



## Maternity and Paternity entitlements Policy and Guidance

School staff and recognised unions were consulted by Suffolk County Council on this document and it was accepted by the Trust Board, who reviewed and approved it again	25 September 2018
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## 1. Introduction

The purpose of this policy and guidance is to detail the provisions of the maternity and paternity leave and pay provisions, as they apply to Teachers under the Conditions of Service Handbook for Teachers (Burgundy Book) and to Support Staff employed under the terms of the NJC for Local Government Services (Green Book).

Open discussion between the school's (or trust's) leadership and the employee is encouraged, thereby ensuring that questions or problems are resolved as quickly as possible. As the provisions are complex, if an employee becomes pregnant, or their partner is pregnant, they should clarify the relevant procedures with the school's SLT or the Trust's HR Office to ensure that they are followed correctly.

## 2. Maternity leave

All pregnant employees can take up to 26 weeks' ordinary maternity leave (OML) and up to 26 weeks' additional maternity leave (AML), making a total of 52 weeks. This is regardless of the number of hours they work or their length of service. Additional maternity leave begins on the day after ordinary maternity leave ends.

An employee's entitlement to pay depends on a number of factors, such as length of service and whether their pay is high enough. The Trust's HR Director is able to explain what their general entitlements are. If circumstances change, please contact the HR Director for further advice.

An employee's rights come partly from statute and partly from their contract of employment.

### 2.1 Notification of pregnancy

The employee is required to give notice that she is pregnant and intends to take maternity leave no later than the 15<sup>th</sup> week before the Expected Week of Childbirth (EWC).

To qualify for leave under either the occupational or statutory maternity schemes, she is required to give at least 28 days' notice in writing before she intends to go on maternity leave. However, she may give less than this if she has a good reason for doing so.

The notice should be given by completing form MP3, attached at appendix 6 of this document. This notice should state:

- that she is pregnant;
- the expected week of childbirth (EWC)\*
- the date she intends to commence her maternity leave.

*\* She should also provide a certificate from a registered medical practitioner or a registered midwife, known as a MATB1 form, stating the expected week of childbirth, when this is available. Both forms should be submitted to the Schools' Choice HR Processing Team.*

The Schools' Choice Processing Team will respond to notification of the employee's leave plans within 28 days of her notification, setting out the date on which she is expected to return to work in the event of taking her full statutory entitlement to maternity leave (being 52 weeks made up of OML and AML).

The employee can change her mind about the date on which she wishes to commence her maternity leave by giving at least 28 days' notice of the revised date (unless this is not reasonably practicable).

If reasonably practicable, notice of the date the baby was born must be given within 28 days.

The starting date of the maternity leave period should normally be agreed between the employee and Headteacher. However, the final decision is the employee's. The earliest maternity leave can start is 11 weeks before the baby is due, or from the time of childbirth if that is earlier. However, if the employee is fit enough, she can work right up to the time the baby is due.

Normally, maternity leave will commence on the day specified by the employee concerned, although maternity leave can be triggered by pregnancy-related absence (see Section 2.4 Sickness absence and maternity leave) or the birth of the baby. When this happens, the maternity leave and maternity pay period is deemed to have begun on the day following the first day of absence or childbirth.

## **2.2 Length of maternity leave**

The employee is automatically entitled to a period of 26 weeks' ordinary maternity leave and 26 weeks' additional maternity leave, regardless of her hours of work or length of service, where the appropriate notice has been given (see Section 2.1 Notification of Pregnancy). This means she can remain on maternity leave for a total period of up to 52 weeks. She may receive Maternity Allowance (MA), Statutory Maternity Pay (SMP) and/or Occupational Maternity Pay (OMP) during this period, depending on the eligibility criteria being satisfied.

An employee need give no further notice of her date of return, unless she wishes it to be earlier than the end of the 52 week (one year) period. In the event of wishing to return to work earlier, she must give at least 8 weeks' notice, in the case of support staff, and 21 days' notice for teachers.

In cases where the notice given is less than required, a manager can postpone the return to ensure the minimum notice period above, as long as this does not go beyond the end of the maternity leave period. Where no early or prior notice of a date of return is given, the employee will be expected to return to work at the end of the 52-week leave period, as notified. The Headteacher or line manager is expected to notify the Schools' Choice HR Processing Team of the employee's return to work.

The Maternity (Compulsory Leave) Regulations 1994 provide that all employees must take a minimum of two weeks' maternity leave immediately after the birth of the child.

## **2.3 Ante-Natal Care**

Once an employee has given notice that she is pregnant, she will be entitled not to be unreasonably refused paid time off work to attend antenatal appointments as advised by a registered medical practitioner, midwife or nurse.

In order 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 (usually the MATB1). 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.

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. 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.

From 1 October 2014, employees and agency workers who have a qualifying relationship with a pregnant woman or an expected child are entitled to take unpaid time off work to accompany that pregnant woman at up to two antenatal appointments.

Employees will have the right from day one of their employment. Agency workers will qualify after 12 weeks in the same assignment. The right to time off is capped at a maximum of six-and-a-half hours on each occasion, which can include travelling time, waiting time and attendance.

An employee or agency worker has a qualifying relationship with a pregnant woman or her expected child if he or she:

- Is the husband or civil partner of the pregnant woman;
- Lives with the pregnant woman in an enduring family relationship, but is not her parent, grandparent, sister, brother, aunt or uncle;
- Is the father of the expectant child; or
- Is an intended parent in a surrogacy situation who meets certain conditions.

Again, the antenatal appointment must be made on the advice of a registered medical practitioner, midwife or nurse. Schools can ask for a signed declaration confirming: the individual's relationship to the mother or her expected child; the time and date of the appointment; the purpose of the time off; and that the appointment is made on the advice of a registered medical practitioner, midwife or nurse.

## **2.4 Sickness Absence and Maternity Leave**

If the employee is absent from work because of a pregnancy related illness on or after the 4<sup>th</sup> week before the baby is due, this should be treated as the start of her maternity leave, unless it is a very minor illness and she is expected to return within 1 or 2 days.

If the employee is ill for a non-pregnancy related reason, she will be regarded as being on sick leave until either the baby is born, or the date she has given as the start date of her maternity leave, when she will start receiving her maternity pay.

It follows that, if an employee is off sick during or after the 4<sup>th</sup> week before the baby is due, and she has not started her maternity leave, it is essential that the reason for her absence is identified quickly. For illnesses where there is uncertainty if the absence is due to pregnancy, wholly or partly, then the advice of the employee's GP and/or an Occupational Health practitioner may be obtained.

