

Summary of Changes to various family related leave Guidance documents (applies to Non-Teaching Guidance)

1. Continuous Service

A recent benchmarking exercise identified the need to clarify the definition of continuous service provided within the **Maternity, Adoption, Paternity and Shared Parental Leave guidance** documents to make it clearer to employees. Therefore, a more concise definition of continuous service qualification for Statutory and Occupational Maternity and Adoption Pay, Statutory Paternity Pay and Shared Parental Leave and Pay has been added to the relevant sections within the guidance documents.

In addition, the following note has also been added to the Maternity and Adoption Guidance:

“(Please note that if you have returned to local government service following a break for maternity reasons and the break in service does not exceed eight years and does not include a period of employment for which you were paid, you will be entitled to have the previous service taken into account for maternity pay purposes).”

Both of the above are in accordance with the ‘red book’ National Agreement on Pay and Conditions of Service.

Section 3.4, in the Maternity and Adoption guidance, has also been revised into a table format in order to make entitlements clearer for employees.

Please see example of wording of Section 3.4 of the Maternity Guidance, attached.

2. Salary Sacrifice Scheme - Childcare Vouchers

Currently, all benefits which are not ‘remuneration’ must be continued during maternity and adoption leave and childcare vouchers, which are available through a salary sacrifice scheme, have until now been viewed as a non-cash benefit and not ‘remuneration’.

However, HMRC have recently advised that employers no longer have to provide childcare vouchers during an employee’s maternity or adoption leave. This is following a recent Employment Appeal Tribunal case (Peninsula Business Services v Donaldson) which overturned an Employment Tribunal decision that it was discriminatory to require employees to suspend their childcare vouchers during maternity leave.

As a result, childcare vouchers are now to be classed as ‘remuneration’ meaning that the Council can no longer continue to provide them during maternity or adoption leave. The Maternity and Adoption Guidance documents therefore have been updated to reflect this. See example of the revised wording for Section 3.7 of the Maternity Guidance, attached. The same changes have been made to the Adoption guidance document. The Shared Parental Leave Guidance document didn’t have anything specific regarding Salary Sacrifice Scheme so some information has been added. See example of the revised wording for Section 8 of the Shared Parental Leave Guidance, attached.

3. Update to Application and Notification Forms

This is a minor change unrelated to (1 and 2) above. Through feedback from the Absence Team within the HR Service Centre, a space for the employee's Line Manager name has been added to all of the Application and Notification forms as follows.

Maternity Guidance

- Notification of Pregnancy
- Application for Maternity Leave
- Notification of Early Return to Work

Adoption Guidance

- Application for Adoption Leave
- Notification of Early Return - from Adoption Leave

Paternity Guidance

- Notification of Paternity Leave
- Application for Paternity Leave

Shared Parental Leave Guidance

- Notice of Curtailment of Maternity/Adoption Leave
- Notice to Withdraw Curtailment of Maternity/Adoption Leave
- Notice of Entitlement and Intention
- Notice of Variation of Entitlement and Intention
- Notice of Variation of Entitlement and Intention
- Period of Leave Notice
- Notice to Withdraw or Vary Period of Booked Leave

In addition, in line with the changes detailed in 1 above, "*Public Authority Continuous Service Start Date*" has been added to the following forms:

- Application for Maternity Leave
- Application for Adoption Leave
- Application for Paternity Leave
- Notice of Entitlement and Intention (Shared Parental Leave)

3.4 Am I entitled to maternity pay?

Your entitlement to maternity pay depends on your length of continuous service and how much you earn.

To qualify for **Statutory Maternity Pay (SMP)** and/or **Occupational Maternity Pay (OMP)** continuous service means, continuous service with **Aberdeen City Council** or a **public authority** as listed in the Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Orders (which covers local authorities and related bodies).

(Please note that if you have returned to local government service following a break for maternity reasons and the break in service does not exceed eight years and does not include a period of employment for which you were paid, you will be entitled to have the previous service taken into account for maternity pay purposes).

Qualification	Entitlement
<p>If you have less than 26 weeks' continuous service* by the end of the 15th week before the expected week of childbirth</p> <p>(*see previous page for definition of continuous service)</p>	<p>You will not be entitled to SMP or OMP but you may be entitled to claim Maternity Allowance through Jobcentre Plus.</p> <p>See notes below for further details.</p>
<p>If you have 26 weeks' continuous service* or more by the end of the 15th week before the expected week of childbirth and your average weekly earnings are <u>equal to or more than</u> the lower earnings limit for National Insurance contributions:</p> <p>(*see previous page for definition of continuous service)</p>	<p>You will be entitled to OMP and SMP for a maximum period of 39 weeks as follows:-</p> <ul style="list-style-type: none"> • For the first 6 weeks you will get 90% of your average weekly earnings. • For the following 12 weeks you can get a sum equal to 50% of your normal pay (this is optional and you can choose whether or not to receive this money – see notes below for further details). In addition you will get the flat rate of SMP or 90% of your average weekly earnings if this is less than the flat rate of SMP. The maximum amount you can receive for these 12 weeks is your normal full pay. • For the following 21 weeks you will get the flat rate of SMP (or 90% of your average weekly earnings if this is less than the flat rate of SMP). • The remaining 13 weeks of maternity leave, if taken, would be without pay.
<p>If you have 26 weeks' continuous service* or more by the end of the 15th week before the expected week of childbirth but your average weekly earnings are <u>less</u> than the lower earnings limit for National Insurance contributions:</p> <p>(*see previous page for definition of continuous service)</p>	<p>You will not be entitled to SMP but you may be entitled to claim Maternity Allowance through Jobcentre Plus. See notes below for further details.</p> <p>You will be entitled to OMP as follows:-</p> <ul style="list-style-type: none"> • For the first 6 weeks you will get 90% of your normal pay (which includes any Maternity Allowance). • For the following 12 weeks you can get a sum equal to 50% of your normal pay (this is optional and you can choose whether or not to receive this money – see notes below for further details). The maximum amount, including any Maternity Allowance, you can receive for these 12 weeks is your normal full pay. • The remaining 34 weeks of your maternity leave, if taken, will be without pay.

