Maternity Leave Policy
For all pregnant employees whose expected week of childbirth is 3rd April 2011 and after.

for school based support staff

Adopted By: Name of School.................................

Date: ..........................................................................

Human Resources
 Revised: 22.03.11
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Maternity Scheme Provisions

1.0 Introduction

Following the introduction of the Maternity and Parental Leave legislation and the Paternity and Adoption Leave (Amendment) Regulations 2006, then the updated Maternity legislation in April 2007 and April 2011 this policy has been developed to clarify the Maternity requirements.

2.0 Scope and Aim

All pregnant employees whose expected week of childbirth (EWC) is 1st April 2007 or after will be entitled to receive benefits in accordance with the scheme below.

To give Head Teachers and Teachers clear guidance on procedures and legal requirements prior to, during and following maternity leave.

3.0 Maternity Leave Entitlements

Maternity leave can start no earlier than 11 weeks before the Expected Week of Childbirth (EWC), i.e. the week that the baby is due to be born, or the date of childbirth if that is earlier. The latest date that maternity leave can commence is the day of childbirth itself.

If an employee has a stillbirth or termination after the start of the 24th week of pregnancy, they have the same rights to leave, pay and protection from discrimination or dismissal as if the baby had been born alive.

If an employee has a miscarriage or termination before the 24th week of pregnancy, there is no right to maternity leave or pay. However, normal sickness procedures will apply.

If the baby is born alive but dies soon afterwards, this will be classified as a live birth irrespective of how long the baby lives, and the employee will have the same rights to leave pay and protection from discrimination or dismissal as if the baby had lived.

All employees who are eligible for maternity leave, as detailed above, are entitled to 52 weeks maternity leave, irrespective of length of service. This will be made up of 26 weeks ordinary maternity leave and 26 weeks additional maternity leave.

Whilst on maternity leave employees must not undertake any paid work including work for the council on a supply/casual basis other than keeping in touch days (9.0).
4.0 **Sickness during Maternity Leave**

Maternity leave will be triggered automatically if the employee is absent from work "wholly or partly because of the pregnancy or childbirth" after the beginning of the 4th week before the EWC.

**Note:** Pregnancy Related Illness – Please contact Human Resources for further advice on whether an illness is to be regarded as pregnancy related or not, as this is used to determine whether maternity leave should automatically be triggered after the 4th week before the EWC.

Head Teachers are advised to contact the employee to clarify her position and to advise her to obtain a medical certificate where appropriate. In the case of a dispute occurring, please contact Human Resources who will seek clarification from the Council’s Occupational Health Consultant.

5.0 **Compulsory Maternity Leave**

No employee may return to work;

- within two weeks of the date of childbirth, or
- until a later date if there are other statutory requirements which stop the employee from working due to the fact that she has just given birth.

6.0 **Notification Procedure**

To be eligible for the full range of benefits the employee must write to her Head Teacher by the 15th week prior to her EWC stating:

- the Expected Week of Childbirth (EWC) – this must be confirmed by the production of a certificate from a Registered Medical Practitioner or a Certified Midwife. (Form MATB1). This form is available when the employee is approximately 26 weeks pregnant.
- the date the employee wants her maternity leave to start.

The Head Teacher must respond to this notification within 28 days. This must be in writing setting out the date on which she is expected to return to work, should she have chosen to take her full entitlement of maternity leave.

The employee can change her mind about when she wants to start her leave providing she informs her Head Teacher at least 28 days in advance.

In order for the employee to qualify for the full range of benefits the Head Teacher should notify Employee Services/Payroll when the maternity leave is due to start (complete the SAP form MB_HR_005) and attach the Form MATB1 (received from the employee). If the employee does not intend returning to work after her maternity leave and has over one year’s service Employee
Services/Payroll should also be notified of this so that the **12 weeks occupational maternity pay at half pay is not paid.**

Although notification timescales are legislative it is asked that the employee informs the Head Teacher as soon as practicable to ensure enough time for the Head Teacher to consider staffing and other pupil related changes.

7.0 Maternity Pay

Entitlement to maternity payments is dependent on both length of **continuous service** (continuous service from other local authorities/governing bodies can be counted) and length of service with this Council/Governing Body. Therefore, when checking entitlements please refer to the appropriate section below.

