

## 3.02 Maternity Leave **[17 NOVEMBER 2020]**

If you are pregnant you have statutory rights relating to:

- time off to attend antenatal appointments – [Section 6 Time off for antenatal care](#)
- maternity leave – [Section 2 Maternity leave – entitlement/requirements](#)
- maternity pay – [Section 4 Statutory maternity pay \(SMP\)](#)
- return to the same job – [Section 9 Return to work](#)

If you meet specified qualifying conditions, you will be eligible for the more generous NICS contractual maternity pay arrangements – [Section 3 Contractual maternity pay](#).

To take advantage of these rights, you will need to satisfy the relevant qualifying conditions and provide the appropriate notice.

Maternity rights apply to childbirth. Childbirth is defined as:

- the birth of a living child or
- the birth of a child, whether living or not, after 24 weeks of pregnancy.

This policy should be read in conjunction with the [Maternity Leave User Guide](#).

### **Further guidance:**

[Maternity Leave FAQs](#)

[Pregnancy and maternity leave – an aide-memoire for staff](#)

[Pregnancy and maternity leave – an aide-memoire for managers](#)

### **The following terms within this policy are defined in the glossary:**

Average weekly earnings, Additional maternity leave, Childbirth, Compulsory maternity leave, Contractual maternity pay, Expected week of childbirth (EWC), Job, Keeping in touch (KIT) days, Maternity allowance (MA), Maternity leave, Maternity allowance period, Maternity pay period, Ordinary maternity leave, Qualifying week, Statutory maternity pay (SMP), Unpaid maternity leave

### **You may also be interested in the following policies:**

[3.03 Paternity Leave](#), [3.04 Ordinary Parental Leave](#), [3.05 Adoption Leave](#), [3.06 Public and Privilege Holidays](#), [3.07 Annual Leave](#), [3.08 Special Leave](#), [3.10 Alternative and Flexible Working Patterns](#), [6.05 Equality, Diversity and Inclusion](#), [3.13 Shared Parental Leave](#),

This policy is version 5.0

This homepage is only a guide to the policy, not the policy itself. In the event of any discrepancy between the content of this homepage and the associated policy, the wording of the policy shall apply.

## 3.02 MATERNITY LEAVE

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## 3.02 MATERNITY LEAVE

### 1 Introduction

**1.1** The arrangements in this policy are set out according to whether they are:

- a. contractual, in other words, arrangements which are specific to the Northern Ireland Civil Service (NICS); or
- b. statutory, in other words, the result of legislation.

**1.2** The current contractual maternity arrangements, which have been in operation since 6 April 2003 in the NICS, were agreed with the industrial trade unions that formerly participated in the Central Joint Co-ordinating Council (for industrial staff), but not with the Trade Union Side of the Central Whitley Council.

**1.3** Your spouse, civil partner or partner (or the baby's father) may be entitled to paternity leave and pay. (The definition of "partner", in relation to a child's mother means a person (whether of a different sex or the same sex) who lives with the mother and the child in an enduring family relationship but is not the mother's parent, grandparent, sister, brother, aunt or uncle.) If applicable, full details of paternity leave and pay arrangements in the NICS can be found in HR policy [3.03 Paternity Leave](#).

### 2 Maternity leave – entitlement/requirements

**2.1** If you are a pregnant employee who satisfies the requirements at paragraph 2.2 below, you are entitled to take 26 weeks' ordinary maternity leave followed immediately by 26 weeks' additional maternity leave. This entitlement is regardless of your length of service or the number of hours you work each week. It will be assumed that you will take the full 52-week entitlement unless you give notice of an early return to work (see [paragraphs 9.3 – 9.4](#)).

#### Notification and evidential requirements

**2.2** To take advantage of the statutory right to maternity leave above, you must:

- a. notify HRConnect no later than the end of the 15th week before the expected week of childbirth (EWC), or as soon as reasonably practicable, of:
  - i. the fact that you are pregnant (to be confirmed by the production of a Maternity Certificate, Mat B1);
  - ii. the week your baby is expected to be born;
  - iii. when you want your maternity leave to start (the earliest

possible date for this is 11 weeks before the EWC);

**and**

- b. still be pregnant at the start of the 16th week before your EWC, or have given birth to a living child before that date.

