, the health, safety and welfare of all staff. Individual members of staff are also responsible for taking reasonable care of themselves and others who could be affected by what they do at work. With these commitments and legal responsibilities in mind, this policy has been developed to protect all building users from exposure to passive smoking and to assist compliance with the Smoking, Health and Social Care (Scotland) Act 2005.

Who is covered by this policy?

597. The Smoke-Free Policy applies to all users of the buildings, including staff, contractors, volunteers and visitors. If you are responsible for any contractors, volunteers or visitors, you must ensure that they are aware of and comply with this policy.

Where can't I smoke?

598. You may not smoke anywhere inside the building.

Where can I smoke?

599. You may smoke, with due consideration for others, anywhere outside the building. A bin is provided outside the kitchen door for cigarette stubs. Please be aware of the possibility of smoke drifting through the windows fronting on to the smoking areas. Please also be considerate of the impact of noise levels on those working in rooms fronting on to the smoking areas.

What if I decide not to comply?

600. If you do not comply with this policy you may be subject to disciplinary action as set out in the disciplinary procedures above. Further, since it is against the law to smoke on public premises, you may also be liable to a fixed-penalty fine and possible criminal prosecution.

Where can I find help?

601. Sources of External Information and Assistance:

- Your doctor.



- The Commissioner's confidential Employee Assistance Programme (Employee Matters) on 0800 282193. Employee Matters provide a free confidential counselling service and offers general advice and support if required.

Section 12.2 - Policy on Substance Abuse

602. The Commissioner is committed to providing a safe and healthy working environment for all staff. Part of this commitment will include minimising the risks caused by alcohol and/or drug consumption or dependency. The Commissioner also has a legal responsibility to ensure, as far as is reasonably practicable, the health, safety and welfare of staff and other building users. Individual members of staff are also responsible for taking reasonable care of themselves and others who could be affected by what they do at work. This policy has been developed with these commitments and legal responsibilities in mind.
603. The Commissioner recognises such dependency as an illness that can seriously affect the health and work performance of any individual in terms of safety, efficiency, productivity and attendance. It also recognises the effects that it can have on work colleagues. We will take full account of the provisions of the Equality Act 2010 in the operation of this policy.

Who is covered by this policy?

604. This policy applies to all OSIC staff, those on secondment from other organisations and contractors. The support offered in the policy is for each employer to determine.

What is the policy?

605. The principles of the Commissioner's policy on substance abuse, which includes the use of illegal drugs, misuse of legal drugs or other substances such as solvents or alcohol, are that:
- You must not present yourself for work under the influence of alcohol or drugs. Under the influence means that there is a sufficient amount of substance in your system to demonstrate that your performance is impaired or that you are likely to pose a risk to others.
 - You must not consume alcohol in the office during normal working hours unless you have the prior agreement of your HOD. The HOD may agree to this if, for example, a small celebratory drinks party were being held to mark someone's retirement.
 - When you are performing a representational role or if you can be identified as an OSIC employee, either internally or at external functions, you are expected to adopt a mature and responsible attitude towards the consumption of alcohol.
 - You must not be in possession of or sell illegal drugs whilst on duty and/or on our premises. This is a criminal offence under the Misuse of Drugs Act 1971 and anyone caught in this position will be reported to the police and will also be investigated under the Commissioner's disciplinary procedures in relation to alleged gross misconduct. If the investigation finds that the allegation against you is well founded, you will be liable to sanctions up to and including dismissal without notice or payment in lieu of notice. You should be aware that committing an act of gross misconduct will normally result in your dismissal. If there are reasonable grounds to suspect that you are in possession of illegal drugs, the Commissioner reserves



the right to search you or your work area including your desk, pedestal, cupboards, bags and car if it is on our premises.

- You must not sell on prescription drugs whilst on duty and/or on our premises. Anyone caught doing so will be reported to the police and will also be investigated under the Commissioner's disciplinary procedures in relation to alleged gross misconduct. If the investigation finds that the allegation against you is well founded, you will be liable to sanctions up to and including dismissal without notice or payment in lieu of notice.
- With the exception of over the counter remedies, if you take any drugs at work which have not been prescribed to you on medical grounds you will, in the absence of any mitigating circumstances, be investigated under the Commissioner's disciplinary procedures in relation to alleged gross misconduct. If the investigation finds that the allegation against you is well founded, you will be liable to sanctions up to and including dismissal without notice or payment in lieu of notice.
- The Commissioner recognises that prescription and over the counter remedies can also have an effect on your performance at work. If you are in any doubt, you should discuss any possible effects with your GP. If there are any such side effects impairing your performance at work, you should inform your line manager so that he/she can take these into account and adjust your duties if necessary.

What does “if your performance is impaired” mean?

606. Your performance is impaired if you cannot carry out your duties to the standard that is normally required for your job. However, other things may have an effect on your performance at work, for example, if your breath smells of alcohol. The smell of alcohol on your breath will affect people's views, not only about you, but also about the organisation. Work and alcohol are not a good mix.

What happens if I breach the policy?

607. If you are employed by the Commissioner, you will be provided with all of the support mechanisms described in this policy. This may include a compulsory referral to the Commissioner's external Occupational Health Service provider in order to draw up and agree an assistance programme, if necessary. If you are on secondment from another organisation or a contractor, the responsibility lies with your own employer to provide support and assistance. Accordingly, if you breach this policy, your employer will be informed so that they might take any necessary action. This may result in the termination of the secondment etc arrangements.

What are the signs of substance abuse?

