



# MATERNITY MATTERS

May 2013 Edition

## FOREWORD

**“Maternity Matters” is the NUT’s guide to teachers’ maternity rights. It aims to explain, as simply as possible, the various maternity and parental rights available to all teachers, whether full or part time.**

The main provisions governing the rights of women teachers to maternity leave and pay are set out in the Burgundy Book, the national agreement on teachers’ conditions of service in England and Wales. The statutory scheme runs parallel to the Burgundy Book scheme. Significant improvements have been achieved by the Union in negotiations with a number of local education authorities at local level.

It is impossible in this guidance to anticipate every potential question about maternity entitlement. Reading the guidance will, however, answer the majority of the questions you are likely to have. If any aspect remains unclear, my colleagues in your NUT regional office in England or NUT Cymru in Wales will be happy to expand on the information contained in this guidance.

**CHRISTINE BLOWER**  
General Secretary

### MATERNITY MATTERS – LOCAL ARRANGEMENTS

The information, advice and guidance set out by the NUT on these web pages concerns national legislation and national agreements. The NUT web pages do not include details of local arrangements which may have been negotiated and agreed by individual local authorities. **You should consult your NUT regional office in England or NUT Cymru in Wales for details of any such arrangements. See Appendix B for contact details.**

### INFORMATION FROM EMPLOYERS

Your contract of employment should refer to the maternity scheme applying to you and details of that scheme should be available from your employer. These should set out your entitlements in respect of the maternity schemes open to you. **If you do not have that information you should seek it from your employer, initially via your head teacher or principal.**

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## **SECTION 1: SOURCES OF MATERNITY RIGHTS**

### **1.1 WHERE ARE MY ENTITLEMENTS SET OUT?**

Statutory maternity rights applying to all employees, including teachers, are set out in the Work and Families Act 2006 and Employment Rights Act 1996 and other associated regulations.

Most teachers are also covered by the maternity rights scheme for teachers set out in the Burgundy Book national agreement on conditions of service, negotiated with employers by the six teachers' organisations. The Burgundy Book has traditionally provided superior entitlements compared to the statutory scheme.

Recent improvements to statutory rights, however, mean that this is no longer the case in every respect. At the moment, statutory maternity rights and the Burgundy Book scheme are running in parallel. Revised guidance will be published if this situation changes. Regulations allow employees to exercise their statutory and contractual maternity rights as a "composite" right and teachers therefore benefit from the most favourable combination of the statutory and contractual provisions.

### **1.2 WHAT ARE MY ENTITLEMENTS?**

Your entitlements to maternity leave and pay depend largely on:

- whether the Burgundy Book scheme is part of your contract of employment;
- whether there is a local agreement applying to you which improves on what is offered to teachers under the national agreement; and
- whether you have the required length of "continuous employment" to qualify for these entitlements. This may also be referred to as 'continuous service'.

### **1.3 IS THE BURGUNDY BOOK SCHEME PART OF MY CONTRACT OF EMPLOYMENT?**

#### **Teachers Working In the Local Authority Sector**

Teachers employed in the local authority sector, other than supply teachers, will generally have the Burgundy Book scheme included in their contract of employment.

- If you work in a local authority-maintained community or voluntary-controlled school, your employer is the local authority. Your contract of employment will automatically include the Burgundy Book scheme.
- If you work in a local authority-maintained foundation or voluntary aided school, your employer is the school governing body. Your contract of employment will, other than in a very small number of cases, include the Burgundy Book scheme.

- There is, however, a small number of foundation and voluntary aided schools which do not apply the Burgundy Book scheme in full but only count continuous employment at that particular school for the purposes of calculating entitlement to maternity leave and pay. Further, a small number of foundation and voluntary aided schools, which were previously grant maintained schools, have their own maternity schemes introduced at that time. These cannot, however, be less favourable than the statutory scheme set out in Section 4 of this document and teachers who worked in the school prior to it becoming grant maintained will have retained entitlement to the provisions of the Burgundy Book scheme.
- If you work in a teaching role in a centrally-organised local authority support service to schools on teachers' pay and conditions, your employer is the local authority. Your contract of employment will automatically include the Burgundy Book scheme. Soulbury staff, however, are not employed on teachers' conditions of service. Their maternity scheme is the one which applies to local authority staff. If you are employed on Soulbury conditions and you need advice on maternity arrangements you should contact your regional office in England or NUT Cymru in Wales. References to "head teachers" in this document should be read as references to the head of service for centrally employed staff.
- The Burgundy Book maternity scheme does not, however, apply to supply teachers who are employed in local authority maintained schools on a daily basis, either employed directly by the local authority or school governing body or via a teaching agency.

### **Teachers Working Outside The Local Authority Sector**

Teachers who work outside the local authority sector will not necessarily have the Burgundy Book scheme included in their contracts of employment. Refer to the appropriate section below for relevant information.

#### ***Sixth Form Colleges***

- If you work in a sixth form college, you will be subject to the Maternity Scheme agreed between the teachers' organisations and the Sixth Form Colleges Employers' Forum. This scheme replicates the Burgundy Book scheme but with one important difference. The sixth form college scheme incorporates a much wider definition of "continuous employment". Teachers who work in sixth form colleges can count, therefore, previous continuous employment with most public sector organisations towards the one year's continuous employment required for the full maternity pay and leave provisions of the scheme.

#### ***City Technology Colleges (CTCs) and Academies***

- CTCs and Academies can establish their own maternity provisions, provided that they observe the basic statutory rights set out in Section 4.
- However, teachers who were employed at the predecessor schools and transferred to the employment of the CTC or Academy when it assumed

that status retain their previous contractual rights, including their rights under the Burgundy Book maternity scheme.

- Teachers who took up their posts after their CTCs or Academies had acquired their new status are in a different position. They will be covered by the establishment's own scheme. This may be inferior to the Burgundy Book scheme in certain respects. Continuous employment may, for example, be dated only from their date of appointment to the CTC or Academy, so that teachers' previous continuous service in the local authority sector may not count towards the qualifying period for maternity leave and pay. CTCs and Academies may, however, choose to recognise previous employment and the NUT urges them to do so.

### ***Independent Schools***

- The proprietors of independent schools are free to establish their own maternity provisions, subject only to the basic statutory maternity rights as outlined in Section 4. Some independent schools do follow the provisions of the Burgundy Book scheme but some count only continuous employment at that particular school for the purposes of calculating entitlement to maternity leave and pay. If you work in an independent school, your contract of employment will set out the maternity rights to which you are entitled.

### ***Supply Teacher Agencies***

- The proprietors of supply agencies are free to establish their own maternity provisions, subject only to the basic statutory maternity rights as outlined in Section 4. If you work for a supply agency, your contract with the agency should set out the maternity rights to which you are entitled.

## **1.4 IS THERE ANY LOCAL AGREEMENT IMPROVING UPON THE BURGUNDY BOOK WHICH APPLIES TO ME?**

If you work in the local authority sector you may find that there is a local agreement in place between the local authority and the teachers' organisations which gives entitlements superior to the national agreement, for example longer periods of leave or improved payments. You can seek advice on this from your NUT regional office or NUT Cymru in Wales.

## **1.5 WHAT ARE THE REQUIREMENTS FOR "CONTINUOUS EMPLOYMENT"?**

A minimum period of continuous employment is required to qualify for some elements of the statutory maternity scheme and the Burgundy Book scheme, in particular the maximum entitlements to maternity pay and maternity leave.

Calculating your length of continuous employment needs care. There are specific definitions of continuous employment both for the statutory scheme and the Burgundy Book scheme which are explained in the glossary. If you are unsure about your entitlements, advice can be obtained from your NUT regional office or NUT Cymru in Wales.

To be entitled to the provisions of the Burgundy Book scheme, you must still be employed at the date you take your leave. A break in your service before you start maternity leave will affect your entitlements to maternity pay. Teachers whose fixed-term contracts expire without being renewed before their maternity leave commences will not be entitled to occupational maternity leave or pay. Expiry of a fixed-term contract shortly before the commencement of maternity leave does not, however, affect your entitlement to receive Statutory Maternity Pay as set out in Section 4.

## **SECTION 2: WORKING DURING YOUR PREGNANCY**

### **2.1 TIME OFF FOR ANTENATAL CARE**

All pregnant employees, whether full or part time, regardless of their length of continuous employment, are statutorily entitled to paid time off to keep appointments for antenatal care made on the advice of a registered medical practitioner, registered midwife or registered health visitor. This statutory right is incorporated in the Burgundy Book maternity scheme at para 3. You must provide evidence of appointments if requested to do so by your employer, except in the case of a first appointment.

Antenatal care is not restricted to medical examinations. Government guidance specifies that it could, for example, include relaxation classes and parentcraft classes as long as these are advised by a registered medical practitioner, registered midwife or registered health visitor. Government guidance also recommends that fathers-to-be should be permitted to take time off on full pay to attend antenatal appointments.

### **2.2 EMPLOYERS' HEALTH & SAFETY OBLIGATIONS TOWARDS PREGNANT EMPLOYEES**

Employers have specific legal obligations regarding the health and safety of pregnant employees in addition to their general health and safety obligations to all employees. Under the Management of Health and Safety at Work Regulations 1999, as soon as an employee has notified her employer in writing that she is pregnant, the employer is required to undertake a "risk assessment" which assesses the specific risks to her condition arising out of her work and take appropriate steps to eliminate them. See [Section 7](#) of this guidance for full details on this area.

### **2.3 SICK LEAVE DURING YOUR PREGNANCY**

You are entitled to paid sick leave if you are ill before the start of your maternity leave. However, if you are ill wholly or partly because of pregnancy after the beginning of the 4th week prior to the expected week of childbirth, your maternity leave will begin automatically.

Taking maternity leave does not affect your entitlement to accrue your sick leave entitlement which will apply to any absence on sickness grounds following your return from maternity leave.

### **2.4 RUBELLA AND OTHER INFECTIOUS DISEASES**

Teachers are entitled under Para 11.1 of the Burgundy Book maternity scheme to absent themselves from school during the early months of pregnancy if advised to do so by medical practitioners because of the risk of rubella. Leave with full pay will be granted, provided that teachers do not unreasonably refuse to serve in other schools where there is no undue risk of rubella. In addition, where medical practitioners advise teachers not to attend school for precautionary reasons due to infectious disease at their workplace, for example chickenpox, Paragraph 10.3 of the Burgundy Book sick pay scheme allows full sick pay during this period

which is not reckoned against other sick leave entitlement under that scheme.  
See Section 7 for further information.

## **SECTION 3: MATERNITY LEAVE AND MATERNITY PAY UNDER THE BURGUNDY BOOK SCHEME**

### **3.1 QUALIFYING FOR MATERNITY LEAVE AND PAY UNDER THE BURGUNDY BOOK**

There are two levels of maternity entitlement set out in the Burgundy Book. Your entitlement depends on your length of continuous employment. It is not, however, affected by the number of hours you work per week.

All pregnant teachers are entitled to remain absent from work for up to 52 weeks.

Entitlement to the provisions of the Burgundy Book scheme and to maternity pay during maternity leave, however, depends upon the length of continuous service with one or more local authorities.

### **3.2 REQUIREMENTS FOR CONTINUOUS EMPLOYMENT**

The Burgundy Book scheme defines continuous employment as including employment “with one or more local authorities”, including previous employment in other community and voluntary-controlled schools in the same or other local authorities where there has not been a break in employment. Most employers in the local authority sector also recognise employment in voluntary-aided and foundation schools in other local authorities for the purposes of continuous employment.

### **3.3 MATERNITY LEAVE AND MATERNITY PAY : YOUR ENTITLEMENTS UNDER THE BURGUNDY BOOK**

Your entitlement will depend upon the length of your continuous service by the relevant qualifying date. The qualifying date for statutory maternity pay is the beginning of the 15<sup>th</sup> week before the expected week of childbirth, known as the EWC. For the Burgundy Book entitlements, the qualifying date is the beginning of the 11<sup>th</sup> week before the EWC. For the purposes of assessing entitlement to maternity leave and pay, teachers can be placed into one of four categories. The full provisions of the Burgundy Book scheme are available to teachers who fall into categories 1 and 2.

