



Report to Joint Consultative and Safety Committee

Subject: Shared Parental leave

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1. Purpose

To introduce for consultation, local policy changes relating to parental leave that reflect the change to national legislation.

2. Introduction and background

Shared Parental Leave legislation applies to the parents of all children born after 1 April 2015. It replaces previous arrangements for additional paternity leave. Currently local policy does not formally reflect this change to legislation. Although the legislation on its own is sufficient to govern our internal practice, the inclusion of a local policy will provide relevant context where necessary.

3. Proposal

The arrangements for parents to share leave are now regulated in law. The proposed local policy shown at Appendix A is designed to reflect this legislation in ways appropriate to this council.

It is recognised that there is some complexity in the process as it is described in law, particularly relating to the notification process. Locally in practice it is anticipated that whenever possible, and still working within the confines of the legislation, a "common sense" approach will be applied for the benefit of the employee and the manager.

4. Financial Issues

It is not anticipated that there will be many occasions where this policy is used. It remains relatively rare that fathers take extended periods of absence to look after newly-born children. Other than cases where few hours are normally worked each week, payments made to parents during the period allowed under this legislation and local policy will usually result in lower pay than salary. Notionally it may arise that in addition to making payment to a partner taking Shared Parental Leave that additional salary needs to be paid to an employee providing cover, the number of

occasions and the length over which the arrangement might need to apply mean that potential costs will be hard to define but small in scale.

5. Human Resource Implications

The policy reflects the requirements of legislation. The operational impacts to the Council are likely to be negligible. In a few cases the ability to take leave more flexible in order to support a young child may be valued highly by the employee in order to meet their own social, economic, domestic or cultural needs.

6. Appendices

Appendix A shows the proposed policy.

7. Background Papers

There are no background papers

8. Recommendations

Committee is recommended to:

8.1 Confirm support to the Appointments and Conditions of Service Committee of the proposal made introduce, with immediate effect, a local Shared Parental Leave Policy.

8.2 Offer further comment to the Appointments and Conditions of Service Committee to assist in the consideration of this proposal.

Shared Parental Leave

1. Definition

Shared Parental Leave enables eligible parents to choose how to share the care of their child during the first year of birth or adoption. Its purpose is to give parents more flexibility in considering how to best care for, and bond with, their child. All eligible employees have a statutory right to take Shared Parental Leave. There may also be an entitlement to some Shared Parental Pay. This policy sets out the statutory rights and responsibilities of employees who wish to take statutory Shared Parental Leave (SPL) and statutory Shared Parental Pay (ShPP) and provides context of how these rights are applied within the Council.

2. Eligibility

SPL can only be used by two people:

- The mother/adopter **and**
- One of the following:
 - the father of the child (in the case of birth) or
 - the spouse, civil partner or partner of the child's mother/ adopter.

Both parents must share the main responsibility for the care of the child at the time of the birth/placement for adoption.

Additionally an employee seeking to take SPL must satisfy each of the following criteria:

- the mother/adopter of the child must be/have been entitled to statutory maternity/adoption leave or if not entitled to statutory maternity/adoption leave they must be/have been entitled to statutory maternity/adoption pay or maternity allowance and must have ended or given notice to reduce any maternity/adoption entitlements;
- the employee must still be working for the organisation at the start of each period of SPL;
- the employee must pass the 'continuity test' requiring them to have a minimum of 26 weeks' service at the end of the 15th week before the child's expected due date/matching date;
- the employee's partner must meet the 'employment and earnings test' requiring them in the 66 weeks leading up to the child's expected due date/matching date have worked for at least 26 weeks and earned an average of at least £30 (this is correct as of 2015 but may change annually) a week in any 13 of those weeks;
- the employee must correctly notify the organisation of their entitlement and provide evidence as required.

3. The Shared Parental Leave entitlement

Eligible employees may be entitled to take up to 50 weeks SPL during the child's first year in their family. The number of weeks available is calculated using the mother's/adopter's entitlement to maternity/adoption leave, which allows them to take up to 52 weeks' leave. If they reduce their maternity/adoption leave entitlement then they and/or their partner may opt-in to the SPL system and take any remaining weeks as SPL.

A mother/adopter may reduce their entitlement to maternity/adoption leave by returning to work before the full entitlement of 52 weeks has been taken, or they may give notice to curtail their leave at a specified future date.

If the mother/adopter is not entitled to maternity/adoption leave but is entitled to Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP) or Maternity Allowance (MA), they must reduce their entitlement to less than the 39 weeks. If they do this, their partner may be entitled to up to 50 weeks of SPL. This is calculated by deducting from 52 the number of weeks of SMP, SAP or MA taken by the mother/adopter.