608. Signs of substance abuse that you might look for include:

- sudden mood changes
- unusual irritability or aggression
- a tendency to become confused
- abnormal fluctuations in concentration and energy
- impaired job performance
- poor timekeeping



- increased short term sickness absence
- a deterioration in relationships with colleagues or members
- any behaviour which may indicate the need to finance an expensive habit.

609. **Remember all the signs shown above may be caused by other factors such as stress and should be regarded only as indicators that an employee may be misusing drugs, solvents or alcohol.**

Why should I be aware of such signs?

610. The Commissioner's policy is primarily to provide support to staff who have a substance abuse problem. It is important, therefore, that if a member of staff is showing any signs of substance abuse, the appropriate support structure is put in place at the earliest possible time.

What can I do if I suspect that someone has a substance abuse problem?

Line Manager

611. Line Managers are often best placed to spot problems related to substance abuse. If you are the person's line manager you should discuss it with the individual privately. You should take time to establish whether or not there is a substance abuse problem. If there is, then you should encourage the individual to self-refer to the HOOM who will put in place the support mechanisms set out in paragraphs 11 and 12 below. If the individual refuses to self-refer, or if they fail to self-refer within 5 working days, then you must report the matter to the HOOM who will take this forward as a compulsory referral as set out in paragraphs 13 to 16 below. The HOOM will let you know what the agreed programme is and keep you up to date with progress.

Colleague

612. Colleagues are often the first to know that someone has a problem with substance abuse. Although there is often an instinctive desire to cover up for someone, this does nothing to help them. You may feel able to discuss it with him or her privately. If you do and if the person recognises that they have a substance abuse problem, you should encourage him or her to self-refer to the HOOM who will put in place the support mechanisms set out in paragraphs 10 and 11 below. If he or she does not recognise that there is a problem then you should tell them that you will raise your concerns with their line manager so that help can be arranged.

What do I do if I want to self-refer?

613. If you think that you need help, you should contact the HOOM who will arrange for you to meet with someone from the Commissioner's external Occupational Health Service provider or Employee Assistance Programme (Health Matters). The reason for this meeting will be to draw up and agree an assistance programme

614. You may also self-refer directly to the confidential Employee Assistance Programme (Employee Matters) on 0800 282193.



What is an assistance programme?

615. An assistance programme will be tailored to your own individual circumstances and may involve referral to an outside agency. Any absences from work to attend counselling sessions or rehabilitation programmes will be treated as sickness absence.



What if I don't want to self-refer?

616. The Commissioner will provide the same support and assistance as described in paragraphs 11 and 12 above but this will be done as part of our disciplinary procedures if there are no mitigating circumstances. Any action we take will take account of the Equality Act 2010.

What if I don't follow the assistance programme?

617. If you have self-referred and you do not follow the programme, you will be warned under the disciplinary procedures that failure to participate or to abide by the assistance programme will result in you being charged with gross misconduct. If the charge against you is well founded you may be dismissed without notice.

618. If you have been referred on a compulsory basis and you do not follow the programme, you will be charged with gross misconduct. If the charge against you is well founded you may be dismissed without notice.

What if I complete the programme and have a relapse?

619. If you do have a relapse, we will seek medical advice to find out how much more treatment/rehabilitation you will need to make a full recovery. We will consider each case on its own merits and on the basis of how likely it is that you will make a full recovery.

Where can I find help?

620. Sources of External Information and Assistance:

- Your doctor.
- The Commissioner's confidential Employee Assistance Programme (Employee Matters) on 0800 282193. Employee Matters provide a free confidential counselling service and offers general advice and support if required.



Section 12.3 - Data Protection Policy in relation to Employee Information

Data Protection Principles

621. As an employer, the Commissioner recognises the importance of safeguarding personal privacy when dealing with information about its staff. The Data Protection Act 1998 (DPA) requires us to inform you what data we hold on you and the purposes for which this data might be used. Additionally, the DPA requires us to process your personal data⁸ in accordance with the following data protection principles:

- Personal data will be processed⁹ fairly and lawfully.
- Personal data will be obtained only for specified and lawful purposes, and will not be processed further in any manner incompatible with those purposes.
- Personal data will be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.
- Personal data will be accurate and, where necessary, kept up to date.
- personal data shall not be kept for longer than is necessary for the purposes for which it is obtained.
- Personal data shall be processed in accordance with the rights of individuals.
- appropriate measures will be taken against unauthorised or unlawful processing of personal data and against its accidental loss, damage or destruction.
- Personal data shall not be transferred to a country outside the European Economic Area without the consent of the data subject unless that country or the transferee is deemed to ensure an adequate level of protection for the processing of personal data and the rights and freedoms of data subjects.

Why do we hold personal data about workers?

622. We collect, maintain and process personal data about employees to enable us to conduct our business, in particular our payroll and personnel functions. We also process personal data to enable us to comply with legal and tax requirements.

To whom might we disclose personal data?

623. We supply personal data to:

- individuals who are legally entitled to the information

⁸ Personal data means any information which relates to you and allows you as an individual to be identified.

⁹ Processing means obtaining, recording or holding information or data or carrying out any other operation on the information or data. This includes the organisation, adaptation, alteration, retrieval, consultation, use, disclosure or otherwise making available, alignment, combination, blocking, erasure or destruction of the information or data.



- those who provide us with electronic data processing services, technical initiatives of benefit to the Commissioner, or other professional or management services such as payroll administration, insurance, health or legal services
- any authority to which we are required by law to disclose personal data (for example, the Inland Revenue, the Health and Safety Executive etc)
- anyone to whom we are otherwise required to disclose it, such as employees seeking access to their own personal data.

