

<b>Committee</b>	HR&R		
<b>Date paper prepared</b>	01/09/2022	<b>Date of committee meeting</b>	14/09/2022
<b>Subject</b>	HR Policies and Procedures – Maternity Leave and Pay Policy and Procedure.		
<b>Author</b>	Judith Fenton, HR&OD Lead		
<b>Action requested</b>	For approval		
<b>Purpose of the paper</b>	To share the policy for approval		
<b>Brief summary of the paper</b>	<p>The paper shares our drafted Maternity Leave and Pay Policy and Procedure. The document has been developed in partnership with SMT, union colleagues, and key staff. LNCC approved the policy for implementation for Employees who joined from August 2021, and for employees who TUPE'd to SUHI from NAFC on 1<sup>st</sup> August 2021. The rationale being that this process is marked for national negotiation and that, therefore, as the SIC policy was collectively bargained, it should not be amended at this point.</p>		
<b>Consultation</b>	SMG and LNCC		
<b>Resource implications</b>	None identified		
<b>Risk implications</b>	None		

<p><b>Link with strategy</b></p>	<p>N/A</p>
<p><a href="#"><u>Equality, Diversity and Inclusion</u></a></p>	<p>A clear position on this area is beneficial in terms of equality, particularly for pregnant employees, and, where applicable, their partners.</p>
<p><b>Island Community Impact</b></p>	<p>Summarise how any actual or potential (positive or negative) impacts on island communities have been considered in the development of the paper.</p>
<p><b>Paper status</b></p>	<p><input checked="" type="checkbox"/> <b>Open</b> – The paper may be circulated to non-members of the committee and published online without restriction.</p> <p><input type="checkbox"/> <b>Restricted</b> – The paper must not be circulated to non-members or published online until after the committee meeting.</p> <p><input type="checkbox"/> <b>Confidential</b> - The paper must not be circulated beyond the committee members and should not be published online. [Please note papers may still be subject to Freedom of Information requests – see below].</p>
<p><a href="#"><u>Freedom of information</u></a></p>	<p>Open</p> <p>If closed/ withheld, select date this will become 'open': Enter a date.</p>

## Maternity Leave and Maternity Pay Policy

### 1. Introduction to maternity rights and benefits

- 1.1 This policy sets out the rights of employees to statutory maternity leave and pay.
- 1.2 This policy applies to employees of Shetland UHI who joined the organisation from August 2021 and to employees who TUPE transferred from NAFC on 1<sup>st</sup> August 2021, thereby superseding the previous policy and procedure arrangements that were in place for those employees.
- 1.3 This policy, and the existing corresponding policy that applies to employees who TUPE transferred from the Shetland Island Council on 1<sup>st</sup> August 2021, will be superseded by any nationally bargained policy agreed and approved by the NJNC, at a future date.
- 1.4 Shetland UHI recognises that, from time to time, employees may have questions or concerns relating to their maternity rights. It is Shetland UHI's policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. As the maternity provisions are complex, if an employee becomes pregnant, she should clarify the relevant procedures with her line manager to ensure that they are followed correctly.
- 1.5 The following definitions are used in this policy:
  - "Expected week of childbirth" means the week, starting on a Sunday, during which the employee's doctor or midwife expects her to give birth.
  - "Qualifying week" means the 15th week before the expected week of childbirth.
- 1.6 All pregnant employees (regardless of length of service) have the right in law to take up to 26 weeks' ordinary maternity leave and up to a further 26 weeks' additional maternity leave and to resume work afterwards. The employee is therefore entitled to a total period of 52 weeks' maternity leave. Additional maternity leave follows on immediately from the end of the period of ordinary maternity leave.
- 1.7 All employees who take maternity leave have the right to return to work at any time during either ordinary maternity leave or additional maternity leave (except during the first two weeks from the day of childbirth), subject to their following the correct notification procedures as set out below.

### 2. Data protection

When managing an employee's maternity leave and pay, Shetland UHI processes personal data collected in accordance with its data protection policy. Data collected from the point at which an employee informs Shetland UHI that they are pregnant is held securely and accessed by, and disclosed to, individuals only for the purposes of managing their maternity leave and pay. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with Shetland UHI's data protection policy immediately. It may also constitute disciplinary offence, which will be dealt with under Shetland UHI's disciplinary procedure.

