



## **Maternity, Paternity & Adoption Leave Policy 44**

**Adoption Date:**  
**Review Date: 6.10.20**

### **1. Introduction**

This policy sets out the statutory rights and responsibilities of employees who are:

1. Pregnant or have recently given birth (Maternity Leave, below)
2. An expectant father or partner of the expectant mother (Paternity Leave, page 5)
3. Due to adopt a child (Adoption Leave, page 7)
4. Seeking to take share lease between parents (Shared Parental Leave, page 12)
5. The intended parent of a child through surrogacy (Surrogacy, page 17)

Where the policy refers to 'the Council' being notified or taking action, this should be read as the Clerk carrying out these responsibilities on behalf of the Council.

### **2. Maternity Leave**

An employee who becomes pregnant may be entitled to up to 52 weeks' maternity leave and up to 39 weeks' maternity pay. The sections below set out the entitlements, notification requirements and other considerations for the Council and the employee.

#### **2.1 Notification**

On becoming pregnant, an employee should notify the Clerk as soon as she feels able to do so. This is important because there are health and safety considerations for the Council and the Council may need to make contingency arrangements during the planned absence period.

By the end of the Qualifying Week (the 15<sup>th</sup> week before the Expected Week of Childbirth), or as soon as reasonably practicable afterwards, an employee is required to provide the following information in writing to the Council:

- a. That she is pregnant
- b. The Expected Week of Childbirth (EWC)
- c. The date on which she intends to start her maternity leave

In addition, the Council should be provided with a MATB1 certificate (issued by your doctor or midwife) stating when the baby is due.

If an employee fails to follow the above notification requirements, she may not be eligible for Statutory Maternity Pay.

The Council will respond in writing within 28 days of notification, setting out the employee's rights and entitlements and confirming the date on which she is expected to return to work if she takes her full 52 week entitlement to maternity leave.

If an employee wishes to change her maternity leave start date, she should give the Council at least 28 days' notice where possible. Where a baby arrives early or an expectant mother is off with pregnancy-related illness within four weeks of the EWC, maternity leave will automatically begin.

## **2.2 Antenatal Appointments**

Once the Council has been advised that an employee is pregnant, the employee is entitled to take reasonable time off work with pay to attend antenatal clinic and other antenatal appointments made on the advice of her doctor, registered midwife or registered health visitor.

If required, the Council may ask for proof of appointments with exception of the first appointment.

## **2.3 Maternity Leave Entitlement**

All pregnant employees are entitled to take 26 weeks' ordinary maternity leave and up to 26 weeks' additional maternity leave, making a total of 52 weeks.

This entitlement is for all pregnant employees regardless of hours of work or length of service.

Ordinary maternity leave can start at any time after the beginning of the 11<sup>th</sup> week before the EWC (unless the child is born prematurely before that date). Maternity leave will start on whichever date is earlier of;

- a. The chosen start date
- b. The day after the birth
- c. The day after any day on which the employee is absent for a pregnancy-related reason in the four weeks before the EWC

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

If an employee chooses to take additional maternity leave, this will begin the day after the 26 weeks' ordinary maternity leave has ended.

## **2.4 Maternity Pay**

### *Statutory Maternity Pay*

Statutory Maternity Pay (SMP) is payable for up to 39 weeks during maternity leave. An employee is entitled to SMP if;

- a. She has been continuously employed by the Council for at least 26 weeks at the end of the Qualifying Week and;
- b. Her average weekly earnings in the eight weeks up to and including the Qualifying Week are not less than the lower earnings limit for National Insurance contributions and;
- c. She is still pregnant eleven weeks before the start of her EWC (or have already given birth) and;

- d. She has provided a MATB1 certificate stating the EWC and;
- e. She has given the Council proper notification of the pregnancy in accordance with the rules at section 1 of this policy

For the first six weeks of maternity leave, an employee is entitled to 90% of the average weekly earnings calculated over a period of eight weeks up to and including the Qualifying Week, which is offset against payments made by way of SMP.

The standard rate of SMP is then paid for the remaining 33 weeks (or less if the employee decides to return to work sooner). The rate of SMP is reviewed every April by the Government. From April 2020 SMP is £151.20 per week. If, when calculated, 90% of an employee's average weekly earnings in the eight weeks leading up to Qualifying Week is less than the rate of SMP, the employee will receive the lower figure.

