

**MATERNITY PAY AND LEAVE  
PATERNITY PAY AND LEAVE  
ADOPTION PAY AND LEAVE  
SHARED PARENTAL PAY AND LEAVE  
AND THE RIGHT TO REQUEST TIME OFF WORK OR ADJUSTMENTS TO THE DUTIES OF THE  
OFFICE TO CARE FOR A DEPENDANT**

ADVICE ISSUED BY THE ARCHBISHOPS' COUNCIL

*This advice is issued by the Archbishops' Council for information and to assist in the development of good practice and does not constitute formal guidance under the Ecclesiastical Offices (Terms of Service) Measure 2009.*

*It replaces advice issued by the Archbishops' Council in 2011.*

*Ecclesiastical Offices (Terms of Service) Directions*

1. With the coming into effect on 1 December 2015 of the Ecclesiastical Offices (Terms of Service) (amendment) Directions 2015, clergy office holders now have a legal entitlement to Shared Parental Leave. (Additional Paternity Leave has been abolished by Parliament on the basis that it is now replaced by shared parental leave.)
2. The effect of the amended Directions is that any future changes to the rights of employees in respect of *maternity, paternity, parental and adoption leave* will automatically apply to clergy. However, please note that subsequent changes to the *right of employees to request flexible working* arrangements (see paragraphs 16 - 30) will *not* automatically apply to clergy office holders, who only have the legal right to request adjustment to the duties of the office in order to care for a dependant.
3. Office holders have had an entitlement to maternity, paternity, parental and adoption **leave** for the same periods and subject to the same conditions as apply in the case of an employee under the Employment Rights Act 1996, since the introduction of Common Tenure in 2011. These rights are conferred on those who hold office under Common Tenure by the Ecclesiastical Offices (Terms of Service) Directions 2010.

*Statutory Maternity, Adoption and Parental Leave*

4. This means that clergy office holders have a minimum statutory entitlement to *leave* as follows

52 weeks' maternity leave (13 weeks of which is unpaid)

2 weeks' paternity leave

18 weeks' unpaid parental leave

Shared parental leave (see paragraphs 7 to 10).

#### *Statutory Maternity and Adoption Pay*

5. Stipendiary office holders have a right to statutory maternity, paternity and adoption **pay** because they are gainfully employed in an office and their stipends are treated for tax purposes as earned income. From April 2015, office holders will also have the right to statutory shared parental pay on the same basis.
6. The minimum level of pay depends on length of service. Clergy with 26 weeks' service are currently entitled to at least Statutory Maternity Pay for 39 weeks (at 90% of average weekly earnings for 6 weeks followed by lower rate SMP for the remaining 33 weeks) plus 13 weeks' unpaid leave.

#### *Shared parental leave and pay*

7. Mothers and adopting parents who meet the conditions for entitlement to Shared Parental Leave remain entitled to 52 weeks of maternity leave. After taking two weeks' compulsory leave, they are entitled to reduce their entitlement to maternity/adoption leave either by returning to work before their full entitlement of Statutory Maternity/Adoption Leave has been taken, or by giving notice to curtail their leave at a specified future date. They may then share the balance of any remaining leave, and pay, with the other parent.
8. The eligibility and notification requirements for Shared Parental Leave are quite complex. A sample shared parental leave and pay policy for employees is available from ACAS. Dioceses may wish to adapt the employee provisions for clergy office holders. See the link below  
<http://www.acas.org.uk/index.aspx?articleid=4911#splletters>
9. Clergy who exercise an entitlement to Shared Parental Leave and who meet the eligibility requirements of the Statutory Shared Parental Pay (General) Regulations 2014 are entitled to Statutory Shared Parental Pay.

#### *Diocesan provision*

10. Each diocese is free to
  - decide whether or not to confer any additional entitlement above the statutory minimum level of pay and leave (and if so what);

- determine the level (if any) of additional (i.e. non-statutory) shared parental pay and whether, if enhanced maternity pay is offered, to pay additional shared parental pay at the same enhanced rate<sup>1</sup>;
- determine whether it is appropriate to have similar provision for employees and office holders within their dioceses, as this can be helpful where clergy are in dual role posts or are likely to be switching regularly between office and employment.

*Other points relating to maternity, adoption, and shared parental leave*

*Additional Paternity Leave*

11. This has been replaced by Shared Parental Leave.

*Training posts*

12. The length of a training post may be extended to take account of maternity leave, adoption leave, paternity leave, shared parental or unpaid parental leave.

*Keeping In Touch Days (KIT Days) and SPLIT Days*

13. Keeping in touch days or KIT days (or SPLIT days when taken during shared parental leave) allow people on maternity or shared parental leave to work without losing Statutory Maternity Pay or Shared Parental Pay for the week in which the work is done. The days may be for work, training or any other activity that has the purpose of keeping in touch with the workplace. The days do not need to be taken consecutively. They may not be taken within two weeks of childbirth.
14. 10 KIT days are available when on maternity leave and an additional 20 SPLIT days during shared parental leave.

*Application of Directions to Office Holders*

15. Holding of office is distinct from employment in a number of ways that affect consideration of office holders' entitlements.
  - Office holders remain in office while they are on leave – which means they retain the rights and responsibilities that go with the office, for example the right to remain in any accommodation provided for the better performance of their duties and the obligation to ensure that the duties of the office are carried out on their behalf.

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<sup>1</sup> ACAS guidance states that it would not be discriminatory if shared parental pay were paid at the statutory minimum, but a diocese wishing to be consistent in its approach and promote the well-being of clergy and their families might decide that it would be more positive to pay shared parental leave at the enhanced rate, quite apart from avoiding any potential discrimination claims.