### 3. How much maternity pay will the employee receive?

## 3.1 Statutory Maternity Pay (SMP)

Employees who have been continuously employed by Shetland UHI for at least 26 weeks at the end of their qualifying week and are still employed during that week, will qualify for SMP, providing that:

- they are still pregnant 11 weeks before the start of the expected week of childbirth (or have already given birth);
- they have provided a MAT B1 form stating their expected week of childbirth; and
- their average weekly earnings are not less than the lower earnings limit for national insurance contributions.

SMP is payable for up to 39 weeks, with the first six weeks payable at 90% of the employee's average weekly earnings. The remaining 33 weeks (or less if you decide to return to work sooner) is payable 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. It is treated as earnings and is therefore subject to PAYE and national insurance deductions.

If the employee becomes eligible for a pay rise between the start of the original calculation period and the end of her maternity leave (whether ordinary maternity leave or additional maternity leave), the higher or standard rate of SMP will be recalculated to take account of the employee's pay rise, regardless of whether SMP has already been paid. This means that the employee's SMP will be recalculated and increased retrospectively, or that she may qualify for SMP if she did not previously. The employee will be paid a lump sum to make up any difference between SMP already paid and the amount payable as a result of the pay rise.

Payment of SMP cannot start prior to the 11th week before the employee's expected week of childbirth. It can start from any day of the week in accordance with the date the employee starts her maternity leave.

SMP is payable whether the employee intends to return to work after her maternity leave or not.

Employees who are not entitled to SMP may be entitled to receive Maternity Allowance (MA) payable directly by the Government. If an employee is not entitled to SMP, Shetland UHI will provide the employee with an SMP1 form to allow her to pursue a claim for maternity allowance.

## 3.2 Occupational Maternity Pay (OMP)

OMP is paid in addition to SMP or MA to employees who have been employed by Shetland UHI continuously for at least 26 weeks before the EWC and who intend to return to work for at least 3 months. You must commit in writing that you intend to return to work at the end of your maternity leave for a period of not less than 3 months.

For the first 6 weeks of absence, you will be entitled to SMP as detailed above. For the subsequent 12 weeks you will be paid 50% of normal average earnings in addition to SMP, however it should be noted that, the combined OMP and SMP payment will be capped at 100% of normal average earnings.

For employees not intending to return to work, payments during the subsequent 33 weeks will be the employee's entitlement to SMP or MA as detailed above. You will be

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

If you have received OMP, but have not returned to work for the prescribed 3 months, you will be required to repay the OMP element of the maternity pay you have received to Shetland UHI. This will be an amount equivalent to 12 weeks of 50% of normal average earnings. There is no requirement to repay SMP. You may choose not to receive this amount of Maternity Pay while on maternity leave and then should you return to work, this amount would be paid to you at the end of 3 months.

## 4. Timing of maternity leave

- 4.1 Ordinary maternity leave can start at any time after the beginning of the 11th week before the employee's expected week of childbirth (unless her child is born prematurely before that date in which case it will start earlier). Maternity leave will start on whichever date is the earlier of:
  - the employee's chosen start date;
  - the day after the employee gives birth; or
  - the day after any day on which the employee is absent for a pregnancy-related reason in the four weeks before the expected week of childbirth.
- 4.2 If the employee gives birth before her maternity leave was due to start, she must notify Shetland UHI in writing of the date of the birth as soon as reasonably practicable.
- 4.3 The law obliges all employees to take a minimum of two weeks of maternity leave immediately after the birth of the child.