Publication on the Internet

624. Generally, the only personal data which would be on the Commissioner's internet website is the name, job title, function and photograph of staff. This limited information is to enable the public to access appropriate staff in accordance with the policy to be open and accessible.

Sensitive personal data

625. Certain information about you is regarded as "sensitive personal data" under DPA. We can only process such data under strict conditions. Sensitive personal data may only be processed if:

- the individual has given explicit consent to the processing of the data or
- one of the other conditions set out in DPA applies to the processing.

626. Sensitive personal data includes any data revealing:

- your racial or ethnic origins
- your political opinions
- your religious beliefs or other beliefs of a similar nature
- your membership or otherwise of a trade union
- your sexual life
- your physical or mental health or condition
- the commission or alleged commission by you of any offence or
- any proceedings or sentence imposed for any offence committed or alleged to have been committed by you.

627. It is the Commissioner's policy at all times to keep any sensitive personal data we hold and process to a minimum. Unless we are permitted to do otherwise under DPA, we will also obtain your explicit consent before such data is processed. We may require to process sensitive personal data for the following purposes:

- in relation to your physical or mental health or condition, for the purpose of sickness records we are required to maintain relevant to your employment
- for equal opportunities monitoring and
- for any other purpose that is necessary to allow us to comply with our statutory obligations.

628. If we wish to carry out any additional processing which is not otherwise permitted under DPA and specifically by conditions in Schedules 2 and 3, we will first obtain your explicit consent to the processing.



Security of personal data

629. The Commissioner will ensure that adequate technical and organisational security measures are taken so that privacy is preserved whenever and wherever processing of personal data (including sensitive personal data) takes place. This is achieved by observance and regular review of our existing Security and IT Security Policies.

Access to personal data

630. All staff are entitled to reasonable access to their own personal data to verify it and put right any inaccuracies. The Commissioner aims to achieve an annual issue of data to all staff for the purposes of updating and correction. If you wish to access your personal data at other times, you should submit a written application (commonly referred to as a “subject access request”) to the HOOM describing the information that you seek. We will then process your subject access request in accordance with DPA. Please note that there are certain types of information that are exempt from this general right of subject access and which we may not disclose to you.

Updating personal data

631. We wish to ensure that personal data is kept accurate and up to date. If you feel that your personal data may be inaccurate please contact the FAM to discuss the matter further.

Updating the policy

632. This policy may be updated from time to time to take account of changes in technology and to reflect our legal obligations.

Misuse of employee data

633. It is an offence under DPA for employees to disclose the personal data of others to third parties or procure the disclosing of such personal data to third parties without the consent of the Commissioner. Any misuse of personal data by employees will be treated extremely seriously and may constitute a disciplinary offence under the disciplinary procedure. If you are concerned about a request to disclose any employee information please contact the HOOM.

Freedom of Information

634. As a Public Authority, the Commissioner is subject to requests from private individuals under FOISA or the EIRs. The Commissioner has a duty to provide information in response to requests made under FOISA or the EIRs subject to the exemptions, etc. contained in the legislation.

635. Amongst other things, such requests may call for the disclosure of personal data about staff. The Commissioner will apply the principles of DPA to each request and the level of disclosure will be decided on its merits. You should be aware, however, that an internal review under FOISA can overrule an initial decision that information should be withheld.



636. The Commissioner may inform and/or consult staff on certain FOI requests. The circumstances under which staff may be informed or consulted are:

Nature of Information about Employees	Staff informed or consulted
Purely incidental references to names/jobs	No
Specific enquiry about job title of identified/identifiable individuals	No
Nature of Duties (other than arising from purely incidental reference e.g. when a memo happens to disclose type of work)	Yes
Information disclosing actions taken by identified individuals in the course of work in non-controversial circumstances	No
As above but information might be expected to focus further attention on employee	Yes
Enquiries designed to ascertain actions taken by identifiable members of staff	Yes
Pay, allowances and expenses (of identified or identifiable individual rather than grade)	Yes
Any disciplinary matter	Yes
Any information about private life	Yes

637. The criteria suggested here relate only to the circumstances in which the Commissioner may inform and/or consult you about FOI requests. While the Commissioner will take into account your views about whether or not information should be disclosed, she will take decisions on the basis of the circumstances of each individual request and in the light of any relevant case law.

How to obtain further information

638. You have certain statutory rights concerning the provision by us of information regarding the manner in which we store and process your personal data. If you wish to raise an issue relating to your personal data or data protection, please contact the HOOM.

639. The rights that you have under this policy do not affect any rights that you may have under DPA or any other Act, rules or regulation.



Section 12.4 - Public Interest Disclosure Policy (Whistleblowing)

Introduction

640. The Public Interest Disclosure Act 1998 (PIDA) allows individuals to disclose certain issues to particular external parties where there is good reason to believe that internal disclosure will not be taken seriously or will cause the individual making the disclosure to be penalised in some way. However, the Commissioner is committed to dealing responsibly, openly and professionally with any genuine concern and encourages you to discuss your concerns internally wherever possible by reporting any wrongdoing or malpractice within OSIC which you believe has occurred or is likely to occur and is in the public interest.
641. The aim of this policy is to ensure that you are fully aware of the sorts of matters which you should report and the reporting procedure you should follow.

Scope

642. This policy applies to all staff engaged by the Commissioner. This includes staff directly employed by the Commissioner, staff on secondment from other organisations, agency workers and other temporary staff.

