

The legal entitlements of clergy office holders who become parents

ADVICE ISSUED BY THE ARCHBISHOPS' COUNCIL

This is general advice 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 2015.

Note: references to *maternity (and other) leave* refer to: paternity leave, adoption leave, shared parental leave or shared adoption leave, and unpaid parental leave; and references to *(statutory or enhanced) maternity (and other) pay* refer to: (statutory or enhanced) paternity pay, adoption pay, shared parental pay or shared adoption pay.

This advice sets out the legal entitlements of clergy office holders who become parents. For the recommended provision, which is more generous than the legal entitlement, see **Guidance Note to dioceses policies to support clergy office holders who become parents**.

Regulation 23, Ecclesiastical Offices (Terms of Service) Regulations 2009

1. Section 6(11) of the Church of England (Miscellaneous Provisions) Measure 2018 revoked the Ecclesiastical Offices (Terms of Service) Directions 2010 and replaced it with a revised Regulation 23 of the Ecclesiastical Offices (Terms of Service) Regulations 2009 (the "2009 Regulations").
2. Regulation 23 of the 2009 Regulations confers on office holders the same legal entitlement to statutory maternity, paternity, adoption and shared parental leave as employees are entitled to under the Employment Rights Act 1996. Therefore, any future changes made by the Employment Rights Act 1996 (or any regulations made under it) to the rights of employees in respect of maternity, paternity, adoption and shared parental leave will automatically apply to office holders.

The distinction between the right to leave and the right to pay

3. The legal entitlements to pay and leave are considered separately because they are distinct rights that apply in different circumstances.

*Statutory Maternity, Paternity, Adoption, Parental and Shared Parental **Leave***

4. Immediately on commencement of their office, office holders have the following statutory entitlement to leave:
 - maternity leave - 52 weeks
 - adoption leave – main adopter has the same rights as maternity leave

5. Office holders with a least 26 weeks' service up to any day in the 'qualifying week'¹ are entitled to:
 - a. Paternity leave - 2 weeks
 - b. Shared Parental Leave – (see paragraphs 11 – 14)
6. Office holders with at least 12 months' service are entitled to unpaid Parental leave – up to 18 weeks (see paragraphs 20 and 21).

Statutory Maternity, Adoption and Paternity Pay

7. Stipendiary office holders have a legal right to statutory maternity, paternity, adoption and shared parental pay because they are remunerated for carrying out their duties of office and their stipends are treated for tax purposes as earned income.
8. Stipendiary office holders with 26 weeks' service up to any day in the 'qualifying week' are legally entitled to receive Statutory Maternity Pay and Statutory Adoption Pay for 39 weeks (at 90% of average weekly earnings for 6 weeks followed by lower rate SMP for the remaining 33 weeks)².
9. Stipendiary office holders with 26 weeks' service up to any day in the 'qualifying week' are legally entitled to receive Statutory Paternity³ Pay for two weeks at the statutory weekly rate (or 90% of the office holder's average weekly earnings, whichever is lower).
10. The Church Commissioners are deemed to be the "employer" of all stipendiary office holders on the national payroll for the purposes of National Insurance Contributions. This means that all stipendiary clergy office holders on the national payroll may move between offices without changing their "employer" for the purposes of statutory maternity, paternity and adoption pay, even if they move to an office in a different diocese. Therefore, if a stipendiary office holder has held their current office for less than 26 weeks, but they held an office in another parish or diocese immediately prior to taking up their current post, their office holding in the previous post will count towards the required 26 weeks, provided that the stipendiary office holder concerned was on the national payroll in their previous office too.

¹ the 15th week before the baby is due, or the "matching week" for adoption.

² Someone might be eligible to claim Maternity Allowance for 39 weeks if she has recently stopped working but is not eligible for Statutory Maternity Pay. For further details, see <https://www.gov.uk/maternity-allowance/eligibility>.

³ Those entitled to paternity pay include the spouse or civil partner of the person giving birth/ primary adopter who will share responsibility for the child's upbringing.

