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|  **THE SCHOOL AT THE HEART OF WALES** |  |



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| **Date adopted** | **June 2022** |
| **Signature of Headteacher** |  |
| **Signature of chair of governors** |  |
| **Review Date**  | **June 2024** |

**CYNGOR SIR *POWYS* COUNTY COUNCIL**

**Supporting Working Parents Policy**

**(For All Teachers)**

**Guiding you through Maternity, Paternity, Parental and Adoption Leave**

# Ysgol Calon Cymru Adopted on: 17th July 2018

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**Cyngor Sir *Powys* County Council**

**Supporting Working Parents**

## (Maternity, Paternity, Parental & Adoption Leave)

**Policy & Procedure**

**(For All Teachers)**

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**Cyngor Sir *Powys* County Council**

**Supporting Working Parents**

### (Maternity, Paternity, and Parental Leave) Policy & Procedure for All Teachers

#### 1.0 Introduction

1.1 This policy explains the entitlements to maternity, paternity, and parental leave. Employees are advised to ensure that they have read this policy prior to commencing such leave, and as necessary, to contact their Headteacher or Human Resources (HR) Advisor, for any further advice and clarification required. ***Further details about how to access external information resources and advice are also provided at the end of this document.***

1.2 This policy applies in cases of births due on or after 1st April 2007 and takes into account the statutory

rights as set out in the Work and Families Act 2006 and the Sex Discrimination Act 1975 amended in 2008. The Sex Discrimination Act was amended during 2008 so that it makes no distinction between ordinary maternity leave (OML) and additional maternity leave (AML).The key change is that the rights and obligations of employees during AML will be consistent with the rights and obligations of employees on OML. The main practical effect of this is that terms and conditions enjoyed by employees on OML will continue to be available during AML.

Currently, employees on OML benefit from the terms and conditions that would have applied to them had they been at work, with the exception of remuneration, i.e. wages or salary. With the introduction of the new regulations, these benefits will continue during AML.

1.3 This policy will affect:

 In the case of maternity, an employee whose expected week of childbirth begins on or after 5 October 2008

#### 2.0 Definitions of Terms

2.1 The leave and pay arrangements described within this policy refer to a number of abbreviations and terms. These terms are those used within the statutory framework concerning parental rights which all employers follow and therefore this terminology is required. The most common ones are described below:

|  |  |
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| **WBD**  | Week Baby is Due. This used to be called the Expected Week of Childbirth. It is the date during the week (commencing on Sunday) given by a Registered Medical Practitioner/Registered Midwife which indicates when the baby is expected, or when an adoption agency indicates when the child is to be placed in cases of adoption.  |
| **15th Week/ Qualifying** **Week (QW)**  | This is the 15th week *before* the WBD and influences eligibility to pay and leave under this policy.  |
| **OML**  | Ordinary Maternity Leave – the core period which covers the first 39 weeks of maternity/adoption leave, during which full terms and conditions of employment apply except those relating to remuneration. The right to remuneration is replaced by the right to receive the appropriate level of Maternity Pay.  |
| **AML**  | Additional Maternity Leave – an extended period of unpaid leave of up to 13 weeks that starts immediately upon expiry of OML.   |
| **MATB1**  | The name of the Maternity Certificate given by a Registered Medical Practitioner/Registered Midwife during pregnancy, indicating the WBD.  |
| **OMP**  | Occupational Maternity Pay. The element of pay that the Council makes provision for. It is subject to at least 1 year’s continuous service in local government at the 11th week before the WBD.   |
| **SMP/SAP**  | Statutory Maternity/Adoption Pay.  |
| **Maternity Allowance**  | Maternity Allowance may be available to help you take time off to have your baby. You must not be entitled to Statutory Maternity Pay from any employer. You must also have been a registered self-employed person or have been employed in at least 26 weeks out of the 66 week period running into the week before the week your baby is due. You should claim as soon as you can after you have been pregnant for 26 weeks. If you delay, you may lose benefit. There are a number of conditions that you need to meet in order to claim maternity benefit.   |

#### 3.0 Eligibility for Maternity Leave

3.1 Employees who have more than 1 year’s continuous Local Government service at the 11th week before the WBD are eligible for SMP and OMP (Occupational Maternity Pay).