Note that for the purpose of the Burgundy Book scheme, a week’s pay is the amount payable under the current contract of employment. If there are significant variations in your salary, the average salary over the 12 weeks preceding the date of absence shall be treated as a week’s salary.

#### **CATEGORY 1**

**Teachers with at least 26 weeks’ continuous employment with their current employer and at least 1 year’s continuous employment with one or more local authorities.**

Teachers who have by the qualifying date completed at least 1 year’s continuous employment with one or more local authorities will benefit from the full entitlements under the Burgundy Book scheme. If they have completed at least 26 weeks’

continuous employment with their current employer, they will also be entitled to Statutory Maternity Pay.

Eligible teachers will be entitled to the following benefits.

**Ordinary maternity leave** of up to 26 weeks which will be paid leave as follows:

- first 4 weeks of absence: full pay inclusive of Statutory Maternity Pay (SMP);
- next 2 weeks: 90 per cent of a week's salary inclusive of SMP;
- next 12 weeks: half pay plus £136.78 SMP (not exceeding full pay);
- next 8 weeks: £136.78 SMP.

**Additional maternity leave** of up to a further 26 weeks, 13 of which will be paid at the SMP rate of £136.78 per week, with the remaining 13 weeks unpaid.

Such teachers can now remain absent for a total period of up to 52 weeks. They will also be entitled to take statutory unpaid parental leave at the end of this period, since they will satisfy the requirement for 1 year's continuous employment with the current employer.

## CATEGORY 2

**Teachers with less than 26 weeks' continuous employment with their current employer but at least 1 year's continuous employment with one or more local authorities**

Teachers who have by the qualifying dates completed at least 1 year's continuous employment with one or more local authorities will be entitled to the full benefits of the Burgundy Book scheme. If, however, they have completed less than 26 weeks' continuous employment with their current employer, they will not be entitled to all of the statutory provisions. In particular, they will not be entitled to Statutory Maternity Pay, although they may be entitled to the state benefit Maternity Allowance (MA) depending on their recent National Insurance contributions record in other employment. Teachers in this category are entitled to be absent for up to 52 weeks.

Eligible teachers will be entitled to the following benefits:

**Ordinary maternity leave** of up to 26 weeks, of which either 18 or 26 weeks will be paid leave as follows:

- first 4 weeks of absence: full pay, inclusive of MA if eligible;
- next 2 weeks: 90 per cent of a week's salary, inclusive of MA if eligible;
- next 12 weeks: half pay plus £136.78 MA if eligible (not exceeding full pay);
- next 8 weeks: £136.78 MA if eligible, otherwise unpaid.

**Additional maternity leave** of up to a further 26 weeks, 13 of which will be paid to teachers who qualify for MA at the rate of £136.78 per week, with the remaining 13 weeks unpaid.

The Burgundy Book scheme allows mothers to take unpaid maternity leave for up to 29 weeks after the week of the birth. They may also be entitled to take statutory unpaid parental leave at the end of their maternity leave period provided that by that date they have at least one year's continuous employment with their current employer. It may also be possible to agree additional unpaid leave for any teacher in this category on an individual basis with the employer.

### **CATEGORY 3**

**Teachers with at least 26 weeks' continuous employment with their current employer but less than 1 year's continuous employment with one or more local authorities**

### **CATEGORY 4**

**Teachers with less than 26 weeks' continuous employment with the current employer and less than 1 year's continuous employment with one or more local authorities**

Teachers who fall into category 3 will not be entitled to the occupational maternity pay provisions of the Burgundy Book, although they will benefit from maternity leave and pay offered under the statutory scheme. Teachers who fall into category 4 will be entitled to take up to 52 weeks' maternity leave but will have only limited statutory entitlements to pay, depending on their National Insurance contributions. See [Section 4](#) of this guidance.

## **3.4 BEGINNING YOUR MATERNITY LEAVE**

### **Notification Requirements**

The earliest you can begin your maternity leave is 11 weeks before the expected week of childbirth (EWC). To calculate the 11th week prior to the expected week of childbirth, you need to count back 11 Sundays from the Sunday prior to the expected date of childbirth.

**The Burgundy Book scheme requires that notification of pregnancy should be given to "the employer". Where the local authority is the employer it may provide for notification to be given to the school, for example to the head teacher. You should check, in advance, the arrangements for notification applying in your school or college. The NUT believes, however, that the notification requirement is satisfied if the notification is given by the due date to your head teacher or principal.**

To be entitled to take maternity leave you must meet the conditions described below.

- You must give your employer written notification of your pregnancy, your wish to be absent for maternity and the date on which you wish to begin

your maternity leave, at least 15 weeks before your expected week of childbirth, unless you have good cause for not doing so. A model letter of notification is attached at [Appendix A](#). If requested by the employer, you must produce a certificate from a registered medical practitioner or a certified midwife stating the expected week of childbirth.

- As noted above, some local authorities expect this notification to be sent to your head teacher. It may, however, help your school in any case if you send a copy of this notification to your head teacher.
- Within 28 days of receiving this notification, your employer must inform you of your “expected date of return”, which is determined on the basis that you will take the maximum amount of leave to which you are entitled.
- If you intend to return from your maternity leave earlier than this “expected date of return”, you are not required to indicate this at the start of your maternity leave. You can choose to notify your employer during your maternity leave that you wish to return earlier than this date, provided you give 21 days’ notice.

In order to receive maternity pay under the Burgundy Book scheme, you must also at this stage declare in writing that it is your intention to return to work after the period of maternity leave. You may change your mind later about returning to work, although this may mean that you are required to repay part of your maternity pay. Please refer to [section 3.8](#). If you decide not to return, you will need to give notice of your intention to resign your post. Please refer to [section 3.9](#).

### **Date of Starting Maternity Leave**

You can stop work and start maternity leave no earlier than 11 weeks before the expected week of childbirth.

If you are in any doubt about when you wish to start maternity leave, the Union advises that you should choose a date on which to begin your maternity leave as close to the expected week of childbirth as it is medically safe to do so. If, at a later stage, you find it necessary to begin your maternity leave earlier than this date, you will be able to do so, subject to the requirement for 28 days’ notice. In any event, if you are absent due to pregnancy-related sickness during the 4 weeks before the expected week of childbirth, maternity leave will be triggered early.

If, however, you choose a particularly early date to begin your maternity leave and then decide you would like to carry on working for some weeks longer, you will be able to, provided you give 28 days’ notice. It is important to choose the actual date very carefully so that you receive maximum benefits.

Where a teacher is absent from work, however, wholly or partly because of pregnancy or childbirth after the beginning of the 4th week before the expected week of childbirth, then maternity leave will automatically be triggered from that date. Where the baby is born before the maternity leave is due to commence, the

day following the date of the birth will be regarded as the first day of maternity leave.

Salary ceases and maternity pay begins on the day on which absence begins, irrespective of whether it is a school holiday. Once your maternity leave period has commenced, any school holiday periods will be included in your period of maternity leave.

### **3.5 MISCARRIAGE/STILLBIRTH**

In the very sad and distressing case of a miscarriage prior to 24 weeks of pregnancy, consequent absence will be treated as sick leave and you will receive sick pay for that period. It will be necessary to provide a medical statement from your doctor.

In the tragic circumstances of stillbirth, which is defined as taking place after 24 weeks of pregnancy, or of neonatal death, you will be entitled to the same maternity leave and pay as if the pregnancy had reached full term. At any time during this period, you may give your employer 21 days' notice of your intention to return to work. Should you then not be fit to return to work on your notified day of return if, for example, your medical statement certifies postnatal depression, then you would be entitled to sick leave/pay in accordance with the usual sick pay provisions.

### **3.6 KEEPING IN TOUCH (KIT) DAYS**

Please refer to [section 4.6](#) for information on KIT days.

### **3.7. DURING YOUR MATERNITY LEAVE**

All your terms and conditions of employment except those relating to your normal pay will apply during your statutory maternity leave period of 52 weeks. Employers who provide child care vouchers (which are not deemed to be pay) to women with children must continue to provide the vouchers for the duration of the statutory maternity leave. It will be discriminatory to stop providing the vouchers on the grounds that you are pregnant, on maternity leave or not in receipt of pay. Similarly, women on maternity leave must not be required to return school lap tops during their leave simply on the grounds that they are on maternity leave.

### **3.8 RETURNING TO WORK**

#### **Notification Requirements**

You must return to work at the end of your period of entitlement to maternity leave unless you have chosen to return early.

**As noted above, it is assumed that you will be returning at the end of the 52 weeks' maximum period of maternity leave to which you are entitled. You therefore need to give notice of your return to work only if you are returning earlier than that date.**

You should check, in advance, the arrangements for notification applying in your school or college, but the NUT believes that the notification requirement is satisfied if the notification is given by the due date to your head teacher or principal.

During your period of maternity leave, you and your employer are entitled to make 'reasonable contact' with each other for the purpose of keeping in touch, for example to discuss the practicalities of returning to work.

If, however, you wish to return to work before the end of your maximum period of entitlement, you must give notice in writing. The notice must be given to the employer at least 21 days before the date on which you propose to return. If that notice is not given, your employer may postpone your return for up to 21 days or to the end of your maximum maternity leave period if earlier.

If you fall ill during your period of maternity leave, you are advised to contact your NUT regional office in England or NUT Cymru in Wales, who will be able to advise you of the options available to you.

If you suffer from post natal depression which is likely to last more than 12 months, the illness may fall within the legal definition of disability, which means you would be protected from discrimination for reasons related to the disability. You are advised to seek further advice from your NUT regional office in England, or NUT Cymru in Wales, if you suffer from post natal depression during your maternity leave.

If you are sick on the day that you are due to return from maternity leave, whether because of post natal depression or for any other reason, you will be entitled to paid sick leave under the usual arrangements. You should inform your employer as soon as possible and submit a medical certificate from your doctor. Should you know prior to the date of return that you are unlikely to be fit to attend work on the day of return from maternity leave, it would be helpful to inform your employer of this in advance.

More information on post-natal depression can be found in Section 7 of this document.

### **Requirement to Return to Work for 13 Weeks**

It is important to note that a condition of entitlement to maternity pay under the Burgundy Book scheme is that you must return to work after the birth for a period of at least 13 weeks. This period includes school holidays and half terms. If you do not, then your employer is entitled to reclaim part of the maternity pay paid to you.

If you were working full-time prior to maternity leave, then you are required to complete the equivalent of 13 weeks' full-time service on your return to teaching. If you were working part-time prior to maternity leave, you are required to complete the equivalent of 13 weeks' service on that part-time basis. Where you move to part-time work, or part-time work on a different basis, following your return, you are allowed to complete the equivalent of these periods on your new part-time basis.

Failure to return for the necessary period will mean that your employer has the discretion to claw-back your maternity pay insofar as it exceeds the amount payable as Statutory Maternity Pay. You may, however, keep the first 6 weeks' payments and will not have to refund any payments of Statutory Maternity Pay.

The NUT's view is that teachers who are unable to complete the 13 weeks' service for a reason which is in the hands of their employers, for example the expiry of fixed term contract, should not be expected to repay maternity pay. In addition, some local authorities have a policy of not reclaiming maternity pay if teachers return to work at another school after obtaining new posts while on maternity leave. The NUT believes that returning to work on this basis should be regarded by the current employer as sufficient to comply with this condition. Further advice on these matters can be sought from your appropriate NUT regional office in England or NUT Cymru in Wales.

Whilst you were on maternity leave and receiving maternity pay, both you and your local authority will have continued to make contributions to the Teachers' Pension Scheme, albeit at a lower rate, which will not reduce your service for pension purposes. If, however, you fail to return for the necessary period, any payments made to you or on your behalf in excess of those entitlements, such as tax or National Insurance contributions, may have to be refunded.