Protection and Confidentiality

643. The Commissioner will not tolerate any detrimental treatment of anyone raising a genuine concern under this policy. You have the Commissioner's assurance, therefore, that you will be offered protection if you raise any concern. We accept that you may wish to raise your concern in confidence. If you ask us to protect your identity by keeping your confidence, we will not disclose it without your consent unless we are required to do so by law. You should be assured that any matter that you report under this procedure will be taken extremely seriously and will be fully investigated. If the situation arises where it is not possible to resolve the concern without revealing your identity, we will discuss with you whether and how we can proceed.

Reporting Wrongdoing or Malpractice

644. It is the responsibility of everyone to ensure that appropriate, reasonable and timely action is taken in relation to any concerns of wrongdoing or malpractice raised that could expose the Commissioner to loss or liability. You are encouraged to report any situation or matter which you reasonably believe might show that one or more of the following has occurred, is occurring or is likely to occur in the future:
- a criminal offence
 - a failure to comply with a legal obligation
 - a miscarriage of justice
 - a danger to the health and safety of any individual
 - damage to the environment
 - a deliberate cover-up of any of the above matters



- *a serious act of misconduct (examples of which are set out in Section 5)
- *a serious breach of our conduct rules (these are set out in Section 4).

645. This reporting procedure should also be followed if you feel that you have been asked to do something which you believe to be improper or unethical or would result in you being implicated in any of the matters listed above. Please note that those marked with an asterisk are not covered by the protections of PIDA, although we will treat them as if they were if raised internally.

How to Raise a Concern Internally

646. As soon as you become aware of any matter of the type listed above, or if you wish to confirm whether it is a matter which should be raised, you should speak with your HOD or the HOOM.
647. If you decide to raise the matter under the policy, you should then report it immediately to the HOOM, or your HOD if you prefer. You may raise these concerns either orally or in writing. You are reminded, however, that e-mail is not an appropriate medium for transferring confidential information.
648. It is very important for you to report promptly any of the matters referred to above in order to assist in upholding the Commissioner's high standards and to help prevent the concealment or destruction of evidence which we might need to review.
649. Once you have told us of your concerns, we will look into the matter and make an initial assessment of what action should be taken. This might involve an internal inquiry or a more formal investigation. We will tell you who is handling the matter, how you can contact them and whether your further assistance may be needed. Subject to any legal constraint, we will keep you informed of the progress of the investigation and its outcome. You have an assurance that the matter will be dealt with promptly and within a reasonable time.
650. Although, for obvious reasons, we would not encourage matters to be raised on an anonymous basis, these will still be investigated. Anonymous disclosures are very rarely helpful since the reliability of the disclosure cannot always be readily tested.

How to Raise a Concern Externally

651. It should only be in exceptional circumstances that it should be necessary for you to raise a concern externally. It is accepted, however, that you may disclose information to a legal adviser in the course of obtaining legal advice. You should be aware, however, that PIDA states that employees would not qualify for protection if, by disclosing the information, they were committing an offence. Disclosure to an external body of information that is defined under Section 45 of the Freedom of Information (Scotland) Act 2002 is likely to be such an offence.
652. You may disclose information to the Chair of the Commissioner's Advisory Audit Board who is Jean Couper.



653. You should seek independent advice before raising concerns externally so that you can be advised as to whether the proposed disclosure may be protected under PIDA. Such advice can be obtained from the charity:

Public Concern at Work
3rd Floor
Bank Chambers
6-10 Borough High Street
London
SE1 9QQ

Telephone: 020 7404 6609
Website: www.pcaw.co.uk

654. You can be assured that no one who reports any concern under this policy in the public interest will suffer any detriment for coming forward, regardless of whether or not the concern is ultimately substantiated. Victimising staff for or deterring them from raising a concern under this policy is a disciplinary offence and will be dealt with under the disciplinary procedures (see paragraphs 19 and 20 below).

655. You should be aware that disclosure to the media or to non-prescribed persons will not usually be protected other than in extreme circumstances and that non-protected disclosures may lead to disciplinary action being taken against you (see paragraphs 19 and 20 below).

How We Will Handle Alleged Detriment

656. If you believe that you are being victimised by or suffering any detriment from someone within OSIC as a result of reporting a concern or assisting us in any investigation, you must inform the HOOM or your HOD immediately and appropriate action will be taken to protect you.

Disciplinary Action

657. Disciplinary action will be taken against anyone who:

- deliberately makes false or malicious allegations
- makes disclosures for personal gain
- makes a non-protected disclosure (see paragraph 5 for a list of those disclosures which are protected) without exhausting the internal procedure
- victimises anyone for raising a concern or making a disclosure under this policy
- inappropriately deters anyone from making a legitimate disclosure.

658. Such conduct will be treated as gross misconduct and may lead to dismissal.

659. Where, following investigation, a disclosure is substantiated, disciplinary action, in terms of the Disciplinary Procedures, may be taken against the person who is the subject of the disclosure.

Guidance on Specific Issues



660. This policy is designed to allow a channel for serious issues of public interest (i.e. inappropriate or illegal use of public resources) to be raised. It should not be used for concerns of any other nature which you feel have a particular negative impact on you and for which the normal grievance or other appropriate procedure should be used.

661. Further guidance will be issued to staff on specific issues if necessary.

Enquiries

662. If you have any enquiries about this policy, please contact the HOOM.



Section 12.5 - Policy on the use of the Internet, E-mail and Other Business Communications Systems

Scope

663. This policy applies to all OSIC staff, staff on secondment and contractors who are authorised to use the Commissioner's internet, e-mail and other business communications systems. Any references to an "employee" or "staff" shall include staff on secondment and contractors who have been issued with a user account.

