

# Scottish Negotiating Committee for Teachers

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Dear Colleague

## **SNCT/49** **MATERNITY AND ADOPTION LEAVE AND PAY**

Following new provisions set out by the government in the Maternity and Parental Leave etc and the Paternity and Adoption Leave (Amendment) Regulations 2006 (SI 2006/2014) the SNCT have agreed the following changes to Conditions of Service.

On 1 April 2007 SNCT/49 will replace SNCT/22, SNCT/43 and SNCT/44.

The provisions in SNCT/49 apply to pregnant employees whose Expected Week of Childbirth falls on or after 1 April 2007 and employees who have a child placed for adoption on or after 1 April 2007.

The pay arrangements are set out in the Statutory Maternity Pay, Social Security (Maternity Allowance) and Social Security (Overlapping Benefits) Amendment Regulations 2006 (SI 2006/2379) and the Statutory Paternity Pay and Statutory Adoption Pay (General) and the Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) (Amendment) Regulations 2006 (SI 2006/2236).

Yours sincerely

Joe Di Paola (Employers' Side)  
Drew Morrice (Teachers' Panel)  
Stephanie Walsh (Scottish Executive)  
**Joint Secretaries**

To: Chief Executives  
Directors of Education  
Directors of Personnel

## **MATERNITY LEAVE**

- (1) An employee whose Expected Week of Childbirth (EWC) falls on or after 1 April 2007 is entitled to 52 weeks of Maternity Leave (ML) regardless of length of service. The 52 weeks comprises 26 weeks' Ordinary Maternity Leave and 26 weeks' Additional Maternity Leave.
- (2) ML can begin from a date not earlier than the 11<sup>th</sup> week before the EWC, unless childbirth has taken place prior to this. The period of ML may commence on any day of the week. During the ML period all the employee's contractual terms and conditions, with the exception of remuneration, continue to apply.

## **COMPULSORY MATERNITY LEAVE**

- (3) An employee is required to take compulsory maternity leave of 2 weeks commencing with the day on which childbirth occurs.

## **MATERNITY PAY**

- (4) An employee 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 maternity pay. However, she may be entitled to Maternity Allowance payable through the Department of Work and Pensions.
- (5) An employee with at least 26 weeks' continuous service at the beginning of the 11<sup>th</sup> week before the EWC (where her EWC falls on or after 1 April 2007) is entitled to be paid:
  - (a) Occupational Maternity Pay (OMP) and Statutory Maternity Pay (SMP) at the appropriate rate for the first 13 weeks. Taken together these payments will be equal to the employee's normal salary;
  - (b) SMP for the remaining 26 week period provided that the employee's average weekly earnings are not less than the lower earnings limit for National Insurance contribution liability.
- (6) Other than for "Keeping In Touch Days", as described in paragraph 42 below, when an employee returns to work before the full ML period then her entitlement to any balance of maternity leave and maternity pay ceases. The employee will receive her normal salary from the date of her return to work.

## **NOTIFICATION OF START OF MATERNITY LEAVE**

- (7) To qualify for maternity leave and pay an employee must notify the council 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 ML to commence (the notified leave date).
- (8) The notification set out above must be given to the council not later than 21 days before maternity leave commences, or as soon as is reasonably practicable.
- (9) 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.

## **NOTIFICATION OF BIRTH**

- (10) An employee should notify the council, as soon as is reasonably practicable, of the date of the birth of her child.

## **NOTIFICATION OF RETURN FROM MATERNITY LEAVE**

- (11) An employee who wishes to return to work earlier than the end of the ML period must give the council 28 days' notice. If the appropriate notice is not given, the council may postpone her return for up to 28 days but not to a date later than the end of the ML period.
- (12) No notification is required for an employee returning to work on the first working day following the end of the ML period.

## **ANTENATAL CARE**

- (13) A pregnant employee shall be allowed to take such reasonable time off without loss of pay as is required to attend for antenatal care, on production of evidence of appointments if required by the council.

## **STILLBIRTH**

- (14) In the event of a stillbirth after 24 weeks of pregnancy an employee is entitled to maternity leave and pay provisions.

