



# Maternity and Paternity Policy

**April 2015**

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## **1. Policy statement**

1.1. This policy sets out the statutory rights and responsibilities of employees who are pregnant or have recently given birth and gives details of the arrangements for antenatal care, pregnancy-related illness, and maternity leave and pay.

1.2. Orkney Islands Council recognises that, from time to time, employees may have questions or concerns relating to their maternity rights. It is the Council's policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. As the maternity / paternity provisions are complex, if an employee becomes pregnant they should clarify the relevant procedures with their manager or Human Resources to ensure that they are followed correctly.

1.3. Executive Directors and the Head of Human Resources and Performance are responsible for arranging appropriate training and briefing on the use of this policy and the maintenance and updating of records to facilitate its smooth operation.

1.4. Employees should be made aware of the policy and have ready access to it.

1.5. This policy has been produced in line with existing best practice and the legislative requirements as well as the relevant provisions from National Conditions of Service including the Scottish Negotiating Committee for Teachers Handbook of Conditions of Service.

## **2. Scope of the policy**

2.1. This policy will apply to all employees of Orkney Islands Council and its subsidiary companies including: Scottish Joint Council (SJC) / Single Status employees including Heads of Service, teachers and other employees covered by Scottish Negotiating Committee for Teachers (SNCT) conditions of service, Orkney College Academic staff, Executive Directors and the Chief Executive.

2.2. The policy will be reviewed by the Head of Human Resources and Performance or their nominated representative in conjunction with recognised trade unions in line with the schedule for the review of all Council Human Resources Policies and Procedures, normally every three years. Should changes to employment law, best practice recommendations or schemes of Conditions of Service dictate, a review within this timescale can be carried out by agreement with the Head of Human Resources and Performance.

2.3. Where the provision differs for teaching and other employees covered by SNCT conditions of service this will be shown separately.

2.4. For the purpose of this policy, all days' referred to within are calendar days.

## **3. Entitlement to maternity leave**

3.1. All employees, regardless of length of service or weekly hours, are entitled to 52 weeks maternity leave consisting of 26 weeks Ordinary Maternity Leave (OML) and 26 weeks Additional Maternity Leave (AML) or as much of that period as they wish to take. However, a minimum of two weeks maternity leave must be taken. In the case

of employees engaged in certain types of manual work a minimum of four weeks maternity leave must be taken.

3.2. If an employee has less than 26 weeks' continuous service by the beginning of the qualifying week, they will be entitled to 52 weeks leave (unpaid).

3.3. The qualifying week is the fifteenth week before the expected week of childbirth (EWC).

3.4. If an employee has 26 weeks or more continuous service by the beginning of the qualifying week, they may be entitled to 39 weeks paid leave and a further 13 weeks unpaid leave (immediately following the initial 39 weeks), provided they meet the criteria contained within paragraph 6 of this policy.

3.5. If the baby is unfortunately stillborn, the law regarding return to work after the birth still applies.

## **4. Maternity risk assessment**

4.1. An employee should notify their line manager of pregnancy as soon as possible in order that a risk assessment can be undertaken in relation to the current post and working conditions.

4.2. If an employee is prevented from working in their current post as a result of Health and Safety legislation every effort will be made to find suitable alternative work.

## **5. Notification to take maternity leave**

5.1. The notification of the intention to take maternity leave must be given in writing to the line manager by the employee no later than the first working day of fifteenth week before the EWC. In the case of teachers the notice must be given no less than 21 days before the intended date to commence maternity leave. This letter should also state the duration of maternity leave which the employee intends to take.

5.2. The employee must provide medical evidence of her EWC in the form of a maternity certificate (MAT B1) which is available from their GP or midwife after the twenty first week of pregnancy and must be sent to Human Resources as soon as possible.

5.3. The employee may change the date on which maternity leave commences by giving 28 days' notice if this is reasonably practicable.

5.4. Human Resources will reply in writing within 28 days to confirm receipt of notification and confirm with the employee their rights to leave and expected date of return from maternity leave.

## **6. Maternity pay**

6.1. If an employee has less than 26 weeks continuous service by the qualifying week, they will be entitled to 52 weeks leave, with no pay. The employee may, however, be entitled to Maternity Allowance (see paragraph 8).

