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**NATIONAL JOINT COUNCIL
FOR LOCAL AUTHORITY
FIRE AND RESCUE SERVICES**

**To: Chief Fire Officers
Chief Executives/Clerks to Fire Authorities
Chairs of Fire Authorities
Directors of HR (Fire Authorities)**

Members of the National Joint Council

4 April 2020

CIRCULAR NJC/2/20

Dear Sir/Madam

**ANNUAL LEAVE – RETAINED DUTY SYSTEM
CALCULATION OF PAY**

1. From 6 April 2020, in circumstances where a worker's pay varies from week to week, the current reference period of 12 weeks for calculating holiday pay under the Working Time Regulations 1998 will be increased to 52 weeks, or, the number of weeks for which the employee has been employed if this is fewer than 52 weeks.
2. As is currently the case, weeks in respect of which no remuneration was payable by the employer to the worker are excluded and earlier weeks are brought in instead. However, the length of time for which an employer must go back to find weeks where pay was received will be limited to 104 weeks.
3. Where there are no weeks to take into account (e.g. a new employment), an assessment will have to be made of the amount that fairly represents a week's pay taking into account such things as the amount offered to the employee as remuneration in respect of the employment or the amount received by other workers engaged in comparable employment.
4. Section 4, part C, paragraph 6 of the Grey Book currently states:

'A week's pay during a period of annual leave shall be the average weekly wage as defined in Appendix C, paragraph C.'
5. With effect from 6 April 2020, the Grey Book will be amended to reflect the now different position in respect of RDS leave, as set out in this circular.

6. Section 4, part C, paragraph 6 will be amended to read:

‘A week’s pay during a period of annual leave shall be the average weekly wage as defined in Appendix C, paragraph D.’

7. In addition, with affect from 6 April 2020, a new Appendix C, paragraph D will be added and will read:

“For an employee working on the retained duty system where the “average weekly wage” (or “remuneration”) applies this shall mean the employee’s average weekly wage or remuneration in the previous 52 weeks, or, if less, the number of complete weeks during which the employee has been employed excluding any week in which she or he has been on sick leave or received no pay. The employer will not be required to look back more than 104 weeks before the start of the leave period in question. When the number of weeks in which remuneration was payable in the past 104 weeks is less than 52 then the average calculation will be based on the actual number of weeks in which remuneration was payable during that time. Where there are no weeks in which remuneration is payable, the employer will make an assessment of the amount that fairly represents a week’s pay taking into account such things as the amount received by other workers engaged in comparable employment. For those cases where the employee has no previous weeks it is important to provide the method of calculating the payment in detail, which the employee may wish to discuss with their trade union representative and/or the HR department. Where there has been an increase in the rates of fees or payments during the 52 week reference period or, if less, the number of complete weeks during which the employee has been employed, the new rate shall be used to make the calculation as if it applied throughout the reference period. Further, given that the annual retainer will continue to be paid during periods of paid sick leave or other paid authorised absences (subject to any reduction to half payment in accordance with Section 5, Part B, paragraph 10), payment of the retainer should be disregarded when calculating average weekly wage.”

8. For the avoidance of doubt, other provisions in the Grey Book refer to Appendix C, paragraph C for other purposes, for example:

- Leave for public duties
- Maternity, Paternity and Adoption leave
- Sick pay

These remain correct and unchanged.

Yours faithfully

NAOMI COOKE
MATT WRACK