## **SICK LEAVE AND MATERNITY LEAVE**

- (15) Where an employee is absent before the start of the maternity leave period due to illness, the absence will be treated as sickness absence except when paragraph 16 below applies. This includes absence due to miscarriage (ie prior to the 24<sup>th</sup> week of pregnancy).
- (16) If an employee 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 ML.
- (17) Where an employee is unable to return to work after the ML period has ended, or on the date previously notified, due to sickness, the normal sickness notification and certification procedures as set out in Paragraph 13.4 of the Scheme of Salaries and Conditions of Service for Teachers in Schools Education will apply.

## **ACCRUAL OF LEAVE - MATERNITY**

- (18) An employee who is entitled to paid ML shall be entitled to receive pay in lieu of accrued leave for the period up to the day before the commencement of ML. For teachers and music instructors SNCT/26 will apply and for education support officers, quality improvement officers and educational psychologists Paragraph 11.14.9 of the Scheme of Salaries and Conditions of Service for Teachers in Schools Education will apply.
- (19) Where an education support officer, quality improvement officer or educational psychologist notifies the council that she intends to return to work after maternity leave she will accrue leave during the period of paid ML in accordance with Paragraph 11.14.9 of the Scheme of Salaries and Conditions of Service for Teachers in Schools Education.
- (20) Where a teacher or music instructor notifies the council that she intends to return to work after ML and where the paid ML period incorporates at least 4 weeks of the school summer holiday or incorporates in full another school holiday period of at least 1 weeks' duration the teacher or music instructor will accrue credit of 2 days' special leave entitlement for each complete week of the vacation which has been lost. For the purpose of this paragraph a week is defined as 7 consecutive days. A maximum credit of 10 days' special leave entitlement may be accrued in any leave year.
- (21) This special leave entitlement shall be taken by the teacher or music instructor, in agreement with the council, following his or her return to work. The timing of this leave is subject to the overriding needs of the service and should normally be taken in the term in which the return to work takes place

or within the following term. In exceptional circumstances the teacher may be paid for any days of special leave which she is unable to take.

- (22) Where an employee gives written notice to the council that she does not intend to return to work at the end of her ML period, the council will make a payment in lieu of leave accrued during the paid ML period. For teachers and music instructors SNCT/26 will apply and for education support officers, quality improvement officers and educational psychologists Paragraph 11.14.9 of the Scheme of Salaries and Conditions of Service for Teachers in Schools Education will apply.

### **ADOPTION LEAVE**

- (23) Where the expected date of an adoption placement is on or after 1 April 2007 an employee will be entitled to 52 weeks of Adoption Leave (AL) regardless of length of service. The 52 weeks comprises 26 weeks' Ordinary Adoption Leave and 26 weeks' Additional Adoption Leave.

- (24) The AL may begin:

- (a) from the date of the child's placement; or
- (b) from a fixed date up to 14 days before the expected date of placement.

- (25) Where more than one child is placed as part of the same adoption arrangement, only one period of leave will be granted.

- (26) Where a couple jointly adopts a child, the couple must choose one person to take the adoption leave.

### **ADOPTION PAY**

- (27) An employee who has less than 26 weeks' continuous service prior to the week in which she/he is notified of being matched with a child for adoption is entitled to 52 weeks' AL without pay.

- (28) An employee who has 26 weeks' continuous service prior to the week in which she/he is notified of being matched with a child for adoption will be entitled to be paid:

- (a) Occupational Adoption Pay (OAP) and Statutory Adoption Pay (SAP) for the first 13 weeks. Taken together these payments will be equal to the employee's normal salary;

(b) SAP for the next 26 weeks provided that the employee's average weekly earnings are not less than the lower earnings limit for National Insurance contribution liability.

(29) Other than for "Keeping In Touch Days", as described in paragraph 42 below, when an employee returns to work before the full AL period then her/his entitlement to any balance of adoption leave and adoption pay ceases. The employee will receive her/his normal salary from the date of her/his return to work.

