

**AGENDA ITEM NO: 8(e)**

**DERBYSHIRE COUNTY COUNCIL**

**CABINET**

**14 April 2015**

**Report of the Strategic Director of Corporate Resources  
and the Director of HR**

**SHARED PARENTAL LEAVE AND PAY (Council Services)**

**1. Purpose of the Report**

To inform Cabinet of the implementation of Shared Parental Leave and Pay and to agree associated Guidance for managers and employees.

**2. Information and Analysis**

In April, Additional Paternity Leave and Pay will be abolished, and a new provision of Shared Parental Leave and Pay will be implemented. This allows a mother to curtail (that is bring to an end) her entitlement to maternity leave and pay and to take the remainder as Shared Parental Leave and / or pay with her partner. This entitlement is applicable for parents of babies that are due on or after 5<sup>th</sup> April 2015.

The Regulations were published for employer consultation in 2014, and the final regulations were not issued until December 2014. The Regulations are complex because of the flexibility it is intended to give to new parents with regard to how they take their leave and / or pay and consequently the different circumstances that employees will present to an employer. The Council has produced Guidance in respect of this new requirement for managers and employees and this is attached at Appendix A. The Guidance will be issued to managers.

The key points are as follows:

- Employed mothers will continue to be entitled to 52 weeks of maternity leave and 39 weeks of maternity pay;
- An employed mother may opt to end her maternity leave early, and with her partner, opt for Shared Parental Leave and Pay instead;
- If both parties qualify, they can choose between them how to divide their Shared Parental Leave and Pay;

- The mothers 'partner' refers to any person who is expected to share in the main care of the child, (but not an immediate family member);
- Shared Parental Leave also applies to adoption

It should be noted that once a mother has opted to curtail her maternity leave and opted into the Shared Parental Leave and Pay scheme, there are very limited circumstances in which she can revert to maternity leave/pay, eg the employees partner has died.

Shared Parental Leave allows more flexibility for a mother and her partner in how they choose to take their leave entitlement:

- They may choose to take leave concurrently or separately;
- They can choose to take their leave in one continuous block;
- They can choose to take their leave in up to three separate blocks;
- They can request that they take their leave in a discontinuous pattern.

The entitlement for statutory maternity pay is currently six weeks at 90% of average weekly earnings, followed by 33 weeks at 90% of average weekly earnings or £139.58 (whichever is lower). However, the Council elects to pay in excess of the statutory minimum and also pays Occupational Maternity Pay which is 12 weeks at half pay plus Statutory Maternity Pay. This is dependent on the individual returning to work following maternity leave for a three month period.

There is also an entitlement for the mother's partner to take 10 days of Occupational Paternity Leave at contractual pay and this is unchanged. The statutory entitlement for Additional Paternity Leave (the entitlement to which expires from April 2015) is £139.58 per week and the Council does not pay in excess of this.

Should a mother decide to curtail her maternity leave and elect to take Shared Parental Leave with her partner, the Council will pay Shared Parental Leave at the statutory rate. Those employees (mothers) who elect to take maternity leave will be paid in accordance with the enhanced Occupational Maternity Scheme. It is proposed to review the Guidance, undertake an Equality Impact Assessment and review the level of pay based on experience in the first 12 months.

It is difficult to assess the likely uptake of Shared Parental Leave and Pay. The uptake of Additional Paternity Leave has been very low, with only 3 cases throughout the Council within the last 2 years, compared to approximately 350 maternity leave cases per annum. The uptake of the new scheme is likely to be higher due to the increased flexibility it offers to new parents, and uptake will be therefore be monitored over the next 12 months, to support a review to be carried out at that time. The government estimates are that take up will be between 2% and 5% of new parents.

Due to the mandatory requirement to take 2 weeks maternity leave immediately following the birth, and the notice requirements for Shared Parental Leave, it is unlikely that any employee will request Shared Parental Leave prior to the end of April. Additionally, due to the required notice periods, indications are that the first employees to take advantage of this entitlement are unlikely to commence their absence for several months.

Trade union consultation has commenced and will continue, and the draft Guidance has been shared with them.

### **3 Financial Considerations**

It is not possible to estimate potential costs and or savings until uptake of the scheme can be monitored following implementation.