## **2.5 Contact during maternity leave \***

Shortly before an employee's maternity leave starts, you should discuss the arrangements for her to keep in touch during her leave, should she wish to do so. You may reserve the right, in any event, to maintain reasonable contact with the employee from time to time during her maternity leave. This may be to discuss the employee's plans for return to work, to discuss any special arrangements to be made or training to be given to ease her return to work, or simply to update her on developments at work during her absence.

In order to ensure that the employee is kept updated on developments within the workplace, it is advisable that either you, or a designated representative, ensure that the employee is forwarded by post, copies of any team meeting notes, job vacancies and/or general information on a regular basis.

\* similar planning applies to shared parental leave. For more guidance about paternity leave and shared parental leave, see Section 2.8.

## **2.6 Keeping-in-touch (KIT) days during maternity leave**

Keeping-in-touch (KIT) days allow an individual to work for up to 10 days (pro-rated for part-time staff) during their maternity leave, without the risk of statutory maternity leave being terminated. Both parties must be in agreement on any such work and the dates must be mutually agreed. A KIT day cannot take place during the first two weeks following the birth of a child (compulsory maternity leave).

KIT days do not have to be consecutive and can be used for work activities, training or any other activity such as a staff meeting, that enables the employee to keep in touch with the workplace. Working for part of a day will count towards one of the 10 days.

Whilst payment for KIT days (in addition to SMP) is discretionary, the school should adopt a consistent approach. which is usually that the individual is paid their normal rate of pay for KIT hours worked, unless they are coming in to complete a specific task which is outside their normal role and at a significantly lower level, in which case they should be paid at an appropriate rate (agreed in advance).

Whatever the decision, this should be clearly discussed with the employee prior to agreeing any KIT days they attend.

The weekly rate of SMP is divisible by 7 to arrive at a daily rate – not by the hours worked to get an hourly rate, or by 5 to represent 5-day weeks.

Schools should email the Schools' Choice Payroll team (Payroll enquiries) with details of the employee's name, employment number, the hours worked and when they were worked, together with details of how much they should be paid, according to your policy. Payroll will calculate the payment due and payment will be made in the next available payslip. No payment is made for travel or childcare costs.

It is the Headteacher's responsibility to write to the employee, both inviting them to attend a KIT day and/or acknowledging their request to attend a KIT day. It is also their responsibility to ensure that a record of KIT days the employee has attended is kept.

Further information about occupational and statutory maternity pay and maternity allowance are set out in Section 3 of this document.

## **2.7 Transfer of maternity leave/additional paternity leave/shared parental leave**

Shared parental leave enables eligible mothers, fathers, partners and adopters to choose how to share time off work after their child is born or placed. This could mean that the mother or adopter shares some of the leave with her or his partner, perhaps returning to work for part of the time and then resuming leave at a later date.

The first two weeks of the 52-week entitlement must be taken by the mother or primary adopter, but the remaining 50 weeks' entitlement and pay can be shared or split between both parents, if they meet the eligibility criteria. There may also be an entitlement to a maximum of 37 weeks of shared parental pay. The school will apply the same enhanced rate of occupational maternity pay to eligible employees on shared parental leave.

The Shared Parental Leave policy and guidance is available from the School Office, or contact the Trust's HR Office.

## **2.8 Paternity leave**

### Ordinary paternity leave

An employee whose wife, civil partner or partner gives birth to a child, or who is the biological father of the child, is entitled to two weeks' ordinary paternity leave provided that he/she has 26 weeks' continuous service by the end of the 15<sup>th</sup> week before the week in which the child is expected.

Ordinary paternity leave is also available to adoptive parents where a child is matched or newly placed with them for adoption. For more information on adoption rights, please see the separate Trust guidance. Either adoptive parent may take ordinary paternity leave where the other adoptive parent has elected to take adoption leave. In respect of an adopted child, the employee must have 26 weeks' continuous service by the week in which the child's adopter is notified of having been matched with the child for adoption.

To qualify for ordinary paternity leave, the employee must also have, or expect to have, responsibility for the upbringing of the child and be making the request to help care for the child or to support the child's mother.

Ordinary paternity leave must be taken in a single block of one or two weeks within 56 days of the birth or adoption of the child. If the child is born early, it must be taken from the time of the birth but within 56 days of the expected date of childbirth. Ordinary paternity leave can start either from the date the child is born or placed for adoption or from a chosen number of days or weeks after that date.

Where an employee wishes to request ordinary paternity leave in respect of a birth child, he/she must give 15 weeks' written notice of the date on which his/her partner's baby is due, the length of ordinary paternity leave he/she wishes to take and the date on which he/she wishes the leave to commence.

In the case of an adopted child, the employee must give written notice of his/her intention to take ordinary paternity leave no later than seven days after the date on which notification of the match with the child was given by the adoption agency. The notice must specify the date the child is expected to be placed for adoption, the date the employee intends to start ordinary paternity leave, the length of the intended ordinary paternity leave period and the date on which the adopter was notified of having been matched with the child.

If an employee subsequently wishes to change the timing of the ordinary paternity leave, he/she must give 28 days' written notice of the new dates.

### **3. Maternity Pay**

There are two maternity pay schemes in operation:

- Statutory Maternity Pay (SMP), which is paid by Payroll on behalf of the Department of Work and Pensions, and
- Occupational Maternity Pay (OMP), which is paid by Payroll in accordance with the appropriate National Conditions of Service. Depending on the length of the employee's service, she may have entitlement under one or both of these schemes.
- Entitlement to SMP and OMP are based on relevant continuous service, but cannot, when added together, exceed normal total pay. To make sure this doesn't happen, OMP is offset by SMP.

#### **3.1 Statutory Maternity Pay (SMP)**

##### **3.1.1 Eligibility**

Statutory maternity pay is payable for up to 39 weeks during maternity leave. To get SMP, an employee must:

- have been continuously employed by her current employer for at least 26 weeks, at the start of the 15<sup>th</sup> week before the baby is due. This 15<sup>th</sup> week is known as the 'qualifying week';
- have average weekly earnings of not less than the lower earnings limit for the payment of National Insurance contributions in the 26 weeks up to and including the 15<sup>th</sup> week before the expected week of childbirth;
- still be pregnant at the 11<sup>th</sup> week before the week the baby is due or have had the baby at that time;
- have provided medical evidence of the date the baby is due (normally a MATB1 certificate) at least 28 days before the maternity absence is due to start; and
- have stopped work.

