



CHESTERFIELD
BOROUGH COUNCIL

SHARED PARENTAL LEAVE

guidelines

prepared by: Human Resources

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1.0 Introduction

- 1.1 Shared Parental Leave (SPL) replaces Additional Paternity Leave (APL) where the expected week of childbirth (EWC) is on or after 5 April 2015 or for children who are placed for adoption and have a matching date on or after that date.

The SPL guidelines are effective from 1 December 2014 and apply to pregnancies from early July 2014.

Employed mothers will continue to be entitled to 52 weeks statutory maternity/adoption leave and 39 weeks of statutory maternity pay or maternity allowance.

Two weeks statutory paternity leave remains in place for fathers and a mother's or adopter's partner and will be the default scheme.

However, if they chose to, eligible mothers can end their maternity leave early and with her partner or child's father opt for shared parental leave instead of maternity leave. If they both meet the qualifying requirements, they will need to decide how they want to divide their Shared Parental Leave and Pay entitlement.

All notices for continuous period of leave from eligible employees will be accepted and all requests for dis-continuous leave will be considered. Adopters will have the same rights as other parents to Shared Parental Leave and pay.

2.0 Shared Parental Leave

- 2.1 SPL must be taken between the baby's birth and first birthday. (Where adoption applies SPL will need to be taken within one year from the date of adoption).
- 2.2 The mother must take a minimum of two (2) weeks compulsory maternity leave ie the first two weeks following the birth. The remaining 50 weeks may then be shared **if** both are eligible.

The mother and partner may choose how much leave they will each take during the remaining 50 weeks. The SPL may be taken at the same or different times as long as the total leave does not exceed what is jointly available. SPL can be taken in up to 3 separate blocks per eligible parent/partner or more if agreed between employer and employee.

The mother can return to work without sacrificing the rest of the leave available (unlike maternity leave).

Example:

The mother takes 12 weeks maternity leave, curtails her maternity leave and her partner takes 10 weeks SPL. The mother then takes the remaining 30 weeks SPL.

- 2.3 If only one parent is eligible for SPL they can't share the leave, however the eligible employee may still use SPL to book leave in separate blocks rather than have a continuous period off, provided that the other parent meets certain criteria (same as for maternity allowance).
- 2.4 The entitlement to shared parental leave is subject to the following conditions:
- The parents must have worked in an employed or self-employed capacity in at least 26 of the 66 weeks immediately before the EWC or matching date and
 - earned an average of at least £30 a week (based on 2015 figures but maybe subject to annual review) based on any of those 13 weeks (prescribed average weekly earnings)

Example:

The Mother takes 8 weeks maternity leave ending on 31 October.

Remaining leave is taken as SPL.

Partner is eligible for SPL.

Both take whole of November as their first block of SPL.

Partner returns to work on 1 December.

Mother returns to work on 12 December to cover Christmas,

Gives employer notice that will go on leave again on 1 to 31 March. (second block of SPL).

Mother takes third block of SPL from 1 to 31 May.

2.5 **Shared Parental Leave: Qualifying criteria Mother**

- 26 weeks continuous service at the end of the 15th week before the EWC or matching date and remains in employment for that employer until the week before any period of shared parental leave is taken
- Has at the date of the child's birth or adoption matching date the main (shared) responsibility for caring for the child.
- Is entitled to Statutory Maternity leave and has ended that leave
- Partner meets employment and earnings rules and has at the date of the child's birth or adoption matching date the main (shared) responsibility for caring for the child.

2.6 Shared Parental Leave: Qualifying criteria Father/Partner

- 26 weeks continuous service at the end of the 15th week before the EWC or matching date and remains in employment until the week before any period of shared parental leave taken.
- Has at the date of the child's birth or adoption matching date the main (shared) responsibility for caring for the child.
- Mother is entitled to statutory maternity leave, maternity pay or maternity allowance and has curtailed it.
- Mother meets employment and earnings rules.

2.7 Notification Requirements

The mother must curtail her maternity leave (and/or pay) by serving a curtailment notice.

The mother and father/partner must each:

- give written notice of the entitlement and intention to take SPL
- provide appropriate evidence
- give a period of leave notice

The mother's partner may start SPL while the mother is on maternity leave, as long as the mother has given notice to end the maternity leave.

Example: Mother goes on maternity leave 10 weeks before baby is born. She decides to take 16 weeks maternity leave and serves curtailment notice on her employer.

