

PERSONNEL COMMITTEE

17 APRIL 2007

MATERNITY PAY AND LEAVE POLICY

REPORT OF DIRECTOR OF HUMAN RESOURCES

Contact Officer: Julia Buchanan Tel No: 01962 848392

RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

This report sets out the new legislative entitlements for maternity pay and leave that will apply to employees with babies due after 1st April 2007. The attached Maternity Pay and Leave Policy reflects these changes and gives guidance to employees and managers on their benefits and responsibilities.

RECOMMENDATION:

That the Director of Human Resources be authorised to implement the changes to the Maternity Pay and Leave Policy.

PERSONNEL COMMITTEE17 April 2007MATERNITY PAY AND LEAVE POLICYREPORT OF DIRECTOR OF HUMAN RESOURCESDETAIL:1 Introduction

1.1 The Work and Families Act 2006 has introduced new legislative entitlements for maternity pay and leave that will apply to employees with babies due after 1st April 2007.

2. Council Policy

2.1 The amended Maternity Pay and Leave Policy as shown in Appendix 1 effects these changes and aims to give greater guidance to employees and managers on their benefits and responsibilities.

2.2 In addition to the legislative requirement, the Local Government entitlement which is covered by the National Agreement on Pay and Conditions of Service (NJC Green Book) still continues. This allows employees who intend to return to work to the equivalent of 12 weeks half pay from week 7 of their maternity leave.

3. Summary of New Entitlements

3.1 A brief summary of the new entitlements are shown as follows:

Where the EWC begins before 1 April 2007	Where the EWC begins on or after 1 April 2007
<i>Qualifying criteria for additional maternity leave (AML)</i>	
A woman is entitled to AML if she is entitled to ordinary maternity leave (OML) and has at least 26 weeks' continuous service at the beginning of the 14th week before the EWC	A woman is entitled to AML once she is entitled to ordinary maternity leave (OML). A woman will therefore no longer have to have at least 26 weeks' continuous service by the beginning of the 14th week before the EWC in order to qualify for AML.

<i>Notice periods for early return from maternity leave</i>	
<p>If a woman wishes to return to work before the end of her maternity leave, she must give her employer at least 28 days' notice of the date of her early return. If the woman fails to do so, the employer can postpone her return by up to 28 days (but not beyond the end of the maternity leave period to which she is entitled).</p>	<p>If a woman wishes to return to work before the end of her AML, she must give her employer at least eight weeks' notice of the date of her early return. If a woman wishes to change that date to an earlier date, she must give the employer at least eight weeks' notice of the earlier date. In a case where a woman fails to provide the employer with the required eight weeks' notice, the employer can postpone her return to work by up to eight weeks (but not beyond the end of her AML).</p>
<i>Reasonable contact with a woman during her maternity leave</i>	
<p>An employer has no statutory right to make reasonable contact with a woman while she is on maternity leave.</p>	<p>The employer and the employee are entitled to make reasonable contact with each other while the employee is on maternity leave. For example, an employer may contact the woman to discuss whether or not her planned date of return to work has changed or is likely to do so, or to discuss any flexible working arrangements that would make her return to work easier.</p>
<i>Working during the maternity leave period</i>	
<p>A woman who works for her employer during her maternity leave will bring her maternity leave to an end.</p>	<p>A woman may work for her employer during her maternity leave for up to ten days (also known as 'keeping-in-touch' days (KIT)) without bringing her maternity leave to an end. A manager cannot insist that an employee carry's out any work and an employee has the right to refuse to work. Equally, an employee cannot insist on being given any work to do. The timing of these KIT days should be left to the employer and employee to agree but they cannot be taken during the 2 weeks immediately following the birth. Working for part of one day will count as one day.</p>

<i>The duration of the Maternity Pay Period (MPP)</i>	
The MPP is a period of 26 consecutive weeks.	The MPP is a period of 39 consecutive weeks. SMP is £112.75 per week from 1 st April 2007 (or 90% of earnings, if less). The first 6 weeks of SMP will continue to be paid at 90% of earnings.
<i>Working during the MPP</i>	
If an employee works for her employer for any part of any week during the MPP, she will lose her statutory maternity pay (SMP) for that week.	If an employee works for her employer for any part of any week during the MPP on a 'keeping-in-touch' day, she will not lose her statutory maternity pay (SMP) for that week.
<i>Maternity Allowance</i>	
If the employee is not entitled to SMP she can claim Maternity Allowance (MA) from Jobcentre Plus. This allowance is paid at the same flat rate as SMP or 90% of earnings of less and for the same period, i.e. 26 weeks.	Employees will now receive MA for 39 weeks if they do not qualify for SMP.