### **4 Equality and Diversity Considerations**

The legislation has arisen from the Children and Families Act 2014 and is intended to reform the leave and pay provisions for working parents in order to provide more choice and flexibility for parents in how they take time off work in the first year of their child's life. The same arrangements will apply to adopters. The qualifying criteria has been set deliberately low by the government to enable as many employees as possible to participate in the scheme. An Equality Impact Assessment will be carried out once the scheme has been in place for 12 months to ensure no staff group is being disadvantaged

### **5 HR Considerations**

As detailed in the report.

**6 Legal Considerations**

It is a legislative requirement to enable eligible employees to take Shared Parental Leave. Therefore, the measures proposed will ensure that the Council meets its statutory obligations regarding Shared Parental Leave. However, equality considerations may arise on the introduction of the proposals relating to Shared Parental Leave. Therefore it is proposed that an Equality Impact Assessment will be undertaken so that any issues arising will be properly considered.

**7 Other Considerations**

In preparing this report the relevance of the other following factors has been considered: prevention of crime and disorder, equality of opportunity, environmental, HR, human rights, health, transport and property considerations.

**8 Key Decision**

No

**9 Call-in**

Is it required that call-in be waived in respect of the decisions proposed in the report?

No

**10 Background Papers**

Background papers are held in the HR division.

**11 Recommendation**

That Cabinet

- Notes the changes in legislation to enable employees to take Shared Parental Leave and agrees the proposed Guidance attached at Appendix A;
- Agrees to review the Guidance in 12 months as detailed in the body of the report.

**JUDITH GREENHALGH  
STRATEGIC DIRECTOR OF  
CORPORATE RESOURCES**

**TONI COMPAI  
DIRECTOR OF HR**

# **Shared Parental Leave & Pay Manager & Employee Guidance**

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## **OVERVIEW – SHARED PARENTAL LEAVE ENTITLEMENT**

### **Introduction**

This document explains what Shared Parental Leave (SPL) is and provides guidance for employees to help them decide whether SPL would work for them, and how it can be used alongside or instead of traditional maternity or adoption leave. It also provides managers with the information they need when considering requests for SPL.

### **What is Shared Parental Leave?**

Shared Parental Leave allows parents more flexibility over how they share childcare during the first year of their child's life. It is generated when a mother (or adopter) ends their maternity or adoption leave early, so that the remaining period of leave can be shared. As long as their partner is also eligible, they can share the leave between them and choose how much of the leave each can take. They can choose to take leave at the same time as each other and return to work in between periods of leave if they wish.

### **Key Points**

- Shared Parental Leave is effective from 5 April 2015 in relation to babies who are **due** on or after this date;
- Employed mothers will continue to be entitled to 52 weeks of maternity and 39 weeks of statutory maternity pay or maternity allowance;
- An eligible mother can opt to end her maternity leave, and with her partner, or the child's father, opt for shared parental leave instead;
- As long as they both meet the qualifying requirements\* they can choose how to divide their shared parental leave and pay;
- Adopters have broadly the same rights as other parents to SPL and pay;
- SPL must be taken within the first 52 weeks following the birth / adoption and in minimum blocks of one week;
- Employees may be entitled to SPL and Statutory Shared Parental Pay if
  - They meet the eligibility requirements\*; and
  - The baby is due (or adopted) after 5 April 2015.
- Employees must give 8 weeks' notice of their intention to commence SPL.
- The scheme is based on the declarations from both parents about their eligibility and the consent of the other parent to take the leave.

### **How Will Shared Parental Leave Operate?**

Each eligible parent can give their employer up to three separate notices to book or vary leave. Each notice can be for a block of leave, or for a pattern of 'discontinuous' leave, involving different periods of leave. Employers are not obliged to agree to discontinuous periods of leave, but must agree to requests for continuous SPL.

Where both parents meet the continuity of employment test\*, they will both be able to make use of the SPL entitlement. However, even if only one parent meets the criteria, a family may still be able to utilise SPL. For example, a self-employed parent could not take SPL, but may pass the employment and earnings test, allowing the other parent to qualify, and allowing for greater flexibility in how they take their leave.

Up to 50 weeks SPL can be shared between parents as the first two weeks following the child's birth are reserved solely for the mother and are compulsory maternity leave. However, this does not prevent the mother's partner beginning their SPL at any time following the child's birth, (although there is still an entitlement to two weeks paid paternity leave). Parents may choose to take SPL at the same time as each other, or separately

### **Continuous and Discontinuous SPL**

SPL does not have to be taken in one continuous block; employees can return to work and then take a further period of shared parental leave. If an employee gives his or her employer a notice requesting discontinuous blocks of leave, the employer has the option to refuse this request. In this case the employee must then either:

- Take the leave requested in one block;
- Withdraw the request; or
- Agree alternative dates with the employer.

