



Guidance on Paternity Leave / Statutory Paternity Pay Birth of a Child



**Corporate Services
Human Resources Division**

Summary of ordinary paternity leave and ordinary statutory paternity pay - birth

- Ordinary paternity leave and statutory paternity pay may be available for the father of a newborn child; husband / partner (including same-sex partner or civil partner) of the mother, subject to eligibility criteria detailed in 1.1 and 1.6 of this Guidance.
- Ordinary paternity leave is time off to care for the newborn child or to support the mother following the birth.
- Ordinary paternity leave for Council employees is one week, which has to be taken as one complete week of leave. The leave must be taken and end within 56 days of the actual birth date.
- Subject to eligibility criteria detailed in 1.6 of this Guidance, an employee will receive the lower of:-
 - The standard weekly rate of Ordinary Statutory Paternity Pay at the time of payment.
 - 90% of average weekly earnings.

How to apply –

- Completion of Form HR 01 for submission to the line manager by the 15th week before the week the baby is due.

In addition to one week of Ordinary Paternity Leave and Statutory Pay, Maternity Support Leave of five days at full pay continues to be available to eligible employees. To apply for Maternity Support Leave, Form HR 07 should be completed for submission to the line manager prior to the period of leave, providing as much notice as possible of the proposed dates.

1. Ordinary paternity leave - birth

1.1 Eligibility criteria

An employee qualifies for ordinary paternity leave (OPL) on the birth of a baby if they:-

- Have or expect to have responsibility for the baby's upbringing, and they are either:-

- the biological father of the baby, or
- the mother's husband, civil partner or partner (including same-sex partner) but not the child's father.

A partner is someone who lives with the mother and the baby in an enduring family relationship but is not an immediate relative of the mother.

In addition, they must:-

- Have 26 weeks' continuous employment with North Lanarkshire Council (NLC), ending with the 15th week before the expected week of childbirth (EWC) – the qualifying week.
- Be working with NLC from the qualifying week up to the date of birth. If the employee's contract of employment ends before the birth, they do not qualify for OPL. If the employee's contract of employment ends after the birth, they retain their right to OPL (and pay if they qualify).
- Have complied with the notice requirements of their intention to take OPL.
- Be taking time off to care for the newborn child or to support the mother following the birth.

1.2 Entitlement

OPL entitlement for Council employees is **one week** of continuous leave, but can start on any day, for example from Tuesday to Monday. It cannot be taken before the child is born.

The entitlement will remain as one week regardless of the number of children resulting from a single pregnancy.

If the mother gives birth to a stillborn baby, the employee is still entitled to OPL but only if the birth happens after 24 weeks of pregnancy. If the baby is born alive but then later dies, the employee is still entitled to OPL.

Ordinary paternity leave must end:-

- Within 56 days (8 calendar weeks) of the actual birth date.
- If the child is born earlier than expected, between the birth and 56 days from the first day of the EWC.

1.3 Applying for ordinary paternity leave - birth

An employee must make a request for ordinary paternity leave by the 15th week before the week the baby is due, by completing form HR 01, signing the declaration within the form, and submitting the completed form to their line manager.

1.4 When can ordinary paternity leave start

An employee cannot start their OPL until the birth of the baby. Otherwise, an employee can choose to start their leave:-

- On the actual date of the baby's birth (whether earlier or later than expected).
- On a date notified by the employee, falling a specified number of days after the actual birth date (whether earlier or later than expected).
- On a date notified by the employee, falling after the first day of the expected week of childbirth. If the baby is born later than this date, the employee must delay their leave until the date of the actual birth.

1.5 Changing the start date of ordinary paternity leave

An employee requesting a change to their start date of OPL must provide the following notice:-

- To change the start date of the leave so that it starts on the date of birth - at least 28 days notice before the first day of the EWC.
- To change the start date of the leave so that it starts on a particular date - 28 days notice before that date.
- To change the start date of the leave so that it starts a specified number of days after the birth - at least 28 days notice before the date falling the same number of days after the first day of the EWC. For example, if the employee wants to start their leave 14 days after the birth and the EWC begins on 16 July, they must notify their line manager of the new date on 2 July, i.e. 28 days before 14 days after 16 July.

If an employee has changed the start date of their leave, a new application form should be completed to replace the existing one.