4. Consultation

- 4.1 Unison has been informed of the legislative changes and the policy amendments.

5. Future Reviews

- 5.1 This policy will be reviewed, in consultation with Unison every three years, subject to changes in legislation, as part of a programme of policy review.
- 5.2 Work is continuing on the introduction of a Pay and Reward Strategy and in the future this policy will be incorporated into these documents.

OTHER CONSIDERATIONS:

6 CORPORATE STRATEGY (RELEVANCE TO):

- 6.1 The policy is linked to the need to continuously improve services and to ensure that the staffing resources within the Council meet business needs through the contribution to the recruitment, retention and motivation of staff.

7. RESOURCE IMPLICATIONS:

- 7.1 The financial implication of implementing the changes detailed above is minimal. The period of Statutory Maternity Pay has increased from 26 weeks to 39 weeks at a cost of £112.75 per week as at the 1st April 2007. The Council claims 92% of this amount back. The Council has on average between 12 to 15 employees taking Maternity leave per year.
- 7.2 The length of Maternity Leave period has not changed and therefore there are no additional resource implications as a direct result of this new legislation.

BACKGROUND DOCUMENTS:

Held within Human Resources Directorate.

APPENDICES:

Appendix 1 Maternity Pay and Leave Policy

MATERNITY LEAVE AND PAY POLICY

Contents

Policy

1. Introduction
2. Maternity Rights
3. Health and Safety
4. Time off for Antenatal Care
5. Sickness During Pregnancy
6. Maternity Leave
7. Contract of Employment During Maternity Leave
8. Maternity Pay
9. Notice of Return to Work After Maternity Leave
10. Rights On and After Return to Work After Maternity Leave
11. Protection Against Detriment or Dismissal on Grounds of Pregnancy or Childbirth

Appendices

- 1 Calculation of a Week's Pay
- 2 Glossary

Document Control

Version	V1.0	Title	Maternity Leave & Pay Policy
Issue Date	March 2007	Author	HR Advisor

MATERNITY LEAVE AND PAY POLICY

1. INTRODUCTION

- 1.1 The Maternity and Parental Leave etc Regulations, which came into force on 15 December 1999, together with the provisions of the Employment Rights Act 1996, as amended by the Employment Relations Act 1999, the Employment Act 2002 and the Work and Families Act 2006, set out the framework for maternity rights. These 'family friendly' measures were designed to improve and simplify the statutory maternity scheme and to assist parents to balance work and family life.
- 1.2 This Policy takes account of the new legislative changes under the Work and Families Act 2006 and the objective of this Policy is to give guidance to managers and employees on the benefits and responsibilities for any employee who is pregnant and her rights in relation to returning to work.
- 1.3 This policy contains information on maternity leave, maternity pay and other issues relating to pregnancy and maternity.

2. MATERNITY RIGHTS

2.1 All employees are entitled to:-

- special consideration with regard to health and safety
- paid time off for antenatal care
- protection against unfair treatment or dismissal
- 26 weeks' ordinary maternity leave
- 26 weeks' additional maternity leave

2.2 Qualifying employees are also entitled to:-

- maternity benefit (Statutory Maternity Pay or Maternity Allowance)
- occupational maternity pay

3. HEALTH AND SAFETY

- 3.1 Whilst an employee is not obliged to notify their manager of their pregnancy until the qualifying week, the Council's Health & Safety Policy requires employees to take care of their own safety and to co-operate with the Council to enable it to discharge its health and safety responsibilities successfully. As a consequence they should inform their manager if they are unable to carry out any working activity in a safe manner or without risk to their health and safety.
- 3.2 Therefore, they are strongly advised to inform their manager of their pregnancy at the very earliest opportunity to enable them to arrange for a risk assessment relating to the working activities and environment. This will establish what, if any, action is required to safeguard the employee's health and well-being and/or that of their unborn child.