Her partner can start SPL as soon as the baby is born as the mother has given notice to end her maternity leave (NB the partner must give at least 8 weeks' notice to their employer)

2.8 Submitting Notifications/requests for leave and the Process

Requests for SPL should be made to the employee's line manager giving 8 weeks' notice.

Notifications for a continuous block of SPL means an unbroken period of leave and eligible employees have a right to take SPL in this way and Chesterfield Borough Council cannot refuse it. However a discontinuous block of leave in a single notice can only be taken with an employers' agreement and there is a **14** calendar day period during which time discussion about the request can take place.

If a request is not agreed then the total amount of leave in the request must be taken as one continuous block unless the employee withdraws the notice and submits a new request.

It may be helpful to have early informal discussions to look at options available and the impact on all parties before formal notices to book leave are given and this is something that should be encouraged.

2.9 What to include in the Notification

- The names of the mother and partner
 - How many weeks' maternity/adoption leave (or maternity adoption pay or maternity allowance if the mother was not eligible for maternity/adoption leave) has been or will be taken.
 - The expected date/week of birth actual birth date or date of placement
 - The start and end date of any statutory maternity or adoption leave
 - The total amount of SPL available
 - How much leave both parents are entitled to take
 - How much SPL each parent intends to take and when
 - The signatures of both parents that are wanting to take SPL
- and a declaration from Mother that :
- They will be sharing responsibility for the care of the child
 - The mother has given notice to end her maternity entitlement
 - They meet the continuity of employment test
 - The information they have given is accurate
 - Should they cease to be eligible they will immediately inform their employer.
- The partner of the employee must also provide their partners employer with a signed declaration stating:
 - Their name, address and National Insurance number
 - They are the father, or mother of the child or partner of the child's mother
 - Their employers name and address (must be supplied within 14 days of the request)
 - They meet the criteria for the employment and earnings test.

- Their employers name and address (this must be supplied within 14 days of request if not supplied at the notification stage).
- (if the mother) they are entitled to statutory maternity leave, statutory maternity pay or maternity allowance and that they have given notice to end that leave and pay/allowance
- That at the time of the birth or placement they share responsibility for the care of the child with the employee seeking to take SPL.
- They consent to the amount of leave and pay that the employee is seeking to take
- They consent to the employer receiving this declaration to process the information contained in it
- (In the case of the mother) that the mother will immediately inform their partner should the mother cease to satisfy the eligibility conditions.

See also SPL checklist at appendix 1

2.10 **Limit on number of notices**

An employee may give up to 3 notices in total (which can be waived by mutual agreement).

2.11 **Further Evidence**

14 days from receipt of the notice the employer can request

- Childs Birth certificate (or adoption certificate)
- Name and address of the other parent's employer if not already supplied. The employee then needs to supply this within 14 days of request.

2.12 **Restrictions on SPL**

SPL **must** be taken in multiples of complete weeks but can start on **any** day of the week. Example if SPL starts on a Wednesday it would finish on a Tuesday.

The minimum period of SPL which may be taken at one time is one week.

2.13 **Terms and Conditions during SPL**

During SPL an employee is entitled to the benefit of all their terms and conditions of employment EXCEPT remuneration.

2.14 Fraudulent claims

Chesterfield Borough Council can where there is a suspicion that fraudulent information may have been provided or where Chesterfield Borough Council has been informed by HMRC that a fraudulent claim has been made, investigate further in accordance with the usual Chesterfield Borough Council investigation and disciplinary procedures and without acting against any protected characteristics in line with the Equalities Act (EA) 2010

3.0 SPL Pay Issues

- Up to 37 weeks statutory maternity pay (SMP) will be 'shareable' or more accurately transferable between parents (The first 2 weeks after the birth of the 39 weeks available as SMP have to be taken by the mother and can't be shared).
- To be eligible the applicant must have :
An average weekly salary of at least the lower earnings limit of £112 per week (from 5.4.15 and subject to annual reviews) for 8 weeks before EWC
- Ordinary Statutory Paternity Pay (OSPP) and Ordinary Statutory Paternity Leave (OSPL) will continue to apply.
- APL and Additional Paternity pay will be abolished.

3.1 SPL Pay Rates

- SPL pay is paid at the rate of £139.58 a week (from 5.4.15 and subject to annual reviews) or 90% of average weekly earnings whichever is the lower.

Example:

Mother starts maternity leave 10 weeks before due date.

Gives notice that will take SPL from 4 weeks after the birth (total of 14 weeks' maternity leave).

