



POLICY AND RESOURCES SCRUTINY COMMITTEE – 14TH APRIL 2015

SUBJECT: DRAFT SHARED PARENTAL LEAVE POLICY

**REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND SECTION 151
OFFICER**

1. PURPOSE OF REPORT

- 1.1 The report is seeking the views of Members prior to its presentation to Cabinet for approval for the introduction of a Shared Parental Leave Policy for the employees of Caerphilly County Borough Council.

2. SUMMARY

- 2.1 The report brings forward a Shared Parental Leave Policy to allow employees leave to care for a child after birth or placed for adoption in the year following the birth or adoption. Shared parental leave is a statutory right for all children due to be born or placed for adoption on or after 5 April 2015. The draft policy outlines the arrangements and notification requirements before a period of Shared Parental Leave (SPL) and the entitlement to pay during the SPL period.

3. LINKS TO STRATEGY

- 3.1 The Policy links to the People Management Strategy and therefore to all other strategies, including the Council's Strategic Equality Plan and supplementary guidance. The Council relies on employees to deliver all its strategies and service provision.

4. THE REPORT

- 4.1 Shared Parental Leave allows employees leave to care for a child after birth or placed for adoption in the first year following the birth or adoption. Shared parental leave is a statutory right for all parents with children due to be born or placed for adoption on or after 5 April 2015. The draft policy outlines the arrangements and notification requirements before a period of SPL and the entitlement to pay during the SPL period. A copy of the draft policy has been attached at Appendix 1.
- 4.2 As all employers in England and Wales are required to implement the provisions of the new legislation, (the legislation became effective on 1 December 2014 for any births or placements for adoption taking place on or after 5 April 2015.) it was suggested by the HR Directors Network which includes all Welsh Local Authorities that a working group be established to draw up a common policy across all twenty-two Councils in Wales, with only minor differences to take account of any local arrangements in place e.g. leave arrangements, contacts for pension issues, etc. A working group was set up in November 2014, which included an officer

from the Council and the attached draft policy has been predominately, with a few minor local changes, based on the outcome of the group's work. The local changes include references to annual leave and bank holidays, pension contributions and salary sacrifice arrangements. These local changes mean that except in relation to the pay and for antenatal/post natal classes, employees who take advantage of the SPL policy are afforded the same rights as employees who take either maternity or adoption leave.

- 4.3 SPL allows employees who are parents for babies or newly adopted children the opportunity to share up to 52 weeks leave between the parents should they wish to do so. This can be at different times or concurrently.
- 4.4 In order to qualify for this type of leave the mother has to curtail her maternity or adoption leave and give notice of her intention to take advantage of SPL. The other parent also has to be eligible to take advantage of SPL. Even if the other parent is ineligible for SPL, the Council's employee may still be eligible, but they do not have to work for the same employer, just as long as they are eligible for the leave.
- 4.5 Employees are required to give their Manager a minimum of eight weeks notice to take SPL. Leave can be taken in one continuous block, i.e. a period of continuous SPL or by giving notice that three separate periods of leave are requested during the SPL period, i.e. discontinuous leave. Employees are able to return to work in between periods of SPL. Under the legislation, the Council is able to refuse discontinuous leave requests or request that the leave is taken at an alternative time. Employees are able to change the date that they require the leave to start as long as this allows for the eight weeks notice prior to both the new and original commencement date of the SPL.
- 4.6 The Shared Parental Pay (General) Regulations 2014 ("the statutory scheme") provide that employees who take advantage of SPL (whether male or female) are only entitled to statutory payments (£139.58 per week from 5 April 2015 or 90% of normal earnings if lower.) The Council's Maternity and Adoption Policies, which are based on nationally agreed terms and conditions, provide a higher element of occupational pay as is the case for maternity and adoption leave. The Local Government Association and the Welsh Local Government Association have confirmed that there is no proposal to amend the nationally agreed terms and conditions to provide for enhanced shared parental pay. Although the Civil Service has adopted such a scheme, few employers across the UK have adopted enhanced shared parental pay schemes.
- 4.7 Paying enhanced occupational pay only to women on maternity leave or the main adopter on adoption leave is a provision, criterion or practice (PCP) with which some men and women cannot access may be indirectly discriminatory but it is considered justified in the circumstances. The cost of providing enhanced shared parental pay is considered prohibitive in light of the current savings required. The costs would also be disproportionate to the discriminatory impact as both female and male employees can access the statutory shared parental pay.
- 4.8 The option of removing the enhanced occupational maternity pay so that all employees receive pay in line with the statutory schemes has been considered but this would involve the Council moving away from nationally agreed terms and conditions and it may mean that the Council would have difficulty recruiting younger female employees. It may also mean that the Council has difficulty retaining employees who expected to be able to access the enhanced occupational maternity pay when they joined the Council. There is also concern that there may be disruption to the Council's services if larger numbers of employees have access to generous leave schemes. The Council is also conscious that to allow a more generous shared parental pay scheme than other local employers may mean that the Council is subsidising leave schemes of other less generous local employers.
- 4.9 Where both parents qualify for statutory Shared Parental Pay (ShPP) they must decide how this period of pay (up to 37 weeks) is to be divided between them. The number of weeks where payment is made cannot exceed the 39 weeks of the maternity/adoption leave period.

