

PERSONNEL COMMITTEE

15 JUNE 2015

HUMAN RESOURCES – REVISED MATERNITY LEAVE AND PAY POLICY

REPORT OF THE HEAD OF ORGANISATIONAL DEVELOPMENT

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

The Maternity Leave and Pay Policy has been updated to reflect changes in employment law.

The policy will be available on the Intranet, and publicised in City Voice and through Core Brief.

RECOMMENDATIONS:

1. That the Revised Maternity Leave and Pay Policy be agreed and implemented.

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HUMAN RESOURCES – REVISED MATERNITY LEAVE AND PAY POLICY

REPORT OF THE HEAD OF ORGANISATIONAL DEVELOPMENT

DETAIL:

1 Introduction

1.1 This policy follows the provision of the Employment Rights Act 1996 and sets out the statutory rights and responsibilities of employees who are pregnant or have recently given birth and gives details of the arrangements for ante-natal care, pregnancy-related illness, and maternity leave and pay.

2. The Maternity Leave and Pay Policy

2.1 The current Maternity Leave and Pay Policy has been reviewed to ensure that it includes the Shared Parental Leave legislation which came in to force for babies due on or after 5 April 2015.

3. Consultation

3.1 There has been consultation on the Policy with Unison.

BACKGROUND DOCUMENTS:

Held in Organisational Development (excluding information on individuals which is exempt information).

APPENDICES:

Appendix 1 Maternity Pay and Leave Policy

Appendix 2 Shared Parental Leave Guidelines

MATERNITY LEAVE AND PAY POLICY



Winchester
City Council

MATERNITY LEAVE AND PAY POLICY

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- 1 Calculation of a Week's Pay
- 2 Glossary
- 3 Risk Assessment form

**Winchester City Council
Maternity and Pay Policy****Document History**

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MATERNITY LEAVE AND PAY POLICY

1. INTRODUCTION

This policy follows the provision of the Employment Rights Act 1996 and sets out the statutory rights and responsibilities of employees who are pregnant or have recently given birth and gives details of the arrangements for ante-natal care, pregnancy-related illness, and maternity leave and pay.

Winchester City Council (“the Council”) recognises that, from time to time, employees may have questions or concerns relating to their maternity rights. It is our policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. As the maternity provisions are complex, if an employee becomes pregnant she can clarify the relevant procedures with Human Resources to ensure that they are followed correctly, and in any event we would recommend that the employee makes contact with Human Resources by the 15th week of pregnancy.

(As is often the case when explaining legal or contractual entitlements, the terminology used can be quite confusing). Commonly used terms and abbreviations used can be found at Appendix 1.

There are separate policies for Paternity Leave, Maternity Support Leave and Adoption Leave.

2. SCOPE

This policy applies to all full, fixed term and part time employees employed by Winchester City Council, regardless of how many hours they work or the length of time of their contract of employment.

3. MATERNITY RIGHTS

Regardless of length of service, 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

Qualifying employees are also entitled to:-

- Statutory Maternity Pay
- Occupational Maternity pay

4. HEALTH AND SAFETY

Whilst an employee is not obliged to notify their manager of their pregnancy until the 'Qualifying Week' (defined in the Glossary below), 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 employees 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.

Therefore, employees are strongly advised to inform their manager of their pregnancy at the very earliest opportunity, as there may be health and safety considerations.

Once the Council has been notified of an employee's pregnancy, a risk assessment will be carried out to identify any preventive and protective measures that it may be considered necessary to avoid any risks identified affecting the health and safety of a new or expectant mother. This may involve:

- (a) changing working conditions or hours of work;
- (b) offering suitable alternative work on terms and conditions that are the same or not substantially less favourable; or
- (c) suspension from duties/work, which will be on full pay unless suitable alternative work has been unreasonably refused.

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 an employee's return to work, and if, for health and safety reasons they are still considered to be at risk, then alternative arrangements may be put in place.

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.

5. NOTIFICATION OF PREGNANCY

An employee should inform the Council of their pregnancy as soon as possible, and in any event 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 Expected Week of Confinement (EWC) unless this is not reasonably practicable. Employees should complete the Notification of Maternity Leave and Pay form found on the HR Intranet. They will need to tell their manager:

- that they are pregnant;
- the expected week of childbirth; and
- the date on which she intends to start her maternity leave

The employee must also provide a certificate from a doctor or midwife (usually on a MAT B1 form) confirming the expected week of childbirth. The form must have either the doctor's name and address or the midwife's name and registration number on it. The earliest this can be obtained from a general practitioner or registered midwife is the 26th week of pregnancy.

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).

Once notice of maternity has been received, the HR Department will write to the employee confirming the maternity leave, on the basis of the employee's maternity leave entitlement, and stating the date on which they are expected to return to work. 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.

6. TIME OFF FOR ANTENATAL CARE

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.

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 future appointments if requested to do so by their manager.

With effect from 1 October 2014, an employee who has a "qualifying relationship" with a pregnant woman or her expected child has the right to take unpaid time off during working hours to accompany the pregnant woman to an antenatal appointment on up to two occasions for a maximum of six-and-a-half hours on each occasion. The right, which does not require any qualifying service, applies only where the appointment is made on the advice of a registered medical practitioner, midwife or nurse.

7. SICKNESS DURING PREGNANCY

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.

If a pregnant employee is absent from work because of a pregnancy related illness and their illness continues or starts within the four-week period starting on the Sunday 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.

Maternity leave (which can include Ordinary Maternity Leave, Additional Maternity Leave and/or Compulsory 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.

Any absence which is not related to pregnancy will be recorded in the usual way. A high level of absence will be subject to further investigations under the Absence Management – Policy and Procedure (on the Human Resources portal of the Intranet) but any pregnancy related absences will be deducted from the employee's Bradford Factor. *The Bradford Factor uses a calculation combining the number of days absent and number of occasions*

therefore differentiating between persistent short term absence and long term absence. Please see the Bradford Index guide for more information.

8. MATERNITY LEAVE

All pregnant employees are entitled to take up to 26 weeks Ordinary Maternity Leave and up to 26 weeks Additional Maternity Leave, making a total of 52 weeks. This is regardless of the number of hours they work or their length of service. Additional Maternity Leave begins on the day after Ordinary Maternity Leave ends. (Please note this only applies to those workers who have a contract of employment with Winchester City Council).

Ordinary Maternity Leave can start at any time after the beginning of the 11th week before the employee's expected week of childbirth (unless her child is born prematurely before that date in which case it will start earlier).

Maternity leave will start on whichever date is the earlier of:-

- a) the employee's chosen start date (which will have been notified to the Council in accordance with this policy);
- b) the day after any day on which the employee is absent for a pregnancy-related reason during the four weeks before the Expected Week of Childbirth (defined in the Glossary); or
- c) the day after the employee gives birth.

The Maternity Pay Period (MPP) may start on any day of the week.

If in the case of (b) above, if an employee is absent for a pregnancy-related reason during the four weeks before the EWC she must notify her line manager and HR as soon as possible in writing, and maternity leave will be triggered.

In the case of (c) above, if an employee gives birth before her maternity leave was due to start, she must notify her line manager and HR in writing of the date of the birth as soon as reasonably practicable. If an employee's baby is born before a MATB1 form 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.

The law obliges all employees to take a minimum of two weeks of maternity leave immediately after the birth of the child.

8.1 ORDINARY MATERNITY LEAVE

During the period of Ordinary Maternity Leave, the employee's contract of employment continues in force and she is entitled to receive all her contractual benefits, except for salary. In particular, any benefits in kind will continue: annual leave and bank holiday entitlement will continue to accrue; and pension contributions will continue to be made.

Salary will be replaced by Statutory Maternity Pay (SMP) if the employee is eligible to receive it (dealt with in more detail in section 12 below).