**2.3** If you wish to apply for Maternity Leave, please refer to the [Maternity Leave User Guide](#).

**2.4** Following notification, HRConnect will respond in writing within 28 days, stating the date on which your additional maternity leave will end. HRConnect will also advise you of the date on which you are due to return to work, which is the next working day after the date your additional maternity leave ends.

**2.5** If you wish to change the start date of your maternity leave, you must notify HRConnect at least 28 days in advance (unless this is not reasonably practicable). As with paragraph 2.4 above, following notification of a change in the start date HRConnect will respond in writing within 28 days, stating the date on which your additional maternity leave will end. HRConnect will also advise you of the date on which you are due to return to work, which is the next working day after the date your additional maternity leave ends.

**2.6** HRConnect will not seek confirmation of either the date of the child's birth or the intended date of return from maternity leave. However, if you wish to return to work before the end of your full entitlement to maternity leave, you must give HRConnect at least eight weeks' notice of the date on which you wish to return – see [Notice to return to work early](#).

### **3 Contractual maternity pay**

#### **Qualifying conditions**

**3.1** In order to benefit from the contractual maternity pay arrangements, you must, in addition to satisfying the notification and evidential requirements set out in Section 2 above:

- a. state that you intend to return to work in the NICS after the birth of your child, and that you agree to repay any payment made during that period if you fail to return and complete at least one calendar month ("one month") of paid service on your return; such repayment will exclude any statutory maternity pay (SMP) to which you are entitled;
- b. be in paid service with your Department at the time your maternity leave begins and have rendered at least one year's paid service with the NICS, which need not be continuous;

- c. not be employed on a temporary appointment;
- d. not be employed on a fixed-term appointment of less than two years; and
- e. not be employed on a fixed-term contract of two years or more, the unexpired period of which will not permit you to return to the Service after your maternity leave and complete at least one month's service.

If you do not satisfy the qualifying conditions above you must rely on the statutory maternity pay arrangements set out in Section 4.

**3.2** If you meet the qualifying conditions in paragraph 3.1, you will be paid full contractual rate of pay for the first 18 weeks of maternity leave. Where you qualify for both contractual maternity pay and statutory maternity pay, contractual maternity pay will count towards the obligation to pay statutory maternity pay. In such cases, the first six weeks of maternity leave will be paid at whichever is the higher of either 90% of your average weekly earnings or your full contractual rate of pay.

**3.3** Following the 18 weeks' contractual maternity pay you must rely on the statutory maternity pay arrangements for the remainder of your maternity leave. Further information on statutory maternity pay is set out in Section 4 below.

**3.4** Contractual maternity pay is granted on the condition that you intend to return to work and that you complete at least one month's paid service on your return to work (see sub-paragraph 3.1a). Where you have not satisfied this requirement, you will be expected to repay any salary or wages for the period of maternity leave (less any SMP to which you are entitled). For the arrangements that apply if you take a career break after your maternity leave see paragraph 13.1 of this policy.

**3.5** NICS HR have discretion to waive repayment where there are good reasons why you cannot return or they believe a genuine intention to return cannot be realised because of exceptional circumstances. Repayment will always be waived if you provide medical evidence that you will be unable to return within the 52 weeks because your child has a disability and requires continuous attention at home. Supporting medical evidence should be sent to HRConnect not later than 3 weeks before the end of the 52-week period.

## **4 Statutory maternity pay (SMP)**

**4.1** In order to qualify for SMP, you must, in addition to satisfying the requirements set out in Section 2 above:

- a. have worked continuously for the NICS for at least 26 weeks continuing into the qualifying week, in other words the 15th week before the EWC; and

- b. have average weekly earnings of not less than the lower earnings limit for the payment of National Insurance contributions.

### **SMP – length of maternity pay period**

**4.2** If you satisfy the conditions in paragraph 4.1, you will be paid SMP for up to a maximum of 39 weeks. You will receive payment for the first 6 weeks at a rate of 90% of your average weekly earnings, followed by up to 33 weeks at the standard SMP rate (or 90% of earnings for the full 39 weeks if this is less than the standard SMP rate).