3.2 In addition, by the time the employee has reached the Qualifying Week (approximately 25 weeks into pregnancy), she must inform her Headteacher and the Employment Services Section within HR:

* that she is pregnant;
* the date of the Week Baby is Due (WBD), and provide the Maternity Certificate (form MATB1) from a registered medical practitioner or registered midwife stating the WBD date;
* the date she intends to commence maternity leave (which must be no earlier than the 11th week before the WBD);

* 1. An employee may change the date they wish to start their leave, by notifying the Headteacher and the Local Authority at least 21 days beforehand, unless this is not reasonably practicable. The employee should not contact Employment Services regarding their return to work. All notifications to Employment Services shall be made via Headteachers.

* 1. The right to maternity **leave** has no continuous service requirements and employees are entitled to take 39 weeks of Ordinary Maternity Leave (OML) and up to 13 weeks of Additional Maternity Leave (AML). They will not be entitled to occupational or statutory maternity pay.

#### 4.0 Maternity Leave and Pay Entitlement

4.1 Maternity Pay is normally paid as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| **Continuous service with LEA by the end of the 15th week** **before WBD**  | **Continuous service with one or more LEAs at the start of the 11th week before WBD**  | **Maternity Pay Entitlement**  **SMP**  Statutory Maternity Pay **OMP** – Ordinary Maternity Pay**MA** Maternity Allowance | **Maternity Leave Entitlement**  |
| Less than 1 year but at least 26 weeks before the Qualifying  | At least 1 year  | 39 weeks occupational and statutory pay as follows: 4 weeks @ full pay inclusive of SMP 2 weeks @ 90% of week’s salary inclusive of SMP  | 26 weeks Ordinary Maternity Leave *plus* 26 weeks Additional Maternity Leave   |
| Week (QW)  |  | 12 weeks @ half pay plus SMP 21 weeks @ SMP   |  |
| Less than 26 weeks before the QW   | At least 1 year  | 39 weeks occupational and statutory pay as follows: 4 weeks @ full pay inclusive of MA if eligible 2 weeks @ 90% of week’s salary inclusive of MA if eligible 12 weeks @ half pay plus MA if eligible 21 weeks @ MA if eligible No entitlement to SMP   | 26 weeks Ordinary Maternity Leave *plus* 26 weeks Additional Maternity Leave   |
| At least 26 weeks  | Less than 1 year  | 39 weeks statutory pay as follows: 6 weeks @ SMP equal to 90% of weekly salary 33 weeks @ SMP No entitlement to occupational pay   | 26 weeks Ordinary Maternity Leave *plus* 26 weeks Additional Maternity Leave   |
| Less than 26 weeks  | Less than 1 year  | No occupational pay No SMP MA if eligible   | 26 weeks Ordinary Maternity Leave *plus* 26 weeks Additional Maternity Leave   |

4.2Maternity Paywill be calculated using the average weekly earnings rules used for calculating Statutory Maternity Pay entitlements, subject to the following qualifications:

1. In the event of a pay award or annual increment being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or annual increment had effect throughout the entire Statutory Maternity Pay calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;

1. In the event of a pay award or annual increment being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or annual increment should be increased accordingly. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;

1. in the case of an employee on unpaid sickness absence or on sickness absence attracting half pay during the whole or part of the period used for calculating average weekly earnings in accordance with the earnings rules for Statutory Maternity Pay purposes, average weekly earnings for that period shall be calculated on the basis of sick pay.

* 1. Employees may begin maternity leave at any time between eleven weeks before the Week Baby is Due and the actual Week Baby is Due. Unless exceptional circumstances prevail, the required notice should be given (see Eligibility, Section 4 above).

* 1. Employees who qualify for OMP may opt to have these payments spread over a longer time period, or have the OMP amount paid to them in full on return to work. Any such payments must be agreed between the employee, the Headteacher and the Local Authority.

