



ORKNEY
ISLANDS COUNCIL

Shared Parental Leave Policy

April 2015

Next scheduled for review April 2018

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Contents

1. Policy Statement.....	3
2. Scope of the policy	3
3. Definitions under this shared parental leave policy.....	3
4. Who is eligible for Shared Parental Leave?.....	4
5. Amount of shared parental leave available.....	4
6. Continuous/Discontinuous periods of shared parental leave	5
7. Notice requirements for shared parental leave	6
8. Occupational shared parental pay	9
9. Eligibility for statutory shared parental pay	9
10. Rights during shared parental leave	10
11. Annual Leave.....	10
12. Contact during Shared Parental Leave.....	11
13. Shared Parental Leave in Touch days.....	11
14. Returning to work following shared parental leave	11
15. Adoption and Surrogacy	12

1. Policy Statement

1.1. This policy sets out the statutory rights and responsibilities of employees who wish to take statutory Shared Parental Leave (SPL) and statutory Shared Parental Pay (ShPP). Shared parental leave is a type of leave that is available to parents with babies due on or after 5 April 2015. Shared parental leave enables employees to commit to ending their maternity/adoption/surrogacy leave and pay at a future date, and to share the untaken balance of leave and pay as shared parental leave and pay with their partner, or to return to work early from leave and opt in to shared parental leave and pay at a later date.

1.2. Shared parental leave should not be confused with ordinary parental leave, which is unaffected by shared parental leave. Ordinary parental leave is the entitlement to up to 18 weeks' unpaid leave and is covered in a separate policy.

1.3. Orkney Islands Council recognises that, from time to time, employees may have questions or concerns relating to their shared parental leave rights. It is our policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. As the shared parental leave provisions are complex, if an employee wishes to take shared parental leave, he/she should clarify the relevant procedures with HR and Performance to ensure that they are followed correctly.

1.4. 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.

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

1.6. 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 applies to all employees of the Orkney Islands Council, whether they are the mother, primary carer in adoption or chosen person in surrogacy. If it is the mother, primary carer or chosen person who is employed by the Council, her partner must (where relevant) submit any notifications to take shared parental leave set out in this policy to his/her own employer, which may have its own shared parental leave policy in place, if they want to take a period of shared parental leave.

2.2. Similarly, if it is the partner who is employed by the Council, the mother/primary carer in adoption or chosen person in surrogacy must (where relevant) submit any notifications to take shared parental leave to their own employer.

2.3. Both partners should ensure that they are each liaising with their own employer to ensure that requests for shared parental leave are handled as smoothly as possible.

3. Definitions under this shared parental leave policy

3.1. The following definitions are used in this policy:

- "Mother" means the mother or expectant mother, the primary carer of the child in adoption or the chosen person, primarily responsible for the care of the child in a surrogacy arrangement.
- "Partner" means the father of the child, or the person who, at the date of the child's birth or placement for adoption or Parental Order, is married to, the civil partner of, or the partner of the mother. This includes someone, of either sex, who lives with the mother and the child in an enduring family relationship but who is not a close relative of the mother e.g. the mother's child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew.
- "Expected week of childbirth" means the week, starting on a Sunday, during which the mother's doctor or midwife expects her to give birth.

4. Who is eligible for Shared Parental Leave?

4.1. If an employee decides not to take their full entitlement to maternity/adoption/surrogacy leave, they and their partner will be able to opt in to shared parental leave. Both parents must meet a set of eligibility criteria which are:

- They must have been continuously employed for at least 26 weeks by the end of the 15th week before the expected week of childbirth; or adoption or in the case of surrogacy after the Parental Order has been approved;
- They must remain continuously employed until the week before any period of shared parental leave starts;
- Both parents must share the main responsibility for the care of the child at the time of the birth; adoption or issue of the Parental Order.
- The mother is entitled to statutory maternity/adoption leave;
- The mother has given notice to end her maternity/adoption/surrogacy leave or has already returned to work;
- They have provided their employers with notice of entitlement and intention to take shared parental leave (see below);
- They have provided any evidence requested within 14 days of the request. This may include a copy of the birth certificate or a declaration from the parents confirming the date and place of the child's birth if the birth certificate is not yet available, and the name and address of the other parent's employer.
- They have provided a period of leave notice (see below)
- have been employed or been a self-employed earner in at least 26 of the 66 weeks immediately preceding the expected week of childbirth;
- have average weekly earnings of at least the maternity allowance threshold [currently £30] for any 13 of those 66 weeks;