Mother earns £300 per week

Mother is paid £270 a week for the first 6 weeks (statutory maternity pay (SMP) is 90% of actual earnings for 6 weeks with no maximum).

She is then paid £138.18 shared parental leave pay (rate applicable up to 4.4.15) afterwards.

4.0 SPL in Touch (SPLIT) days

An employee may do up to a maximum of 20 days' work during a period of SPL without this effecting their right to claim ShPP for that week and reasonable contact may continue during SPL between the employee and Chesterfield Borough Council to provide updates on work developments etc during their absence. This could be used from the SPLIT allowance as appropriate. Any time worked will receive full pay for the time worked. If a SPLIT day occurs during a week when the

employee is receiving ShPP this will effectively be topped up so that the employee receives pay due for that day.

4.1 **Ante-natal appointments**

An employee will be eligible to have time off (up to maximum of 6.5 hours for each appointment) to accompany a pregnant woman (to a maximum of 2) antenatal appointments if they are:

- Husband or civil partner of the pregnant woman
- They live with the woman in a relationship, but are not related
- They are the father of the expected child
- They are the intended parent of the child expected by a surrogate
- They are a potential applicant for a parental order in respect of a child in a surrogacy arrangement.

Any time in excess of the 6.5 hours should be covered by the employees own time by using annual leave, flexi time, Time in lieu etc. and booked via their line manager. It is appreciated that an employee may be unable to book this in advance if a pre booked appointment takes longer than the 6.5 hours allowed. In these circumstances the employee would need to discuss with their manager at the earliest opportunity after the day how this extra time will be covered. Should all leave entitlement have been exhausted time from the following years allocation can be agreed to be used.

An employer should make reasonable attempts to allow an employee to attend if given reasonable notice of the appointment date and times.

4.2 **Child Born Early**

If the employee booked a period of leave to start within 8 weeks of the birth, a notice to vary the start date should be given as soon as reasonably practicable after the birth. If the employee has not provided notices or booked leave and the child is born 8 or more weeks early notice should be given as soon as reasonably practicable to take leave within 8 weeks of the birth. Unlike most other variation notices, this would **not** count as one of the employee's three notifications.

Any leave after the first 8 weeks of the due date is still bound by the eight week rule notice required to vary leave.

If the child is born more than 8 weeks before the due date and the notice to entitlement to SPL and /or a notice to book SPL have not been given, then there is no requirement to give 8 weeks' notice before the period of leave starts. The notices should be given as soon as reasonably practicable after the actual birth.

4.3 Death of the child before or during birth or within the first year

Should the child die before the parents have submitted a notice of entitlement to take SPL then they cannot opt into SPL because a qualifying condition is caring for a child. The mother will remain entitled to maternity leave and the mother's partner could still qualify for statutory paternity leave.

If the parents have opted into SPL and they have booked leave they will still be entitled to take the booked leave. No further notice booking leave can be submitted and only one variation notice can be given to reduce a period of leave or to rearrange a discontinuous leave arrangement into a single block of leave.

An employee who is absent on SPL may cancel agreed SPL and return to work by giving their employer 8 weeks notice of their return to work.

4.4 Partner no longer caring for the child

If the circumstances of an employee who has booked SPL change so that they will no longer be responsible for caring for the child (unless it is because the child has died), their entitlement to both SPL and ShPP will immediately cease and they must tell their employer.

If the employee has any SPL arranged within 8 weeks of their entitlement ceasing, their employer can still require them to take it as SPL if it is not reasonably practicable for the employer to have their employee in work for example if cover has been arranged. Any weeks of SPL arranged after 8 weeks of their entitlement ceasing must be cancelled.

If the remaining parent will be continuing to care for the child then they will still be eligible to take their SPL entitlement. If the other parent who is no longer caring for the child had any SPL leave entitlement outstanding the remaining will only be able to transfer it into their own entitlement if they can get the signed agreement of the other parent to a notice confirming a variation of leave entitlement.

4.5 Death of a Parent during child's first year

If one parent dies and the other parent is taking or is entitled to SPL then they will continue to be eligible. Any SPL that was due to be taken by the deceased parent may be transferred to the other parent if the other parent is eligible for SPL.

Should it be necessary for the other parent to take a further period of SPL or to vary pre agreed leave then notice may be given as soon as is reasonably practicable if 8 weeks' notice cannot be given. If they

have already given 3 notices to take leave they must be allowed to submit 1 further notice to book /amend SPL.