SMP is treated as earnings and is therefore subject to income tax and National Insurance contributions. If part of the pension scheme, contributions will be taken based on the amount of maternity pay received. The Council will continue to contribute for any time the employee is in receipt of SMP based on the salary the employee would have been receiving had she not been on maternity leave. When on unpaid maternity leave an employee can opt to make additional pension contributions; this should be discussed with the Council's Finance Manager.

Payment of SMP cannot start before the 11<sup>th</sup> week before your EWC. SMP can start from any day of the week in accordance with the date an employee starts her maternity leave. SMP is payable whether or not she intends to return to work after her maternity leave.

SMP is still payable in the event of; a baby being born early, a stillbirth after the start of the 24<sup>th</sup> week of pregnancy, or the death of the baby after being born.

The Council is eligible to reclaim a percentage of SMP payments made (currently 92%).

If the employee has not been working for the Council for 26 weeks at the Qualifying Week she will not be eligible to receive SMP. She may however be able to apply to the Department for Work and Pensions for maternity allowance, see below.

### *Maternity Allowance*

If an expectant mother is not eligible to receive SMP she may be entitled to up to 39 weeks of maternity allowance from the Department for Work and Pensions.

To qualify she must have been in employment or self-employed for at least 26 of the previous 66 weeks before the EWC (not necessarily consecutive). From these 26 weeks, she must have earned on average at least £30 per week for 13 weeks.

An expectant mother can claim maternity allowance once she is 26 weeks pregnant and payment can start from the 11<sup>th</sup> week before the EWC.

## **2.5 Contact/KIT days**

An employee may decide she wants to keep in touch during her maternity leave. Legally she is entitled to work up to 10 days without losing her entitlement to SMP. Any days worked are known as 'keep in touch' days (KIT days) and will be paid in full and will be subject to the usual tax, National Insurance and pension deductions.

There is no obligation for an employee to work during her maternity leave. Maternity leave or pay will not be extended due to the fact that work has been carried out during the leave period.

Legislation allows for the Council and the employee to make reasonable contact during the leave period to discuss such issues as the return to work. This contact does not count towards the 10 KIT days and does not bring the maternity leave to an end.

The Council will ensure that the employee is kept informed of relevant matters such as job vacancies, significant workplace developments and training opportunities.

## **2.6 Health & Safety**

Upon notification of an employee's pregnancy, the Council will seek to do a risk assessment with the employee in her role. This assessment will consider any heavy lifting or carrying, sitting/standing for long periods of time with no breaks, exposure to toxic substances and long working hours (this is not an exclusive list).

If a risk is identified that cannot be avoided, the Council must take steps to remove the risk or offer different suitable work with no less favourable terms and conditions. If no alternative work is available, the employee will be suspended on full pay for as long as possible to protect the health and safety of the mother and baby.

If an employee is suspended on maternity grounds, this will not in any way affect her statutory or contractual employment and maternity rights.

If a pregnant employee has any concerns about any aspects of health and safety, as with any employee, these should be raised immediately with her line manager.

## **2.7 Sickness**

If a pregnant employee is absent from work during her pregnancy due to sickness, she will receive sick pay in the same manner as any other sickness absence provided she has not yet begun maternity leave.

If, however a pregnant employee is absent from work due to a pregnancy-related illness within four weeks of her EWC, maternity leave will automatically commence from the day after her first day of absence.

## **2.8 Annual Leave**

An employee will continue to accrue annual leave during maternity leave (ordinary and additional) and substitute days for Bank Holiday leave. The employee should discuss with her manager the options for using leave before or after maternity leave if she wishes to. It is not possible to use annual leave entitlement during maternity leave.

## **2.9 Return to Work**

On resuming work after maternity leave, the employee is entitled to return to the same job on the same terms and conditions of employment as if she has not been absent. She also has the right to receive any pay rises or improvements to terms and conditions for the job as if she has not been on leave.

If however there is a reason why it is not reasonably practicable for the Council to take them back in her original job, she will be offered suitable alternative work of equivalent status and responsibility and on terms and conditions that are no less favourable than would have applied if she had not been absent.

