



SHARED PARENTAL LEAVE REGULATIONS
REPORT OF DEPUTY CHIEF EXECUTIVE – CORPORATE DIRECTION

WARDS AFFECTED: ALL WARDS

1. PURPOSE OF REPORT

- 1.1 To advise members of the new Shared Parental Leave Regulations 2014.

2. RECOMMENDATION

- 2.1 That the draft policy is approved.

3. BACKGROUND TO THE REPORT

- 3.1 The Shared Parental Leave Regulations 2014 came into force on 1 December 2014 and replaces the additional paternity leave regime. Shared parental leave is available to parents with babies due on or after 5 April 2015 and provides parents with more flexibility in how to share the care of their child in the first year following birth or adoption. Parents will be able to share a pot of leave, and can decide to be off work at the same time or take it in turns to have periods of leave to look after their child. Shared parental leave should not be confused with ordinary parental leave, which is an entitlement for parents to take up to 18 weeks' unpaid leave.
- 3.2 The regulations are fairly complex with a prescriptive eligibility criteria and notification process. This needs to be followed accurately to ensure consistency of application and the draft policy attached to this report sets out the procedure in detail.

Parents will need to meet the eligibility criteria and must follow the correct notification of leave requirements.

In terms of eligibility, the mother who intends to apply for shared parental leave must:

- Have a partner
- Be entitled to take maternity adoption leave and pay
- Curtailed (given notice) to end maternity leave and pay

The parent who intends to apply for shared parental leave must:

- Be an employee
- Share primary responsibility for the care of the child with the other parent
- Properly notify the employer of their entitlement and provide the necessary declarations and evidence
- Satisfy the continuity of employment test and have a partner who satisfies the employment and earnings test.

- 3.3 There is a maximum of 50 weeks shared parental leave and 37 weeks shared parental leave pay. Prior to claiming shared parental leave pay, the mother must end her maternity leave early and this can only be curtailed after taking a minimum of 2 weeks statutory maternity leave. The parents then choose how to split up the remaining weeks of leave between them and leave can be taken by each parent separately, or at the same time.

The regulations specify that an employee must give the two notices to the employer:

- 1) Maternity leave curtailment notice and a notice of entitlement and intention to take SPL (non binding)
- 2) Period of leave notice setting out start and end dates

It is likely that the employer will receive the notices together, but there could be a chance it could be done separately.

- An employee is entitled to up to 3 booking notices
- Must be at least 8 weeks before the SPL period
- Must be dated and in writing setting out the reasons for leave
- Must be at least 1 week
- Can be a request for a single block of continuous leave

A continuous period of shared parental leave cannot be declined by an employer if the notification and eligibility has been met. In practice, parents can take 3 periods of continuous shared parental leave within the year and are likely to do this rather than submit one request for discontinuous leave for the whole period.

The legislation does provide for a 14 day discussion period when an application for discontinuous leave (meaning two more periods of leave separated by periods of work) is made. During this period the leave may be agreed, a different pattern of discontinuous leave agreed, or refused. If after this 14 day period no agreement is reached or response given by the employer, the default provisions apply, which is to revert to continuous leave periods.

- 3.4 Entitlements, rights and payments for maternity leave and pay will remain the same. Existing paternity leave of 2 weeks taken within 8 weeks after the birth of the child will remain; currently this is paid at 1 week's full pay and 1 weeks statutory paternity pay.

Statutory maternity leave entitlement totals 52 weeks. In line with the NJC green book, employees are entitled to occupational maternity pay over and above the statutory maternity pay for mothers/adopters, which are broken down as follows:

- **Weeks 1 - 6:** Statutory Maternity Pay - Entitled to 90% of a full pay
- **Weeks 7 - 18:** Occupational Maternity Pay - Entitled to half pay plus SMP
- **Weeks 19 - 39:** For the remaining weeks the employee will receive SMP only (currently £139.58)

Statutory shared parental pay is paid at £139.58 per week from 5 April 2015. Up to 37 weeks of Shared Parental Pay will be available to be shared between the parents. Whilst shared parental pay is paid at the statutory rate, the council could, at its discretion, enhance shared parental pay over and above the statutory pay. The council could in effect 'mirror' the green book occupational maternity pay for employees as there is an argument that the employer should pay the same amount for both types of leave, to avoid direct and indirect discrimination claims. The Local Government Association has advised however, that the enhancing of pay is a local decision.

