

# Shared Parental Leave and Pay

## HR NETWORK EVENT

26 February 2015

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Department for Business, Innovation and Skills (BIS)

- The Department for Business, Innovation and Skills (BIS) is responsible for the policy on shared parental leave (SPL) and statutory shared parental pay (ShPP).
- Children and Families Act 2014 gave Government a power to introduce a new system of shared parental leave and statutory shared parental pay. Regulations which BIS took through Parliament in 2014 and 2015 brought in SPL and ShPP for working parents whose baby is due on or after 5 April 2015, or who adopt a child on or after that date.
- The Regulations came into force on 1 December 2014 to catch early births.

## Recap of existing family leave rights

- **Maternity Leave**
- **Statutory Maternity Pay**
- **Maternity Allowance**
- **Paternity Leave and Pay – 1 or 2 weeks**
- Additional Paternity Leave – will be abolished
- **Adoption Leave and Pay**
- **Unpaid Parental Leave (“EU leave”)**

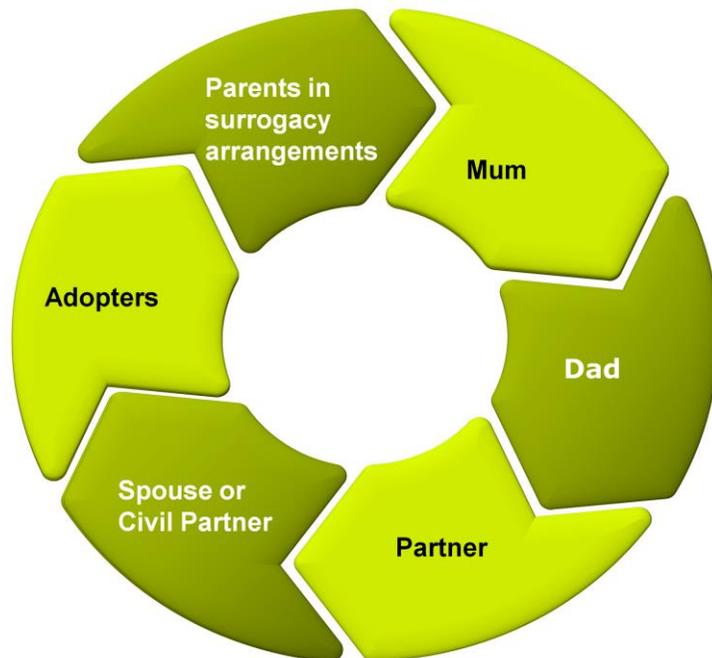
- **Maternity Leave:** 52 weeks Leave – Day 1 right (i.e. no qualifying period).
- **Statutory Maternity Pay:** 39 weeks – enhanced to 90% of pay for first 6 weeks then paid at lesser of 90% of salary or flat rate (currently £138.18 per week, increasing to £139.58 per week from 5 April). Administered through employers.
- **Maternity Allowance:** for low paid or self employed mothers – 39 weeks paid at the lesser of 90% of salary or flat rate. Administered through Jobcentre Plus.
- **Paternity Leave and Pay:** 2 consecutive weeks paid at the lesser of 90% of salary or flat rate. Administered through employers.
- **Additional Paternity Leave:** When mother/adopter returns to work, the father/partner is able to take balance of the mother’s leave (and pay if still within the 39 week maternity/adoption pay period). Only able to take it from the 20th week after birth/placement for adoption. Must be taken in a single continuous block up to a maximum of 26 weeks.
- **Adoption Leave and Pay:** 52 weeks leave and 39 weeks pay, paid at the lesser of 90% of salary or flat rate. **From 5 April 2015**, will become a ‘day 1 right’ to leave and statutory adoption pay will be enhanced to 90% of salary in first 6 weeks then paid at lesser of 90% of salary or flat rate.
- **Unpaid Parental Leave:** 18 weeks per parent per child up until the child’s 5th birthday – will increase to 18<sup>th</sup> birthday **on 5 April**. Still only 4 weeks in any 12 month period. Employer can require employee to defer their leave for up to 6 months.