If the employee satisfies these conditions, she qualifies for SMP.

If an employee is not entitled to SMP, Payroll will issue her with a form SMP1, explaining why she is not entitled to SMP.

### **If the employee stops work before the qualifying week**

The employee will not normally qualify for SMP if her employment ends before the qualifying week. This is the 15th week before the week in which her baby is due. However, if her baby is born prematurely before the QW she will be taken as satisfying the continuous employment rule if she would have been continuously employed but for early childbirth.

### **If the employee stops work during or after the qualifying week**

If employment ends during or after the qualifying week the employee can still qualify for SMP from her former employer.

For those who do not qualify for SMP details will also be provided on how they can claim State Maternity Allowance (SMA) from the Job Centre Plus.

### **3.1.2 Rates of SMP**

For the first 6 weeks, SMP is paid at the higher rate, which is equivalent to 90% of the employee's average weekly earnings calculated over the period of eight weeks up to and including the qualifying week. For the purpose of calculating average weekly earnings, shift allowances and overtime payments, if applicable, are included.

The standard rate of SMP is paid for the remaining 33 weeks, or less if the employee returns to work sooner. SMP is paid at a rate set by the Government (see the [gov.uk](http://gov.uk) website) for the relevant tax year, or 90% of the employee's average weekly earnings calculated over the period of eight weeks up to and including the qualifying week, if this is lower than the Government's set weekly rate.

If the employee becomes eligible for a pay rise between the start of the original calculating period and the end of her maternity leave (whether ordinary maternity leave or additional maternity leave), the 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 the difference between SMP already paid and the amount payable as a result of the pay rise.

Statutory maternity pay is treated as earnings and is, therefore, subject to PAYE and national insurance deductions.

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

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

## 3.2 Occupational Maternity Pay (OMP)

### 3.2.1 Eligibility

To qualify for OMP, the employee must have at least 1 year of continuous local government service at the 11<sup>th</sup> week before the expected week of childbirth. The Occupational Maternity Pay Scheme applies to pregnant employees with qualifying service regardless of the number of hours worked per week.

If an employee has less than 1 year of continuous local government service at the 15<sup>th</sup> week before the expected week of childbirth, then she will not qualify for OMP, but will still get SMP or Statutory Maternity Allowance (SMA) as appropriate.

The amount of OMP the individual receives will depend on whether she wishes to return to work.

If the employee's baby is born early, before or during the qualifying week and she would have completed 26 weeks' employment but for the early birth, the continuous service rule for OMP is satisfied.

In order to determine eligibility for SMP, only continuous service with the Trust, together with previous unbroken Local Government service with is taken into account.

### 3.2.3 Summary of main benefits

Length of service	OML	AML	SMP	OMP
Less than 26 weeks at QW	√	√	No entitlement except possibly SMA	No entitlement
At least 26 weeks at QW but less than 1 year at 11 weeks prior to EWC,	√	√	6 weeks at 90% of average pay plus 33 weeks standard rate SMP	No entitlement
More than 1 year at 11 weeks before EWC <b>(Support Staff)</b>	√	√	6 weeks at 90% of average pay plus 33 weeks standard rate SMP	Weeks 1-6 as per SMP Weeks 7-18 half pay (unless half pay plus standard rate SMP exceeds normal pay)*
More than 1 year at 11 weeks before EWC <b>(Teachers)</b>	√	√	6 weeks at 90% of average pay plus 33 weeks standard rate SMP	Weeks 1-4 full pay Weeks 5-6 as per SMP Weeks 7-18 half pay (unless half pay plus standard rate SMP exceeds normal pay)**

Note that if the normal earnings are lower than the standard rate of SMP, but above the Lower Earnings Limit (LEL), the 33 weeks will be paid at 90% of normal earnings.

\* Support Staff are required to return to work (technically to “local authority employment” meaning that schools based support staff can return to another school or SCC without having to repay their OMP) for a minimum of 3 months to secure an entitlement to OMP. If they do not, then the half pay entitlement must be repaid (SMP is not refundable). They may choose to have the half pay paid as it falls due, as a lump sum on return to work or as a lump sum after they have returned to work for three months.

\*\* Teachers are required to return to work (technically to the same job in the same school, in accordance with the Burgundy Book) for a minimum period of 13 weeks (or pro rata equivalent if they reduce working hours on their return to work) to secure an entitlement of OMP. If they do not, then the half pay entitlement must be repaid (SMP is not refundable). The employee may choose to have the OMP paid as it falls, as a lump sum on return to work or as a lump sum after they have returned to work for three months.

Please note that employee must return to contracted work in order to secure the entitlement to OMP. Supply and casual contracts do not count as contracted work.

## **4. Shared parental pay**

### **4.1 Ordinary Paternity Pay**

Pay during ordinary paternity leave will be at a standard rate of Statutory Paternity Pay (SPP) set by the Government for the relevant tax year, or at a rate equivalent to 90% of the employee's average weekly earnings if this figure is less than the rate of SPP. However, employees whose average weekly earnings are below the lower earnings limit (LEL) for national insurance contributions will not be eligible for ordinary statutory paternity pay.

Statutory paternity pay is treated as earnings and is therefore subject to PAYE and national insurance deductions.

Statutory paternity pay can start from any day of the week in accordance with the date the employee starts his/her paternity leave.

Note: Please see additional guidance on Maternity Support Leave, which may provide for full pay during the first week.

**4.2 The Shared Parental pay** policy and guidance can be found on the Trust's website, or contact the Trust's HR Office.

## **5 Employees working under more than one contract**

If the employee satisfies the qualifying rules with more than one employer, s/he can receive SMP/SPP from each of them.

If an employee works under two separate contracts of employment and Suffolk County Council as the employer pays National Insurance Contributions separately for each contract, eligibility for the payment of SMP/SPP will be assessed separately.

If the pay from the contracts is added together before National Insurance contributions are calculated, then SMP/SPP is assessed on the total payment.

## **6 Health & Safety rights for new and expectant mothers**

There is a duty of care to assess a pregnant employee's work activities to see if there are risks while she is pregnant, a new mother (up to six months after giving birth) or breast-feeding, 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 processes, working conditions or physical, chemical or biological agents in the workplace.

