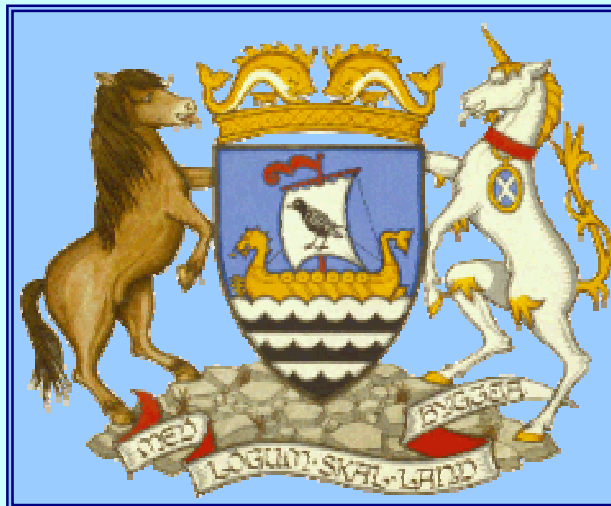


**SHETLAND ISLANDS COUNCIL**

**GUIDANCE NOTES TO  
MATERNITY  
PROVISIONS FOR  
STAFF**



**Operational Date: 6 April 2003  
Applies to: All Staff except Teachers**

# Shetland Islands Council

## GUIDANCE NOTES TO MATERNITY PROVISIONS FOR STAFF

Operational Date: 6 April 2003

Review Date: 6 April 2007

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### APPENDIX A – STANDARD MATERNITY LETTER

**Applying to: All staff groups except Teachers**  
**Effective from: 6 April 2003**

## **INTRODUCTION**

**This guidance note is intended to provide the necessary information required to assist both employees and managers when dealing with questions about maternity.**

This note is made up of three sections and covers the following Rights and Provisions:

**PART ONE – Maternity Leave**

**PART TWO – Maternity Support Leave**

**PART THREE – Statutory Paternity Leave**

Forms to provide the required information to the Council are attached. Additional copies are available from the administration section of the service/department.

This information is also available on the Council's Intranet Site.

For further details on any aspect of the scheme employees should contact departmental administration staff.

## **PART ONE – MATERNITY LEAVE**

### **1.1 PREGNANT EMPLOYEES AT WORK**

#### **1.1.1 Protection from Risk**

Under Health and Safety regulations, the Council must take the necessary measures to avoid exposure of pregnant and breastfeeding employees to identified potential risk, by temporarily adjusting working conditions and/or hours. A risk assessment must be carried out to assess the nature of potential risks, either by a trained individual within the employee's department, or the Council's Safety Manager.

If due to pregnancy, an employee cannot carry out her normal duties because of Health and Safety regulations, she has the right to be offered suitable alternative work. If such work is not available, she will be asked to remain at home on normal pay. If an employee turns down an offer of suitable alternative work, she loses her right to be paid while remaining at home on maternity grounds.

Specific medical advice given to an individual employee should be communicated to the employee's manager at the earliest opportunity. The manager is responsible for initiating, as a matter of urgency, any required changes as a result of such medical information, or seeking advice from Personnel, Occupational Health and/or the Health and Safety section on what should be done.

#### **1.1.2 Right to Time Off for Antenatal Care**

A pregnant employee shall be allowed to take reasonable time off without loss of pay to attend antenatal care.

Antenatal care covers any appointment made on the advice of a doctor, midwife or health visitor. This includes relaxation classes or dental appointments in addition to attending antenatal clinics. The employee however, should arrange these appointments outwith working hours where possible. The employee would be expected to produce on request, a certificate from her doctor stating that she is pregnant and written evidence of appointments made.

The Council will permit reasonable time off for the biological father or the mother's husband or partner to attend antenatal appointments. Such time off should be requested in writing, and the line-manager's consent obtained. It is a requirement of the Council that time off for such appointments be made up within a reasonable time.

#### **1.1.3 Protection from Dismissal**

It is automatically unfair to dismiss an employee for any reason connected with pregnancy or maternity leave.

This provision applies to employees regardless of the type of contract of employment they have with the Council. Further advice on this issue can be obtained from Personnel.