5. Amount of shared parental leave available

5.1. The amount of shared parental leave to which an individual is entitled will depend on when the mother brings her maternity leave period to an end and the amount of leave that the other parent takes in respect of the child. Shared parental leave must be taken in blocks of at least one week. The employee can request to take shared parental leave in one continuous block (in which case Orkney Islands Council is required to accept the request as long as the employee meets the eligibility and notice requirements), or as a number of discontinuous blocks of leave (in which case the employee needs their line manager's agreement). A maximum of three requests for leave per pregnancy can normally be made by each parent.

5.2. The first two weeks following birth are the compulsory maternity leave period and are reserved for the mother. This means that the mother cannot end her maternity leave to take shared parental leave until two weeks after the birth and the maximum period that the parents could take as shared parental leave is 50 weeks between them (although it will normally be less than this because of the maternity leave that mothers usually take before the birth).

5.3. The mother's partner can begin a period of shared parental leave at any time from the date of the child's birth, excluding the first two weeks compulsory maternity leave period. Partners should bear in mind that they are entitled to take up to two weeks' ordinary paternity leave following the birth of the child/adoption of a child/surrogacy arrangement, which he/she will lose if shared parental leave is taken first. The mother and partner must take any shared parental leave within 52 weeks of birth.

5.4. Employees can make a maximum of three requests for leave or to vary leave per pregnancy, adoption placement or surrogacy arrangement, Orkney Islands Council may waive this limit in exceptional circumstances.

6. Continuous/Discontinuous periods of shared parental leave

6.1. If the employee submits a period of leave notice requesting one continuous period of leave, he/she will be entitled to take that period of leave.

6.2. The employee may submit a period of leave notice requesting discontinuous periods of leave. For example, the mother and partner could request a pattern of leave from their respective employers that allows them to alternate childcare responsibilities.

6.3. If the employee submits a period of leave notice requesting discontinuous periods of leave, their line manager, in the two weeks beginning with the date the period of leave notice was given, can:

- consent to the pattern of leave requested;
- propose an alternative pattern of leave; or
- refuse the pattern of leave requested.

6.4. If agreement is reached within those two weeks, the employee is entitled to take the leave on the dates agreed.

6.5. If no agreement has been reached within that two-week discussion period, the employee is entitled to take the leave as one continuous period of leave. In that event, the employee must choose a start date for the leave that is at least eight weeks from the date on which the period of leave notice was originally given. The employee must notify their line manager of that date within five days of the end of the two-week discussion period. If the employee does not choose a start date within five days of the end of the two-week discussion period, the period of continuous leave will start on the date of the first period of leave requested in the period of leave notice.

6.6. Alternatively, if the request has been refused or no agreement has been reached during the two-week discussion period, the employee may withdraw a period of leave notice requesting discontinuous periods of leave. The employee can withdraw a period of leave notice at any time on or before the 15th day after the period of leave notice was given. A notice for discontinuous leave that has been withdrawn before it is agreed does not count towards the total number of requests for leave that an employee can make.

6.7. For Teachers and associated professionals covered by SNCT conditions of service, the minimum block time for a discontinuous period of shared parental leave shall be 4 weeks.

6.8. Where a request for a period of discontinuous leave has been refused, the employee can, should they wish, appeal the decision to the relevant Head of Service. Any appeal must be submitted in writing by the employee within 14 calendar days of confirmation of the refusal for the period of discontinuous leave.

7. Notice requirements for shared parental leave

7.1. A minimum of 8 weeks' notice is required to be provided of the intention to take shared parental leave. This notice period may be waived in the event of premature birth, or where less than 8 weeks' notice is provided in respect of an adoption placement date etc.

7.2. The notices that the parents must give to the relevant employer to be able to take shared parental leave are made up of three elements. They are:

- a "maternity/adoption/surrogacy leave curtailment notice" from the employee setting out when they propose to end their maternity/adoption/surrogacy leave (unless they have already returned to work from maternity leave);
- a "notice of entitlement and intention" from the employee giving an initial, non-binding indication of each period of shared parental leave that they are requesting; and
- a "period of leave notice" from the employee setting out the start and end dates of each period of shared parental leave that he/she is requesting.

