

**To: The Chair of the Probation Board/Trust
The Chief Officer of the Probation Board
The Chief Executive of the Probation Trust
(Copy enclosed for the Head of Human Resources)
The Secretary of the Probation Board/Trust
Members of the NNC**

14 April 2008

NNC CIRCULAR NO.7/2008

Dear Madam/Sir

NNC Agreement on Pay and Conditions of Service

Revised Section A9 – Maternity Pay and Leave

Please find attached an updated version of Section A9 of the NNC Agreement on Pay and Conditions of Services to replace the existing one. This reflects the changes to the statutory maternity pay and leave entitlements which came into force on 1 October 2006 applicable to women whose expected week of childbirth (EWC) was on or after 1 April 2007.

Boards should amend their local policies and procedures to take account of these changes if this has not already been done.

Further guidance on the rights of both pregnant employees and their employers and their responsibilities towards each other are provided by the DBERR and HMRC. Boards are also reminded of Health and Safety Arrangement No 33 (NPS/HS/33) – 'New and Expectant Mothers' which contains further guidance and a model risk assessment.

Yours faithfully

**Christine Lawrie
Judy McKnight**

Joint Secretaries

MATERNITY PAY AND LEAVE

Who This Scheme Applies To

1. The occupational maternity scheme shall apply to all pregnant employees regardless of the number of hours worked per week.

Initial Obligations on the Employee

2. An employee is asked to notify her employing probation board of the following:
 - a) that she is pregnant;
 - b) of the expected week of childbirth (EWC);
 - c) of the date of the beginning of her absence.
3. Such notice should be given at least 28 days before her absence begins or as soon as is reasonably practicable.

Obligations on the Employer

4. On receipt of the employee's notice of the expected date of maternity leave the employing probation board will respond in writing to the employee, within 28 days, notifying her of the date on which her additional maternity leave will end.

Health and Well-being

5. (a) Ante-natal Care

Any pregnant employee has the right to reasonable paid time off to attend for ante-natal care and must produce evidence of appointments if requested by her employing probation board.

(b) Health and Safety

Employers are required to provide suitable rest facilities for employees who are either pregnant or breastfeeding or who have given birth within the previous 6 months. Consideration must be given to any health and safety implications for pregnant or breast-feeding employees identified in any Workplace Risk Assessment.

Maternity Leave Entitlement

6. All employees regardless of service will be entitled to 26 weeks Ordinary Maternity Leave.

7. All employees regardless of services will be entitled to a further 26 weeks Additional Maternity Leave beginning on the day immediately following that on which Ordinary Maternity Leave ends.
8. Maternity leave shall start no earlier than 11 weeks before the EWC.
9. If an employee's maternity leave has not already started it will be triggered by the birth of the child or pregnancy related absence from the beginning of the 4th week before the EWC.
10. Employees should notify their employing probation board, as soon as reasonably practicable, that they have given birth or are absent wholly or partly because of pregnancy

Maternity Pay

11. Employees who have:
 - 26 weeks' continuous service by the end of the 15th week before the EWC and
 - average earnings in the eight weeks up to and including the qualifying week of at least equal to the lower earnings limit for National Insurance contributionsshall be entitled to Statutory Maternity Pay (SMP). This will be six weeks at 9/10ths of average weekly earnings followed by 33 weeks at the standard rate per week (£112.75 as at 6 April 2007) or 9/10ths of earnings if this is less.
12. For the purposes of claiming SMP employees must give their employer:
 - at least 28 days' notice of the date they wish to start receiving SMP (if they have not already done so when giving the notice required for maternity leave)
 - medical evidence of the date that the baby is due signed by a doctor or a midwife (normally the Maternity Certificate, MAT B1) by the end of the third week of what would be the maternity pay period
13. Employees who do not qualify for SMP may be eligible to claim Maternity Allowance from the Department for Work and Pensions.
14. Payments for employees who have completed 1 year's continuous service at the 11th week before the EWC shall be as follows:-
 - (i) For the first six weeks of absence an employee shall be entitled to nine-tenths of a week's pay offset against payments made by way of SMP or Maternity Allowance (MA) for employees not eligible for SMP.

- (ii) An employee who declares in writing that she intends to return to work will, for the subsequent 12 weeks, receive half a week's pay without deduction except by the extent to which the combined pay and SMP (or MA and any dependant's allowances if the employee is not eligible for SMP) exceeds full pay.
- (iii) For the remaining 11 weeks the employee will receive her SMP entitlement.
- (iv) For employees not intending to return to work payments shall be the employee's entitlement to SMP.
- (v) Payments made by the probation board during maternity leave under (ii) above shall be made on the understanding that the employee will return to probation board employment for a period of at least three months, which may be varied by the employing board on good cause being shown and, in the event of her not doing so, she shall refund the monies paid, or such part thereof, if any, as the probation board may decide. Payments made to the employee by way of SMP are not refundable and she will still receive them should she leave her employment after the 15th week before EWC
- (vi) A pregnant employee who resigns or is dismissed, for whatever reason, before the date on which she intended to start her Ordinary Maternity leave (or before she has notified the intended start date of her leave) loses her right to maternity leave but will retain any right to be paid statutory maternity pay during her maternity pay period.