* 1. An employee who states their intention to return to work and then does not do so, or returns for a period of less than 13 weeks after their maternity leave shall, in normal circumstances, refund the 12 weeks of half occupational maternity pay.
	2. Employees who do not satisfy the conditions for SMP (e.g., continuous employment with the Local Authority for at least 26 weeks by the time they reach the 15th week before the Week Baby is Due), are advised to seek advice from Job Centre Plus regarding Maternity Allowance.

#### 5.0 Confirming Maternity Leave and Pay

5.1 Employment Services will write to the employee to confirm the following:

* The level of paid and unpaid leave entitlements;

* Unless an earlier return date has been given, confirmation of the expected return date based on 52 weeks paid and unpaid leave entitlement;

* The length of any period of accrued annual leave which it has been agreed may be taken either side of the maternity leave period; and

* The requirement for the employee to give at least 21 days notice if they wish to return to work before the expected return date.

#### 6.0 Keeping in Touch

6.1 Before going on leave, the Headteacher and the employee should also discuss and agree any arrangements for keeping in touch during maternity leave including:

* any arrangements (in person or by correspondence) that may be helpful to help keep in touch with developments at work and, nearer the time of return, to help facilitate a return to work;
* keeping the headteacher in touch with any developments that may affect the employee’s intended date of return.

* 1. This may be achieved by taking up to 10 ‘Keeping in Touch’ (KIT) days which may be taken by mutual agreement. These days are optional and may be taken to attend particular events such as training days or team meetings, or to assist with a phased return to work at the end of maternity leave, and shall be paid at the normal pay rate.

* 1. Any work that is done by an employee as a Keeping in Touch (KIT) day, even if it is as little as half an hour, counts as a whole KIT day. KIT days may be taken as single days, in blocks, or all at once.

#### 7.0 Returning To Work

7.1 If the employee intends to return to work at the end of their full maternity leave they will not be required to give any further notification to their Headteacher, although if they wish to return early they must give at least 21 days’ notice (Section 5 paragraph 7.1, Burgundy Book). The employee should contact the Headteacher on all occasions relating to their return to work. The employee has the right to return to their job under the original contract and on no less favourable terms and conditions. The Local Authoritywill ensure that due consultation takes place in instances of organisational change where redundancies or restructuring occurs.

7.2 There are certain obligations placed on the Headteachers and the Local Authorityconcerning care for new mothers returning to work. These obligations include the provision of a safe working environment taking into consideration the needs of the new mother, and the provision of suitable rest facilities for workers who are breastfeeding for expressing milk. Staff will not be allowed to breastfeed whilst at work. Headteachers are referred to the Health and Safety information in Section 11.

7.3 An employee who has stated that they intend to return to work after their leave period but then does not return to work, or returns for less than a period of 13 weeks after their maternity/adoption leave shall, in

normal circumstances, refund the 12 weeks of half occupational maternity pay. However, consideration will be given to individual circumstances such as where this will cause considerable hardship and should be referred to Human Resources. Returning to work with the Local Authorityis not a pre-requisite to receiving SMP.

#### 8.0 Returning on Flexible Working Arrangements

8.1 If, at the end of maternity leave, an employee wishes to return to work with a different working pattern, the Governing Body, in consultation with the school’s HR Adviser, will consider this as far as is reasonably practicable. If this is not possible the school and/or Local Authority must provide written, objectively justifiable reasons for this and the employee will return to the same job and working pattern as was held prior to taking maternity leave.

8.2 The Local Authority’s ***Access to Flexible Working Policy*** sets out the flexible working options that are available to employees, describes the legal rights for working parents, the Local Authority’s obligations towards employees, and explains the procedure for making a formal request for flexible working. Employees should refer to this policy before considering making a request for flexible working.

#### 9.0 Sickness following the end of Maternity Leave

9.1 In the event of illness following the date the employee was due to return to work, normal sick leave provisions will apply.

9.2 The school and the Local Authority will, however, be sensitive to the needs of new parents and provide reasonable support including access to the Occupational Health Service for those experiencing postnatal conditions and symptoms such as post-natal depression.