Under health and safety legislation, if the job duties of a pregnant employee are in any way likely to cause her or her unborn child harm, reasonable steps must be taken to remove or reduce the risks. Specifically, consideration must be given where necessary to:

- exposure to infectious diseases e.g. rubella
- removing the employee from any job duties that might pose a risk to her health or safety
- transferring the employee to an alternative job – which must be on terms and conditions not substantially less favourable than those of her normal job
- where alternative work is not available or would not remove or reduce the risks to the employee, place her on paid suspension 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.

You should arrange with the pregnant employee to carry out a risk assessment. This is particularly necessary where a job involves lifting. The appropriate forms must be used and the assessment undertaken in conjunction with the employee when possible. Control measures and adjustments to her working environment contained within the assessments must be implemented immediately.

The risk assessment must be reviewed regularly by you (every 4-6 weeks). This interval may need to be more frequent as the pregnancy progresses to take into account the changing needs of the employee. The risk assessment should be held locally by you for ongoing review during this period. A copy of the risk assessment should be held on file.

If you have any concerns regarding Health & Safety issues during your employee's pregnancy, or whilst she is breastfeeding, you should contact your Health & Safety Adviser.

## **7 KIT days during shared parental leave**

Employees will be entitled to take up to 10 keeping-in-touch days during the course of shared parental leave.

Rules regarding payment for this are the same as for those set out earlier in this document.

## **8 Annual Leave during maternity/shared parental leave**

If the employee is contracted to work throughout the school closure periods, and therefore has annual leave entitlement, please contact the The Trust's HR Office for advice concerning their entitlement to annual leave and public holidays during maternity/additional paternity leave.

If their maternity/additional paternity leave crosses over the annual leave year into the following year, they may at your discretion, be able to carry over any entitlement remaining. They will then continue to accrue annual leave as normal in that annual leave year. At your agreement, they may take any carried over annual leave immediately after their maternity/additional paternity leave, in line with normal notification and annual leave policies and allowance.

At your discretion, you may request that they take any outstanding annual leave prior to commencing maternity/shared parental leave, if their planned return to work date crosses over into the next annual leave year.

They may also be able to take any annual leave accrued but not taken within the annual leave year, prior to the end of their maternity/additional paternity leave, providing they have given the appropriate 8 weeks' notice of their intended return to work date (21 days for teachers). For example, if a member of support staff has 10 days' annual leave entitlement remaining from that year's annual leave allowance, they may give 8 weeks' written notice of their return 10 working days early, and take those 10 days then as annual leave for which they will be paid at their normal daily or hourly rate of pay. Please note however, once they have returned into annual leave, their maternity/additional paternity leave will be deemed to have ceased.

## **9 Premature babies**

If the baby is born early, but after the employee has gone on maternity leave, it will have no effect on the maternity pay she is entitled to.

If the employee's baby is born before the maternity pay period is due to start, she must, if reasonably practicable, give notice of the date she had the baby within 28 days. OMP and/or SMP should be paid from the day following the day of childbirth.

If her baby is born prematurely and before 11 weeks of the EWC, and survives, consideration should be given to requests for extended leave, based on individual circumstances.

## **10 Late babies**

If the baby is born after the expected week of childbirth, then maternity pay is not affected.

## **11 Stillborn babies & miscarriage**

If a baby is born and survives only for an instant it is classed as a live birth and the employee will be entitled to SMP if they qualify for it.

If the employee suffers a miscarriage, or her baby is stillborn earlier than the 25<sup>th</sup> week of pregnancy she will not be entitled to maternity leave or SMP, but she may still be eligible for sick pay and/or possibly special leave, according to circumstances.

If the employee suffers a miscarriage or her baby is stillborn from the beginning of the 25<sup>th</sup> week of pregnancy onwards, she is entitled to the same leave and SMP she would have received if her baby had been born alive.

## **12 Return to work after maternity leave**

### **12.1 Ordinary maternity leave**

On resuming work after Ordinary Maternity Leave, the employee is entitled to return to the same job she occupied before commencing maternity leave, on the same terms and conditions of employment, as if she had not been absent.

If she is employed on a fixed-term contract and this is due to end whilst they are on maternity leave, there is no right to return to the same role she occupied before commencing maternity leave. However, the fixed-term contract may be renewed, and schools should consult with the employee on this, prior to agreeing to its extension/renewal. If it is not renewed, and as the ending of a fixed-term contract is classed as a dismissal in law, it should be dealt with in the same way as any dismissal providing the same rights of accompaniment and appeal. Contact the Trust's HR Office for further guidance on ending fixed term contracts.

### **12.2 Additional maternity/paternity leave**

On resuming work after additional maternity/paternity leave, again, s/he is entitled to return to the same job as s/he occupied before commencing maternity/paternity leave on the same terms and conditions of employment. However, if it is not reasonably practicable to allow the employee to return to the same job, s/he may be offered suitable alternative work, on terms and conditions that are not substantially less favourable than would have been applied if s/he had not been absent. If changes have taken place to his/her work structure, s/he is entitled to be offered suitable alternative employment.

See the Trust's website or contact the Trust's HR Office for further guidance on shared parental leave and pay arrangements.

### **12.3 If the employee decides not to return**

If the employee decides not to return to work after their period of maternity/paternity leave, they must notify you in writing, giving their contractual notice. If they do not provide their contractual notice prior to the end of their maternity/paternity leave, they will be expected to return to work immediately after their maternity/paternity leave ends to complete the remainder of their notice. This may be waived by agreement with you in exceptional circumstances, but they will not be paid for any hours that they do not work as part of their contractual notice, but which they are expected to work, unless they are sick, and then sick pay rules will apply.

If the employee's notice period ends before they have exhausted all of their SMP, this will still continue to be paid to the employee until all 39 weeks have been paid.

Schools must notify the Schools' Choice Processing Team of the employees return to work, on their first day of return, or as soon as practicably possible.

## **13 Managing requests for flexible working**

The employee has a statutory right to request flexible working such as changing/reducing their hours, which you should seriously consider. Further details are available on the Trust's website, or contact the Trust's HR Office.

Please note that the employee does not have an absolute right to return to work on different terms, as the right to return after maternity/additional paternity leave relates to the position held before the leave began. However, if the employee wishes to change their hours (or other conditions), they should discuss the matter with their Headteacher in the first instance.

All requests for part-time work or other flexible working arrangements will be considered in line with the operational requirements of the school. Any requests made for flexible working should be made and considered in line with the statutory provisions for flexible working, paying particular attention to the specified timings.