- 3.3 Where an unacceptable risk is identified, the Council will take protective or preventative measures to eliminate it. Where this will not avoid the risk, the employee may find that one of the following steps is taken:-
- if it is reasonable to do so, the employees working conditions or hours of work will be altered;
 - if it is not reasonable to make such alterations, or if the risk cannot be avoided in this way, the employee will be offered suitable alternative work;
 - if no suitable alternative work is available, the employee will be suspended from work, that is given paid leave, for as long as necessary to protect their safety or health.
- 3.4 If the employee is offered suitable alternative work but they are not prepared to do it, they will lose the right to be paid during suspension.
- 3.5 The need to undertake risk assessments and alter working practices etc. apply if the employee is pregnant, has given birth within the previous 6 months or if they are breastfeeding. Therefore, where appropriate, another risk assessment will be undertaken upon their return to work, and if, for health and safety reasons, they are still considered to be at risk, alternative arrangements may be put in place.
- 3.6 If the employee has any further concerns or queries about the effects of their work on their own or their unborn baby's health, they should contact their manager immediately.

4. TIME OFF FOR ANTENATAL CARE

- 4.1 An employee is entitled to take paid time off, including travel and waiting time, at their normal rate of pay, during their normal working hours to receive antenatal care. Antenatal care may include relaxation and parent craft classes as recommended by the employee's general practitioner or midwife on a clinical basis, as well as medical examinations.
- 4.2 The employee should advise their manager that they will be absent as far in advance of their appointment as they can and try to arrange them as near to the start or end of the working day as possible. With the exception of their first appointment, they must provide evidence of their future appointments if requested to do so by their manager.

5. SICKNESS DURING PREGNANCY

- 5.1 If an employee becomes ill while they are pregnant they will receive their normal entitlement to sick pay, whether or not their illness is pregnancy related. They must not remain at work if they have been certified medically unfit to do so.
- 5.2 If a pregnant employee is absent from work because of a pregnancy related illness and their illness continues or starts after the beginning of the 4th week before the week in which their baby is due, they will automatically transfer at that point to the maternity scheme. Non-pregnancy related illness during this 4 week period will be treated as normal sickness absence.

5.3 Maternity leave will not be treated as sick leave and will not therefore be taken into account for the calculation of the period of entitlement to sickness leave.

6. MATERNITY LEAVE

6.1 Timing of maternity leave

6.1.1 An employee can choose to start their maternity leave at any time after the start of the 11th week before the week in which their baby is due. Maternity leave will start on a Sunday.

However, in the last 4 weeks prior to the EWC, an employee's maternity leave will begin on the day after they are absent from work wholly or partly due to pregnancy related illness or suspension from work for pregnancy related health and safety reasons.

6.2 Early birth

6.2.1 Maternity leave will start on the day after an employee's baby is born if this is earlier than their notified leave date.

If an employee's baby is born before a maternity certificate has been issued, one should be completed by their general practitioner or registered midwife showing the date their baby was born as well as the date the baby was expected. They must, if reasonably practicable, provide their manager with this certificate within 28 days.

6.3 Death or stillbirth

6.3.1 If an employee's baby dies or is stillborn after 24 weeks of pregnancy this scheme applies. Where this occurs before 24 weeks (miscarriage) the Council will give sympathetic consideration to the circumstances and will, where necessary, grant special leave or sick leave, as appropriate to individual circumstances. This decision will be based upon medical advice and the employee's own individual needs.

6.4 Entitlement to ordinary maternity leave

6.4.1 All employees are entitled to a period of 26 weeks **ordinary maternity leave**. To take advantage of this maternity leave, an employee must give their manager proper notification (see section 9).

6.5 Entitlement to additional maternity leave

6.5.1 All employees are entitled to a period of 26 weeks **additional maternity leave**. This runs from the day after the last day of the ordinary maternity leave period and continues for a further 26 weeks. To take advantage of this maternity leave, an employee must give your manager proper notification (see section 9).

6.6 Compulsory maternity leave

6.6.1 All employees must take 2 weeks **compulsory maternity leave** beginning on the day that their child is born.

6.7 Notification requirements

6.7.1 An employee will be required to notify their manager in writing of their intention to take maternity leave by the qualifying week (this is the 15th week before the EWC) unless this is not reasonably practicable. Employees should complete the Notification of Maternity Leave and Pay form found in Appendix 1. They will need to tell their manager:

- that they are pregnant
- the date their baby is expected to be born (attach MATB1 if available)
- when they want their maternity leave to commence

6.7.2 If the employee wishes to change the date of commencement of their maternity leave they will need to tell their manager at least 28 days in advance of the new commencement date (unless this is not reasonably practicable).

