

Council, 7 May 2010

Maternity and Paternity Provision

1 Introduction

- 1.1 The following resolution was approved by the 2009 Annual General Meeting:

“This AGM instructs Council to review current maternity and paternity provision to ensure that the provision is consistent with best practice in the public sector.”

- 1.2 The Committee considered statutory provisions and a range of provisions within the public sector. In particular, as the mover and seconder of the motion at the AGM made reference to the local government scheme applying in Glasgow, consideration was made of arrangements for local government employees.

2 Statutory Provisions

2.1 Maternity Leave

All employees, irrespective of their length of service are entitled to 52 weeks maternity leave. Entitlement to maternity pay is dependent on a number of factors which are set out below.

2.2 Statutory Maternity Provision

A pregnant woman still at work into the 15th week before her baby is due is entitled to 26 weeks' ordinary maternity leave, all non-wage contractual rights, e.g. holidays and benefits that accrue during the 26 weeks leave and a further 26 weeks additional maternity leave.

In addition to maternity leave a pregnant employee has the right to statutory maternity pay (SMP) if she has worked for her employer for at least 26 weeks prior to the 15th week before the baby is due.

SMP amounts to

- 6 weeks pay at 90% of her average earnings (higher rate SMP); and
- a further 33 weeks' pay at a flat rate of (currently) £123.06 (standard rate SMP)

2.3 Statutory Adoption Provision

Entitlement to Statutory Adoption Leave and Pay mirrors the provisions for Statutory Maternity Leave and Pay excepting that the week of being matched with a child for adoption replaces the 15th week for entitlement to pay.

2.4 Statutory Paternity Provision

The partner of a woman on maternity leave, or the biological father of her unborn child can claim paternity leave as long as he/she is:-

- working under a contract of employment
- has worked for at least 26 weeks by the 15th week before the baby is due

Leave of either one or two consecutive weeks can be chosen and must be taken within 8 weeks of the birth. Statutory Paternity Pay is paid at the same rate as standard rate SMP.

- 2.5 There are a number of other criteria which must be fulfilled to meet the statutory entitlement, e.g. notification procedures, provision of a maternity certificate, minimum earnings per week, but these are common across both statutory and occupational provision.

3 Current SNCT Occupational Maternity Provision

- 3.1 A pregnant woman still at work into the 11th week before her baby is due is entitled to 26 weeks' ordinary maternity leave, all non-wage contractual rights, e.g. holidays and benefits that accrue during the 26 weeks leave and a further 26 weeks additional maternity leave.

In addition to maternity leave a pregnant employee has the right to occupational maternity pay (OMP) if she has worked for her employer for at least 26 weeks prior to the 11th week before the baby is due.

OMP amounts to

- 13 weeks pay equal to her average earnings; and
- a further 26 weeks' pay at a flat rate of (currently) £123.06 (standard rate SMP)

3.2 Occupational Adoption Provision

Entitlement to Occupational Adoption Leave and Pay mirrors that for Occupational Maternity Leave and Pay accepting that the week of being matched replaces the 11th week for entitlement to pay.

3.3 Maternity and Adoption Support Leave and Pay (including Paternity Pay)

The spouse or partner or nominated carer of an expectant mother or someone taking adoption leave can claim support leave of one week and will receive normal pay. There is no qualifying requirement to receive this allowance.

In addition to maternity support leave the spouse or partner or nominated carer of an expectant mother is entitled to a further week's Statutory Paternity Leave. This is paid at the same rate as standard rate SPP. A qualifying period of 26 weeks continuous service before the 15th week is required.

Leave of either one or two consecutive weeks can be chosen and must be taken within 8 weeks of the birth. Statutory Paternity Pay is paid at the same rate as standard rate SMP.

4 Comparison of Best Practice across a range of Public Sector Organisations

- 4.1 As a result of a number of factors, e.g. differing qualification periods, the requirement to repay money in excess of statutory payments if not returning, it is difficult to compare the parental leave of one organisation against the other, on a like for like basis.

The table at Appendix 1 sets out the main entitlements across similar public sector organisations.

The table at Appendix 2 sets out the amounts which would be payable to an employee in each public sector organisation.

