

Item: 4

Human Resources Sub-committee: 31 August 2021.

Maternity and Paternity Policy.

Report by Executive Director of Education, Leisure and Housing.

1. Purpose of Report

To consider a revised staffing policy on Maternity and Paternity.

2. Recommendations

The Sub-committee is invited to note:

2.1.

That the Council's policy in respect of Maternity and Paternity provisions was last reviewed in April 2015.

2.2.

The revised Maternity and Paternity Policy, attached as Appendix 1 to this report, which has been amended to ensure it is fully compliant and up to date with relevant employment law, statutory provisions and existing terms and conditions of employment.

It is recommended:

2.3.

That the revised policy on Maternity and Paternity, attached as Appendix 1 to this report, be approved.

3. Background

3.1.

Council human resources policies are regularly reviewed, normally every 5 years. Should changes to employment law, best practice recommendations or schemes of Conditions of Service dictate, a review within this timescale can be carried out by agreement with the Head of Human Resources and Performance. The response to the COVID-19 pandemic has impacted on maintaining the regular review schedule. However, this policy review has now been undertaken.

3.2.

The proposed amendments capture statutory changes which have occurred since the policy was last considered in April 2015 and ensures the practical compliance with these measures are covered in the Council's policy. The work to update the policy has been delayed by the response to the Covid-19 pandemic.

4. Amendments to the Policy

4.1.

Section 4: Maternity Risk Assessment has been updated to reflect the current best practice and requirements in terms of Health and Safety for general workplace risk assessments to cover risks associated with maternity and for this to be regularly reviewed, rather than specific risk assessments to be undertaken for employees when they declare they are expecting.

4.2.

Section 10, regarding employees on a temporary contract, has been added to help clarify within the policy the position regarding maternity pay in this scenario. The Council's policy on maternity pay contains a period for 12 weeks where pay entitlement is above the statutory minimum should the employee be committing to returning to work. Where an employee has a temporary contract that is due to end and therefore they cannot return, then this section clarifies they will not receive the enhanced amount during their maternity leave, however this can be paid retrospectively should their situation change.

4.3.

Section 14 regarding returning to work following Ordinary Maternity Leave has been updated to include a paragraph about seeking appropriate medical advice and guidance for anyone returning early, should there be any concerns over their health and wellbeing. It is not anticipated this would be exercised very frequently but nonetheless it is prudent to include it in the policy.

4.4.

Section 20 has been added to the Policy to ensure the Council's statutory requirements around provision for breastfeeding and expressing of milk for returning mothers is contained in policy. This is a statutory requirement and the policy addition simply reflects that and current practice.

4.5.

Section 22 regarding stillborn babies, miscarriage or early death of a child has been added to the Policy to reflect changes to employment law that have occurred since the policy was last reviewed. This addition therefore ensures the Council is compliant in policy terms as well as practice with its statutory duties.

5. Human Resources Implications

HR implications are covered in the body of this report. However, the additions and amendments to the policy are primarily reflective of changing statutory requirements on the Council as an employer.

6. Corporate Governance

This report relates to the Council complying with governance and its duties as an employer and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

7. Financial Implications

7.1.

The addition of Section 10 clarifies the position regarding maternity pay for those employees who have temporary employment and cannot therefore return to work. The approach is designed to avoid a situation whereby employees are overpaid maternity pay which the Council would then be obliged to reclaim.

7.2.

The statutory requirements outlined in Section 22 increase employees' rights to pay in the unfortunate scenario that a baby is stillborn, or the employee miscarries after 24 weeks, or if the baby dies shortly after birth. This is therefore a potential area of increased cost to the Council associated with employment and maternity. However, such scenarios are relatively infrequent.

7.3.

The current rate of Statutory Maternity Pay is £151.97 per week.

8. Legal Aspects

The changes to the Maternity and Paternity Policy reflect statutory obligations and compliance with employment law.

9. Contact Officers

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10. Appendix

Appendix 1: Policy on Maternity and Paternity.



Maternity and Paternity Policy

August 2021

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Document Control Sheet.

Review / approval history.

Date.	Name.	Position.	Version Approved.
2015.	General Meeting of the Council.	n/a.	Version 1.0.
TBC.	General Meeting of the Council	n/a.	Version 2.0.

Change Record Table.

Date.	Author.	Version.	Status.	Reason.
Next due for review in 2026.				

