

## LOROL Proposal on Holiday Pay Premium (HPP) – April 2016

### Background

The European Working Time Directive was written into UK law in the form of the Working Time Regulations which came into force in 1998 and were later amended in 2003. A number of key employment tribunal cases have tested this law in relation to holiday pay to focus on whether additional payments to employees which they receive over and above their basic salary (such as overtime or commission payments) should be included in the calculation of holiday pay. There are two ongoing cases of note: *Fulton & Baxter v Bear Scotland* and *Lock v British Gas*.

At this point in time, we do not legally have to implement any changes to our current arrangements for holiday pay.

### Summary of the Proposal

- Payment of Holiday Pay Premium (HPP) is to be effective from 1<sup>st</sup> April 2015. It should be noted that a number of system changes will be required and therefore implementation may be delayed. However, a back payment to this date would be made to reflect this when implemented.
- Employees currently eligible to receive Annual Leave Premium (ALP) will not be affected by this proposal and will not receive HPP. Existing ALP arrangements will remain in place and further discussions will take place with the recognised Trade Unions for grades in receipt of ALP.
- HPP to be paid annually as a lump sum in the final pay period of the tax year based on certain qualifying variable elements of pay earned during the same tax year. Calculation of HPP is set out in the following proposal:

### Detailed Proposal

#### *Scope*

- 1.0 This arrangement will apply to employees of LOROL (including West Anglia) covered by existing collective bargaining agreements with the exception of those already eligible for ALP. They will become eligible for certain enhancements to basic pay, known as 'Qualifying Variable Elements' (QVE). A list of the QVE can be found in Appendix 1. Any other enhancements or further enhancements agreed in the future will not be used for the calculation of HPP.
- 1.1 Contractors, secondees from parent company organisations or agency employees working at LOROL are not affected by this agreement.

### *Existing Annual Leave Premium (ALP)*

- 2.0 Current arrangements for ALP will continue for those grades currently eligible for ALP. Employees in grades currently eligible for ALP will not be eligible to receive HPP.

### *Calculation Formula*

- 3.0 HPP for each employee will be based on their individual earnings, using the QVE they have earned as set out in Appendix 1.

The reference period used to calculate HPP for the first and subsequent holiday years will correspond to the tax year and equate to the 13 pay periods prior to the 5<sup>th</sup> April each year.

- 3.1 The formula will be as follows:

QVE (see Appendix 1 for a list of what will be included) received during the reference period x 4/52 (7.69%) = HPP.

This can be simplified as: QVE x 7.69%.

### *Payments*

- 4.0 HPP will be paid as a lump sum in the final pay period of the tax year, based on the QVE paid in that complete tax year.

- 4.1 HPP will be subject to deductions required by law such as tax and National Insurance. HPP will be non-pensionable.

### *New Starters*

- 5.0 New starters who were not employed throughout the whole reference period will have their HPP calculated based on the proportion of the reference period they have been employed. The formula of QVE x 7.69% applies.

### *Leavers*

- 6.0 Employees who leave part way through the reference period will be paid any outstanding HPP which is owed to them. This will be calculated using the formula QVE x 7.69%. The reference period will be based on the beginning of the tax year to their last day of employment.

Employees who have left LOROL before HPP is agreed but after 1<sup>st</sup> April 2016 will be able to write to LOROL to request that their HPP be calculated and paid to them.

### *Maternity Leave, Adoption Leave, Shared Parental Leave*

- 7.0 Employees who have been absent from work due to Maternity Leave, Adoption Leave or Shared Parental Leave during the Reference Period will have their HPP calculated as if they had been at work for the whole reference period by annualising the QVE earned during the part of the Reference Period they were at work and multiplying by 7.69%.

### *Part Time Employees*

- 8.0 Part time employees will have their HPP calculation applied in the same way as full time employees by multiplying the QVE earned during the reference period by 7.69%.

### *Extended Unpaid Leave*

- 9.0 Employees who have had a period of extended unpaid leave (lasting 20 working days or more) during the reference period will have their HPP calculated by multiplying the QVE earned during the reference period by 7.69%.

### *Current year calculation (2015-2016)*

- 10.0 Payments received in 2016 will be based on the reference period 1<sup>st</sup> April 2015 to the end of the 2015-16 tax year.
- 10.1 For employees recently transferred from Abellio Greater Anglia, payments received in 2016 will be based on the reference period 31<sup>st</sup> May 2015 to the end of the 2015-16 tax year.

### *Terms of agreement*

- 11.0 The Company and its recognised unions recognise that there continues to be legal challenges surrounding the application and calculation of HPP. If agreed, this proposal will be jointly reviewed as required to consider changes in the prevailing UK law.

In addition, the Unions accept that all employee claims relating to HPP for the period up to the 1<sup>st</sup> of April 2016 are settled by the Company's payment of backdated HPP to employees calculated in accordance with clause 3.

The Unions also agree not to submit any claims or support any employee(s) in submitting claims, current or in the future, made against the Company relating to HPP unless any such claim asserts that the Company has failed to correctly apply this Agreement.

As LOROL is in the last 12 months of its concession, any agreement reached with the unions will be subject to shareholder and TfL approval prior to final formal agreement and implementation.

Appendix 1: Summary of basic pay elements (not included in the calculation of Holiday Pay Premium) and the Qualifying Variable Elements (which will be included in the calculation of Holiday Pay Premium).

<b>LOROL</b>	
<b>Basic Pay Elements Summary</b>	<b>Qualifying Variable Elements Summary</b>
Additional Allowance	Higher Grade Duty
Additional Non Pen Pay	Overtime including overtime on HGD
Additional Pen Pay	Rest Day Worked including on HGD
Location Payment	Worked Sunday
London Allowance	Management Overtime
Basic Pay	
Redeployment Adjustment	
SMP	
OSPP	
SAP	
SSP	
ASPP	

<b>WAI</b>	
<b>Basic Pay Elements Summary</b>	<b>Qualifying Variable Elements Summary</b>
Additional Non Pen Pay	Overtime
Redeployment Adjustment	Basic Pay Enhancements
Annual Sunday Allowance	Drivers Sunday Allowance
Basic Pay	Higher Grade Duty
London Allowance	IUP (irregular and unsocial hours payment)
Relief Allowance	Rest Day Work
Shift Allowance Commercial	Rest Day worked on Sunday Allowance
SMP	Worked Sunday
OSPP	Worked Bank Holiday
SAP	Minder Payments
SSP	
ASPP	

Appendix 2: Examples of the proposed Calculation of Holiday Pay Premium:

<b>Role</b>	<b>Value of Qualifying Variable Pay Elements</b>	<b>Holiday Premium Pay</b> Qualifying Variable Pay Elements * 7.69%	<b>Annual Holiday Pay Premium</b>
Driver	4000	4000*7.69%	307.6
Control	3400	3400*7.69%	261.46
RPI	8000	8000*7.69%	615.2
Customer Host	11000	11000*7.69%	845.9
HQ	150	150*7.69%	11.54