- 4.2 While the schemes considered have both advantages and disadvantages the current qualifying period in the SNCT policy is of some benefit. The Employers' Side of the SNCT has stated its intention to seek to negotiate a change to bring the qualifying period into line with statutory provision.
- 4.3 Glasgow City Council offers maternity pay which is in excess of nationally negotiated conditions for the rest of the local government sector. There are other conditions of service matters which differ from the national position, e.g. an increase in the hourly rate of pay for lower paid staff. The drawback of the scheme is that there is a considerable payback if the employee does not return from maternity leave. The SNCT Scheme does not require any payback if the teacher does not return from maternity leave.
- 4.4 In the current climate it is unlikely that the Employers' Side of the SNCT would enter into any negotiations to improve the current rates of occupational maternity pay.
- 4.5 The recent EU decision in the Merino Gomez v Continental Industrias Del Caucho SA case implies that teachers on maternity leave will accrue leave during the whole of their period of maternity leave. Because teachers have an entitlement to 66 days leave they will be at an advantage to the rest of the public sector workforce where annual leave is unlikely to be more than 40 days including public holidays.
- 4.6 One of the drawbacks of the teachers scheme is that currently teachers who are on unpaid maternity leave do not accrue reckonable service for pension purposes. Currently there are two options applying elsewhere in the public sector to plug the break in superannuable service for the 13 week period of unpaid maternity leave. The option available to Local Government and NHS employees to repay contributions for this period on return to work would be the preferred option for teachers given the cost involved. While the facility to buy additional pension in blocks of £250 does not actually cover the gap it adds to the individual's pension at retirement.

- 4.7 Paternity leave across teachers and local government employees is comparable. Some employers do offer 2 weeks paid leave at normal salary whereas teachers receive one week at normal salary and one week at Statutory Paternity Pay rate.

5 Future Developments

- 5.1 The current Government has in place a proposition to improve paid leave from 39 weeks to 52 weeks. This has already been delayed due to representation from organisations such as the CBI and it is unlikely that 52 weeks leave will be implemented before April 2012 at the earliest.
- 5.2 Current EU legislation sets out a minimum period of maternity leave of 14 weeks, with pay for the duration to be no lower than sickness pay in the member state concerned. The EU has recently backed an extension to the policy to 20 weeks - all of it on full pay. This exceeded the European Commission's proposal for 18 weeks full pay. This will be strongly resisted by employer organisations in the UK.
- 5.3 Legislation is currently being drafted to allow fathers to take additional paternity pay and leave in the first 12 months of the child's life. A number of criteria must be satisfied including one that the mother has returned to work. The intended start date of this legislation is 3 April 2011.

6 Conclusions

- 6.1 On the whole the parental leave arrangements for those members under the SNCT umbrella compares favourably with other large public sector organisations.
- 6.2 As can be seen from Appendix 2 the cost of implementing the agreement on annual leave arising from European legislation, in particular Merino-Gomez, provides a particular advantage to the SNCT group because of their contractual holiday position.
- 6.3 Glasgow City Council has a local agreement for non-teaching employees which is a significant improvement on the nationally negotiated position. However, SNCT provision compares favourably with the standard advice issued by COSLA which has formed the provision in the vast majority of Councils except for Glasgow. The Teachers' side of the SNCT should be opposed to any attempts to bargain locally on national matters.
- 6.4 The Teachers' Side of the SPPA Management Advisory Group should consider tabling a proposal that teachers can make up the 13 week period of unpaid maternity leave on return to work by payment of the missing contributions over an agreed period. It should be noted that this position could be overtaken by the intention to move towards 52 weeks paid leave.
- 6.5 This report should be referred to the EIS Representatives on the SNCT.

