

# Scottish Negotiating Committee for Teachers

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19 March 2003

Dear Colleague

## **SNCT/22** **CHANGES TO MATERNITY PROVISIONS**

### **Background**

In order to incorporate the revised maternity provisions introduced in the Employment Act 2002 into the national Scheme, the SNCT has agreed that the changes contained in appendix 1 to this circular should be used in respect of teachers whose babies are due to be born on or after 6<sup>th</sup> April 2003. The current maternity provisions continue to apply to teachers expecting babies before that date.

In addition, in order to incorporate the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 into the national Scheme, section 12.4 which defines different provisions for temporary employees is deleted with immediate effect.

Amended pages for the national Scheme will be issued in due course.

Yours sincerely

Dan Brown (Employers' Side)  
Ken Wimbor (Teachers' Panel)  
John Swift (Scottish Executive)

### **Joint Secretaries**

To: Chief Executives  
Directors of Education  
Directors of Personnel  
c.c. Directors of Finance

## 1. MATERNITY PROVISIONS

Part 12 of the existing Scheme has been replaced as follows:

### **PART 12: MATERNITY LEAVE AND PAY**

#### **12.1 Definition**

Maternity leave is the aggregate of paid and unpaid leave of absence granted in accordance with the provisions set out below.

#### **12.2 Maternity Leave**

12.2.1 All teachers, regardless of length of service, are entitled to 26 weeks' Ordinary Maternity Leave beginning from a date not earlier than the eleventh week before the expected week of childbirth (EWC), unless childbirth has taken place prior to this, and the period of maternity leave shall in all cases commence on a Sunday. All teachers have the right to return to work at or before the end of the ordinary 26-week period of maternity leave subject to the notification requirements set out in sub-paragraph 12.2.2. During the first 26 weeks of Ordinary Maternity Leave all of the teacher's contractual terms and conditions, with the exception of remuneration, are preserved.

12.2.2 All teachers have the right to a 26-week period of Ordinary Maternity Leave provided the teacher notifies her authority in writing of:-

- (a) the fact that she is pregnant;
- (b) the expected week of childbirth or the actual date of the birth if this has already occurred;
- (c) the date she wishes the Ordinary Maternity Leave to commence (the notified leave date).

12.2.3 The notification set out in sub-paragraph 12.2.2 above must be given to the authority not later than 21 days before the Ordinary Maternity Leave commences, or as soon as is reasonably practicable.

12.2.4 If a teacher entitled to only the Ordinary Maternity Leave period wishes to return earlier than the end of the 26-week period, she must give her authority at least 7 days' notice. Failure to do so may result in a postponement of her return by the authority for up to 7 days to a date not beyond the end of the 26-week period. The notification does not require to be in writing. No notification is required from a teacher returning at the end of the Ordinary Maternity Leave period.

#### **12.3 Maternity Pay – Teachers with at least 26 weeks' continuous service at the beginning of the 11<sup>th</sup> week before the EWC**

12.3.1 A teacher shall be entitled to Ordinary Maternity Leave with pay where the following conditions are met:

- (a) the teacher has 26 weeks' continuous service by the beginning of the 11<sup>th</sup> week before the EWC; and
- (b) the teacher has given the proper advance notification of her intentions as set out in sub-paragraph 12.2.2. Confirmation of the pregnancy and expected date of childbirth should be given in the form of a maternity certificate (form MAT B1) from a registered medical practitioner or midwife.

12.3.2 Paid maternity leave shall be for a maximum period of 26 weeks from a date not earlier than the beginning of the eleventh week before the expected week of childbirth other than as provided for in sub-paragraph 12.2.1. A teacher who returns to work for all or part of any week before the end of the Ordinary Maternity Leave period is exhausted will have the maternity pay period reduced by a week for each week in which she works, and will receive her normal salary for that week.

12.3.3 Maternity pay shall comprise the following:-

- (a) for the first 13 weeks of Ordinary Maternity Leave the teacher shall receive maternity pay and Statutory Maternity Pay (SMP) at the appropriate rate. Taken together these payments will be equal to the teacher's normal salary; and
- (b) provided that the teacher's average weekly earnings are not less than the lower earnings limit for National Insurance contribution liability, she shall also be entitled to SMP for the remaining 13-week period.