1. Policy Statement

This policy sets out the statutory rights and responsibilities of employees who are pregnant or have recently given birth and gives details of the arrangements for antenatal care, pregnancy-related illness, and maternity leave and pay.

Orkney Islands Council recognises that, from time to time, employees may have questions or concerns relating to their maternity rights. It is the Council's policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. As the maternity / paternity provisions are complex, if an employee becomes pregnant they should clarify the relevant procedures with their Manager or Human Resources to ensure that they are followed correctly.

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.

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

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

This policy will apply to all employees of Orkney Islands Council and its subsidiary companies including: Scottish Joint Council (SJC) / Single Status employees including Heads of Service, employees covered by Scottish Negotiating Committee for Teachers (SNCT) conditions of service, Orkney College Academic staff, Executive Directors and the Chief Executive.

The policy will be reviewed by the Head of Human Resources and Performance or their nominated representative in conjunction with recognised trade unions in line with the schedule for the review of all Council Human Resources Policies and Procedures, normally every 5 years. Should changes to employment law, best practice recommendations or schemes of Conditions of Service dictate, a review within this timescale can be carried out by agreement with the Head of Human Resources and Performance.

Where the provision differs for teaching and other employees covered by SNCT conditions of service this will be shown separately.

For the purpose of this policy, all "days" referred to within are calendar days.

3. Entitlement to Maternity Leave

All employees, regardless of length of service or weekly hours, are entitled to 52 weeks maternity leave consisting of 26 weeks Ordinary Maternity Leave (OML) and 26 weeks Additional Maternity Leave (AML) or as much of that period as they wish to

take. However, a minimum of 2 weeks maternity leave must be taken. In the case of employees engaged in certain types of manual work a minimum of 4 weeks maternity leave must be taken.

If an employee has less than 26 weeks' continuous service by the beginning of the qualifying week, they will be entitled to 52 weeks leave (unpaid).

The qualifying week is the 15th week before the expected week of childbirth (EWC).

If an employee has 26 weeks or more continuous service by the beginning of the qualifying week, they may be entitled to 39 weeks paid leave and a further 13 weeks unpaid leave (immediately following the initial 39 weeks), provided they meet the criteria contained within paragraph 6 of this policy.

4. Maternity Risk Assessment

The workplace risk assessment should already consider any risks to employees of childbearing age and, in particular, risks to new and expectant mothers (for example, from working conditions, or the use of physical, chemical or biological agents). Any risks identified must be included and managed as part of the general workplace risk assessment.

When a manager is notified that an employee is pregnant, breastfeeding or has given birth within the last six months, they should check the workplace risk assessment to see if any new risks have arisen. If risks are identified during the pregnancy, in the first six months after birth or while the employee is still breastfeeding, they must take appropriate, sensible action to reduce, remove or control them.

While it is a legal obligation for employers to regularly review general workplace risks, there is actually no legal requirement to conduct a specific, separate risk assessment for new and expectant mothers.

5. Notification to take Maternity Leave

The notification of the intention to take maternity leave must be given in writing to the line manager by the employee no later than the first working day of 15th week before the EWC. This letter should also state the duration of maternity leave which the employee intends to take.

SNCT employees including Teachers:

The notice must be given no less than 21 days before the intended date to commence maternity leave.

The employee must provide medical evidence of their EWC in the form of a maternity certificate (MAT B1) which is available from their GP or midwife after the 21st week of pregnancy and must be sent to Human Resources as soon as possible.

The employee may change the date on which maternity leave commences by giving 28 days' notice if this is reasonably practicable.

Human Resources will reply in writing within 28 days to confirm receipt of notification and confirm with the employee their rights to leave and expected date of return from maternity leave.

6. Maternity Pay

If an employee has less than 26 weeks continuous service by the qualifying week, they will be entitled to 52 weeks leave, with no pay. The employee may, however, be entitled to Maternity Allowance (see paragraph 8).

To qualify for Statutory Maternity Pay (SMP) an employee must:

- Have average weekly earnings not less than the lower earnings limit for National Insurance contribution liability.
- Continue to be employed during all or part of the Qualifying Week.
- Have continuous employment with the Council, other local authority or other recognised body for at least 26 weeks before the end of the Qualifying Week.
- Continue to be pregnant at the 24th week of pregnancy.
- Have stopped work wholly or partly because of pregnancy or childbirth.
- Give appropriate notice of intention to take maternity leave.
- Submit a Maternity Certificate (MATB1) stating the expected week of childbirth.