7.3. Employees are advised that, if they have already decided the pattern of shared parental leave that they would like to take, they can provide more than one type of notice at the same time. For example, the mother could provide a maternity leave curtailment notice, notice of entitlement and intention and period of leave notice at the same time. Similarly, the partner could provide his/her notice of entitlement and intention and period of leave notice at the same time.

7.4. Notice to end maternity/adoption/surrogacy leave

7.4.1. Before the partner can take shared parental leave, mother/primary carer in adoption or chosen person in surrogacy must either return to work before the end of her maternity/adoption/surrogacy leave (by giving the required eight weeks' notice of their planned return) or provide their employer with a leave curtailment notice in writing and state the date on which maternity/adoption/surrogacy leave is to end. That date must be:

- after the compulsory maternity leave period, which is the two weeks after birth;
- at least eight weeks after the date on which the mother gave the curtailment notice to her employer; and
- at least one week before what would be the end of the additional maternity/adoption leave period.

7.4.2. The leave curtailment notice must be provided at the same time as either the notice of entitlement and intention or a declaration of consent and entitlement signed by the mother confirming that her partner has given his/her employer a notice of entitlement and intention (see Employee's notice of entitlement and intention below).

7.5. Withdrawing notice to end maternity/adoption/surrogacy leave

The mother/primary carer in adoption or chosen person in surrogacy can withdraw their notice to end their maternity/adoption leave in limited circumstances. The withdrawal of the maternity/adoption leave curtailment notice must be in writing and can be given only if the mother has not returned to work. The curtailment notice can be withdrawn if:

- it is discovered that neither the mother nor the partner are entitled to shared parental leave or statutory shared parental pay and the mother withdraws her maternity leave curtailment notice within eight weeks of the date on which the notice was given;
- the notice was given before the birth of the child/date of placement for adoption/issue of the Parental Order and the mother withdraws it within six weeks of the child's birth/date of placement for adoption/ issue of the Parental Order; or
- the partner has died.

7.6. Notice of Entitlement and Intention to take shared parental leave

The employee, whether the mother or the partner, must provide a non-binding notice of entitlement and intention. This notice, which must be in writing and provided at least eight weeks before the start date of the first period of shared parental leave to be taken by the employee, must set out the following information.

7.6.1. The written notice of Entitlement and Intention should include:

- the mother's name;
- the partner's name;
- the start and end dates of any statutory maternity leave taken or to be taken by the mother;
- the total amount of shared parental leave available;
- the child's expected week of birth and the child's date of birth (although, if the child has not yet been born, the date of birth can be provided as soon as reasonably practicable after birth, and before the first period of shared parental leave to be taken by the mother);
- how much shared parental leave the mother and partner each intend to take; and
- a non-binding indication as to when the employee intends to take shared parental leave (including the start and end dates for each period of leave).

7.6.2. The notice of entitlement and intention must also include a declaration signed by the mother/partner that:

- they satisfy, or will satisfy, the eligibility requirements to take shared parental leave;
- the information they give in the notice of entitlement and intention is accurate; and
- they will immediately inform the Council if they cease to care for the child or if the mother no longer meets the requirement to have curtailed her maternity leave or pay period.

7.6.3. In addition, the mother's notice of entitlement and intention must include a declaration signed by her partner:

- specifying the partner's name, address, and national insurance number (or declaring that the partner does not have a national insurance number);
- declaring that the partner satisfies, or will satisfy, the conditions set out above (see Mother's eligibility for shared parental leave);
- declaring that the partner is the father of the child, or is married to, the civil partner of, or the partner of, the mother;

- declaring that the partner consents to the amount of leave that the mother intends to take; and
- declaring that the partner consents to the mother's employer processing the information in the partner's declaration.

7.6.4. In addition, the partner's notice of entitlement and intention must include a declaration signed by the mother:

- specifying the mother's name, address, and national insurance number (or declaring that the mother does not have a national insurance number);
- declaring that the mother satisfies, or will satisfy, the conditions set out above and she will notify the partner if she no longer qualifies for maternity leave, statutory maternity pay or maternity allowance;
- declaring that the mother consents to the amount of leave that the partner intends to take;
- declaring that she will immediately inform the employer if she no longer meets the requirement to have curtailed her maternity leave or pay period; and
- declaring that the mother consents to the partner's employer processing the information in the mother's declaration.

