



# Shared Parental Leave Policy

## Lostwithiel Town Council

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Version: May 2017

## **Definitions**

The following definitions are used in this policy:

- "Expected week of childbirth" (EWC) means the week, starting on a Sunday, during which the employee's doctor or midwife expects her to give birth; and
- "Qualifying week" means the fifteenth week before the expected week of childbirth
- "Primary adopter" refers to the nominated parent (when a couple is adopting) who is entitled to take the statutory adoption leave / pay.

## **Abbreviations**

The following abbreviations are used within this policy:

- SPL Shared Parental Leave
- ShPP Shared Parental Pay
- SMP Statutory Maternity Pay
- SAP Statutory Adoption Pay
- MA Maternity Allowance

## **Overview**

In 2015 the Government introduced new legislation which enables mothers, fathers/partners and primary adopters to decide how to share the care of their child during the first year of birth or adoption.

The legislation enables mothers or primary adopters who wish to, to end their maternity or adoption leave/pay period early and share the remaining entitlement with their partner.

It is important to understand that there is a distinction between the entitlement to leave and pay.

It is also important to understand that each individual (i.e. the mother/primary adopter and the father/partner) wishing to take a period of Shared Parental Leave and/or receive Shared Parental Pay must be assessed in his/her own right to check whether he/she is eligible.

Depending upon whether they satisfy specific qualification criteria, individuals may be entitled to:

- Leave (SPL) and pay (ShPP)
- Pay (ShPP) but not leave (SPL)
- Leave (SPL) but not pay (ShPP)
- Neither leave (SPL) nor pay (ShPP)
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SPL can only be used by two people:

- The mother/primary adopter and
- One of the following:
  - The father of the child (in the case of birth) or
  - The spouse, civil partner or the partner of the child's mother/primary adopter.

## **1. Shared Parental Leave**

### **1.1 Entitlement to Shared Parental Leave**

The total amount of leave to which employees may be entitled is calculated using the mother's/primary adopter's entitlement to maternity/adoption leave/pay. The maximum amount of SPL available is 52 weeks. SPL must be taken during the child's first year of birth/placement and must end no later than one year after the birth/placement of the child.

A mother/primary adopter who is entitled to maternity/adoption leave must take a period of compulsory leave of two weeks immediately after the birth or placement of the child. Following this they can take a period of up to 50 weeks' maternity/adoption leave. This means that a mother/primary adopter who ends their maternity/adoption leave at the earliest opportunity could share up to 50 weeks' SPL with their partner.

A mother/primary adopter who is not entitled to Maternity Leave (e.g. an agency worker, casual worker or not in work) may still be entitled to pay. This could be Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP) or Maternity Allowance (MA). These are paid for 39 weeks. As above, the mother/primary adopter must take SMP/SAP/MA for a compulsory period of two weeks immediately after the birth or placement of the child. If the

mother/primary adopter ends their period of pay before the 38<sup>th</sup> week of pay, the father/partner may be entitled to up to 50 weeks of Shared Parental Leave, some of which may be paid. The amount of Shared Parental Leave available to the father/partner is calculated by deducting from 52 weeks the number of weeks of SMP, SAP or MA taken by the mother/primary adopter.

## 2. Eligibility to Shared Parental Leave

It is the employee's responsibility to prove that they are eligible for SPL and ShPP. Employees can check their eligibility for SPL and ShPP via the Gov website: <https://www.gov.uk/shared-parental-leave-and-pay-employer-guide/overview>

To be eligible for SPL both individuals must share the main responsibility for the care of the child at the time of the birth/placement for adoption. Additionally, an employee seeking to take SPL must satisfy each of the following criteria:

- The mother/primary adopter of the child must be/have been entitled to statutory maternity/adoption leave. If not entitled to statutory maternity/adoption leave, they must be/have been entitled to statutory maternity/adoption pay or maternity allowance.
- The mother/primary adopter must have ended, or given notice to end, any maternity/adoption entitlements via the 'Curtailed Maternity/Adoption Leave and/or Pay' form.
- The employee must still be working for the Town Council at the start of each period of SPL.
- The employee must pass the 'continuity test', which requires them to have a minimum of 26 weeks' service at the end of the 15th week before the child's expected due date/matching date;
- The employee must correctly notify The Town Council of their entitlement and provide evidence as required.
- The employee's partner must meet the 'employment and earnings test'. This requires them to have in the 66 weeks before the week of the baby's due date/week they're matched with their adopted child to:
  - have been working for at least 26 weeks (they don't need to be consecutive)
  - have earned at least £390\* in total in 13 of the 66 weeks (add up the highest paying weeks, they don't need to be consecutive)

