

Shared Parental Leave

1.0 Introduction; What is Shared Parental Leave?

SPL is a new legal entitlement for eligible parents of babies due, or children placed for adoption, on or after 5 April 2015. It provides both parents with the opportunity to consider the best arrangement to care for their child during the child's first year.

The regulations give parents the right to take SPL and place a duty on employers to ensure that their employees are not penalised for using their entitlement or put under pressure to cancel/change a leave notification.

The amount of leave available is calculated using the mother's entitlement to maternity/adoption leave, which allows them to take up to 52 weeks' leave.

If they reduce their maternity/adoption leave entitlement, then they and/or their partner may opt-in to the SPL system and take any remaining weeks as SPL. This means their partner could begin to take SPL while the mother is still on maternity/adoption leave.

SPL enables parents to share the caring responsibilities evenly or have one parent taking the main caring role, depending on their preferences and circumstances. Unlike maternity/adoption leave, eligible employees can stop and start their SPL and return to work between periods of leave with each eligible parent able to submit three notices booking periods of leave (although an employer may allow more).

2.0 Shared Parental Leave; leave arrangements

Employers and employees will find that having early conversations regarding leave intentions will be beneficial, enabling them both to be clear regarding the entitlement, what leave arrangements are being considered and how any leave will be accommodated.

3.0 What happens to Maternity/Adoption/Paternity Leave?

Parents will remain entitled to take maternity, paternity and adoption leave. However, an eligible mother or adopter may now choose to reduce their maternity/adoption leave early and opt into SPL.

A birth mother must take at least two weeks' maternity leave following the birth of a child (four weeks for manual work) but can otherwise choose to end her maternity leave at any stage.

An adopter can end their adoption leave once they have taken two weeks.

4.0 The Shared Parental Leave eligibility criteria

To qualify for SPL a mother must:

- have a partner
- be entitled to either maternity/adoption leave or to statutory maternity/adoption pay or maternity allowance
- have curtailed, or given notice to reduce, their maternity/adoption leave, or their pay/allowance (if not eligible for maternity/adoption leave).

A parent intending to take SPL must:

- be an employee
- share the primary responsibility for the child with the other parent at the time of the birth or placement for adoption
- have properly notified their employer of their entitlement and have provided the necessary declarations and evidence.

4.1 Continuity of employment test

The individual has worked for Peat Rigg for at least 26 weeks at the end of the 15th week before the child's expected due date/matching date and is still working for Peat Rigg at the start of each leave period.

4.2 Employment and earnings test

In the 66 weeks leading up to the baby's expected due date/matching date, the person has worked for at least 26 weeks and earned an average of the current minimum statutory amount, per week in any 13 weeks.

5.0 Shared Parental Pay Entitlement

A mother, subject to certain criteria, will be entitled to statutory maternity pay/adoption pay/Maternity Allowance for up to 39 weeks. If the mother gives notice to reduce their entitlement before they will have received it for 39 weeks' then any remaining weeks could become available as ShPP.

If both parents qualify for ShPP they must decide who will receive it, or how it will be divided, and they must each inform their employer of their entitlement.

To qualify for ShPP an employee needs to have met the 'continuity of employment test' and their partner must meet the 'employment and earnings test', just like SPL. In addition, the employee must also have earned above the 'Lower Earnings Limit' in the eight weeks leading up to and including the 15th week before the child's due date/matching date and still be employed with the same employer at the start of the first period of ShPP.

If an employee's employment comes to an end while they are still entitled to some ShPP then any remaining weeks will usually remain payable unless they start working for someone else.

SPL can:

- Start on any day of the week, only be taken in complete weeks (so if SPL lasts for one week and begins on a Tuesday it will finish on the following Monday)
- Be taken using three separate notices to book leave (although an employer could decide to accept more)
- Be taken by the partner, while the mother is still on maternity/adoption leave if the mother reduces their entitlement to maternity/adoption leave.

Each notice to book SPL can be for either a 'continuous' block or multiple 'discontinuous' blocks.

