

Shared Parental Leave

Policy and guidance

Reviewed March 2020



Introduction to Shared Parental Leave

This policy sets out the rights of employees to Shared Parental Leave (SPL) and statutory Shared Parental Pay (ShPP) available to parents with babies due or placed for adoption on or after 5 April 2015. It also outlines the eligibility and notice requirements before a period of SPL can commence and statutory ShPP can be paid.

SPL enables mothers/adopters to commit to ending their maternity/adoption leave and pay at a future date, and to share the untaken balance of leave and pay as SPL and ShPP with their partner, or to return to work early from maternity/adoption leave and opt in to SPL and ShPP at a later date.

SPL should not be confused with ordinary parental leave, which is unaffected by SPL. Ordinary parental leave is the entitlement to up to 18 weeks' unpaid leave. Please read the Authority's Parental Leave Policy for further details.

The Authority recognises that employees may have questions or concerns relating to their SPL rights. It is the Authority's policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. As the SPL provisions are complex, if an employee wishes to take SPL, s/he should clarify the relevant procedures with the HR Absence Team to ensure that they are followed correctly.

Definitions under this shared parental leave policy

The following definitions are used in this policy:

"Mother" means the mother or expectant mother of the child.

"Adopter" means the primary adopter of the child.

"Partner" means the father of the child, or the person who, at the date of the child's birth, is married to, the civil partner of, or the partner of the mother/adopter. This includes someone, of either sex, who lives with the mother/adopter and the child in an enduring family relationship but who is not the mother's/adopter's child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew.

"Expected week of childbirth (EWC)" means the week, starting on a Sunday, during which the mother's doctor or midwife expects her to give birth.

“Matching certificate/date (MCD)” this form is a certificate completed by the appropriate adoption agency and confirms that the adopter has been matched with a child for adoption and includes the date the child is expected to be placed for adoption.

Scope of this shared parental leave policy

This Policy covers all employees, whether they are the mother/adopter or the partner, including centrally employed teachers but excluding staff on the complement of locally managed schools for whom a separate policy applies.

If it is the mother/adopter who is employed by the Authority, his/her partner must (where relevant) submit any notifications to take SPL set out in this policy to his/her own employer, which may have its own SPL policy in place, if s/he wants to take a period of SPL.

Similarly, if it is the partner who is employed by the Authority, the mother/adopter must (where relevant) submit any notifications to take SPL to his/her own employer.

The mother/adopter and the partner should ensure that they are each liaising with their own employer to ensure that requests for SPL are handled as smoothly as possible.

Discussions regarding SPL

An employee considering taking SPL is encouraged to contact the HR Absence Team to arrange an informal discussion as early as possible regarding their potential entitlement, to talk about their plans and to enable the Authority to support the individual.

On receipt of a ‘notification of entitlement’ to take SPL from the employee (see section 8) the HR Absence Team may arrange an informal discussion with the employee (in consultation with the employee’s line manager) to talk about their intentions and how they currently expect to use their SPL leave entitlement.

On receipt of a ‘period of leave notice’ to take SPL from an employee (see section 8) the HR Absence Team will usually arrange a meeting to discuss it. Where a notice is for a single period of continuous leave, or where a request for discontinuous leave can without further discussion be approved (in consultation with the employee’s line manager) in the terms stated in the employee’s ‘period of leave notice’, a meeting may not be necessary.

The purpose of the meeting is to discuss 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 Authority, and what the outcome may be if no agreement is reached.

Responding to a Shared Parental Leave notification

Once the HR Absence Team (in consultation with the line manager) receives the 'period of leave notice', it will be dealt with as soon as possible, but a response will be provided no later than the 14th calendar day after the leave request has been received by the HR Absence Team.

All notices for continuous leave will be confirmed in writing by the HR Absence Team.

All requests for discontinuous leave will be carefully considered (in consultation with the employee's line manager), weighing up the potential benefits to the employee and to the Authority against any adverse impact to the business.

Each request for discontinuous leave will be considered on a case-by-case basis. Agreeing to one request will not set a precedent or create the right for another employee to be granted a similar pattern of SPL.

The employee will be informed in writing of the decision by the HR Absence Team, as soon as is reasonably practicable, but no later than the 14th calendar day after the leave notification was received by the HR Absence Team. The request may be granted in full or in part, e.g. the Authority may propose a modified version of the request.