Note: Medical evidence usually in the form of a maternity certificate (known as a MAT B1) will be required for Statutory Maternity Pay purposes. The earliest this can be obtained from a general practitioner or registered midwife is the 26th week of pregnancy.

6.7.3 An employee can give their manager their notification on any day of the week but their leave must start on a Sunday.

6.7.4 It is essential that a pre-maternity discussion is arranged between the employee and their line manager. See Managers Checklist for guidance.

6.7.5 Once notice of maternity has been received, the HR Department will write to the employee confirming the maternity leave, on the basis of the employees maternity leave entitlement, and stating the date on which the leave will end. The employee should normally receive this letter within 28 days of the HR Department receiving the Notification of Maternity Leave and Pay Form from the employee.

7. THE CONTRACT OF EMPLOYMENT DURING MATERNITY LEAVE

7.1 The contract of employment continues throughout ordinary and additional maternity leave unless an employee or the Council expressly end it or it expires (for example, temporary contracts).

7.2 Maintaining Contact During Maternity Leave

7.2.1 An employee and their manager are entitled to have reasonable contact with each other to ensure that the employee is kept up to date with departmental changes, vacancies, plan the return to work and any other matters relevant to the employees of the Council. The mode of contact (e.g. face to face, email, by phone) is to be confirmed and agreed prior to the commencement of maternity leave. Contact during maternity leave does not bring that period to an end. Reasonable contact does not constitute 'work' as described in 7.3 below, and would not therefore count towards the 10 days.

7.3 Working During Maternity Leave

- 7.3.1 For the purposes of this provision, 'work' is defined as any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the workplace. An employee may agree with their manager to come to work for up to 10 days during the maternity leave period without bringing that period to an end as a result of carrying out the work. Working for part of a day will count as one day. Note: the employee cannot work during the compulsory maternity leave period i.e. the first 2 weeks' of childbirth.
- 7.3.2 There is no statutory entitlement to these work days. A manager cannot insist that an employee carry's out any work and an employee has the right to refuse to work. Equally, an employee cannot insist on being given any work to do. The maternity leave will not be extended due to the fact that an employee has carried out some work in this period.
- 7.3.3 The manager and employee will agree before maternity leave commences what type of work may be appropriate.
- 7.3.4 The employee will not lose their right to SMP as a result of working up to 10 days and they will be entitled to receive their salary based on their contractual pay. Any SMP, OMP or MA received will count towards that remuneration, which will not exceed full pay. To claim for hours worked the employee will need to email an HR Advisor who will update Selima.

7.4 Terms and Conditions During Maternity Leave

7.4.1 Annual leave and Bank Holidays

- i) The employee is entitlement to annual leave remains unaffected by maternity leave. The amount of annual leave that they have accrued in the current leave year will be dependent upon the timing of their maternity leave.
- ii) Subject to agreement by their manager, the employee should ensure that they take their accrued annual leave prior to the commencement of their maternity leave. The balance of annual leave can be taken following their return to work. Employees are permitted to carry over 5 days annual leave to the following leave year with their manager approval in line with Council policy.
- iii) Should the employee resign during, or at the end of their maternity leave, they may be entitled to payment for the balance outstanding.
- iv) The employee should ensure that they do not have a credit or debit for hours worked in relation to the Council's flexi-time system before they start their maternity leave.
- v) The employee is entitled to all her terms and conditions during the period of her OML (the first 26 weeks). As a result, a substitute day's leave should be given for any bank holidays that fall during this period.

7.4.2 Local Government Pension Scheme

- i) Pension contributions will be deducted in the normal way from any payment the employee receives during their maternity pay period.

- ii) Any maternity absence which is unpaid will be treated as a break in service for occupational pension purposes unless the employee chooses to pay voluntary contributions. These contributions will be based on the reduced remuneration that they were entitled to receive immediately before the unpaid period. When they are not receiving any payment, they will be invoiced by the Payroll section each month.

Further advice can be obtained from Hampshire County Council Pension Services Section on 01962 841 841 or email: pensions@hampshire.gov.uk .

7.4.3 Contract Hire car

- i) The agreement made with the employee under the company car scheme makes no provision for the return of the vehicle in the event of maternity leave. Therefore, the employee is able to continue to use the car in accordance with the conditions of the scheme for the duration of their maternity leave. However, the provision of the car remains subject to statutory deductions (i.e. income tax and National Insurance contributions) and the appropriate adjustments will be made.
- ii) For employees who contribution towards the cost of their lease car their contribution will be deducted as usual during their period of paid maternity leave. When they are not receiving any payment or when there is a shortfall, they will be invoiced by the Payroll section each month.