## 5. Notice requirements

- 5.1 On becoming pregnant, an employee should notify her line manager as soon as possible. This is important as there are health and safety considerations for Shetland UHI.
- 5.2 By the end of the qualifying week, or as soon as reasonably practicable afterwards, the employee is required to inform Shetland UHI in writing of:
  - the fact that she is pregnant
  - her expected week of childbirth; and
  - the date on which she intends to start her maternity leave.
- 5.3 The information above should be submitted to the individual's line manager.
- 5.4 The employee is permitted to bring forward her maternity leave start date, providing that she advises Shetland UHI in writing at least 28 days before the new start date or, if that is not possible, as soon as reasonably practicable. The employee may also postpone her maternity leave start date, providing that she advises Shetland UHI in writing at least 28 days before the original proposed start date or, if that is not possible, as soon as reasonably practicable.
- 5.5 Shetland UHI will formally respond in writing to the employee's notification of her leave plans within 28 days, confirming the date on which she is expected to return to work if she takes her full 52-week entitlement to maternity leave.
- 5.6 The employee is required to give at least 28 days' notice of the date that she wants her statutory maternity pay to begin. If it is not possible for the employee to give 28 days'

notice, for example if the baby arrives early, she should tell Shetland UHI as soon as reasonably practicable.

## 6. Time off for antenatal care

- 6.1 Once an employee has advised Shetland UHI that she is pregnant, she will be entitled not to be unreasonably refused paid time off work to attend antenatal appointments as advised by her doctor, registered midwife or registered health visitor.
- 6.2 To be entitled to take time off for antenatal care, the employee is required to produce a certificate from her doctor, registered midwife or registered health visitor, stating that she is pregnant. Except in the case of the first appointment, the employee should also produce evidence of the appointment, such as a medical certificate or appointment card, if requested to do so.
- 6.3 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.
- 6.4 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.
- 6.5 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 to antenatal appointments. The individual with the qualifying relationship should ask their employer for more details of the right.

## 7. Health and safety

- 7.1 Shetland UHI has a duty to take care of the health and safety of all employees. We are also required to carry out a risk assessment to assess the workplace risks to women who are pregnant, have recently given birth or are breastfeeding where the work is of a kind that could involve a risk of harm or danger to her health and safety or the health and safety of her baby and the risk arises from either process, working conditions or physical, chemical or biological agents in the workplace. If applicable, Shetland UHI will provide the employee with information as to any risks identified in the risk assessment. If the risk assessment reveals that the employee would be exposed to health hazards in carrying out her normal job duties, Shetland UHI will take such steps as are reasonably necessary to avoid those risks, such as altering the employee's working conditions. In some cases, this may mean offering the employee suitable alternative work (if available) on terms and conditions that are not substantially less favourable.
- 7.2 If it is not possible for Shetland UHI to alter the employee's working conditions to remove the risks to her health and there is no suitable alternative work available to offer her on a temporary basis, Shetland UHI may suspend her from work on maternity grounds until such time as there are no longer any risks to her health. This may be for the remainder of her pregnancy until the commencement of her maternity leave. If an employee is suspended in these circumstances, her employment will continue during the period of the suspension, and it does not in any way affect her statutory or contractual employment and maternity rights. The employee will be entitled to her normal salary and contractual benefits during the period of her suspension, unless she has unreasonably refused an offer of suitable alternative employment.

## 8. Sickness absence

- 8.1 If an employee is absent from work during pregnancy owing to sickness, she will receive normal statutory or contractual sick pay in the same manner as she would during any other sickness absence providing that she has not yet begun ordinary maternity leave. If, however, the employee is absent from work due to a pregnancy-related illness after the beginning of the fourth week before her expected week of childbirth, her maternity leave will start automatically.
- 8.2 If the employee is absent from work wholly or partly because of pregnancy during the four weeks before the expected week of childbirth, she must notify Shetland UHI in writing of this as soon as reasonably practicable.

## 9. Rights during maternity leave

- 9.1 During ordinary maternity leave and additional maternity leave, all terms and conditions of the employee's contract except normal pay will continue. Salary will be replaced by SMP/OMP if the employee is eligible for it.
- 9.2 This means that, while sums payable by way of salary will cease, other benefits such as holiday entitlement will remain in place. Shetland UHI's pension contributions will continue based on the employee's normal pay during ordinary maternity leave and paid additional maternity leave. However, Shetland UHI's pension contributions will cease during any periods of unpaid additional maternity leave.
- 9.3 Employees are encouraged to take any outstanding holiday due to them before the commencement of maternity leave. Employees are reminded that holiday must be taken in the year that it is earned.