Shared Parental Leave and Pay

11. Parents who meet the conditions for entitlement to Shared Parental Leave may share the mother/main adopter's entitlement to 50 weeks of leave. After taking two weeks' compulsory leave, a mother (or adopting parent) is entitled to reduce their entitlement to their remaining maternity (or adoption) leave, either by returning to work before the full leave entitlement 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 statutory leave and pay with the other parent.
12. In order to be eligible for Shared Parental Leave, each of the parents needs to have been employed continuously by their respective employers for at least 26 weeks by the end of the 15th week before the due date (or by the end of the week an adopting couple were matched with the child). Each parent must remain employed by their respective employers while they take Shared Parental Leave.
13. Stipendiary office holders who are eligible for and exercise their entitlement to Shared Parental Leave are entitled to statutory Shared Parental Pay at the same rate as statutory maternity/adoption pay.

The eligibility and notification requirements for Shared Parental Leave and Pay are quite complex. Detailed information on shared parental leave and pay which dioceses may find useful is available from ACAS⁴ and from the government⁵.

14. **Guidance note no 1 for dioceses on policies to support clergy office holders who become parents**, suggests at paragraph 9 a minimum level of discretionary provision, in addition to legal entitlement, that it is recommended should apply in all cases, whether or not someone is eligible for Statutory Maternity (and other) Pay.

Keeping In Touch Days ("KIT" Days)

15. KIT days do not apply to office holders as they only apply to work performed "under a contract of service" with an employer. As office holders are not engaged under any form of contract, and KIT days do not relate to work carried out in the performance of the duties of an office, office holders are not entitled to KIT days. However, stipendiary office holders do not lose statutory maternity (or other) pay if they carry out any duties of their office during maternity (or other) leave.
16. If an office holder wishes to undertake any of their duties of office during leave, they are advised to agree, in writing, with their church wardens and archdeacon/area dean (as appropriate) what these duties will be and when they will be undertaken. This will enable the office holder to set clear boundaries to

⁴ <http://www.acas.org.uk/index.aspx?articleid=4911#splletters>

⁵

<https://www.gov.uk/government/publications/shared-parental-leave-and-pay-employers-technical-guide>

protect their leave which can be communicated to the PCC. See also **Guidance note no 3 to clergy office holders about to become parents.**

Unpaid Parental Leave

17. All office holders who are parents are entitled to parental leave of up to 18 weeks' unpaid leave for each child and adopted child, up to their 18th birthday. However, unless agreed otherwise, a parent cannot take more than 4 weeks of parental leave for each child in any year. Parental leave must be taken in blocks of whole weeks, rather than in individual days, unless agreed otherwise or if the relevant child is disabled.
18. In order to qualify for parental leave, an office holder must have held office for more than a year and either be named on the child's birth or adoption certificate or have or expect to have parental responsibility. Office holders must give 21 days' notice before their intended start date.
19. Any unpaid leave will be non-pensionable.

Application of the 2009 Regulations to Office Holders taking leave

20. Office holding is distinct from employment in a number of ways, with some of the rights and obligations of office holders being different from those of employees. Those that are particularly relevant to office holders taking leave are highlighted below.
 - Office holders remain in office while they are on maternity, adoption, paternity, parental and shared parental leave. This means they retain the rights and responsibilities that go with their office, for example they retain the right to remain in any accommodation provided for the better performance of their duties of office.
 - Unlike an employee, an office holder does not have the right to be found an equivalent post when returning from maternity or adoption leave. This is because the office holder has not left their office whilst on maternity/adoption leave and therefore continues in their existing post as of right, unless the office holder resigns or is removed from office.
 - Office holders are under an obligation to ensure that the duties of their office are carried out on their behalf during any period of absence, including maternity, adoption, paternity, parental and shared parental leave. Regulation 23(2) of the 2009 Regulations requires an office holder "*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*". Examples of how this could be undertaken include:
 - The office holder making arrangements in advance to cover services during the period of absence on maternity or other leave and putting arrangements in place for duties to be delegated to the Churchwardens.

- a discussion with the archdeacon or area dean about how best to ensure that cover is provided whilst the office holder is on leave; or
- arranging for the appointment of a person to a designated cover post, pursuant to Regulation 29 of the 2009 Regulations, to provide cover for an office holder's authorised absence. Such a post 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/adoption leave.

Training posts

21. The length of a training post may be extended to take account of time spent on maternity, adoption, parental or shared parental leave.

22. Any queries about this Advice should be directed to hr.clergy@churchofengland.org

Archbishops' Council March 2020