

The Highland Council

Highland Council

12 March 2015

Shared Parental Leave

Report by Depute Chief Executive/Director of Corporate Development

Agenda Item	23
Report No	HC/12/15

Summary

This paper outlines detail on the introduction of Shared Parental Leave (SPL) and makes recommendations regarding the provision of Shared Parental Leave Pay.

1. Background

- 1.1 Shared parental leave will be available to parents of children born or placed for adoption on or after 5 April 2015.
- 1.2 The right to shared parental leave and pay arises under the Shared Parental Leave Regulations 2014 (SI 2014/3050) and the Statutory Shared Parental Pay (General) Regulations 2014 (SI 2014/3051) respectively, both of which came into force on 1 December 2014.
- 1.3 The government has moved away from the former inflexible arrangements and created a new, more equal system which allows both parents to share parenting and to keep a strong link to their workplace. The shared parental leave reforms give parents much greater flexibility about how they 'mix and match' care of their child in the first year after birth. They may take the leave in turns or take it together, provided that they take no more than 52 weeks combined in total. These changes allow partners to play a greater role in raising their child, help mothers to go back to work at a time that's right for them, returning a pool of talent to the workforce. It also creates more flexible workplaces to boost the economy.
- 1.4 Under the new arrangements employed mothers will still be entitled to 52 weeks of maternity leave as a day 1 right, however mothers can choose to end their maternity leave after the initial two week recovery period; working parents can then decide how they want to share the remaining leave.
- 1.5 Those who have adopted a child will be entitled to the same pay and leave as birth parents.
- 1.6 The introduction of these regulations gives parents the right to take SPL and places a duty on employers to ensure that their employees are not penalised for using their entitlement or put under pressure to cancel/change a leave notification.

- 1.7 The Council currently offers enhanced maternity leave provision to female employees. This entitles women to occupational maternity pay (OMP) during the first 18 weeks of the maternity leave period before reducing to Statutory Maternity Pay for the next 21 weeks as follows:
- i) First 6 weeks of the maternity pay period at 9/10 pay including Statutory Maternity Pay (SMP)
 - (ii) Following 12 weeks of maternity pay period at half pay plus SMP
 - (iii) Following 21 weeks at SMP only, currently £138.18 per week
 - (iv) Any further period of maternity leave at no pay (up to a maximum of 13 weeks)
- 1.8 The Council's current parental leave provision entitles employees who are the partner or nominated carer of an expectant mother, (or who are the spouse, partner or civil partner of the primary adopter of a child), to two weeks of leave, one at full pay and the second week at Statutory Paternity Pay (depending on their service).
- 1.9 The Equality Act 2010 provides protection from discrimination for people on the grounds of pregnancy and maternity. The Highland Council is committed, through our Equal Opportunities policies, to eliminate discrimination and promote equality in the workplace.

2. Entitlement

- 2.1 Mothers and partners of mothers of babies due on or after 5 April 2015 are entitled to statutory shared parental leave and pay if they meet certain eligibility requirements.
- 2.2 Shared Parental Leave enables eligible parents to choose how to share time off work to care for their child during the first year of birth or adoption. For example, a mother could end her maternity leave after 12 weeks, leaving 40 weeks (of the total 52 week entitlement) available for Shared Parental Leave. If both the mother and her partner are eligible, they can share the 40 weeks. They can take the leave at the same time or separately.
- 2.3 Guidance for the provision of Shared Parental Leave, including details on eligibility, has been prepared in line with the new legislation.

3. Shared Parental Leave Pay

- 3.1 One of the key factors for employees making the decision to take Shared Parental Leave will be whether their employer decides to enhance shared parental pay to the same level as Occupational Maternity Pay. A survey by Personnel Today in July 2014 found that the majority of organisations (75%), that offer occupational maternity pay, will also provide the same level of

payments to parents taking shared parental leave.