8.2 ADDITIONAL MATERNITY LEAVE

During the period of Additional Maternity Leave, the employee's contract of employment continues in force and she is entitled to receive all her contractual benefits, except for salary. In particular, any benefits in kind will continue, and annual leave and bank holiday entitlement will continue to accrue. Pension contributions will continue to be made whilst Statutory Maternity Pay or Occupational Maternity Pay is being paid.

9. REDUNDANCY DURING MATERNITY LEAVE

In the event that an employee's post is affected by a redundancy situation occurring during maternity leave, the Council will write to the employee to inform her of any proposals and will invite her to a meeting before any final decision is reached as to her continued employment.

Where such a situation occurs, the employee is entitled to be offered suitable alternative employment where there is a match against the person specification. Where an appropriate vacancy exists, the alternative employment under a new contract will begin on the day immediately following the day on which the previous contract comes to an end.

Where redundancy takes effect before maternity leave commences, there is no entitlement to preferential treatment with regard to being offered suitable alternative employment.

10. TRANSFER OF MATERNITY LEAVE TO ADDITIONAL PATERNITY LEAVE (APL)

The right to Additional Paternity Leave is available only to fathers and partners of mothers of children who were due on or before 4 April 2015.

If an employee proposes to return to work early without using the full 52 week entitlement of maternity leave and provides proper notification of an early return in accordance with Section 17 of this policy, she may be eligible to transfer up to 26 weeks of outstanding maternity leave (and any outstanding statutory maternity pay).

An employee qualifies for Additional Paternity Leave if he or she is the child's father, or is married to, the partner of, or the civil partner of the child's mother. The employee must also have had at least 26 weeks' continuous employment with the employer, ending with the 15th week before the expected week of childbirth, and remain in continuous employment with the employer until the week before the first week of the additional paternity leave. The employee must have, or expect to have, the main responsibility (apart from the child's mother) for the child's upbringing.

The earliest that APL may commence is 20 weeks after the date on which the employee's child is born and it must end no later than 12 months after the date of the birth. The minimum period of APL is 2 consecutive weeks and the maximum is 26 weeks. The employee returning from maternity leave must therefore have at least 2 week's paid maternity leave remaining to transfer to their partner. Absence on annual, sick or parental leave immediately following maternity leave does not constitute a return to work. However, a brief return to work may be followed by subsequent leave without affecting the entitlement to APL and pay.

Additional Paternity Leave must be taken as a single block in multiples of complete weeks. The minimum period is two consecutive weeks and the maximum period is 26 weeks.

Further written details may be obtained from the employee's spouse or partner's employer to confirm the arrangements. If an employee does wish to transfer part of the maternity leave entitlement in this way, she will be required to submit a written and signed declaration form to her partner's employer, which may also make additional enquires of the Council to verify its employee's entitlement to APL and pay.

11. SHARED PARENTAL LEAVE

Shared parental leave is aimed at giving parents more flexibility over how they share childcare between them during the first year of their child's life. They will be able to take it in turns to have periods of leave to care for the child, and/or take leave at the same time as each other.

Mothers of babies due on or after 5 April 2015 are entitled to return to work early or give advance notice of their intention to curtail their statutory maternity leave to take, or enable the father or partner to take, shared parental leave.

Mothers who meet the eligibility requirements will be able to bring their maternity leave to an end and choose to take shared parental leave with her partner, who must also meet the relevant eligibility requirements. Up to 50 weeks' shared parental leave can be shared between the parents. The amount of shared parental leave that the parents can take between them is 52 weeks, minus the amount of maternity leave taken by the mother. The compulsory maternity leave period is reserved for the mother; therefore the mother cannot curtail her maternity leave until two weeks after the birth. However, the mother's partner can begin a period of shared parental leave at any time from the date of the child's birth. All leave must be taken within the first 52 weeks following the birth.

The leave does not have to be taken in one continuous block; employees can return to work and then take a further period of shared parental leave. If an employee gives his or her employer a notice requesting discontinuous blocks of leave, the employer has the option to refuse this request, in which case the employee must take the leave requested in one block, withdraw the request or agree alternative dates with the employer. However, an employee can submit up to three separate notices requesting periods of leave, which could have the effect of enabling the employee to take three separate blocks of leave without the employer being able to refuse this.

Further guidance on Shared Parental Leave can be found on the Maternity pages on the HR Intranet.

12. MATERNITY PAY

Entitlement to maternity pay is determined by various factors, including length of service and earnings, and therefore the Human Resources (HR) section in conjunction with the Payroll section will assess the employee's eligibility and entitlements on an individual basis.

There are two types of maternity pay payable by the Council – Statutory Maternity Pay (SMP) and Occupational Maternity Pay (OMP).

12.1 STATUTORY MATERNITY PAY (SMP)

Statutory Maternity Pay (SMP) is payable for a maximum of 39 weeks during maternity leave. SMP will stop being payable if an employee returns to work (except where she is simply keeping in touch in accordance with section 16). An employee is entitled to SMP if:-

- she has continuous Winchester City Council service of at least 26 weeks going into the Qualifying Week (the 15th week before the expected week of childbirth) and she is still employed during that week;
- her average weekly earnings during the 8 weeks ending with the Qualifying Week are not less than the lower earnings limit for national insurance contributions;
- she is still pregnant 11 weeks before the start of the Expected Week of Childbirth (or has already given birth);
- she provides a MATB1 form (doctor or midwife's certificate) stating her expected week of childbirth; and
- she gives the Council proper notification of her pregnancy in accordance with the rules set out above (as much notice as possible, 28 days at the least).

SMP is calculated as follows:

- (a) First six weeks: SMP is paid at the equivalent to 90% of the employee's average weekly earnings calculated over the period of 8 weeks up to and including the qualifying week. For the purpose of calculating average weekly earnings, salary, shift allowances and overtime payments are all included
- (b) Remaining 33 weeks (or less if the employee returns to work sooner): SMP is paid at a rate set by the Government for the relevant tax year, or at a rate of 90% of the employee's average weekly earnings calculated over the period of 8 weeks up to and including the Qualifying Week (if this is lower than the Government's set weekly rate).

If the employee becomes eligible for a pay rise between the start of the original calculation period and the end of her maternity leave (whether Ordinary Maternity Leave or Additional Maternity Leave), the rate of SMP will be recalculated to take account of the employee's pay rise, and this will be regardless of whether SMP has already been paid. This means that the employee's SMP will be recalculated and increased retrospectively, or that she may qualify for SMP if she did not previously qualify. The employee will be paid a lump sum to make up any difference between SMP already paid and the amount payable as a result of the pay rise.

SMP is treated as earnings and is therefore subject to PAYE income tax, National Insurance and pension deductions where appropriate.

Payment of SMP cannot start prior to the 11th week before the employee's expected week of childbirth. SMP can start from any day of the week in accordance with the date the employee starts her maternity leave.

SMP is payable whether or not the employee intends to return to work after her maternity leave, or even if they leave the Council's employment before they want their SMP to start.

SMP is not payable if the pregnancy ends before the 24th week other than by live birth.

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

Employees who are not entitled to SMP may be entitled to receive maternity allowance (MA) payable by the Government.

12.2 NON ENTITLEMENT TO SMP

If the employee does not meet the criteria above and is not entitled to SMP or if their circumstances change 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 previously provided.

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 the Government.

The employee must claim MA if they are entitled to receive Occupational Maternity Pay (OMP) 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 OMP payments made to them.

12.3 CHANGES IN CIRCUMSTANCES

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 for "Keeping in Touch" days on more than ten occasions (Please see section 16).

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

12.4 OCCUPATIONAL MATERNITY PAY (OMP)

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.

12.5 THE RATE OF OCCUPATIONAL MATERNITY PAY

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 SMP or MA if the employee is not eligible for SMP.