7.4.4 Essential User Car Allowance

- i) If the employee is an essential car user, their monthly allowance will continue to be paid in full for the first 3 months of their maternity leave. For the following 3 months they will receive 50% of the allowance and after this time the allowance will be suspended until they return to work.

7.4.5 Car Loan scheme

- i) The terms and conditions contained in the Council's car loan agreement apply throughout the period of the employee's maternity leave. Therefore, they are required to continue to make the appropriate repayments throughout their maternity leave period.
- ii) During the period of paid leave, repayments will be deducted as usual. Where there is a shortfall, the employee will be invoiced by the Payroll Section each month for the contribution outstanding.
- ii) Should the employee decide not to return to work, they will be invoiced for the full outstanding amount which will be payable immediately.

7.4.6 Standby Duty Payments

- i) During the period of the employee's maternity leave they will not be required to undertake standby duty and therefore they will not receive any standby payments.

7.4.7 Maternity and Continuous Service

- i) If the employee returns to local government service following a break for maternity reasons, they will be entitled to have previous service taken into account in respect of the provisions relating to sickness payments and maternity leave provided that the break in service does not exceed 8 years and also provided that no permanent full-time paid employment has intervened.

For the purposes of the calculation of annual leave entitlement, the 8 years' time limit does not apply, provided that no permanent full-time paid employment has intervened. (Purple Book section 1 para 16)

7.4.8 Flexible Working Arrangements

- i) The Council will consider any request the employee may make to reduce their working hours or change their working pattern when they return from maternity leave in line with the Flexible Working Policy and will offer a return to work on a flexible basis wherever possible. The employee may wish to explore this with their manager either before or during their maternity leave and set out their proposals as soon as possible in advance of their return, in order to provide adequate time for full consideration of their request.

7.4.9 Council Property

The employees should return any Council property (i.e. mobile phone, laptop, keys, manuals, protective clothing etc) during the period of OML and AML. This applies to employees who work from home and/or whose normal place of work is located at one of the Council's offices. There may be a need for the individual who is employed to cover for the absent employee to use the equipment supplied to the employee on maternity leave.

8. MATERNITY PAY

- 8.1 Entitlement to maternity pay is determined by various factors, including length of service and earnings, and therefore the HR Department in conjunction with the Payroll Section will assess the employee's eligibility and entitlements on an individual basis.

- 8.2 There are two types of maternity pay – Statutory Maternity Pay (SMP) and Occupational Maternity Pay (OMP).

8.3 STATUTORY MATERNITY PAY

- i) SMP is paid to the employee by the Council on behalf of the Inland Revenue and is paid for a period of 39 weeks, known as the Maternity Pay Period (MPP).
- ii) SMP usually starts on the day OML begins or, if triggered by birth or pregnancy related absence, the day after the day of birth or on the day after the 1st day of absence respectively
- iii) SMP is not payable if the pregnancy ends before the 24th week other than by live birth.

iv) The calculation of a 'week's pay' is shown in Appendix 1

8.3.1 The Right to SMP

- i) If the employee is pregnant or has just given birth, they are entitled to a maximum of 39 weeks' SMP providing that they:-
- have been continuously employed by Winchester City Council for at least 26 weeks continuing into the qualifying week (the 15th week before the expected week of childbirth);
 - have average weekly earnings over the 8 week period prior to the qualifying week of not less than the lower earnings limit for the payment of National Insurance contributions which applies at the end of the qualifying week. If the employee participates in the Busy Bees Childcare Vouchers and has a salary sacrifice during this period of time this will reduce the amount of salary that is liable to National Insurance Contributions and, therefore, reduce the entitlement to SMP.
 - still be pregnant at the 11th week before the baby is due or have had their baby by that time;
 - Give at least 28 days notice before their absence is likely to start, or as soon as is reasonably practicable;
 - have notified their manager of the date of commencement of their maternity leave;
 - have stopped working for the Council wholly or partly because of pregnancy or confinement.
- ii) If the employee meets all of these conditions, they qualify for SMP whether or not they intend to return to work after their baby is born, or even if they leave the Council's employment before they want their SMP to start.

8.4 Non entitlement to SMP

8.4.1 If the employee does not meet the criteria above and is not entitled to SMP or if their circumstances change (see section 9.5) and they stop getting SMP, the Payroll Section will provide them with form SMP1 which states the reasons why the Council cannot pay them SMP. They will also be given back any maternity certificate they have provided.