It may take some time to consider/implement changes; therefore discussions should take place as soon as possible.

Employees should be aware that returning on a different basis (e.g. part-time from full time) will affect some of their entitlements, such as annual leave, pension provisions, etc, depending on the change being made, normally pro-rata to the new hours being worked. For further guidance, please refer to the above guidance in the first instance, or contact the Trust's HR Office for further clarification.

It is the Trust's policy that all posts are considered suitable for job sharing, unless there are specific, stated, reasons why not, which could include:

- if there are job sharing arrangements already operating in the school, such that further arrangements could be detrimental to the delivery of the service;
- where a particular post relies on continuity by one person throughout the week and job sharing is considered inappropriate

Any post considered unsuitable must be reviewed next time it becomes vacant or upon request by the post holder.

For support staff, returning part-time does not affect an employee's entitlement to retain their 12 weeks at half pay, providing s/he returns to work for the minimum period of 3 months, regardless of the number of hours s/he works.

For teaching staff where there is a reduction in hours, the requirement to work for a minimum of 13 weeks is increased pro rata, e.g. a reduction from full time to 0.5 full time equivalent necessitates the employee returning for a minimum of 26 weeks to retain all his/her occupational maternity pay.

Employees only have the right to request one change to their working hours in the first 12 months after they return, and this is considered a permanent change of their contract. However, by mutual consent a temporary arrangement may be made and for a shorter period, this can then be reviewed thereafter before making the change permanent or reverting back to the substantive contract.

## **14 Maternity checklist**

In order to ensure that you address all the issues prior to, during and after the employee's maternity leave period, it is advisable that you meet with the employee to ensure completion of the Maternity Checklist, as detailed at Appendix 5.

Please remember that the employer is required to notify the employee of any changes to the employee's contract of employment requiring formal consultation at the time of the event i.e. restructure, etc. In this instance, please contact the Trust's HR Office for assistance with this process.

## **15 Maternity Support Leave**

Under national conditions of service support staff have an entitlement to take 5 days of maternity support leave which is at full pay. This is available to the child's father or the partner or nominated carer of the mother, to assist in the care of the child and provide support to the mother at or around the time of the birth. Where an employee qualifies for both Shared Parental Leave and Pay and Maternity Support Leave, they will receive SPP topped up to full pay for the first week and SPP only for the second week.

There is no provision for maternity support leave in teachers' conditions of service. Schools have discretion to make provision for teachers to take maternity support leave with full pay within their arrangements for special leave. You should clarify this with staff on request.

## **16 Fertility Treatment**

There is no specific legal right to have time off for fertility treatment. Cases should be dealt with on an individual basis and referred to the Trust's HR Office for advice.

## **17 Pensions**

During any period of paid maternity/additional paternity leave (including any period when only Statutory Maternity Pay is paid), and during any unpaid maternity leave during the 26 week OML period, and during any period of unpaid statutory additional paternity leave, the employee must continue to pay pension contributions on the actual pay, if any, they are receiving. Benefits will continue to accrue as if they were working normally on full pay.

If the employee has a right to return to work, they can choose to pay contributions for any period of unpaid maternity leave beyond the 26 week OML period, or in any period of unpaid additional paternity leave, so that the period of absence will count in full for pension purposes. The contributions will be calculated on the rate of pay (or reduced pay) the employee was entitled to receive immediately before they commenced the period of unpaid maternity/additional paternity leave.

If the employee chooses to pay the contributions, they will be given the opportunity to pay at the end of the period of unpaid leave. Repayments are usually made over the same period as the length of the missing service e.g. unpaid maternity leave of six months would mean recovery of the pension contributions over the following six months. Instalments are subject to agreement between the employee and the Payroll and Pensions Manager.

If, before going on maternity/paternity leave, the employee was paying additional contributions to increase their membership, these remain payable. They are calculated on the rate of pay the employee would have received if they were not on maternity/paternity leave. The additional membership continues to accrue in full.

Pension contributions will continue to be made during any period when the employee is receiving statutory paternity pay but not during any period of unpaid additional paternity leave. Employee contributions will be based on actual pay, while employer contributions will be based on the salary that the employee would have received had he/she not gone on additional paternity leave.

## **18 Continuous Service**

Maternity/Paternity leave counts as continuous service for redundancy purposes and does not adversely affect an employee's right to a redundancy payment. If there is any threat of redundancy, it is the school's responsibility to ensure that the employee is kept informed and consulted on any developments that may adversely affect their employment.

For the purposes of entitlements regarding annual leave, the Occupational Sickness Scheme and the Occupational Maternity Pay Scheme, continuous service will include continuous previous service with any public authority to which the Redundancy Payments Modification Order (Local Government) 1983 (as amended) applies.

Where an employee returns to local government service following a break for maternity/paternity reasons, or reasons concerned with caring for children or other dependants, s/he will be entitled to have previous service taken into account in respect of the sickness and maternity//paternity schemes, provided that the break in service does not exceed eight years and that no permanent paid full time employment has intervened. For the purposes of the calculation of entitlement to annual leave, the eight years' time limit does not apply, provided that no permanent full time employment has intervened.

Where an employee is transferred to an organisation not covered by the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999, continuity of service is protected under the TUPE Regulations where there is a TUPE transfer.

However, if that employee returns voluntarily to local government service, continuity is broken. Where an employee returns in such circumstances, without a break between employments, all previous continuous service will be recognised for the purposes of calculation of entitlements to annual leave, occupational maternity leave/pay and occupational sick pay. This is subject to the return to service being within five years of the original transfer.

## **19 Protection against discrimination**

Pregnant employees are entitled not to be subjected to any type of unfavourable treatment related to their pregnancy or impending absence on maternity leave. Such unfavourable treatment has been ruled by the courts to amount to direct sex discrimination and will always be unlawful. You should, therefore, ensure that pregnant employees do not experience:

- exclusion from training, appraisal or other normal activities
- demotion

- detrimental change to job duties
- removal of responsibility
- denial of sick pay if absent on account of a pregnancy-related illness
- pressure to resign or dismissal
- abuse or derogatory remarks

Any dismissal on any grounds related directly or indirectly to the fact that an employee is pregnant will be automatically unfair, as well as discriminatory. Employees may bring complaints of pregnancy-related detriment or dismissal to any employment tribunal, irrespective of their length of service.

When an employee first announces that she is pregnant, you should take care that what is said in response is appropriate and supportive.

Those taking paternity leave, are also not to be subjected to any type of unfavourable treatment related to their impending paternity leave.