\*This is a statutory amount and is subject to annual review

### **3. Shared Parental Pay**

#### **3.1 Entitlement to Shared Parental Pay**

The total amount of pay to which employees may be entitled will depend upon how much Statutory Maternity/Adoption Pay or Maternity Allowance the mother/primary adopter has been paid at the date when their maternity/adoption leave or maternity/adoption pay period ends. The principle is that any pay (SMP/SAP/MA) not taken can be converted into Shared Parental Pay as long as the person wanting to take this is eligible.

SMP/SAP/MA is paid for 39 weeks. A mother/primary adopter who is entitled to this must take two weeks' of pay during the compulsory two week period immediately after the birth/placement. The mother/primary adopter may choose to end their maternity/adoption pay early at some point after this. In this case any paid weeks not taken as SMP/SAP/MA (as long as there are at least two weeks' pay remaining) may be taken as Shared Parental Pay (ShPP). If the mother/primary adopter took the minimum amount of SMP/SAP/MA, this would therefore enable 37 weeks' of Shared Parental Pay to be taken.

Any Statutory Shared Parental Pay due during shared parental leave will be paid at a rate set by the Government for the relevant tax year, or at 90% of the employee's average weekly earnings, if this figure is lower than the Government's set weekly rate.

#### **3.2 Eligibility for statutory shared parental pay (ShPP)**

It is the employee's responsibility to prove that they are eligible for SPL and ShPP. Employees can check their eligibility for SPL and ShPP via the Gov website: <https://www.gov.uk/shared-parental-leave-and-pay-employer-guide/overview>

For employees to be eligible for ShPP, both parents must each meet certain eligibility requirements.

### **Mother's/primary adopter's eligibility for statutory shared parental pay:**

The mother/primary adopter is eligible for ShPP if they:

- Have at least 26 weeks' continuous employment ending with the 15th week before the expected week of childbirth/placement and remain in continuous employment with his/her employer until the week before any period of shared parental pay that they get;
- Have normal weekly earnings for a period of eight weeks ending with the 15th week before the expected week of childbirth/placement of at least the Lower Earnings Limit for national insurance contribution purposes;
- Have, at the date of the child's birth/placement, the main responsibility, apart from the partner, for the care of the child;
- Are absent from work and intend to care for the child during each week in which they receive statutory Shared Parental Pay; and
- Are entitled to Statutory Maternity/Adoption Pay in respect of the child, but the maternity/adoption pay period has been reduced.

In addition, for the mother/primary adopter to be eligible for ShPP their partner 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, at the date of the child's birth, the main responsibility, apart from the mother, for the care of the child; and
- Have earned at least £390 in total in 13 of the 66 weeks (add up the highest paying weeks, they don't need to be consecutive).

### **Partner's eligibility for statutory shared parental pay:**

The partner is eligible for ShPP if they:

- Have at least 26 weeks' continuous employment ending with the 15th week before the expected week of childbirth and remain in continuous employment with their employer until the week before any period of shared parental pay that they get;
- Have normal weekly earnings for 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;

- Have, at the date of the child's birth/placement, the main responsibility, apart from the mother/primary adopter, for the care of the child; and
- Are absent from work and intend to care for the child during each week in which they receive statutory shared parental pay.

In addition, for the partner to be eligible, the mother/primary adopter 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 earned at least £390 in total in 13 of the 66 weeks (add up the highest paying weeks, they don't need to be consecutive)
- Have, at the date of the child's birth, the main responsibility, apart from the partner, for the care of the child; and be entitled to statutory maternity pay or maternity allowance in respect of the child, but the maternity pay period or maternity allowance period have been reduced.

#### **4. Requesting Shared Parental Leave**

An employee considering taking SPL is encouraged to contact the Town Clerk to arrange an informal discussion as early as possible regarding their potential entitlement.