6.0 Notification to take SPL

- 6.1 Notifying an employer of a continuous block means taking an unbroken period of leave. For example, this could be a notification for a period of six weeks' leave. Eligible employees have a statutory right to take SPL in this way and an employer cannot refuse it.
- 6.2 Requesting a discontinuous block means asking for leave over a period of time, with breaks between the leave where the employee returns to work. For example, four weeks' SPL followed by three weeks back at work, followed by a further four weeks' SPL. Discontinuous leave, in a single notice, can only be taken with the employer's agreement and is most likely to be accepted where the needs of the employer and employee have both been considered. Once a request for discontinuous leave is made the employee and employer will have a discussion period of 14 calendar days to talk about the request.
- 6.3 If a request for a discontinuous leave block is not agreed then the total amount of leave in the request must be taken as one continuous block unless the employee withdraws the notice and submits a new request.
- 6.4 It is important to consider how reliant a parent is on the proposed pattern the other parent is seeking to agree. Where both parents are taking continuous leave, this consideration is minimal because the patterns must be accepted by the respective employers. Where the care of the child is dependent on one or both of the parents agreeing discontinuous leave arrangements and one is refused, one or both parents may need to withdraw their notification and make new amended ones.
- 6.5 Having an early discussion can be helpful for an employee to explore options, find out what discontinuous leave arrangements the employer may be agreeable to, and what plans the employer has to accommodate the leave. It is good practice for employees and employers to do this before formal notices to book leave are given.
- 6.6 If an employee is eligible for, and intends to take SPL they must provide their employer with a notice of entitlement to take SPL. The notice of entitlement must be submitted at least eight weeks before the employee intends to take a period of SPL.

7.0 The notice of entitlement to take SPL must include:

- how many weeks' maternity/adoption leave (or maternity/adoption pay or maternity allowance if the mother was not eligible for maternity/adoption leave) has been/will be taken
- how much leave both parents are entitled to take
- how much leave each parent intends to take
- when they expect to take their leave
- the signatures of both parents

The employee does not have to take their leave on the dates they state in the notice of entitlement to take SPL but it will give their employer an idea of what is being considered.

The notice of entitlement must be accompanied by a declaration from the employee's partner that at the time of the birth they:

- share the main responsibility for the care of the child with the employee
- meet the employment and earnings test
- consent to the employee taking the number of weeks of SPL specified in the employee's notice of entitlement.

If the employee intends to claim ShPP, they must give their employer notice, which must include:

- how much ShPP both parents are entitled to take
- how much ShPP each parent intends to take
- when they expect to take ShPP
- a declaration from the employee's partner confirming their agreement to the employee claiming their amount of ShPP

The notice to claim ShPP can be included within the notice of entitlement to take SPL.

8.0 Leave

8.1 Leave can be booked at the same time as, or following, the employee notifying their employer of their entitlement to SPL. An employee is entitled to submit three separate notices to book leave, although an employer can allow them more. This means that an employee could book three separate periods of leave during the child's first year in the family. Any variation to leave already booked will, in most circumstances, count as one of the three notices.

8.2 A notice to book SPL must be submitted at least eight weeks before any period of leave would begin. A notice must be in writing, dated and clearly set out what leave the employee intends to take.

8.3 If the child has not yet been born then a booking can specify that it will commence after a period of time following birth. For

example, an employee could book two weeks' leave to begin "two weeks after the child's birth".

- 8.4 In most circumstances (all continuous leave notifications and agreed discontinuous leave requests) an employee will not need to take any further action and will proceed to take their leave as notified.
- 8.5 Should an employer fail to respond to a notification then the employee should check that their employer received the request. The employee will be entitled to take a continuous leave booking even if the employer does not respond to the notification.
- 8.6 If no agreement is reached regarding a discontinuous leave request during the 14 calendar days' discussion period or no response is given, then the leave will default to a single continuous block. The employee will then have to decide whether to take the leave as a continuous block or to withdraw the request. An employee should understand the default provisions that are in place so they do not miss an action point deadline.