## **1.2 NOTIFICATION**

In order to ensure the health and safety of a pregnant employee, written notification of the pregnancy should be submitted to the manager as early as possible. This will be treated in the strictest of confidence and is only required so that a specific risk assessment can be carried out. Failure to provide this notification in writing may prevent the Council from meeting its obligations under the relevant legislation.

In addition, the Council requires an employee to inform her manager of her pregnancy, the Expected Week of Childbirth (EWC) and the date she intends to commence her Ordinary Maternity Leave (OML) by submitting the completed FORM A on or before the 15<sup>th</sup> week before the EWC. The 15<sup>th</sup> week before the EWC is known as the Qualifying Week.

### **1.2.1 Resignation due to pregnancy**

If an employee chooses to resign due to pregnancy prior to the birth of her baby, she must complete the final section of FORM A, giving the appropriate amount of notice as stated in her Terms and Conditions of Employment.

## **1.3. LEAVE ENTITLEMENT**

**There are three periods of maternity leave - Compulsory, Ordinary and Additional.**

### **1.3.1 Compulsory Maternity Leave**

Employees must not work for the two weeks after the birth of the baby, beginning with the day of childbirth. It is an offence for employers to allow employees to do this. This period of leave forms part of the ordinary maternity leave period.

### **1.3.2 Ordinary Maternity Leave (OML)**

All pregnant employees are entitled to take 26 weeks' ordinary maternity leave, regardless of their length of service, provided they satisfy the notification criteria outlined in section 1.4 below.

An employee would still be entitled to receive ordinary maternity leave in the event of her child surviving for only a short time after birth, or in the event of a still birth 24 weeks or more into the pregnancy.

### **1.3.3 Additional Maternity Leave (AML)**

Employees with at least 26 weeks' continuous service with the Council by the 15<sup>th</sup> week before the EWC are entitled to take a further 26 weeks' additional maternity leave at the end of their ordinary maternity leave.

### **1.3.4 Maintaining Contact**

Throughout the pregnancy and maternity leave period, communication and information exchange between the Council and employee are vital. The employee

should be kept informed of changing circumstances at work and must be notified of any Council job vacancies.

## **1.4 EMPLOYEES WITH LESS THAN 26 WEEKS CONTINUOUS SERVICE**

### **1.4.1 Ordinary Maternity Leave (OML)**

The earliest date at which an employee can elect to start OML is the beginning of the 11<sup>th</sup> week before the expected week of childbirth (EWC).

The actual start of OML will be the earliest of one of the following:

- The intended start date.
- The first day after the beginning of the 4<sup>th</sup> week before the EWC where the employee is absent from work wholly or partly because of pregnancy.
- The day of childbirth.

In order to qualify, the employee must:

- Notify her manager of her pregnancy in writing as early as possible and where possible, no later than the end of the 15<sup>th</sup> week before the EWC.
- Provide a certificate from a mid-wife or doctor, usually a MatB1 certificate stating the EWC.
- Give at least 28 days notice of any requirement to change the date she wishes to begin OML. If this proves not to be practical, then she must inform her line manager as soon as possible.

The manager must confirm receipt of this information and will provide confirmation of the employee's rights to leave and pay in writing (using the standard letter) within 28 days.

### **1.4.2 During OML**

During OML, the employee will retain her entitlements to the terms and conditions of employment which would have applied if she had not been absent, except remuneration.

- Annual leave entitlement continues to accrue.
- The employee will be entitled to receive a day in lieu for each public holiday that occurs during the OML period.
- For employees who are Essential Car Users, and the car is not in use for work as a result of maternity leave, the lump sum payments shall continue to be paid for the remainder of the month in which the car first went out of use and a further 3 months thereafter. For the following 3 months, the payment shall be at the rate of 50% of the lump sum payment. Thereafter, payment shall cease until the car is returned to use or if the employee returns to work.

### **1.4.3 Pay during OML**

Employees with less than 26 weeks' continuous service at the 15<sup>th</sup> week before EWC are not entitled to receive Statutory Maternity Pay (SMP). They are however, entitled to receive Maternity Allowance.

