

## **B4 MATERNITY, PATERNITY, PARENTAL AND ADOPTION LEAVE AND PAY AND THE RIGHT TO REQUEST TIME OFF WORK OR ADJUSTMENTS TO THE DUTIES OF THE OFFICE TO CARE FOR A DEPENDENT**

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**B4.1** New arrangements for all these areas apply with effect from 31st January 2011 because of the introduction of Common Tenure. They reflect the Ecclesiastical Offices (Terms of Service) Directions 2010 and the subsequent Advice issued by the Archbishops' Council in January 2011 and April 2011. These arrangements will also be used in relation to those who hold their office on freehold.

Office holders are entitled to maternity, paternity, parental and adoption **leave** for the same periods and subject to the same conditions as apply in the case of an employee under the Employment Rights Act 1996, or any regulations made under that Act that have effect at the time when the Directions came into force on 1st January 2011. This also includes additional paternity leave.

Stipendiary office holders have a right to statutory maternity, paternity and adoption **pay** because of their National Insurance Contributions.

These guidelines relate primarily to stipendiary clergy and licensed lay workers. They also provide guidance for self-supporting clergy, though self-supporting clergy do not have any entitlement to remuneration or financial benefits through the office they hold.

### **MATERNITY LEAVE AND PAY**

**B4.2** All pregnant office holders are entitled to 52 weeks' statutory maternity leave around the birth of their child. At the very least an office holder must take two weeks' leave after the birth of her child.

Maternity leave can start any time from the 11<sup>th</sup> week before the baby is due but must start from the date the baby is born if the leave has not started by that date.

Stipendiary female clergy and licensed lay workers who fulfil the criteria in B4.3 below will receive **paid** maternity leave as set out below for up to 39 weeks. They may if they so wish take an additional 13 weeks **unpaid** maternity leave after the end of the period of paid maternity leave if they intend to return to work at the end of this time.

Notwithstanding the statutory required notice period (see below), it would be helpful if the cleric or licensed lay worker would inform the Archdeacon and Diocesan Office and, if in an assistant's post, their incumbent as soon as she feels able in order that appropriate arrangements for leave, pay and cover may be put in place.

Under the Ecclesiastical Offices (Terms of Service) Directions 2010, the office holder concerned shall use all reasonable endeavours to make arrangements for the duties of her office to be performed by others during her period of leave. Assistance in this may be available from the Area Dean or the Clerical Registry. The Winchester Diocesan Board of Finance will meet the cost of providing clergy to ensure the provision of the regular pattern of church services and any occasional offices.

The Area Dean (for an incumbent or priest-in-charge) or the Incumbent (for a person in an assistant post) is then responsible for ensuring that a **general risk assessment** and **VDU computer workstation assessment** (if the individual uses a computer) are carried out. The Maternity Risk Assessment and VDU Computer Workstation Assessment forms should be used. These are available as downloads from the Health and Safety Executive website.  
<http://www.hse.gov.uk/mothers/flowchart.pdf>  
<http://www.hse.gov.uk/mothers/fags.htm#a3>

Because an office holder remains in office during the period of the leave, they retain the rights and responsibilities which go with that office. So clergy on maternity leave retain the right to remain in any accommodation provided for the better performance of their duties. They also have the obligation to ensure that the duties of the office are carried out on their behalf. Any such duties should be exercised on a Keeping-in-Touch day (see below). In case of doubt about which legal duties may and may not be delegated during maternity leave, advice should be sought from the Diocesan Registrar.

An office holder who has been on maternity leave has the right to return to work in her existing post unless she resigns or is removed from it.

**B4.3** To qualify for ***Paid Maternity Leave***, a cleric or licensed lay worker must:

- have been in office continuously for at least 26 weeks by the end of the 15<sup>th</sup> week before the Expected Week of Childbirth (EWC);
- be in paid service at the time maternity leave begins;
- stop work at the earliest after the start of the 11<sup>th</sup> week before EWC;
- give at least 28 days' notice to the Diocesan Office in writing of the intention to take maternity leave, and provide medical evidence of pregnancy (form BAT1 from GP or clinic). This must be done before the end of the 15<sup>th</sup> week before the EWC. The Commissioners' Clergy Payments Department should then confirm the date in writing, including the date when the cleric/ licensed lay worker is expected to return to work. The cleric/ licensed lay worker can change her mind about the dates but should give the Diocese and Commissioners 8 weeks' notice of any changes, which should again be confirmed by the Commissioners' Clergy Payments Department in writing;
- be pregnant at the 11<sup>th</sup> week before the EWC, or have had the baby.