Principles on the use of the internet and e-mail systems

664. The principles under which you are authorised to use the Internet and e-mail systems are as follows:

- The Internet and e-mail are business systems. The Commissioner requires that all use of the systems by you is primarily for business purposes.
- You may, however, use the systems for limited non-business use if you do so in your own time, for example during your break or before or after work provided you observe the terms of this policy. N.B. for security reasons, you may not access personal email accounts using the Commissioner's business systems.
- You may also use these systems for personal purposes in the same way that short, important, personal telephone calls are allowed (see paragraphs 692 to 695 below).
- The Commissioner may monitor and record the use of the internet and any e-mails which are transmitted over its computer system for the reasons set out in paragraphs 682 to 684 below. This means that you must not expect to have total privacy in respect of any messages you send or receive or in your use of the internet.
- All internet and e-mail use is automatically recorded by the IT systems and through these logs use can be attributed accurately to individual users. Normally we will only interrogate these logs for the reasons set out in paragraphs 689 to 691 below. However, in line with ICT security best practices, the Commissioner reserves the right to review these logs to ensure adherence to this policy.
- You are required to comply with this policy at all times. The consequences of failing to comply with the policy are set out in paragraphs 696 to 697 below. This means that all breaches in this policy will be dealt with under the disciplinary procedures.
- You must ensure you do not discriminate in respect of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender identity, sexual orientation, trade union membership or lack thereof.
- Since the technology and law in this area are subject to change, this policy will be updated from time to time. The Commissioner will bring any updated policy to your attention before it is introduced.



Commercial and legal effects of e-mail

665. The commercial and legal effects of sending and receiving e-mails are the same as any other form of written communication. The style, tone and content of e-mails have a direct effect on the way OSIC, and indeed the Commissioner himself, is perceived by others. E-mails can contractually bind the Commissioner and any commercial advice, opinion, guarantee, representation or other statement contained in an e-mail may be relied upon by third parties.
666. You must not, therefore, send e-mails which make representations, contractual commitments or any form of legally binding statement concerning the Commissioner unless you have specific authority to do so.
667. It is your responsibility to ensure that appropriate records are retained in accordance with our corporate records retention schedule, including records of any commercial or legally binding e-mails which are sent in the course of OSIC business.

Security

668. You must take all reasonable steps to ensure that you do not unnecessarily compromise the security of the Commissioner's information and associated assets. You are responsible for any action carried out under your IT account. To avoid misuse, you should lock your workstation when away from your desk and you must never divulge your password to anyone. You should also ensure that you log out of your account when you are finished. Unless you are an Administrator with authority to do so, you should never attempt to log on to, or use, a network account that is not yours.
669. Internet e-mail is not a secure means of transmitting information. It can be intercepted or can be sent to the wrong person or organisation. It can easily be copied and widely distributed. You should be aware of these hazards when you send emails.
670. All e-mails that are sent from the OSIC system automatically contain the disclaimer set out in Annex 1. You must not delete, alter or otherwise interfere with the automatic disclaimer.

Viruses

671. Viruses can be introduced into the OSIC network or transmitted to a third party's system by sending and receiving e-mail and by using the internet. The deliberate introduction of a virus onto a third party's computer systems may be a criminal offence. Accidental introduction of viruses on to a third party's computer system may, in certain circumstances, give rise to a claim against the Commissioner by that third party. You must take all reasonable steps to ensure that no viruses are transmitted by you to any third parties and to ensure that you do not knowingly allow a virus to affect the OSIC computer systems.
672. All e-mail transmitted via the OSIC network is automatically scanned for viruses whether it is being sent or received. Since a virus may, nevertheless, slip through, please beware of all unsolicited e-mails and e-mails from unknown sources. If you have any reason to be



suspicious, contact an Administrator for assistance before opening the message or attachment. If in any doubt, do not open or run any attached file.

673. From time to time, you may receive e-mails warning of computer viruses, encouraging you to forward the e-mail on to others. These are usually hoax messages designed to overload computer systems. If you receive such a message, please do not forward it but contact an Administrator immediately.

Unauthorised Use

674. Unless strictly necessary for proper conduct of your duties, e-mail and the internet must not be used for the creation, transmission, downloading, browsing, viewing, reproduction or accessing of any image, material or other data of any kind which:

- is illegal
- is unacceptable to the Commissioner, including but not limited to:
 - sexually explicit messages, images, cartoons, jokes, or any other material of a sexual nature, (including nude or partially dressed men or women);
 - malicious gossip or inappropriate personal information about others;
 - inappropriate emotional responses to others, for example e-mails that contain an aggressive or abusive tone and/or content;
 - anything which may harass, provoke, demean, degrade, threaten, victimise or discriminate against anyone else or a group of people, particularly on grounds of gender, gender identity, sexual orientation, marital, civil partnership, family or part-time status, racial group (including colour, race, nationality, national or ethnic origin), religion, disability, age or trade union membership/non membership/activities or political belief;
 - material which involves the inappropriate use of social networking sites, blogs, instant messaging, newsgroups, bulletin boards or forums. Examples of inappropriate use include posting data which breaches the confidentiality of information relating to the organisation and/or colleagues, posting information relating to colleagues which could be considered discriminatory, engagement in online dialogue regarding colleagues which could be considered "cyber" bullying and use of the Commissioner's logo or corporate branding on a personal web page;
 - material which is, or is potentially, defamatory;
 - material which does, or is likely to, introduce viruses, worms, Trojan horses, or other unauthorised software into the Commissioner's computer system (see paragraphs 9-11 above);
 - material which is concerned with your own commercial enterprise or conflicts with the interests of the Commissioner;
 - material which may be of embarrassment to the Commissioner such as making insulting or untrue statements about a company or its employees, products or services, which could then be reported as the Commissioner's official opinion or
 - material which unnecessarily disrupts the work of colleagues.