For the next 33 weeks the employee will receive their entitlement to the standard rate SMP set by the Government for the relevant tax year.

Subject to paragraph 11.6 below, an employee who declares in writing that she intends to return to work will also be entitled to receive an additional 6 weeks OMP whilst on maternity leave. The additional 6 weeks OMP is based on the employees normal contractual weekly pay payable prior to their maternity leave and is usually paid over the remaining 33 weeks (weeks 7 – 39) of their paid maternity leave, although it may be paid over any distribution period mutually agreed between the employee and the Council, e.g: 6 weeks at 100%, 12 weeks at 50%, 20 weeks at 30% or 33 weeks at 18.18% and so on.

Alternatively an employee can request that the payment of the additional 6 weeks OMP be deferred until they have returned to work (see section 12.6 below).

The additional 6 weeks OMP will be reduced accordingly if the employee's combined pay plus SMP (or MA and any dependants' allowances if they are not eligible for SMP) exceeds their full pay.

12.6 CONDITIONS ATTACHED TO RECEIVING THE ADDITIONAL 6 WEEKS OMP

The employee will receive the additional 6 weeks OMP on the understanding that they will return to Local Authority employment for a period of **at least 3 months**. Should they not do so, they will be required to repay the additional 6 weeks OMP, or such part thereof, if any. Employees who are unsure whether or not they intend to return to work after their maternity leave should therefore exercise caution before requesting payment of the additional 6 weeks OMP during their maternity leave. Payments made to the employee in respect of SMP are not refundable.

Employees who chose not to receive the additional 6 weeks OMP during their maternity leave and subsequently return to Local Authority work will, after completing 3 months employment, receive payment of the 6 weeks pay due by way of a lump sum.

12.7 MATERNITY PAY REFERENCE TABLE

	Less than 26 weeks service at the 15th week before the EWC	26 weeks service at the 15th week before the EWC	One year's service or more at the 11th week before the EWC
Weeks 1 – 6	Maternity Allowance paid by the Government	SMP (90%) of an average weeks pay	
Weeks 7 – 39		SMP	SMP plus OMP

Weeks 40 – 52	Unpaid		

12.8 PAYMENT OF STATUTORY AND OCCUPATIONAL MATERNITY PAY

During the employee's maternity absence, the payments due to them will be paid by the same method used to pay their salary e.g. monthly by BACs. SMP and OMP will be paid according to the number of calendar days due in any particular month.

SMP and OMP are earnings and therefore subject to PAYE income tax, National Insurance and pension contributions (as appropriate). Any deductions which are lawfully made from pay, for example voluntary deductions or attachment of earnings orders (AOE's) etc will continue to be made where there is sufficient pay to do so.

Note: when calculating SMP, previous continuous Local Government service is not taken into account and only the length of service with Winchester City Council is considered. However, when calculating OMP, previous Local Government service is taken into consideration (when calculating the length of service to establish an employee's entitlement to receive OMP).

13. DEATH OR STILLBIRTH

The Council recognises the importance of sensitivity and understanding in the situation where a baby has died or is stillborn. The following information may assist you in these circumstances, please do not hesitate to contact Human Resources if you require assistance.

If a baby dies or is stillborn after the start of the 24th week of pregnancy, the employee is still entitled to the provisions of the scheme – i.e. the maternity pay and leave according to the employee's length of service. When the employee wishes to return to work they should give notice of the date they intend to return to work in accordance with the provisions detailed in section 18. Medical advice may be required to confirm fitness for any early return to work.

If an employee's pregnancy ends before 24 weeks the Council will give sympathetic consideration to the circumstances and may grant special leave or sick leave as deemed appropriate in individual circumstances. This decision will be based upon medical advice and the employee's own individual needs.

Employees may access the Council's Counselling service on 07925 299796.

14. MULTIPLE BIRTHS

There is no entitlement to additional SMP or OMP in the case of multiple births.

15. MAINTAINING CONTACT DURING MATERNITY LEAVE

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 or by telephone) 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 section 16 below, and would not therefore count towards the 10 'Keeping in Touch' days.

16. WORKING DURING MATERNITY LEAVE / KEEPING IN TOUCH (KIT) DAYS

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 'Keeping in Touch' (KIT) days during the maternity leave period without affecting their maternity leave period or maternity pay. Working for just part of a day will count as one KIT day.

Note: the employee cannot work during the compulsory maternity leave period i.e. the first 2 weeks immediately following childbirth.

There is no statutory entitlement to these work days and a manager cannot insist that an employee carries 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 period will not be extended due to the fact that an employee has carried out some work in this period.

The manager and employee should agree before maternity leave commences what type of work may be appropriate.

An employee will not lose their right to receive SMP or OMP as a result of working a KIT day and for each part or whole KIT day worked the employee will receive one days contractual full pay. In accordance with the Conditions of Service (Green Book) a days pay will be calculated as follows:

- monthly contractual salary & allowances divided by the number of days in the month = one days contractual pay.

For the avoidance of doubt, KIT days are not calculated by multiplying the hours worked by the employees hourly rate.

The employee's line manager must inform the HR section of any KIT days worked so they may record the event and issue the necessary payment instruction to the Payroll section.

17. TERMS AND CONDITIONS DURING MATERNITY LEAVE

17.1 ANNUAL LEAVE AND BANK HOLIDAYS

Employees will continue to accrue both statutory and any additional contractual holiday entitlement during both the 26 weeks' ordinary maternity leave period and 26 weeks' additional maternity leave period.

An employee who has requested maternity leave will be advised before she starts ordinary maternity leave whether or not she has any outstanding holiday entitlement. The Council may (with consent of the employee's manager):

- require the employee to take such outstanding holiday before commencing maternity leave;
- agree that the employee should carry the leave over and take it on return to work after maternity leave; or
- for holiday entitlement in excess of the statutory minimum, pay the employee for any outstanding holiday leave as if the employee were leaving.

Should an employee resign during, or at the end of their maternity leave, they may be entitled to payment for the balance of any accrued annual leave outstanding.

The employee should ensure that they do not have any credit or debit for hours worked in relation to the Council's flexi-time system before they start their maternity leave.

The employee is entitled to all their terms and conditions during their period of maternity leave. As a result, a substitute day's leave should be given for any bank holiday that falls during this period.

17.2 LOCAL GOVERNMENT PENSION SCHEME (LGPS)

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

Any maternity absence which is unpaid will be treated as a break in service for occupational pension purposes unless the employee chooses to continue to pay pension contributions. Employees may choose to pay contributions for any period of unpaid maternity leave so that the period of absence will count in full for pension purposes.

Employees who wish to pay contributions during their unpaid maternity leave should notify HR and Payroll accordingly. In this event the Payroll section will make arrangements to deduct the employee's pension contributions due for the unpaid leave period from the employees pay when they resume work.

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

17.3 COMPANY CAR CONTRACT HIRE SCHEME

The Agreement made with the employee under the Contract Car Hire Scheme does not include any requirement for the return of the vehicle in the event of maternity leave. Therefore, the employee will continue to use the car in accordance with the conditions of the scheme for the duration of their maternity leave. During the period of maternity leave any company car tax due will continue to be collected as normal from their pay. Any contribution the employee makes towards the private use of their company car will also continue to be deducted from their pay.

During any period of unpaid maternity leave or where there is insufficient pay from which an employee's company car contribution can be deducted, then the employee will be invoiced monthly for the sum(s) owing to the Council under the terms of their Agreement. The terms and conditions of the Contract Car Hire Scheme agreement applies throughout the employee's maternity leave period.

17.4 ESSENTIAL USER CAR ALLOWANCE

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.

17.5 CAR LOAN & SEASON TICKET LOAN SCHEMES

The terms and conditions contained in the Council's Car Loan and Season Ticket Loan Agreement apply throughout the period of the employee's maternity leave. Therefore, collection of these loan repayments will continue throughout their maternity leave period.