6.2. To qualify for Statutory Maternity Pay (SMP) an employee must:

- Have average weekly earnings not less than the lower earnings limit for National Insurance contribution liability.
- Continue to be employed during all or part of the Qualifying Week.
- Have continuous employment with the Council, other local authority or other recognised body for at least 26 weeks before the end of the Qualifying Week.
- Continue to be pregnant at the twenty fourth week of pregnancy.
- Have stopped work wholly or partly because of pregnancy or childbirth.
- Inform the Council in writing by the fifteenth week prior to the EWC, of the date of the beginning of absence due to maternity or childbirth or in the case of teachers, inform the Council in writing no later than 21 days before the intended date to commence maternity leave.
- Submit a Maternity Certificate (MAT B1) stating the expected week of childbirth.

6.3. An employee with at least 26 weeks' continuous service at the beginning of the fifteenth week before the EWC is entitled to be paid:

- First six weeks at nine tenths of normal weekly pay (including SMP).
- Following 12 weeks at half pay (plus SMP) provided the total cost does not exceed the normal full pay.
- Following 21 weeks at SMP, with any further maternity leave with no pay (up to a maximum of 13 weeks).

6.4. Payments made by the Council during maternity leave will be made on the understanding that the employee will return to work for a period of at least three months and in the event of the employee not doing so, they will refund the monies paid excluding those elements of SMP. Periods of annual leave, sick leave or parental leave which directly follow maternity leave will count as a return to work.

6.5. Employees who have indicated that they will not be returning to work will be paid for the first six weeks at nine tenths of normal weekly pay and then SMP for the remaining 33 weeks.

### **Teaching and all other SNCT employees**

6.6. Where an employee satisfies the conditions above and is eligible to receive SMP, they will be entitled to 39 weeks paid leave, as follows:

- First 13 weeks at full pay (including SMP).
- Following 26 weeks at SMP, with any further maternity leave with no pay (up to a maximum of 13 weeks).

## **7. Exclusion from receiving maternity pay**

7.1. An employee is excluded from receiving SMP if, at the beginning of the Maternity Pay Period, they:

- Fail to meet the qualifying conditions outlined above.
- At any time during the Maternity Pay Period are in legal custody or work for another employer.

7.2. Those who do not qualify for SMP may be entitled to maternity allowance (see paragraph 8).

7.3. An employee will be advised of entitlement to maternity pay when notification of pregnancy is received.

## **8. Maternity allowance**

8.1. If an employee is excluded from SMP for any reason, the Council will return the MAT B1 certificate and an SMP1 form which explains the reason that SMP cannot be paid.

8.2. If the employee meets qualifying conditions based on recent employment and earnings they may receive up to 39 weeks Maternity Allowance. Further information on eligibility to claim Maternity Allowance is available from the Department for Work and Pensions.

## **9. Employee who has reserved their position – excluding teachers and other SNCT employees**

9.1. Where an employee wishes to reserve their position about returning to work, this should be confirmed in writing. The employee should also confirm the EWC and the date on which it is intended to commence maternity leave.

9.2. The employee will still be entitled to receive 90% of their salary for the first six weeks and 33 weeks at the lower rate of SMP but will not receive the additional 12 weeks at half pay. This will be paid in a lump sum on return to work, providing it is the intention to return to work for a period of at least three months.

9.3. Should the employee decide to resign, notice should be given as detailed in the employment contract and should run during the maternity leave period.

## **10. Antenatal care**

10.1. Employees are entitled to reasonable paid time off for antenatal care during working hours, on the advice of a medical practitioner, midwife or registered health worker, to attend any appointments they have made for this purpose. Employees will need to produce their appointment card to their supervisor / manager so that the time off can be confirmed. Antenatal care may include relaxation and parent craft classes that the employee's doctor, midwife or health visitor has advised her to attend, in addition to medical examinations.

10.2. Time off will be granted for non-essential antenatal care, for example aquanatal classes, but this is dependent on the exigencies of the service. Any time taken in this respect should be deducted from annual leave or accrued flexitime.

10.3. The employee should endeavour to give her line manager as much notice as possible of antenatal appointments and, wherever possible, try to arrange them as near to the start or end of the working day as possible.

10.4. An individual who has a qualifying relationship with the employee, which includes the employee's husband or civil partner and the father of the expected child,

is eligible to take unpaid time off to accompany the employee at up to two antenatal appointments.