Appendix 1

Comparison of Maternity Pay Benefits across Public Sector Organisations

Organisation/ Entitlement	Statutory	SNCT	Scottish Government	Local Government	Glasgow City Council	NHS (Lothian)
Qualifying Period	26 weeks by 15 th week	26 weeks before 11 th week	As Statutory	As Statutory	As Statutory	12 months by the 11 th week*
Maternity Pay	6 weeks @90% of normal salary, 33 weeks SMP	13 weeks @ normal salary, 26 weeks SMP	26 weeks @ normal salary, 13 weeks SMP	6 weeks @ 90% of normal salary, 12 weeks @ 50% + SMP, 21 weeks SMP	6 weeks @ 90% of normal salary, 33 weeks @ 50% + SMP	8 weeks @ normal salary, 18 weeks @ 50% + SMP, 13 weeks SMP
Repayment Required	No	No	Must return for 4 weeks or sums in excess of SMP repayable	Must return for 3 months or sums in excess of SMP repayable	Must return for 3 months or sums in excess of SMP repayable **	Must return for 3 months or sums in excess of SMP repayable **
Paternity Pay	1 or 2 weeks at SPP rate	1 week @ normal salary, 1 week SPP	2 weeks @ normal salary	1 week @ normal salary, 1 week SPP	2 weeks @ normal salary	2 weeks @ normal salary
Superannuation for 13 week unpaid period	n/a	Need to purchase additional pension	Need to purchase additional pension	Contributions deducted from pay on return	Contributions deducted from pay on return	Contributions deducted from pay on return

- Standard rate Statutory Maternity Pay is currently £123.06 per week (£124.88 from 6 April 2010)
- * Statutory entitlements apply if the longer qualifying period is not met
- ** Payment at the higher rate can be deferred until the employee knows whether they will return or not.

Appendix 2

Comparison of Maternity Pay Benefits across Public Sector Organisations

The examples are based on a full time employee with more than 12 months service on a salary of £34,000 per annum who takes 12 months maternity leave. It is assumed that each organisation has 40 days contractual holiday entitlement with the exception of teachers who have 66 days.

Organisation/ Entitlement	Statutory	SNCT	Scottish Government	Local Government	Glasgow City Council	NHS (Lothian)
Higher Rate SMP (90% of normal salary)	£3,530.77					
Occupational * Maternity Pay		£8,500	£17,000	£3,530.77 £5,399.85	£3,530.77 £14,849.44	£5,230.77 £8,099.70
Standard Rate SMP(£123.06)	£4,060.98	£3,199.56	£1,599.78	£2,584.26		£1,599.78
Sub Total	£7,591.75	£11,699.56	£18,599.78	£11,514.88	£18,380.21	£14,930.25
Statutory Holidays (28 days)	£2,608.21	£3,647.51	£2,608.21	£2,608.21	£2,608.21	£2,608.21
Contractual Holidays		£4,950.19	£2,622.55	£2,622.55	£2,622.55	£2,622.55
Total	£10,199.96	£20,297.26	£23,830.54	£16,745.64	£23,610.97	£20,160.01

- * Where there are two payments this indicates the higher and lower rates of employers occupational maternity pay.

Organisation	Statutory	SNCT	Scottish Government	Local Government	Glasgow City Council	NHS Lothian
Qualifying Period	26 weeks by 15th week	26 weeks before 11th week	Statutory	Statutory	Statutory	12 months by 11th week. If less than 12 months service then SMP payable
Maternity Pay	6 weeks @ 90%, 33 weeks SMP	13 weeks at 100%, 26 weeks statutory	26 weeks at 100%, 13 weeks statutory	6 weeks at 90%, 12 weeks at 50% + SMP, 21 weeks SMP	6 weeks @ 90%, 33 weeks at 50% plus SMP	8 weeks at 100%, 18 weeks at 50% + SMP, 13 weeks SMP
Paternity Pay	1 or 2 weeks at SPP rate	1 week at 100%, week SPP	2 weeks @ 100%	1 week at 100%, 1 week SPP	2 weeks @ 100%	2 weeks at 100%, but SPP if service less than 12 months by 15th week
Repayment Required	No	No	Need to return for 4 weeks, or sums additional to SMP repayable	Need to return for 3 months, or sums additional to SMP repayable	Need to return for 3 months, or sums additional to SMP repayable*	Need to return for 3 months, or sums additional to SMP repayable*
Superannuation	n/a	Need to purchase additional pension for unpaid period	Need to purchase additional pension for unpaid period	Deducted from pay on return over an agreed period	Deducted from pay on return over an agreed period	Deducted from pay on return over an agreed period
* Payment at the higher rate can be deferred until the employee is sure whether they will return or not						