If a discontinuous leave pattern is refused, then the employee may withdraw the request on or before the 15th calendar day after the notification was received by the HR Absence Team; or may take the total number of weeks in the notice in a single continuous block. If the employee chooses to take the leave in a single continuous block, the employee has until the 19th calendar day from the date the original notification was received by the HR Absence Team to choose when they want the leave period to begin. The leave cannot start sooner than eight weeks from the date the original notification was received by the HR Absence Team. If the employee does not choose a start date, then the leave will begin on the first leave date requested in the original notification.

Entitlement to SPL and ShPP

SPL and ShPP must be taken between the baby's birth/placement and first birthday/ within 1 year of adoption.

The amount of SPL to which an employee is entitled will depend on when the mother/adopter brings his/her maternity/adoption leave period to an end and the amount of leave that the other parent takes in respect of the child. SPL must be taken in blocks of at least one week.

The employee can request to take SPL in:

- **One continuous block** (in which case the Authority is required to accept the request as long as the employee meets the eligibility and notice requirements); or
- **As a number of discontinuous blocks of leave** (in which case the employee needs the Authority's agreement). A maximum of three requests for leave per pregnancy/adoption can normally be made by each parent.

The first two weeks following birth/placement are the compulsory maternity/adoption leave period and are reserved for the mother/adopter. This means that the mother/adopter cannot curtail his/her maternity/adoption leave to take SPL until two weeks after the birth/placement and the maximum period that the parents could take as SPL is 50 weeks between them (although it will normally be less than this because of the maternity/adoption leave that mothers/adopters usually take before the birth/placement).

However, the mother's/adopter's partner can begin a period of SPL at any time from the date of the child's birth/placement (but the partner should bear in mind that s/he is entitled to take up to two weeks' ordinary paternity leave following the birth/placement of his/her child, which s/he will lose if SPL is taken first). The mother/adopter and partner must take any SPL within 52 weeks of birth/placement.

Eligibility for SPL

For employees to be eligible to take SPL, both parents must meet certain eligibility criteria.

Both parents must share the main responsibility for the care of the child at the time of the birth/placement for adoption and comply with the SPL notice and evidence requirements.

Mother's/adopter's eligibility for SPL

The mother/adopter is eligible for SPL if s/he:

- has at least 26 weeks' continuous employment ending with the 15th week before the EWC/MCD and remains in continuous employment with the Authority until the week before any period of SPL that s/he takes;
- is entitled to statutory maternity/adoption leave in respect of the child; and
- complies with the relevant maternity/adoption leave curtailment requirements (or has returned to work before the end of statutory maternity/adoption leave).

In addition, for the mother/adopter to be eligible for SPL, the partner must:

- have been employed or been a self-employed earner in at least 26 of the 66 weeks immediately preceding the EWC/MCD;
- have average weekly earnings of at least the maternity allowance threshold [currently £30] for any 13 of those 66 weeks.

Partner's eligibility for SPL

The partner is eligible for SPL if s/he:

- has at least 26 weeks' continuous employment ending with the 15th week before the EWC/MCD and remains in continuous employment with the Authority until the week before any period of SPL that s/he takes.

In addition, for the partner to be eligible for SPL, the mother/adopter must:

- have been employed or been a self-employed earner during at least 26 of the 66 weeks immediately preceding the EWC/MCD;
- have average weekly earnings of at least the maternity allowance threshold [currently £30] for any 13 of those 66 weeks;
- be entitled to statutory maternity/adoption leave, statutory maternity/adoption pay or maternity allowance in respect of the child; and
- comply with the relevant maternity/adoption leave or pay curtailment requirements (or have returned to work before the end of statutory maternity/adoption leave).

Notice requirements for shared parental leave

The notices that the parents must give to the relevant employer be able to take SPL are made up of three elements. They are:

- a "**maternity/adoption leave curtailment notice**" from the mother/adopter setting out when s/he proposes to end his/her maternity/adoption leave (unless the mother/adopter has already returned to work from maternity/adoption leave);
- a "**notice of entitlement and intention**" from the employee giving an initial, non-binding indication of each period of SPL that s/he is requesting; and
- a "**period of leave notice**" from the employee setting out the start and end dates of each period of SPL that s/he is requesting.

The notice periods set out below are the minimum required by law. However, the earlier the employee informs the appropriate organisation of his/her intentions, the more likely it is that the organisation will be able to accommodate the employee's wishes, particularly if s/he wants to take periods of discontinuous leave.

The notice requirements for SPL and statutory ShPP are very specific and detailed. Employees are therefore required to complete the appropriate notice template as fully as possible. Each has been designed to ensure employees provide the required information and declarations to assess eligibility and entitlement.