An employee can submit up to three separate notices requesting periods of leave. In effect this can enable an employee to take three separate blocks of leave without the employer being able to refuse this, provided that the notice provisions have been adhered to.

\* These terms are defined in the section on eligibility



## ELIGIBILITY

The right of one parent to take leave is not only dependent on them satisfying the eligibility criteria, but is also dependent on their partner satisfying certain conditions, as detailed below.

<b>ELIGIBILITY</b>	
<b>A mother will be eligible for SPL if she meets the following criteria:</b>	<b>*The father of a child, or the partner of a child's mother will be eligible for SPL if they meet the following criteria:</b>
Has 26 weeks continuous employment by the end of the 15 <sup>th</sup> week before the expected week of childbirth and remains in continuous employment with that employer until the week before any period of shared parental leave that she takes;	Has 26 weeks' continuous employment by the end of the 15 <sup>th</sup> week before the expected week of childbirth and remains in continuous employment with that employer until the week before any period of shared parental leave that he or she takes;
Has the main responsibility for the care of the child at the date of the birth (apart from the responsibility of her partner or the child's father);	Has the main responsibility for the care of the child at the date of the birth (apart from the responsibility of the mother);
Is entitled to statutory maternity leave;	
Has curtailed her statutory maternity leave by giving the relevant notice, or returned to work before the end of the maternity leave period; and	
Has complied with the relevant notice and evidence requirements.	Has complied with the relevant notice and evidence requirements.
<b>EMPLOYMENT &amp; EARNINGS TEST</b>	
<b>In addition, the mothers partner must:</b>	<b>In addition, the child's mother must:</b>
Have been employed or self-employed during at least 26 of the 66 weeks before the expected week of childbirth;	Have been employed or self-employed during at least 26 of the 66 weeks before the expected week of childbirth;
Have weekly earnings of at least £30 for any 13 of those 66 weeks; and	Have average weekly earnings of at least £30 for any 13 of those 66 weeks;
Have the main responsibility for the child at the date of the birth (apart from the responsibility of the mother).	Have the main responsibility for the child at the date of the birth (apart from the responsibility of the employee).
	Be entitled to Statutory Maternity Leave, Statutory Maternity Pay or Maternity Allowance in respect of the child; and Have curtailed her Statutory Maternity Leave, or if she is not entitled to Statutory Maternity Leave, curtailed her Statutory Maternity Pay or Maternity Allowance.

\*An employee does not have to be the father of a child to be eligible to take SPL alongside the child's mother, if he or she has, or expects to have, the main responsibility for the care of the child alongside the mother and is not an immediate family member.

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## **EMPLOYEE GUIDANCE**

### **Eligibility – Shared Parental Leave**

If you wish to take SPL and/or pay, you must check your eligibility and provide a 'notice of entitlement'\* at least eight weeks before each period of leave. In addition, you must provide a declaration from your partner confirming your eligibility and agreeing to take shared /parental leave and/or pay.

\*Click on this link for the Notice of Entitlement and Declarations.

#### **You:**

To qualify for SPL you must meet the following requirements:

- You must share care of the child with either:
  - Your husband or wife, civil partner or joint adopter;
  - The child's other parent;
  - Your partner (if they live with you and the child).
- You or your partner must be eligible for maternity pay or leave, and have given notice to curtail it.
- You must have been continuously employed for at least 26 weeks by the end of the 15<sup>th</sup> week before the due date (or the date you are matched with your adopted child).
- Be employed by the same employer whilst you take SPL.

#### **Your Partner:**

To qualify for SPL, your partner must meet the following requirements:

- During the 66 weeks before the baby is born, they must have worked for at least 26 weeks (not necessarily consecutively);
- They must have earned at least £30 a week on average in 13 of those 66 weeks.
- They may have been employed, self-employed or an agency worker.

Before requesting SPL, you may want to discuss your intentions informally with your manager.

### **Eligibility – Shared Parental Pay**

Statutory Shared Parental Pay will be created where an eligible mother or adopter chooses to bring their maternity or adoption pay or maternity allowance to an end early. The untaken maternity or adoption pay or maternity allowance will become available as statutory shared parental pay – up to a maximum of 37 weeks.

You will qualify for Shared Parental Pay if one of the following applies:

- You qualify for Statutory Maternity Pay or Statutory Adoption Pay;
- You qualify for Statutory Paternity Pay and have a partner who qualifies for Statutory Maternity Pay or Maternity Allowance or Statutory Adoption Pay.