**4.3** Any maternity leave beyond the 39-week maternity pay period is unpaid.

### **Maternity allowance**

**4.4** If you do not qualify for SMP you should contact your local Social Security/Jobs & Benefits office as you may be eligible for maternity allowance. Entitlement to maternity allowance is based on your employment and earnings in the 66 weeks ending with the week before the EWC. Maternity allowance is a social security benefit, which you must claim directly. If you are in receipt of maternity allowance you must inform HRConnect as soon as possible of the amount of maternity allowance paid and where contractual maternity pay is payable - it will be subject to a deduction equivalent to the rate of maternity allowance you receive.

### **Duration of maternity allowance period**

**4.5** Maternity allowance will be payable for a maximum of 39 weeks.

**4.6** Any maternity leave beyond the 39-week maternity allowance period is unpaid.

## **5 Timing of maternity leave**

**5.1** As stated in paragraph 2.2 above, your maternity leave cannot begin earlier than the beginning of the 11th week before your EWC unless childbirth has taken place before that date.

**5.2** Maternity leave will normally begin on the date that you have notified to HRConnect. There are, however, a number of exceptions, which are set out below.

### **Childbirth before your intended start date**

**5.3** If you give birth before your maternity leave has started, your maternity leave will start automatically and it begins on the day after the date of childbirth. In order to preserve your rights to maternity leave and pay, you must, as soon as reasonably practicable, notify your line manager who will pass this information onto HRConnect and, if you have not already done so,

you must submit evidence of the date the child was expected.

### **Absence for a pregnancy-related reason before the intended start date**

**5.4** If you specify that you wish to begin your maternity leave any time after the beginning of the 4th week before your EWC, the following restrictions apply. If you are on a pregnancy-related sickness absence immediately before your specified date, or childbirth occurs during the period of sickness absence, the start of maternity leave will be brought forward to whichever is the later of:

- a. the day following the first day of the period of sickness absence, or
- b. the day following the beginning of the 4th week before the expected week of childbirth.

**5.5** If, because of the circumstances described at 5.3 and 5.4 above, your maternity leave commences earlier than you had intended, your additional maternity leave end date will also have changed from that already notified to you under paragraph 2.4. HRConnect will, within 28 days of becoming aware that paragraph 5.3 or paragraph 5.4 is applicable, notify you of the revised date on which your additional maternity leave will end and also the date on which you are due to return to work. HRConnect will also advise you of the date on which you are due to return to work, which is the next working day after the date your additional maternity leave ends.

**5.6** It will be assumed that you are taking your full maternity leave entitlement unless you give notice to return to work early in accordance with paragraphs 9.3-9.4 below.

### **Compulsory maternity leave**

**5.7** Regulation 8 of the Maternity and Parental Leave etc. Regulations (Northern Ireland) 1999 provides that an employee who is entitled to statutory maternity leave shall not work, or be permitted by their employer to work, during the two-week period commencing with the date of childbirth. You should not, therefore, notify HRConnect of a return date from maternity leave that is within two weeks of your expected date of childbirth.

## **6 Time off for antenatal care**

**6.1** Under Article 83 of the Employment Rights (Northern Ireland) Order 1996, if you are pregnant and you have, on medical advice, made an appointment to receive antenatal care, you are entitled to be permitted time off to keep the appointment. Except for the first appointment, you may be asked to produce a certificate of pregnancy and proof that the appointment has been made. You will be paid for the period of absence at the normal rate of pay (including any shift disturbance allowance).

**6.2** A person with whom you, or your expected child, has a qualifying

relationship may have a statutory entitlement to be permitted unpaid time off during working hours to accompany you to antenatal appointments on up to two occasions. If applicable, please refer to Section 9 of HR policy [3.03 Paternity Leave](#) for details of the arrangements in the NICS.

## **7 Contact during maternity leave**

**7.1** Your Department may make reasonable contact with you from time to time while you are on maternity leave in order, for example, to keep you informed of developments at the workplace or to discuss arrangements for your return to work.

**7.2** What constitutes “reasonable” contact will vary according to the circumstances. Some of you may prefer to keep such contact to a minimum, while others may not mind frequent contact. Therefore, before your maternity leave begins, you should discuss arrangements for staying in touch with your line manager. This should include agreement on the reasons for making contact, who will initiate contact, the way(s) in which contact will be made and how often, and the process for agreeing to work keeping in touch days (see Section 8 below).