- 3.5 In consideration of this, there is a risk that if we did not enhance pay for a partner who has taken shared parental leave, it could be argued that it is sex discrimination not to pay him the same as would have been paid to a female employee who was taking maternity leave at the equivalent time. To illustrate this option, a male employee who works at the council requests shared parental leave. His partner, who works at another organisation, then opts to end their statutory maternity leave. The male employee will then receive the enhanced shared parental pay which is in line with the occupational maternity pay for that period. The counter argument to

enhancing pay, however, is the perceived low risk factor. It is suggested that take up will be minimal with the government indicating that nationally, it is anticipated that there will only be over 4000 claims. The likelihood of employees' requesting shared parental leave at the council therefore may be limited. Furthermore it has been implied that following the election the legislation may be reviewed.

Given that the perceived risk is low, it is recommended not to enhance shared parental pay and to pay statutory pay only. This can be reviewed within a year of implementation to assess demand levels and the risk to the council in regard to claims.

4. FINANCIAL IMPLICATIONS (KP)

4.1 The financial implications of this Policy will depend upon the entitlement offered and the individual applying for the leave. As outlined in section 3.4, the options proposed are:

- a) That statutory shared parental pay only is offered for the full 37 weeks
- b) That the entitlement mirrors the current benefits offered for maternity pay

4.2 The calculation below illustrates the cost to the Council for option a). On the basis that the Council is able to recoup 92% of SMP, the cost to the Council would be £413 per each officer taking shared parental leave.

Wks	Wks	Employee payment	Payment to employee	Total payment to employee	HBBC Recoup	HBBC Recoup	Cost to HBBC
	#		£	£		£	£
1-37	37	SMP	139.58	5,164	92% of SMP	4,751	413

4.3 The calculation below illustrates to the cost to the Council for option b). This is based on the current average salary for a Council employee (£22,881) and therefore will differ depending on the individual concerned. Based on these calculations, the total cost to the Council for 37 weeks would be £3,176 - £2,763 more than option a)

Wks	Wks	Employee payment	Payment to employee	Total payment to employee	HBBC Recoup	HBBC Recoup	Cost to HBBC
	#		£	£		£	£
1-6	6	90% of salary	396	2,376	92% of 90% salary	2,186	190
7-18	12	50% of salary + SMP	360	4,315	92% of SMP	1,541	2,774
19-37	19	SMP	139.58	2,652	92% of SMP	2,440	212
	37			9,343		6,167	3,176
		Average salary	22,881				
		Weekly salary	440				
		SMP	139.58				

4.4 The costs above exclude any additional costs associated with back filling a post, which are considered on a case by case basis.

5. LEGAL IMPLICATIONS (MM)

5.1 None.

6. CORPORATE PLAN IMPLICATIONS

6.1 Corporate Aim 4 Providing value for money and pro-active services – to value diversity.

7. CONSULTATION

7.1 Full consultation has taken place with the Unison branch.

8. RISK IMPLICATIONS

8.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

8.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

8.3 The following significant risks associated with this report / decisions were identified from this assessment:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
There is a small risk of discrimination claims if the council does not enhance pay	Review within a year of the policy being applied and number of requests.	Julie Stay

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

9.1 Set out within the body of the report.

10. CORPORATE IMPLICATIONS

10.1 By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

Background papers: None

Contact Officer: Julie Stay, HR and Transformation Manager, extension 5688

Executive Member: Cllr Amanda Wright