## 10. Contact during maternity leave

- 10.1 Shetland UHI reserves the right to maintain reasonable contact with employees during maternity leave. This may be to discuss employees' plans for return to work, to discuss any special arrangements to be made or training to be given to ease their return to work or to update them on developments at work during their absence.

## 11. Keeping-in-touch days

- 11.1 Employees can agree to work for Shetland UHI (or to attend training) for up to 10 days during their maternity leave without that work bringing their maternity leave to an end and without loss of a week's statutory maternity pay. These are known as "keeping-in-touch" days. Any work carried out on a day shall constitute a day's work for these purposes.
- 11.2 Shetland UHI has no right to require employees to carry out any work and employees have no right to undertake any work during their maternity leave. Any work undertaken, and the amount of salary paid for any work done on keeping-in-touch days, is entirely a matter for agreement between employees and Shetland UHI.

## 12. Returning to work after maternity leave

- 12.1 The employee may return to work at any time during ordinary maternity leave or additional maternity leave, providing that she gives the appropriate notification.

Alternatively, the employee may take her full period of maternity leave entitlement and return to work at the end of this period. If the employee wishes to return before the full period of maternity leave has elapsed, she must give at least eight weeks' notice in writing to Shetland UHI of the date on which she intends to return.

- 12.2 The employee has the right to resume working in the same job if returning to work from ordinary maternity leave. If the employee returns to work after a period of additional maternity leave, she is entitled to return either to the same job or, if this is not reasonably practicable, to another suitable job that is on terms and conditions not less favourable.
- 12.3 Failure to return to work by the end of maternity leave will be treated as an unauthorised absence unless the employee is sick and produces a current medical certificate before the end of the maternity leave period.
- 12.4 If the employee decides during maternity leave that she does not wish to return to work, she should give written notice of resignation to Shetland UHI as soon as possible and in accordance with the terms of her contract of employment.
- 12.5 Ahead of a return to work, should an employee wish to change her pattern of working or working hours, she should make a request via the flexible working policy and procedure.
- 12.6 In reference to Annual Leave, employees are encouraged to take any carry over annual leave ahead of returning to work following a period of maternity leave to support business continuity.

## 13. Transfer of maternity leave

- 13.1 **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 and pay with their partner, or to return to work early from maternity leave and opt in to shared parental leave and pay at a later date.
- 13.2 Shared parental leave must be taken in blocks of at least one week. The employee can request to take shared parental leave in one continuous block (in which case Shetland UHI is required to accept the request as long as the employee meets the eligibility and notice requirements), or as a number of separate blocks of leave (in which case the employee needs Shetland UHI's agreement).
- 13.3 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.
- 13.4 Employees can refer to the Shetland UHI's policy on Shared Parental Leave, where they will find full details of the eligibility requirements, as well as instructions as to how the mother's maternity leave can be curtailed. Shetland UHI's policy on Shared Parental Leave sets out the notice periods with which employees must comply and what evidence they must provide to Shetland UHI. The policy also contains more details on employees' entitlement to statutory shared parental pay.
- 13.5 The mother and the partner should ensure that they are each liaising with their own employer when making requests for shared parental leave.



## Linked Policies

- Shared Parental Leave Policy
- Paternity Leave Policy
- Equality, Diversity and Inclusion Policy
- Dignity at Work Policy
- Disciplinary Policy and Procedure
- Probationary Policy and Procedure
- Adoption Leave Policy
- Flexible Working Policy and Procedure

## Relevant Legislation

- Employment Rights Act 1996 as amended
- Employment Rights Act 2004
- Employment Rights Dispute Resolution Act 1998
- Employment Relations Act 1999
- Data Protection Act 1998 as amended;
- Human Rights Act 1998
- Health and Safety at Work etc. Act 1974;
- Management of Health and Safety at Work Regulations 1999;
- Equality Act 2010

Reviewed	By	Approved
29/07/22	HR and OD Lead	N/A
23/08/22	SMG	Yes
29/08/22	LNCC	Yes – pending clarification in relation to which employees the policy applies to – now provided.
TBC	HR&R	