## **8 Keeping in Touch days**

**8.1** Under the Maternity and Parental Leave etc. (Amendment) Regulations (Northern Ireland) 2006, an employee on maternity leave may agree with their employer to work for up to 10 keeping in touch (KIT) days during their maternity leave without losing SMP or maternity allowance, or bringing their maternity leave to an end as a result. This provision is intended to help to ease your return to work. KIT days differ from the reasonable contact mentioned in Section 7 above as during KIT days you can actually carry out work for your employer. Working KIT days has no effect on the end date of your maternity leave.

**8.2** For the purposes of this arrangement, “work” means any work done for the employer and may include training or any activity undertaken by you for the purposes of keeping in touch with the workplace. For example, they could be particularly useful in enabling you to attend a conference or attend for a team meeting. Any KIT days worked under this provision must be by agreement between you and your line manager. Your line manager has no right to demand that any such KIT day is worked, nor have you any right to work a KIT day. The type of work that you undertake on KIT days is a matter for agreement between you and your line manager. Only line managers at Staff Officer (SO) level or above may agree a request to work a KIT day.



## **When KIT days may be worked**

**8.3** KIT days may be worked at any stage during the maternity leave period except during the two weeks of compulsory maternity leave (see paragraph 5.7 above). Although you may work a maximum of 10 KIT days (see paragraph 8.1), these need not be worked on consecutive days and working for part of a day will count as one of the 10 days.

## **Arranging to work a KIT day**

**8.4** KIT days may only be worked by agreement. If you wish to take advantage of working a KIT day, you must contact your line manager (at SO level or above) who will consider the request.

**8.5** If your line manager wishes to offer you the opportunity to work a KIT day during your maternity leave, for example, to attend a training activity, contact will be made with you through the agreed contact arrangements (see paragraph 7.2). As KIT days may only be worked by agreement, you are entitled to turn the offer down without suffering any consequences as a result.

## **Payment for KIT days worked**

**8.6** The payment of contractual maternity pay or SMP is not affected by working any of the 10 permitted KIT days. Therefore, if you work a KIT day, you will continue to receive any contractual maternity pay or SMP (or maternity allowance) that is due for that day. Where you are entitled to an additional payment (see paragraph 8.7), it will be paid as basic pay. Although working for part of a day will count as one of the 10 KIT days, any entitlement to payment will be calculated using the net hours actually worked.

**8.7** The total of maternity pay and any additional payment due for working a KIT day will not exceed your contractual daily rate of pay. In practice, this means that:

- a. if you work a KIT day while receiving NICS contractual maternity pay, you will receive no extra payment,
- b. if you work a KIT day while receiving only SMP\*, you will receive payment for the net hours actually worked at your normal contractual rate of pay, in addition to SMP, within the overall limit of your contractual daily rate of pay,

and

- c. if you work a KIT day while on unpaid maternity leave, you will receive your contractual rate of pay for the net hours you work.

\* For the purposes of KIT days, maternity allowance will be treated the same as SMP and when calculating payment for working a KIT day, a notional daily rate

of SMP or maternity allowance, equivalent to one seventh of the appropriate weekly rate, will be used.

### **Example**

Your contractual daily rate of pay is £66.00. You work half a KIT day for which you would earn £33.00. The level of additional payment (if any) to which you are entitled will depend on the maternity pay you are receiving for that day.

If the half KIT day is worked while

- a. you are receiving NICS contractual maternity pay, in other words usually during the first 18 weeks of maternity leave, you will receive no extra payment,
- b. you are receiving SMP only, you will be paid £54.60, which is made up of the £33.00 that you earned plus the notional daily amount of SMP\*\* (£21.60), or
- c. you are on unpaid maternity leave, you will be paid £33.00 as basic pay.

\*\* This will vary according to the rate of SMP in effect at any given time. For the purposes of this example, the weekly rate of SMP has been taken as £151.20 (the rate applicable for 2020/21), making the notional daily rate £21.60).

**8.8** When you work a KIT day, please refer to the Maternity Leave User Guide for process details, complete the appropriate form and pass it to your line manager (at SO level or above) for authorisation. The line manager must then send the completed form to HRConnect for processing.

### **Pensions**

**8.9** Additional maternity leave, except during the maternity pay period, is not reckonable for pension purposes. However, where a KIT day is worked during this period, that day will reckon for pension purposes.