## **11. Sickness during pregnancy**

11.1. If an employee is sick during pregnancy medical certificates should be submitted in accordance with normal sickness procedures.

11.2. If, however, the employee is sick for any reason connected with pregnancy or childbirth after the beginning of the fourth week before the EWC, and has not yet started maternity leave, Human Resources should be informed as soon as is practicable, and a medical certificate should be submitted in the normal way. This period of sickness will automatically trigger the beginning of maternity leave for the employee.

## **12. Beginning maternity leave**

12.1. Maternity leave may not begin before the beginning of the eleventh week before the EWC. The employee may choose when to begin maternity leave any time after this date.

12.2. The employee may continue to work up to the EWC provided that they are fit to carry out normal duties. This is subject to the requirements to undergo a medical examination if it is considered that the employee is prejudicing their health by continuing to work.

12.3. Maternity leave will automatically start on the day following childbirth if this occurs before the intended date which the employee has notified they wish their maternity leave to commence.

## **13. Notification of return to work after maternity leave**

13.1. If the employee wishes to change their return to work date, eight weeks' notice of the change must be given. For teaching and other employees covered by SNCT conditions of service wishing to return to work earlier than the end of the maternity leave period, a minimum of 28 days notice is required.

13.2. If an employee wishes to return to work early from OML, the Council should review the position carefully including carrying out a risk assessment. It may be necessary to ask the employee to seek medical clearance from her GP and / or Occupational Health to return early.

13.3. It should be noted that an employee is required to take two weeks compulsory maternity leave immediately following the birth of their child.

## **14. Right to return to the same or similar job**

14.1. Where the employee is taking OML only and is returning to work they will return to exactly the same job which they left.

14.2. If the employee is taking AML they will normally be entitled to return to the same job as they left. However if it is not reasonably practicable, the employee will

be offered another job which is both suitable and appropriate. This means, of the same terms and conditions as the job they left.

14.3. The only instance where this is not the case is during organisational change in accordance with the Council's redundancy policy. However, employees on maternity leave will be considered preferentially for redeployment opportunities should this occur. Please refer to the Council's Redundancy and Redeployment Policies for further information.

## **15. Keeping in touch days**

15.1. To assist employees to keep in touch with the workplace during their maternity leave, they can, in agreement with their line manager, arrange to work up to 10 days. These days can be used for specific events, training, or anything which has been previously agreed by both parties. No keeping in touch days can be taken during the two weeks immediately following the birth.

15.2. Keeping in touch days can only be worked during the maternity leave period and cannot be worked and claimed after the employee has returned to work or during a period of annual leave.

15.3. Any work carried out on a particular day, be it a few minutes or a full day, constitutes a whole keeping in touch day. Hours worked on these days will be paid following submission of an authorised timesheet.

15.4. Please note that the employee is not required to work these 10 days, nor is the employer obliged to offer them. The full 10 day entitlement applies and is not dependant on the duration of maternity leave. If work is performed on more than 10 days, entitlement to statutory maternity leave ends.

## **16. Part-time and flexible working**

16.1. Where an employee wishes to return to work but is unable to do so on a full-time basis, or wishes to work flexibly, serious consideration will be given to the request in line with the service requirements.

16.2. A request for flexible working should be made in writing to the line manager no later than eight weeks before the expected return to work date.

16.3. In the event the request cannot be granted, an explanation will be given to the employee. Please see Flexible Working Policy for more information.

## **17. Annual leave / public holidays**

17.1. Annual leave which is accrued prior to going on maternity leave should be taken before the maternity leave period commences wherever possible.

17.2. Entitlement to annual leave and public holidays is unaffected by maternity leave and it is accrued as if the employee was at work. These accrued holidays should be taken, wherever possible, prior to returning to work.

17.3. Should the employee return to work on reduced hours (i.e. on a part-time basis), the annual leave entitlement will be calculated based on a period of full-time service up to the date that they have returned from maternity leave, and then based on a period of part-time service, from the date that the employee commences part time hours.

17.4. Should the employee not return to work after maternity leave, they will be entitled to a proportion of the year's annual leave up to the end of the maternity leave period and to any public holidays which arose before that date.