Employees are advised that, if they have already decided the pattern of SPL that they would like to take, they can provide more than one type of notice at the same time. For example, the mother/adopter could provide a 'maternity/adoption leave curtailment notice', 'notice of entitlement and intention' and 'period of leave notice' at the same time. Similarly, the partner could provide his/her 'notice of entitlement and intention' and 'period of leave notice' at the same time.

Mother's notice curtailing maternity leave

Before the mother/adopter or partner can take SPL, the mother/adopter must either:

- return to work before the end of her maternity/adoption leave (by giving the required eight weeks' notice of his/her planned return); or
- provide her employer with a 'maternity/adoption leave curtailment notice'. This must be in writing and state the date on which maternity/adoption leave is to end.

That date must be:

- after the compulsory maternity/adoption leave period, which is the two weeks after birth/placement;
- at least eight weeks after the date on which the mother/adopter gave the 'maternity leave/adoption curtailment notice' to her employer; and

- at least one week before what would be the end of the additional maternity/adoption leave period.

The mother/adopter must provide his/her 'maternity/adoption leave curtailment notice' at the same time s/he provides either his/her 'notice of entitlement and intention' or a 'declaration of consent and entitlement' signed by the mother/adopter confirming that his/her partner has given his/her employer a 'notice of entitlement and intention'.

Withdrawal of maternity leave curtailment notice

The mother/adopter can withdraw his/her notice curtailing his/her maternity/adoption leave in limited circumstances. This must be in writing and can be given only if the mother/adopter has not returned to work. The mother/adopter can withdraw his/her maternity/adoption leave curtailment notice if:

- it is discovered that neither the mother/adopter nor the partner are entitled to SPL or statutory ShPP and the mother/adopter withdraws his/her maternity/adoption leave curtailment notice within eight weeks of the date on which the notice was given;
- the maternity/adoption leave curtailment notice was given before the birth/placement of the child and the mother/adopter withdraws his/her maternity/adoption leave curtailment notice within six weeks of the child's birth/placement; or
- the partner has died.

Employee's notice of entitlement and intention

The employee, whether the mother/adopter or the partner, must provide the Authority with a non-binding 'notice of entitlement and intention'. This must be in writing and provided at least eight weeks before the start date of the first period of SPL to be taken by the employee, must set out the following information.

Within 14 calendar days of receiving a 'notice of entitlement and intention' from the employee, whether the mother/adopter and/or partner, the Authority can request from the employee:

- a copy of the child's birth certificate/matching certificate (or, if the child has not been born/placed, a copy of the birth certificate/matching certificate within 14 days of the birth/placement - if the birth certificate/matching certificate has yet to be issued after this period, a signed declaration stating the date and location of the child's birth/placement will suffice); and
- the name and address of the other parent's employer (or a declaration that the other parent has no employer).

The employee has 14 calendar days from the date of the request to send the Authority the required information.

Variation or cancellation of notice of entitlement and intention

The employee can vary or cancel his/her proposed SPL dates following the submission of a 'notice of entitlement and intention', provided that s/he provides the Authority with a written notice. The written notice must contain:

- an indication as to when the employee intends to take SPL leave (including the start and end dates for each period of leave);
- details of any periods of SPL that have been notified through a period of leave notice;
- details of any periods of statutory ShPP that have been notified in relation to periods where SPL was not to be taken; and
- a declaration signed by the mother/adopter and the partner that they agree to the variation.

Any indication of leave intended to be taken that the employee provides in a 'variation of notice of entitlement and intention' is non-binding until s/he provides a 'period of leave notice' in relation to that period of leave. There is no limit on the number of 'variations of notice of entitlement and intention' that the employee can make.

Employee's period of leave notice

To take a period of SPL, the employee must provide the Authority with a written 'period of leave notice' setting out the start and end dates of each period of SPL requested in that notice.

A 'period of leave notice' must be given not less than eight weeks before the start date of the first period of SPL requested in the notice. The notice may be given at the same time as a 'notice of entitlement and intention' and can be a request for a continuous period of leave or discontinuous periods of leave.

Variation or cancellation of period of leave notice

The employee can vary or cancel his/her proposed SPL dates following the submission of a 'period of leave notice', provided that s/he provides the Authority with written notice not less than eight weeks before any period of leave varied or cancelled by the notice is due to commence. The written notice can:

- vary the start date or the end date of any period of SPL or cancel a request for leave;
- request that a continuous period of leave become discontinuous periods of leave; or
- request that discontinuous periods of leave become a continuous period of leave.

Limit on number of requests for leave

The employee can provide a combined total of up to three 'period of leave notices' or 'variations of period of leave notices' per pregnancy/placement, although the Authority may waive this limit in exceptional circumstances.