8.4.2 The employee may be entitled to receive Maternity Allowance (MA) if they do not qualify for SMP. They will need form SMP1 and their maternity certificate to claim MA. This benefit is paid to them directly by JobCentre Plus.

8.4.3 The employee must claim MA if they are entitled to receive occupational maternity pay but are not eligible to receive SMP. They should inform the Payroll Section immediately if they receive MA as this allowance will be offset against any occupational maternity payments made to them.

8.5 Changes in Circumstances

8.5.1 The employee cannot continue to receive SMP if, during the maternity pay period:

- they start work or return to work after their baby is born, for an employer who did not employ them in the qualifying week; or
- they are taken into legal custody (this means that they have been detained, usually arrested or in prison) or;
- they attend work on more than ten occasions. (See section 7.3)

8.5.2 The employee (or a person acting for them, if applicable) is responsible for informing the manager if their circumstances change in any of the ways described above.

8.6 The Rate of SMP

8.6.1 SMP is payable for a maximum of 39 weeks and there are two weekly rates of SMP:-

i) Earnings Related Rate:

This is equivalent to 9/10^{ths} of average weekly earnings and is payable during the first 6 weeks of the maternity pay period. As a general rule, gross earnings will be averaged over the 8 weeks up to and including the last payday before the end of the qualifying week.

ii) Flat Rate:

This is a flat rate which is reviewed each year and paid for the remaining 33 weeks of the maternity pay period. The rate at 1st April 2007 is £112.75.

8.7 Multiple Births

There is no entitlement to additional SMP for multiple births.

8.8 OCCUPATIONAL MATERNITY PAY

8.8.1 Entitlement to occupational maternity pay

The employee qualifies for occupational maternity pay (OMP) if they have completed **1 year's continuous local government service or more** at the beginning of the 11th week before the week in which their baby is due. They must also satisfy the following criteria:

- still be pregnant at the 11th week prior to the EWC, or have given birth by that time;
- have stopped work due to pregnancy or childbirth;
- have given written notification of their intention to return to work as a condition of receiving the 6 weeks full pay element of OMP whilst on maternity leave. Statutorily an employee does not have to state their intention to return, however in order to receive OMP they must give this indication. An employee, who does not return or has not verified their employment with another local authority, may be liable to repay any OMP received. This is because Occupational Maternity Pay is made on the understanding that the employee will return to local authority employment for a period of at least 3 months.

8.8.2 The rate of occupational maternity pay

- i) For the first 6 weeks (weeks 1 – 6) of the employee's maternity leave they will be entitled to 9/10^{ths} (90%) of their average weekly earnings. This is offset against payments made by way of Statutory Maternity Pay or Maternity Allowance if the employee is not eligible for SMP (this means that you will not receive two lots of payments).
- ii) For the next 33 weeks the employee will receive their entitlement to the flat rate SMP which is £112.75 as at 1st April 2007.
- iii) In addition to the SMP, employees can receive the equivalent of 6 weeks full pay to be paid over 12 weeks at 50% of pay, over 20 weeks at 30% of pay or over 33 weeks as 18.19% of pay. Alternatively the employee can have the 6 weeks pay paid to her as a lump sum on her return. The payment begins in the 7th week of maternity leave.
- iv) If the employee's half pay plus SMP (or MA and any dependants' allowances if they are not eligible for SMP) comes to more than full pay, it will be reduced accordingly.

8.8.3 Conditions attached to receiving half pay

- i) The employee will receive 6 weeks' pay on the understanding that they will return to work for the Council for **at least 3 months**. Should they not do so, they will be required to refund all of the 6 weeks pay. They do not have to refund any payments made to them by way of SMP.
- ii) If they are unsure about their intention to return to work after their maternity leave, the Council can retain the 6 weeks pay until they do return, providing that they inform the Payroll Section of their request *before* they start their maternity leave.

8.8.4 Payment of Statutory and Occupational maternity pay

- i) During the employees maternity absence, the payments due to them will be paid in exactly the same way as they receive their salary at the moment.
- ii) SMP is subject to income tax and National Insurance contributions. Any deductions which are lawfully made from pay, for example pension contributions, trade union subscriptions etc, will also be made from SMP, if applicable.
- iii) If the employee has certain things deducted from their salary, for example, car loan, Council Tax, rent, etc, these will continue to be deducted from any payments made to them.
- iv) The Payroll Section will inform an employee if they need to make alternative arrangements at any time during their maternity leave to ensure that they do not fall into arrears.
- v) Note: For the calculation of SMP previous continuous service with a different local authority is not included. It is the length of service with Winchester City Council that is considered. Previous local government service is taken into consideration when calculating length of service for OMP.