The Default Provisions (discontinuous leave only)
Within 14 calendar days of the original notification... If an agreement is reached regarding when the employee will take their leave, no default provisions will apply. If no agreement is reached or the employer refuses the discontinuous leave notification or the employer makes no response to a discontinuous leave notification, the default provisions will apply.
Within 15 calendar days of the original notification... If no agreement is reached, the employee may withdraw their discontinuous leave notification. If the employee does withdraw the request it will not count as one of their three notices to book leave. If the employee does not withdraw their request, the discontinuous leave notification automatically defaults to a period of continuous leave.
Within 19 calendar days of the original notification... The employee can choose when the continuous leave will commence but it cannot start sooner than eight weeks from the date the original notification was given. If the employee does not choose, the start date automatically defaults to the date the requested discontinuous leave would have first started.

9.0 Becoming aware of a pregnancy or adoption match

If an employer becomes aware of an employee's pregnancy or being matched to adopt, there are a number of steps they can take to ensure leave is arranged smoothly and positively.

Where a notice to take maternity, adoption or paternity leave has been made, it might help to arrange an informal discussion to raise the option of SPL. This may be because the employee is considering it, or there is uncertainty about their eligibility, or they were not aware of the option. A discussion at this stage could be a good opportunity to draw the employee's attention to the different options (maternity, paternity, adoption, flexible working etc.), which may include both statutory and contractually-enhanced schemes.

Although this discussion should be as informal as possible, an employer may allow their employee to be accompanied by a workplace colleague, trade union representative or even a personal friend or family member.

Line managers should be fully aware of the rights and entitlements of employees seeking to take SPL. Employers should make sure that line managers are aware of their procedures for dealing with SPL and are equipped to take a proactive and supportive role.

Shared Parental Leave is a legal entitlement
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Qualifying employees have the legal right to choose to take SPL, to determine when they take it and to not suffer any detriment for using or seeking to use SPL. Although an employer can refuse to agree to a discontinuous leave request, the entitlement remains and the number of weeks requested in the notice will default to a single block of continuous leave.

10.0 Discussing early intentions

Upon receiving a notification of entitlement seeking an informal discussion regarding plans to take SPL can provide an opportunity for the employer, and employee to talk about their preferences and what leave the employee had indicated they were considering taking in their notice of entitlement.

The purpose of such a conversation is for the employer to get an idea of the type and pattern of leave an employee may be interested in taking, giving them time to consider how best to accommodate any forthcoming notice to book SPL. It can also be an opportunity to discuss what forms of discontinuous leave patterns could be accommodated and what an employer is most likely to agree to.

If the employee wishes, it would be good practice to allow them to be accompanied by a workplace colleague, trade union representative or even a personal friend or family member.

11.0 Notification of a leave booking

Upon receiving a notice to book leave, the employer's next step will depend on whether the employee has notified a continuous block of leave or has requested a discontinuous block of leave.

A notification for continuous leave cannot be refused and therefore an employer will need to decide how the leave period will be covered.

If discontinuous leave is requested then the employer will have 14 calendar days to discuss the proposal with the employee and consider how and whether the request, or a modified version of it, can be agreed. Upon receiving a request for discontinuous leave an employer may wish to consider:

- What impact will the leave arrangements have on the business and could this be mitigated?

- Would any modification to the leave reduce the impact on the business and might the employee be agreeable to this?
- Might other considerations help achieve a mutually beneficial agreement?
- The likely outcome if the request for discontinuous leave is not agreed?

Employers will often find it beneficial to have a meeting with the employee once they have received a notice to book SPL. Although it should be kept as informal as possible, an employer should inform their employee that they have the option to be accompanied by a colleague, trade union representative or a personal friend or family member.

Whilst there is no legal requirement to include friends or family, it can be reassuring to the employee and help encourage an open-minded discussion.