Continuous period of shared parental leave

If the employee submits a 'period of leave notice' requesting one continuous period of leave, s/he will be entitled to take that period of leave.

Discontinuous periods of shared parental leave

The employee may submit a 'period of leave notice' requesting discontinuous periods of leave. For example, the mother/adopter and partner could request a pattern of leave from their respective employers that allows them to alternate childcare responsibilities.

If the employee submits a 'period of leave notice' requesting discontinuous periods of leave, the Authority, in the two weeks beginning with the date the period of leave notice was received by the HR Absence Team, can:

- 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 received by the HR Absence Team. The employee must notify the Authority of that date within

seven calendar days of the end of the two-week discussion period. If the employee does not choose a start date within seven calendar 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 Authority 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 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.

Shared parental pay (ShPP)

Statutory ShPP is available for eligible parents to share between them while on SPL. The number of weeks' statutory ShPP available to the parents will depend on how much statutory maternity/adoption pay or maternity allowance the mother/adopter has been paid when her maternity/adoption leave or pay period ends.

A total of 39 weeks' statutory maternity/adoption pay or maternity allowance is available to the mother/adopter. As there is a compulsory maternity/adoption leave period of two weeks, this means that a mother/adopter who ends her maternity/adoption leave at the earliest opportunity could share up to 37 weeks' statutory ShPP with his/her partner (although it will normally be less than this because of the maternity/adoption leave that mothers/adopter usually take before the birth).

Any statutory ShPP due during SPL will be paid at a rate set by the Government for the relevant tax year, currently £151.20, or at 90% of the employee's average weekly earnings, if this figure is lower than the Government's set weekly rate.

It is up to the parents as to who is paid the statutory ShPP and how it is apportioned between them.

Eligibility for statutory ShPP

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

Both parents must share the main responsibility for the care of the child at the time of the birth/placement for adoption.

Mother's/adopter's eligibility for statutory ShPP

The mother/adopter is eligible for statutory ShPP if s/he:

- has at least 26 weeks' continuous employment ending with the 15th week before the EWC/MCD and remains in continuous employment with his/her employer until the week before any period of ShPP that s/he gets;
- has normal weekly earnings for a period of eight weeks ending with the 15th week before the EWC/MCD of at least the lower earnings limit for national insurance contribution purposes;
- is absent from work and intends to care for the child during each week in which s/he receives statutory ShPP; and
- is 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/adopter to be eligible for statutory ShPP, the partner must:

- have been employed or been a self-employed earner during at least 26 of the 66 weeks immediately preceding the EWC/MCD; and
- have average weekly earnings of at least the maternity allowance threshold [currently £30] for any 13 of those 66 weeks.

Partner's eligibility for statutory shared parental pay

The partner is eligible for statutory ShPP if s/he:

- has at least 26 weeks' continuous employment ending with the 15th week before the EWC/MCD and remains in continuous employment with his/her employer until the week before any period of ShPP that s/he gets;
- has normal weekly earnings for eight weeks ending with the 15th week before the EWC/MCD of at least the lower earnings limit for national insurance contribution purposes; and
- is absent from work and intends to care for the child during each week in which s/he receives statutory ShPP.

In addition, for the partner to be eligible, the mother/adopter must:

- have been employed or been a self-employed earner during at least 26 of the 66 weeks immediately preceding the EWC/MCD;
- have average weekly earnings of at least the maternity allowance threshold [currently £30] for any 13 of those 66 weeks; and

be entitled to statutory maternity/adoption pay or maternity allowance in respect of the child, but the maternity/adoption pay period or maternity allowance period has been reduced.

Terms and conditions of employment during SPL

During SPL, all terms and conditions of the employee's contract except normal pay will continue. Salary will be replaced by statutory ShPP, if eligible.

This means that, while the payment of salary will cease, all other benefits will remain in place, e.g. holiday entitlement will continue to accrue and any holiday entitlement that cannot be taken before SPL can be carried over into the next holiday year.

Employees are encouraged to take any outstanding annual leave due wherever possible before the commencement of SPL. Employees are reminded that wherever possible annual leave must be taken in the year that it is earned and therefore if the annual leave year is due to end during SPL, the employee should endeavour to take the majority of their full year's entitlement before starting SPL.

Employees who do not return to work will have their last day of the paid/unpaid SPL period treated as their leaving date and annual leave entitlement will be calculated as at that date and any excess days taken will be reclaimed accordingly.

Members of the Local Government Pension Scheme (LGPS) and Teachers' Pension Scheme (TPS) that take SPL will continue to pay pension contributions on any period s/he is in receipt of statutory ShPP. Despite paying less pension contributions during this period, the member's pension build up will not be affected.