In order to claim Maternity Allowance from the Benefits Agency, FORM A should be submitted in the first instance. The Council's Payroll Section will then issue DSS form SMP1 to the employee, along with her MATB1 form, within 7 days of the decision that she is not entitled to receive SMP.

Maternity Allowance is payable for 26 weeks (if a woman has worked and paid NI contributions for 26 weeks out of 66 before the EWC). The rate is equal to flat rate SMP.

## **1.5 EMPLOYEES WITH MORE THAN 26 WEEKS SERVICE**

### **1.5.1 Leave**

As stated in 1.4.1 above, an employee who is pregnant is entitled to 26 weeks Ordinary Maternity Leave (OML) regardless of her length of service. In addition to this, if she has 26 weeks continuous service by the 15<sup>th</sup> week before the Expected Week of Childbirth (EWC), she is entitled to 26 weeks Additional Maternity Leave following her OML (see 1.4.1).

It will be assumed that an employee entitled to receive AML will do so unless she indicates otherwise.

Annual leave entitlement continues to accrue during AML.

### **1.5.2 Statutory Maternity Pay (SMP)**

To qualify for SMP an employee must meet all of the following conditions:

- Employed by the Council continuously for a period of 26 weeks continuing into the 15<sup>th</sup> week before the EWC.
- An employee must have average weekly earnings of not less than the lower earnings limit for the payment of National Insurance contributions, which applies in the QW.
- An employee must have begun her period of Maternity Leave.

SMP is payable for the entire 26 week period of OML. It is paid as follows: -

First 6 weeks	90% of average earnings (inclusive of non-contractual payments e.g. overtime).
Next 20 weeks	SMP only (the lesser of £100 or 90% of employees' average weekly earnings).

### **1.5.3 Occupational Maternity Pay (OMP)**

OMP is paid in addition to SMP to employees who have been employed by the Council continuously for at least 26 weeks before the EWC. The employee must also commit, in writing that she intends to return to work at the end of her maternity leave for a period of not less than three months.

When calculating the 3-month period, annual leave, public holidays and periods of sick leave will count towards this.

An employee entitled to both OMP and SMP would be paid as follows:

First 6 weeks	90% of average earnings (exclusive of non-contractual payments e.g. overtime).
Next 12 weeks	50% of normal average earnings plus SMP (capped as a maximum of 90% of earnings).
Next 8 weeks SMP only	(the lesser of £100 or 90% of employees average weekly earnings).

Employees will be paid maternity pay on the normal pay date, which will comprise the number of completed weeks in the month.

When an employee has received OMP, but not returned to work for the prescribed three months, she would be required to repay part of the OMP element of the maternity pay she will have received to the Council. This will be an amount equivalent to 12 weeks of 50% of normal average earnings. There is no requirement to repay SMP. An employee may choose not to receive this amount of Maternity Pay and then should she return to work this amount would be paid to them at the end of 3 months.

## **1.6 RETURNING TO WORK**

An employee has the right to return to the job in which she was employed under her contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been on maternity leave.

Where it is not practicable by reason of redundancy or other circumstances, the employee is entitled to be offered a suitable vacancy where one exists, provided the work to be done is suitable and appropriate to the circumstances and not on less favourable terms.

### **1.6.1 Notification of Return**

An employee is only required to notify the Council before returning to work where she intends to return *before* the end of OML.

Should an employee taking OML wish to return to work before the end of the 26 weeks, she must confirm her elected return date, in writing to her manager at least 28 days in advance of her proposed date.

Should an employee take AML she must confirm her elected return date, in writing to her manager at least 28 days in advance of her proposed return date.

Failure to give the required period of notice may delay the employee's actual return date.

### **1.6.2 Return to Part-Time Work or Job Share**

An employee may request a return to work on a job-sharing basis and it is important to give reasonable notice of this intention i.e. at least 8 weeks before the intended date of return. The Council should be able to justify why a post may not be job-shared if a request is refused.

This can be a temporary or permanent change and it may be an option to phase the return to full-time working by a temporary adjustment to part-time hours for the first 3 months or other agreed period. It is not an entitlement, with each case being assessed on its' individual circumstances and subject to the manager's discretion.