7.1 Employees with less than one year’s continuous Local Government Service and less than 26 weeks service with Middlesbrough Council or the current Governing Body

An employee’s rights to Statutory Maternity Pay (SMP) are determined at the **15th week** (Qualifying Week) before the Expected Week of Childbirth (EWC). Therefore if the employee has **less than 26 weeks** service with Middlesbrough Council or their current Governing Body at that point there will be **no entitlement** to statutory or occupational maternity pay. However, employees may qualify for Maternity Allowance at the same rate as SMP from Jobcentre Plus. To claim, employees need to complete form MA1, which is available from antenatal clinics, Jobcentre Plus offices, or online at www.jobcentreplus.gov.uk.

7.2 Employees with less than one year’s continuous Local Government Service and more than 26 weeks service with Middlesbrough Council or their current Governing Body

Employees’ rights to Statutory Maternity Pay (SMP) are determined at the **15th week** (Qualifying Week) before the Expected Week of Childbirth (EWC). It is a daily benefit and the benefit week can begin on any day.

SMP will be payable for **39 weeks**. However, the employee must:

- still be employed by the Council/Governing Body until immediately before the Qualifying Week:

- earn an amount equal to or above the lower earnings limit for National Insurance averaged over an eight week period:

- still be pregnant at the **11th week** before the EWC or already have given birth:

- have followed the necessary notification requirements:

- have stopped working:
If eligible for SMP employees are entitled to:

- 6 weeks at 90% of their average pay.
- 33 weeks at flat rate SMP (£128.73 per week with effect from 3 April 2011) (or 90% of earnings, whichever is lower)

Whilst receiving SMP, employees must not:

- be in legal custody at any time.

The Head Teacher must inform the employee before her maternity leave commences that if the above occurs it will result in SMP ceasing.

7.3 Employees with more than one year’s continuous Local Government Service and less than 26 weeks service with Middlesbrough Council or the current Governing Body.

There is no entitlement to Statutory Maternity Pay however the Occupational Maternity Scheme applies:

An employee’s rights to Occupational Maternity Pay (OMP) are determined at the 11th week (Qualifying Week) before the Expected Week of Childbirth (EWC). This is a weekly benefit that can be commenced on any day of the week.

If eligible for OMP employees are entitled to:

- 6 weeks at 90% of their average pay, which is calculated from the pay that the employee received in the 8 weeks prior to the last pay day before the 15th week (qualifying week)
- 12 weeks at 50% of a week's pay calculated as above.

Although the employee is not eligible for SMP she may be eligible for 21 weeks Maternity Allowance payable by Jobcentre Plus, making a total of 39 weeks.

If an employee does not intend returning to work she will not be entitled to 12 weeks half pay or any difference between the 6 weeks Occupational Maternity Pay and Statutory Maternity Pay.

All employees who are entitled to Occupational Maternity Pay should sign a form of undertaking (Appendix A). This form is numbered HR/SCH/5C, and can be found on the HR policies and procedures tile on lotus notes. This is to state that, in the event of the employee not returning to work for a period of at least 3 months, she will repay the non-statutory element of her maternity pay, i.e. the 12 weeks at half pay.
7.4 Employees with more than one year’s continuous Local Government service and more than 26 weeks service with Middlesbrough Council or their current Governing Body

The Occupational Maternity Scheme applies:

An employee’s rights to Occupational Maternity Pay (OMP) are determined at the 11th week (Qualifying Week) before the Expected Week of Childbirth (EWC). This is a weekly benefit that can be commenced on any day of the week.

An employee’s rights to Statutory Maternity Pay (SMP) are determined at the 15th week (qualifying week) before EWC, based on the amount of service and pay.

Employees are entitled to:
6 weeks at 90% of their average pay, which is calculated from the pay that the employee received in the 8 weeks prior to the last pay day before the 15th week (qualifying week) and
12 weeks at 50% of a weeks pay plus flat rate SMP (as long as it does not exceed full pay)

then either 21 weeks at lower rate SMP if the employee intends to return to work making a total of 39 weeks
or
33 weeks at the SMP rate if the employee is not intending to return to work (39 weeks in total).

If an employee does not intend returning to work she will not be entitled to 12 weeks half pay or any difference between the 6 weeks Occupational Maternity Pay and Statutory Maternity Pay.

For SMP to be payable for the full 39 week period, the employee must:

- still be employed by the Council or Governing Body until immediately before the Qualifying Week;
- earn an amount equal to or above the lower earnings limit for National Insurance averaged over an eight week period (if the employee earns less than that Maternity Allowance may be payable):
- still be pregnant at the 11th week before the ECW or already have given birth:
- have followed the necessary notification requirements:
- have stopped working:
Whilst receiving SMP employees must not:

- undertake any paid work including any work for the Council or the governing body, even casual work, other than “keeping in touch days” (see paragraph 9).

- be in legal custody at any time.