9. NOTICE OF RETURN TO WORK AFTER MATERNITY LEAVE

9.1 Notice required for return to work

- 9.1.1 If the employee intends to return immediately after the end of their additional maternity leave period (52 weeks), they do not need to give advance notice of their return. Their date of return will be their next normal working day after the end of their 52 weeks maternity leave period (i.e. their first normal working day of the 53rd week).
- 9.1.2 Whilst the employee is under no obligation to do so, it would assist the Council if they could confirm as soon as convenient during their maternity leave that they will be returning to work as expected.
- 9.1.3 However, if they wish to return to work earlier than the end of their entitled maternity leave period, they must give their manager at least 8 week's notice of their return date. If they do not provide this notice, the Council may postpone their return for a period of up to 8 weeks, or until the end of the maternity leave period, if this is sooner.
- 9.1.4 At the very least the employee must take 2 weeks' compulsory maternity leave beginning on the day that their baby is born. Should they decide to return immediately after the compulsory leave period, they may be required to provide their manager with a certificate from their general practitioner, which states that they are fit to work. The Council will pay for this certificate.

9.2 Notice required if the return to work date is changed

- 9.2.1 If the employee wishes to change the date of return from maternity leave, they are required to give 8 weeks notice.

9.3 Employees who do not wish to return to work after maternity leave

- 9.3.1 If the employee decides that they do not wish to return to work after their ordinary or additional maternity leave period, they must provide their manager with a written statement of their resignation giving the notice required by their Contract of Employment. If they had opted to receive their occupational maternity pay and then choose either not to return to work, or to return to work for less than 3 months, they will be required to refund all or part of this payment.

9.4 Sickness at the End of Ordinary or Additional Maternity Leave

- 9.4.1 If the employee is unable to attend work at the end of their ordinary or additional maternity leave period due to sickness, the normal contractual arrangements for sickness absence will apply.

10. RIGHTS ON AND AFTER RETURN TO WORK AFTER MATERNITY LEAVE

10.1 Return to work after ordinary maternity leave

- 10.1.1 The employee is entitled to return to the same job on the same terms and conditions of employment as if they had not been absent.

10.2 Return to work after additional maternity leave

10.2.1 After additional maternity leave the employee will have the right to return to the same job on the same terms and conditions as if they had not been absent, unless that is not reasonably practicable, in which case they will be entitled to be offered suitable alternative work which has the same or better status and terms and conditions as their old job.

10.3 Return to work and redundancy

10.3.1 If a redundancy situation has arisen either during the employee's maternity leave or upon their return to work, they have the right to be offered a suitable and appropriate alternative vacancy, where there is one, with employment rights that are not substantially less favourable than they had before.

11. PROTECTION AGAINST DETRIMENT OR DISMISSAL ON GROUNDS OF PREGNANCY OR CHILDBIRTH

11.1 Regardless of an employee's length of service, they have significant protection to ensure that they do not suffer detriment or are dismissed for a reason connected to their pregnancy or recent childbirth.

11.2 Detrimental treatment

11.2.1 An employee's right not to suffer detrimental treatment at work begins as soon as they have told their manager that they are pregnant and lasts up to the end of their ordinary or additional maternity leave. Detrimental treatment in this context does not include dismissal or unfair selection for redundancy on grounds of pregnancy or maternity, as this is a separate right.

ii) An employee must not be subjected to unfair treatment at work because they:

- are pregnant,
- have given birth,
- have taken, or sought to take, ordinary or additional maternity leave,
- have taken, or sought to take, any of the benefits of ordinary maternity leave,
- have been suspended from work for health & safety reasons connected to their maternity.

iii) They may seek redress through an employment tribunal if they believe that they have been unfairly treated at work for these reasons.

11.3 Protection from unfair dismissal during pregnancy or maternity leave

11.3.1 It is unlawful for an employer to dismiss an employee, or select them for redundancy in preference to other comparable employees, for reasons connected with:

- their pregnancy,
- childbirth,
- maternity suspension on health & safety grounds,
- taking, or seeking to take, ordinary or additional maternity leave,
- taking, or seeking to take, any of the benefits of ordinary maternity leave.