675. This list is illustrative and not exhaustive. If you have any questions as to whether a particular activity is/is not permissible, you should ask your line manager before acting. You should also note that the prohibitions in this policy still apply even if the material is located on a part of the system which is personal or password protected.



676. It is also clear that bullying and harassment can occur by electronic means (see Anti - harassment, -bullying and -victimisation policy) and that such behaviour is not determined solely on the content of such correspondence. The tone or style used when writing e-mails is also extremely important. All users must ensure that they avoid using a bullying tone or style when sending correspondence electronically.
677. These restrictions on the use of e-mail and the internet apply to both business (unless otherwise stated) and personal use. The Commissioner considers that it is important that all use is restricted in this way to avoid disruption in the workplace and embarrassment, distress or offence to others. Remember that what is offensive material is determined by the effect on the recipient, not how it is regarded by the sender.
678. It may not always be possible to avoid receiving unacceptable e-mails from others. If you receive such material you should delete it. If the sender is someone you know, you should ask them not to send such material in future. If you do not know the sender, you must not reply to the e-mail, rather you should contact an Administrator for advice. If the email is from within OSIC you should report the matter to your line manager who may wish to raise it at a higher level or with the HOOM.
679. It is also possible to enter internet sites carrying offensive material by accident, for example sites that contain pornographic, derogatory, defamatory or obscene material. If you enter such a site, such access will not be considered a breach of this policy if you immediately close your browser window and report the matter to your line manager.
680. You must not create, transmit, download or reply to chain letters, junk mail or unsolicited commercial or advertising materials. If you receive such e-mails you should delete them immediately and they should not be forwarded to anyone else, either externally or internally. If the e-mail is unsolicited, do not click on any "unsubscribe" link as this may simply confirm to the sender that your e-mail account is active.
681. You are not permitted to download any software, audio files, games etc. from the internet or to install or use any unauthorised software or hardware from home to use on the OSIC network unless such activity has been approved by your HOD. If you require any particular business related software, please submit a written request, with a full business case, detailing why the software is required.
682. You must not access or attempt to access anyone else's e-mail account without their permission. In emergency cases your line manager may authorise the Administrator to perform a password reset on your IT account.
683. You must not use e-mail or the internet to impersonate others or to forge messages or e-mail addresses. Where a message is sent on behalf of another person the message should make it clear that this is the case and should identify the writer and the sender.
684. You must not browse, access or use any internet site in any manner which breaches its published terms and conditions or download or store any material without reading and complying with any copyright or licence restrictions. In addition, you must not store any



copyright material (e.g. audio or video files) on the OSIC IT system if it is not directly related to the business of the Commissioner.

685. You must not use information feeds (an internet site that provides automatic updates of selected information from a variety of sources, e.g. news pages) unless for legitimate business purposes. For example, a legitimate business purpose might be for the HOOM to have automatic updates from a site that provides an information service on employment issues.
686. Any unauthorised use of the Commissioner's business systems may lead to the sanctions set out in paragraphs 689 to 692 below being imposed.

Additional Guidance on the use of E-Mail

687. When using e-mail OSIC staff should remember the following:

- E-mail is a form of written communication. The generally recognised standards that apply to internal memos and external letters should be observed when sending e-mails.
- In line with Commissioner's Records Management policy and procedures, you should file all essential sent and received e-mails in VC, Workpro or ACT! to create a record for ease of retrieval. You should delete all other messages (which do not require to be retained) on a regular basis.

Privacy and Monitoring

688. It is not the Commissioner's intention to monitor and/or record routinely any e-mails which are transmitted over the Commissioner's computer system or your use of the internet, including the nature of material downloaded from the internet. However, this information is automatically logged by the IT systems and we may, from time to time, monitor the systems for the following purposes:

- To ensure the Commissioner's practices, policies and procedures are being followed.
- To investigate or detect the suspected unauthorised use of the Commissioner's computer system.
- To secure the effective operation of the Commissioner's computer system.
- For the purpose of preventing or detecting crime.

689. If you are absent from work, or in the event of an emergency it may be necessary to check your inbox to ensure that mail items are dealt with appropriately in your absence. Under normal circumstances you will have given permission to another member of your team to access your inbox. However, there may be times when this is not possible and permission will be given to another work colleague. This will only be done if requested of the Administrator by your line manager. E-mails which are clearly personal or private will not be checked unless we have your prior permission.

690. This policy will be operated in line with the Commissioner's Data Protection Policy in relation to employee information.



Use of Office Telephones

691. The Commissioner recognises the occasional need to make short, important, personal telephone calls during work hours and expects you to use your personal mobile phone for these. However, the Commissioner's network may be used occasionally for such calls when this is not possible. You may not, however, make personal use of international calls, unless:

- you are working abroad and have come to an arrangement with your line manager or
- you make arrangements to reimburse the cost of the calls.