### **Right to Return to the Same Job**

You are entitled under the Burgundy Book to return to your job unless that is not practicable due to redundancy. See [Section 6](#) for more information on this area.

## **3.9 RESIGNING YOUR POST**

Teachers taking maternity leave who choose to resign once their maternity leave has started are subject to provisions for contractual notice in the usual way. It is open to your employer to waive the full notice requirements. The NUT expects employers to be sympathetic to the needs of teachers whose circumstances will have changed once their child is born.

As noted above, you may have to repay maternity pay if you do not return for the necessary period. Contact your NUT regional office in England or NUT Cymru in Wales, if you require more advice on this area.

If you do not wish to apply for occupational maternity leave and pay and you do not wish to return to your post after having your baby you must inform your employer that you wish to terminate your employment. The contractual notice requirements do not apply in these circumstances. You must give at least 21 days' notice of your resignation for your contract to end on the day of the birth or up to 11 weeks beforehand. You will not receive contractual pay but you will still be entitled to Statutory Maternity Pay as set out in Section 4. The precise date of the end of your employment will be determined by discussion between you and your employer. If you subsequently change your mind, however, there is no requirement for your employer to give you your job back. The NUT recommends that you discuss your wish to resign and your contractual notice obligations with your NUT regional office in England or NUT Cymru in Wales.

## **SECTION 4: STATUTORY RIGHTS: MATERNITY LEAVE, STATUTORY MATERNITY PAY AND MATERNITY ALLOWANCE**

This Section outlines the provisions on statutory maternity rights relevant to teachers who are not entitled to the full provisions of the Burgundy Book maternity scheme for maternity leave and maternity pay.

### **4.1 MATERNITY LEAVE AND MATERNITY PAY : YOUR STATUTORY ENTITLEMENTS**

The Employment Rights Act 1996, as amended by the Work and Families Act 2006 contains the statutory rights to maternity leave and pay. It provides two statutory maternity schemes: one covers all pregnant employees, the other gives extended rights to those who have worked for longer with their employer. It further provides women taking maternity leave with a certain level of protection against dismissal or other detriment.

There are two statutory maternity benefit schemes. Statutory Maternity Pay (SMP) is paid by employers on behalf of the state to women employed during pregnancy. Maternity Allowance (MA) is a state benefit paid by JobCentre Plus directly to women who have not worked for long enough to claim statutory maternity pay.

As explained in Section 3 of this guidance, your entitlements will depend upon the length of your continuous service and which of 4 categories you fall into. The qualifying dates are explained on pages 10-11. Teachers who fall within categories 1 and 2 are entitled to the full provisions of the Burgundy Book scheme and their position is considered in Section 3. The following considers the entitlements of those teachers who fall into categories 3 and 4 and are not entitled to the Burgundy Book provisions.

### **CATEGORY 3**

#### **Teachers with at least 26 weeks' continuous employment with their current employer but less than 1 year's continuous employment with one or more local authorities**

Teachers who, by the qualifying dates, have completed at least 26 weeks' continuous employment with their current employer, but who have less than 1 year's continuous employment with one or more local authorities, including their current employer, will qualify for the full statutory provisions but will not qualify for the Burgundy Book entitlements.

Eligible teachers will be entitled to the following benefits.

**Ordinary maternity leave** of up to 26 weeks, paid as follows:

- first 6 weeks of absence: SMP equal to 90 per cent of a week's salary;
- next 20 weeks: SMP at £136.78.

**Additional maternity leave** of up to 26 weeks, 13 weeks of which will be paid at the SMP rate of £136.78, the rest unpaid. Teachers who fall into this category can therefore remain absent for a total period of up to 12 months and will receive SMP for 39 weeks. They will also be entitled to take statutory unpaid parental leave at the end of this period, since they will satisfy the requirement for 1 year's continuous employment with the current employer.

#### **CATEGORY 4**

##### **Teachers with less than 26 weeks' continuous employment with the current employer and less than 1 year's continuous employment with one or more local authorities**

Teachers with less than 26 weeks' continuous employment by the qualifying dates either with the current employer or with one or more local authorities will not qualify for the Burgundy Book entitlements. They will be entitled to take up to 52 weeks' maternity leave but will have only limited statutory entitlements to maternity pay and, depending upon their National Insurance contributions record in recent employment, to the state Maternity Allowance benefit. See paragraph 4.5 for information on qualifying for Maternity Allowance.

Eligible teachers will be entitled to the following benefits.

**Ordinary maternity leave** paid as follows:

- 26 weeks' maternity leave for which no SMP will be payable but for which £136.78 MA will be payable if eligible depending on their NI contributions.

**Additional Maternity Leave** paid as follows.

Teachers in this category qualify for the further period of 26 weeks' statutory additional maternity leave, 13 weeks of which will be paid if eligible at the MA rate of £136.78 a week, with the rest unpaid. They are also entitled to take statutory unpaid parental leave either at the end of their maternity leave period or shortly afterwards, provided that by that date they have at least one year's continuous service with their current employer. It may also be possible to agree additional unpaid leave for any teacher in this category on an individual basis with the employer.

## **4.2 BEGINNING YOUR MATERNITY LEAVE**

### **Notification Requirements**

**The statutory provisions provide that notification of pregnancy should be given to "the employer" according to arrangements determined by the employer. You should check, in advance, the arrangements for notification applying in your school or college. The NUT believes, however, that the notification requirement is satisfied if the notification is given by the due date to your head teacher or principal.**

You are required to inform your employer no later than the end of the 15th week before your expected week of childbirth or, exceptionally, as soon as you reasonably can:

- that you are pregnant;
- the date of your expected week of childbirth and, if requested, a midwife or doctor's certificate; and
- the date on which you intend your ordinary maternity leave to commence.

The notification needs to be in writing if requested by your employer. It is preferable that you make such a written notification for the purpose of keeping a record. It is also advisable to inform your employer of your pregnancy as soon as you feel comfortable doing so. Once you have done so, your period of protection from detriment starts.

Your midwife or GP will give you a MAT B1 Form when you are about six months' pregnant. You should be prepared to produce this to confirm your pregnancy.

You can vary your leave start date by giving your employer 28 days' notice.

### **Date of Starting Maternity Leave**

You can start your maternity leave at any time from 11 weeks before the week your baby is due. It is up to you to decide and you can work up until the week of childbirth. Your SMP will start on the same day as your maternity leave, i.e. the date notified to the employer. The only exception is if you have a pregnancy-related illness during the last four weeks of your pregnancy. In this case, your maternity leave will be automatically triggered.

Where the baby is born before the maternity leave is due to commence, the day following the date of the birth will be regarded as the first day of maternity leave and pay.

It is a legal requirement that you do not work for two weeks following the date of childbirth. During the ordinary maternity leave period, all your contractual rights, except your normal pay, will continue as if you were not absent from work.

Your employer must, within 28 days of receiving notice of your intention to take maternity leave, give you written notice of the date that your maternity leave entitlement will end, i.e. the end of 52 weeks.

## **4.3 RETURNING TO WORK**

### **Notification requirements**

If you are going back to work at the end of your 52 weeks' maternity leave period, you do not need to give any notice of return. Your employer will assume that you will take advantage of the full entitlement unless you give notice that you intend to return before the end of your entitlement.

If you do wish to return to work before the end of the period of leave to which you are entitled, you must give your employer 8 weeks' notice of the date on which you wish to return. If you do not give such notice, your employer may postpone your return for up to 8 weeks or to the end of your entitlement if earlier.

You should check, in advance, the arrangements for notification applying in your school or college. The NUT believes, however, that the notification requirement is satisfied if the notification is given by the due date to your head teacher or principal.

### **Rights to return to your job**

If you return at the end of 26 weeks' ordinary maternity leave, you are entitled to return to the job in which you were employed before your absence and on the same contractual terms. You should be treated as if you had never taken leave. If you return after additional maternity leave of between 26 and 52 weeks, however, you are entitled to return either to that job or, if that is not reasonably practicable, to another which is both suitable and appropriate for you in the circumstances.

For further information on this area, including what should happen if notice of redundancy is given while you are on maternity leave or if your school is reorganised, see [Section 6](#).

## **4.4 STATUTORY MATERNITY PAY**

### **Qualifying Conditions**

To qualify for statutory maternity pay you must have worked continuously for the same employer for at least 26 weeks by the end of the 15th week before the week the baby is due. For the definition of 'continuous employment' please refer to the glossary. To find the 15th week, look on a calendar for the Sunday before your baby is due, or the day it is due if that is a Sunday, and count back 15 Sundays from there. You must have worked at least 26 weeks with your employer by the end of that week in order to qualify for statutory maternity pay. You must still be employed in that job in the 15th week before the baby is due and you must earn at least £109.00 [2013 - 2014] per week on average during the 8 weeks before the 15th week. You do not lose your entitlement to SMP if you leave employment after the 15th week or do not intend to return to work.

### **Rate of Statutory Maternity Pay**

For the first six weeks you get 90 per cent of your average pay. After that you get the basic rate of statutory maternity pay, which, at the date of publication, is £136.78 per week, for up to 33 weeks. Statutory maternity pay is only payable when you are away from work so if you work at any time during your maternity leave you will not get statutory maternity pay for that week. The exception to this is the introduction of Keeping In Touch (KIT) days, which allow women to work for up to 10 days without bringing their maternity leave to an end or losing SMP or MA. Further information on this is set out at the end of this section.

## **Period of Payment**

Statutory maternity pay is paid for up to 39 weeks. It is for you to decide how many weeks you wish to claim. The earliest week that you can get statutory maternity pay is the 11th week before the birth. If, however, your baby is stillborn from week 16 before the expected date of childbirth, you can now get statutory maternity pay.

You are entitled to 39 weeks' maternity pay whenever you decide to leave work. If you have a pregnancy related illness in the 4 weeks before the baby is due and this triggers your maternity leave, you will not be able to claim statutory sick pay. If, however, your illness is not pregnancy related, you can claim statutory sick pay until your maternity leave and pay start.

## **How to Claim**

To claim statutory maternity pay you may apply at the same time that you give notice to your employer of your pregnancy and your intention to take maternity leave. This would be by the end of the 15th week before the expected week of the birth. If you have not already requested SMP, you may write to your employer at least 28 days before you stop work, asking that you be paid statutory maternity pay. If you have not already done so, you must send them a copy of your Maternity Certificate, Form MAT B1 which your GP or midwife will have given you. Under the Burgundy Book scheme, the first 18 weeks' pay includes SMP and occupational maternity pay, the SMP being claimed on your behalf by your employer. If you were entitled to occupational maternity pay it would not be necessary for you to make any claim apart from informing your employer that you wished to receive statutory maternity pay when giving notification of absence.

## **4.5 MATERNITY ALLOWANCE**

### **Qualifying Conditions**

Maternity Allowance is available for women who work just before or during their pregnancy but who are not eligible for statutory maternity pay. If you gave up work or changed jobs during your pregnancy you may be entitled to Maternity Allowance.

Maternity Allowance is claimed from your social security office. You must have worked and paid full national insurance contributions for at least 26 of the 66 weeks before the week in which the baby is due. You must have been earning on average £30.00 a week or more.

You cannot receive Maternity Allowance for any week in which you work or are entitled to statutory maternity pay.

If you are still working, you can choose when to start getting Maternity Allowance. The earliest you can start getting Maternity Allowance is from the 11th week before the week in which the baby is due. The latest is from the day following the date on which the baby is born.

If you are on sick leave for a pregnancy related reason in the 4 weeks before the week the baby is due, your Maternity Allowance will start from the day following the first day you were off sick for that reason in that 4 week period.

### **Rate and Period of Payment**

If you are eligible, you will receive the lower of £136.78 a week or 90 per cent of your average weekly earnings for up to 39 weeks.

### **How to Claim**

You will need Form MA1 from your antenatal clinic or social security office. You will also need to obtain the Maternity Certificate, Form MAT B1, from your midwife or doctor when you are about 6 months pregnant and Form SMP 1 from your employer if you have been turned down for statutory maternity pay.