If an employee returns to work on a job-share or part-time basis, the 3-month return to work period will be based on the new contractual hours, i.e. calendar months.

### **1.6.3 Right to Request Flexible Working**

Any employee with 26 weeks' continuous service with the Council and who has a child under six years old (18 if the child is disabled), has the right to ask for a change in terms and conditions relating to:

- Hours of work (this includes a return to work on a job sharing basis or part-time working).
- Times of work.
- Location of work (home or employer's location).

A written request must be submitted to the line manager. Further information is contained in the Flexible Working Guidelines.

### **1.6.4 Risk Assessment for Returning to Work**

New mothers who perform night work have a right to be offered suitable alternative employment, or where that is unavailable, given paid leave providing they produce a medical certificate which shows that their health and safety is at risk if they continue to work nights.

The Council must provide somewhere for breast-feeding mothers to rest. There may be other risks to consider if the employee plans to continue breast-feeding once she returns to work. These depend on their working conditions and advice should be sought from the Council's Health and Safety section. An employee

should notify the Council, in writing, as early as possible that she plans to continue breast-feeding when she returns to work.

## **1.7 PENSION CONTRIBUTIONS – Unpaid maternity leave**

If an employee receives OMP or SMP during maternity leave, pension contributions will be taken from the pay received. If AML is also taken, which is unpaid, the employee can decide whether to make additional contributions upon her return to work as if she had received maternity pay. She must tell the Council whether or not she wishes to make the extra contributions. This must be done within 30 days of the date she returns to work or the date she tells the Council that she intends to leave.

These additional contributions can be made by either paying the full amount in one lump sum or by instalments over a period of time, which must be no greater than the period of unpaid leave.

If contributions **are not** made for the unpaid period, it will **not** count as membership of the Local Government Pension Scheme.

## **1.8 COMPLICATIONS OF PREGNANCY OR BIRTH**

### **1.8.1 Still birth**

If the employee's child is stillborn on or before the 24<sup>th</sup> week of pregnancy, she will not meet the qualifying conditions for maternity leave or pay. SSP or Sickness Allowance may be payable instead of maternity pay. Any communication with the employee must be handled with sympathetic consideration for the circumstances.

If a stillbirth occurs after the 25<sup>th</sup> week, the employee will be entitled to Statutory Maternity Pay and Leave.

### **1.8.2 Resignation**

If an employee has resigned due to childbirth and sadly the child does not live, she will be entitled to return to work. Every effort should be made to find suitable alternative employment, as there is no entitlement to return to the same post, grade or salary as before.

# FORM A (1/2) APPLICATION FOR MATERNITY LEAVE

TO: ADMINISTRATION SECTION

I am giving you this form to let you know that I am pregnant and to notify you of when I want to start my maternity leave and begin receiving Maternity Pay if I am eligible for it.

<b>1. Personal Details (PLEASE PRINT)</b>	
Name: .....	Service: .....
Employee No: .....	Line Manager: .....
Signature: .....	Date Submitted: .....
<b>2. My baby is due on the week commencing Sunday:</b> .....	
(Expected Week of Childbirth)	
<b>3. A certificate (usually a MAT B1) confirming this:</b>	
a) Has been given to you already	Yes <input type="checkbox"/> No <input type="checkbox"/>
b) Is enclosed with this form	Yes <input type="checkbox"/> No <input type="checkbox"/>
c) Will be given to you shortly	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>4. Qualifying for Statutory Maternity (SMP)</b>	
The 15 <sup>th</sup> week before my Expected Week of Childbirth (EWC) is the week commencing Sunday: .....	
On this date I will have worked continuously for at least 26 weeks	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>5. Qualifying for Occupational Maternity Pay (OMP)</b>	
I wish to receive my entitlement to 12 weeks at 50% of normal pay	Yes <input type="checkbox"/> No <input type="checkbox"/>
I am an Essential Car User (payment as per 'Car Not in use' scheme).	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>6. Qualifying for Ordinary Maternity Leave (OML)</b>	
I am entitled to 26 weeks' Ordinary Maternity Leave.	
My Ordinary Maternity Leave will commence on:	.....
I am due back to work on:	.....