Before requesting Shared Parental Pay, you may want to discuss your intentions informally with your manager. Shared Parental Pay is requested by completing the Notice of Entitlement using the link below and returning it to your manager.

To check both your own and your partners eligibility for SPL and/or ShPP you can use the link below.

Calculate your leave and pay when you have a child - GOV.UK **Will Shared Parental Leave Work for You?**

Not everyone will meet the criteria to qualify for SPL, but even those who do will need to consider whether other arrangements will suit them better. Things you might want to consider when deciding on which option is best for you include:

- Whether one or both parents qualify and how you would like to share the care of your child;
- Whether the mother wants to reduce her maternity / adoption leave;
- Is there an entitlement to enhanced maternity / adoption / paternity / SPL pay, and would reducing the mother's maternity leave impact on this;
- What other options are available (such as flexible working requests, annual leave, parental leave) and how these could work alongside SPL;
- The wider financial implications e.g. pay and pensions.

Even if you don't choose SPL in the first instance, you can opt in at a later date if you are still eligible, as long as you provide the correct notice and take the leave within 12 months of your child's birth.

### **How Much Leave And Pay Am I Entitled To And When Can I Take It?**

The amount of SPL and pay depends on how much maternity or adoption leave has already been used up. SPL is 52 weeks minus the number of weeks already taken as maternity leave. (The first two weeks being compulsory maternity leave).

Statutory Shared Parental Pay is 39 weeks minus the number of weeks of statutory maternity (or adoption) pay or maternity allowance taken by the mother or adopter.

ShPP is paid at the rate of £139.518 a week or 90% of your average weekly earnings, whichever is lower.

### **What Happens To My Pension Whilst On Shared Parental Leave?**

If you are a member of the local government pension scheme, whilst on paid shared parental leave, you will pay pension contributions on any pensionable pay received.

If on unpaid shared parental leave, you will not automatically build up pension benefits as you will not be contributing. However, you can elect to buy back the lost pension. You should do this within 30 days of returning to work in order to benefit from the Shared Cost Additional Pension contribution contract. i.e. the Council will pay some of your contributions for you. Please see the following link for more details:

Local Government Pension Scheme: Working for us - Derbyshire County Council

### **How Do I Apply?**

Before applying, you should note that SPL can only be used when the mother has:

- Already returned to work, **or**
- Given notice to their employer that reduces their maternity / adoption leave and confirms when it will end by completing a maternity curtailment notice).

Insert link to maternity leave curtailment notice.

If the mother is not entitled to maternity / adoption leave (e.g. she may be self-employed), they must have ended, or given notice to reduce their maternity/adoption pay period or maternity allowance period for their partner to be eligible for SPL.

If you wish to apply for SPL you must provide a notice of entitlement, see link below. You will need to include the following information:

(Link to Notice of entitlement and Intention to take Shared Parental Leave form)

- The names of the mother and the partner;
- The start and end date of any statutory maternity / adoption leave taken or to be taken by the mother;
- The total amount of SPL available to be taken;
- The child's expected week of birth, actual date of birth, or date of placement. (If the notice is submitted prior to the birth then the date of birth must be provided as soon as reasonably practicable);
- How much SPL the mother and partner each intend to take;
- An indication as to when they intend to take SPL, (this is non-binding).

This must be accompanied by a signed declaration from both the mother and partner confirming the following:

- A signed declaration that:
  - you will be sharing responsibility for the care of the child
  - the mother has given notice to end her maternity entitlement
  - you meet the continuity of employment test
  - the information you have given is accurate
  - Should you cease to be eligible you will inform manager immediately.

Your partner must also supply a signed declaration stating the following information:

- Their name, address, and national insurance number;
- They are the father, mother of the child, or partner of the child's mother;
- They meet the criteria for the employment and earnings test;
- If they are the mother, that they are entitled to statutory maternity leave, statutory maternity pay or maternity allowance, and that they have given notice to end that leave and pay / allowance;
- That at the time of the birth or placement they shared the responsibility for the care of the child with the employee seeking to take SPL;
- They consent to the amount of leave and pay that you are seeking to take;
- They consent to the employer receiving this declaration to process the information contained within it;
- In the case of the mother, that she will immediately inform the partner should the mother cease to satisfy the eligibility criteria.