SPL can commence as follows:

- The mother can take SPL after she has taken the legally required two weeks of maternity leave immediately following the birth of the child
- The adopter can take SPL after taking at least two weeks of adoption leave
- The father/partner/spouse can take SPL immediately following the birth/placement of the child, but may first choose to exhaust any paternity leave entitlements (as the father/partner cannot take paternity leave or pay once they have taken any SPL or ShPP).

Where a mother/adopter gives notice to curtail their maternity/adoption entitlement then the mother/adopter's partner can take leave while the mother/adopter is still using their maternity/adoption entitlements.

SPL will generally commence on the employee's chosen start date specified in their leave booking notice, or in any subsequent variation notice (see "Booking Shared Parental Leave" and "Variations to arranged Shared Parental Leave" below).

If the employee is eligible to receive it, Shared Parental Pay (ShPP) may be paid for some, or all, of the SPL period (see "Shared Parental Pay" below).

SPL must end no later than one year after the birth/placement of the child. Any SPL not taken by the first birthday or first anniversary of placement for adoption is lost.

4. Notifying the council of an entitlement to Shared Parental Leave

An employee entitled and intending to take SPL must give their line manager notification of their entitlement and intention to take to SPL, at least eight weeks before they can take any period of SPL.

Part of the eligibility criteria requires the employee to provide the council with correct notification. Notification must be in writing and requires each of the following:

- the name of the employee;
- the name of the other parent;
- the start and end dates of any maternity/adoption leave or pay, or maternity allowance, taken in respect of the child and the total amount of SPL available;
- the date on which the child is expected to be born and the actual date of birth or, in the case of an adopted child, the date on which the employee was notified of having been matched with the child and the date of placement for adoption;
- the amount of SPL the employee and their partner each intend to take
- a non-binding indication of when the employee expects to take the leave.

The employee must provide the council with a signed declaration stating:

- that they meet, or will meet, the eligibility conditions and are entitled to take SPL;
- that the information they have given is accurate;
- if they are not the mother/adopter they must confirm that they are either the father of the child or the spouse, civil partner or partner of the mother/adopter;
- that should they cease to be eligible they will immediately inform the organisation.

The employee must provide the council with a signed declaration from their partner confirming:

- their name, address and national insurance number (or a declaration that they do not have a national insurance number);
- that they are the mother/adopter of the child or they are the father of the child or are the spouse, civil partner or partner of the mother/adopter;
- that they satisfy the 'employment and earnings test' (as set out in section 2), and had at the date of the child's birth or placement for adoption the main responsibility for the child, along with the employee;
- that they consent to the amount of SPL that the employee intends to take;
- that they consent to the organisation processing the information contained in the declaration form; and
- (in the case whether the partner is the mother/adopter), that they will immediately inform their partner should they cease to satisfy the eligibility conditions.

5. Requesting further evidence of eligibility

The council may, within 14 days of the SPL entitlement notification being given, request:

- the name and business address of the partner's employer (where the employee's partner is no longer employed or is self employed their contact details must be given instead)
- in the case of biological parents, a copy of the child's birth certificate (or, where one has not been issued, a declaration as to the time and place of the birth).
- in the case of an adopted child, documentary evidence of the name and address of the adoption agency, the date on which they were notified of having been matched with the child and the date on which the agency expects to place the child for adoption

In order to be entitled to SPL, the employee must produce this information within 14 days of the employer's request.

6. Fraudulent claims

Should there be suspicion that fraudulent information may have been provided or where the HMRC provides notification that a fraudulent claim was made, the matter will be considered under the Disciplinary Procedure.

7. Discussions regarding Shared Parental Leave

Advice to managers and employees about the application of this policy can be obtained through the council's Personnel Team.

An employee considering taking SPL should discuss this with their line manager as early as possible. A Personnel Officer can attend this meeting to provide information about the operation of the policy.

At the meeting the employee may, if they wish, be accompanied by a workplace colleague, trade union representative, a personal friend or family member.

The purpose of the meeting is to discuss in detail the leave proposed and what will happen while the employee is away from work. Where it is a request for discontinuous leave the discussion may also focus on how the leave proposal could be agreed, whether a modified arrangement would be agreeable to the employee and the council, and what the outcome may be if no agreement is reached.

8. Booking Shared Parental Leave

In addition to notifying the employer of entitlement to SPL/ShPP, an employee must also give notice to take the leave.

The employee has the right to submit three notifications specifying leave periods they are intending to take. Each notification may contain either:

- (a) a single period of weeks of leave; or
- (b) two or more weeks of discontinuous leave, where the employee intends to return to work between periods of leave.

The employee can submit three notifications to book (or vary) leave which is the statutory minimum. More notifications than this may be allowed at the discretion of the line manager subject to there being no detriment to the council's business need

SPL can only be taken in complete weeks but may begin on any day of the week. For example if a week of SPL began on a Tuesday it would finish on a Monday. Where an employee returns to work between periods of SPL, the next period of SPL can start on any day of the week.