**FORM A (2/2) APPLICATION FOR MATERNITY LEAVE**

**7. Qualifying for Additional Maternity Leave (AML)**

I am entitled to 26 weeks' Ordinary Maternity Leave and 26 weeks' Additional Maternity Leave. Yes  No

My combined maternity leave will commence on: .....

I am due back to work on: .....

(It is assumed you will take both periods of leave unless you indicate otherwise)

***You do not have to take the entire 26 week's Statutory Maternity Leave, or the entire 26 weeks Additional Maternity Leave period, if it applies to you.***

**8.**

I do not intend to return to work. I hereby give notice that my last day at work will be: .....

**Signature:** ..... **Date:** .....

***Your administration section will confirm whether they agree with the dates shown above in writing.***

**9. You must sign this section**

I understand that if I want to return to work before the date shown above, if possible, I must give the administration section at least 28 days notice of the date on which I want to return in writing.

**Signature:** ..... **Date:** .....

**TO BE COMPLETED BY SERVICE MANAGER (or equivalent)**

I confirm ..... is entitled to **Ordinary Maternity Leave/Ordinary and Additional Maternity Leave/Statutory Maternity Pay/Statutory and Occupational Maternity pay.** (delete as appropriate)

The effective start date for the commencement of this leave is: .....

**Signature:** ..... **Date:** .....

**ADMINISTRATION SECTION TO SEND TO PAYROLL  
STANDARD MATERNITY LETTER**

**Appendix A**

**Executive Director:**

**Department of:**

**Private & Confidential**

Address  
Telephone: 01595 744550  
Fax: 01595 744585  
www.shetland.gov.uk

If calling please ask for

Direct Dial:

Our Ref:  
Your Ref:

Date:

Dear

**Application for Ordinary and Additional Maternity Leave**

I refer to your application dated , for Ordinary and Additional Maternity Leave. I confirm that you have satisfied the conditions for maternity leave and that you will, therefore be entitled to maternity leave and pay in accordance with the SJC Conditions of service for Local Government Employees.

Your leave will commence on Sunday and continue for a period of no longer than 52 weeks. Based on an expected date of childbirth of the latest date on which you can return to work is week commencing Sunday .

You should return to work for at least 3 months after your maternity leave and if you do not observe this condition you will have to refund 50% of the amount of maternity pay paid to you by the Council for the twelve week period.

If you wish to change your return date then you must confirm this in writing to me at least 28 days in advance of the proposed return date.

The amount of pay that you will receive will be as follows:

First 6 weeks@	90% Normal average pay
Next 12 weeks @	50% Normal average pay and standard rate SMP
Next 8 weeks @	Standard rate SMP only
Further period	without pay

Maternity pay is treated as earnings and will be subject to deduction of income tax, national insurance and pension contributions. You will receive maternity pay at your normal pay period.

I hope all goes well for you.

If you have any questions about this, please do not hesitate to contact me.

Yours sincerely

Service Manager (or equivalent)

## **PART TWO – MATERNITY SUPPORT LEAVE (MSL)**

Maternity Support Leave of five days with full normal pay will be granted to the child's father or the partner or nominated carer of an expectant mother at or around the time of birth. The nominated carer is the person nominated by the mother to assist in the care of the child and to provide support to the mother at or around the time of birth.

### **2.1 ELIGIBILITY**

This entitlement is available to employees regardless of their length of continuous service or the number of hours worked each week.

A nominated carer must obtain confirmation in writing from the mother and a copy of the MAT B1.

Employees must complete FORM B and submit to their Service Manager (or equivalent) no later than the 15<sup>th</sup> week before the Expected Week of Childbirth (EWC).

Fathers or partners of an expectant mother who have 26 weeks' continuous service with the Council by the start of the 15<sup>th</sup> week before the EWC are entitled to receive a second week's leave under Statutory Paternity Leave provisions outlined in PART THREE.

## **PART THREE – STATUTORY PATERNITY LEAVE (SPL)**

Statutory Paternity Leave provides a right to fathers (and other eligible persons) to take leave of up to two weeks to help care for the mother and the baby. An employee can take either one week or two consecutive weeks but not two separate weeks. However, they can substitute one of these weeks for Maternity Support Leave.