During any period of unpaid maternity leave, or where there is insufficient pay from which an employee's loan repayment can be deducted, then the employee will be invoiced monthly for the sum(s) owing to the Council under the terms of their Agreement.

Should the employee decide not to return to work, they will be invoiced for the full outstanding balance of their loan including any recalculated interest due. In this event the outstanding amount which will become immediately repayable.

17.6 SALARY SACRIFICE CHILDCARE VOUCHER & BIKE SCHEMES

A salary sacrifice arrangement is where an employee sacrifices pay in order to receive a non-taxable and non NI'able benefit, and consequently this arrangement will reduce the Average Weekly Earnings (AWE) figure used to calculate the SMP or MA due to the employee.

Employees may not enter into a new salary sacrifice arrangement if they are already pregnant or during a period of maternity leave.

Employees with an existing salary sacrifice arrangement may continue to sacrifice their pay including OMP during their maternity leave. Where an employee is receipt of SMP only, the

full cost of the salary sacrifice will be met by the Council as it is illegal to apply a salary sacrifice arrangement to statutory payments such as SMP.

Employees should also be aware that entering into a salary sacrifice arrangement can affect the amount of SMP and MA due, as these payments are calculated on employees' earnings in a previous pay period (that are subject to National Insurance Contributions (NICs)).

17.7 COUNCIL PROPERTY

Employees should return any Council property (i.e. mobile phone, laptop, keys, manuals, protective clothing etc) during the period of their Ordinary Maternity Leave (OML) and Additional Maternity Leave (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.

18. RETURNING TO WORK AFTER MATERNITY LEAVE

Once an employee has notified the Council in writing of their intended start date, Human Resources will send a letter to the employee (within 28 days) to inform them of their expected return date (see clause 5 above). The employee is expected to return on this date, unless she has notified her manager and Human Resources of other intentions. If the employee's start date has changed (either because notice has been provided by the employee, or because maternity leave started early due to illness or premature childbirth) Human Resources will write (within 28 days) with a revised expected return date.

If the employee is unable to attend work at the end of her maternity leave due to sickness or injury, this will be treated as sickness absence and the Council's normal arrangements for sickness absence will apply. In any other case, late return without prior authorisation will be treated as unauthorised absence.

While the employee is under no obligation to do so, it would assist the Council if she confirms as soon as convenient during her maternity leave that she will be returning to work as expected. If the employee decides to not to return to work, or is unsure, it would be helpful if she discusses this with the Council as early as possible, and if she decides not to return, a notice of resignation should be given in accordance with the contract of employment. (The amount of maternity leave left to run when notice is given must be at least equal to the employee's contractual notice period, otherwise the Council may require the employee to return to work for the remainder of the notice period). This does not affect the employee's right to receive SMP.

However, if an employee wishes 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.

As previously stated, 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 return to work. The Council will pay for this certificate.

19. EMPLOYEES WHO DO NOT WISH TO RETURN TO WORK AFTER MATERNITY LEAVE

As stated in section 18, 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 additional 6 weeks OMP and then choose either not to return to work, or to return to work for less than 3 months, they will be required to repay all or part of this payment (see section 12.6).

20. RIGHTS ON AND AFTER RETURN TO WORK

On resuming work after **Ordinary Maternity Leave**, the employee is entitled to return to the same job as she occupied before commencing maternity leave on the same terms and conditions of employment as if she had not been absent.

On resuming work after **Additional Maternity Leave**, the employee is entitled to return to the same job as she occupied before commencing maternity leave on the same terms and conditions of employment as if she had not been absent. However, if it is not reasonably practicable for the Council to allow the employee to return to the same job, the Council may offer the employee suitable alternative work, on terms and conditions that are no less favourable than would have applied if she had not been absent.

An employee who worked full time prior to her maternity leave has no automatic right to return to work on a part time basis or to make other changes to her working patterns. However, all requests for part time work or other flexible working arrangements will be considered in line with the operational requirements of the Council. If an employee would like this option to be considered, she should complete the flexible working application form (which can be found on the forms pages of the HR Intranet) as soon as possible in advance of her return date, so that there is adequate time for full consideration of the request. Further information can be found in the Flexible Working Hours Procedure or by contacting Human Resources.

21. REDUNDANCY

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 those had before. The employee will be entitled to the same consultation rights whilst on maternity leave as any other employee. If a redundancy situation arises, the employee will be notified in writing by their manager or Human Resources.

22. MATERNITY AND CONTINUOUS SERVICE

If the employee returns to local government service following a break for maternity reasons, they will be entitled to have their 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 that no permanent full-time paid employment (with another employer) 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. (Green Book Part 2 paragraph 14).

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

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.

23.1 DETRIMENTAL TREATMENT

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. This is dealt with separately in sections 24 and 25 below.

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,
- have requested flexible working.

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

24. PROTECTION FROM UNFAIR DISMISSAL DURING PREGNANCY OR MATERNITY LEAVE

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.

An employee is entitled to make a claim for unfair dismissal to an employment tribunal if they believe that they have been dismissed or selected for redundancy in these circumstances.

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

An employee who is found to have been dismissed on the grounds of redundancy may also be entitled to a redundancy payment.

25. WRITTEN STATEMENT OF REASONS FOR DISMISSAL

If an employee is dismissed at any time during pregnancy or Ordinary or Additional Maternity Leave, they are entitled to a 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.

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.

26. GENERAL ADVICE

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.

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.

27. PROBLEMS

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. For salaried employees paid monthly this is their contractual annual pay divided by a factor of 52.14.
- Variable working hours:** where there are no normal working hours, a week's pay is their average remuneration in the period of 12 weeks proceeding 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.

Appendix 2

GLOSSARY

The following terms and abbreviations may appear 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 PAYE income tax, National Insurance and pension contributions, if applicable; 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 the Government 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 Confinement (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 Confinement	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 25th 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.

Appendix 3

RISK ASSESSMENT FORM

Organisation name:	
Name of employee:	
Department:	
Section:	
Job title:	
Date of childbirth/expected date of childbirth:	
Date of risk assessment:	
Name and job title of person carrying out risk assessment:	
Review date:	

Risks to new and expectant mothers	Risks identified - who could be at risk and how	Precautions already taken to reduce those risks	Further action necessary (including dates when action will be taken and name of person/people responsible for taking action)
Physical hazards: <ul style="list-style-type: none"> • awkward spaces and workstations • vibration • noise 			
Chemical hazards: <ul style="list-style-type: none"> • handling chemicals such as drugs, pesticides, or lead 			
Biological agents: <ul style="list-style-type: none"> • infections 			
Working conditions: <ul style="list-style-type: none"> • inadequate facilities (including inadequate rest rooms) • excessive working hours (including night work) • unusually stressful work • exposure to cigarette smoke • high or low 			

<p>temperatures</p> <ul style="list-style-type: none"> • lone working • working at heights • travelling • exposure to violence 			
<p>Any other hazard:</p>			
<p>Details of any advice provided by the employee's GP or midwife:</p>			
<p>Employee's signature:</p>			
<p>Date:</p>			
<p>Signature of person carrying out risk assessment:</p>			
<p>Date:</p>			

SHARED PARENTAL LEAVE

Summary

Shared Parental Leave is a new scheme which entitles employees to paid time off for childcare in the first year after a child's birth is now in effect for employees whose baby is due on or after 5 April 2015 (the new scheme). The intention behind the new scheme is to allow families more choice over how they look after their children in the first year.