It is a legal requirement to take at least two weeks' compulsory maternity leave, which commences on the day when the child is born and forms part of the ordinary maternity leave period.

Women whose babies are stillborn, or who miscarry after the 24<sup>th</sup> week of pregnancy, still qualify for the full scheme terms.

**B4.4 *Maternity Pay***

The Diocesan provision for maternity pay is more generous than the minimum required under statutory maternity pay, and more generous still than that accorded to WDBF employees because a cleric remains in office during the period of maternity leave. There is an expectation that they will fulfil the unavoidable requirements of that office on Keeping-in-Touch days. It is also not possible nor desirable to avoid all pastoral contact with parishioners when living in the area she serves. Therefore, the Diocese of Winchester follows the advice previously issued by the Central Stipends Authority and pays maternity pay:

- as a full stipend for 39 weeks from the commencement of maternity leave, for the period of continuous absence before and after confinement;

- is a weekly payment, (though paid through the Church Commissioners payroll as stipend) but the week can start from any day of the week, from the day after the last day worked before starting maternity leave;
- is taxable and attracts national insurance deductions;
- is partly reclaimed by the Clergy Payments Department from the Government at the rate of 92% of the clergy equivalent of the lower rate of statutory maternity pay.

For the final 13 weeks of additional leave there is no pay.

Maternity leave and pay:

- can start any time from the 11<sup>th</sup> week before the baby is due;
- must start from the date the baby is born if it has not already done so.

It is always assumed that 52 weeks' maternity leave will be taken. Stipendiary office holders should take note that they will cease to receive pay for the last 13 weeks. If the office holder intends to return to work at the end of 39 weeks or earlier and therefore not take advantage of the full 52 weeks they should give the proper notice, see B4.3 above.

#### **B4.5 *Keeping in Touch days***

A woman is able to do a limited amount of work (on up to ten days) during the maternity leave period so that she is able to keep in touch with her work. These days may not be in the two weeks immediately following childbirth. The days do not have to be consecutive; they may be used at any time during the maternity leave by mutual agreement between the person concerned and her suffragan bishop / archdeacon / island dean, (or incumbent in the case of someone in an assistant's post). The diocese expects these days to be used to fulfil the unavoidable obligations of the office held.

#### **B4.6 *Returning to work***

It would be very helpful to the diocese if the office holder would state their intention to return to work after maternity leave at the outset.

It is always assumed that the full 52 weeks' maternity leave will be taken. If the office holder wishes to return earlier she must give the Diocesan Office 8 weeks notice in writing of the date she would like to return to work. If the office holder receives a stipend they must also give 8 weeks' notice in writing to the Commissioners Clergy Payments Department.

If an office holder wishes to resign before, during or at the end of their maternity leave she should do so in accordance with her terms and conditions.

For an assistant curate in a training post the length of the curacy may be extended to ensure that she fulfils the requirements of the learning outcomes.

## PATERNITY LEAVE AND PAY

### **B4.7 Ordinary Paternity Leave**

For clergy and licensed lay workers who have at least 26 weeks' service by the end of the 15<sup>th</sup> week before EWC, there is an entitlement to take 2 weeks' leave, which can be taken at the time of birth, or in the following weeks (up to 56 days from the birth), whichever is more helpful to the family. This leave must be taken in clear blocks of a week, not in individual days. A full stipend will continue to be paid for these two weeks.

To take Ordinary Paternity Leave, the cleric or licensed lay worker must notify the Diocesan Office at least 15 weeks before the beginning of the week when the baby is due

- when the baby is due
- when they wish to take their leave entitlement

The Clergy Payments Department is able to reclaim part of paternity pay from the government at the rate of 92% of the clergy equivalent to statutory paternity pay. The form SC3 must be completed and sent to the Diocesan office. <http://www.hmrc.gov.uk/forms/sc3.pdf>

### **B4.8 Additional Paternity Leave and Additional Statutory Paternity Pay**

All office holders are entitled to Additional Paternity **Leave** (APL) which gives fathers (and adoptive partners) the right to up to six months' paternity leave which can be taken once the mother (or other adopter) has returned to work. Stipendiary office holders may be entitled to Additional Statutory Paternity **Pay** (ASPP) if some of this leave is taken during the maternity or adoption pay period.