## **20 Agency worker regulations and maternity/paternity entitlements**

If schools hire temporary agency workers through an agency, they will need to provide the agency with up to date information on your terms and conditions so that they can ensure that an agency worker receives the correct equal treatment, as if they were recruited directly, after 12 weeks in the same job. However, the regulations **do not alter agency workers' employment status** i.e. they do not make an agency worker an employee of either the hirer or the agency. Therefore, they will still not have the right to claim occupational maternity/paternity pay.

Most breaks between or during an assignment to the same job that are less than six weeks in length will simply pause the accrual of the 12 week qualifying period. Most breaks between or during an assignment to the same job that are six weeks or more will reset the 12 week qualifying period. However, during closure periods (e.g. holidays, PD days, industrial action), the qualifying period will be paused rather than stopped and will continue running from where it left off when it re-opens.

The accrual of the 12 weeks qualifying period can also be paused by any leave which they are entitled, including annual, maternity and paternity leave.

In cases of absence relating to pregnancy, maternity leave, and paternity leave the period will continue to run for the originally intended duration of the assignment, or the likely duration of the assignment (whichever is longer). Pregnant agency workers will now be allowed to take **paid** time off for ante-natal appointments during an assignment. Please contact the Schools' HR Team for further guidance.

## **21 Further Advice**

If an employee requires any further information regarding their maternity rights, they should either ask their Headteacher **or** Contact the HR office through the Helpdesk.

For specific enquiries on an employee's maternity pay entitlement, they should contact Schools' Choice Payroll on **03456 066 046** (option 5) **or** [payroll@schoolschoice.org](mailto:payroll@schoolschoice.org)

## Appendix 1 - Flowchart

### Maternity leave

*When the employee informs  
The school that she is  
pregnant:*

Risk Assessment undertaken. Discuss planned antenatal care appointments.

Risk assessments should be conducted at least every 4-6 weeks to ensure the workplace remains safe for a pregnant employee.

*By the 15<sup>th</sup> week before  
the baby is due:*

Employee should notify of their planned dates for maternity leave using form MP3. Remind employee to submit their MATB1 to the Schools' Choice HR (together with their form or when available).

Schools' Choice Processing team will write to the employee within 28 days confirming entitlements to maternity leave/pay and their return to work date.

*Before employee  
goes on maternity leave*

Discuss and agree arrangements for keeping in touch and KIT days. You may also want to discuss initial plans for returning to work, such as part-time hours.

Your employee should notify you within 28 days of the actual date of birth.

## Maternity leave (continued)

*Before your employee returns to work*

Employee may make contact to bring their return to work date forward – they must give at least 8 weeks' notice (21 days for teachers) to you of the new date. Please contact the Schools' Choice Processing team immediately confirming any changes.

If employee decides not to return to work, they should send a resignation letter and school should commence the usual leaver process.

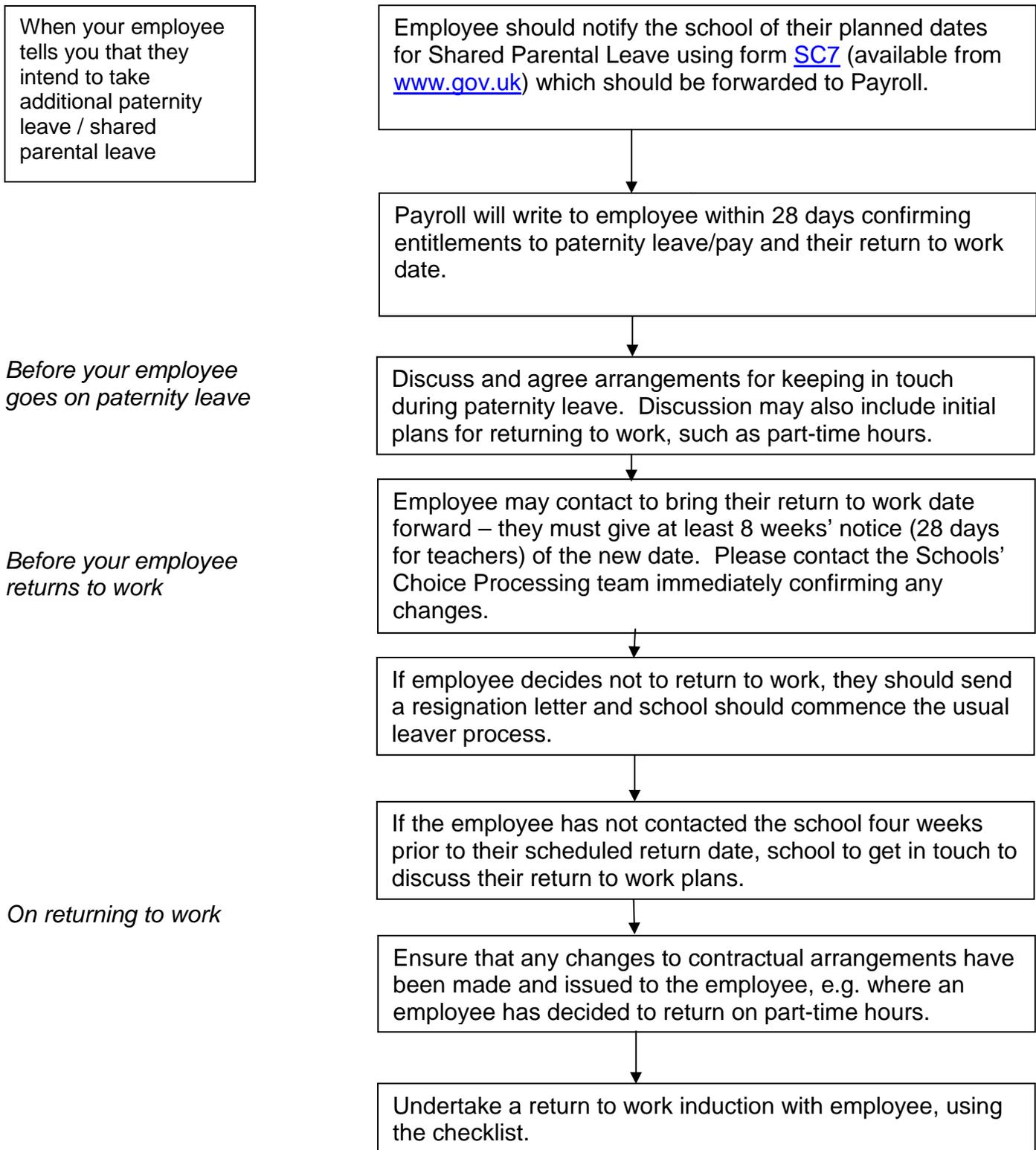
If employee has not contacted the school four weeks prior to their scheduled return date, school should get in touch to discuss their return to work plans.