12.3.4 A teacher who is entitled to Ordinary Maternity Leave with pay shall be entitled to receive payment in lieu of accrued leave calculated in accordance with the provisions of sub-paragraph 11.4 of the Scheme for the period up to the day before the commencement of Ordinary Maternity Leave, less the number of days leave, but not public holidays, already received.

## **12.4 Maternity Pay – Teachers with less than 26 weeks' continuous service at the beginning of the 11<sup>th</sup> week before the EWC**

12.4.1 Teachers with less than 26 weeks' continuous service at the beginning of the 11<sup>th</sup> week before the EWC will have no entitlement to occupational maternity pay or to SMP.

## **12.5 Additional Maternity Leave**

12.5.1 A teacher who has completed 26 weeks' continuous local authority service by the beginning of the 11<sup>th</sup> week before the EWC shall have the right to an additional 26 weeks' leave immediately following the 26 weeks' Ordinary Maternity Leave. If she wishes to return to work earlier than the end of the Additional Maternity Leave period, she must give the authority 21 days' notice. If the appropriate notice is not given, the authority may postpone her return for up to 21 days to a date not later than the end of the Additional Maternity Leave period. No notification is required for teachers returning at the end of the Additional Maternity Leave period.

## **12.6 Notification of Birth**

12.6.1 The teacher should notify the authority, as soon as is reasonably practicable, of the date of the birth of her child.

- 12.7 Stillbirth**
- 12.7.1 In the event of a stillbirth after 24 weeks of pregnancy the teacher automatically has the right to the maternity leave period.
- 12.8 Sick Leave and Maternity Leave**
- 12.8.1 Where a teacher is absent before the commencement of maternity leave due to illness, the absence shall be treated as sick leave.
- 12.8.2 Maternity Leave shall not be treated as sick leave when calculating a teacher's sick leave entitlement except in the case of miscarriage (ie prior to the 24<sup>th</sup> week of pregnancy).
- 12.8.3 If a teacher is absent because of a pregnancy-related illness and there are fewer than 4 weeks before her baby is due, she will be deemed to have commenced maternity leave.
- 12.8.4 Where the teacher is unable to return to work after the maternity leave period has ended, or on the date previously notified, due to sickness, the normal sickness notification and certification procedures as set out in sub-paragraph 13.4 will apply.
- 12.9 Accrual of Personal Incremental Credit**
- 12.9.1 Maternity Leave shall count in full as credited service in the determination of scale placing in accordance with the salary placement regulations. In the case of a teacher who returns to work under the provisions in sub-paragraph 12.5.1 above, the period from the end of paid maternity leave to the date of return to work shall also be credited in full.
- 12.10 Accrual of Annual Leave During Maternity Leave**
- 12.10.1 During the first 26 weeks' leave all contractual benefits except for remuneration must be maintained. Where a permanent teacher gives written notice to the authority that she does not intend to return to work at the end of her maternity leave period, the authority will make payment to the teacher in lieu of leave accrued during the first 26 weeks of her maternity leave.
- 12.10.2 Where a permanent teacher notifies the authority that she intends to return to work following her maternity leave, then the following provision will apply in relation to the accrual of annual leave:
- (a) if the first 26 weeks of maternity leave incorporates at least four weeks of the school summer vacation or incorporates in full another school vacation of at least one week's duration, the Teacher will accrue credit of two days' special leave entitlement in respect of each complete week of the vacation period, subject to a maximum of 10 such days credit in respect of any one leave year.
- 12.10.3 As the existing payment structure for temporary teachers includes an element in respect of annual leave, they will not accrue any additional entitlement to annual leave during maternity leave.
- 12.11 Antenatal Care**

12.11.1 A pregnant teacher shall be allowed to take such reasonable time off without loss of pay as is required to attend for antenatal care, on production, if required by the authority, of evidence of appointments.

**12.12 Compulsory Maternity Leave**

12.13.1 All teachers are required to take a compulsory maternity leave period of two weeks commencing with the day on which childbirth occurs.