- This also means that, unlike an employee, an office holder does not have the right to be found an equivalent post when he or she returns from maternity and adoption leave. She or he has not left her office whilst on maternity/adoption leave and therefore returns to work in the existing post as of right unless she or he resigns or is removed from it.
- Clause 2 (2) of the Directions confers a requirement on office holders 'in consultation with a responsible person or authority' to 'use all reasonable endeavours to make arrangements for the duties of the office to be performed by another person or persons during the period of leave'. This may simply involve a discussion with the archdeacon about how best to ensure that cover is provided whilst the office holder is on leave. A possible option might be to make an appointment under Regulation 29, which allows for someone to be appointed to a post designated as created in order to cover for an office holder's authorised absence from work. This may be held for a fixed term or under terms which provide for the appointment to be terminated on the occurrence of a specified event, such as the return of the original office holder from maternity leave.
- Flexible working, as it is understood in the employment context, **does not apply to clergy office holders**. The Ecclesiastical Offices (Terms of Service) Directions 2010 currently confer a legal entitlement on clergy to make requests to take time off or make adjustments to the duties of the office to care for a dependant, but not for other reasons (see paragraphs 20 -32). When the right to request flexible working was extended to all employees, RACSC took the view that it was not appropriate to extend it to clergy office holders, as they already had sufficient flexibility.

*Right to request time off work or adjustments to the duties of the office to care for a dependant*

16. These provisions remain unchanged.
17. Holders of parochial offices already have a high degree of flexibility over how they carry out their duties, which is not always the case with employees, who will generally have defined hours of work. Office holders may not always need therefore to request flexible working to care for a dependant, in the way that an employee might. However, office holders still need to bear in mind the need to arrange appropriate cover if they are taking time off. For example, if they wish to take half term as leave, they should check with the area dean that one of their colleagues is available to provide cover during this period. Similarly an incumbent or priest in charge still has a responsibility to ensure that someone is available to take weddings on Saturdays, despite any family commitments.

18. Where office holders need to vary their duties in order to care for a dependant (for example reducing a post from full time to part time with a commensurate reduction in stipend), they should use the procedure below.
19. The request may only be made in order to help care for a dependant not for any other purpose. "Dependant", as defined in paragraph 3(6) of the Directions, embraces a spouse or civil partner; a child; a parent; a person living in the same household as the office holder (other than a tenant, employee, lodger or boarder) or anyone who reasonably relies on the office holder for assistance or provision of care in the event of illness or injury. The provision therefore covers a wide range of possible arrangements, from a few days' time off in an emergency to a longer term adjustment of duties to accommodate, for example, the need to care for an elderly parent or a disabled child.
20. The Directions confer the right to make a request – and have the request properly considered. The request may be refused if there is no other reasonable way of meeting the pastoral needs of the parish and the requirements of the office.
21. The Archbishops' Council has agreed that the procedure for making a formal request should be as follows, and that the office holder should
  - make the request in writing
  - set out the date of the request
  - make no more than one request during a twelve month period
  - state that the request is being made under the Ecclesiastical Offices (Terms of Service) Directions 2010
  - set out the reasons for needing an adjustment to the duties of the office
  - set out the change requested
  - state whether they have made any previous requests in their current post
  - identify the effect the proposed change will have on the provision of ministry to the parish
  - suggest how such an effect could be mitigated (the office holder may wish to consult colleagues about this first so that he or she is in a position to indicate that the proposed solution might have their support in principle)
  - give a proposed start date
  - indicate whether the proposed adjustment is intended to be permanent, or, if not, for how long it might be expected to last.
22. The bishop, on receiving the request, is required by paragraph 3(5) to consult the PCC(s). The bishop may also wish to consult any of the office holder's colleagues who are likely to be affected by the request.

23. Once the bishop has received a reply from the PCC(s), the office holder's request should be considered promptly.
24. If the bishop agrees to the request, the office holder and the PCC(s) should be informed in writing of the bishop's agreement.
25. If the bishop is not in a position to agree immediately, the bishop should arrange to meet the office holder as soon as possible to discuss the request. The office holder may bring a colleague or trade union representative to the meeting.
26. In good time after the meeting (normally within 14 days), the bishop should inform the office holder of the decision. If he does not accept the request, he must give the reason in writing and give reasonable time (normally 14 days) for the office holder to appeal. The appeal should be held and the office holder informed of the result within reasonable time (in both cases, normally 14 days).
27. A revised statement of particulars should be issued to reflect any changes made, unless they are very temporary and short term. The office holder will need to be informed that this will be a permanent change to the duties of the office, and there is no automatic right to have the duties adjusted back to the original terms at a later point, unless this has been agreed in advance.
28. The bishop should not refuse the request simply because the PCC does not support it or the proposed solutions. Potential grounds for refusing a request include:
  - cost
  - inability to reorganise duties among existing clergy
  - inability to recruit additional clergy
  - potential effect on the office holder's performance of his or her duties.
29. The bishop may delegate consideration of these requests to the suffragan or area bishop or the archdeacon.
30. If a diocesan bishop needed to adjust the duties of his or her office to care for a dependant, he or she could use their power under s13 of the Dioceses Mission and Pastoral Measure 2007 to delegate their functions to a suffragan bishop by instrument. This would require the approval of the diocesan synod (or, where the bishop considers that the matter is urgent and it is not practicable to obtain the approval of the diocesan synod) the bishop's staff council and standing committee of the Diocesan Synod.
31. Any queries about this note should be directed to [patrick.shorrocks@churchofengland.org](mailto:patrick.shorrocks@churchofengland.org)

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