An employee with at least 26 weeks' continuous service at the beginning of the 15th week before the EWC is entitled to be paid:

- First 6 weeks at 9/10ths of normal weekly pay (including SMP).
- Following 12 weeks at half pay (plus SMP) provided the total cost does not exceed the normal full pay.
- Following 21 weeks at SMP (or 90% of average weekly earnings (whichever is lower) with any further maternity leave with no pay (up to a maximum of 13 weeks).

Payments made by the Council during maternity leave will be made on the understanding that the employee will return to work for a period of at least 3 months and in the event of the employee not doing so, they will refund the monies paid excluding those elements of SMP. Periods of annual leave, sick leave or parental leave which directly follow maternity leave will count as a return to work.

Employees who have indicated that they will not be returning to work will be paid for the first 6 weeks at 9/10ths of normal weekly pay and then SMP for the remaining 33 weeks.

SNCT employees including Teachers:

Where an employee satisfies the conditions above and is eligible to receive SMP, they will be entitled to 39 weeks paid leave, as follows:

- First 13 weeks at full pay (including SMP).

- Following 26 weeks at SMP, with any further maternity leave with no pay (up to a maximum of 13 weeks).

7. Exclusion from receiving Maternity Pay

An employee is excluded from receiving SMP if, at the beginning of the Maternity Pay Period, they:

- Fail to meet the qualifying conditions outlined above; or
- At any time during the Maternity Pay Period are in legal custody or work for another employer.

Those who do not qualify for SMP may be entitled to maternity allowance (see paragraph 8).

An employee will be advised of entitlement to maternity pay when notification of pregnancy is received.

8. Maternity Allowance

If an employee is excluded from Statutory Maternity Pay for any reason, the Council will return the MATB1 certificate and an SMP1 form which explains the reason that Statutory Maternity Pay cannot be paid.

If the employee meets qualifying conditions based on recent employment and earnings they may receive up to 39 weeks Maternity Allowance. Further information on eligibility to claim Maternity Allowance is available from the Department for Work and Pensions.

9. Employee who has reserved their position – Excluding SNCT employees

Where an employee wishes to reserve their position about returning to work, this should be confirmed in writing. The employee should also confirm the EWC and the date on which it is intended to commence maternity leave.

The employee will still be entitled to receive 90% of their salary for the first 6 weeks and 33 weeks at the lower rate of SMP but will not receive the additional 12 weeks at half pay. This will be paid in a lump sum on return to work, providing it is the intention to return to work for a period of at least 3 months.

Should the employee decide to resign, notice should be given as detailed in the employment contract and should run during the maternity leave period.

10. Employee on a temporary contract

Where the employee is on a temporary contract with an end date which will not allow them to return to work for the required period of 3 months following maternity leave they will receive 90% of their salary for the first 6 weeks and 33 weeks at the lower rate of SMP as long as they meet the qualifying conditions but will not receive the additional 12 weeks at half pay.

If their contract is extended for a period which will allow them to return to work for a period of at least 3 months, then this will be paid in a lump sum on return to work.

11. Antenatal Care

Employees are entitled to reasonable paid time off for ante-natal care during working hours, on the advice of a medical practitioner, midwife or registered health worker, to attend any appointments they have made for this purpose. Employees will need to produce their appointment card to their supervisor / manager so that the time off can be confirmed. Antenatal care may include relaxation and parent craft classes that the employee's doctor, midwife or health visitor has advised her to attend, in addition to medical examinations.

Time off will be granted for non-essential ante-natal care, for example aqua-natal classes, but this is dependent on the exigencies of the service. Any time taken in this respect should be deducted from annual leave or accrued flexitime.

The employee should endeavour to give her line manager as much notice as possible of antenatal appointments and, wherever possible, try to arrange them as near to the start or end of the working day as possible.

An individual who has a qualifying relationship with the employee, which includes the employee's husband or civil partner and the father of the expected child, is eligible to take unpaid time off to accompany the employee at up to two antenatal appointments.

12. Sickness during pregnancy

If an employee is sick during pregnancy medical certificates should be submitted in accordance with normal sickness procedures.