#### 10.0 Further Information for Pregnant Employees

##### 10.1 Sickness Prior to Childbirth

If an employee takes sick leave due to a pregnancy related illness during the last four weeks before the Week Baby is Due (WBD), maternity leave will commence on the day after the first full day of sickness absence. Absence prior to the last four weeks before the WBD, supported by a Doctor’s Note, or a selfcertificate, shall be treated as sick leave in accordance with normal sick leave provisions.

##### 10.2 Premature Birth

If the baby is born alive before expected but nevertheless after the maternity leave has started, leave and pay continues as agreed.

If the baby is born before maternity leave has commenced but after the 15th Week before WBD, maternity leave and pay commences the day after the birth.

Where the baby is born before the 15th week before the WBD, maternity leave and pay commences as above. Maternity Pay is based on the average earnings over the 8 weeks ending on the Saturday before the birth.

##### 10.3 Still Birth

Where the baby is still-born after the 24th week of pregnancy the employee will be entitled to the same amount of maternity leave and pay as if the baby had been born alive.

##### 10.4 Miscarriage

In cases of miscarriage before the 24th week of pregnancy, the usual sick leave provisions will apply, and support will be offered to the employee by way of access to the Occupational Health Service.

#### 11.0 Health and Safety for Employees Pre and Post Birth

11.1 Where an employee is pregnant, has recently given birth or is breast feeding, the Headteacher should carry out a risk assessment of the employee’s working conditions. Health & Safety legislation requires employers to carry out a specific risk assessment where women of child-bearing age or new or expectant mothers may be at risk from a work process, working condition or physical, biological or chemical agent.

11.2 In the best interests of the expectant employee, action will be taken in instances of Rubella (German Measles), which could include transferring the employee to another work location. Where risks are identified, employees will not be obliged to continue that work. Every effort will be made to alter the working conditions for that person wherever possible.

11.3 If it is found, or a medical practitioner considers, that the employee or their child would be at risk if the employee were to continue with their normal duties, the Headteacher should provide suitable alternative work for which they will receive their normal rate of pay. Where it is not reasonable to offer suitable alternative work the employee should be offered “*gardening leave*” on full pay for as long as the risk exists to safeguard their well-being. Where the “*gardening leave*” continues to the start of the 4th week before the Week Baby is Due, maternity leave will automatically begin.

11.4 In all cases, guidance and advice is available from Occupational Health & Safety and Human Resources.

#### 12.0 Additional Provisions

Where any changes in roles, management of change issues, consultation events, promotion opportunities occur within a school, all employees, including those on maternity/adoption/parental leave must be notified of those changes and invited to attend any organised event relating to those changes.

##### 12.1 Contractual rights

During maternity leave employees retain all of their contractual rights except remuneration. This is replaced by maternity pay (subject to eligibility).

##### 12.2 Increments

Maternity leave, whether paid or unpaid, shall count as service for annual increments and for the purposes of any service qualification period for additional annual leave.

##### 12.3 Pensions

Pension rights and contributions shall be dealt with in accordance with the provisions of the Teachers Pension Scheme. Employees are advised to seek advice from the Local Authority’s Pensions Service regarding pension contributions during maternity leave.

##### 12.4 Antenatal Care

Pregnant employees have the right to paid time off for antenatal care. Antenatal care may include relaxation and parent-craft classes as well as appointments for antenatal care.

##### 12.5 Post-natal Care and Breastfeeding Mothers

Women who have recently given birth should have paid time off for post-natal care e.g. attendance at health clinics.

The Health and Safety Executive encourages employers to provide a healthy and safe environment for women who are breast-feeding with suitable access to a private room to express and store milk. The headteacher and the employee should discuss individual needs and arrange for adequate facilities to be made available. Advice and guidance is available from the Occupational Health & Safety Service and Human Resources.

#### 13.0 Paternity (Partner) Leave and Pay/Maternity Support Leave

13.1 This will apply to employees who are biological and adoptive fathers and same sex partners who are fully involved in the upbringing of the child and are taking this time off to support their partner taking maternity leave and the new child. They must have been in employment with the school/ Local Authority for at least 26 weeks before the 15th week before the Week Baby is Due and have informed the school/ Local Authority of their intention to take the leave by this date as far as is reasonably practicable.