Ensure that any changes to contractual arrangements have been made and issued to the employee, e.g. where an employee has decided to return on part-time hours.

*On returning to work*

Undertake a return to work induction with employee, using the Maternity Policy checklist. Notify the Schools' Choice Processing Team of the employee's return to work.

## Appendix 2 - Flowchart



## Appendix 3

### New and Expectant Mothers Initial Risk Assessment Form

Employee:	Date:
Job title:	Area of work:
Date baby due / born:	Date first advised of pregnancy/ birth / breastfeeding:
Name of assessor (usually Line Manager):	Date of next assessment review: (within 4 – 6 weeks)  Reviews may need to be more frequent depending upon the individual and as size increases. (NB The reviewing process must continue for as long as the mother is breastfeeding)
People at risk: <b>New or expectant worker, unborn child.</b>	Copies to: Employee, held on personal file.
Employees include Volunteers, Agency / Relief Workers	
Risk and precautions	Indicate if a risk and how this will be controlled
Medical concerns: <b>Ask employee if there are any medical concerns relevant to their employment, to ensure adequate precautions are taken, ask employee to discuss this with their GP and advise us in writing of any medical concerns.</b>	
Night work: This does not in itself present any special risks to new and expectant mothers, but in some circumstances a doctor or midwife may consider it so, on production of a certificate alternative daytime work should be offered (or suspension on paid leave – refer to Schools' HR Team).	
Manual Handling (Moving and handling people or inanimate object) or restraint techniques: There are increased risks due to hormonal changes of postural problems when pregnant or limitation of ability if the employee has had a caesarean section. Ensure only light duties are undertaken, not requiring excessive pressure.	
Heat stress / dehydration / fatigue from extremes of hot or cold (i.e. work in kitchens, cold room etc): Ensure access to refreshments and regular short breaks.	
Prolonged standing or work involving much physical effort: Ensure employee is able to take short breaks and seating is available where possible.	
Limited or restricted space: <b>Ensure sufficient space and understanding of issues arises from increasing size and reduced mobility / dexterity / agility.</b>	
VDU's: There are no known health issues in working with VDUs. However a DSE assessment should be undertaken / reviewed to ensure their posture and positioning is suitable.	
Regular breaks: Toilet facilities need to be available and more frequent breaks will be required.	
Raised blood pressure associated with stress:	

Discuss and agree workload and pace of work, hours of work.	
Excessive working hours: Working hours should be assessed and issues discussed and agreed with employee.	
Morning sickness: This can arise from early shift work, or from nauseating smells, ensure flexible working / flexible work rota, and flexible work allocation.	
Slips, trips and falls: Poor balance in later stages can increase risks from slippery surfaces, ensure these are cleaned immediately and ensure footwear is appropriate.	
Noise: Noisy environments can be stressful and regular breaks away from the situation should be enabled.	
Vibration: Using machinery or riding / driving in 'off road' vehicles likely to cause shock or vibration must be avoided during pregnancy.	
Violence / Challenging behaviour: If the employee encounters people who are likely to display challenging behaviour or violence, she should be excluded from these situations or work found elsewhere. It may be necessary to put employee on paid leave. A member of the Schools HR Team should be consulted if any of these options is likely to be required.	
COSHH (Chemical risks): Ensure all chemicals used have adequate assessment and follow the safe system of use, which will indicate if any specific risks to new or expectant mothers. Eliminate person from hazard or hazard from person. (i.e. Toxic Chemicals – mercury, Antimitotic (cytotoxic) drugs, pesticides, carbon monoxide, lead)	
Passive Smoking: If the work involves working in a smoky environment (i.e. with a customer who smokes) the risk must be assessed and the risk eliminated where possible.	
Personal Protective Equipment: <b>Any personal protective equipment must be suitable (comfort and fit) for the increasing size of the employee. Any work for which PPE has been indicated should not be undertaken if adequate PPE is not available or comfortable for their condition.</b>	
First aid duties: <b>Due to the risk of having to undertake duties which may put undue physical pressure on a new or expectant mother, these duties should not be undertaken.</b>	
Lead: Working with lead (in pottery for example) must be avoided during the pregnancy and until breastfeeding has ceased.	
Confined Space: <b>A specific risk assessment must be completed for this type of work under the regulations, This refers to Storage vessels, tanks etc and advice must be sought from your Health &amp; Safety Advisor.</b>	
Other risks not mentioned above:	

It is the responsibility of the Manager to assess the risks in the workplace and if risks are present other than those mentioned above, seek advice from your Health & Safety Advisor. (i.e. ionising and non-ionising radiation, hyperbaric atmosphere, working at height etc)

--

Employee signature:

Date:

Line Manager signature:

Date:

## Appendix 4

### New and expectant mothers Risk Assessment Review Form

Employee:	Date:
Name of Assessor:	Date of next review:
Review (review the details on the initial risk assessment form and enter any changes concerns or additional risks and relevant control measures)	
Employee signature:	Date:
Line Manager signature:	Date:

## Manager's Maternity\* Checklist

The following checklist is designed to ensure that a consistent approach is taken to supporting an employee before, during and after her maternity leave period and to ensure that a structured return to the workplace is completed. Whilst it is not the manager's responsibility to perform each of the tasks listed, it is their responsibility to ensure that their member of staff is sufficiently guided and supported during this time. This checklist should be retained by the manager until the employee returns to work.