The employee must book SPL by giving the correct notification at least eight weeks before the date on which they wish to start the leave and (if applicable) receive ShPP.

The notification should be made by the employee to their line manager.

The original request together, in the case of "discontinuous leave" (see below) requests, with confirmation by the line manager to confirm acceptance, variation or refusal should be sent to the Personnel Team who retain the notification on the employee's personal file and, if payments are to be made under the policy, will also notify Payroll.

The leave cannot start sooner than eight weeks from the date the original notification was submitted. If the employee does not choose a start date then the leave will begin on the first leave date requested in the original notification.

Continuous leave notifications

A notification can be for a period of continuous leave, which means a notification of a number of weeks taken in a single unbroken period of leave (for example, six weeks in a row).

An employee has the right to take a continuous block of leave notified in a single notification, so long as it does not exceed the total number of weeks of SPL available to them (specified in the notice of entitlement) and the employer has been given at least eight weeks' notice.

Discontinuous leave notifications

A single notification may also contain a request for two or more periods of discontinuous leave, which means asking for a set number of weeks of leave over a period of time, with breaks between the leave where the employee returns to work (for example, an arrangement where an employee will take six weeks of SPL and work every other week for a period of three months).

Where there is concern over accommodating the notification, this should be discussed with a view to agreeing, where possible, an arrangement that meets both the needs of the employee and the organisation.

The line manager will consider a discontinuous leave notification but has the right to refuse it.

If a discontinuous leave pattern is refused then the employee may withdraw the request without detriment on or before the 15th day after the notification was given; or may take the total number of weeks in the notice in a single continuous block. If the employee chooses to take the leave in a single continuous block, the employee has until the 19th day from the date the original notification was given to choose when they want the leave period to begin.

Each request for discontinuous leave will be considered on a case-by-case basis. Agreeing to one request will not set a precedent or create the right for another employee to be granted a similar pattern of SPL.

Should the employee believe that the policy has been incorrectly or unfairly applied then the council's Grievance Procedure should be used to appeal the decision.

9. Responding to a Shared Parental Leave notification

Once the Personnel Team receives the leave booking notice (together with any comments of the line manager in cases of discontinuous leave requests) confirmation of the arrangement will be sent to the employee no later than the 14th day after the leave request was made.

Although there is no right to refuse, all notices for continuous leave will be confirmed in writing.

10. Variations to arranged Shared Parental Leave

The employee is permitted to vary or cancel an agreed and booked period of SPL, provided that they advise the council in writing at least eight weeks before the date of any variation. Any new start date cannot be sooner than eight weeks from the date of the variation request.

Any variation or cancellation notification made by the employee, including notice to return to work early, will usually count as a new notification reducing the employee's right to book or vary leave by one. However, a change as a

result of a child being born early, or as a result of the council requesting it be changed, and the employee being agreeable to the change, will not count as further notification. Any variation will be confirmed in writing by the organisation.

11. Statutory Shared Parental Pay (ShPP)

Eligible employees may be entitled to take up to 37 weeks ShPP while taking SPL. The amount of weeks available will depend on the amount by which the mother/adopter reduces their maternity/adoption pay period or maternity allowance period.

ShPP may be payable during some or all of SPL, depending on the length and timing of the leave.

In addition to meeting the eligibility requirements for SPL, an employee seeking to claim ShPP must further satisfy each of the following criteria:

- the mother/adopter must be/have been entitled to statutory maternity/adoption pay or maternity allowance and must have reduced their maternity/adoption pay period or maternity allowance period;
- the employee must intend to care for the child during the week in which ShPP is payable;
- the employee must have an average weekly earnings for the period of eight weeks leading up to and including the 15th week before the child's expected due date/matching date are not less than the lower earnings limit in force for national insurance contributions;
- the employee must remain in continuous employment until the first week of ShPP has begun;
- the employee must give proper notification in accordance with the rules set out below.

Where an employee is entitled to receive ShPP they must, at least eight weeks before receiving any ShPP, give their line manager written notice advising of their entitlement to ShPP. To avoid duplication, if possible, this should be included as part of the notice of entitlement to take SPL.

In addition to what must be included in the notice of entitlement to take SPL, any notice that advises of an entitlement for ShPP must include:

- the start and end dates of any maternity/adoption pay or maternity allowance;
- the total amount of ShPP available, the amount of ShPP the employee and their partner each intend to claim, and a non-binding indication of when the employee expects to claim ShPP;
- a signed declaration from the employee confirming that the information they have given is correct, that they meet, or will meet, the criteria for ShPP and that they will immediately inform the organisation should they cease to be eligible.