### **Teaching staff and music instructors**

17.5. Annual leave will continue to be accrued during ordinary and additional maternity leave.

17.6. On return from maternity the employee shall take any remaining statutory leave (28 days pro-rata for part-time) in that leave year. Where it is not practicable to take the leave in full or in part any balance, will be carried forward into the next leave year, but must be taken as leave.

17.7. The timing of this leave shall take account of the needs of the service and:

17.7.1. In the case of teachers and music instructors, should normally be taken in the terms in which the return to work takes place, or within the following term; or

17.7.2. In the case of education support officers, quality improvement officers and educational psychologists should normally be taken as soon as possible following the return to work.

17.8. The balance of annual leave, in excess of statutory leave, accrued during the period of maternity leave shall be taken following the end of the maternity / adoption support leave period. The timing of this leave is subject to the overriding needs of the service and:

17.8.1. In the case of teachers and music instructors, the accrued leave can be directed to be taken during the days of school closure, with payment to be arranged in accordance with Section 5, Paragraph 5.7 of the SNCT Handbook, with any remaining leave to be taken in the term in which the return to work takes place, or within the following term; or

17.8.2. In the case of education support officers, quality improvement officers and educational psychologists should normally be taken as soon as possible following the return to work.

## **18. Childcare vouchers**

18.1. Employees with parental responsibility for children aged up to 16 years (18 years if disabled) may save on tax and national insurance by using Childcare Vouchers. The childcare provider must be registered with the Scottish Care Commission.

## **19. Transfer of maternity leave**

### **Shared parental leave**

19.1. Shared parental leave is available in relation to babies due on or after 5 April 2015. Shared parental leave enables mothers to commit to ending their maternity leave and pay at a future date, and to share the untaken balance of leave and pay as shared parental leave with their partner.

19.2. To be able to take shared parental leave, an employee and his / her partner must meet various eligibility requirements and have complied with the relevant curtailment, notice and evidence requirements. This includes the mother curtailing her maternity leave.

19.3. The Council provides a separate policy on shared parental leave.

## **20. Ordinary paternity leave**

20.1. An employee whose wife, civil partner or partner gives birth to a child, or who is the biological father of the child, is entitled to two weeks' ordinary paternity leave (OPL) provided they:

- Have or expect to have responsibility for the child's upbringing.
- Have 26 weeks' continuous service by the week ending with the fifteenth week before the baby is due.

20.2. OPL is also available to adoptive parents where a child is matched or newly placed with them for adoption. Either the adoptive father or the adoptive mother may take OPL where the other adoptive parent has elected to take adoption leave. In respect of an adopted child, the employee must have 26 weeks' continuous service by the week in which the child's adopter is notified of having been matched with the child for adoption. Please see Adoption policy for further information.

20.3. OPL is granted in addition to an employee's normal annual holiday entitlement. OPL must be taken in a single block of one or two weeks within eight weeks of the birth or adoption of the child. If the child is born early, it can be taken from the time of the birth but within eight weeks of the expected date of childbirth. OPL can start either from the date the child is born or placed for adoption or from a chosen number of days or weeks after that date.

## **21. Ordinary paternity pay**

21.1. Employees will receive full pay for the period of OPL.

### **Teachers and other SNCT Employees**

21.2. Teachers and other SNCT employees will receive full pay for the first week of OPL and the Statutory Paternity Pay rate for the second week.

## **22. Notification to take ordinary paternity leave**

22.1. The notification of the intention to take OPL in respect of a birth child must be given in writing to the line manager no later than 15 weeks' before the date on which their partner's baby is due. This letter should include length of OPL they wish to take and the date on which they wish the leave to commence.

22.2. In the case of an adopted child, the employee must give written notice of their intention to take OPL no later than seven days after the date on which notification of the match with the child was given by the adoption agency. The notice must specify the date the child is expected to be placed for adoption, the date the employee intends to start OPL, the length of the intended OPL they wish to take and the date on which the adopter was notified of having been matched with the child.

22.3. The employee must also complete and sign a self-certificate declaring that they are entitled to OPL and ordinary statutory paternity pay.

22.4. The employee may change the date on which OPL commences by giving no less than 28 days' notice if this is reasonably practicable.

22.5. Please note that additional paternity leave and pay has been replaced with shared parental pay. Full details on shared parental leave are available in the shared parental leave policy.