Under the new scheme, employees will have the same rights to maternity leave and ordinary paternity leave that they currently have but the system of additional paternity leave (APL) has been abolished. In its place, where the eligibility criteria are met, mothers will be able to convert up to 50 weeks of their maternity leave and 37 weeks of their statutory maternity pay (SMP) into shared parental leave (SPL) and shared parental pay (ShPP), and share it with their partner. The new scheme will give parents significant flexibility: they can apply to take the time off together or separately, in one continuous period or discontinuously. Employers will be able to reject some, but not all, patterns of SPL requested.

- Mothers, fathers and partners of mothers of babies due on or after 5 April 2015 are entitled to statutory shared parental leave if they meet certain eligibility requirements. The right is also available to adoptive parents of children who are placed for adoption on or after 5 April 2015.
- For employees to be eligible to take shared parental leave, they must satisfy an individual eligibility test and their partners must satisfy a joint eligibility test.
- For employees to be eligible to take shared parental leave, the mother must have returned to work or have curtailed her maternity leave. Similar rules apply in an adoption situation.
- The total amount of shared parental leave available to be taken by the mother and father or partner depends on the number of weeks of statutory maternity leave taken by the mother before her leave curtailment date or her return to work. Where the mother is entitled to statutory maternity pay or maternity allowance only, the amount of shared parental leave will depend on the number of weeks of statutory maternity pay or maternity allowance payable to her before her return to work or up to her maternity pay curtailment date. Similar rules apply in an adoption situation.
- To take a period of shared parental leave, an employee must give his or her employer a written notice of entitlement and intention to take shared parental leave at least eight weeks before the start of the first period of leave that he or she wishes to take.
- An employee is entitled to be absent from work on shared parental leave only if he or she submits a period of leave notice to his or her employer. The

notice must be in writing and, among other things, set out the start and end dates of each period of leave requested in it.

- An employee may carry out up to 20 days' work for his or her employer without bringing shared parental leave to an end.
- An employee on shared parental leave has preferential redeployment rights if, during a period of leave because of a redundancy situation, it is not reasonably practicable for the employer to continue to employ the employee under his or her existing contract of employment.
- With effect from 1 December 2014, an employee has the right not to be subjected to a detriment because, among other things, he or she has taken or sought to take, shared parental leave, or the employer believed that he or she was likely to take shared parental leave. The dismissal of an employee in these circumstances is automatically unfair.

How will shared parental leave operate?

Shared parental leave is aimed at giving parents more flexibility over how they share childcare between them during the first year of their child's life. They will be able to take it in turns to have periods of leave to care for the child, and/or take leave at the same time as each other.

Shared parental leave will apply in relation to babies due on or after 5 April 2015. Similar arrangements will apply for adoptive parents, in relation to children placed for adoption on or after 5 April 2015.

A mother who meets the eligibility requirements will be able to bring her maternity leave to an end and choose to take shared parental leave with her partner, who must also meet the relevant eligibility requirements. Up to 50 weeks' shared parental leave can be shared between the parents. The amount of shared parental leave that the parents can take between them is 52 weeks, minus the amount of maternity leave taken by the mother. The compulsory maternity leave period is reserved for the mother, therefore the mother cannot curtail her maternity leave until two weeks (or four weeks for factory workers) after the birth. However, the mother's partner can begin a period of shared parental leave at any time from the date of the child's birth. All leave must be taken within the first 52 weeks following the birth.

The leave does not have to be taken in one continuous block; employees can return to work and then take a further period of shared parental leave. If an employee gives his or her employer a notice requesting discontinuous blocks of leave, the employer has the option to refuse this request, in which case the employee must take the leave requested in one block, withdraw the request or agree alternative dates with the employer. However, an employee can submit up to three separate notices

requesting periods of leave, which could have the effect of enabling the employee to take three separate blocks of leave without the employer being able to refuse this.

What is the difference between shared parental leave and additional paternity leave?

Additional paternity leave is being abolished and replaced by shared parental leave. Shared parental leave will apply in relation to babies due on or after 5 April 2015. Additional paternity leave will continue to be available only in relation to babies due before 5 April 2015.

Under the additional paternity leave provisions, which were introduced in 2011, the mother of a child can return to work before the end of her maternity leave, allowing the father, or mother's partner, to take up to 26 weeks' additional paternity leave.

Shared parental leave is intended to give parents more flexibility than additional paternity leave over how they share childcare during the first year of the child's life. The main differences between shared parental leave and additional paternity leave are that:

- parents can take shared parental leave at the same time as each other; whereas a father can take additional paternity leave only once the mother has returned to work;
- shared parental leave can be taken in multiple periods; whereas additional paternity leave must be taken in one block;
- shared parental leave can be taken at any time between the birth and the child's first birthday, with up to 50 weeks available to be shared between the parents (the compulsory maternity leave period is reserved for the mother); whereas additional paternity leave cannot be taken until the 20th week after the child's birth, with a maximum of 26 weeks available.

There are similar provisions introducing shared parental leave in relation to children who are placed for adoption on or after 5 April 2015. The primary adopter and his or her partner can take shared parental leave at the same time as each other, in more than one block of leave, at any time before the first anniversary of the placement. Additional paternity leave remains available only in relation to children placed for adoption before 5 April 2015.

The right to shared parental leave

The right to shared parental leave arises under the **Shared Parental Leave Regulations 2014 (SI 2014/3050)**. Mothers, fathers and partners of mothers of babies due on or after **5 April 2015** are entitled to statutory shared parental leave and pay if they meet certain eligibility requirements. The right is also available to adoptive parents of children who are placed for adoption on or after 5 April 2015. (In a birth situation where the baby is due before 5 April, and in an adoption situation

where the child is placed before 5 April 2015, eligible employees will continue to be entitled to additional paternity leave and pay.

Under the shared parental leave regime, mothers are able to return to work early or give advance notice of their intention to curtail their statutory maternity leave and share untaken leave with their partner. The amount of shared parental leave to which parents are entitled depends on the amount of maternity leave the mother takes and the amount of shared parental leave that the other parent takes. Similarly, adopters are able to return to work early or give advance notice of their intention to curtail their statutory adoption leave and share untaken leave with their partner. The amount of available shared parental leave is calculated in the same way as in a birth situation. The total amount of shared parental leave available is unaffected by the number of children born or expected as a result of the same pregnancy, or the number of children placed for an adoption through the same placement.

Each parent claims shared parental leave from his or her own employer. As well as satisfying an individual eligibility test, parents must satisfy a joint eligibility test for the other parent to qualify for leave.

Shared parental leave can be taken in instalments, with parents interspersing periods of leave with periods of work. Parents can choose how to share the leave and can also take leave at the same time as each other and the partner can take leave while the mother is still on maternity leave, or the adopter is still on adoption leave.

Shared parental leave must be taken as complete weeks and the minimum period of an instalment is one week.

Under the statutory provisions, employees can make a maximum of three requests for leave per pregnancy or placement for adoption. Employees may request to take shared parental leave in one continuous block, or as a number of discontinuous blocks of leave.

Shared parental leave can be taken during the period starting with the date of the child's birth and ending on the day before the child's first birthday. In an adoption situation, shared parental leave can be taken during the period starting with the child's placement date and ending on the day before the first anniversary of that date.

Entitlement to shared parental leave (birth)

To be eligible to take shared parental leave, the mother and father or the mother's spouse, civil partner or partner (at the date of the child's birth) must meet certain eligibility criteria.

For the mother to access shared parental leave:

- she must satisfy the individual eligibility test; and

- the father or partner must satisfy the partner component of the joint eligibility test

If the partner does not satisfy the partner component of the joint eligibility test, the mother will not be eligible to take shared parental leave.

For the father or partner to access shared parental leave:

- he or she must satisfy the individual eligibility test; and
- the mother must satisfy the mother component of the joint eligibility test

If the mother does not satisfy the mother component of the joint eligibility test, the father or partner will not be eligible to take shared parental leave.