13.2 The entitlement is to two weeks’ paternity leave with the first week paid at full pay and the second week at Statutory Paternity Pay. Only one period of Paternity Leave is available when there is a multiple birth.

13.3 Leave may be taken in a continuous block of either one or two weeks, as agreed between the employee and their Headteacher. The leave must be taken within 56 days of the birth.

13.4 Employees should apply for Paternity (Partner) Leave by using the application form provided in Appendix 1, at least 28 days before they want the leave to start, unless there are exceptional circumstances.

13.5 Reasonable paid time off for attending ante natal classes with the partner taking maternity leave should also be granted.

13.6 For employees who do not meet the eligibility criteria for Paternity (Partner) Leave (described in paragraph 14.1 above), but are in a position of providing sole support to a new parent at or around the time of birth, Maternity Support Leave may be available. This leave may only be granted when there is **no other** Council employee taking Paternity (Partner) leave in relation to the same child. Maternity support leave may be granted for a period of 1 week with pay. Leave must be taken in one block within 56 days of the birth.

13.7 It is a prerequisite of Maternity Support Leave being considered that the employee nominates the person who will be taking the leave, and declares that no other Council employee will be taking Paternity/ (Partner) Leave in connection with that birth/adoption. The nominated employee requesting to take Maternity Support Leave will be required to provide a copy of the MATB1 form.

#### 14.0 Leave for Foster Parents

14.1 As a provider of Social Services, Powys County Council recognises the need to encourage and support employees whose assessment for suitability to become foster parents is being undertaken by a Local Authority.

14.2 Employees should be aware, however, that although there is currently no statutory provision to support potential foster parents with paid time off, in cases where employees decide to become foster parents

and are undergoing the approval process, reasonable time off should be granted to attend meetings and training in the same way that expectant parents have access to ante natal appointments.

14.3 Employees who are potential foster parents should also be encouraged to consult the Access to Flexible Working Policy for guidance on the range of flexible working options available that will support the achievement of a more satisfactory work-life balance if required.

#### 15.0 Parental Leave

Working parents – mothers and fathers and adoptive parents – have a statutory right to take up to 13 weeks of unpaid leave during their child's first five years, or up to the age of 18 if the child has a disability.

Powys County Council extends this age limit for a further 12 months, up to the child’s 6th birthday. Leave must be taken in blocks of 1 week at a time. Parental leave gives another option for working parents needing time off to spend with their child/ren and further guidance on other flexible working arrangements that may be considered are contained in the Access to Flexible Working Policy.

#### 16.0 Adoption

16.1 Employees are entitled to the same provisions as laid out in the maternity provisions which are detailed in this policy. Entitlements to adoption leave are applicable for a newly-matched child (up to the age of 18 years) placed with adoptive parents. A parent who is not the main carer of the adopted child may qualify to take up to two weeks paid Paternity (Partner) Leave (See Section 15). Where the term maternity is used in this document, adoption also relates.

16.2 Paid Leave should be granted to allow new adopters to fulfill the requirements of the formal adoption procedure e.g. counseling, screening, interviews, meeting the child, etc and also at the time when the child comes under the full-time care of the adoptive parent. Adopting parents are required to complete the form at Appendix 1 and attach supporting documentation from the adoption agency that confirms the placement of the child.

16.3 An adopter is a person who has been matched with a child for adoption. In the case where two people have been matched jointly, the adopter is whichever has opted to be the child’s adopter for the purpose of taking statutory adoption leave. The other partner may qualify to take Paternity (Partner) Leave (See Section 15)

16.4 Adoption leave is not available in cases where a child is not newly matched for adoption, such as where a step-parent is adopting a partner’s child/ren.

16.5 Where pregnant employees have the right to paid time off for antenatal care time off for prospective adoptive parents is available for meetings with authorities prior to the adoption.