#### *Date of Return*

Unless the Council is notified otherwise, the employee will be expected to return to work on the date in which the 52 week maternity leave period ends.

If the employee intends to bring forward her return to work date, she should notify the Council in writing providing at least eight weeks' notice where possible. If she fails to do so, the Council has the right to postpone her return to such a date as will give the Council eight weeks' notice, provided this is not later than her expected return date.

If the employee is unable to return to work due to sickness or injury, the Council's normal arrangements for sickness absence will apply.

#### *Breastfeeding/Expressing*

Where an employee is seeking to return to work and will require time or a suitable location to breastfeed or express, she should notify the Council of this so that suitable arrangements can be discussed.

#### *Part Time/Changed Hours*

If she decides to return to work after maternity leave, an employee has a right to request changed hours if she wishes, either on a temporary or permanent basis. The Council will consider this request and to look at whether this can be accommodated.

In order to allow the Council time to give full consideration to the request, such a request should be put in writing as far in advance of the return to work date as possible, with a minimum of six weeks' notice. The Council will respond in writing as soon as practically possible, within 14 days at the latest. The Council will always consider such requests in line with the operational requirements of the Council's business.

#### *Resignation*

If an employee decides not to return to work after maternity leave she should submit her resignation in the normal manner, providing adequate notice as per her terms and conditions of employment.

Where an employee has received OMP, she must be aware that she may be required to refund her OMP payments to the Council (not including the SMP element of these payments).

### **3. Paternity Leave**

An expectant parent or partner of a mother may be entitled to up to two weeks' paternity leave. The sections below set out the entitlements, notification requirements and other considerations for the Council and the employee.

For paternity leave entitlements where a child is adopted please see 'Adoption Leave' below.

### **3.1 Notification**

On becoming an expectant parent, an employee should notify the Clerk as soon as they feel able to do so.

By the end of the Qualifying Week (the 15<sup>th</sup> week before the Expected Week of Childbirth), or as soon as reasonably practicable afterwards, an employee is required to notify the Council when the baby is due, whether or not they are seeking to take one or two weeks' paternity leave and when they expect the leave to begin.

If an employee fails to follow the above notification requirements, they may not be eligible for Statutory Paternity Pay.

The Council will respond in writing within 28 days of notification, setting out the employee's rights and entitlements to and during paternity leave.

If an employee wishes to change their paternity leave start date, they should give the Council at least 28 days' notice where possible. The employee does not need to give a specific date for the leave to start, for example they may wish to say the day after the birth or one week after the birth.

### **3.2 Antenatal Appointments**

While there is no legal right for to paid time off for expectant fathers or partners of expectant mothers, the Council understands the importance of attendance at antenatal classes and appointments and will therefore allow paid time off for these appointments, provided adequate notice is given to the employee's line manager of such a request for time off work.

If required, the Council may ask for proof of appointments.

### **3.3 Paternity Leave Entitlement**

Paternity leave is available for a period of one or two weeks. The leave must be consecutive and not taken as ad hoc days.

To be eligible for paternity leave, an employee must:

- a. Have or expect to have responsibility for the child's upbringing and;
- b. Be the biological father of the child or the mother's husband or partner and;
- c. Have worked continuously for the Council for 26 weeks leading in to the 15<sup>th</sup> week before the baby is due and be employed continuously during the pregnancy up to the actual date the baby is born

Paternity leave must be taken within 56 days of the child being born and may only start after the actual birth.

### **3.4 Paternity Pay**

Statutory Paternity Pay (SPP) is payable for up to two weeks. An employee is entitled to SPP if;

- a. They have been continuously employed by the Council for at least 26 weeks at the end of the Qualifying Week and;
- b. They are employed up to the actual date of birth and;

- c. Their average weekly earnings in the eight weeks up to and including the Qualifying Week are not less than the lower earnings limit for National Insurance contributions and;
- d. They have given the correct notice as per section 10

The rate of SPP is reviewed every April by the Government. From April 2020 SPP is £151.20 per week. If, when calculated, 90% of an employee's average weekly earnings in the eight weeks leading up to Qualifying Week is less than the rate of SPP, the employee will receive the lower figure.