## **9 Return to work**

**9.1** If you are returning to work after maternity leave you will return to the same job on the same terms and conditions as if you had not been absent.

**9.2** If you resign because you do not intend to return to work after maternity leave, but later wish to return by the date on which you would otherwise have been due to return following your full entitlement to maternity leave because of a radical change in circumstances such as the child's stillbirth, you have no absolute right to return but may be allowed to do so and, if at all possible, in

accordance with paragraph 9.1. In these circumstances, your resignation will be cancelled and the period of absence will be counted as maternity leave.

### **Notice to return to work early**

**9.3** If you wish to return to work earlier than the end of your additional maternity leave entitlement, you must give HRConnect at least eight weeks' notice of the date on which you intend to return. Failure to do so will result in your return to work date being postponed until the eight weeks' notice has been given, but not to a date after the end of your additional maternity leave period. Please refer to the Maternity Leave User Guide for details.

**9.4** If, after having notified HRConnect that you intend to return to work before the expiry of your 52-week maternity leave entitlement, you change your mind and decide that you want to return on an earlier date, you must give HRConnect at least eight weeks' notice of the new date. If you want to return on a later date, you must give HRConnect at least eight weeks' notice ending with the date on which you are currently due to return. Please refer to the [Maternity Leave User Guide](#) for more information.

### **Shared parental leave**

**9.5** The Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations (Northern Ireland) 2015 allow eligible employees to curtail their statutory maternity leave to take, or enable their spouse, civil partner or partner (or the baby's father) to take, shared parental leave. For further information on shared parental leave eligibility, see HR policy [3.13 Shared Parental Leave](#).

## **10 Health and safety**

**10.1** Once a line manager becomes aware that an employee is pregnant, or is informed that they have given birth in the last six months or are breastfeeding, they must arrange for a specific risk assessment of the employee's work activities to be undertaken and protect the employee from having to work in areas that might be detrimental to their health. Where necessary, the line manager should seek advice and guidance from their Departmental Health and Safety Adviser/Officer.

**10.2** If you are pregnant, have given birth in the last six months or are breastfeeding, and feel that there is a health and safety risk from your post or workplace to yourself or your baby, you should bring your concerns to the attention of your line manager without delay.

## **11 Sickiness absence before or after maternity leave**

**11.1** If you are unfit for work during pregnancy (before maternity leave begins) or following maternity leave, the sick pay arrangements outlined in HR policy [3.01 Sickiness Absence](#) will apply.

**11.2** If you are on a pregnancy-related sickness absence immediately prior to the notified start date of your maternity leave, the actual start date will be brought forward in accordance with paragraph 5.4.

## **12 Resignation during maternity leave**

**12.1** If you have commenced maternity leave and then find that you will be unable to honour your undertaking to return to duty you must inform your line management of your resignation as soon as possible.

### **Starting work for another employer**

**12.2** If you start work for another employer after your child is born and during the maternity pay period (in other words the period during which SMP is payable), you must advise HRConnect within seven days, as your Department's liability to pay SMP ceases for the remainder of the maternity pay period.

## **13 Career break immediately following a period of maternity leave**

**13.1** Where you apply for, and are granted, a career break immediately following a period of maternity leave, there is no need for you to return to work for one month before starting your career break. However, you must take whatever annual leave is due to you as well as any time off in lieu that you accrued for public and privilege holidays that fell during your maternity leave. (Both of these count as paid service for the purposes of the required one month of service in sub-paragraph 3.1a of this policy.) If you do not complete one month's paid service between the end of your maternity leave and the start of your career break and you subsequently resign during the career break, or you fail to return to work at the end of it and complete the required period of service, you will be expected to repay the contractual maternity pay paid to you (less any SMP to which you were entitled).

## **14 Overlapping periods of maternity leave**

**14.1** Where you satisfy the qualifying conditions for contractual maternity pay, and you wish to start a second period of maternity leave before the first period has finished or, within one month of a completed period of maternity leave,

you will only be entitled to contractual maternity pay provided you sign a new undertaking to repay contractual maternity pay (less any statutory maternity pay paid) if you fail to return to work for at least one month at the end of the second period of maternity leave. NICSHR may waive the requirement to return to work for at least one month in order to retain contractual maternity pay for the first period of maternity leave.

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