7.6.5. Within 14 days of receiving a notice of entitlement and intention from the employee, whether the mother or partner, Orkney Islands Council can request from the employee:

- a copy of the child's birth certificate (or, if the child has not been born, a copy of the birth certificate within 14 days of the birth - if the birth certificate has yet to be issued after this period, a signed declaration stating the date and location of the child's birth will suffice); and
- the name and address of the other parent's employer (or a declaration that the other parent has no employer).

7.6.6. The employee has 14 days from the date of the request to provide the required information.

7.7. Variation or cancellation of notice of entitlement and intention

7.7.1. The employee can vary or cancel his/her proposed shared parental leave dates following the submission of a notice of entitlement and intention, provided that he/she provides written notice. The written notice must contain:

- an indication as to when the employee intends to take shared parental leave (including the start and end dates for each period of leave);
- details of any periods of shared parental leave that have been notified through a period of leave notice;
- details of any periods of statutory shared parental pay that have been notified in relation to periods where shared parental leave was not to be taken; and
- a declaration signed by the mother and the partner that they agree to the variation.

7.7.2. Any indication of leave intended to be taken that the employee provides in a variation of notice of entitlement and intention is non-binding until he/she provides a period of leave notice in relation to that period of leave. There is no limit on the number of variations of notice of entitlement and intention that the employee can make.

7.7.3. Teaching employees can make a maximum of three request to vary leave per pregnancy, adoption placement or surrogacy arrangement.

7.8. Employee's period of leave notice

7.8.1. To take a period of shared parental leave, the employee must provide written notice setting out the start and end dates of each period of shared parental leave requested in that notice.

7.8.2. A period of leave notice must be given not less than eight weeks before the start date of the first period of shared parental leave requested in the notice. The notice may be given at the same time as a notice of entitlement and intention and can be a request for a continuous period of leave or discontinuous periods of leave.

8. Occupational shared parental pay

8.1. The first two weeks of Ordinary Maternity Pay is not transferrable. There is a total of 37 paid weeks leave available to be shared between the parents (where parent is OIC employee):-

- The parent who is off from weeks 1-4 will receive 9/10ths of normal weekly pay (including statutory shared parental pay)
- The parent who is off from weeks 5 to 16 will receive half pay (plus statutory shared parental pay) provided the total cost does not exceed the normal full pay
- The parent who is off during the following 21 weeks will receive statutory shared parental pay, with any further shared parental leave with no pay (up to a maximum of 13 weeks)

Teaching

8.2. The first two weeks of Ordinary Maternity Pay and the entitlement to 11 weeks of OMP and SMP equal to the mother's normal pay is not transferrable.

- The parent who is off for the first 11 weeks will receive their full current earnings.
- The parent who is off during the following 26 weeks will receive statutory parental pay with any further shared parental leave with no pay (up to a maximum of 13 weeks).

8.3. Please note that a partner who has previously taken a period of Shared Parental Leave (SHPL) in respect of a child will not be entitled to take ordinary Paternity leave.

9. Eligibility for statutory shared parental pay

9.1. For employees to be eligible for statutory shared parental pay, both parents must meet certain eligibility requirements:

- They must have at least 26 weeks' continuous employment ending with the 15th week before the expected week of childbirth and remains in continuous employment until the week before any period of shared parental pay;
- They must have normal weekly earnings for a period of eight weeks ending with the 15th week before the expected week of childbirth of at least the lower earnings limit for national insurance contribution purposes;
- Both parents must share the main responsibility for the care of the child at the time of the birth/placement for adoption.

- They will be absent from work and intend to care for the child during each week in which statutory shared parental pay is received
- The mother is entitled to statutory maternity pay in respect of the child, but the maternity pay period has been reduced.
- They must have been employed or been a self-employed earner during at least 26 of the 66 weeks immediately preceding the expected week of childbirth;
- Have average weekly earnings of at least the maternity allowance threshold; currently £30 for any 13 of those 66 weeks.

10. Rights during shared parental leave

10.1. During shared parental leave, all terms and conditions of the employee's contract except normal pay will continue. Salary will be replaced by pay under the OIC's enhanced shared parental pay scheme 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. For example, holiday entitlement will continue to accrue. Pension contributions will continue to be paid.