Even when the notification is for continuous leave and there is little to discuss, or where it is a request for discontinuous leave that is likely to be refused, holding such a meeting can help ensure mutual understanding and avoid any confusion regarding the notification. It is possible for an employer and an employee to agree/accept a modification to an SPL notification at the meeting itself.

12.0 Outcome

Depending on the circumstances involved, there are four possible outcomes once an employer has received, considered and discussed a notice to book SPL:

- Unconditionally accept a leave notification.
- Confirm an agreed modification to a leave notification.
- Refuse a leave notification (discontinuous leave only).
- Fail to respond to a leave notification.

A) Unconditionally accept a leave notification

A continuous leave notification must be accepted.

If a discontinuous leave notification is made and is completely acceptable to an employer (possibly as a result of holding an early discussion before the notification is made), they should confirm their agreement to the employee, ideally in writing, within 14 calendar days of the date the notification was received, confirming the relevant leave dates being taken.

B) Confirm an agreed modification to a leave notification

If the employer and employee agree a different discontinuous leave arrangement to the one originally requested by the employee, both should confirm their agreement, ideally in writing, within 14 calendar days of the date the notification was received, confirming the agreed dates. The new arrangement could include different dates/duration to the pattern originally requested or could be a move to a continuous leave arrangement instead. There is no legal requirement for an employee to change a continuous leave notification but if they are agreeable to a modification then this may be agreed instead. An employee should not be put under any pressure to change the period or face any detriment if they refuse. A modification in either of these

instances will not count as a further statutory notification and this should be confirmed in writing.

C) Refuse a leave notification (discontinuous leave only)

Where the employer is not immediately agreeable to a notification for discontinuous leave they should always seek to arrange a meeting to discuss the request with the employee. If the notification remains unacceptable to an employer, they should provide the following, ideally in writing, within 14 calendar days of the date the notification was given:

- proposed alternative dates (wherever the option is viable) for the employee to consider AND
- a confirmation of their refusal AND
- clear information on what options are now available to the employee i.e. withdraw, move to the default provisions or agree a modified arrangement.

If no agreement is reached, then the employee and employer need to be mindful of the default provisions (see section 8 for details).

D) Fail to respond to a leave notification

This outcome is not good practice and should be avoided wherever possible. Although employers are under no statutory obligation to respond to any notification regarding SPL, providing a response in writing is good practice and advantageous to maintaining good working relations.

A continuous leave notification must be accepted. If no response is made to such a notification, the employee has the right to take the leave as outlined in the notification.

If a response is not provided to a request for discontinuous leave it will be regarded as having been refused and the employee and employer need to be mindful of the default provisions (see the end of this section for details).

13.0 Cancelling or varying booked Shared Parental Leave

Situations will arise where an employee may need to vary or cancel a period of booked leave. An employee should give written notice to vary/cancel their leave and make clear what change they are seeking. Any variation must be made at least eight weeks before the dates varied begin.

A notice to vary booked SPL will count as a further notification. Therefore, if the employee had originally agreed the leave as part of their first notice to book SPL, cancelling or varying the leave would count as a second notification, meaning, unless the employer gave them more they would only have one more notification to use any remaining leave.

If the employee has already used up all of their notifications the employer is under no obligation to agree to vary/cancel the leave but could still consider the request and decide whether it is reasonably practicable to grant it.

Instances where the employer proposes a variation to leave, and the employee is agreeable, would not count as a further notification and this should be confirmed in writing.

14.0 Working and communicating during Shared Parental Leave

Some contact during SPL periods will usually be beneficial for employers and employees. Whether this is done through SPLIT days or pre-arranged phone contact is for both parties to consider.

14.1 Reasonable contact

Reasonable contact allows employers and employees to keep up-to-date on changes within the workplace and to personal circumstances that can help ease the employee's return to work. The employer has legal obligations to the employee while they are away from work and therefore should keep the employee informed about everyday issues e.g. staffing changes and job opportunities.

How and when contact will take place should be discussed in advance of the leave period being taken and agreed upon.