#### 17. Other Sources of Information for Working Parents

* Information about **maternity and parental rights** is contained in the following Department of Trade and Industry (DTI) booklet:-

*Pregnancy and Work: What you need to know as an employee*.

Copies of this booklet can be obtained by telephoning 0870 1502 500. It is also available from the DTI website at:

<http://www.dti.gov.uk/employment/workandfamilies>

* The DTI website will also provides a link to TIGER, an on-line interactive service which provides assistance to both employees and employers with **calculating maternity and paternity leave entitlements.**

* Information on **Statutory Maternity Pay and Maternity Allowance** entitlements is contained in the following Department for Work and Pensions (DWP) booklet:

A Guide to Maternity Benefits (NI17A)

Copies of this booklet can be obtained from:

<http://www.dwp.gov.uk/advisers/ni17a>

* Information and guidance on **Maternity Allowance** is available from JobCentre Plus on 0800 0556688.

* Further information for **new and expectant mothers at work** is available on the health and Safety Executive website at:

 [www.hse.gov.uk/mothers/index.htm](http://www.hse.gov.uk/mothers/index.htm)

* For a comprehensive resource on everything to do with **work-life balance**, visit:

 [http://www.workingfamilies.org.uk](http://www.workingfamilies.org.uk/) .

* ACAS (Advisory, Conciliation and Arbitration Service) provides advice to individuals and employers on a range of **employment matters** via its helpline on 08457 474747 or visit:

 [www.acas.gov.uk](http://www.acas.gov.uk/)

* The Local Government Employers (LGE) – for information relating to teacher’s terms and conditions on **Phone:** 020 7187 7373

www.lge.gov.uk

* The Local Authority’s Access to **Flexible Working Policy** is available by visiting the Human Resources Intranet site, or by contacting Human Resources.

**APPENDIX 1**

### APPLICATION FOR PATERNITY LEAVE & PAY

#### *Employee Details*

|  |
| --- |
|    |

Surname

|  |
| --- |
|    |

First Name

|  |
| --- |
|         |

Address

|  |
| --- |
|   |

Employee

Number

|  |
| --- |
|   |

Job Title

|  |
| --- |
|   |

Name of

Headteacher

#### *Your Dates for Pay and Leave*

|  |
| --- |
|  |

Date baby due

|  |
| --- |
|  |

Date you would like paternity leave to start

### Continued Overleaf

#### *Your Declaration*

**You must be able to tick all of the following boxes to receive paternity pay/leave:**

##### I declare that I am

* The baby’s biological or adoptive father *or*

Married to the mother *or*

Living with the mother in an enduring family relationship but am not an immediate relative

* I have responsibility for the child’s upbringing

|  |
| --- |
|  |

Signature/Date

#### *Confirmation of receipt of this form/Approval of Leave*

**Headteacher:**

|  |
| --- |
|  |

Name

|  |
| --- |
|  |

Service Area

|  |
| --- |
|  |

Signature/Date

#### *Please return this form to Employment Services along with confirmation of the expected Week Baby is Due (Copy of MatB1)*

FREQUENTLY ASKED QUESTIONS **Appendix 2**

Are supply teachers entitled to occupational maternity pay?

Not normally. Supply teachers are only entitled to statutory maternity pay as they are not able to fulfill the obligation to return to their job (see Burgundy Book definitions in paragraphs 1.1 (a) & 1.2 of Section 2).

Can a teacher commence her maternity leave at any time, including during a period of school closure? Yes, subject to the automatic trigger in the case of the birth of the child and pregnancy-related sickness absence. It is the teacher who determines when she wants to commence maternity leave, to suit her own wishes.