11.3.2 An employee is entitled to make a complaint of unfair dismissal to an employment tribunal if they are dismissed or selected for redundancy in these circumstances.

11.3.3 They may also be able to claim unlawful discrimination on grounds of sex or marriage.

11.3.4 If an employee is dismissed they are entitled to their normal notice or pay in lieu of notice.

11.3.5 An employee dismissed on the grounds of redundancy may also be entitled to a redundancy payment. In addition, an employee absent on ordinary or additional maternity leave has the right, in the event of redundancy, to be offered a suitable alternative vacancy where one is available.

11.4 Written statement of reasons for dismissal

11.4.1 If an employee is dismissed at any time during pregnancy or ordinary or additional maternity leave, they are entitled to receive an accurate written statement of the reasons for their dismissal. They do not have to request the statement and this right applies regardless of their length of service.

11.4.2 An employee can make a complaint to an employment tribunal if they are not provided with a statement, or they receive a statement that they consider to be inadequate or untrue.

11.5 General Advice

11.5.1 The employee is strongly encouraged to use their right to return to work. If they resign instead of taking maternity leave, they give up their right to return to work at a later date.

11.5.2 All maternity leave is counted as continuous service for the purposes of calculating any service-related rights. Thus, once they return to work, their length of service with us is calculated as if they had never been absent.

11.6 Problems

11.6.1 Maternity should be a very happy time and we all hope that nothing will go wrong, but occasionally there are problems. If something does go wrong the employee can contact the HR Department who will help as best they can. All information will be treated confidentially, but obviously there will be some circumstances where further advice or help will be needed. This will be discussed fully with the employee.

Appendix 1

CALCULATION OF A WEEK'S PAY

A week's pay is calculated in one of the following ways depending upon the employee's working hours:-

Normal working hours: where their normal working hours do not vary with the amount of work done in the period, a week's pay is the amount payable to them by the Council under their current contract of employment for working their normal working hours in a week.

Variable working hours: where there are no normal working hours, a week's pay is their average remuneration in the period of 12 weeks preceding the date on which the last complete week ended, excluding any week in which no remuneration was earned.

As the amount of maternity pay is based upon the employee's contract of employment in force during the maternity leave, it would consequently change if, for instance, a pay award was implemented during this period.

GLOSSARY

The following terms and abbreviations are used in this policy:

SMP: Statutory Maternity Pay	This is payable to eligible employees who take maternity leave or leave employment because of pregnancy or childbirth. Payment of SMP is subject to qualifying conditions; deductions for tax, national insurance and pension contributions, if applicable; and is payable only for complete weeks. Once paid SMP is not repayable.
OMP: Occupation Maternity Pay	This is an enhanced level of maternity pay provided by the Council to eligible employees.
MA: Maternity Allowance	This is the allowance payable by JobCentre Plus to employees not entitled to Statutory Maternity Pay.
MPP: Maternity Pay Period -	This is the period during which SMP is payable to an eligible employee.
SMP1: Statutory Maternity Pay Form	This is the form, which Payroll gives to an employee who is not entitled to Statutory Maternity Pay (SMP) for the purpose of claiming Maternity Allowance (MA).
NI: National Insurance Lower Earnings Limit:	The level of earnings the employee must receive in order to pay National Insurance and to be entitled to state benefits e.g. MA. This weekly earnings level is set annually by the HM Revenue & Customs.
QW: Qualifying Week for SMP	This is the end of the 15th week before the Expected Week of Childbirth (EWC) for the payment of Statutory Maternity Pay (SMP).
OML: Ordinary Maternity Leave	This is the 26-week maternity leave period to which all pregnant employees are entitled to regardless of length of service or hours worked.
AML: Additional Maternity Leave	This is the 26-week maternity leave period, which immediately follows Ordinary Maternity Leave.
CML: Compulsory Maternity Leave	This is the first 2 weeks following the birth of the baby, which must be taken as maternity leave.
EWC: Expected Week of Childbirth	This is the week in which the baby is due to be born as certified by the employees Doctor or Midwife on the Maternity Certificate (MAT B1).
MAT B1: Maternity Certificate	This is the maternity certificate given to a pregnant woman by a Doctor or Midwife, which states the Expected Week of Childbirth and is issued after the 25 th week of pregnancy. It is required for the payment of SMP.
CS: Continuous Service	This is the continuous service covered by the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) order 1999 as amended.