Office holders have the right to APL and ASPP (as applicable) if their spouses or civil partners

- are due to give birth on or after 3 April 2011 (or they receive notification on or after this date that they have been matched with a child for adoption) and
- return to work.

Additional paternity leave (APL)

- may be taken even if the mother has no maternity leave remaining when she returns to work;
- is for a maximum of 26 weeks;

- may not start until 20 or more weeks after the child's birth or placement for adoption;
- must have ended by the end of the 52nd week after the child's birth or placement for adoption;
- is subject to the requirement at paragraph 2(2) of the Ecclesiastical Offices (Terms of Service) Directions 2010 (as applicable) for the office holder to use all reasonable endeavours to make arrangements for the duties of the office to be performed by another person or person during the periods of leave.

Additional statutory paternity pay (ASPP) may be paid

- if the office holder holds a stipendiary post;
- in addition to ordinary statutory paternity pay (OSPP);
- only if the mother has returned to work without exhausting her entitlement to statutory maternity pay (SMP) or adoption pay(SAP), or maternity allowance(MA);
- only if there are at least two weeks of SMP, SAP or MA remaining;
- only for periods of at least one week during which no work (other than a Keeping in Touch Day) is done;
- at the level of SMP, SAP or MA;

Those wishing to take additional pay or leave need to comply with additional notification requirements as set out below.

Eight weeks before office holders wish their APL or ASPP to start, they must provide the Diocesan Office with:

- (a) a leave notice in writing specifying
  - the expected week of birth and/or placement for adoption
  - the date of birth or placement for adoption
  - the start and end date of their Additional Paternity Leave
  - the arrangements they have made to provide cover for the duties of their office to be carried out
  - the date on which they want any Additional Statutory Paternity Pay to start;
- (b) a declaration signed by the parent taking the leave stating that
  - the purpose of leave is to care for the child
  - the parent is
    - either the father
    - or married to or the partner or civil partner of the mother but is not the child's father
  - the parent has or expects to have the main responsibility for the upbringing of the child apart from any responsibility of the mother;

- (c) a declaration from the mother or other adoptive parent stating:
- their name and address
  - their date of intended return to work
  - their National Insurance Number
  - that the parent taking the leave is:
    - either the father
    - or married to or the partner or civil partner of the mother or other adoptive parent but is not the child's father
  - has or expects to have the main responsibility for the upbringing of the child apart from any responsibility of the mother
  - is, to the mother's knowledge, the only person exercising the entitlement to additional paternity leave in respect of the child
  - that the mother or other adoptive parent consents to the DBF/Payroll services processing the information in the declaration.

## ADOPTION LEAVE AND PAY

**B4.9** Arrangements for these mirror the maternity and paternity leave and pay arrangements set out above. One parent has rights akin to statutory maternity leave and pay and is able to receive statutory adoption pay, while the other parent has rights akin to statutory paternity leave and pay.

Clergy or licensed lay workers seeking to take statutory adoption leave and pay should notify the Diocese within seven days of being informed that a child has been matched with them, with details of when the child is expected to be placed and when the adoption leave is to start. They must also obtain a Matching Certificate or equivalent from the adoption agency and send it to the Diocesan Office.

## PARENTAL LEAVE

**B4.10** Clergy and licensed lay workers with children, who have completed one year's continuous qualifying service by the time they take the leave, are entitled to **unpaid Parental leave**. This is for a maximum of 13 weeks for each child, can be taken by both mothers and fathers, and applies to the parents of all children aged under 5, or under 18 if the child is disabled, or under 18 if a child was adopted within the past 5 years. An office holder is entitled to 18 weeks' unpaid parental leave if their child is entitled to receive a disability living allowance. The aim is to enable employees with parental responsibility to have time off to spend time with and to look after a child, or to make arrangements for a child's welfare. This should be discussed with your incumbent (for those in assistant posts), or archdeacon /

suffragan bishop / island dean as early as possible so that appropriate arrangements may be made for cover and suspension of stipend.

Parental leave cannot be transferred between parents.

## **PENSIONABLE SERVICE**

**B4.11** All unpaid maternity, paternity, parental and adoption leave counts as pensionable service and pension contributions will continue to be paid.

## **ANNUAL LEAVE**

**B4.12** Annual leave accrues at a normal rate whilst an office holder is off on maternity leave, adoption leave, ordinary paternity leave, additional paternity or parental leave. An office holder may not take annual leave during their maternity/adoption/paternity/parental leave but may wish to use any untaken annual leave before and/or after their maternity/adoption/paternity/parental leave. If an office holder gives birth during a period of annual leave her maternity leave automatically starts.