It must be accompanied by a signed declaration from the employee's partner confirming:

- their agreement to the employee claiming ShPP and for the organisation to process any ShPP payments to the employee;
- (in the case whether the partner is the mother/ adopter) that they have reduced their maternity/adoption pay or maternity allowance;
- (in the case whether the partner is the mother/ adopter) that they will immediately inform their partner should they cease to satisfy the eligibility conditions.

Any ShPP due will be paid at a rate set by the Government for the relevant tax year.

The notice of entitlement to, and claim for, ShPP should be sent to the Personnel Team who retain the notification on the employee's personal file and, if payments are to be made under the policy, will also notify Payroll.

12. Terms and conditions during Shared Parental Leave

During the period of SPL, the employee's contract of employment continues in force and they are entitled to receive all their contractual benefits, except for salary. Contractual annual leave entitlement will continue to accrue.

Pension contributions will continue to be made during any period when the employee is receiving ShPP but not during any period of unpaid SPL. Employee contributions will be based on actual pay, while the council's contributions will be based on the salary that the employee would have received had they not been taking SPL.

13. Annual Leave

SPL is granted in addition to an employee's normal annual holiday entitlement. Employees should wherever possible take holiday in the year that it is earned. Where an SPL period overlaps two leave years the employee should consider how their annual leave entitlement best meets the business needs of the service which may mean identifying how leave can be used to ensure that it is not untaken at the end of the employee's holiday year.

14. Contact during Shared Parental Leave

Before an employee's SPL begins, their line manager will discuss the arrangements for them to keep in touch during their leave. The council reserves the right in any event to maintain reasonable contact with the employee from time to time during their SPL. This may be to discuss the employee's plans to return to work, to ensure the individual is aware of any possible relevant work issues that might potentially affect them, to discuss any special arrangements to be made or training to be given to ease their return to work or simply to update them on developments at work during their absence.

15. Shared Parental Leave in Touch days

An employee can agree to work for the council (or attend training) for up to 20 days during SPL without bringing their period of SPL to an end or impacting on their right to claim ShPP for that week. These are known as "Shared Parental Leave In Touch" or "SPLIT" days. Any work carried out on a day or part of a day shall constitute a day's work for these purposes.

The organisation has no right to require the employee to carry out any work, and is under no obligation to offer the employee any work, during the employee's SPL. Any work undertaken is a matter for agreement between the organisation and the employee. An employee taking a SPLIT day will receive full pay for any day worked. If a SPLIT day occurs during a week when the employee is receiving ShPP, this will be effectively 'topped up' so that the individual receives full pay for the day in question. Any SPLIT days worked do not extend the period of SPL.

An employee, with the agreement of the line manager, may use SPLIT days to work part of a week during SPL. The organisation and the employee may use SPLIT days to effect a gradual return to work by the employee towards the end of a long period of SPL or to trial a possible flexible working pattern.

16. Returning to work after Shared Parental Leave

The council will have formally advised the employee in writing of the end date of any period of SPL. The employee is expected to return on the next working day after this date, unless they notify the organisation otherwise. If they are unable to attend work due to sickness or injury, 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 under the Disciplinary Procedure.

If the employee wishes to return to work earlier than the expected return date, they may provide a written notice to vary the leave and must give the organisation at least eight weeks notice of their date of early return. This will count as one of the employee's notifications. If they have already used their three notifications to book or vary leave then the organisation does not have to accept the notice to return early but may do if it is considered to be reasonably practicable to do so.

On returning to work after SPL, the employee is entitled to return to the same job if the employee's aggregate total statutory maternity/paternity/adoption leave and SPL amounts to 26 weeks or less, he or she will return to the same job. The same job is the one they occupied immediately before commencing maternity/paternity/adoption leave and the most recent period of SPL, on the same terms and conditions of employment as if they had not been absent.

If their maternity/paternity/adoption leave and SPL amounts to 26 weeks or more in aggregate, the employee is entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, to another job which is both suitable and appropriate and on terms and conditions no less favourable.

If the employee also takes a period of unpaid parental leave of 4 weeks or less this will have no effect on the employee's right to return and the employee will still be entitled to return to the same job as they occupied before taking the last period of leave if the aggregate weeks of maternity/paternity/adoption and SPL do not exceed 26 weeks.

If a parent takes a period of 5 weeks of unpaid parental leave, even if the total aggregate weeks of maternity/paternity/adoption and SPL do not exceed 26 weeks, the employee will be entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, to another job which is suitable and appropriate and on terms and conditions no less favourable.

Special Circumstances and further information

In certain situations an employee's rights and requirements regarding SPL and ShPP may change. In these circumstances the council will abide by any statutory obligations and an employee should refer to the documents listed below and/or clarify any issues or queries with the Personnel Team.

Law relating to this document:

- The Shared Parental Leave Regulations 2014
- The Shared Parental Pay (General) Regulations 2014
- The Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations 2014
- Employment Rights Act 1996
- Child and Families Act 2014
- Equality Act 2010