#### **NOTIFICATION OF START OF ADOPTION LEAVE**

(30) An employee must inform the council in writing of her/his intention to take AL within 7 days of being notified by their adoption agency that they have been matched with a child for adoption, where this is reasonably practicable.

(31) Such notification must include:

- (a) the expected date of placement; and
- (b) the date on which they intend to start their adoption leave; and
- (c) a matching certificate from the adoption agency.

(32) An employee who wishes to change the date on which her/his adoption leave starts must give the council 28 days' written notice, where this is reasonably practicable.

(33) The council will respond in writing to an employee's notification to change the start date of adoption leave within 28 days and will also state the latest date on which the employee is expected to return to work.

#### **NOTIFICATION OF RETURN FROM ADOPTION LEAVE**

(34) An employee who wishes to return to work prior to the end of the adoption leave period must give the council 28 days' notice. If the appropriate notice is not given, the council may postpone her/his return for up to 28 days or to the end of the adoption leave period if this is earlier.

#### **PRE-ADOPTION MEETINGS**

(35) An employee who is adopting will be allowed to take such reasonable time off without loss of pay as is required to attend pre-adoption meetings, on production of evidence of appointments if required by the council.

## **TERMINATION OF PLACEMENT**

- (36) Where the adoption placement ends, for any reason, during the adoption leave, the employee will notify the council. The employee will be entitled to remain absent on AL for up to 8 weeks after the end of the placement, except where the placement ends during AL. In that circumstance the leave shall end at the expiry of the AL period or 8 weeks after the placement ends whichever is sooner. In such circumstances notice of the intended date of return should be given in accordance with paragraph 34 above.

## **ACCRUAL OF LEAVE - ADOPTION**

- (37) An employee who is entitled to paid AL shall be entitled to receive pay in lieu of accrued leave for the period up to the day before the commencement of AL. For teachers and music instructors SNCT/26 will apply and for education support officers, quality improvement officers and educational psychologists Paragraph 11.14.9 of the Scheme of Salaries and Conditions of Service for Teachers in Schools Education will apply.
- (38) Where an education support officer, quality improvement officer or educational psychologist notifies the council that she/he intends to return to work after AL she/he will accrue leave during the period of paid AL in accordance with Paragraph 11.14.9 of the Scheme of Salaries and Conditions of Service for Teachers in Schools Education.
- (39) Where a teacher or music instructor notifies the council that she/he intends to return to work after AL and where the paid AL period incorporates at least 4 weeks of the school summer holiday or incorporates in full another school holiday period of at least 1 week's duration the teacher or music instructor will accrue credit of 2 days' special leave entitlement for each complete week of the vacation which has been lost. For the purpose of this paragraph a week is defined as 7 consecutive days. A maximum credit of 10 days' special leave entitlement may be accrued in any leave year.
- (40) This special leave entitlement shall be taken by the teacher or music instructor, in agreement with the council, following his or her return to work. The timing of this leave is subject to the overriding needs of the service and should normally be taken in the term in which the return to work takes place or within the following term. In exceptional circumstances the teacher may be paid for any days of special leave which she/he is unable to take.
- (41) Where an employee gives written notice to the council that she/he does not intend to return to work at the end of the AL period, the council will make a payment in lieu of leave accrued during this period. For teachers and music instructors SNCT/26 will apply and for education support officers,

quality improvement officers and educational psychologists Paragraph 11.14.9 of the Scheme of Salaries and Conditions of Service for Teachers in Schools Education will apply.

### **KEEPING IN TOUCH DAYS**

- (42) During both ML and AL the employee is allowed up to 10 days at work with normal pay as 'Keeping In Touch Days', without bringing the ML or AL period to an end. Normal pay will be an amount inclusive of SMP, SAP or Maternity Allowance, as appropriate. These days do not have to be consecutive and can be used for training or any other activity which enables the employee to keep in touch with the place of employment. 'Keeping In Touch Days' can only be taken following agreement between the employer and the employee to both the activity and timing.

### **PENSION**

- (43) The employer shall continue to make full pension contributions during the period of paid ML or AL.

