

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

1. 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 documents. 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.

2. Definition of Continuous Service

A definition of continuous service has been added to the Paternity/Support Guidance (section 2.2.2) and the Shared Parental Leave Guidance (section 3). This is the same definition that is provided for within the Maternity and Adoption guidance and ensures consistency and clarity in all these family leave related guidance documents. Please see example of the wording below.

"Continuous service means any previous employment with councils, employers listed in the Redundancy Payment (Local Government) (Modification) Order 1990 (as amended) and any other employment deemed by the council to be relevant, shall be counted as continuous service (as defined in the Employment Rights Act 1996) subject to a gap in employment not exceeding one working week."

In addition, in section 2.1 and the Application form within the Paternity/Support Guidance, the wording has been revised to provide clarification around the continuous service qualifying criteria for Ordinary Paternity Leave.

These changes are in accordance with the SNCT handbook.

3. Update to Application and Notification Forms

This is a minor change unrelated to (1) 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, the definition detailed in 2 above has also been added to the Application for Paternity/Support Leave form and the Notice of Entitlement and Intention Form (Shared Parental Leave).

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 go into 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.