## **MANAGER GUIDANCE**

### **When Does Shared Parental Leave Take Effect?**

The Shared Parental Leave Regulations 2014 will apply only in relation to babies **due** on or after 5 April 2015, or children placed for adoption on or after 5 April 2015. The actual date of birth does not change this.

### **Notice Requirements**

An eligible employee must give at least eight weeks' notice of intention to take SPL. They can choose to take SPL at any time before the child's first birthday or before the first anniversary of the adoption placement.

### **What Notice Must Employees Give If They Intend To Take Shared Parental Leave?**

There are a number of different notices that employees must give before they can take SPL.

Before either parent can take SPL, the mother must provide a leave curtailment notice, to bring her maternity leave to an end and this must be provided at least eight weeks before the start of the first period of SPL taken by either of the parents.

The employee, whether the mother or her partner, must give his or her manager a notice of entitlement and intention to take SPL not less than eight weeks before the start of his or her first period of SPL. The appropriate notice and declarations are detailed in the section 'How to Apply'.

Each employee taking SPL must give his or her manager a period of leave notice, setting out the start and end dates of the period or periods of leave requested, at least eight weeks prior to each period of SPL.

### **Can I Refuse A Request For Shared Parental Leave?**

If your employee requests a 'period of leave notice' requesting discontinuous periods of SPL, you can refuse the request and require the employee to either withdraw the request, or to take the leave in a continuous block.

However, you should note that an employee has the right to take up to three separate blocks of SPL, provided they submit a separate notice for each period of leave and give eight weeks' notice for each period. You can refuse a request for discontinuous SPL only if it is requested in the same notice.

An employee who submits a 'period of leave notice' requesting one continuous block of leave must be allowed to take the leave on the dates requested.

If a request for discontinuous leave is refused the employee can withdraw the notice or agree alternative dates with the employer. If he or she has not done either within

two weeks of the date of the notice, the employee can either withdraw the notice at that point or take the total amount of leave requested on the leave notice as a continuous period of leave. The employee can choose a start date for the continuous period of leave that is no less than eight weeks from the start date of the leave notice.

See the links below for letters to discuss or refuse requests for discontinuous SPL.

### **Can I Insist On Evidence That An Employee Is Entitled To Shared Parental Leave?**

When an employee applies to take SPL, they are required to complete a notice of entitlement and intention to take SPL. This requires them to provide details of the child's expected date of birth and their partner's details.

Generally, we will rely on the declarations provided that eligibility requirements are met and will not check, for example, the earnings and employment history of the employee's partner.

However, false declaration that they an employee is entitled to SPL and/or pay could be treated as a disciplinary issue.

### **Can An Employee Take Shared Parental Leave If His Or Her Partner Is Self-Employed?**

Yes. An employee may be eligible to take SPL if his / her partner is self-employed, as long as the partner meets the relevant requirements relating to employment and earnings.

See 'Eligibility'.

### **Can Same Sex Couples Take Shared Parental Leave?**

Yes. An employee can take SPL with his / her spouse, civil partner or partner. Partner is defined as someone who lives with the employee in an enduring family relationship but is not an immediate family member.**Are Parents Entitled To Shared Parental Leave If Their Baby Is Due Before 5 April 2015 But Is Born On Or After That Date?**

No. SPL is available only in relation to babies whose expected week of birth begins on or after 5 April 2015. The actual date of birth is not relevant for the purposes of eligibility for shared parental leave.

Similarly, if a baby expected on or after 5 April is born before that date, the parents' eligibility for shared parental leave is not affected.



### **Can Employees On Shared Parental Leave Take Keeping In Touch Days?**

Yes, employers and employees can agree up to 20 keeping in touch days during shared parental leave without bringing the leave to an end. Both parents have up to 20 keeping in touch days each, which can be taken as single days or in blocks of days. This is in addition to the 10 keeping in touch days available to the mother or primary adopted during maternity leave or adoption leave.

### **Do Employees Receive Statutory Pay While On Shared Parental Leave?**

Yes, up to 37 weeks statutory shared parental pay is available for parents to share between them while on shared parental leave. Similar provisions apply for parents taking shared parental leave in an adoption situation.

Statutory shared parental pay will be paid at a flat rate (currently £139.58, or 90% of the employee's normal earnings if this is less). Unlike SMP, there is no provision for employees to be paid 90% of their earnings for the first six weeks of their statutory shared parental pay period where this is higher than the statutory rate. Therefore, if an employee who is receiving SMP at the higher rate of 90% of her earnings switches to statutory shared parental pay within the first six weeks of her SMP period, she will move to the lower rate immediately.