However, if the employee is sick for any reason connected with pregnancy or childbirth after the beginning of the 4th week before the EWC, and has not yet started maternity leave, this period of sickness will automatically trigger the beginning of maternity leave for the employee. In this instance Human Resources should be informed as soon as is practicable, and a medical certificate should be submitted in the normal way.

13. Beginning Maternity Leave

Maternity leave may not begin before the beginning of the 11th week before the EWC. The employee may choose when to begin maternity leave any time after this date.

The employee may continue to work up to the EWC provided that they are fit to carry out normal duties. This is subject to the requirements to undergo a medical examination if it is considered that the employee is prejudicing their health by continuing to work.

Maternity leave will automatically start on the day following childbirth if this occurs before the date on which the employee has notified they wish their maternity leave to commence.

14. Notification of return to work after Maternity Leave

If the employee wishes to change their return to work date, 8 weeks' notice of the change must be given.

SNCT employees including Teachers:

Teaching and other employees covered by SNCT conditions of service wishing to return to work earlier than the end of the maternity leave period, a minimum of 28 days' notice is required.
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If an employee wishes to return to work early from OML, the Council should review the position carefully including carrying out a risk assessment. It may be necessary to ask the employee to seek medical clearance from their GP and / or Occupational Health to return early should there be any concerns over the employee's fitness to return.

It should be noted that an employee is required to take 2 weeks compulsory maternity leave immediately following the birth of their child.

15. Right to return to the same or similar job

Where the employee is taking OML only and is returning to work they will return to exactly the same job which they left.

If the employee is taking AML they will normally be entitled to return to the same job as they left. However, if it is not reasonably practicable, the employee will be offered another job on the same terms and conditions as the job they left.

The only instance where this is not the case is during organisational change in accordance with the Council's redundancy policy. However, employees on maternity leave will be considered preferentially for redeployment opportunities should this occur. Please refer to the Council's Redundancy and Redeployment Policies for further information.

16. Keeping in touch days

To assist employees to keep in touch with the workplace during their maternity leave, they can, in agreement with their line manager, arrange to work up to 10 days. These days can be used for specific events, training, or anything which has been previously agreed by both parties. No keeping in touch days can be taken during the 2 weeks immediately following the birth.

Keeping 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.

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.

Please note that the employee is not required to work these 10 days, nor is the employer obliged to offer them. The full 10 day entitlement applies and is not dependent on the duration of maternity leave. If work is performed on more than 10 days, entitlement to statutory maternity leave ends.

17. Part-time and Flexible Working

Where an employee wishes to return to work but is unable to do so on a full-time basis, or wishes to work flexibly, serious consideration will be given to the request in line with the service requirements.

A request for flexible working should be made in writing to the Line Manager no later than 8 weeks before the expected return to work date.

In the event the request cannot be granted, an explanation will be given to the employee. Please see Flexible Working Policy for more information.

18. Annual Leave / Public Holidays

Annual leave which is accrued prior to going on maternity leave should be taken before the maternity leave period commences wherever possible.

Entitlement to annual leave and public holidays is unaffected by maternity leave and it is accrued as if the employee was at work. These accrued holidays should be taken, wherever possible, prior to returning to work.

Should the employee return to work on reduced hours (i.e. on a part-time basis), the annual leave entitlement will be calculated based on a period of full-time service up to the date that they have returned from maternity leave, and then based on a period of part-time service, from the date that the employee commences part-time hours.

Should the employee not return to work after maternity leave, they will be entitled to a proportion of the year's annual leave up to the end of the maternity leave period and to any public holidays which arose before that date.

SNCT employees including Teachers:

Annual leave will continue to be accrued during ordinary and additional maternity leave.

On return from maternity 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.

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 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.

19. Tax-Free Childcare

A scheme to help families in Scotland with childcare costs is available. Parents and carers that are either employed or self-employed with children aged up to the age of 12 years old or 17 years old if the child has disabilities.

To be eligible to use this scheme, you and your partner (if applicable) must earn a certain amount over the next 3 months. This is at least the National Minimum Wage or Living Wage for 16 hours a week on average. You are also eligible if you are on maternity leave, paternity leave, adoption leave or unable to work due to disability or caring responsibilities. You will not be eligible if you are earning £100,000 or more.

20. Returning to Work – Breastfeeding / Expressing Milk

The Council will ensure that pregnant employees and new mothers are allowed reasonable flexibility in their working hours to allow them to make use of the organisation's facilities. An employee who wishes to request flexibility to, for example, go home to feed their baby (if they live close to the workplace), should speak to their line manager.