Once an employee has checked that they are eligible for SPL and/or ShPP, they should then complete a 'Notice of Entitlement and Intention' form (Appendix D) which should then be given to the Town Clerk.

Before SPL can begin the mother/primary adopter must end their maternity/adoption leave and/or pay entitlement. Therefore, if the employee is the mother/primary adopter then they must also complete the 'Curtailed Maternity/Adoption Leave and/or Pay' form (Appendix C).

##### **4.1 Requesting Further Evidence of Eligibility**

The Council may request, within 14 days of receiving the 'Notice of Entitlement and Intention' form being given:

- The name and business address of the partner's employer (where the employee's partner is no longer employed or is self-employed their contact details must be given instead).

- In the case of biological parents, a copy of the child's birth certificate (or, where one has not been issued, a declaration as to the time and place of the birth).
- In the case of an adopted child, documentary evidence of the name and address of the adoption agency, the date on which they were notified of having been matched with the child and the date on which the agency expects to place the child for adoption

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In order to be entitled to Shared Parental Leave, the employee must produce this information within 14 days of the employer's request.

#### **4.2 Booking Shared Parental Leave**

In addition to notifying the employer of entitlement to SPL/ShPP via the 'Notice of Entitlement and Intention' form, an employee must also give notice to take the leave. In many cases, notice to take leave will be given at the same time as the notice of entitlement to SPL.

Requests for leave should be made via the 'Period of Shared Parental Leave Notice' (appendix F).

The employee must book leave by giving the correct notification at least eight weeks before the date on which they wish to start the leave and, if applicable, receive ShPP.

Eligible employees have the right to submit up to three notifications specifying leave periods they are intending to take.

Each period of leave may consist of either a) a single period of weeks of leave; or b) two or more weeks of discontinuous leave, where the employee intends to return to work between periods of leave.

Leave must be taken in complete weeks but can start on any day of the week. Periods of Shared Parental Leave can be taken either at the same as or at different times to leave taken by their partner.

The father/partner can take SPL immediately following the birth/placement of the child, but may first choose to exhaust any paternity leave entitlements (as they cannot take paternity leave or pay once SPL has been taken).



SPL must be taken during the child's first year of birth/placement and must end no later than one year after the birth/placement of the child. Any SPL not taken by the first birthday or first anniversary of placement for adoption will be lost.

#### **4.3 Continuous Periods of Shared Parental Leave**

If the employee submits a 'Period of Shared Parental Leave Notice' requesting one continuous period of leave, they will be automatically entitled to take that period of leave.

#### **4.4 Discontinuous Periods of Shared Parental Leave**

The employee may submit a Period of Shared Parental 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.

If the employee submits a request for a period of discontinuous of leave, the Town Council can, in the two weeks beginning with the date the period of leave notice was given:

- Consent to the pattern of leave requested;
- Propose an alternative pattern of leave; or
- Refuse the pattern of leave requested.

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

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 the Town Council 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.

Alternatively, if the Town Council has refused the request 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 Shared Parental 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.

#### **4.5 Arranging a Meeting to Discuss Leave Requests**

Any meetings arranged to discuss leave requests and/or entitlement to SPL should take place in private and be arranged in advance. If the initial date is problematic then another date will be arranged if possible. If an alternative date cannot be arranged then the meeting may be held over the telephone. At the meeting the employee may, if they wish, be accompanied by a work colleague or trade union representative.

The purpose of the meeting is to discuss in detail the leave proposed and what will happen while the employee is away from work. Where it is a request for discontinuous leave the discussion may also focus on how the leave proposal could be agreed, whether a modified arrangement would be agreeable to the employee and the Town Council, and what the outcome may be if no agreement is reached.

A response to the SPL request should be given no later than the 14<sup>th</sup> day after the request was made.

#### **4.6 Variations to Arranged Shared Parental Leave**

The employee is permitted to vary or cancel an agreed and booked period of SPL, provided that they advise the Town Council, in writing at least eight weeks before the date of the variation. Any new start date cannot be sooner than eight weeks from the date of the variation request.

Any variation or cancellation notification made by the employee, including notice to return to work early, will usually count as a new notification and will reduce by one the employee's right to book/vary leave.