Fill in Form MA 1 and send it to your social security office with the other forms. Send in Form MA 1 as soon as you can after you are 26 weeks' pregnant. Do not delay in sending it in because you are waiting for MAT B1 or SMP 1, as these can be sent in later.

## **4.6 WORK DURING MATERNITY LEAVE**

### **Reasonable contact**

Employers and employees are entitled to make 'reasonable contact' with each other during maternity or adoption leave in order to discuss the practicalities of returning to work.

### **Keeping in Touch 'KIT' Days**

In addition, employees may work up to 10 mutually agreed 'Keeping in Touch' days during ordinary or additional maternity leave without losing SMP. KIT days may also be taken by adopters without loss of Statutory Adoption Pay (SAP).

These 10 days may be taken regardless of whether the employee works on a full or part time basis. Under the KIT day scheme, 'work' includes work, training, or other activities undertaken for the purpose of keeping in touch with the workplace, for example attending an appraisal meeting. A teacher who attends work for three hours' training will have used one of her KIT days.

Women are not permitted to carry out any work for the employer, including KIT days, during the two week period of compulsory maternity leave following the birth of a child.

The regulations on keeping-in-touch days are silent on the question of how much an employee should be paid for working so this will be a matter for agreement between you and your employer. It is important to note that if your employer pays you any extra contractual pay your employer is entitled to off-set it against any SMP paid for that week. For this reason, should you decide you would like to work for up to 10 days before the end of your maternity leave, you may request to do so during the unpaid period of maternity leave.

You are not obliged to work KIT days. Your employer cannot force you to do so.

You are advised to contact your NUT regional office in England or NUT Cymru in Wales before agreeing to work KIT days.

### **Working for the same employer for more than 10 days**

If you work for 10 KIT days and then do further work for the same employer, under the same or a new contract, while you are entitled to receive SMP, you will lose one week's SMP for each week or part week that you work for that employer.

### **Working for another employer**

Your SMP will not be affected if you work *before* your baby is born for another employer who did not employ you in the 15th week before your baby was due.

Your SMP will end if you work *after* your baby is born for another employer who did not employ you in the 15th week before the baby was due.

In either case, you should check that the employer paying your SMP consents before you start work to ensure that you are not breaching your contract.

### **Self-employment**

If you undertake work on a self-employed basis during your maternity leave, this will not affect your maternity leave or pay because the rule applies only to employment under a contract of service as an employee. Self-employed work could include self-employed supply work, marking exams on a self-employed basis, or providing private tuition. You should check that the employer paying your SMP consents before you start work to ensure that you are not breaching your contract.

## **4.7 DURING YOUR MATERNITY LEAVE**

All your terms and conditions of employment except those relating to your normal pay will apply during your statutory maternity leave period of 52 weeks. Employers who provide child care vouchers (which are not deemed to be pay) to women with children must continue to provide the vouchers for the duration of the statutory maternity leave. It will be discriminatory to stop providing the vouchers on the grounds that you are pregnant, on maternity leave or not in receipt of pay. Similarly, women on maternity leave must not be required to return school lap tops during their leave simply on the grounds that they are on maternity leave.

## **4.8 RESIGNING YOUR POST**

Please refer to [section 3.9](#).

## **4.9 ACCRUAL OF STATUTORY ANNUAL LEAVE DURING MATERNITY LEAVE**

The position is complex but the majority of women teachers returning from maternity leave will not be entitled to annual leave on their return.

Teachers are entitled to 28 days statutory annual leave under the Working Time Regulations and they must be allowed to take this leave outside of their maternity leave. Teachers will accrue their statutory annual leave during their maternity absence. The situation is complex because the Working Time Regulations also state that employers can determine when the statutory leave is taken and teacher employers have advised that the statutory leave should be offset against periods of school closure. The annual leave year as far as teachers are concerned usually runs from 1<sup>st</sup> September – 31<sup>st</sup> August. In most cases, therefore, periods of school closure before and after the maternity leave period will more than equal the 28 day annual leave entitlement.

In addition, where the return from annual leave is so close to the end of the leave year that there is not enough time to take the annual leave, a teacher must be allowed to carry this balance forward to the following leave year. The teacher can then be required to take this during the remaining periods of school closure after the 28 days annual leave for that leave year has been accommodated.

Teachers who resign and do not, therefore, return at the end of their maternity leave period may, in some cases, be entitled to additional payment in lieu of their accrued annual leave entitlement. In the case of teachers who resign, any additional payment will help off-set any occupational maternity pay that has to be re-paid following a failure to return to work for 13 weeks.

## **SECTION 5: OTHER STATUTORY RIGHTS: PARENTAL LEAVE, PATERNITY LEAVE AND PAY, ADOPTION LEAVE AND PAY, AND TIME OFF FOR FAMILY REASONS**

This section outlines the statutory rights to parental leave, paternity leave and pay, adoption leave and pay, and to unpaid time off for urgent domestic reasons.

### **5.1 STATUTORY RIGHTS TO PARENTAL LEAVE**

The parental leave provisions of the Employment Rights Act 1996 and the Maternity and Parental Leave Regulations give men and women employees with one year's service a right to take unpaid leave to care for their children. Please see the glossary for the definition of 'continuous employment'.

Women taking maternity leave can choose whether to take unpaid parental leave immediately following maternity leave or later. Parental leave is an additional right to your maternity rights under the Burgundy Book.

Eighteen weeks' unpaid leave per child can be taken in total (this was increased from 13 weeks in March 2013). You may take a maximum of four week's parental leave per child in any year of entitlement, starting from the first date of entitlement. Parents of disabled children, i.e. children who are entitled to disability living allowance, may take parental leave in multiples of weeks or days. Other parents must take their parental leave in blocks or multiples of a week. Leave can be taken:

- any time up to and including the child's fifth birthday,;
- where the child is entitled to disability living allowance, up to and including the child's 18th birthday;
- where the child has been adopted, up to and including the fifth anniversary of the adoption, or the child's 18th birthday, whichever is earlier.

When you return after parental leave, you are entitled to return to the post in which you were previously employed. If it is not reasonably practicable for your employer to allow you to return to that post, you must be allowed to return to another which is both suitable and appropriate for you in the circumstances. The terms and conditions must not be less favourable than would have applied if you had not been absent on parental leave.

The NUT recommends that to make a request for parental leave, teachers should ask for parental leave in accordance with local arrangements for paternal or other leave. You should give 21 days' notice of taking leave. An employer can ask to see evidence of parental responsibility. An unmarried father may be asked to provide evidence, for example, such as a birth certificate showing registration as the child's father or a parental responsibility order if appropriate.

If the leave is to be taken by a father starting on the day of his child's birth, the notice given must be at least 21 days before the expected week of childbirth, and

specify the expected week of childbirth and the length of leave which is to be taken.

If the leave is to be taken from the date of adoption, notice must be given at least 21 days before the week in which the adoption placement is to occur, and must specify the week in which the placement is expected and the duration of leave to be taken. In all other cases, at least 21 days' notice must be given, specifying the dates on which the leave is to begin and end.

If a woman wishes to take parental leave immediately following maternity leave, she should ensure compliance with the 21 days' notice.

An employer may not refuse a request for parental leave where the notice and evidence requirements have been satisfied. An employer may postpone parental leave (unless it is to commence on the date of adoption or child birth) if the employer considers that the leave would unduly disrupt the operation of business.

## **5.2 STATUTORY RIGHTS TO PATERNITY LEAVE AND PAY**

Statutory paternity leave and paternity pay is available to fathers, and the partners of mothers of children born on or after 6 April 2003. You may have a contractual right to paternity leave and pay as well as your statutory right. You may combine these rights and you may take advantage of whichever 'provision' is more favourable. If in doubt, you should seek advice from your NUT regional office in England or NUT Cymru in Wales.

### **Statutory Paternity Leave**

Statutory Paternity Leave is absence from work for the purpose of caring for a newborn child or for supporting the child's mother.

To qualify, a teacher must:

- be the child's father or the spouse or partner, same or opposite sex, of the child's mother;
- have or expect to have responsibility or the main responsibility for child's upbringing;
- have been continuously employed by their employer for at least 26 weeks ending with the 15th week before the expected week of birth; and
- give proper notice and evidence to their employer.

Eligible teachers may choose to take either one or two consecutive weeks' paternity leave.

Statutory paternity leave may be taken before 56 days from the date of the child's birth and cannot start before the birth of the child. It may begin on the date the child is born, or on a date falling a specific number of days after date child is born, or on a specific predetermined date after the expected week of the birth.

Paternity leave will start on the date in your notice. If you choose to start leave on the date of the birth and you are at work on that date, leave begins the day after the birth.

If the child is born early, you may take your paternity leave between the birth and 56 days after the birth. If the child is born late, you may take your paternity leave between the birth and 56 days after the first day of the expected week of the birth. You are still entitled to take the leave if the baby is stillborn after 24 weeks.

### **Applying for Statutory Paternity Leave**

You must give your employer notice of your intention to take paternity leave by the end of the 15th week before the expected week of the birth. You may use Inland Revenue form 'SC3 - Becoming a Parent' to give notice of leave and to apply for Statutory Paternity Pay. Your notice must specify the expected week of the birth, the length of leave you wish to take and the date you wish your leave to begin.

Where your employer requests, you must supply a signed declaration that the purpose of the absence is to care for a child or to support the child's mother, that you are the child's father or the mother's partner; and that you have the main responsibility for the child's upbringing.

If you wish to change your start date you must give your employer 28 days' notice, in writing if requested.

You must give your employer notice of the birth as soon as is reasonably practicable after the date child was born.

### **Returning to work**

Your employment contract will continue during statutory paternity leave. You are entitled to the benefit of your normal terms and conditions of employment, except terms relating to your normal salary.

In most cases, if you return to work from statutory paternity leave and there is no redundancy situation, you are entitled to return to the same job on the same or improved terms and conditions. If a redundancy situation has arisen, you are entitled to be offered a suitable alternative position on terms which are not substantially less favourable.

If you return to work from paternity leave which immediately followed additional maternity leave or additional adoption leave or parental leave of more than four weeks, you are entitled to return to the same job or if that is not reasonably practicable to an alternative job on no less favourable terms and conditions.

### **Statutory Paternity Pay**

Statutory Paternity Pay is a weekly payment made by employers to eligible employees for one or two weeks.

You will be entitled to Statutory Paternity Pay if you:

- are the child's father or the spouse or partner of the child's mother;
- have or expect to have responsibility or the main responsibility for the child's upbringing;
- have been continuously employed by the same employer for at least 26 weeks ending with the 15th week before the expected week of the birth;
- have been employed by the same employer from the end of the 15th week before the expected week of birth to the date of the birth; and
- earn at least £109.00 per week for 8 weeks ending with the 15th week before the expected week of the birth.

### **Applying for Statutory Paternity Pay**

You should complete form 'SC3 - Becoming a Parent' which gives notice of intention to take paternity leave and serves as an application form for Statutory Paternity Pay. You must give your employer at least 28 days' notice of the date from which you wish the payment to start.

If you are entitled to paternity pay and leave, you may give notice at the same time so long as you give notice by the end of the 15th week before the expected week of the birth and at least 28 days before you wish payment to begin.

The weekly rate of Statutory Paternity Pay from April 2013 is the lower of £136.78 or 90 per cent of your weekly earnings.

## **5.3 ADDITIONAL PATERNITY LEAVE AND ADDITIONAL STATUTORY PATERNITY PAY**

The Government has introduced a right to Additional Paternity Leave and Additional Statutory Paternity Pay for fathers of babies due on or after 3 April 2011 or matched for adoption on or after that date. Under the new right, mothers will be able to transfer the last 6 months of their maternity leave, or part of that leave to the father. Details of the provision are set out below:

### **Qualifying for Additional Paternity Leave and Pay**

You may qualify for Additional Paternity Leave and Pay if either:

- you are the father of a child due on or after 3 April 2011;
- your wife, partner or civil partner is pregnant and due to give birth to a child on or after 3 April 2011;
- you and your partner receive notification that you are matched with a child for adoption on or after 3 April 2011; or
- your spouse or civil partner is adopting a child from overseas and the child enters Great Britain on or after 3 April 2011.