The Head Teacher must inform the employee before her maternity leave commences that if any of the above occurs it will result in SMP ceasing.

The amount of OMP paid is based on the pay detailed on the contract of employment in force during maternity leave. OMP will change if a pay award was implemented during the period.

### 7.5 Additional Paternity Leave

Under new regulations (Work and Families Act 2010) an employee who gives birth on or after 3rd April 2011 may transfer between a minimum of 2 and a maximum of 26 weeks of their Maternity Leave to their partner, to be taken as Additional Paternity Leave (APL). Taking of APL applies to the father of the child and partner or civil partner of the child’s mother and is subject to satisfying the required criteria.

Conditions of Additional Paternity Leave include:

- APL to be taken only once the mother of the child has returned to work
- The mother must have been entitled to Maternity Leave
- APL can commence from 20 weeks after the baby is born and must end by 12 months after birth
- Details of eligibility are provided to the employer of the person taking APL
- APL can be a minimum of 2 consecutive weeks and a maximum of 26 consecutive weeks
- The father/ partner/ civil partner must have been continuously employed by the same employer for at least 26 weeks by the 15th week before EWC
- The father/ partner/ civil partner shall still be in the same employment until the week before APL commences
- The person taking APL must have responsibility for the upbringing of the child and the purpose for taking leave is to care for the child
- Both parties to meet the evidential and notice requirements to transfer and take the APL

Further information can be found in the Paternity Leave Policy on the HR Policies and Procedures for Schools tile.

### 7.6 Additional Paternity Pay

If a father / partner / civil partner is eligible for Additional Paternity Leave they may also be entitled to Additional Statutory Paternity Pay (ASPP).
If eligible for ASPP, employees are entitled to:

*Flat rate ASPP of £128.73 (with effect from 03.04.11) or 90% of their average weekly pay, whichever is lower.*

In addition to meeting the criteria to take APL, further conditions of ASPP include:

- The mother of the child was entitled to Statutory Maternity Pay or Maternity Allowance
- The mother has returned to work
- ASPP can only be paid during the mother’s 39 week maternity pay period
- A father/partner/civil partner’s earnings to be above the lower earnings limit for National Insurance for 8 weeks before the qualifying week (15th week before EWC)
- Both parties to meet the evidential and notice requirements to transfer and be paid the ASPP

Further information can be found in the Paternity Leave Policy on the HR Policies and Procedures for Schools tile.

### 7.7 Procedure for an Employee requesting to transfer APL / ASPP

An employee who wishes to request to transfer part of her Maternity Leave to the father of the child/partner/civil partner must:

- Give the required notice of a return to work (see section 8 below) to the Head Teacher
- At least 8 weeks before the expected APL start date, the employee (mother of the child) must provide a written and signed declaration to the employer of the father/partner/civil partner
- The following detail must be included in the declaration:
  - Employee’s (mother of the child) name, address and National Insurance Number
  - Confirm notice has been given to the Head Teacher of a return to work and the date of return
  - Any entitlement to SMP or MA and the start date of the maternity pay period
  - Confirm that father/partner/civil partner is the sole applicant for APL/ASPP
  - Confirm that the father/partner/civil partner has responsibility for the upbringing of the child
  - Give consent to the father/partner/civil partner’s employer to process the declaration

Employees should be aware that the father/partner/civil partner may have to provide the child’s birth certificate and name and address of the Council/Governing Body to their employer. If so, this information should be requested by the partner’s employer within 28 days of receipt of the letter of declaration and should be provided by the mother within 28 days of request.
8.0 Returning To Work

An employee is **not** allowed to return to work from maternity leave **within 2 weeks of childbirth**.

An employee who returns to work after Ordinary Maternity Leave (up to 26 weeks) is entitled to return to the **same job on the same terms and conditions** as if she had not been absent, unless a redundancy situation has arisen.

An employee who returns to work after Additional Maternity Leave (more than 26 weeks) is also normally entitled to return to the same job on the same terms and conditions as if she had not been absent, unless a redundancy situation has arisen. However, if there is a reason other than redundancy which means that it is not reasonably practicable for her employer to take her back to the same job, she is entitled to be offered suitable alternative work.

Employees do not need to give advance notice if they are intending to return to work immediately after the period of Ordinary Maternity Leave plus Additional Maternity Leave (52 weeks). However, if an employee wishes to return to work **before the end of this period** she must inform her Head Teacher in writing at least 21 days before her intended return date.

If she fails to give the appropriate notice the Head Teacher may postpone her return for up to 21 days as long as this does not exceed the 52 week period.