The application of the individual and joint eligibility tests may result in only the mother or the father or partner being eligible to take shared parental leave. In these circumstances, the eligible employee may still choose to access shared parental leave in order to access a more flexible system of leave but only he or she would be able to use any available shared parental leave.

Definitions (birth)

"Mother" means the mother or expectant mother of the child.

"Partner" means the father of the child, or the mother's spouse, civil partner or partner at the date of the child's birth. This includes someone, of either sex, who lives with the mother and the child in an enduring family relationship but who is not the mother's child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew.

"Expected week of birth" means the week, beginning with midnight between Saturday and Sunday, in which it is expected that the child will be born.

Mother's individual entitlement to shared parental leave (birth)

Regulation 4(2) of the Shared Parental Leave Regulations 2014 (SI 2014/3050) provides that a mother will be entitled to take shared parental leave to care for a child if she:

- has been continuously employed by her employer for at least 26 weeks ending with the 15th week before the expected week of childbirth and remains in continuous employment with that employer until the week before any period of shared parental leave (the continuity of employment test (reg.35));
- has main responsibility for the care of the child at the date of his or her birth (apart from the responsibility of the partner);

- is entitled to statutory maternity leave in relation to the child;
- has brought her statutory maternity leave to an end by giving her employer a "leave curtailment notice" (the leave period must remain curtailed) or returned to work before the end of her statutory maternity leave
- has given her employer a "notice of entitlement and intention to take shared parental leave" as required by reg.8
- has provided any supplementary evidence requested by her employer under reg.10; and
- has submitted a "period of leave notice" to her employer as required by reg.12

Partner component of joint eligibility test (birth)

Under reg.4(3), for the mother to be eligible to take shared parental leave, the partner must:

- satisfy the employment and earnings test set out in reg.36, which requires that, in the 66 weeks immediately preceding the child's expected week of childbirth, he or she has:
 - been engaged in employment as an employed or self-employed earner for any part of the week in at least 26 of those weeks; and
 - average weekly earnings of at least the maternity allowance threshold (£30) in any 13 of those weeks (whether or not consecutive); and
- main responsibility for the care of the child at the date of the child's birth (apart from the mother's responsibility).

Partner's individual entitlement to shared parental leave (birth)

Regulation 5(2) of the Shared Parental Leave Regulations 2014 (SI 2014/3050) provides that a partner will be entitled to take shared parental leave to care for the child if he or she has:

- been continuously employed by his or her employer for at least 26 weeks ending with the 15th week before the expected week of childbirth and remains in continuous employment with that employer until the week before any period of shared parental leave (the continuity of employment test (reg.35));
- main responsibility for the care of the child at the date of his or her birth (apart from the responsibility of the mother);
- given his or her employer a "notice of entitlement and intention to take shared parental leave" as required by reg.9
- provided any supplementary evidence requested by the employer under reg.10; and

- submitted a "period of leave notice" to the employer as required by reg.12

Mother component of joint eligibility test (birth)

Under reg.5(3), for the partner to be eligible to take shared parental leave, the mother must:

- satisfy the employment and earnings test set out in reg.36, which requires that, in the 66 weeks immediately preceding the child's expected week of childbirth, she has:
 - been engaged in employment as an employed or self-employed earner for any part of the week in at least 26 of those weeks; and
 - average weekly earnings of at least the maternity allowance threshold (£30) in any 13 of those weeks (whether or not consecutive); and
- have main responsibility for the care of the child at the date of his or her birth (apart from the responsibility of the partner);
- be entitled to statutory maternity leave, statutory maternity pay or maternity allowance in relation to the child; and
- have brought her statutory maternity leave to an end (and that leave remain curtailed) or returned to work before the end of her statutory maternity leave, or curtailed her statutory maternity pay period or maternity allowance period (and in either case the period remains curtailed).

Individual entitlement conditions where child born early

The first element of the continuity of employment test (which forms part of the criteria that the parent must satisfy to establish his or her individual entitlement to shared parental leave) requires that the parent is continuously employed by his or her employer for at least 26 weeks ending with the 15th week before the expected week of childbirth. Regulation 35(2) provides that where the child is born earlier than the 15th week before the expected week of birth and the parent would have satisfied the above requirement but for the early birth, the employee is treated as having satisfied this requirement.

Notice of entitlement and intention to take shared parental leave (birth)

Mother's notice of entitlement and intention to take shared parental leave (birth)

Regulation 8(1) of the Shared Parental Leave Regulations 2014 (SI 2014/3050) provides that, to take a period of shared parental leave, the mother must give her employer a written notice of entitlement and intention to take shared parental leave

at least eight weeks before the start of the first period of leave that she wishes to take.

Regulation 8(2) states that the notice must set out:

- the mother's name;
- the partner's name;
- the start and end dates of any statutory maternity leave taken, or to be taken, by the mother;
- the total amount of shared parental leave available to be taken;
- the child's expected week of birth and date of birth (unless the notice is submitted before the child's birth, in which case the mother must provide her employer with the child's date of birth as soon as reasonably practicable after the birth and before the first period of shared parental leave);
- the amount of shared parental leave that the mother and partner each intend to take; and
- an indication of when the mother intends to take shared parental leave, including start and end dates for each period of leave (this indication is non-binding and must not be treated as a period of leave notice unless the employee specifies otherwise in the notice).

The notice must be accompanied by a signed declaration from both the mother and partner.

Under reg.8(3)(a), the mother's declaration must confirm that:

- she meets, or will meet, the individual eligibility conditions to take shared parental leave that are set out in reg.4(2)
- the information that she has provided in the notice of entitlement is accurate; and
- she will advise her employer immediately if she ceases to care for the child.

Under reg.8(3)(b), the partner's declaration must confirm:

- his or her name, address and national insurance number (or confirm that he or she does not have a national insurance number);
- that he or she meets, or will meet, the criteria set out in reg.4(3), namely, the partner component of the joint eligibility test (
- that he or she is the child's father, or the mother's spouse, civil partner or partner;
- that he or she agrees to the amount of shared parental leave that the mother intends to take as set out in the mother's notice of entitlement; and

- that he or she agrees to the mother's employer processing the information in the declaration

Partner's notice of entitlement and intention to take shared parental leave (birth)

Regulation 9(1) of the Shared Parental Leave Regulations 2014 (SI 2014/3050) provides that, to take a period of shared parental leave, the partner must give his or her employer a written notice of entitlement and intention to take shared parental leave at least eight weeks before the start of the first period of shared parental leave that he or she wishes to take.

Regulation 9(2) states that the notice must set out:

- the partner's name;
- the mother's name;
- the start and end dates of any statutory maternity leave taken, or to be taken, by the mother;
- where statutory maternity leave was not taken, or is not to be taken, the start and end dates of any period in which statutory maternity pay or maternity allowance is paid or payable;
- the total amount of shared parental leave available to be taken;
- the child's expected week of birth and date of birth (unless the notice is submitted before the child's birth, in which case the employee must provide his or her employer with the child's date of birth as soon as reasonably practicable after the birth and before the first period of shared parental leave);
- the amount of shared parental leave that the mother and the partner each intend to take; and
- an indication of when the partner intends to take shared parental leave, including start and end dates for each period of leave (this indication is non-binding and must not be treated as a period of leave notice unless the employee specifies otherwise in the notice).

The notice must be accompanied by a signed declaration from the partner and the mother.

Under reg.9(3)(a), the partner's declaration must confirm that:

- he or she meets, or will meet, the individual eligibility conditions to take shared parental leave that are set out in reg.5(2) (
- the information that he or she has provided in the notice of entitlement is accurate;

- he or she is the child's father, or the mother's spouse, civil partner or partner; and
- he or she will advise the employer immediately if he or she ceases to care for the child or if the mother informs him or her that she no longer satisfies the requirements relating to the curtailment of the maternity leave or maternity pay or allowance period set out in reg.5(3)(d).