There are other qualification requirements.

## **Additional Paternity Leave**

To qualify for leave, you must have been with your employer for at least 26 weeks by the qualifying week which is either:

- the end of the 15<sup>th</sup> week before the start of the week when the baby is due;
- the end of the week you are notified you are matched with your child (adopting within the UK); or
- the date your child enters Great Britain for the purposes of adoption (adopting from overseas).

You must also still be employed with that employer the week before you want to start your leave.

For you to qualify for Additional Paternity Leave you must be taking the time off to care for the child and the child's mother or adopter must have:

- been entitled to one or more of the following – Statutory Maternity Leave, Statutory Maternity Pay, Maternity Allowance or Statutory Adoption Leave or Pay; and
- returned to work and ceased claiming any relevant pay.

## **How long can Additional Paternity Leave last?**

Additional Paternity Leave is for a maximum of 26 weeks. If your partner has returned to work, the leave can be taken between 20 weeks and one year after the child is born or placed for adoption.

## **Additional Statutory Paternity Pay**

To qualify for Additional Statutory Paternity Pay you must earn at least the lower earnings limit (LEL) for National Insurance contributions in force at the end of the qualifying week (£109.00 per week for 2013/2014).

In addition, the mother, or adopter, must have:

- returned to work; and
- stopped claiming any relevant pay, with at least two weeks of unexpired Statutory Pay period remaining

You must intend to care for the child during your Additional Statutory Paternity Pay Period.

Additional Statutory Paternity Pay is only payable to you during the period of your partner's 39 week Maternity Allowance, Statutory Maternity or Statutory Adoption Pay period. The current rate is £136.78 a week or 90 per cent of your average weekly earnings if that is less.

## **5.4 STATUTORY RIGHTS TO ADOPTION LEAVE AND PAY**

Statutory adoption and paternity rights are available to new adoptive parents where a child is placed for adoption on or after 6 April 2003. You may have a contractual right to adoption and paternity leave and pay as well as your statutory right. You may combine these rights and you may take advantage of whichever 'provision' is more favourable. If you are adopting a child and qualify for the Burgundy Book entitlements, the local authority has the discretion to extend to you the relevant post-natal conditions of the Burgundy Book maternity scheme. If in doubt, you should seek advice from your NUT regional office in England or NUT Cymru in Wales.

### **Statutory Adoption Leave**

Statutory adoption leave is available to adoptive parents to prepare for adoption or to care for a newly placed adoptive child.

You will be entitled to take statutory adoption leave, if you:

- have been matched with a child for adoption;
- have notified the adoption agency that you agree that the child should be placed with you on the placement date;
- have been continuously employed by the same employer for at least 26 weeks ending with the week you are notified of the match; and
- give notice and evidence to your employer.

The maximum length of statutory adoption leave is 52 weeks comprising ordinary adoption leave of 26 weeks and additional adoption leave of 26 weeks. You are entitled to 52 weeks' leave if the ordinary adoption leave did not end prematurely.

You may begin your adoption leave on the placement date or up to 14 days before the placement date. Where you have chosen to begin leave on the placement date and you are at work on that date, your leave begins on the following day.

### **Applying for Statutory Adoption Leave**

You must give your employer notice of your intention to take statutory adoption leave within 7 days of being notified of the match. The notice must be in writing if requested by your employer and must state that you intend to take adoption leave, the date you wish your leave to begin and the expected date of placement.

If your employer asks, you must also supply the name and address of the agency, the name and date of birth of the child, and the date you were notified of the match.

You may change your leave start date by giving your employer 28 days' notice.

Within 28 days of receiving notice of your intended adoption leave start date, your employer must notify you in writing of the date your leave will end. Adoption

leave will last for 52 weeks unless you return to work early or the placement is disrupted.

### **Returning to Work after Statutory Adoption Leave**

If you return to work early, you must give your employer 8 weeks' notice of your intended return otherwise your employer may postpone your return for up to 8 weeks or to the end of your entitlement if earlier.

If the adoption is disrupted, your adoption leave will end eight weeks after the week the disruption took place. You should give your employer 8 weeks' notice of your return.

Your employment contract continues during your adoption leave. During ordinary adoption leave your normal terms and conditions apply, except those relating to normal salary. During additional adoption leave your terms and conditions relating to notice, redundancy and disciplinary or grievance apply.

In most cases, if you return to work from ordinary adoption leave and there is no redundancy situation you are entitled to return to the same job on the same or improved terms and conditions. If a redundancy situation has arisen, you are entitled to be offered a suitable alternative position on terms which are not substantially less favourable.

If you return to work from adoption leave which immediately followed additional maternity leave or additional adoption leave or parental leave of more than four weeks, you are entitled to return to the same job or, if that is not reasonably practicable, to an alternative job on no less favourable terms and conditions.

### **Statutory Adoption Pay**

Statutory Adoption Pay is a weekly payment made by employers to eligible adoptive parents for up to 39 weeks.

You will be entitled to Statutory Adoption Pay if:

- the child is, or is expected to be, placed for adoption with you;
- you have been continuously employed by the same employer for at least 26 weeks ending with the week you are notified of the match;
- you stop work;
- your weekly earnings for the 8 weeks ending with the week you are notified of the match are at least £109.00; and
- you have elected to receive Statutory Adoption Pay.

### **Applying for Statutory Adoption Pay**

At least 28 days before you wish payment to begin, you must give your employer written notice of the date you wish payment to start, the expected placement date

and the actual placement date, if you wish payment to start on the placement date.

You must supply your name and address, the name and address of the adoption agency, and the date you were notified of the match.

Where you are entitled to both adoption pay and leave, you may give notice at the same time so long as you give notice within 7 days of the date after you were notified of the match and no less than 28 days before you wish payment to begin.

You may choose Statutory Adoption Pay to start on either the date the child is placed or on a specific date up to 14 days before the placement date.

Statutory Adoption Pay will be paid on a weekly basis for 39 weeks or, if earlier, until the day you return to work, or for eight weeks after the end of the week the placement is disrupted.

The weekly rate of Statutory Adoption Pay from 6th April 2013 is the lower of £136.78 or 90 per cent of your weekly earnings. You may in addition be entitled to contractual adoption pay. Statutory Adoption Pay is not payable during a week if you work for your employer during any part of a week, the exception being if you work for up to 10 KIT days. See paragraph 4.6 of Section 4 for more information on this.

### **Statutory Paternity Leave for Adoption**

Statutory paternity leave for adoption is absence from work for the purpose of caring for a newly placed adoptive child or to support the main adopter.

You are entitled to paternity leave for adoption if you:

- are the spouse or partner of the adopter;
- have responsibility for the child's upbringing;
- have been continuously employed by your employer for at least 26 weeks ending with the week the child's adopter is notified of the match;
- have given notice and evidence to your employer.

You may choose to take either one or two consecutive weeks' paternity leave. If eligible, you will receive statutory paternity pay for one or two whole weeks.

You may take paternity leave before the end of 56 days from the placement date. You may begin your paternity leave on the placement date, or a date falling a specific number of days after the placement, or a predetermined date after the expected date of placement. If you chose to start leave on date of the placement and you are at work on that day, leave begins on day after the placement.

### **Applying for Statutory Paternity Leave for Adoption**

You must give notice to your employer of your intention to take paternity leave for adoption no more than 7 days after the adopter is notified of the match.

The notice must be in writing if requested by the employer and must specify the date the adopter was notified the match, the expected date of placement, the length of leave you wish to take, and the date you wish the leave to begin.

Where your employer requests, you must supply a signed declaration that the purpose of the absence is to care for a child or to support the child's adopter, that you are the spouse or partner of the adopter and that you have or expect to have the main responsibility for the child's upbringing.

You may change your leave start date by giving your employer 28 days' notice.

You must give your employer notice, in writing if your employer requests, of the date that the child was placed as soon as possible after the placement.

You are entitled to take one or two weeks' leave. If you have not started your leave and the child is not placed, you will not be entitled to take statutory paternity leave. If you have started your leave and the placement is disrupted, you will be entitled to take your whole week or two weeks' paternity leave.

### **Returning to Work from Statutory Paternity Leave for Adoption**

Your employment contract will continue during your leave and your normal terms and conditions, except those relating to your normal salary, will apply.

In most cases, if you return to work from paternity leave and there is no redundancy situation you are entitled to return to the same job on the same or improved terms and conditions. If a redundancy situation has arisen, you are entitled to be offered a suitable alternative position on terms which are not substantially less favourable.

If you return to work from paternity leave which immediately followed additional maternity leave or additional adoption leave or parental leave of more than four weeks, you are entitled to return to the same job or, if that is not reasonably practicable, to an alternative job on no less favourable terms and conditions.

### **Statutory Paternity Pay for Adoption**

Statutory Paternity Pay for adoption is a weekly payment made by employers to eligible employees for one or two weeks.

You will be entitled to Statutory Paternity Pay for adoption if you:

- are the spouse or partner of the adopter;
- have responsibility for the child's upbringing;
- have been continuously employed by the same employer for at least 26 weeks ending with the week the adopter is notified of the match;

- earn at least £109.00 per week for 8 weeks ending with the week the adopter is notified of the match;
- have been continuously employed with the same employer from the end of the week the adopter is notified of the match to the day of the placement;
- have elected to receive Statutory Paternity Pay.

### **Applying for Statutory Paternity Pay for Adoption**

You should complete form 'SC4 – Becoming an Adoptive Parent' which gives notice of intention to take paternity leave and serves as an application form for Statutory Paternity Pay. You must give the employer at least 28 days notice of the date from which you wish the payment to start.

If you are entitled to both paternity pay and leave, you may give notice at the same time so long as you give notice no more than 7 days after the date the adopter was notified of the match and no less than 28 days before you wish payment to begin.

The weekly rate of Statutory Paternity Pay from April 2013 is the lower of £136.78 or 90 per cent of your weekly earnings. You may also be entitled to contractual paternity pay. Statutory Paternity Pay is not payable during a week if you work for your employer during any part of a week.

## **5.5 STATUTORY RIGHTS TO UNPAID TIME OFF FOR FAMILY AND DOMESTIC REASONS**

All employees have a legal entitlement to take unpaid time off to deal with incidents involving employees' dependants. A dependent is defined as:

- a spouse or civil partner;
- a child;
- a parent;
- a person living in the same household, other than as an employee, tenant, lodger or boarder.

A dependent is also any person who reasonably relies on the employee for assistance on an occasion when the person falls ill or is injured or assaulted, or to make arrangements for the provision of care in the event of illness or injury. This will include, for example, elderly relatives or same sex or opposite sex partners not living in the same household but reliant on the employee to assist them in the event of illness or injury. A dependant is also any person who reasonably relies on the employee to make arrangements for the provision of care.

No qualifying period of service is required, and all employees will have the right to time off. A "reasonable" amount of unpaid time off is allowed, although there is no

definition of what is “reasonable” and it will, therefore, vary according to each case and each set of circumstances.

The right to time off for domestic and family reasons is entirely separate from, and additional to, entitlement to parental and or maternity leave. Local arrangements for leave of absence should continue unaffected by these new arrangements and may be better than the statutory minimum right to time off because they provide leave with pay.

## **SECTION 6: RETURNING TO WORK**

### **6.1 YOUR RIGHTS TO RETURN TO YOUR JOB**

Where you take maternity leave under the terms of the Burgundy Book scheme, you are entitled to return to your job unless that is not practicable due to redundancy. "Your job" means the job which you are employed to do under your contract, in the same capacity and in the same place where you are employed. If you have complied with the notification requirements outlined above, it is unlawful for your employer to expect you to return to another job or on less favourable conditions.