- 3.2 It is not clear yet what decisions will be made by other Scottish Local Authorities but the Society of Personnel & Development Scotland (SPDS) has produced template documentation that assumes the provision of statutory payments.
- 3.3 The UK Government's impact assessment on the introduction of the new legislation estimated that the cost to business would be around £17 million, and that for many employers it would be cost-neutral because the number of women coming back early would balance out the number of partners taking leave and accessing pay.
- 3.4 There are two options available relating to the provision of pay:
- Option 1** – the provision of Statutory Shared Parental Pay (equal to Statutory Maternity Pay)
- Option 2** – the provision of Occupational Shared Parental Pay (equal to Occupational Maternity Pay)
- 3.5 Should the Council agree to make provision based on **option 1** (Statutory Shared Parental Pay) there is a risk that it will deter employees from taking advantage of the new shared parental leave regime until any enhanced maternity pay has been exhausted. It is likely that **option 1** would be cost neutral with a low uptake by employees. There is a risk that partners, taking Shared Parental Leave, who are not able to benefit from the equivalent of Occupational Maternity Pay may claim direct and/or indirect sex discrimination. The Council would have defences against such a claim but these would require to be tested.
- 3.6 Should the Council agree to make provision based on **option 2** (Occupational Shared Parental Pay) there is a higher likelihood that employees will take up the benefit offered by the better provision. This option better supports the aims of the legislation and the Council's commitments as an equal opportunities employer. There is likely to be an additional cost associated with the provision under **option 2** (Occupational Shared Parental Leave).
- 3.7 It is difficult to accurately model the costs of the two options. **Option 1** would deliver a net saving where both the mother and the partner are employees of the Council. This is because the provision of Statutory Shared Parental Leave is less costly than the provision of Occupational Maternity Leave. Where the mother is the employee of another organisation, and the partner is the employee of the Council, the only additional cost would be the 8% of Statutory Shared Parental Pay that cannot be recovered. (92% of statutory payments can be recovered by employers).
- 3.8 The provision of **option 2** would incur an additional cost. Where the mother and the partner are both employees of the Council the additional cost would be the difference between male and female average earnings. Male employees

currently earn on average 8.6% more than female employees. Based on 2014/15 figures this would equate to an average additional cost of £175 for every occasion that the provision was taken up.

- 3.9 Where the mother is the employee of another organisation, and the partner is the employee of the Council, the additional cost would be equal to the cost of providing Occupational Shared Parental pay to an employee who would not have previously benefited from any payment. Based on 2014/15 figures this would equate to an average additional cost of £2,036 for every occasion that the provision was taken up.
- 3.10 The UK Government has forecast that uptake of Shared Parental Leave would be up to 6%. Based on 2014/15 figures, (where 291 female Council employees received Occupational Maternity Payments), uptake by partners who are employees of Highland Council is forecast at 18 per year. Based on analysis of the Highland working population as a whole it is forecast that a further 12 employees would take up Shared Parental Leave, (where the mother was an employee of another organisation).
- 3.11 Based on an uptake of 6%, average male and female salaries and 2014/15 birthrates it is forecast that the additional cost of providing **option 2** (Occupational Shared Parental Leave) would be approximately £28,000.

4. Conclusion

4.1 Shared Parental Leave legislation has been introduced with the aim of:

- Giving parents more choice and flexibility in how they care for their child in the first year by increasing the share of leave partners can take, thus enabling both parents to retain a strong link with the labour market
- Encouraging more partners to play a greater caring role (pre-birth and in the first year) via a right to attend antenatal appointments and longer, more flexible shared leave
- Increase flexibility for employers and employees to reach agreement on how best to balance work and domestic needs without state interference. In addition it demonstrated the Council's ongoing commitment as an Equal Opportunities Employer.

The provision of Occupational Shared Parental Pay, in line with Occupational Maternity Pay (option 2) would best support the realisation of these benefits.

5. Implications

5.1 Resource implications: Resource implications arising from this report are analysed in section 3.

Legal implications: There is a risk that the Council would fail in its statutory and contractual responsibilities by failing to progress this work.

Equalities implications: An Equality Impact Assessment Screening has been carried out. The provision of Share Parental Leave will benefit female employees and their partners.

Climate change/carbon clever implications: There are no climate change/carbon clever implications arising from this paper.

Risk implications: There is a risk that the Council would fail in its statutory and contractual responsibilities by failing to progress this work.

Gaelic implications: There are no Gaelic implications arising from this report.

Rural implications: There are no rural implications arising from this report.

6. Recommendations:

Members are asked to:

- 6.1 Approve the provision of Shared Parental Leave as set out in the report.
- 6.2 Approve the payment of Occupational Shared Parental Pay as detailed in section 3.

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