## What is shared parental leave and pay?

- New statutory entitlement for working parents
- Created from **untaken maternity leave/pay/allowance**
- Replaces additional paternity leave (APL) and pay
- Up to **50 weeks leave** and **37 weeks pay** (in total)
- Must take **after birth** and **before child's 1st birthday**
- **Can be stopped and started**
- **If both parents qualify can share**
- Parents can be at **home together or stagger their leave**

- For parents of babies due on or after 5 April 2015 or parents who adopt on or after that date.
- Created from **untaken maternity leave and pay/allowance**.
- **Additional paternity leave (APL)** will continue for parents of babies **due on or before 4 April** and couples who adopt on or before that date.
- **Can't carry leave and pay over**. Any leave and pay not taken is lost (even if good reason for not taking, e.g. employee on sick leave).
- **Employee can return to work between periods of SPL**.
- **Each employee needs to qualify in own right to share**. If only one parent qualifies, e.g. because other self-employed, the employed parent may still want to opt into SPL and ShPP because it is more flexible than maternity leave and pay.
- **Dad can start SPL whilst mum still on maternity leave or both parents can be on SPL at same time**. So could be at home together for up to 26 weeks or they stagger their leave so that one of parents always at home in first year.
- **Statutory shared parental pay (ShPP) is paid at the flat rate throughout** (currently £138.18 per week, increasing to £139.58 per week from 5 April 2015) . So no entitlement to enhanced pay unless employer offers an occupational scheme – even if mum ends maternity pay period before taking all of 6 week enhancement she can't transfer the enhancement to dad or partner. ShPP administered through employers.

## Who can share?



- **SPL is for couples. They must share the main responsibility for caring for the child at the date of the child’s birth.**
- **Who can share?** If the employee is the mother they can opt into shared parental leave with the child’s father (even if they don’t live together); their spouse, their civil partner or their partner (someone who lives with the mother in an enduring family relationship). If the employee is the father or partner they can opt into shared parental leave with the child’s mother, their spouse, their civil partner or their partner. If the employee is an adopter they can share with their spouse, civil partner or partner. If the employee is a Parental Order parent they can share with the other Parental Order Parent.
- **Who can’t share?** The employee can only opt into shared parental leave and pay with the other parent. So they can’t, for example, opt into SPL and ShPP with their mother, father, grandfather, grandmother, uncle, aunt, niece, nephew, friend or neighbor.
- **Don’t forget that in order to be able to share both parents must be eligible for SPL and/or ShPP.** If only one parent is eligible (e.g. because the parent who meets the “employment and earnings test” is self-employed) the employed parent may still want to opt into SPL and/or ShPP because they can stop and start SPL (in contrast to maternity leave which ends irrevocably when the mother returns to work).

## When is an employee eligible for SPL?

- **Mother must curtail her maternity leave or, if not eligible for mat leave her statutory maternity pay period (or maternity allowance period).**
- **Employee that wants to take SPL must:**
  - Have **main responsibility for caring for the child** (along with the other parent) at date of child's birth
  - **Meet a "continuity of employment test"** (26 weeks at 'qualifying week' and still working for employer at start of week on SPL)
  - **Have a partner who meets an "employment and earnings test"** (£30 a week in 13 weeks in 66 week test period)
  - **Give their employer correct notice** (normally 8 weeks)
  - **Provide additional information** (if asked for this)

- **Curtail maternity leave means mother takes less than her full statutory entitlement to 52 weeks' maternity leave.** If she takes full 52 weeks there is no 'untaken balance' to 'convert' into SPL.
- **If mother is not eligible for maternity leave she won't be eligible for SPL but her employed partner may be.** Mother can curtail her statutory maternity pay period or her maternity allowance period (i.e. take less than 39 weeks of pay/allowance) to 'create' SPL for their partner to take.
- Main responsibility doesn't mean has to care for the child 24/7.
- **Continuity of employment test** – Employee must have **worked for same employer continuously for 26 weeks by the 'qualifying week'** (i.e. the end of the 15<sup>th</sup> week before the child's due date). This is the current/continuing test for SMP and paternity leave and pay.
- **Employment and earnings test** – The other parent must have been employed for at least 26 weeks in the 66 week period leading up to the due date and have earned, on average, at least £30 a week in any 13 of those weeks. This is the current/continuing test for maternity allowance.
- **If both parents qualify for SPL, then the employee will need to meet continuity of employment test to take SPL themselves and meet the employment and earnings test to enable their partner to take SPL.**
- **Correct notice** – Employee must give at least 8 weeks' notice of their/the other parent's entitlement to SPL and also periods of leave.