Can a teacher continue to move up the upper pay spine when they have been off on maternity leave? Movement on the upper scale usually depends on two successful performance reviews. If someone is on maternity leave, there may not be sufficient evidence over 2 years to determine this. It would then be necessary to reach a judgement as to whether the teacher has met their performance targets. If a teacher is absent for 2 terms out of 6 then it is likely that a judgement could be made that she had met her performance objectives. However if a teacher is absent for 5 terms out of 6 then it is not likely that there would be enough evidence to say that the teacher had met their objectives. It may not be possible to complete performance management reviews within two consecutive years and the governing body may not have any reviewer’s recommendation to consider. Governing bodies should therefore decide whether teachers meet the statutory criteria by reference to such information as is available. This might include information from one completed performance management review or information from any part of the two year period when the teacher was present. Failure to consider progression in this way could clearly constitute less favourable treatment on the basis of gender or disability and leave the governing body open to complaints of unlawful direct discrimination. The most a teacher will be on maternity leave in a year so the head teacher should use one year’s worth of evidence.

Do teachers need to give 8 weeks, 28 days or 21 days notice of return to work following maternity?

Under the Work and Families Act 2006 the statutory notice period for early return from leave was extended from

28 days to 8 weeks. Under the Burgundy Book however a teacher only has to give 21 days' notice (see paragraph 7.1of Section 5). This contractual entitlement over-rides the statutory requirement to give 8 weeks' notice.

Do teachers on maternity leave accrue a right to paid annual leave under the Working Time Directive?

All teachers have a statutory right to 24 days leave under the Working Time Regulations. As a result of case law in Gomez, a teacher must be able to take her annual leave at a time separate to her maternity leave. Very often the 24 days entitlement will have been met during school closure periods either before or after her period of maternity leave.

If a teacher decides not to return to her job, does she need to repay her entitlement to occupational maternity pay?

Yes, if a teacher does not return to her original post for 13 weeks after maternity leave, she will be required to repay the 12 weeks of half occupational maternity pay. If she knows that she intends to leave she can elect not to receive this payment. It is also at the authority's discretion whether they reclaim some or all of these payments.

What is the current occupational maternity entitlement?

It has not been possible to reach agreement with the Trade Unions in respect of maternity and other conditions of service issues and therefore the Burgundy Book has not yet been updated (since 2000). However authorities will need to take account of statutory changes to maternity entitlements. The current maternity entitlements are set out in Education Employers' Bulletin (EEB No.503) dated 20 March 2007 and accompanying appendix. These are:

Teachers with one year’s continuous service with one or more local authorities at the 11th week before the EWC will receive 18 weeks Occupational Maternity Pay (OMP), as follows:

* 4 weeks at full pay (SMP offset)
* 2 weeks at 9/10ths of a week’s pay (SMP offset)
* 12 weeks at half pay (+ SMP)

This will be followed by 21 weeks Statutory Maternity Pay (SMP). The remaining 13 weeks leave are unpaid. The 12 weeks of half occupational maternity pay is only payable on condition that the teacher returns to work for at least 13 weeks (see section 5 of the Burgundy Book).

What are the paternity provisions for teachers?

Paternity leave is not referred to in the Burgundy Book. However the teacher may be entitled to statutory paternity leave and pay, in which case they can choose to take one or two weeks' consecutive paid leave, the first week paid at full pay and the second at Statutory Paternity Pay rate. Please see the attached link for further information. <http://www.direct.gov.uk/en/Employment/Employees/WorkAndFamilies/DG_10029398>

When does SMP start?

The earliest date that maternity leave and, consequently, SMP can start is from the 11th week before the week the baby is due (unless the baby is born before this); the latest date is the day following the birth. If a teacher continues to work after the 11th week before the week her baby is due, she can choose when she wants her SMP and maternity leave to start. However, maternity leave will automatically be triggered by any pregnancyrelated absence from the 4th week before the baby is due. Leave and pay will both start on the day following the first day of absence.

Who is responsible for paying occupational maternity pay and SMP if a teacher changes jobs at the end of her maternity leave and returns to a different authority?

If the teacher does not return to her original job then the previous employer is not responsible for continuing to pay her SMP from the date she starts carrying out work for her new employer. She will no longer be entitled to the 12 weeks half occupational maternity pay as she is not returning to her original post as specified in the Burgundy Book. The original authority may at their discretion ask for occupational payments made to be returned.

What is meant by the term “gardening leave”?

Garden leave or gardening leave is a period whereby an employee continues to receive their normal salary to serve out a period of time at home – or “in the garden”.