11. Annual Leave

11.1. SPL is granted in addition to an employee's normal annual holiday entitlement. Employees are reminded that holiday should wherever possible be taken in the year that it is earned. Where an SPL period overlaps two leave years the employee should consider how their annual leave entitlement can be used to ensure that it is not untaken at the end of the employee's holiday year.

Teaching staff and Music Instructors

11.2. Annual leave will continue to be accrued during maternity and shared parental leave. On return from maternity/shared parental leave 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.

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

- 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
- 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.
- The balance of annual leave, in excess of statutory leave, accrued during the period of maternity/adoption support 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'
- 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
- 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.

12. Contact during Shared Parental Leave

12.1. Before an employee's SPL begins, their line manager will discuss the arrangements for them to keep in touch during their leave. The Council reserves the right in any event to maintain reasonable contact with the employee from time to time during their SPL. This may be to discuss the employee's plans to return to work, to ensure the individual is aware of any possible promotion opportunities, to discuss any special arrangements to be made or training to be given to ease their return to work or simply to update them on developments at work during their absence.

13. Shared Parental Leave in Touch days

13.1. To assist employees to keep in touch with the workplace during shared parental leave, they can, in agreement with their line manager, arrange to work up to 20 "Shared Parental Leave In Touch" or "SPLIT" days. These days can be used for specific events, training, or anything which has been previously agreed by both parties.

13.2. Shared Parental Leave 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.

13.3. 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.

13.4. Please note that the employee is not required to work these 20 days, nor is the employer obliged to offer them. The full 20 day entitlement applies and is not dependant on the duration of maternity leave. If work is performed on more than 20 days, entitlement to statutory maternity leave ends.

13.5. An employee, with the agreement of their line manager, may use SPLIT days to work part of a week during SPL. SPLIT days can be used to allow a gradual return to work by the employee towards the end of a long period of SPL or to trial a possible flexible working pattern.

14. Returning to work following shared parental leave

14.1. On returning to work after SPL, the employee is entitled to return to the same job if the employee's aggregate total statutory maternity/paternity/adoption leave and SPL amounts to 26 weeks or less, he or she will return to the same job. The same job is the one they occupied immediately before commencing maternity/paternity/adoption leave and the most recent period of SPL, on the same terms and conditions of employment as if they had not been absent.

14.2. If their maternity/paternity/adoption leave and SPL amounts to 26 weeks or more in aggregate, the employee is entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, to another job which is both suitable and appropriate and on terms and conditions no less favourable.

14.3. If the employee also takes a period of unpaid parental leave of 4 weeks or less this will have no effect on the employee's right to return and the employee will still be entitled to return to the same job as they occupied before taking the last period of leave if the aggregate weeks of maternity/paternity/adoption and SPL do not exceed 26 weeks.

14.4. If a parent takes a period of 5 weeks of unpaid parental leave, even if the total aggregate weeks of maternity/paternity/adoption and SPL do not exceed 26 weeks, the employee will be entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, to another job which is suitable and appropriate and on terms and conditions no less favourable.

15. Adoption and Surrogacy

Shared parental leave will apply to parents who are adopting a child due to be placed on or after 5 April 2015. In order for adoptive parents to take shared parental leave in respect of a child they must meet the eligibility criteria above and be entitled to statutory adoptions leave. Parents must provide the same notice of entitlement to their employers. However, the notice must also confirm:

- The date the parents were notified as having been matched with the child
- The date the child is expected to be placed with the parents
- A declaration which includes the parent's national insurance numbers and consent to the amount of time the other parent intends to take.

If the employer requests any evidence of eligibility then instead of providing a birth certificate the employee may be required to provide copies of documents issued by the adoption agency confirming the date the parents were matched with the child. The other requirements such as for giving notice, timeframes and periods of continuous parental leave follow the same process as outlined above.

For surrogacy arrangements if the intended parents have applied or intend to apply for a 'parental order' then, subject to meeting qualifying conditions, the nominated primary adopter will be entitled to take adoption leave and pay and to end their adoption leave early and move onto shared parental pay.

Please note that shared parental leave arrangements are slightly different when adopting from out with the UK. If adopting from out with the UK please contact HR and Performance for information on Shared Parental Leave.