### **3.1 ELIGIBILITY**

An employee is eligible if:

- He/She has or expects to have responsibility for the baby's upbringing **and** is either the biological father or the mother's husband or partner (including same sex).
- He/She has 26 weeks' continuous service with the Council by the 15th week before the Expected Week of Childbirth (EWC) and continues in that employment up to the date of birth.
- He/She wishes to take time off either to care for the new baby or to support the mother.
- He/She must have earnings at or above the Lower Earnings Limit for National Insurance at the 15<sup>th</sup> week before EWC.

### **3.2 NOTIFICATION**

An employee who wishes to take SPL must submit a completed FORM B to his/her line-manager (or equivalent) no later than the 15<sup>th</sup> week before the EWC.

There will be circumstances when an employee needs to change the commencement date. He/she must inform his/her manager as soon as possible.

### **3.3 STATUTORY PATERNITY LEAVE (SPL)**

SPL must be taken once the child has been born and within 56 days of the birth or, where the child is born earlier or later than expected, between the actual date of birth and 56 days from the first day of the EWC.

There is no doubling up (or more) of leave or pay in the case of multiple births.

### **3.4 STATUTORY PATERNITY PAY**

Statutory Paternity Pay is paid at the same rate as Statutory Maternity Pay.

**Form B (1/2)****APPLICATION FOR STATUTORY PATERNITY LEAVE/MATERNITY SUPPORT LEAVE****TO: ADMINISTRATION SECTION**

I am giving you this form to let you know that I want to start my Statutory Paternity Leave and/or Maternity Support Leave.

<b>1. Personal Details (PLEASE PRINT)</b>	
Name: .....	Service: .....
Employee No: .....	Line Manager: .....
Signature: .....	Date Submitted: .....
<b>2. My baby is due on the week commencing Sunday:</b> .....	
(Expected Week of Childbirth)	
<b>3. A certificate (usually a MAT B1) confirming this:</b>	
a) Has been given to you already	Yes <input type="checkbox"/> No <input type="checkbox"/>
b) Is enclosed with this form	Yes <input type="checkbox"/> No <input type="checkbox"/>
c) Will be given to you shortly	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>4. I wish to take one week's Maternity Support Leave commencing:</b> .....	
<b>5. The mother has/has not (please delete) confirmed I am her nominated carer.</b>	
a) A letter from the mother is attached	Yes <input type="checkbox"/> No <input type="checkbox"/>
b) The mother has signed the declaration below	Yes <input type="checkbox"/> No <input type="checkbox"/>
<b>Declaration</b>	
I confirm that .....(Name) is my nominated carer and that the Expected Week of Childbirth stated above is correct.	
<b>Signature:</b> .....	<b>Date:</b> .....

## Form B (2/2)

### APPLICATION FOR STATUTORY PATERNITY LEAVE/MATERNITY SUPPORT LEAVE

<b>6. Qualifying for Statutory Paternity Leave</b>	
The 15 <sup>th</sup> week before the Expected Week of Childbirth (see question2) is week commencing Sunday: .....	
<b>7. All Statements must be circled 'YES' to qualify for SPL</b>	
I have or expect to have responsibility for the baby's upbringing or I am the biological father of the mother's husband or partner.	YES
I have worked continuously for the Council for 26 weeks as at the 15 <sup>th</sup> week before the Expected Week of Childbirth and continue in that employment in that employment up to the date of birth.	YES
I wish to take time off either to care for the new baby or to support the mother.	YES
<b>8. Leave Options</b>	
<i>Please indicate which option you wish to take by circling the appropriate 'YES'</i>	
I wish to take Maternity Support Leave only.	YES
I wish to take Maternity Support Leave and one week's Statutory Paternity Leave.	YES
I confirm the mother has not named another person as her nominated carer.	YES

#### **TO BE COMPLETED BY SERVICE MANAGER (or equivalent)**

I confirm ..... is entitled to **Statutory Paternity and/or Maternity Support Leave/Maternity Support Leave Only**. (delete as appropriate)

The effective start date for the commencement of this leave is: .....

**Signature:** .....

**Date:** .....

**ADMINISTRATION SECTION TO SEND TO PAYROLL**