4.6 Multiple births / adoptions

An employee is not entitled to extra SPL or ShPP if they are expecting more than one child. The entitlements are like maternity leave the same as if the employee was expecting one child. This also applies to multiple adoptions that occur in a single placement.

4.7 Right to Return to Work after SPL

If the total amount of SPL (plus any other statutory leave) taken by the employee is 26 weeks or less the employee is entitled to return to the same job.

The employee is entitled to return to the same job, or if it is not reasonably practicable a job which is suitable and appropriate, if the period of SPL taken when added to any other relevant period of statutory leave is more than 26 weeks,

OR

If a parent takes a period of 5 weeks of unpaid parental leave , even if the total aggregate weeks of maternity/paternity/adoption and SPL do not exceed 26 weeks, the employee will be entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, another job which is suitable and appropriate and on terms and conditions no less favourable.

The employee will be expected to return to work once the agreed period of SPL ends, should they not be able do this due to sickness or injury then the employee would need to follow the normal sickness absence procedures. Failure to attend as expected without notification will be classed as unauthorised absence.

If however the employee wishes to return to work earlier than agreed on their original SPL request they must give Chesterfield Borough Council at least 8 weeks' notice of their request to have an early return. This counts as one of the notifications in the SPL request. If the employee has already submitted 3 notifications to book or vary leave then the council does not have to accept the notice to return early but may do so if it is considered to be reasonably practicable to do so.

4.8 Redundancy during SPL

- Where there is a suitable alternative vacancy, the employee is entitled to be offered alternative employment with the employer the employers successor or an associated employer.
- The work must be suitable and appropriate *and* not on substantially less favourable terms

4.9 **Protection from Detriment and Dismissal**

It would be considered automatic unfair dismissal if either :

The reason or principal reason for the dismissal is connected with SPL

OR

the reason or principal reason for the dismissal is that the employee is redundant and the requirements regarding suitable alternative vacancies have not been complied with.

Right not to be subjected to any detriment because:

The employee took, sought to take or made use of the benefits of SPL

The employer believed that the employee was likely to take SPL

OR

The employee took, considered taking or refused to take keeping in touch (SPLIT) days

5.0 **Rights during Shared Parental Leave**

Chesterfield Borough Council (CBC) are not obliged to maintain normal pay or contractual benefits during the period of leave but the following terms must continue :

- rights to notice of termination, should CBC seek to terminate your contract whilst you are absent on parental leave
- compensation in the event redundancy
- the application of the disciplinary and grievance procedures
- the implied duty of trust and confidence.

You also have duties during parental leave. You will continue to be bound by;

- the duty to give notice according to the terms and conditions of your contract, if you decide to resign
- the implied duty of good faith
- any terms in your contract relating to the disclosure of confidential information, the acceptance of gifts or other benefits, or participation in any other business.

6.0 **Failure to return to work after Shared Parental Leave**

If you fail to return on the agreed date you will be dealt with as an unexplained absence. If you have exceeded your period of leave without authority or good reason, it will be dealt with through the disciplinary procedure.

7.0 **Surrogacy**

Employees having a child through a surrogate mother and who have applied or intend to apply with another person for a parental order in respect of the child may be entitled to ordinary and additional adoption leave and time off for antenatal appointments subject to some eligibility and notification requirements.

For further guidance on the SPL regulations see the BIS guidance at www.gov.uk/shared-parental-leave and ACAS at www.acas.org.uk

Appendix 1

Checklist for arranging Shared Parental Leave

Employers and employees may use this checklist to ensure everything is in place, and keep it as a record of actions taken.

Action	
<p>Does the employee know what the policy is on SPL?</p> <p>Has maternity/adoption leave/pay ended or has a date been confirmed when it will end?</p> <p>Has the employee correctly completed a notice of entitlement to take SPL?</p> <p>How much SPL does the employee have available for them to take?</p> <p>Has a meeting been arranged to discuss possible leave?</p> <p>Has a notice to book leave been made?</p> <p>Has a meeting to discuss the notice to book SPL been arranged?</p> <p>Has contact during SPL been discussed?</p> <p>Contact details whilst on SPL for issue of payslips and other necessary contact by Council</p> <p>Has a response to the notice to book SPL been given within 14 calendar days?</p> <p>What leave period has been arranged?</p> <p>How many notices to book leave are remaining?</p> <p>How much SPL does the employee still have available for them to take?</p> <p>SPLIT days entitlement and process</p> <p>Has Annual leave been discussed regarding time outstanding prior to SPL being taken?</p>	