If an employee does not fulfil her obligation to return to work at the end of her maternity leave on either a full or part time basis for a period of at least 3 months, she will be required to **refund** any non-statutory maternity pay that she may have received (i.e. the 12 weeks at half pay). If an employee returns to work on less hours than she worked before the start of her maternity leave she will not have to repay occupational maternity pay, as long as she works for at least 3 months from the date of her return.

If there are extenuating circumstances as to why she has not returned to work for the specified period, an amount less than 100% of the 12 weeks half pay may be recovered. In such a case, the Head Teacher should consult with Human Resources.

**Employees on temporary or fixed term contracts will only have statutory maternity rights for as long as they remain employees.** They therefore, do not have a right to return to work unless the end of the contract is a date following the end of the maternity leave period. However once an employee has qualified for SMP (i.e. by having 26 weeks service by the end of the 15th week before the EWC), she will be entitled to SMP if she subsequently resigns or is dismissed. Therefore a temporary or fixed term employee, whose employment comes to an end will lose their entitlement to occupational maternity pay but will retain the right to statutory maternity pay, if they had qualified for it.

**IN ALL CASES** Employee Services/Payroll must be notified of the employee’s return to work date. Head Teachers must complete the relevant Maternity Leave form (SAP HR005a) and forward to Employee Services/Payroll.
9.0 Keeping in Touch days

An employee on maternity leave may agree with her Head Teacher to carry out up to 10 days’ work, whether consecutive or not, without bringing the maternity leave period to an end. These days are known as “keeping in touch days”. Whatever period of time an employee works on a keeping in touch day it will be classed as a full day for the purposes of working a maximum of 10 however they will only be paid for the hours worked. Keeping in touch days cannot be taken in the two-week compulsory maternity leave period. Therefore for the purposes of this entitlement, any work carried out on any day shall constitute one day’s work.

Work in this context includes training or any other activity to assist the employee in keeping in touch with the workplace. Any days that are worked do not have the effect of extending the total duration of the leave period. Furthermore, Statutory Maternity Pay (SMP) is not affected and will continue to be paid.

Statutory maternity pay will continue to be paid for the week in which any ‘keeping in touch’ work is undertaken by the employee. Payment will be made for each hour the employee works, at the employee’s normal hourly rate of pay, in addition to any maternity pay received.

Such work may be carried out only following agreement between the Head Teacher and the employee. There is no right for the employer to provide 10 days’ work, or for an employee to do such work.

Employers are entitled to make "reasonable contact" with an employee while they are on maternity leave.

10.0 Pension Deductions During Maternity Leave

If employees are members of the Local Government Pension Scheme, (LGPS), pension contributions will automatically be deducted from both Occupational and Statutory maternity pay. Once maternity pay is exhausted, pension deductions will stop.

Employees do have the option on their return to work, to pay pension contributions for the duration of any unpaid maternity leave to ensure continuity of service in the Local Government Pension Scheme. Employee Services/Payroll will issue employees in the LGPS with a ‘Maternity Leave Option Form’. This form will give details of the cost of paying for any period of unpaid leave and will help the employee to decide whether or not to pay back pension contributions. (The option form must be returned to Employee Services/Payroll within 30 days of returning to work or leaving employment.)
If the employee chooses to pay back pension contributions, then the employer’s contributions are also payable at the appropriate rate. It is the responsibility of Employee Services/Payroll to calculate the payments to be made, which should be based on the pay the employee was receiving immediately before pay ceased.

If the employee chooses not to pay back the pension contributions, then the unpaid service will not count for pension purposes.

Employee Services/Payroll will complete a Pension Leave of Absence Form, attach the Maternity Leave Option Form and forward them to the Pensions Section in each of the above circumstances.

If the employee does not return to work then she will be regarded as having left the Local Government Pension Scheme on the date that pay ceased, unless the employee has agreed to pay for the period up to the actual leave date. In this case, Employee Services/Payroll will forward a Leavers Form to Mouchel, Pension Section.

11.0 Health And Safety

11.1 Health and Safety Requirements

Under the Management of Health and Safety at Work Regulations 1999, where:

- persons working in an undertaking include women of childbearing age, and
- the work is of a kind which could involve risk, by reason of her condition to the health and safety of a new or expectant mother, or to that of her baby,

the risk assessment must also include an assessment of such risk.

This is a proactive requirement and risk must be assessed when carrying out the general risk assessment, rather than in response to an employee becoming pregnant.

The risk assessment should consider:

- expectant mothers.
- employees who have recently given birth.
- breast feeding mothers.

and measures should be determined to reduce the risk.

Further help and advice is available from Mouchel, Health & Safety Unit on telephone number 727414.