SPP is treated as earnings and is therefore subject to income tax and National Insurance contributions. If part of the pension scheme, contributions will be taken based on the amount of paternity pay received. The Council will continue to contribute for any time the employee is in receipt of SPP on the salary the employee would have been receiving had he not been on paternity leave.

SPP is still payable in the event of; a stillbirth after the start of the 24<sup>th</sup> week of pregnancy or the baby being born alive at any point of pregnancy.

The Council is eligible to reclaim a percentage of SPP payments made (currently 92%).

### **3.5 Annual Leave**

An employee will continue to accrue annual leave during paternity leave and substitute days for Bank Holiday leave. The employee should discuss with their manager the options for using leave before or after paternity leave if they wish to. It is not possible to use annual leave entitlement during paternity leave.

### **3.6 Employment Rights**

All employment rights are protected and the employee shall suffer no detriment from taking paternity leave. An employee is entitled to return to the same job after up to two weeks'

## **4. Adoption Leave**

Qualifying employees (male or female) who have been matched with a child for adoption may take up to 52 weeks' adoption leave and may be entitled to 39 weeks of Statutory Adoption Pay. If a couple jointly adopt a child, one may take adoption leave and the other parent may be able to take paternity leave or shared parental leave.

### **4.1 Notification**

Within seven days of being matched with a child, the employee should tell the Council (in writing preferably):

- a. How much leave they want
- b. Their leave start date
- c. The 'date of placement' – the expected or actual date the child is placed with them

Within 28 days the Council will write to the employee confirming their leave start and end date and the employee's rights and entitlements.

Employees wishing to change their leave dates must inform the Council at least 28 days before their original start date or the new start date, whichever is earlier.

The rules are different if it is an overseas adoption. An employee must tell the Council:

- a. The date of their 'official notification' and the expected date the child arrives in the UK – within 28 days of getting the notification and;
- b. The actual date the child arrives in the UK – within 28 days of this date and;
- c. How much leave they want and when they want it to start

The Council will respond in writing within 28 days confirming their leave start and end dates.

## **4.2 Adoption Leave Entitlement**

An employee can take up to 52 weeks' statutory adoption leave. The first 26 weeks are known as 'ordinary adoption leave' and the last 26 weeks as 'additional adoption leave'.

Adoption leave will start:

- a. On the date the child starts living with the employee or up to 14 days before expected placement date (UK adoptions) or;
- b. When an employee has been matched with a child to be placed with them by a UK adoption agency or;
- c. When the child arrives in the UK or within 28 days of this date (overseas adoptions)

An employee is entitled to adoption leave from day one of employment; there is no service requirement for entitlement.

If jointly adopting, the main adopter will be entitled to adoption leave; the secondary adopter may be entitled to paternity or shared parental leave.

## **4.3 Adoption Pay**

### *Statutory Adoption Pay*

Statutory Adoption Pay (SAP) is payable for up to 39 weeks during adoption leave. An employee is entitled to SAP if;

- a. They have been continuously employed by the Council for at least 26 weeks by the week they were matched with the child and;
- b. Their average weekly earnings in the eight weeks up to and including the point they were matched with the child are not less than the lower earnings limit for National Insurance contributions and;
- c. They have given the Council proper notification of the pregnancy in accordance with the rules at section 16 of this policy and;
- d. They have given the Council proof of the adoption (see section 19 below)

For overseas adoptions, the conditions are the same as above except they;

- d. Must have 'official notification' (permission for a UK authority) that they can adopt from abroad and;
- e. Must fill in the declaration on online form SC6 if they are adopting with their partner (this form confirms they are not taking paternity leave or pay)

For the first six weeks of adoption leave, SAP is paid at the rate of 90% of the average weekly earnings calculated over a period of eight weeks up to and including the week they were matched with a child.

The standard rate of SAP is then paid for the remaining 33 weeks (or less if the employee decides to return to work sooner). The rate of SAP is reviewed every April by the



Government. From April 2018 SAP is £151.20 per week. If, when calculated, 90% of an employee's average weekly earnings in the eight weeks leading up to the week they were matched with a child is less than the rate of SAP, the employee will receive the lower figure.

SAP is treated as earnings and is therefore subject to income tax and National Insurance contributions. If part of the pension scheme, contributions will be taken based on the amount of adoption pay received. The Council will continue to contribute for any time the employee is in receipt of SAP based on the salary the employee would have been receiving had they not been on adoption leave. When on unpaid adoption leave an employee can opt to make additional pension contributions; this should be discussed with the Council's Finance Manager.