Notes:

- If you are not entitled to SMP you may be entitled to claim Maternity Allowance through Jobcentre Plus. If you have submitted the MAT B1 form and the Application for Maternity Leave form by the end of the 15th week before the expected week of childbirth, you will be issued with an SMP1 form within 7 days of the decision that you are not entitled to SMP. This is so that you can ask about claiming and applying for Maternity Allowance through Jobcentre Plus.
- If you choose to take the 12 weeks at 50% of your normal pay and then do not return to work for a period of 12 completed calendar weeks at the end of your maternity leave, you will be required to pay the money back (paid back on a pro rata basis if you return for less than 12 completed calendar weeks).
- If you choose not to take the 12 weeks at 50% of your normal pay, you will get the flat rate of SMP (or 90% of your average weekly earnings if this is less than the flat rate of SMP) for these 12 weeks. However if you do then return to work a period of 12 completed calendar weeks at the end of your maternity leave, you will then be paid for the 12 weeks at 50% of your normal pay (paid on a pro rata basis if you return for less than 12 completed calendar weeks).
- The definition of 'average weekly earnings' for the purpose of Statutory Maternity Pay is the gross average of all payments made to you in the 8 week period up to and including the last pay day before the end of the 15th week before the expected week of childbirth. The definition of 'normal pay' for the purpose of Occupational Maternity Pay is basic pay plus any contractual payments.
- If you are expecting more than one child (e.g. twins or triplets), your entitlement to maternity pay and maternity leave is the same as if you were only expecting one child.
- The rate of Statutory Maternity Pay is usually reviewed each April by the Department for Work and Pensions. If payment of your Statutory Maternity Pay starts before and continues after the rate is changed, you will receive the new rate from the start of the week in which the change occurs.
- Income tax and national insurance contributions will be deducted from your maternity pay as appropriate.
- In the event of a stillbirth after 24 weeks of pregnancy an employee is entitled to maternity leave and pay provisions.

3.7 I am part of the childcare voucher scheme (or any of the other salary sacrifice schemes) – how will this affect my maternity pay?

If you have chosen to take part in any of the salary sacrifice schemes offered by the Council this may affect the amount of maternity pay you will receive. This is because Statutory Maternity Pay (SMP) is calculated on your average gross weekly earnings during the 8 week period up to and including the last pay day before the end of the 15th week before the expected week of childbirth. Your 'gross weekly earnings' means the amount of salary you receive **excluding** the amount of salary which is sacrificed through the salary sacrifice scheme. So you may receive a lower rate of maternity pay if you remain in a salary sacrifice scheme after the 24th week before the expected week of childbirth than you would if you opt out of the scheme by that date.

You should give urgent consideration to whether or not you wish to remain in the scheme after the 24th week before the expected week of childbirth. You may choose to leave the scheme at any time but if you do so after the 24th week before the expected week of childbirth the amount of maternity pay you receive may be proportionately reduced.

If you decide to leave the scheme you should do so by completing the required cancellation process from your online childcare account for childcare vouchers or the stated cancellation method for any of the other salary sacrifice schemes. Further information can be found by visiting the relevant section of www.accmybenefits.co.uk. You should check the timelines on the Zone or on the Council's My Benefits website to plan when you would need to opt out of the relevant scheme.

If you choose to remain in a salary sacrifice scheme you will receive the maternity pay due to you based on your average gross weekly earnings during the 8 week period up to and including the last pay day before the end of the 15th week before the expected week of childbirth. There will be no deduction made from this amount to fund your salary sacrifice during your maternity leave. **When you commence a period of Statutory Maternity pay or no pay, childcare vouchers will be suspended during this time. When you return to work and are in receipt of pay and wish to re-instate your childcare vouchers, then you should send a written request to ACCMYBenefits@aberdeencity.gov.uk and your request will be effective from the next available pay period.**

The Council and its benefits providers are unable to offer financial advice so you are advised to seek financial advice from a qualified, independent source if you find yourself in any doubt as to the best course of action for your circumstances.

8. What does the employee need to know before they start their SPL?

During SPL, all terms and conditions of the employee's contract, except normal pay, will continue. Salary will be replaced by statutory ShPP if the employee is eligible for it. This means that, while sums payable by way of salary will cease, all other benefits will remain in place just like maternity, adoption and paternity arrangements.

If the employee has chosen to take part in any of the salary sacrifice schemes offered by the Council, prior to commencing maternity or adoption leave, they will have given urgent consideration as to whether or not they wish to remain in the scheme in the case of maternity after the 24th week before the expected week of childbirth or in the case of adoption after the beginning of the 8th week before the matching week or expected week of birth for surrogacy. For full details on how this would affect maternity or adoption pay and what to do if you wish to leave, see the Maternity Guidance or the Adoption Guidance.

If the employee chooses to remain in a salary sacrifice scheme, when they go into a period of ShPP or no pay, childcare vouchers will be suspended during this time. When the employee returns to work and is in receipt of pay and wishes to re-instate their childcare vouchers, then they should send a written request to ACCMYBenefits@aberdeencity.gov.uk and the request will be actioned effective from the next available pay period.

Pension contributions will continue to be paid for any period the employee is receiving ShPP but not during any periods of unpaid SPL. Annual leave will continue to accrue during periods of SPL.