Use of other Business Communications Systems

692. If you have been supplied with an office mobile phone, you may only use it for personal calls if:

- you have reached an agreement with your line manager as to what are reasonable personal calls or
- you inform your line manager and make arrangements to reimburse the cost of these calls, if they amount to more than £5:00.

693. You may also occasionally use the fax system for personal use.

694. You may not, however, under any circumstances, use the Commissioner's postage or stationery for personal purposes.

Breaches of the Policy

695. OSIC staff who breach this policy will be dealt with under the disciplinary procedures. If the breach is considered to be gross misconduct, the penalty will normally be summary dismissal without notice or compensation in lieu of notice. Offences include intentional viewing or downloading of pornographic or other derogatory, defamatory, obscene or inappropriate material.

696. Where a breach or an alleged breach of this policy involves harassment or discrimination, this may be reported or dealt with under the Anti-harassment, -bullying and -victimisation Policy at VC 48666. Again, depending on the severity of the offence, the breach may be considered as gross misconduct.

697. Contract staff found to be in breach of this policy will be reported to the contract manager and may result in the abuser's services being terminated under the terms of the contract.

698. If we suspect that the Commissioner's business systems are being used for anything illegal, we will report these concerns to the police or any other relevant authority.



Section 12.5 Annex 1: The SIC disclaimer

699. If you are not the intended recipient of this email (and any attachment), please inform the sender by return email and destroy all copies. Unauthorised access, use, disclosure, storage or copying is not permitted.

Any email including its content may be monitored and used by the Scottish Information Commissioner for reasons of security and for monitoring internal compliance with the office policy on staff use. Email monitoring or blocking software may also be used.

The Scottish Information Commissioner cannot guarantee that this message or any attachment is virus free or has not been intercepted and amended. You should perform your own virus checks.

<http://www.itspublicknowledge.info> or email:enquiries@itspublicknowledge.info

Scottish Information Commissioner, Kinburn Castle, Doubledykes Road,
St Andrews, Fife, KY16 9DS

Tel: 01334 464610 Fax: 01334 464611

Think before you print



Section 12.6 – Social media policy for employees of the Scottish Information Commissioner

Introduction

700. This section sets out the Commissioner’s policy on personal use of social media and the Commissioner’s social media communications. It sits alongside and is complementary to the Commissioner’s other policies:
- Equalities and diversity policy (see Section 2), including the associated Anti-harassment, -bullying and -victimisation policy (VC 48666)
 - Conduct principles and rules (see Section 4 of this Handbook), including: confidentiality and official information; standards of propriety; political neutrality and general standards of behaviour
 - Disciplinary policy (see Section 5)
 - Public interest disclosure (see Section 12.4)
 - Policy on the use of internet, email and other business communications systems (see Section 12.5)

Scope

701. This policy applies to all forms of social media and social networking sites, including Facebook, LinkedIn, twitter, Wikipedia and all other internet postings, including blogs.
702. It applies to the use of social media for both business and personal purposes, whether during or outwith office hours. The policy applies regardless of whether the social media etc. is accessed using the Commissioner’s IT systems and equipment or equipment belonging to individual staff.

What this means for staff

703. Social media should never be used in a way that breaches any of the Commissioner’s policies.
704. When using social media, either in a personal or professional capacity, you should exercise caution when posting content which relates to your professional life.
705. You must exercise the same discretion in social media as in all other forms of communication. You must be extremely careful not to make available information which should be withheld. You must ensure that you do not disclose any information which would result in a breach of section 45 of FOISA. More generally, you must also consider how a post, link, comment or blog might be perceived by third parties. Ask yourself, for example, could it be seen to:
- compromise your own, or the Commissioner’s, professional impartiality?
 - compromise the core values of the organisation?
 - bring you, or the organisation, into disrepute?
 - be a conflict of interest with your professional role?



706. Staff must not provide references for other individuals in social or professional networking sites – such references can be attributed to the Commissioner and create legal liability for both the author and the Commissioner.
707. If you are approached to speak on behalf of the Commissioner, remember that only the Commissioner can provide comment. You should immediately refer the request to your line manager.
708. If you are in doubt about whether a proposed action might breach these standards, the best advice may be not to act until you have had the opportunity to discuss it with your line manager.

Use of social media as a private individual but not under or in the name of the Commissioner

709. You are not discouraged from using social media such as Facebook, twitter, LinkedIn and blogs in your own time to communicate with friends and contacts. However, you should never forget that you are publicly associated with working for the Commissioner. There is no difference when it comes to social media.
710. You may say on your social media profile that you work for the Commissioner. Do not add “OSIC” or “Scottish Information Commissioner” to the name of your Facebook page or twitter account (lest people assume that they are visiting a corporate page). And do not use the Commissioner’s logos or other branding. There should be a clear division between the Commissioner’s pages and any personal pages. Where you have declared your employer, always make clear that any views expressed are personal and not those of the Commissioner.
711. You can discuss the work of the Commissioner’s office publicly but you have to be careful not to commit an offence or bring the organisation into disrepute. Do remember that even though you may have locked down the security settings in your account, anyone who can read your posts can also copy and publish them somewhere else – and there’s nothing you can do about it. The BBC helpfully describes its own guidance to employees as “don’t do anything stupid”.
712. Here are some important “don’ts”:
- Don’t forget the importance of political neutrality - you must not take part in any political or public activity (including campaigning) that compromises your professional impartiality, nor take part in any surveys or research projects if they deal with attitudes or opinions on political matters or matters of policy (see Section 4.3).
 - Don’t say anything that compromises the independence and impartiality of the Commissioner and her office.
 - Don’t say or do anything that brings the Commissioner or her office into disrepute.
 - Don’t sound off about things in an openly partisan way.
 - Don’t criticise colleagues or other people associated with your work, including applicants, authorities, enquirers, requesters and contractors.