It is recommended that, where practical, and where the individual wishes, the following should be provided within work to support new mothers breast feeding/expressing milk:

- Access to a private room in which to express milk. A medical room or toilet is not considered appropriate for this due to the risk of contamination.
- Use of secure, clean refrigerators for storing expressed milk and facilities for washing, sterilising and storing receptacles.
- Reasonable time off (without loss of pay or benefits, and without fear of penalty) to express milk or breastfeed.

While the Council cannot guarantee that it will be able to agree to every request for flexibility, it will give favourable consideration to requests and endeavour, within reason, to accommodate employees' wishes.

21. Transfer of maternity leave

Shared parental leave.

Shared parental leave enables mothers to commit to ending their maternity leave and pay at a future date, and to share the untaken balance of leave and pay as shared parental leave with their partner.

To be able to take shared parental leave, an employee and their partner must meet various eligibility requirements and have complied with the relevant curtailment, notice and evidence requirements. This includes the mother curtailing her maternity leave.

The Council provides a separate policy on shared parental leave.

22. Stillbirth, miscarriage or if your baby dies

Where a child is stillborn 24 weeks or more into the pregnancy, the employee will retain their entitlement to maternity leave and pay provided that they meet the qualifying conditions.

A stillbirth or miscarriage prior to this date will mean that the employee will not have the right to maternity leave or pay. Instead, the employee will be entitled to statutory sick pay provided that the qualifying conditions are met.

Where an employee gives birth early and the child lives for a short period of time only, the employee will retain their full rights to maternity leave and pay, irrespective of the timing of the birth.

If the child is unfortunately stillborn, the law regarding return to work after the birth still applies.

23. Ordinary Paternity Leave

An employee whose wife, civil partner or partner gives birth to a child, or who is the biological father of the child, is entitled to two weeks' ordinary paternity leave (OPL) provided they:

- Have or expect to have responsibility for the child's upbringing; and
- Have 26 weeks' continuous service by the week ending with the 15th week before the baby is due.

OPL is also available to adoptive parents where a child is matched or newly placed with them for adoption. Either the adoptive father or the adoptive mother may take OPL where the other adoptive parent has elected to take adoption leave. In respect of an adopted child, the employee must have 26 weeks' continuous service by the

week in which the child's adopter is notified of having been matched with the child for adoption. Please see Adoption policy for further information.

OPL is granted in addition to an employee's normal annual holiday entitlement. OPL must be taken in a single block of one or two weeks within eight weeks of the birth or adoption of the child. If the child is born early, it can be taken from the time of the birth but within eight weeks of the expected date of childbirth. OPL can start either from the date the child is born or placed for adoption or from a chosen number of days or weeks after that date.

24. Ordinary Paternity Pay

Employees will receive full pay for the period of OPL.

SNCT employees including Teachers:

Teachers and other SNCT employees will receive full pay for the first week of OPL and the Statutory Paternity Pay rate for the second week.

25. Notification to take Ordinary Paternity Leave

The notification of the intention to take OPL in respect of a birth child must be given in writing to the line manager no later than 15 weeks before the date on which their partner's baby is due. This letter should include length of OPL they wish to take and the date on which they wish the leave to commence.

In the case of an adopted child, the employee must give written notice of their intention to take OPL no later than 7 days after the date on which notification of the match with the child was given by the adoption agency. The notice must specify the date the child is expected to be placed for adoption, the date the employee intends to start OPL, the length of the intended OPL they wish to take and the date on which the adopter was notified of having been matched with the child.

The employee must also complete and sign a self-certificate declaring that they are entitled to OPL and ordinary statutory paternity pay.

The employee may change the date on which OPL commences by giving no less than 28 days' notice if this is reasonably practicable.

Please note that additional paternity leave and pay has been replaced with shared parental pay. Full details on shared parental leave are available in the shared parental leave policy.

26. Parental Bereavement Leave (Statutory entitlement)

Parents and primary carers i.e. adopters, foster parents, guardians and those classed as kinship carers (those that have assumed responsibility for looking after a child in the absence of parents) who have lost a child under 18 and parents that have suffered a still birth (after 24 weeks of pregnancy) have a right to two weeks statutory parental bereavement leave. Please refer to the Leave of Absence Policy for further details.