If an employee takes a period of unpaid SPL there is an opportunity for LGPS members to reinstate any 'lost pension' arising by paying contributions under an Additional Pension Contribution (APC) arrangement or for TPS members to buy additional pension through Additional Voluntary Contributions (AVCs) on his/her return to work.

Employees who already contribute to Additional Pension Contributions (APCs) or Additional Voluntary Contributions (AVCs) prior to commencing SPL are advised to seek advice on the implications of statutory ShPP pay/unpaid leave with the pension provider. The Authority cannot advise the employee in these circumstances.

Employees who have entered into a car loan/lease agreement through the Authority's Assisted Car Purchase Scheme/Car Contract Hire Scheme and who intend to return to work will be required to maintain payments in line with the terms and conditions of the relevant scheme whilst on SPL and/or statutory ShPP. Employees are strongly advised to speak to the Resources Department for further information.

Employees who have entered into a childcare voucher salary sacrifice agreement prior to commencing SPL can decide before SPL starts: to leave the scheme and stop receiving vouchers; to maintain the current voucher value or change the value of vouchers received (increase or decrease). This is classed as a 'life-changing' event under the terms and conditions of the scheme. (Please see section on eligibility criteria for ShPP including earnings thresholds). The employee will continue to receive childcare vouchers as a non-cash benefit during statutory ShPP/unpaid SPL.

Employees who have entered into a cycle 2 work/car salary sacrifice agreement prior to commencing SPL can continue to use the bicycle/vehicle as a non-cash benefit during SPL.

The employing department is responsible for all salary sacrifice payments during statutory ShPP/unpaid SPL.

If an employee has not entered into a salary sacrifice agreement prior to SPL, the Authority is not obliged to provide this benefit during SPL. The employee is therefore ineligible to join any salary sacrifice scheme until all continuous and discontinuous periods of SPL have expired.

Contact during shared parental leave and 'SPLIT' days

The Authority reserves the right to maintain reasonable contact with employees during SPL. This may be to discuss employees' plans for their 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.

An employee can agree to work for the Authority (or to attend training) for up to 20 days during SPL without that work bringing the period of his/her shared parental leave and pay to an end. These are known as "shared-parental-leave-in-touch" (SPLIT) days.

The Authority has no right to require employees to carry out any work and employees have no right to undertake any work during their SPL. Any work undertaken and the hours worked on SPLIT days, is entirely a matter for agreement between employees and the Authority.

If an employee is entitled to receive statutory ShPP for any week during which s/he attends work for SPLIT days, s/he will still receive this in the usual way. In addition, the Authority will pay for each hour worked during a SPLIT day at the normal contractual rate of pay for the hours worked which will be offset against ShPP.

Returning to work following SPL

The employee has the right to resume working in the same job when returning to work from SPL if the period of leave, when added to any other period of SPL, statutory maternity/adoption leave or statutory paternity leave taken by the employee in relation to the same child, is 26 weeks or less.

If the employee is returning to work from SPL and the period of leave taken is more than 26 weeks, when added to any other period of SPL, statutory maternity/adoption or paternity leave taken in relation to the same child, or was the last of two or more consecutive periods of statutory leave that included a period of ordinary parental leave of more than four weeks, or a period of additional maternity/adoption leave, the employee has the right to return to the same job unless this is not reasonably practicable. In these circumstances, if it is not

reasonably practicable for the Authority to permit a return to the same job, the employee has the right to return to another job that is suitable and appropriate for him/her.

Fraudulent claims

The Authority can, where there is a suspicion that fraudulent information may have been provided or where the Authority has been informed by the HMRC that a fraudulent claim was made, investigate the matter further in accordance with its Investigation and Disciplinary policies and procedures, without acting in a discriminatory manner in relation to any of the protected characteristics defined in the Equality Act 2010.

Ensuring Equality of Treatment

All employees are required to adopt a positive, open and fair approach and ensure the Authority's Equality and Diversity Policy is adhered to and applied consistently to all irrespective of race, colour, nationality, ethnic or national origins, disability, religion and belief or non-belief, age, sex, gender reassignment, gender identity and gender expression, sexual orientation, pregnancy or maternity, marital or civil partnership status.

In addition, the Welsh Language Standards ask us to 'ensure that the Welsh language is treated no less favorably than the English language' and this principle should be adopted in the application of this principle.

If you have any equality and diversity concerns in relation to the application of this policy and procedure, please contact a member of the HR Team who will, if necessary, ensure the policy/procedure is reviewed accordingly.

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