14.2 SPLIT days

During SPL, an employee and employer will be able to agree up to 20 Shared Parental Leave In Touch (SPLIT) days. There is no obligation on an employer to offer these days or for an employee to agree to them. SPLIT days can be used in situations where both parties feel it would be beneficial for the employee to attend a work-related activity, for example a training session or a team meeting, or to work part of a week to help the employee return to their role in a gradual way.

Both parties should be clear about how much an employee will be paid for working a SPLIT day and whether the contractual pay will top up ShPP to full pay or whether the contractual pay will be additional to the week's ShPP.

SPLIT days payments need to meet National Minimum Wage requirements and not be discriminatory, so it will usually be necessary to pay an employee for the work they do at the rate they would usually receive, and offset any ShPP they would have received for that week against that total.

15.0 Returning to work after Shared Parental Leave

When an employee returns to work following a period of SPL they are entitled to return to the same job if their combined leave period (comprising of maternity/paternity/adoption and shared parental leave) totalled 26 weeks or less. This is unaffected by unpaid parental leave of up to four weeks being taken as well.

In the case where the number of weeks of maternity/paternity/adoption and SPL exceeds 26 weeks in aggregate, or the total number of unpaid parental week exceeds four weeks, an employer must allow an employee to return to the same job unless it is not reasonably practicable, in which case they must offer a suitable and appropriate job on terms and conditions that are no less favourable.

It is rare to justify any change to an employee's role even after 26 weeks. If an employee believes they have unreasonably not been allowed to return to their role they should express their concerns in writing to their employer and seek advice or support from trade union representatives where they are available.

16.0 Annual leave during Shared Parental Leave

Just like maternity, adoption and paternity leave employees still accrue annual leave while on SPL. The employee should still try to take annual leave within their leave year wherever possible. Where this is not possible, it would be good practice for an employer to allow it to be carried-over.

Appendix 1

Information required in an SPL notice of entitlement

The employee **MUST** provide their employer with:

- the names of the mother and partner
- the start and end date of any statutory maternity or adoption leave
- the total amount of shared parental leave available
- the child's expected week of birth, actual date of birth, or date of placement
- how much shared parental leave the mother and partner each intend to take
- an indication as to when they intend to take shared parental leave (an employee does not have to take their leave as they indicate in this document)
 - a signed declaration from the employee seeking to take SPL that:
 - they will be sharing responsibility for the care of the child
 - the mother has given notice to end her maternity entitlement
 - they meet the continuity of employment test
 - the information they have given is accurate

Additionally;

- if the employee ceases to be eligible they will immediately inform their employer. The partner of the employee must also provide their partner's employer with a signed declaration stating: their name, address and national insurance number and that they are the father, mother of the child or partner of the mother of the child and that they meet the criteria for the employment and earnings test
- (if the mother) they are entitled to statutory maternity leave, statutory maternity pay or maternity allowance and that they have given notice to end that leave and any pay/allowance
- that at the time of the birth or placement they shared the responsibility for the care of the child with the employee seeking to take SPL
- they consent to the amount of leave and pay that the employee is seeking to take
- they consent to the employer receiving this declaration to process the information contained within it

- (in the case of the mother) that the mother will immediately inform their partner should the mother cease to satisfy the eligibility conditions.

- **Checklist for arranging Shared Parental Leave**

You as the Employer and employees should use this checklist to ensure everything is in place, and keep it as a record of actions taken.

Action	Completed (insert date & notes)
Does the employee know what the company policy is on SPL?	
Has maternity/adoption leave/pay ended or has a date been confirmed when it will end?	
Has the employee correctly completed a notice of entitlement to take SPL?	
How much SPL does the employee have available for them to take?	
Has a meeting been arranged to discuss possible leave?	
Has a notice to book leave been made?	
Has a meeting to discuss the notice to book SPL been arranged?	
Has contact during SPL been discussed?	
Has a response to the notice to book SPL been given within 14 calendar days?	
What leave period has been arranged?	
How many notices to book leave are remaining?	
How much SPL does the employee still have available for them to take?	