\*the checklist can also be used for additional paternity leave / shared parental leave

Employee	Date
<b>General Rights and Responsibilities - on Initial Notification of Pregnancy</b>	
Notify HR - ensure employee has sent correct notification (Form MP3) to Schools' HR Processing Team	<input type="checkbox"/>
Ensure employee is in receipt of acknowledgement letter from Schools' HR Processing Team (with details of entitlement supplied by Payroll)	<input type="checkbox"/>
Ensure Health & Safety concerns are explained and complete the new and expectant mothers risk assessment form (see appendix 3).	<input type="checkbox"/>
<b>Level of contact during Maternity Leave – What has been agreed between employee and employer</b>	
Keeping-in-touch days discussed and employee in agreement with KIT Days (for training, team meetings, etc)	<input type="checkbox"/>
Level of contact agreed during maternity/additional paternity/shared parental leave: <ul style="list-style-type: none"> <li>• Fortnightly</li> <li>• Monthly</li> <li>• Other (please state)</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Type of contact? <ul style="list-style-type: none"> <li>• Phone calls</li> <li>• Home Visits</li> <li>• Emails</li> <li>• Combination</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Contact with whom? Please specify a name:	
Ensure nominated representative appointed to forward copies of internal staff vacancies/ announcements	<input type="checkbox"/>
Any specific wishes/requirements during maternity leave? Please specify:	<input type="checkbox"/>
Changes at work (restructure, new opportunities, work process changes) – check changes have been communicated to employee, preferably in person or via the telephone.	<input type="checkbox"/>

<b>Planning a return to work</b>	
<ul style="list-style-type: none"> <li>• Job may have changed</li> <li>• Hours to be worked? Change in contract (e.g. flexible working request / change of hours)</li> <li>• Consider training requirements and incorporate into appraisal/PDR</li> <li>• Arrange visit to school before day one/re-introduction to the team (if appropriate)</li> </ul>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<b>Returning to work – day 1</b>	
Carry out return-to-work meeting Have a 're-introduction to work' timetable which should cover first few days	<input type="checkbox"/> <input type="checkbox"/>
<p><b>Progress reviews</b> (between line manager and employee. To be kept informal. Frequency to be agreed at return to work meeting, but weekly progress meetings are recommended. Need to be clear on required objectives.</p> <p>Week 1          Week 2          Week 3          Week 4          Month 2</p> <p>Further regular reviews required? (add details and dates below)</p>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

## Appendix 6

### Glossary of terms

#### **EWC Expected Week of Childbirth**

This is the week your doctor or midwife thinks your baby is due.

#### **QW Qualifying Week**

This determines whether your length of service qualifies you for Statutory Maternity Pay and additional maternity leave. You must have 26 weeks' service including part of the QW to be eligible for Statutory Maternity Pay.

#### **Qualifying Period**

The qualifying period is the period of time from the beginning of the 26 week period before the qualifying week to the end of the qualifying week.

#### **MATB1 Maternity Certificate**

Ask your midwife or doctor for one of these - usually available from 21/22 weeks. You must give this or a similar document to the County Council as evidence of your EWC.

#### **SMP Statutory Maternity Pay**

This is maternity pay due to you, which is paid via the County Council at higher rate SMP (90%) for the first six weeks, followed by 33 weeks at the current standard rate per week or 90% of normal weekly earnings whichever is lower.

#### **OMP Occupational Maternity Pay**

This is maternity pay from the school due to you under your contract of employment.

#### **OML Ordinary Maternity Leave**

Statutory entitlement for all pregnant employees (26 weeks)

#### **AML Additional Maternity Leave**

Statutory entitlement for pregnant employees (26 weeks)

#### **LEL Lower Earnings Limit**

This is the limit below which National Insurance is not due.

#### **New or Expectant Mother**

A new or expectant mother is an employee (included volunteers, agency or relief workers) who is pregnant, has given birth within the previous six months, or who is breastfeeding.

#### **Notification Period**

The notification period is the period of time, which begins on the date the adopter receives notification of having been matched with the child and for the following seven days.

## Notification of Pregnancy

Please complete and sign this form and forward it to the Schools' HR Processing Team as soon as possible once you are aware of your pregnancy and you have decided on the date you wish to start maternity leave. Please also ensure you attach an original Maternity Certificate (MATB1 form).

The Schools' HR Processing Team will verify the information as indicated and forward the form to payroll. You will receive written confirmation of your rights and obligations.

The information you give will be used to assess:

- a) Your Occupational Maternity entitlements (conferred by Conditions of Service)
- b) Your eligibility to receive Statutory Maternity Pay (SMP)

This form will be accepted as notification:

- a) Of your pregnancy
- b) Of your wishes concerning returning to work after the birth
- c) Of your wishes concerning the receipt of your half pay entitlements (if applicable)
- d) Of the date of commencement of your maternity leave

This form is NOT acceptable as a resignation from your post; you need to write a separate letter to your line manager if you wish to resign.

Section 1			Departmental verification (where needed)
1.1	Name and Forename(s):		
1.2	Personal Number (from latest payslip)	/	
1.3	Job Title:		
1.4	Department / Place of work:		
Section 2			
2.1	Date you commenced employment with the County Council	/ /	
2.2	Contracted hours per week:		
2.3	Are you on a fixed term contract?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
2.4	Do you pay contributions into the Local Government Pension Scheme?		
Section 3			
3.1	Is it your intention to return to work following the birth?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
3.2	If YES, How would you like to receive your half pay entitlement, if eligible? (please tick one box)		
	a. Paid as falls due	<input type="checkbox"/>	

	b. As a lump sum on return to work	<input type="checkbox"/>	
	c. As a lump sum after return to work	<input type="checkbox"/>	

This form is **NOT** acceptable as a resignation of your post: you need to write a separate letter to your Line Manager in this respect.

Section 4			Departmental verification (where needed)
4.1	Do you have a Maternity Certificate (MATB1) or other written evidence that you are pregnant?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
4.2	If YES: Enter date of expected childbirth from certificate (Attach the certificate securely to this form)	/ /	Attached?
4.3	If NO: Enter your personal estimate of the date of expected childbirth?	/ /	
4.4	Give reason certificate is not available:		
Section 5			
5.1	Have you already commenced your maternity leave?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
5.2	If YES: Enter date you commenced maternity leave?	/ /	
5.3	If you could not give notice please explain why:		
5.4	If NO: Enter date you intend to commence maternity leave?	/ /	
5.5	If you are giving less than 28 days' notice, please explain why:		
Section 6			
6.1	Starting from the Sunday preceding your date of expected childbirth, count back 11 complete weeks:		
	a. Were you or do you expect to be abroad outside the European Economic Area during this week?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
	b. Were you or do you expect to be in legal custody during this week?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
6.2	Starting from the Sunday preceding your date of expected childbirth (childbirth) count back 15 complete weeks. Were you or do you expect to remain in the employment of the County Council during this week?	Yes <input type="checkbox"/> No <input type="checkbox"/>	

Signed: (Employee): \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**NB: Please attach Maternity Certificate (MATB1 form).  
We require written evidence of the pregnancy prior to the payments being released.**