### **MATERNITY AND ADOPTION SUPPORT LEAVE AND PAY**

- (44) Support Leave of 1 week with normal pay will be granted to the spouse or partner or nominated carer of an expectant mother or of someone taking adoption leave at or around the time of birth or placement. The nominated carer is the person nominated by the mother or the person taking adoption leave to assist in the care of the child and to provide support to her/him.

- (45) Maternity Support Leave and Adoption Support Leave can be taken:-

- (a) from the date of the child's birth or placement for adoption
- (b) from another date after the child's birth or placement for adoption

and is subject to paragraphs 51 and 54 below.

### **STATUTORY PATERNITY LEAVE AND PAY**

- (46) In addition to the maternity support leave described above, an employee who is the spouse or partner of an expectant mother and who has at least 26 weeks' continuous service at the start of the 15th week before the baby is due is entitled to a further week's Statutory Paternity Leave (SPL).
- (47) In addition to the adoption support leave described above, an employee who is the spouse or partner of a person taking adoption leave and who has at least 26 weeks' continuous service at the start of the notification week is entitled to a further week's SPL.



- (48) SPL can be taken:-
- (a) from the date of the child's birth or placement for adoption
  - (b) from another date after the child's birth or placement for adoption
- (49) Leave can start on any day of the week, but must be taken within 56 days of the actual birth or placement date of the child. If the child is born early, leave must be taken within the period from the actual date of the birth up to 56 days after the expected week of birth.
- (50) An employee who is on SPL shall receive Statutory Paternity Pay (SPP).
- (51) An employee who wishes to take SPL must inform the council of her/his intention to take paternity leave by the 15th week before the week in which the child is expected, where reasonably practicable. In the case of adoption employees must inform their employers of their intention to take paternity leave within seven days of the employee being notified by their adoption agency that they have been matched with a child, unless this is not reasonably practicable. They must state in writing:
- (a) the week in which the child is due or when the child is expected to be placed for adoption;
  - (b) when they want the leave to start.
- (52) There can only be one period of leave. Where an employee elects to take 2 weeks' leave these weeks must be consecutive. Where an employee elects to take only 1 week of leave then this will be taken as a complete week of leave. The first week will be support leave and paid at full pay and the second week will be paternity leave and SPP will be paid.
- (53) Where leave incorporates 1 complete week of a school vacation the employee will accrue credit of 2 days' special leave entitlement, to be taken up by the employee, in agreement with the council during the term following the vacation concerned subject to the overriding needs of the service.
- (54) Employees may alter the date on which their leave starts by giving 28 days' notice in writing, where this is reasonably practicable.
- (55) Only one period of leave is available to employees irrespective of whether more than one child is placed for adoption.
- (56) An employee shall be entitled to the provisions of this circular in circumstances where the child is stillborn after 24 weeks or has died or where the child's mother has died within the period of leave.

- (57) The paternity leave and pay provisions allow for up to 2 weeks' SPL and SPP for employees who meet the criteria. The provisions set out above provide for normal pay for the first week and SPP for the second week. In the first week SPP is offset against normal pay.

### **CONTINUOUS SERVICE**

- (58) All periods of maternity, adoption, paternity and maternity support leave count towards continuous service.

### **RIGHT TO RETURN TO WORK**

- (59) An employee has the right to return from the periods of leave described in this Circular to the post in which she/he was employed under the original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her/him had she/he not been on maternity or adoption leave.
- (60) Where it is not practicable by reason of redundancy for the council to permit the employee to return to work in her/his post the employee is entitled to be offered a suitable alternative vacancy where one exists.
- (61) Suitable alternative employment may also be offered in exceptional circumstances other than redundancy (eg a general reorganisation) which would have occurred if the employee had not been on maternity or adoption leave, and necessitate a change in the post in which she/he was employed prior to her/his leave commencing.
- (62) A temporary employee will not have the right to return to work where her/his contract would have expired during the leave period but will be entitled to all other provisions in this Circular provided she/he meets the criteria where these are stated.