The Council is eligible to reclaim a percentage of SAP payments made (currently 92%).

#### **4.4 Proof of Adoption**

In order to qualify for SAP the employee must give the Council proof of adoption. Proof is not needed for entitlement to adoption leave unless the Council wishes to request it.

For adoption, the proof must show the:

- a. Name and address of the agency and employee and;
- b. Date the child was matched e.g. the matching certificate and;
- c. The expected or actual date of placement (e.g. a letter from the agency) and;
- d. The relevant UK authority's 'official notification' confirming the parent is allowed to adopt (overseas adoptions only) and;
- e. The date the child arrived in the UK e.g. a plane ticket (overseas adoptions only)

#### **4.5 Exemptions**

An employee will not qualify for either adoption leave or pay if they;

- a. Become a special guardian or kinship carer or;
- b. Adopt a stepchild or;
- c. Adopt a family member or stepchild or;
- d. Adopt privately e.g. within permission from a UK authority or adoption agency

#### **4.6 Contact/KIT Days**

An employee may decide they want to keep in touch during their adoption leave. Legally they are entitled to work up to 10 days without losing their entitlement to SAP. Any days worked are known as 'keep in touch' days (KIT days) and will be paid in full and will be subject to the usual tax, National Insurance and pension deductions.

There is no obligation for an employee to work during their adoption leave. Adoption leave or pay will not be extended due to the fact that work has been carried out during the leave period.

Legislation allows for the Council and the employee to make reasonable contact during the leave period to discuss such issues as the return to work. This contact does not count towards the 10 KIT days and does not bring the adoption leave to an end.

The Council will ensure that the employee is kept informed of relevant matters such as job vacancies, significant workplace developments and training opportunities.

#### **4.7 Adoption Appointments**

An employee is entitled to paid time off to attend adoption appointments.

Single adopters are entitled to paid time off to attend up to five adoption appointments. These must be taken in the period between the employee being notified of a match with a child and the date that the child joins the family.

In the case of joint adoptions, one of the adopters will be entitled to paid time off to attend up to five adoption appointments. The other adopter will be entitled to unpaid time off to attend up to two adoption appointments.

Where there are joint adopters, the adopter who took paid time off to attend adoption appointments may not then claim paternity leave and pay. It is usually therefore the main adopter (who is entitled to adoption leave and pay) that would take paid time off.

#### **4.8 Paternity Leave with Adoption**

If an employee is a secondary adopter and is seeking to take paternity leave sections 10 to 15 above apply with the amendments below.

##### *Notification*

An employee adopting a child must give the Council an SC4 form (the Council can provide this) for:

- a. Leave – no later than seven days of their co-adopter or partner being matched with a child and;
- b. Pay – 28 days before they want their pay to start

For overseas adoptions the form and notice period are different. Information on these can be found online on the [www.gov.uk](http://www.gov.uk) website.

##### *Eligibility*

An employee adopting a child must;

- a. Have worked for the Council continuously for at least 26 weeks by the end of the week they were matched with the child (UK adoptions) or;
- b. Have worked for the Council continuously for at least 26 weeks by either the date the child arrives in the UK or when they want their pay to start (overseas adoptions) and;
- c. Confirm that their partner is getting statutory adoption pay in writing and;
- d. Meet the other eligibility conditions for paternity leave and pay (as detailed in the above 'Paternity Leave' section of this policy)

An employee will not be entitled to paternity leave and pay when adopting a child if they have had paid time off for adoption appointments (see section 22 above).

##### *Leave Start Date*

An employee taking paternity leave because they are adopting can start their leave;

- a. On the date of placement or;
- b. An agreed number of days after the placement or;
- c. On the date the child arrives in the UK or an agreed number of days after this (overseas adoptions)

For overseas adoptions, the leave must be taken within 56 days of the placement or the child's arrival in the UK.

### *Proof of Adoption*

An employee must give the Council proof of adoption to qualify for paternity pay (but not paternity leave). Proof can be a letter from their adoption agency or their matching certificate.