1.6 Ordinary statutory paternity pay - birth

An employee will qualify for Ordinary Statutory Paternity Pay (OSPP) if they have:-

- At least 26 weeks continuous service with NLC by the end of the 15th week before the expected week of childbirth.
- Average weekly earnings (AWE) at or above the lower earnings limit (LEL) for National Insurance Contributions (NICs).
- Declared their eligibility for OSPP by submitting a completed form at least 28 days before they want their OSPP to start (or as soon as reasonably practical)

An employee who is eligible for OSPP will receive the lower of:-

- The standard weekly rate of OSPP at the time of payment (this rate will increase every April in line with other statutory payments).
- 90% of average weekly earnings.

Summary of additional paternity leave and additional statutory paternity pay - birth

- **Additional paternity leave and additional statutory paternity pay may be available for the father; husband / partner (including same-sex partner or civil partner), of the mother, subject to eligibility criteria detailed in 2.1 and 2.6 of this Guidance.**
- **Additional paternity leave is a period of leave that can be taken by the father / husband / partner, to be used to share the caring responsibilities for the child. The mother must have returned to work before additional paternity leave can be taken by the father / husband / partner.**
- **Additional paternity leave is a minimum of two weeks and a maximum of 26 continuous weeks leave, which can be started at any point after the baby is 20 weeks old and must be completed by the baby's first birthday.**
- **Additional statutory paternity pay can be provided to the father / husband / partner only if the mother has entitlement to statutory pay and that payment has been brought to an end by the mother returning to work. It is payable from 20 weeks after the child was born, during what would have been the mother's statutory maternity pay or maternity allowance period of 39 weeks. Additional statutory paternity pay will be paid for a minimum of two weeks and will end when the mother's statutory maternity pay period would have ended.**
- **Subject to eligibility criteria detailed in 2.6 of this Guidance, an employee will receive the lower of:-**
 - **The standard weekly rate of Additional Statutory Paternity Pay at the time of payment.**
 - **90% of average weekly earnings.**
- **Unpaid additional paternity leave may be taken if the 39 week statutory pay period ends prior to the child's first birthday and if any the 26 week leave period remains unused. However, the total amount of additional paternity leave, paid or unpaid, cannot exceed 26 weeks and cannot extend beyond the child's first birthday.**

How to apply –

- **Completion of Form HR04 for submission to the line manager at least eight weeks before the start date of the proposed leave. The mother of the child must also complete the relevant declaration within Form HR 04.**

2. Additional paternity leave – birth

2.1 Eligibility criteria

For an employee to qualify for additional paternity leave (APL) they must:-

- Be the father of the baby and/or the husband or partner (including same-sex partner or civil partner) of a woman who is due to give birth on or after 3 April 2011. A partner is someone who lives with the mother and the baby in an enduring family relationship but not an immediate relative of the mother.
- Have or expect to have the main responsibility for the baby's upbringing, apart from any responsibility of the mother.
- Have at least 26 weeks' continuous employment with North Lanarkshire Council (NLC) ending with the qualifying week – the 15th week before the expected week of childbirth.
- Continue to work with NLC from the qualifying week into the week before they wish to take additional paternity leave – weeks run Sunday to Saturday.
- Be taking the time off to care for the baby.

If the employee's contract of employment ends before leave starts they do not qualify for leave or pay.

The baby's mother must also:-

- Be entitled to statutory maternity leave; statutory maternity pay or maternity allowance.
- Return to work at least two weeks after the child's birth, but with at least two weeks of unexpired statutory maternity leave entitlement remaining.

A return to work means the mother has resumed working. If the mother takes a period of annual leave or is on sickness absence directly after her maternity leave period, and this falls within her statutory maternity pay or maternity allowance period, this does not count as a return to work.

However, once the mother has returned to work, subsequent periods of annual leave or sickness taken by the mother will not affect the period of additional paternity leave or pay taken by the father / partner.

2.2 Entitlement

APL is a minimum of **two weeks** and a maximum of **26 weeks** continuous leave. This entitlement is in addition to the one week of ordinary paternity leave which can be taken within 56 days of the actual birth and maternity support leave of five days.

An employee can only have one period of APL regardless of the number of children resulting from a single pregnancy.

2.3 Applying for additional paternity leave

An employee must make a request for APL at least eight weeks before the start of the leave, by completing and signing form HR 04.

The mother of the child must also complete and sign the relevant declaration within form HR04. The employee should then submit completed form HR 04 to their line manager for consideration.