If the assessment does reveal a risk, the risk assessor and/or the Head Teacher should inform female employees about the potential risks if they are, or could in the future be pregnant or breastfeeding.
The manager should also explain what they would do to make sure that new and expectant mothers are not exposed to the risks that could cause them harm.

At the point at which an employee informs her Head Teacher of her pregnancy, or when it otherwise becomes clear that the employee is pregnant, those measures identified to eliminate or control the risk to her must be implemented.

11.2 Avoiding Risks and Hazards in the Workplace

In all cases the Head Teacher, in consultation with the risk assessor should consider removing the hazard or seek to prevent exposure to the risk.

Where this is not feasible the risk should be controlled.

If there is still a significant risk at work to the safety or health of a new or expectant mother then the Head Teacher must take the following steps to remove her from the risk.

- temporarily adjust her working conditions and/or hours of work.

If it is not reasonable to do so, or would not avoid the risk, then:

- redeploy the employee on existing terms and conditions within the establishment. If this is not possible, consideration should be given to redeployment to another area of work. Contact Human Resources for advice.

If the steps above are not appropriate, it may become necessary to grant paid leave of absence to the employee. This leave of absence can apply before and after maternity leave. In such cases, maternity leave is activated at the 4th week before the EWC.

For further information contact Mouchel, Health & Safety Unit or Human Resources.

12.0 Other Related Provisions

12.1 Ante-Natal and other related Appointments

All pregnant employees have the right to reasonable paid time off to attend antenatal appointments. Reasonable time off to attend relaxation and parentcraft classes when the appointment has been made on the advice of a registered midwife, doctor or health visitor will be given. Head Teachers may ask employees to produce evidence of such appointments.

12.2 Sickness Following Maternity Leave

Where an employee has notified the school of her intended date of return and then submits a Medical Certificate indicating that she is unfit for work on that day,
she is deemed to have ended maternity leave as if she had returned to work. If the employee is absent on certified sick leave for at least 3 months and then tenders her resignation, she retains her entitlement to 12 weeks’ half-pay. If the employee submits her resignation prior to the completion of the 3 months the Council/Governing Body has discretion as to whether she should retain the 12 weeks’ half pay. The Head Teacher should contact Human Resources to discuss such situations.

**Note:** The Head Teacher should manage the employee’s sickness in accordance with the school’s Managing Attendance Policy.

12.3 **Annual leave**

All employees are entitled to the minimum statutory annual leave for each financial year. Seek further advice from Human Resources for individual cases.

12.4 **Parental leave taken immediately after maternity leave**

A period of Parental Leave of 4 weeks (unpaid) or less does not have any effect on the employee’s right to return. For further information contact Human Resources and see the Parental Leave policy on the Lotus Notes HR Policies and Procedures for Schools tile.

12.5 **Breastfeeding Mothers**

Where possible the school will make a room available for breastfeeding mothers to express milk. These special arrangements must be made with the Head Teacher or other nominated person.

12.6 **Temporary Employees**

All female employees, regardless of their length of service or the number of hours they work, will qualify for maternity benefits.

These employees will only have statutory maternity rights for as long as they remain employees. Where their contract ends during their maternity leave, this will end their maternity benefits as well as their employment.

12.7 **Employee Rights**

The Employment Rights Act 1999 provides that employees should not be victimised on the grounds of pregnancy, childbirth or maternity. The policy will be applied fairly to all employees irrespective of disability, race, religion, age, sexual orientation or marital/civil partnership status.

12.8 **Forms**

All forms referred to in this policy can be found on the HR Policies and Procedures for Schools tile, on Lotus Notes.
OCCUPATIONAL MATERNITY PAY

FORM OF UNDERTAKING

To be completed by an employee who has:-

i. not less than one year’s continuous local government/governing body service at the beginning of the 11th week before the Expected Week of Childbirth; and

ii. has declared her intention to return to work following maternity leave.

Name: ..............................................................

Job Title: ............................................................

School: ..............................................................

I hereby undertake to refund all gross Occupational Maternity Pay* payable to me after the first 6 weeks of paid absence (This will usually be 12 weeks at half pay) if I do not return to local authority/governing body employment for a period of at least 3 months following my maternity leave.

Employee signature: ..............................................................

Date: ........................................

Head Teacher signature: ............................................................

Head Teacher name: ..............................................................

Date: ........................................

* Gross Occupational Maternity Pay means pay before the deduction of Income Tax, Employee’s National Insurance Contributions, Employee’s Pension Contributions, Union Fees or any other payments made by the Council on the employee’s behalf.