## **4.9 Annual Leave**

An employee will continue to accrue annual leave during adoption leave (ordinary and additional) and substitute days for Bank Holiday leave. The employee should discuss with their manager the options for using leave before or after adoption leave if they wish to. It is not possible to use annual leave entitlement during adoption leave.

## **4.10 Return to Work**

On resuming work after adoption leave, the employee is entitled to return to the same job on the same terms and conditions of employment as if they had not been absent. They also have the right to receive any pay rises or improvements to terms and conditions for the job as if they had not been on leave.

If however there is a reason why it is not reasonably practicable for the Council to take them back in their original job, they will be offered suitable alternative work of equivalent status and responsibility and on terms and conditions that are no less favourable than would have applied if they had not been absent.

### *Date of Return*

Unless the Council is notified otherwise, the employee will be expected to return to work on the date in which the 52 week adoption leave period ends.

If the employee intends to bring forward their return to work date, they should notify the Council in writing providing at least eight weeks' notice where possible. If they fail to do so, the Council has the right to postpone their return to such a date as will give the Council eight weeks' notice, provided this is not later than their expected return date.

If the employee is unable to return to work due to sickness or injury, the Council's normal arrangements for sickness absence will apply.

### *Part Time/Changed Hours*

If they decide to return to work after adoption leave, an employee has a right to request changed hours if they wish, either on a temporary or permanent basis. The Council will consider this request and to look at whether this can be accommodated.

In order to allow the Council time to give full consideration to the request, such a request should be put in writing as far in advance of the return to work date as possible, with a minimum of six weeks' notice. The Council will respond in writing as soon as practically possible, within 14 days at the latest. The Council will always consider such requests in line with the operational requirements of the Council's business.

### *Resignation*

If an employee decides not to return to work after adoption leave they should submit their resignation in the normal manner, providing adequate notice as per their terms and conditions of employment.

Where an employee has received OAP, they must be aware that they may be required to refund their OAP payments to the Council (not including the SAP element of these payments).

#### **4.11 Record Keeping**

For a period of three years after the tax year that it relates to, the Council must keep records of;

- a. Proof of adoption
- b. The date SAP started
- c. The payments of SAP made including dates
- d. The payments the Council has reclaimed
- e. Any weeks not paid and the reason

### **5. Shared Parental Leave**

Shared Parental Leave enables eligible mothers, fathers, partners and adopters to choose how to share time off work during the first year after a child is born or placed for adoption. Parents will be able to share a pot of leave and decide to be off work at the same time and/or take it in turns to have periods of leave to look after the child.

Eligible employees may take up to 50 weeks shared parental leave 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. If they decide not to take all 52 weeks' maternity/adoption leave, the remaining leave can be taken as shared parental leave.

#### **5.1 Notification**

An employee must give the Council at least eight weeks' notice of their entitlement/request for shared parental leave to start.

The employee will need to inform the Council;

- a. The name of the other parent and;
- b. 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 shared parental leave available and;
- c. The date on which the child is expected to be born/the actual date of birth or in the case of adoption, the date on which the employee was notified of having been matched with the child and the date of placement for adoption and;
- d. The amount of shared parental leave the employee and their partner each intend to take and;
- e. A non-bonding indication of when the employee expects to take the leave

The employee will also need to provide the Council with a signed declaration stating;

- a. That they meet, or will meet, the eligibility conditions and are entitled to take shared parental leave
- b. That the information they have given is accurate
- c. 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
- d. That should they cease to be eligible that they will immediately inform the Council

In addition to the above, the employee will also need to provide the Council with a signed declaration from their partner confirming;

- a. Their name, address and National Insurance number
- b. That they are the mother/adopter of the child or they are the father of the child or spouse, civil partner or partner of the mother/adopter
- c. That they satisfy the 'employment and earnings test' and had at the date of the child's birth or placement for adoption the main responsibility for the child, along with the employee
- d. That they consent to the amount of shared parental leave that the employee intends to take
- e. That they consent to the Council processing the information contained in the declaration form
- f. (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

The Council may, within 14 days of the above notification, request;

- a. The name and business address of the partner's employer (if the partner is no longer employed or is self-employed, their contact details should be given instead) and;
- b. In the case of biological parents, a copy of the child's birth certificate or;
- c. In the case of an adopted child, documentary evidence of the name and address of the adoption agency, the date of 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

The employee must, in order to be eligible for shared parental leave, respond to the above request within 14 days.