Within 28 days of notice being submitted by the employee, the following further information may be sought from the applicant by the line manager:-

- A copy of the child's birth certificate.
- The employment details of the mother

If this additional information is sought it must be provided by the employee within 28 days of the date of the request, otherwise the employee may not be able to take the requested leave.

The start and end date of the additional paternity leave will then be confirmed in writing to the employee, within 28 days of either the initial request, or if further information is sought, within 28 days of this being received.

2.4 When can additional paternity leave start

An employee can start APL any time from 20 weeks after the child is born and up to no later than the child's first birthday.

2.5 Accommodating changes to additional paternity leave

An employee must give at least six weeks notice, in writing, if they wish to change the date of their APL or if they no longer wish to take it. If six weeks notice is not provided, the line manager can refuse the requested change if the change cannot be reasonably accommodated.

For example, an employee provides notice on 1 July that he wishes to take APL from 1 September until 1 November. However, due to the mother being ill when she planned to go back to work, he informs you on 21 August that he wishes to change his leave to begin on 1 November and end on 1 January. In

the meantime, a fixed term employee has already been taken on to cover the period September to November. The line manager could choose to either:-

- Insist the employee starts his leave on 1 September, although there would be no entitlement to pay as the mother had not returned to work.
- Allow the employee to delay his leave until 1 November.

In either case the return date of 1 January can be accepted as the employee provided sufficient notice. If the employee wishes to return to work earlier he must provide six weeks notice, in writing, of the earlier date.

If an employee is no longer eligible for APL, for example because their partner has not returned to work or because they will not be caring for the child, it is the employee's responsibility to tell their line manager as soon as possible.

2.6 Additional statutory paternity pay

Additional statutory paternity pay (ASPP) is payable to those employees who meet the eligibility criteria for additional paternity leave and:-

- They are taking time off to care for the child during the remainder of the mother's 39 week statutory maternity pay or maternity allowance period.
- The mother has returned to work.

ASPP is payable from 20 weeks after the child was born, and payment can only be made during what would have been the mother's statutory maternity pay or maternity allowance period of 39 weeks. The balance of the maternity pay/maternity allowance period of 39 weeks not used by the mother will be payable to the father/ partner.

Additional paternity leave which is taken after the 39 week maternity pay/ maternity allowance period has ended, and up until the child's first birthday, will be unpaid.

The following worked example explains how APL/ASPP may be split between a mother / father. The maximum period of APL available to the father / partner will be dependent upon the date the mother commences her maternity leave, but will not exceed 26 weeks up until the child's first birthday:-

Mother	Father
<ul style="list-style-type: none"> ▪ 39 weeks maternity pay period 	-
<ul style="list-style-type: none"> ▪ The mother returns to work in week 30, with 9 weeks of her maternity pay period remaining. 	<ul style="list-style-type: none"> ▪ As the mother has returned to work, the father can now take Additional Paternity Leave of up to 26 weeks. ▪ If he takes the maximum 26 weeks leave, then for that 26 week period he will have an entitlement to Additional Statutory

	Paternity Pay for 9 weeks. <ul style="list-style-type: none"> ▪ The remaining 17 weeks of his Additional Paternity Leave period will be unpaid.
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To qualify for ASPP an employee must have:-

- Average weekly earnings (AWE) at or above the lower earnings limit for National Insurance contributions in force at the end of the qualifying week.
- At least two weeks of the mother's statutory maternity pay or maternity allowance period remaining.

Completion of application form HR 04 at least eight weeks before the start of APL will be sufficient for the verification of ASPP eligibility.

An employee eligible for ASPP will receive the lower of:-

- The standard weekly rate of ASPP at the time of payment (this rate will increase every April in line with other statutory payments)
- 90% of average weekly earnings.

2.7 Terms and conditions during Additional Paternity Leave

While on additional paternity leave, employees have:

- The right to the continuation of all terms and conditions of employment, except pay.
- The right to return to either the same job or to a suitable alternative position in terms no less favourable.
- Protection from detriment for any reason connected with the fact they have requested or taken additional paternity leave.
- Protection from dismissal if the fact that they have requested or taken additional paternity leave was the reason, or principal reason, for dismissal (including selection for redundancy).

Up to 10 Keeping in Touch Days will be available during the period of APL, without losing entitlement to ASPP or triggering the end of the period of additional paternity leave.