Under reg.9(3)(b), the mother's declaration must confirm:

- her name, address and national insurance number (or confirm that she does not have a national insurance number);
- that she meets, or will meet, the criteria set out in reg.5(3), namely, the mother component of the joint eligibility test
- that she agrees to the amount of shared parental leave that the partner intends to take as set out in the partner's notice of entitlement;
- that she will advise the employer immediately if she ceases to meet the requirements relating to the curtailment of the maternity leave or statutory maternity pay or maternity allowance period; and
- that she agrees to the partner's employer processing the information in the declaration.

Supplementary evidence (birth)

Regulation 10 of the Shared Parental Leave Regulations 2014 (SI 2014/3050) provides that within 14 days of the employee submitting his or her notice of entitlement, the employer can request the following supplementary evidence:

- a copy of the child's birth certificate; and
- the name and address of the other parent's employer.

Where the employer makes a request after the child's birth, the employee must provide the supplementary evidence to the employer within 14 days of its request. If the employer requests a copy of the birth certificate but it has not been issued when the employee responds to the request, he or she must send the employer a signed declaration confirming the date and location of the child's birth and stating that a birth certificate has not yet been issued.

If the employer requests the name and address of the other parent's employer (whether that be the employer of the mother or the partner) but he or she does not have an employer, the employee must send the employer a declaration to this effect. The Regulations do not require the employer, or prohibit the employer, from contacting the other parent's employer.

If the employer requests a copy of the birth certificate before the child's birth, the employee must comply with that request within 14 days of the child's birth. If a birth

certificate has not been issued when the employee responds to the request, he or she must send the employer a signed declaration confirming the date and location of the child's birth and stating that a birth certificate has not yet been issued.

Curtailment of maternity leave (birth)

The curtailment of the right to statutory maternity leave is dealt with in the Maternity and Adoption Leave (Curtailment of Statutory Rights to Leave) Regulations 2014 (SI 2014/3052). If the mother is entitled to maternity leave, the amount of shared parental leave available to her and her partner is calculated by reference to the amount of maternity leave that is left when she returns to work or curtails her maternity leave.

The process of curtailing maternity leave allows the mother to notify her employer that she intends to end her maternity leave on a specified date in the future. The specified date determines how much shared parental leave will be available to divide between her and her partner and will allow the partner to take a period of shared parental leave before the end of the mother's maternity leave. The mother is not required to submit a curtailment notice if she has already returned to work.

The Maternity and Adoption Leave (Curtailment of Statutory Rights to Leave) Regulations 2014 set out how an employee can curtail her maternity leave. The mother can bring forward the end of her maternity leave period by giving her employer a "leave curtailment notice" stating the date on which her ordinary or additional maternity leave is to end, which is the "leave curtailment date". Regulation 6 provides that the date specified in the notice, which must be in writing, is required to be at least:

- one day after the end of the compulsory maternity leave period;
- eight weeks after the date on which the employee submits the leave curtailment notice to her employer; and
- one week before the end of the employee's additional maternity leave period.

Regulation 5 provides that the mother must accompany the leave curtailment notice with either:

- a notice of entitlement and intention to take leave; or
- a declaration of consent and entitlement, confirming that the partner has given his or her employer a notice of entitlement and intention to take leave and that the mother consents to the amount of shared parental leave that the partner intends to take.

If the mother has submitted a valid curtailment notice, her maternity leave will come to an end on the leave curtailment date (reg.7).

Revoking the curtailment notice (birth)

The mother may revoke a curtailment notice in limited circumstances by submitting a revocation notice to her employer (reg.8). A revocation notice must be in writing and state that the mother revokes her leave curtailment notice.

The revocation notice must be submitted to the employer prior to the leave curtailment date and within:

- eight weeks of the date on which the mother submitted the leave curtailment notice to her employer if neither the mother or the partner are entitled to shared parental leave or statutory shared parental pay;
- six weeks of the child's birth if the mother served the leave curtailment notice before the birth of the child; or
- a reasonable time of the date of death if the partner dies (in which case the revocation notice must also specify the date of death).

If the mother submits a leave curtailment notice before the child's birth and subsequently revokes it in the six weeks following the child's birth, she can submit a further leave curtailment notice at a later date. However, the mother cannot submit a leave curtailment notice after serving a revocation notice in any other circumstances (reg.8(6)).

Q and A

Can an employer insist on evidence that an employee is entitled to shared parental leave?

When an employer receives notice from an employee that he or she intends to take shared parental leave, it can request a copy of the child's birth certificate and the name and address of the employee's partner's employer. The employee must provide this within 14 days of the request (if the employer requests a copy of the birth certificate before the child has been born, the employee must provide this within 14 days of the birth).

This information will not be enough for the employer to be able to confirm that the employee is entitled to shared parental leave. However, in most cases, the employer should rely on the declarations provided by the employee and his or her partner that they meet the various eligibility requirements. Employers are not expected to check, for example, the earnings and employment history of their employee's partner.

While an employer can contact the employer of its employee's partner, to check whether or not the partner is entitled to shared parental leave, the partner's employer would not be able to provide information on its employee without his or her consent.

Employers should make clear to employees that providing a false declaration that they are entitled to shared parental leave and/or pay will be treated as a disciplinary issue.

What is "discontinuous leave" under the shared parental leave regime?

An employee who is eligible for shared parental leave can request to take discontinuous periods of leave, ie he or she can take a period of shared parental leave, then return to work, then take a further period of shared parental leave.

Shared parental leave must be taken in blocks of at least one week. All leave must be taken before the child's first birthday, or before the first anniversary of the adoption placement.

When an employee gives the employer a period of leave notice, he or she can request either a single block of leave or discontinuous periods of leave. If the employee requests discontinuous leave, the employer can refuse the request and require the employee to withdraw the request or take the leave in a continuous block. However, if an employee requests a continuous period of leave, the employer must agree to it.

Employees can submit up to three separate leave notices. Therefore, an employee can take three separate blocks of leave, provided that he or she gives his or her employer a separate notice of each period of leave, at least eight weeks before it starts.

Shared parental leave will apply in relation to babies due on or after 5 April 2015 and children placed for adoption on or after that date.

Can an employer have a policy of refusing all requests for discontinuous periods of shared parental leave?

If an employee submits a period of leave notice requesting discontinuous periods of shared parental leave, the employer can refuse the request and require the employee to withdraw the request or take the leave in a continuous block.

An employer may decide to refuse all requests for discontinuous leave as a matter of policy, to reduce disruption to the business. If an employee wanted to challenge this, he or she may claim that such a policy is discriminatory, in which case the employee would have to show that the policy placed a certain group, eg male employees, at a

disadvantage compared to other employees. It is not clear that any particular protected group would be disadvantaged by being required to take leave in continuous periods, so it may be difficult for an employee to succeed with such a claim.

However, employers should note that they cannot prevent employees from taking up to three separate blocks of shared parental leave, provided that the employee submits a separate notice of each period of leave, at least eight weeks before it starts. Employers can refuse a request for discontinuous leave only if the employee requests discontinuous periods of leave in the same notice. Employees can submit up to three separate leave notices.

Therefore, a policy of refusing all requests for discontinuous leave may not be effective in preventing disruption. It may be preferable for the employer to discuss each request with the employee, with a view to reaching an agreement about the pattern of leave.

Shared parental leave will apply in relation to babies due on or after 5 April 2015 and children placed for adoption on or after that date.

Can an employer refuse an employee's request to take shared parental leave or require him or her to take it at a different time?

Whether or not an employer can refuse an employee's request to take shared parental leave depends on the pattern of leave that the employee has requested when giving the employer a "period of leave notice".