Slightly different provisions on return to work apply to those teachers who are not entitled to the benefit of the Burgundy Book provisions and must rely upon the statutory provisions. If you return at the end of 26 weeks' ordinary maternity leave, you are entitled to return to the job in which you were employed before your absence and on the same contractual terms. You should be treated as if you had never taken leave. If you return after additional maternity leave of between 26 and 52 weeks, however, you are entitled to return either to the job in which you were previously employed or, if it is not reasonably practicable for your employer to allow you return to that job, to another which is both suitable and appropriate for you in the circumstances. The terms and conditions must not be less favourable than would have applied if you had not been absent on maternity leave.

For these statutory provisions, the definition of "job" is the nature of the work you were employed to do under your contract. If your contract states simply that you are employed as "a teacher", it may mean that your employer can move you to a slightly different teaching post on your return. If your employer refuses to take you back after ordinary maternity leave or additional maternity leave, this will be regarded as an automatically unfair dismissal unless this is for reasons of redundancy. It may also amount to sex discrimination. If you return on less favourable terms and conditions you may have a claim for breach of contract, constructive unfair dismissal, or sex discrimination. Contact your NUT regional office in England, or NUT Cymru in Wales, if pressure is placed upon you to relinquish your management responsibilities.

If your post becomes redundant while you are on maternity leave, you are entitled, under the Maternity and Parental Leave Regulations and Burgundy Book, to be offered 'a suitable alternative vacancy, where one exists'. Please refer to [Section 6.2](#) below for further information on what this means.

You may be able to return to work part-time or on a jobshare basis if you wish. Please refer to [Section 6.4](#) below.

If you think you have suffered a disadvantage on your return from maternity leave, your NUT regional office in England or NUT Cymru in Wales, will be able to advise further.

### **Receiving Information about Vacant Posts during Maternity Leave**

Whilst on maternity leave you are entitled to receive information about other vacant posts with your employer, in the same way that other employees received this information.

If your employer circulates wider vacancies, from other employers, you are also entitled to receive this information. You must bear in mind, however, the consequences of not returning to work with your current employer for 13 weeks. In such circumstances your employer may reclaim part of the occupational maternity pay you have received. See Section 3.6 'Returning to Work' for more information.

## **6.2 REDUNDANCY/REORGANISATION**

If, whilst you are on maternity leave, your school is involved in any reorganisation, your employer must inform you of this and give you the opportunity to become involved in the process.

Where you cannot return to your former job because you have been selected for redundancy, you are entitled to be offered a suitable alternative vacancy where one exists. The definition of a "job" is the nature of the work you were employed to do under your contract. If this is phrased simply as "a teacher", it may mean that your employer can move you to a slightly different teaching post on your return.

The work in the new post must be suitable and appropriate for you to do. The capacity and place in which you are employed and your terms and conditions of employment must not be substantially less favourable to you, than if you had been able to return to your previous job.

Where a group of employees have been selected for redundancy, a woman taking maternity leave who has been selected, must be offered any suitable vacancy in priority to other employees.

If you have been selected for redundancy for a pregnancy or maternity-related reason, your dismissal will be treated as automatically unfair.

It would be useful to let your school representative know when you will be taking maternity leave so that she or he can keep you informed of any developments concerning reorganisation or plans for redeployment in your absence.

If your employer seeks to make unreasonable changes to your timetable or teaching duties or responsibilities in your absence or on your return to work, it is essential that you consult your NUT regional office in England or NUT Cymru in Wales.

## **6.3 UNFAIR DISMISSAL AND DISCRIMINATION BECAUSE OF PREGNANCY**

The Employment Rights Act 1996 and Regulation 19 of the Maternity and Parental Leave Regulations 1999 protect women against dismissal or detriment for reasons connected with pregnancy.

The law provides that any dismissal because of pregnancy or a reason connected with pregnancy or childbirth will be automatically unfair, irrespective of length of service or hours of work. It does not matter whether the job is temporary or permanent.

This statutory protection applies from the beginning of your pregnancy to the end of your statutory maternity leave period.

If you are dismissed for any reason connected with pregnancy or because you took maternity leave, you can make a complaint to an employment tribunal.

Women are also protected from unfair treatment at work in connection with pregnancy, childbirth and maternity leave. This could include, for example, being harassed, having to do inconvenient timetables or having your job downgraded. If you believe that you have been treated unfairly on any of these grounds you can complain to an employment tribunal.

If there are health and safety reasons why you should not continue in your job, you must be offered any suitable alternative work available on not substantially less favourable terms and conditions. If none is available you must be suspended on full pay.

If you are pregnant when you apply for a new job and you are refused employment on the grounds of pregnancy, or believe that this is the reason you have not been appointed, you may have been discriminated against under the terms of the Sex Discrimination Act 1975.

If any of the above has happened to you or you require further information relating to these acts, please contact your NUT regional office in England or NUT Cymru in Wales, as soon as possible for further advice.

#### **6.4 RETURNING TO WORK ON A FLEXIBLE BASIS - PART-TIME OR JOBSHARING**

As outlined earlier, you are entitled to return to your former post on the same terms and conditions of employment as if you had not left. In addition, however, you may, with your employer's agreement, return to work on a flexible or part-time basis, while part-time teachers may similarly return to work on a different part-time basis. Part time work may be negotiated on a permanent or temporary basis. Another option is returning to work on a job-share basis where you share a single full-time post with another teacher.

Since April 2003, eligible teachers have had a statutory right to request flexible working. The regulations set out an application and appeal procedure for employers and employees to follow. Employees may request a change to their hours, times of work or place of work in order to care for a child under the age of 17, a disabled child under the age of 18, or an adult aged 18 or over who is related to or living at the same address as the employee. However, under the scheme, you can make no more than one application in any period of 12 months. For this reason, the NUT advises that you make an informal request to your employer initially. Only if the employer refuses an informal request should you use the statutory scheme to seek to change your working pattern.

Good employers will allow new mothers to return to work on a part-time basis. An employer who has insufficient justification for refusing such a request may be challenged under sex discrimination law.

The Part-Time Work Regulations mean that teachers who move from full-employment to job-shares or part-time working or do so after maternity absence are protected against any discriminatory change in their contract terms. Part-timers who believe that they have been treated unfairly may now request an explanation in writing. This provides an important opportunity for part-timers and their employers to resolve any problems before a complaint to an employment tribunal becomes necessary.

It is important to note that if it is agreed that you can return to work on a part-time basis, you are still required to complete the equivalent of 13 weeks of your previous weekly hours of service on your return to be entitled to full occupational maternity pay.

If you experience difficulties in securing a return to part-time work or to a job-share arrangement, it is suggested that you contact your NUT regional office in England or NUT Cymru in Wales, for advice. You will need to act quickly, as there is a three months' time limit for the case to be taken to an Employment Tribunal, starting from the refusal of the request for alternative working arrangements.

For further information on job sharing, see "Job Share: Guidance for NUT Members" available from NUT Headquarters and from your NUT regional office in England or NUT Cymru in Wales. For further information on the statutory scheme for requesting flexible working, please refer to "NUT guidance on the Right to Request Flexible Working".

## **6.5 EMPLOYERS' HEALTH AND SAFETY OBLIGATIONS TOWARDS NEW AND NURSING MOTHERS**

### **Facilities for breastfeeding and for expressing/storing milk at school**

Although there is no specific legal entitlement to such facilities, the Health & Safety Commission's guide for employers, "New and Expectant Mothers at Work" (HSG 122), advises that "it is good practice to provide a healthy and safe environment for nursing mothers to express and store milk. These facilities could be included in the suitable resting facilities ... provided for pregnant and breastfeeding mothers" (para 30) and also that employers might provide "access to a private room where women can breastfeed or express breast milk; and use of secure, clean refrigerators for storing expressed breast milk while at work" (Appendix 1).

The HSC goes on to remind employers that breastfeeding "may significantly protect the health of both mother and infant ... evidence shows that breastfeeding can help to protect the mother against cancer and helps protect the child from certain diseases in infancy ... obstacles to breastfeeding in the workplace may significantly affect the health of both mother and child" (Appendix 1).

## **Rest facilities**

There is, however, a specific entitlement under the Workplace (Health, Safety and Welfare) Regulations 1992 to rest facilities for both new and expectant mothers. The employer's obligations with regard to health and safety for new mothers - see Section 7 below - may require the employer to allow the teacher to be excused supervision duties during mid-morning breaks in order to avoid fatigue and excessive standing and also to allow such teachers access to more frequent toilet breaks.

These 'rest facilities' are very likely to also be a suitable place for breastfeeding or expressing. Although private, the ladies toilet is never a suitable place in which to breastfeed a baby or collect milk.

Maternity Action has published a helpful information sheet 'Continuing to breastfeed when you return to work' which addresses all the above issues as well as offering practical advice about continuing breastfeeding once back at work. It's at:

<http://www.maternityaction.org.uk/sitebuildercontent/sitebuilderfiles/breastfeeding.pdf>

## **SECTION 7: PREGNANCY AND HEALTH AND SAFETY**

**In addition to general health and safety legislation, new and expectant mothers are also covered by additional specific requirements contained in the Management of Health and Safety at Work Regulations 1999 and the Workplace (Health, Safety and Welfare) Regulations 1992.**

### **RISK ASSESSMENT FOR NEW AND EXPECTANT MOTHERS**

As soon as you have notified your employer in writing of your pregnancy, your employer is required under the terms of the Management Regulations to assess the specific risks to your condition arising out of your work and take appropriate steps to eliminate them.

If a particular risk cannot be eliminated, you should be offered suitable alternative work. If none is available, you should be medically suspended on your normal remuneration for as long as necessary. Your employer is entitled to ask for written confirmation of your pregnancy from a registered medical practitioner or a registered midwife. Your employer must keep the assessment under review.

Although pregnant or breastfeeding teachers are unlikely to be exposed as a result of their work to particularly hazardous substances such as lead, there are many other hazards which need to be considered by an employer. The Health and Safety Commission's guidance document, "New and Expectant Mothers at Work : a Guide for Employers", gives detailed guidance to employers on their obligations and on the steps which they may need to take to meet these.

Some of the most common issues which employers may need to address are considered below.

#### **Fatigue**

Fatigue is a natural consequence of pregnancy, whatever the woman's occupation. In recognition of this, the Workplace Regulations stipulate that employers must provide suitable facilities for pregnant women employees and nursing mothers to rest. The accompanying Approved Code of Practice to these regulations states that rest facilities for pregnant women should be conveniently situated in relation to sanitary facilities and should include the facility to lie down.

Fatigue is a particular problem in the early and late stages of pregnancy. Employers should, therefore, consider whether a pregnant teacher's workload should be temporarily reduced. One way in which this could be achieved would be for a school to not require a pregnant teacher to attend certain non-essential evening meetings and to reduce the burden of cover, particularly in relation to classes known to be particularly stressful.

#### **Lifting**

Assessing the risks of manual handling of loads is required by the Manual Handling (Operations) Regulations 1992. Particular allowances should be made for pregnant women because of the increased susceptibility to injury. Where lifting or carrying needs to be done, pregnant women should make arrangements for this work to be undertaken by another person or, failing this, report the matter to the head teacher. A new mother

may be at risk if, for example, she has had a caesarean section, in which case there is likely to be a temporary limitation on her lifting and handling capabilities. There is no evidence to suggest that breastfeeding mothers are at a greater risk from manual handling than any other workers.

## **Infectious Diseases**

General advice on infectious diseases in schools, including the above, is published by the Department of Health and further information can be obtained from local authorities or health authorities. As they are in contact with large numbers of children, pregnant teachers may, of course, be more vulnerable than other pregnant women to contracting infectious diseases. The following sections look at a number of infectious diseases which can pose a danger to unborn children and are, therefore, particularly relevant to pregnant teachers.