It should be remembered that mothers, under health and safety legislation, must have a period of two weeks maternity/adoption leave after the birth or placement for adoption so there are only 37 weeks ShPP that can be shared between the parents.

- 4.10 In the same way that employees on maternity and adoption leave are able to return to work for up to ten days to maintain contact by undertaking Keeping in Touch days, employees on SPL are able to return to work for up to twenty days during the SPL period. Whilst undertaking these SPL In Touch (SPLIT) days, employees are paid their normal salary for the hours worked. It is not compulsory for employees to undertake these SPLIT days.
- 4.11 The introduction of SPL has resulted in the right to Additional Paternity Leave being withdrawn (as it is replaced with SPL), the Council's Paternity Leave Policy will be amended to reflect this change.
- 4.12 Previously when an employee commenced maternity or adoption leave, Managers were able to plan on the employee being absent for a given period of time. This allowed the employee's absence to be covered either by other employees absorbing the duties or by appointing someone for the maternity/adoption leave period. This will be more difficult under SPL as employees are able to return to work during the SPL period for up to three separate periods of time. It may mean that the type of cover arrangements used may change to that of temporary week to week contracts or agency cover to accommodate any discontinuous arrangements. As the take up of SPL is unknown at the moment, the Council is unsure whether this will pose a problem for resources in the future.
- 4.13 The new policy will be placed on the Council's HR Support Portal and employees will be made aware of the new policy via an all user email to employees and Managers. Managers of employees who do not have access to the Council's email system or Intranet will be asked to make their employees aware of the new policy. A series of Frequently Asked Questions will also be posted on the Council's Intranet to help both employees and Managers understand the provisions of the legislation and the Council's policy.
- 4.14 The policy will apply to all employees except those employees directly employed by schools. For the policy to apply to schools each School Governing Body is required to adopt the policy. The HR Strategy and Development Team will be working with colleagues in the EAS to facilitate this process.

5. EQUALITIES IMPLICATIONS

- 5.1 An EIA screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance and some potential negative impact has been identified affecting one or more of the target equality groups. A full EIA has been carried out and the summary and recommendations are included below. The completed EIA is attached as Appendix 2.

6. FINANCIAL IMPLICATIONS

- 6.1 The financial implications are not known at present, as it will depend on the number of employees who take advantage of the Shared Parental Leave Policy.

7. PERSONNEL IMPLICATIONS

- 7.1 The personnel implications of introducing this policy are covered in the main report. There will be implications for covering this leave, particularly if it is taken discontinuously - this will be managed by each Service Area.

8. CONSULTATIONS

- 8.1 There are no other consultation responses other than those included in the report. The Council's Trade Unions and Senior Policy Officer (Equalities and Welsh Language) have been consulted on the introduction of the new policy.

9. RECOMMENDATIONS

- 9.1 Members are asked to note that the Shared Parental Leave Policy is based on the statutory entitlement and in all aspects other than pay it mirrors the Council's Maternity and Adoption Policies.
- 9.2 Cabinet be advised that Members do not recommend that the Council adopts an enhanced Occupational Shared Parental Pay scheme.
- 9.3 Cabinet be advised that Members do not recommend that the Maternity Pay scheme is reduced to the statutory scheme only.
- 9.4 That Members consider the contents of the Report and recommend to Cabinet that the Shared Parental Leave Policy attached at Appendix 1 is adopted.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 Shared Parental Leave is a statutory right and this policy sets out the Council's processes. Introducing an enhanced scheme for Shared Parental pay or reducing the Council's Maternity Pay Policy (which would involve changing the terms and conditions of all existing employees) could be cost prohibitive and may not be compatible with the Council's People Management Strategy in recruiting and retaining a balanced workforce.

11. STATUTORY POWER

- 11.1 Local Government Act 1972
Local Government Act 2000
Employment Rights Act 1996
Shared Parental Pay (General) Regulations 2014
Shared Parental Leave Regulations 2014

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Councils recognised Trade Unions

Background Papers: Shared Parental Pay (General) Regulations 2014
Shared Parental Leave Regulations 2014
Shared Parental Leave – A Good Practice Guide for Employers - ACAS
Department of Business and Skills Technical Guide
Advice Received From Both The Local Government Association and the Welsh Local Government Association

Appendices:

Appendix 1 Draft Shared Parental Leave Policy

Appendix 2 Equality Impact Assessment