The Council will respond in writing no later than 14 days after the initial request has been received (or in the case of further information being requested by the Council, 14 days after the employee has provided this information).

## **5.2 Eligibility**

In order to be eligible for shared parental leave the employee must be:

- a. The mother/adopter, or
- b. Either the father of the child or the spouse/civil partner/partner of the child's mother/adopter

In addition to this, the employee will need to satisfy all of the following criteria:

- a. The mother/adopter of the child must be/must have been entitled to statutory maternity/adoption leave or if not entitled to statutory maternity/adoption leave they must be/must have been entitled to SMP/SAP or maternity allowance and must have ended or given notice to reduce any maternity/adoption entitlements
- b. The employee must still be working for the Council at the start of each period of shared parental leave
- c. The employee must pass the 'continuity test' requiring them to have a minimum of 26 weeks' service at the end of the 15<sup>th</sup> week for the child's expected due date/matching date
- d. 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 a week in any 13 of those weeks
- e. The employee must correctly notify the Council of their entitlement and provide evidence as required

### **5.3 Leave Entitlement**

The amount of leave available is calculated on the date of which the mother/adopter returns to work and the amount of maternity/adoption leave they have left remaining of the initial 52 weeks' entitlement.

Providing all eligibility and notification requirements are met by both parents, they may choose whether or not to share the remaining leave. There are various ways in which the leave can be shared and each request would have to be considered on its own merit and circumstances.

All shared parental leave must be taken with the first year of the child being born/being matched with the child.

#### *Continuous Leave*

Continuous leave is a number of weeks taken in a single unbroken period of leave e.g. if the mother/adopter returns to work after 22 weeks, a block booking of up to 30 weeks could be chosen.

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 shared parental leave available to them and the Council has been given at least eight weeks' notice.

An employee may submit up to three separate notifications for continuous periods of leave.

#### *Discontinuous Leave*

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. An example is an arrangement is where an employee will take six weeks of shared parental leave and work every other week over a period of three months.

The Council will consider a discontinuous leave notification but does have the right to refuse it. Upon receipt of a notification for discontinuous leave the Council will arrange a meeting to discuss this with the employee. All requests will be carefully considered, weighing up the potential benefits to the employee and the Council against any adverse impact on the Council's activities.

Where a request is refused the employee can either withdraw the request within 15 days of giving it or can take the leave in a single continuous block, providing the correct notification requirements are met.

#### *Shared Leave*

Shared parental leave may be taken at the same time so both parents are taking leave together, providing they do not exceed the total amount of leave entitlement.

#### *Variation*

The employee is permitted to vary or cancel an agreed and booked period of shared parental leave, provided that they advise the Council in writing at least eight weeks before the date of variation. Any variation will be confirmed in writing by the Council within 14 days of receiving notification of the variation.

## 5.4 Shared Parental Pay

### *Statutory Shared Parental Pay*

Eligible employees may be entitled to up to 37 weeks Statutory Shared Parental Pay (ShPP) while taking shared parental leave. The amount of weeks available will depend on the amount by which the mother/adoption reduces their maternity/adoption pay period or maternity allowance period.

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

In addition to meeting the eligibility requirements for shared parental leave (section 28 above), an employee seeking to receive ShPP must also meet each of the following criteria;

- a. The mother/adoption must be/have been entitled to SMP/SAP or maternity allowance and must have reduced their maternity/adoption pay period or maternity allowance period
- b. The employee must intend to care for the child during the week in which ShPP is payable
- c. The employee must have average weekly earnings for the period of eight weeks leading up to and including the 15<sup>th</sup> week before the child's expected due date/matching date are not less than the lower earnings limit in force for National Insurance contributions
- d. The employee must remain in continuous employment until the first week of ShPP has begun
- e. The employee must give proper notification in accordance with the rules set out below

An employee entitled to ShPP should usually include this notification to the Council in the same notification as the leave itself.