Right to Return to Work

- 15. Subject to Paragraph 16 below an employee has the right to return to the job in which she was employed under her original contract of employment and on terms and conditions not less favourable than those which would have been applicable to her if she had not been absent. "Job", for this purpose, means the nature of the work which she is employed to do and the capacity and place in which she is so employed.
- 16. Where it is not practicable by reason of redundancy during the employee's ordinary or additional maternity leave periods for the probation board to permit her to return to work in her job as defined in (a) above the employee has the right to be offered a suitable alternative vacancy where one exists, provided that the work to be done in that post is suitable to her and appropriate to the circumstances, and that the capacity and place in which she is to be employed and her terms and conditions of employment are not substantially less favourable to her than if she had been able to return to the job in which she was originally employed.

17. Suitable alternative employment may also be offered if exceptional circumstances other than redundancy (e.g. a general re-organisation), which would have occurred if the employee had not been absent, necessitate a change in the job in which she was employed prior to her absence. The work to be done should be suitable to her and appropriate to the circumstances and the capacity and place in which she is to be employed and her terms and conditions of employment should not be less favourable to her than if she had been able to return to the job in which she was originally employed.

Exercise of the Right to Return to Work

18. If an employee chooses to take ordinary maternity leave only or wishes to return to work before the end of her additional maternity leave period, she must give the employer at least 8 weeks' notice of the date on which she wishes to return.
19. Where an employee is unable to return on the expected day due to sickness the absence will be covered by the sickness scheme in the normal way.
20. For an employee where, because of an interruption of work (whether due to industrial action or some other reason), it is unreasonable to expect her to return on the due date, she may instead return when work resumes, or as soon as reasonably practicable thereafter.

Return to Work – Flexible Working Arrangements

21. Qualifying employees who are parents of children under six years of age, or of disabled children under 18, have statutory rights to apply to change their working arrangements.
22. Probation boards should consider the full range of flexible working arrangements and support facilities for employees returning to work. The needs of breast-feeding employees should be taken into account.

Relationship with Sickness and Annual Leave

23. Maternity leave will not be treated as sick leave and will not therefore be taken into account for the calculation of the period of entitlement to sickness pay.
24. Neither contractual nor statutory sick pay is payable during any part of the maternity leave period. An employee wishing to claim sick pay during maternity leave will need to bring the maternity leave to an end by giving the required 8 week's notice. At the point at which the maternity leave ends, normal sick pay rules will apply.

25. Employees shall accrue a pro rata contractual annual leave entitlement during their period of Ordinary Maternity Leave which may be taken at the beginning or the end of the maternity leave period. Normal carry over rules apply. A period of Additional Maternity Leave does not attract contractual annual leave. In calculating the employee's annual leave entitlement where a period of maternity leave intervenes, cross reference should be made to ensure that the statutory annual leave entitlement, including any entitlement to paid Bank Holiday leave, for the whole leave year is met or exceeded.

Definitions

26. **(a) A Week's Pay**

The term "a week's pay" for employees whose remuneration for normal working hours does not vary with the amount of work done in the period, is the amount payable by the probation board to the employee under the current contract of employment for working her normal hours in a week. Where there are no normal working hours, a week's pay is the average remuneration in the period of 12 weeks preceding the date on which the last complete week ended excluding any week in which no remuneration was earned.

(b) Childbirth

Childbirth means the live birth of a child, or a stillbirth after a pregnancy lasting at least 24 weeks.

27. Nothing in the above provisions shall be construed as providing rights less favourable than statutory rights.

National Guidance

28. **(a) Miscarriage, Termination, Still-birth and Death of a Baby**

If the baby dies or is stillborn after 24 weeks' pregnancy the scheme applies. Where this occurs before 24 weeks (miscarriage) or there is a termination, probation boards should give sympathetic consideration to the circumstances and where necessary grant special leave or sick leave, as appropriate on the basis of the individual circumstances. The decision should be based on the needs of the employee and medical opinion.

(b) Premature Birth

Where a baby is born prematurely probation boards should consider each case on its merits and the action required. For example extension of the maternity leave period might be appropriate. The necessary discretion already exists under the scheme.

(c) Keeping-in-Touch Schemes

An employee may voluntarily carry out 10 days' paid work for her employer during her statutory maternity leave period without bringing her maternity leave to an end. The purpose of this provision is to allow an employee to 'keep in touch' with the workplace. Work includes any work done under the contract of employment and may include training or any activity aimed at keeping in touch. Any work carried out on a day constitutes one day's work. Payment should be at the employee's normal daily rate of pay offset by any contractual or statutory maternity pay received for that day. This provision is not intended to create any obligation for employees on maternity leave to take part in keeping-in-touch days nor is there any obligation on a Probation Board to provide them.

A keeping in touch day must not take place during the two week period of compulsory maternity leave.

Probation boards and employees should maintain contact over the maternity leave period. Boards need to ensure that employees are kept informed of vacancies, any significant workplace developments and training opportunities. Reasonable contact from time to time during maternity leave, for example to discuss the employee's return to work, does not bring the maternity leave period to an end.

29. For further information on parental leave, maternity support leave, part-time working, career breaks etc, please refer to the appropriate Sections of the NNC National Agreement on Pay and Conditions of Service and any local policies and procedures.