However, a change as a result of a child being born early, or as a result of the Town Council requesting it be changed, and the employee being agreeable to the change, will not count as further notification. Any variation will be confirmed in writing by the Town Council.

## **5. Fraudulent Claims**

Where there is a suspicion that fraudulent information may have been provided or where the Council has been informed by the HMRC that a fraudulent claim was made, the Town Council can investigate the matter further in accordance with their usual investigation and disciplinary procedures, and also without acting in a discriminatory manner in relation to any of the protected characteristics defined in the Equality Act 2010.

## **6. Pension**

### **Employee Contributions During Shared Parental Leave and Maternity/Paternity/Adoption Leave**

Employees will pay pension contributions at their 'normal' percentage rate during any period of paid leave.

Employees will not pay pension contributions during any period of unpaid leave. However, there is a distinction between the following:

- Periods of unpaid Ordinary Maternity Leave, Ordinary Adoption Leave and Paternity Leave, when the employer continues to make pension contributions.
- Periods of unpaid Shared Parental Leave, Additional Maternity Leave and Additional Adoption Leave, when the employer does not make any pension contributions.

In the latter case the employee can, if they wish, choose to enter into an age-related Additional Pension Contribution (APC) to cover the amount 'lost' during the unpaid leave. Information about this is set out in the employer's information below.

## **Employer Contributions During Shared Parental Leave and Maternity/Paternity/Adoption Leave**

The Town/Parish Council will pay employer contributions on the employee's Assumed Pensionable Pay (APP). APP is calculated with reference to the average pensionable pay the employee received in the 3 months immediately preceding the period of reduced or nil pay. If, however, the employee's pay during their leave is higher than APP, the Town/Parish Council will pay contributions based on this higher amount.

APP does not apply during any period of unpaid Shared Parental Leave, unpaid Additional Maternity Leave or unpaid Additional Adoption Leave. The employee can, if they wish, choose to enter into an age-related Additional Pension Contribution (APC) to cover the amount of pension 'lost' during the unpaid leave.

If the employee notifies the Town/Parish Clerk in writing within 30 days of returning to work that they wish to enter into an APC then:

- The employee will pay 1/3 of the cost of the APC
- The employer will pay 2/3 of the cost of the APC.
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If the employee notifies the Town/Parish Clerk of this decision later than 30 days after returning to work then the whole cost will be borne by the employee, unless the Town/Parish Council voluntarily agrees to contribute to the APC.

## **7. Continuous Service**

Any periods of Shared Parental Leave will count as continuous service for statutory and contractual purposes.

## **8. Leave During Shared Parental Leave**

- **Annual Leave and Bank/Public Holidays**

Annual leave and bank/public holidays continue to accrue during SPL. Where bank/public holidays fall during a period of SPL, the employee will be entitled to a day's holiday (pro rata if part-time) in lieu of each bank/public holiday.

- **Carry Forward of Annual Leave and Bank/Public Holidays**

The employee and their line manager should review annual leave arrangements prior to SPL being taken. Where taking SPL means that the employee is unable to take their full annual leave entitlement in the current annual leave year, the outstanding leave (including any days in lieu of bank/public holidays) can be carried over to the next annual leave year.

- **Treatment of Leave Where an Employee Changes Their Hours after Shared Parental Leave**

If an employee changes their hours after taking SPL, all leave accrued up to the agreed date when their hours change is calculated based on their original hours and any leave accrued subsequently is calculated based on their new hours.

## **9. Returning to Work**

- **Shared Parental Leave in Touch Days (SPLIT)**

Employees can work up to 20 days without bringing their Shared Parental Leave to an end. These are called Shared Parental Leave In Touch (SPLIT) days. Working for part of a day will count as one day. An employee will not lose any SPL or ShPP for working up to 20 days.

Work is defined as any work done under the contract of employment and may include training or any activity undertaken for the purposes of keeping in touch with the workplace.

SPLIT days are optional - both the employee and your employer must agree to them.

Managers need to ensure that they keep in touch with their employees whilst they are on Shared Parental Leave. If you do not wish to be contacted, please notify your manager and/or the

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Town/ParishClerk. Any relevant correspondence will be sent to all employees whilst they are on Shared Parental Leave.