The notification from the employee must include each of the following;

- a. The start and end dates of any SMP/SAP or maternity allowance
- b. The total amount of ShPP available and the amount of ShPP the employee and their partner each intend to claim
- c. 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 also be accompanied by a signed declaration from the employee's partner confirming;

- a. Their agreement to the employee claiming ShPP and for the Council to process any ShPP payments to the employee and;
- b. (in the case where the partner is the mother/adoption) that they have reduced their SMP/SAP or maternity allowance and;
- c. (in the case where the partner is the mother/adoption) that they will immediately inform their partner should they cease to satisfy the eligibility conditions

The standard rate of ShPP is reviewed every April by the Government. From April 2018 ShPP is £151.20 per week. If, when calculated, 90% of an employee's average weekly earnings in the eight weeks leading up to the child's expected week of birth/week they were matched with a child is less than the rate of ShPP, the employee will receive the lower figure. ShPP is treated as earnings and is therefore subject to income tax and National Insurance contributions. If part of the pension scheme, contributions will be taken based on the amount of shared parental pay received. The Council will continue to contribute for any time the employee is in receipt of ShPP based on the salary the employee would have been receiving

had they not been on shared parental leave. When on unpaid shared parental leave an employee can opt to make additional pension contributions; this should be discussed with the Council's Finance Manager.

The Council is eligible to reclaim a percentage of ShPP payments made (currently 92%).

## **5.5 Contact/SPLIT Days**

An employee may decide they want to keep in touch during their shared parental leave. Legally they are entitled to work up to 20 days without losing their entitlement to ShPP. Any days worked are known as 'shared parental leave in touch' days (SPLIT days) and will be paid in full and will be subject to the usual tax, National Insurance and pension deductions.

There is no obligation for an employee to work during their shared parental leave. Shared parental leave or pay will not be extended due to the fact that work has been carried out during the leave period.

Legislation allows for the Council and the employee to make reasonable contact during the leave period to discuss such issues as the return to work. This contact does not count towards the 20 SPLIT days and does not bring the leave to an end.

The Council will ensure that the employee is kept informed of relevant matters such as job vacancies, significant workplace developments and training opportunities.

## **5.6 Annual Leave**

An employee will continue to accrue annual leave during shared parental leave and substitute days for Bank Holiday leave. The employee should discuss with their manager the options for using leave before or after shared parental leave if they wish to. It is not possible to use annual leave entitlement during adoption leave.

## **5.7 Return to Work**

The employee will have been formally advised in writing by the Council of the end date of any period of shared parental leave. The employee is expected to return to work the next working day after this date, unless they notify the Council otherwise.

If they are unable to attend work due to illness or injury, the Council's normal arrangements for sickness absence will apply.

If the employee wishes to return to work earlier than planned, they must provide the Council at least eight weeks' notice of their early return where possible.

On returning to work after shared parental leave, the employee is entitled to return to the same job if the employee's aggregate total statutory maternity/paternity/adoption leave and shared parental leave amounts to less than 26 weeks. This must be on the same terms and conditions of employment as if they had not been absent.

If the employee's maternity/paternity/adoption leave and shared parental leave combined amounts to 26 weeks or more, the employee is entitled to return to the same job they held before commencing the leave or, if this is not reasonably practicable, to another job which is both suitable and appropriate on terms and conditions no less favourable.

### *Resignation*



If an employee decides not to return to work after shared parental leave they should submit their resignation in the normal manner, providing adequate notice as per their terms and conditions of employment.

## **6. Surrogacy**

Surrogacy is when another woman carries and gives birth to a baby for the intended parents. The woman who gives birth to the child will be treated as the mother, however, parental responsibility can be transferred by either an adoption or parental order.

### *Surrogate Mothers*

Pregnant employees have the right to 52 weeks' maternity leave and to return to their job after maternity leave. Whatever the birth mother does with the child in a surrogacy arrangement following the birth it has no impact on her right to maternity leave.

### *Intended Parents*

Adoption leave and pay is available to eligible employees who become legal parents following an application for adoption or parental order. Paternity leave and pay, and shared parental leave and pay may also be available to eligible employees. See the previous sections in this policy for further details.

While there is no legal right to paid time off for intended parents, the Council understands the importance of attendance at antenatal classes and appointments and will therefore allow paid time off for these appointments alongside a birth mother, provided adequate notice is given to the employee's line manager of such a request for time off work.

If required, the Council may ask for proof of appointments.