- Don't use your work email address for personal use of social media.
- Don't breach copyright

713. And some “dos”

- Share the Commissioner's news if you want to – you can link to news releases and statements or retweet the Commissioner's tweets. But don't issue “scoops” – if it's not already in the public domain, we're not ready to share. It's generally wise not to share decisions – others may draw inappropriate conclusions about your motivation.
- If you're considering setting up a blog or personal website in which you identify yourself as an employee of the Commissioner, consult your line manager first to ensure that impartiality and confidentiality are maintained.

The Commissioner's Facebook page

714. The Commissioner's page is a corporate communication – while the messages are conveyed through social media they are just as carefully managed as any we issue.

715. There are two key differences with the Facebook page:

- Anyone can “like” the page and like or comment on posts – it is much more interactive than our other communications.
- “Likes” and comments on posts bear the Facebook page address of the author.

Liking the Commissioner's page and posts on the page

716. If you “like” the Commissioner's page, only the page administrators can see your identity.

717. But if you “like” a post on the Commissioner's page, other visitors will be able to link to your personal pages.

718. You can, of course, restrict the amount of information that visitors can see on your personal page, but bear in mind that Facebook regularly makes changes to its privacy settings and you do not have control over those changes.

Commenting on posts on the Commissioner's page

719. The Commissioner has developed a set of procedures for the Facebook page (VC 21528) including how comments are managed by the P&I Team. Other employees should not “like” or comment on posts on the Commissioner's Facebook page without first consulting HOPI or their line manager. Remember that, in framing any comments for the page, you should consider yourself to be “at work”.



Document Control Sheet

Document Information	
Full name of current version: Class, Title, Version No and Status.	C5 Employee Handbook v07 CURRENT ISSUE
VC File Id	17556
Type	Policy
Approver	SMT
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Corrections / Unplanned or Ad hoc reviews (see Summary of changes below for details)	
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Summary of changes to document				
Date	Action by (initials)	Version updated (e.g. 01.25-36)	New version number (e.g. 01.27, or 02.03)	Brief description (e.g. updated paras 1-8, updated HOPI to HOOM, reviewed whole section on PI test, whole document updated, corrected typos, reformatted to new branding)
30.04.12	JAW	7.0	7.1	<ul style="list-style-type: none"> Changes to Standards of Propriety P18, section 4.2 Changes and Updates – Statutory Maternity Rights P64-66, section 9.2, Annex D, Appendix 2 Changes and updates to Paternity Leave Page 67, Section 9.2 Annex E Change references to the SIC from 'he' and 'his' to 'she' and 'her' Throughout document Change chair of AAB Page 138, Section 12.4 para 645
21.06.12	JAW	7.1	7.2	<ul style="list-style-type: none"> Fire Safety Policy Page 14, para 35 References to CHAS changed to Workpro Page 84, Para 395; page 141 para 681 Reference to paragraph numbers amended to reflect correct paragraphs
28.02.13	DL	7.2	7.3	<ul style="list-style-type: none"> Phased Return to Work – requests without a prolonged absence may be considered at Commissioner's discretion Page 95, Para 455 Page 108, Para 505 & 508
04.06.13	DL	7.3	7.4	<ul style="list-style-type: none"> Organisational Chart – updated to reflect current structure Page 8 Salary Scales – updated wef 1 April 2013. Page 42 Para 157 Parental Leave - entitlement increased from 13 to 18 weeks. Page 90, Para 426
05.11.13	JAW	7.4	7.4	Addition of 'hospitality' to clarify that this is also considered a 'gift' which should be declared in the Register of Gifts. Page 17. para 52



08.04.14 ¹⁰	JAW	52 (INVU version)	53	Salary scales updated to reflect pay increase 01.04.14 page 42 para 157
08.04.14	JAW	53	54	Changes to version 53 accepted
27/05/14	DL	54	55	Page 42 – para 57 – change table header from 01/04/13 to 01/04/14
26/08/14	JAW	57	59	Section 9.1 changes to flexi leave procedures.
26/08/14	JAW	59	60	Insertion of paragraphs re Employees with less than two years' service in sections 5.1 and 6.3; replacement of 'in good faith' with 'in the public interest' in section 12.4, Public Interest Disclosure Policy
27/08/14	DL	60	61	Minor revisions 26/08/14 accepted
27/08/14	JAW	61	62	Table of Contents updated
30/10/14	DL	62	64	Paragraph cross references corrected at para 665
08/04/15	DL	64	67	Text sufficient time is allowed for applications for flexible working – paras 234,354,377,398
06/08/15	JAW	67	69	Amend para 461 - addition of 'in a sealed envelope'
07/08/15	DL	69	71	Accept amendment
07/08/15	KB	71	72	DCS updated with publish details. Published on website
17/11/15	JAW	72	73	Update of INVU references to VC
17/11/15	MK	73	74	Opened in editing mode in error
15/12/15	JAW	74	75	Updates from Law at Worek recommendations. Update of salary scales.
26/03/17	DL	79	80	Para 664 updated – access to personal email accounts prohibited DCS style updated
30/03/17	KB	80	81	DCS update, published on website
22/02/18	KB	81	82	DCS updated, published on website
25/10/18	KB	82	83	Review date amendeded, published on website

¹⁰ Version numbers adopt revised naming convention from here (i.e. 'major version.invu version')