[http://www.hpa.org.uk/webc/HPAwebFile/HPAweb\\_C/1194947358374](http://www.hpa.org.uk/webc/HPAwebFile/HPAweb_C/1194947358374)

Rubella is an infectious disease which, if caught during early pregnancy, can cause serious damage to the unborn child. The Burgundy Book national teachers' sick pay scheme recognises that women teachers are particularly vulnerable to contracting the disease. The sick pay scheme provides that teachers in the early months of pregnancy may stay away from their school on full pay if a doctor considers it advisable because of the risk of rubella, although such teachers may be required to teach in another school where there is no such risk. The NUT would argue, however, that there is no absolute guarantee that such an alternative school would itself be free from the risk of rubella. In all cases, therefore, where you are notified that you should teach in a different school, you should seek advice without delay both from your GP and your NUT regional office in England or NUT Cymru in Wales.

To minimise the risk of contracting rubella still further, if you are planning a pregnancy, you are advised to undergo a blood test to check whether you are already immune to rubella or whether you need to be vaccinated.

Chickenpox during pregnancy can, on rare occasions lead to infection in the unborn baby, which in turn can lead to learning disabilities, limb abnormalities and skin scarring. The risk of adverse effects occurring in the unborn baby is highest in the second trimester or three month period of pregnancy, where there is a 2 per cent risk, and lowest in the first trimester, where there is a less than 0.5 per cent risk. In addition, newborn babies are at particular risk from severe chickenpox if infected from the mother in the first few days of life. Chickenpox acquired from the mother in this way can be life-threatening to a newborn child. As a general rule, unless you are *certain* that you have had chickenpox, you should assume that you are *not* immune, and should act accordingly. In such circumstances you can check with your GP whether you have immunity to the disease. This can be done by means of a blood test. The DfES and Department of Health advise women who are exposed early in pregnancy, the first 20 weeks, or very late in pregnancy, the last three weeks before birth, to do this; but the NUT advises that it is sensible to do this without waiting for these circumstances to arise.

If you find out that you are not immune from past infection you should avoid contact with any known cases of chickenpox at school and should seek advice from your GP as to whether you should absent yourself from the school to avoid infection in such circumstances. Paragraph 11.1 of The Burgundy Book sick pay scheme, provides that

teachers who are advised by a medical practitioner that it is inadvisable to attend school for precautionary reasons due to infectious disease in the workplace shall be allowed full sick pay during this period; and that this period of absence shall not be reckoned against a teacher's normal entitlement to sick leave under the teachers' sick pay scheme.

Slapped cheek disease (Parvovirus) is transmitted via respiratory secretions and can occasionally affect an unborn child. If you know you have been exposed, you should inform your GP, or whoever is providing your antenatal care.

Chlamydia Psittaci infection, caught mainly from sheep, can result in the death of the unborn child or premature delivery. Pregnant teachers should avoid visiting farms at lambing time or other contact with lambing sheep.

Cytomegalovirus (CMV) is a version of the herpes virus which is found in a significant proportion of the population. Healthy people with a normal immune response will only generally suffer mild symptoms such as a sore throat and a raised temperature – making it difficult to distinguish from other viral infections. However, adults with suppressed immunity and unborn or newborn babies are at a greater risk. If a woman gets infected with CMV during early pregnancy, it can cause miscarriage. Alternatively, the baby may be born with problems such as deafness.

If CMV is caught later in pregnancy, it can cause premature labour, stillbirth or severe abnormalities in the newborn child.

The key preventative measure is rigorous adherence to good personal hygiene practices throughout your pregnancy. Wash hands thoroughly, especially if there is or may have been a risk of contamination with the bodily excretions or secretions of other children, e.g. saliva, faeces or blood.

If you work with very young children or in a special school, you may be at a higher risk; if in doubt, seek advice from your medical practitioner.

### **Display Screen Equipment**

Although there is no proof of a link between radiation and miscarriage, a head teacher should consider the possible risks involved and be asked to re-organise your work if it involves an element of computer use and if you are concerned about the risk.

### **Passive Smoking**

Passive smoking has now been proven conclusively to constitute a health risk. Pregnant women require special protection since breakdown products from tobacco smoke have been found in the human foetus. The smell of tobacco smoke can also be particularly nauseating to a pregnant woman who is suffering from pregnancy-related sickness.

Smoking is prohibited in workplaces and public places so pregnant teachers should not have to worry about exposure to tobacco smoke.

### **Injuries caused by Collision or Assault**

All pregnant workers are protected by the legal duty which requires employers to assess and address the specific risks they face because of their condition. Pregnant teachers

are, therefore, entitled to expect that, where necessary, schools take action to reduce the risk of unintended playground collisions or of assault by pupils who are known to have disruptive and violent tendencies. This might, for example, involve excusing pregnant teachers from playground supervision duties and making sure that violent pupils are removed from their classes.

### **Toilet Provision**

Women in the early and late stages of pregnancy often need to visit the toilet more frequently than anyone else. Arrangements should, therefore, be made to ensure that they are able to do so.

### **Post-Natal Depression**

Post-natal depression is a relatively common condition which affects as many as ten per cent of women who have recently had a baby. Most women experience the 'baby blues' within the first week after the birth of their baby. They feel emotional and weepy but these feelings generally reduce once mothers become used to the new demands of caring for a young baby. For some women, however, the 'baby blues' don't disappear and the symptoms become more distressing. In other cases, the condition may develop more slowly and may not be noticeable until several weeks after the birth.

These are many possible symptoms of post-natal depression. They include extreme anxiety, feelings of panic, inability to concentrate, sleep difficulties and obsessive thoughts.

The good news is that post-natal depression is a treatable illness. Any mother who thinks she may be suffering from post-natal depression should see her doctor as soon as possible. There are many different treatments available, including anti-depressant drugs and/or counselling.

For information on what to do if you are suffering from post-natal depression at the time when you are due to return from maternity leave, see section 3.8 of this document.

## **SECTION 8: HAVING YOUR BABY: FURTHER INFORMATION**

### **8.1 NATIONAL INSURANCE**

It is important to note that if you are taking any unpaid maternity leave no national insurance payments will be made on your behalf, which might affect your entitlement to some state benefits.

### **8.2 SUPERANNUATION AND PENSION RIGHTS**

During your period of paid absence, when you are receiving either your 18 weeks' contractual pay under the Burgundy Book scheme, or statutory maternity pay, superannuation contributions will be deducted and your pensionable service will continue to increase. If, however, you choose to take a period of unpaid absence, this will not be covered for superannuation purposes. You may choose to protect your pension by buying in additional pension to compensate for that absence. Full details are available from the Teachers' Pensions website at [www.teacherspensions.co.uk](http://www.teacherspensions.co.uk)

If you return on a part-time basis, your employer will continue to deduct payments because part time service is automatically pensionable. The pro rata salary will be subject to contributions of 6.4 per cent and the reckonable service will be on a pro rata basis according to the proportion which the earnings bear to the full time equivalent salary. For example, a teacher employed part time who earns £15,000 over the year, whose full time equivalent is £30,000, will be credited with 6 months' reckonable service.

### **8.3 STATE MEDICAL BENEFITS**

You are entitled to free NHS dental treatment while you are pregnant, provided that you were pregnant at the start of the treatment, and for a year after your baby's birth. If you tell your dentist that you are pregnant, you will not have to pay. Check first, however, that you are receiving NHS, not private, dental treatment.

You get free NHS prescriptions automatically while you are pregnant and for a year after your baby's birth. You do not have to pay for any prescriptions for your baby, or for any other child who is under 16. Applications for free prescriptions should be made on Form FW8, available from your doctor, midwife or health visitor.

### **8.4 CHILDCARE VOUCHERS PROVIDED UNDER A SALARY SACRIFICE SCHEME – IMPACT ON STATUTORY MATERNITY PAY (SMP)**

Since 2006, all teachers have been able to take part in 'salary sacrifice' schemes if such a scheme is offered by their employer. These schemes allow employees to obtain certain kinds of benefit – in particular childcare vouchers – on a tax-free basis in return for surrendering part of their pay. To give an example of how the scheme works, an employee whose employer operates such a scheme could obtain £55 in childcare vouchers per week, in return for giving up £55 in gross

pay, which would otherwise be reduced to approximately £35-£40 in take-home pay, after income tax and NI deductions.

Although this scheme has obvious benefits to teachers paying for childcare, it is important that you are aware of a pitfall in the operation of the scheme in relation to calculation of Statutory Maternity Pay (SMP).

SMP must be calculated on the basis of net pay during the 'relevant period'. This is the period of 8 weeks between the 17<sup>th</sup> and 25<sup>th</sup> week of the pregnancy. If you are receiving childcare vouchers under a salary sacrifice scheme, your net pay for the purposes of SMP will not include the childcare voucher element of your pay, so your SMP will be paid at the reduced rate.

If the arrangements for vouchers in your particular scheme allow you to do so, you can avoid this reduction by suspending your childcare vouchers during the 8 week period, i.e. between weeks 17-25. You can then apply for the vouchers to recommence after the 8 weeks, providing that the scheme allows you to do this.

If you work part time, you should also be aware that childcare vouchers under a salary sacrifice scheme effectively reduce the amount of tax, and NI contributions that you pay on your salary. If you are in full time employment, the vouchers shouldn't affect your entitlement to SMP, but if you work part time, check that the vouchers won't reduce your average weekly salary to below the lower earnings limit (£109.00 a week in 2013/2014).

See also paragraph 3.7 of this document for further information about receiving childcare vouchers during your maternity leave.

## **8.5 ENTITLEMENT TO PAID MATERNITY LEAVE FOR WOMEN HAVING A BABY THROUGH SURROGACY**

There is no entitlement to statutory maternity pay (SMP) or statutory maternity leave (SML) for women who use surrogacy to have a baby. The same goes for Statutory Adoption Pay and Leave.

Some employers may choose to extend the relevant post-natal sections of the Burgundy Book scheme to women who have a baby through surrogacy, but there is, unfortunately, no entitlement in this respect. However, women with an underlying disability which prevents them from conceiving or carrying a child to term may be able to request maternity leave and pay as a 'reasonable adjustment'.

## **SECTION 9: USEFUL ADDRESSES AND GLOSSARY**

### **9.1 USEFUL ADDRESSES**

#### **Gingerbread**

520 Highgate Studios  
53-79 Highgate Road  
London NW5 1TL  
Tel: 0808 802 0925  
[www.gingerbread.org.uk](http://www.gingerbread.org.uk)

Supports single parents and their children by providing advice on financial, social and legal problems. Has over 300 local self-help groups and operates holiday schemes.

#### **4 Children**

City Reach  
5 Greenwich View Place  
London E14 9NN  
Tel: 020 7512 2112  
[www.4children.org.uk](http://www.4children.org.uk)

Offers practical support to individuals and groups wanting to set up play-care clubs and holiday play schemes for school-age children. Offers information about where clubs already exist.

#### **Working Families**

1-3 Berry Street  
London EC1V 0AA  
Tel: 0300 012 0312  
[www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)

Campaigns for improvements in rights and services for parents and babies and produces material explaining how to claim benefits and employment rights.

#### **Miscarriage Association**

17 Wentworth Terrace  
Wakefield  
WF1 3QW  
Tel: 01924 200 799  
[www.miscarriageassociation.org.uk](http://www.miscarriageassociation.org.uk)

Gives support and information to women and their families during and after miscarriage. Promotes good practice in the way miscarriage is managed in hospitals.

## **Maternity Action**

52-54 Featherstone Street  
London EC1Y 8RT  
Tel: 0845 600 8533  
[www.maternityaction.org.uk](http://www.maternityaction.org.uk)

Maternity Action works to end inequality and promote the health and wellbeing of all pregnant women, their partners and children from before conception through to the child's early years.

## **National Childbirth Trust**

Alexandra House  
Oldham Terrace  
Acton  
London W3 6NH  
Enquiry line: 0300 330 0700  
[www.nct.org.uk](http://www.nct.org.uk)

Charity concerned with education for pregnancy, birth and parenthood, with over 300 branches and groups all over the country. Antenatal classes, support with breast-feeding and help and support after the baby is born are main areas of work.

## **National Childminding Association**

Royal Court  
81 Tweedy Road  
Bromley  
Kent BR1 1TG  
Tel: 0845 880 0044  
[www.ncma.org.uk](http://www.ncma.org.uk)

Campaigns, coordinates and provides information on childminding. They have produced a leaflet on how to find a childminder.