It is not possible to pay an office holder in lieu of any untaken annual leave, unless he/she resigns or is removed from their post.

## **TIME OFF TO DEAL WITH EMERGENCIES INVOLVING DEPENDANTS**

**B4.13** All clergy and licensed lay workers are entitled to reasonable time off to deal with unexpected or sudden emergencies affecting their dependents. The office holder should contact their incumbent (for those in assistant posts), or archdeacon, suffragan bishop or island dean as early as possible so that appropriate arrangements may be made for cover.

## **CARE FOR A DEPENDENT**

**B4.14** *Right to request time off work or adjustment to the duties of the office to care for a dependent*

The Ecclesiastical Offices (Terms of Service) Directions 2010 make provision for time off to care for dependents. This Diocese has largely adopted the advice issued by the Archbishops' Council in this matter. However, this provision is to be used when a permanent

adjustment to the terms of holding an office is being sought. Any short term needs which arise should be discussed with the relevant bishop, archdeacon or island dean.

- B4.15** Holders of parochial offices already have a high degree of flexibility over how they carry out their duties, which is not always the case with employees, who will generally have defined hours of work. Office holders may not always need therefore to request flexible working to care for a dependent, in the way that an employee might. However, office holders still need to bear in mind the need to arrange appropriate cover if they are taking time off.
- B4.16** Where office holders need to vary their duties in order to care for a dependent (for example reducing a post from full time to part time with a commensurate reduction in stipend), they should use the procedure below.
- B4.17** The request may only be made in order to help care for a dependent, not for any other purpose. "Dependent", as defined in paragraph 3(6) of the Directions, embraces a spouse or civil partner; a child; a parent; a person living in the same household as the office holder (other than a tenant, employee, lodger or boarder) or anyone who reasonably relies on the office holder for assistance or provision of care in the event of illness or injury.
- B4.18** The Directions confer the right to make a request, and have the request properly considered. The request may be refused if there is no other reasonable way of meeting the pastoral needs of the parish and the requirements of the office.
- B4.19** The Archbishops' Council has agreed that the procedure for making a formal request should be as follows, and that the office holder should
- make the request in writing
  - set out the date of the request
  - make no more than one request during a twelve month period
  - state that the request is being made under the Ecclesiastical Offices (Terms of Service) Directions 2010
  - set out the reasons for needing an adjustment to the duties of the office
  - set out the change requested
  - state whether they have made any previous requests in their current post
  - identify the effect the proposed change will have on the provision of ministry to the parish
  - suggest how such an effect could be mitigated (the office holder may wish to consult colleagues about this first so that

he or she is in a position to indicate that the proposed solution might have their support in principle)

- give a proposed start date
- indicate whether the proposed adjustment is intended to be permanent, or, if not, for how long it might be expected to last.

**B4.20** The Bishop, on receiving the request, is required by paragraph 3(5) of the Directions to consult the PCC(s). The Bishop may also wish to consult any of the office holder's colleagues who are likely to be affected by the request.

Once the Bishop has received a reply from the PCC(s), the office holder's request should be considered promptly.

If the Bishop agrees to the request, the office holder and the PCC(s) should be informed in writing of the bishop's agreement.

If the Bishop is not in a position to agree immediately, the Bishop should arrange to meet the office holder as soon as possible to discuss the request. The office holder may bring a colleague or trade union representative to the meeting.

In good time after the meeting (normally within 14 days), the Bishop should inform the office holder of the decision. If he does not accept the request, he must give the reason in writing and give reasonable time (normally 14 days) for the office holder to appeal. The appeal should be held and the office holder informed of the result within reasonable time (in both cases, normally 14 days).

A revised statement of particulars should be issued to reflect any changes made. The office holder will need to be informed that this will be a permanent change to the duties of the office, and there is no automatic right to have the duties adjusted back to the original terms at a later point, unless this has been agreed in advance.

The Bishop should not refuse the request simply because the PCC does not support it or the proposed solutions. Potential grounds for refusing a request include:

- cost
- inability to reorganise duties among existing clergy
- inability to recruit additional clergy
- potential effect on the office holder's performance of his or her duties.

The Bishop may delegate consideration of these requests to the relevant suffragan bishop, archdeacon or island dean.