If an employee submits a period of leave notice requesting one continuous period of leave, the employer must allow him or her to take the period of leave on the dates requested. It cannot require him or her to take it at a different time, for example to avoid the employee being absent during a particularly busy period for the business or when other employees are also absent.

If an employee submits a period of leave notice requesting discontinuous periods of leave, eg two weeks' leave beginning on 1 June, four weeks' leave beginning on 1 August and four weeks' leave beginning on 1 December, the employer can refuse the employee's request. The employer can suggest alternative dates for a period or periods of leave, but is not obliged to do so.

If his or her request for discontinuous leave is refused, the employee can withdraw the notice or agree alternative dates with the employer. If he or she has not done either within two weeks of the date of the notice, the employee can either withdraw the notice at that point or take the total amount of leave requested in the leave notice as a continuous period of leave (ie one period of 10 weeks' leave, in the example above). The employee can choose a start date for the continuous period of leave that is no less than eight weeks from the date of the leave notice.

However, an employee who wishes to take discontinuous periods of leave can achieve this by requesting each period in a separate period of leave notice. An employer can refuse a request for leave only if the employee requests discontinuous periods of leave in the same notice. An employee can submit up to three separate leave notices. Therefore, as long as the employee gives a separate notice and at least eight weeks' notice of each period of leave, he or she could take up to three separate periods of leave, without the employer having the right to refuse the request.

Can a mother's partner begin a period of shared parental leave while the mother is still on maternity leave?

Yes, if the mother has provided her employer with a maternity leave curtailment notice, and all the relevant eligibility criteria and notice requirements are satisfied, the mother's partner can begin a period of shared parental leave while the mother is still on maternity leave.

For example, the mother could submit a leave curtailment notice stating that her maternity leave will end three months from the date of the notice. The mother's partner can take shared parental leave (with at least eight weeks' notice) at any time after the mother has submitted her leave curtailment notice; he or she does not have to wait until those three months have passed.

Can an employee use periods of shared parental leave to reduce his or her hours over a period, for example by working for two days a week and taking shared parental leave for three days a week?

No, shared parental leave must be taken in blocks of at least one week at a time. Therefore, an employee could not take shared parental leave in blocks of one or two days to reduce his or her working hours.

However, each parent can agree with his or her employer to use up to 20 "shared-parental-leave-in-touch" (SPLIT) days to carry out work without bringing a period of shared parental leave to an end. If the employee and employer agree, SPLIT days can be used to enable the employee to attend work on a regular basis during a period of shared parental leave. For example, the employee could take shared parental leave for 10 weeks and use two SPLIT days each week to attend work.

Working a SPLIT day will not affect the employee's entitlement to statutory shared parental pay. Contractual pay should be agreed between the employer and employee. For example, the employer could pay the employee his or her full contractual pay for the day, offsetting any entitlement to statutory pay.

Under the shared parental leave rules, can both parents have a period back at work at the same time, before taking further periods of leave, or does at least one parent have to remain on leave?

Both parents can be back at work at the same time and still retain the right to shared parental leave.

Shared parental leave is aimed at giving parents more flexibility over how they share childcare between them during the first year of their child's life. The leave does not have to be taken in one continuous block; one or both parents can return to work and then take a further period of shared parental leave, provided that they comply with the notice requirements. The parents could decide to arrange alternative childcare and both return to work for a period at the same time.

Can both parents take shared parental leave at the same time?

Yes, both parents can be absent from work on shared parental leave at the same time.

The amount of shared parental leave that the parents can share is 52 weeks, minus the amount of maternity leave taken by the mother, or adoption leave taken by the primary adopter. All leave must be taken before the child's first birthday, or before the first anniversary of the day on which the child was placed for adoption. For example, the mother could take two weeks' compulsory maternity leave followed by 40 weeks' shared parental leave. This would leave 10 weeks' shared parental leave for the father (or the mother's partner) to take at any time before the child's first birthday, either at the same time as the mother or when she has returned to work.

Can employees still take ordinary paternity leave once shared parental leave is in force?

Yes, eligible employees will still be able to take one or two weeks' ordinary paternity leave within the first 56 days following the child's birth, once shared parental leave is in force. However, reg.4 of the draft Paternity and Adoption Leave (Amendment) Regulations 2014 provides that an employee cannot take ordinary paternity leave if he or she has already taken a period of shared parental leave in relation to the same child. Therefore, an employee can choose to take both ordinary paternity leave and shared parental leave, but the period of ordinary paternity leave must come first.

Can a mother's partner begin a period of shared parental leave while the mother is still on maternity leave?

Yes, if the mother has provided her employer with a maternity leave curtailment notice, and all the relevant eligibility criteria and notice requirements are satisfied, the mother's partner can begin a period of shared parental leave while the mother is still on maternity leave.

For example, the mother could submit a leave curtailment notice stating that her maternity leave will end three months from the date of the notice. The mother's partner can take shared parental leave (with at least eight weeks' notice) at any time after the mother has submitted her leave curtailment notice; he or she does not have to wait until those three months have passed.

Contact during shared parental leave

The organisation reserves the right to maintain reasonable contact with employees during shared parental leave. This may be to discuss employees' plans for their return to work, to discuss any special arrangements to be made or training to be given to ease their return to work or to update them on developments at work during their absence.

An employee can agree to work for the organisation (or to attend training) for up to 20 days during shared parental leave without that work bringing the period of his/her shared parental leave and pay to an end. These are known as "shared-parental-leave-in-touch" (SPLIT) days.

The organisation has no right to require employees to carry out any work and employees have no right to undertake any work during their shared parental leave. Any work undertaken, and the amount of salary paid for any work done on SPLIT days, is entirely a matter for agreement between employees and the organisation.

Shared parental leave: maternity leave curtailment notice	
Name of employee:	
Job title:	
<p>I wish to bring my [ordinary/additional] maternity leave [and statutory maternity pay] to an end to be able to take shared parental leave. I have also completed a [form providing a notice of entitlement and intention to take shared parental leave/declaration that my partner has provided a notice of entitlement and intention to take shared parental leave to his/her employer and that I consent to the amount of leave that he/she intends to take].</p>	
I wish to end my [ordinary/additional] maternity leave on:	
I wish my statutory maternity pay period (if applicable) to end on:	
Signed:	
Dated:	
<p>Notes</p> <p>You should complete and submit this form alongside the organisation's Form for a mother to provide a notice of entitlement and intention to take shared parental leave or the declaration that your partner has provided a notice of entitlement and intention to take shared parental leave to his/her employer and that you consent to the amount of leave that he/she intends to take.</p> <p>Please think very carefully before you submit this form. Once the form is submitted, you can withdraw your maternity leave curtailment notice only in limited circumstances.</p> <p>The date on which you end your maternity leave must be at least:</p> <ul style="list-style-type: none"> • eight weeks after the date on which you provide this notice to the organisation; • two weeks [or four weeks for factory workers] after you give birth; and • one week before what would have been the end of your additional maternity leave 	

Shared parental leave: revocation of maternity leave curtailment notice	
Name of employee:	
Job title:	
Date of maternity leave curtailment notice:	
I previously notified you that I wished to end my maternity leave on:	
I no longer wish to end my maternity leave and would like to revoke my maternity leave curtailment notice. [I would also like to revoke my maternity pay period curtailment notice.]	
Signed:	
Dated:	
<p>Notes</p> <p>You can withdraw your maternity leave curtailment notice only if:</p> <ul style="list-style-type: none"> • it is discovered that neither you nor your partner are entitled to shared parental leave or statutory shared parental pay and you withdraw your maternity leave curtailment notice within eight weeks of providing your maternity leave curtailment notice; • you gave the maternity leave curtailment notice before the birth of your child and you withdraw your maternity leave curtailment notice within six weeks of your child's birth; or • your partner has died (if this is the case, please state the date of death here: []). 	