## **Stillbirth and Neonatal Death Society (SANDS)**

28 Portland Place  
London W1B 1LY  
Tel: 020 7436 5881 (helpline)  
[www.uk-sands.org](http://www.uk-sands.org)

Provides support for parents who have suffered a stillbirth or lost a newborn baby.

## **Association for Post-Natal Illness**

145 Dawes Road  
Fulham  
London  
SW6 7EB  
Tel: 020 7386 0868

[www.apni.org](http://www.apni.org)

## Perinatal Illness UK

PO Box 8062  
Ashbourne  
Derbys DE6 9DF  
[www.pni-uk.com](http://www.pni-uk.com)

### 9.2 GLOSSARY OF TERMS

**Burgundy Book:** This document sets out the national teachers' conditions of service agreements, including maternity leave and pay. There must be a copy in every school.

**Ordinary Maternity Leave:** All pregnant employees are entitled to 52 weeks' maternity leave, the first 26 weeks' of which is classed as 'ordinary maternity leave'. Pay during this time will depend on a number of factors. See section 3.3.

**Additional Maternity Leave:** Additional maternity leave begins at the end of ordinary maternity leave and lasts 26 weeks.

**EWC:** Expected week of childbirth

**SMP:** Statutory Maternity Pay

**MA:** Maternity allowance

**QW:** Qualifying week

**Form MAT B1:** Maternity Certificate available from your midwife.

**Notifying the Employer:** Arrangements for who to contact when notifying "the employer" will be determined locally. You should check, in advance, the arrangements for notification applying in your school or college. The NUT believes, however, that the notification requirement is satisfied if the notification is given by the due date to your head teacher or principal.

**Continuous employment or continuous service:** For employment to be deemed to be “continuous” for the purpose of maternity rights, it is normally necessary for employment to be unbroken or at least for contracts to follow on without a full week’s break. Breaks can only be “bridged” in exceptional circumstances. For example, for the purposes of statutory maternity leave and pay and for parental leave, continuity is not broken where a teacher moves from the employment of a local authority to the employment of a school maintained by the same local authority or vice versa. Continuity of employment is not broken by a succession of fixed-term contracts, provided they are end-on to each other. Teachers employed on a “supply” basis may also qualify as having continuous service where such employment has been regular throughout the school terms for the required period. Most supply teachers will not be eligible for the Burgundy Book provisions - see Section 1.

## **APPENDIX A: LETTER OF NOTIFICATION OF PREGNANCY**

**- to be sent to your employer no later than the end of the 15th week before the week in which the baby is due.**

"This letter is to notify you of my pregnancy. My expected date of childbirth is..... I enclose a medical statement from my doctor (MAT B1)\*, which confirms that date.

It is my intention to exercise, at the conclusion of my absence for maternity, my right to return to my present teaching post.

I intend to commence maternity leave on ..... and I would like my maternity pay, statutory and contractual, to start on that date.

I will give you at least 28 days' notice of any change to this date."

\*Alternatively, where appropriate, this could read:

"I will forward to you as soon as possible a medical statement from my doctor".

This letter of notification covers the matters referred to in the sections headed Beginning Your Maternity Leave and Returning to Work and is suggested for your use where appropriate.

## **APPENDIX B: ADDRESSES OF NUT REGIONAL OFFICES IN ENGLAND AND NUT CYMRU IN WALES**

### **Region 1: Northern**

NUT Regional Office  
3 McMillan Close  
Saltwell Business Park  
Joicey Road  
Gateshead NE9 5BF

Telephone: (0191) 482 7700; Fax: (0191) 482 7720; Email: [northern@nut.org.uk](mailto:northern@nut.org.uk)

(City of York, Cumbria, Darlington, Durham, Gateshead, Hartlepool, Middlesbrough, Newcastle, Northumberland, North Tyneside, North Yorkshire, Redcar and Cleveland, S.Tyneside, Stockton, Sunderland)

### **Region 2: North West**

NUT Regional Office  
25 Chorley New Road  
Bolton BL1 4QR

Tel: (01204) 521434/Fax: (01204) 362650; Email: [north.west@nut.org.uk](mailto:north.west@nut.org.uk)

(Blackburn with Darwen, Blackpool, Bolton, Bury, Cheshire, Halton, Isle of Man, Knowsley, Lancashire, Liverpool, Manchester, Oldham, Rochdale, Salford, Sefton, St Helens, Stockport, Tameside, Trafford, Warrington, Wigan, Wirral)

### **Region 3: Yorkshire/Midland**

NUT Regional Office  
Lazarus House (1<sup>st</sup> floor)  
14 Princes Street  
Doncaster DN1 3NJ

Tel: (01302) 342448/Fax: (01302) 341021; Email: [yorkshire.midland@nut.org.uk](mailto:yorkshire.midland@nut.org.uk)

(Barnsley, Bradford, Calderdale, Derby City, Derbyshire, Doncaster, East Riding of Yorkshire, Hull, Kirklees, Leeds, Lincolnshire, North East Lincs, North Lincs, Nottingham City, Nottinghamshire, Rotherham, Sheffield, Wakefield)

### **Region 4: Midlands**

NUT Regional Office  
Jarvis House, 96 Stone Road  
Stafford ST16 2RS

Tel: (01785) 244129/Fax: (01785) 251856; Email: [midlands@nut.org.uk](mailto:midlands@nut.org.uk)

(Birmingham, Coventry, Dudley, Herefordshire, Leicester City, Leicestershire, Rutland, Sandwell, Shropshire, Solihull, Staffordshire, Stoke on Trent, Telford and Wrekin, Walsall, Warwickshire, Wolverhampton, Worcestershire)

### **Region 5: Eastern**

NUT Regional Office  
45a Anvil Way  
Kennett  
Newmarket  
Suffolk CB8 8GY

Tel: (01638) 555300/Fax: (01638) 666480; Email: [eastern@nut.org.uk](mailto:eastern@nut.org.uk)

(Bedfordshire, Buckinghamshire, Cambridgeshire, Essex, Hertfordshire, Luton, Milton Keynes, Norfolk, Northamptonshire, Peterborough, SCS (Germany), Southend-on-Sea, Suffolk, Thurrock)

### **Region 6: South East**

NUT Regional Office  
Britton House  
College Road  
Ardingly  
Haywards Heath  
West Sussex RH17 6TT

Tel: (01444) 894500/Fax: (01444) 894516; Email: [south.east@nut.org.uk](mailto:south.east@nut.org.uk)

(Bracknell Forest, Brighton and Hove, East Sussex, Hampshire, Isle of Wight, Kent, Medway, Oxfordshire, Portsmouth, Reading, Slough, Southampton, Surrey, West Berkshire, West Sussex, Windsor & Maidenhead, Wokingham)

### **Region 7: South West**

NUT Regional Office  
1 Lower Avenue, Heavitree  
Exeter EX1 2PR

Tel: (01392) 258028/Fax: (01392) 286818; Email: [south.west@nut.org.uk](mailto:south.west@nut.org.uk)

(Bath and North East Somerset, Bournemouth, Bristol, Cornwall, Devon, Dorset, Gloucestershire, Guernsey, Isles of Scilly, Jersey, North Somerset, Plymouth, Poole, Somerset, South Gloucestershire, Torbay, Swindon, Wiltshire)

### **Region 8: London**

London Region, Hammersmith  
Ravenscourt House, 322A King Street  
London W6 0RR

Tel: (020) 8846 0600/Fax: (020) 8563 8877; Email: [london@nut.org.uk](mailto:london@nut.org.uk)

London Region, Ilford  
103 Cranbrook Road  
Ilford  
Essex IG1 4PU

Tel: (020) 8477 1234/Fax: (020) 8477 1230; Email: [london@nut.org.uk](mailto:london@nut.org.uk)

(Barking and Dagenham, Barnet, Bexley, Brent, Bromley, Camden, City of London, Croydon Ealing, Enfield, Greenwich, Hackney, Hammersmith/Fulham, Haringey Harrow, Havering, Hillingdon, Hounslow, Islington, Kensington/Chelsea, Kingston, Lambeth, Lewisham, Merton, Newham, Redbridge, Richmond, Southwark, Sutton, Tower Hamlets, Waltham Forest, Wandsworth, Westminster)

**Wales: NUT CYMRU**

NUT Cymru  
Ty Sinnott  
18 Neptune Court  
Vanguard Way  
Cardiff CF24 5PJ

Tel: (029) 2049 1818/Fax: (029) 2049 2491; Email: [cymru.wales.@nut.org.uk](mailto:cymru.wales.@nut.org.uk)

(Blaenau Gwent, Bridgend, Caerphilly, Cardiff, Camarthenshire, Ceredigion, Conwy, Denbighshire, Flintshire, Gwynedd, Merthyr Tydfil, Monmouthshire, Neath and Port Talbot, Newport, Pembrokeshire, Powys, Rhondda Cynon Taff, Swansea, Torfaen, Vale of Glamorgan, Wrexham, Ynys Mon)

## APPENDIX C: PREGNANCY AND MATERNITY PLANNER

<p><b>In the early weeks:</b></p>	<p><b>DURING YOUR PREGNANCY</b></p> <p><b>Consult ‘Maternity Matters’ to check whether you are entitled to the Burgundy Book maternity scheme, the statutory scheme, or both. Establish the length of your continuous service.</b></p> <p>As soon as you have notified your employer, in writing, of your pregnancy, your employer must assess any specific risks to your condition and take appropriate steps to eliminate them.</p> <p>Once your employer knows you are pregnant, if you are sacked for a reason connected with your pregnancy, it will automatically be unfair dismissal.</p> <p>You are entitled to paid time off to go to antenatal appointments. This includes relaxation and parent-craft classes. Except in the case of a first appointment, be prepared to provide an appointment card.</p>
<p><b>Week 24:</b></p>	<p>If your baby is stillborn after the 24<sup>th</sup> week of pregnancy, then all maternity rights apply in full.</p>
<p><b>Week 25:</b></p>	<p>To gain entitlement to Statutory Maternity Pay, you must have worked for your current employer for 26 continuous weeks by the end of this week. The end of this week is the deadline for giving notice that you are pregnant, letting your employer know your expected week of childbirth and giving written notice of the date on which you intend to start your maternity leave. Teachers taking leave under the Burgundy Book scheme must declare that they intend to return to work at the end of the period of maternity leave.</p>
<p><b>Week 29:</b></p>	<p>This is the earliest you can begin your maternity leave.</p>
<p><b>Week 36:</b></p>	<p>You can choose when to start your maternity leave but, if you are off sick for a pregnancy-related reason in the last four weeks of pregnancy, your employer will require you to begin your maternity leave. If your baby is born early, your maternity leave and pay starts on the following day.</p>

<b>AFTER YOUR BABY IS BORN</b>	
<b>Week of childbirth:</b>	Don't forget to claim child benefit. You must put in a claim within three months of the birth for it to be paid from the date of birth.
<b>During your post-natal maternity leave</b>	You only need to give notice of your return to work if you are returning earlier than at the end of the leave to which you are entitled. If you wish to return to work early, you must give your employer 21 days' written notice, if you are entitled to the Burgundy Book provisions, or 8 weeks' written notice if you are only entitled to the statutory provisions.
<b>Week 53:</b>	You must return at the beginning of this week. Your employer should have notified you of the exact date within 28 days of receiving your notification of pregnancy and start date of leave. If you are ill on the date of your return from maternity leave, you should inform your school, as soon as possible, and submit a medical certificate from your doctor.
<b>Once you are back at work:</b>	To retain maternity pay received under the Burgundy Book scheme, you are required to complete at least 13 weeks' full-time service, or its part-time equivalent, on your return to work. If you were working part-time prior to maternity leave, you are required to complete 13 weeks' part-time service. This period includes both term time and school holidays. There is no need to return to work if you claimed SMP only and there is no need to repay SMP if you do not return for 13 weeks.