## When is an employee eligible for ShPP?

An employee can only claim statutory shared parental pay (ShPP) if the **mother has curtailed her 39 week maternity pay/allowance period** and they:

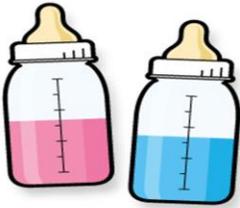
- **Qualify for statutory maternity pay or paternity pay**
- **Qualify for, and are on SPL in the weeks they claim ShPP** (doesn't apply to agency workers)
- **Meet the continuity of employment test and are still working for the employer in the week before they take their first week of ShPP**

- **Must end SMP or MA period early** - If a mother takes her full entitlement to 39 weeks of pay/allowance there is no 'untaken balance' to 'convert' into ShPP.
- In contrast to SPL, the employee **doesn't have to be working for the same employer at the start of each week** that they claim ShPP but they **must be working for the same employer in the week before the first week that they claim ShPP**. So an employee is not entitled to ShPP just because they met the 'continuity of employment test' at the 'qualifying week' (end of 15th week before due date). If they leave or are sacked, the employer is not liable to pay ShPP. But if the employee starts to take SPL and ShPP and is then sacked, the employer is required to pay the remaining ShPP to which the employee is entitled.
- An employee eligible for ShPP will always be eligible for SPL and they **must be on SPL in the weeks that they claim the ShPP** (but they can also take unpaid SPL).
- If the mother doesn't give notice to curtail her SMP/MA period whilst she is still in her 39 week statutory maternity pay/maternity allowance period then she has missed the boat! **She can't curtail once the 39 weeks have passed – even if she claimed less than 39 weeks of SMP or maternity allowance.**

## If both parents eligible they can share!

### Parental leave - how will you share yours?

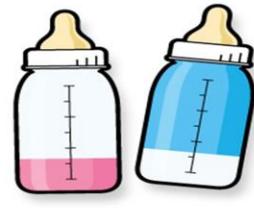
If your baby is due from 5 April 2015, mums can end their maternity leave after 2 weeks and split up to 50 weeks of shared parental leave with dads, any way they like.



Both parents  
take 25 weeks at  
the same time.



Mum takes 44  
weeks, Dad takes  
the first 6 weeks  
at the same time.



Mum takes the first  
12 weeks, then Dad  
takes the remaining  
38 weeks.

Start planning your **#sharedparentalleave** at [www.gov.uk/sharedparentalleave](http://www.gov.uk/sharedparentalleave)

- Info-graphic talks about mums and dads/birth parents for simplicity – but **same principles apply to couples who adopt and same sex couples**.
- The mother and their partner/the father can share **up to 50 weeks** of SPL (the mother must take at least 2 weeks maternity leave to recover from birth).
- **Same principles apply to ShPP**. The mother and her partner/the father can share **up to 37 weeks** of ShPP (the mother must take at least 2 weeks statutory maternity pay).

## Adopters can also share!

### Parental leave for same-sex couples – how will you share yours?

If your baby is due, or an adopted child placed with you, from 5 April 2015, same-sex parents can split up to 50 weeks of shared parental leave between them in addition to a minimum of 2 weeks' maternity or adoption leave.



Both parents  
take 25 weeks  
at the same time.



One parent takes  
44 weeks, the other  
takes the first 6  
at the same time.



One parent takes  
the first 12 weeks,  
the other takes the  
remaining 38 weeks.

Start planning your **#sharedparentalleave** at [www.gov.uk/sharedparentalleave](http://www.gov.uk/sharedparentalleave)

- Info-graphic that we used to promote SPL to same sex couples.
- Same principles apply to ShPP.

## Curtailing mat leave to 'create' SPL

- Mother can curtail (cut short) her maternity leave to 'create' SPL for her or her partner to take by:
  - **Returning to work**
  - Giving **written notice** to her employer that she will end her maternity leave on a **specified date of her choice** (i.e. her 'maternity leave curtailment date')
- The 'maternity leave curtailment notice' must be accompanied by **mother's notice of her entitlement to SPL** or a **declaration from the mother confirming that dad/partner is eligible for SPL and she consents to them taking this.**

- **Returning to work** - Maternity leave ends irrevocably. Mum can't go back on mat leave but can still opt into SPL by giving her employer notice of her entitlement and/or a declaration that the partner/dad is entitled to SPL after her return to work. **Where the mother returns to work without giving her employer a maternity leave curtailment notice** her maternity leave will end **on the date she returns to work.**
- **Maternity leave curtailment notice** – If mum gives her employer written notice, her **maternity leave will end on her 'leave curtailment date'** - **even if she returns to work before that date and even if she or her partner/the father subsequently decide not to take any SPL.** The maternity leave curtailment date is a date chosen by the mother – it must be at least 8 weeks after she gives the notice.
- **Why give employer a maternity leave curtailment notice?** The 'untaken balance' of mum's mat leave can be identified whilst still on mat leave (or before goes on leave) and dad/partner can start to use this from date of child's birth. So can take SPL whilst mother still on mat leave.
- The notice to curtail maternity leave **must be in writing.** It doesn't have to be on a particular form but must contain certain information.
- The notice to curtail maternity leave is binding (i.e. the mother can't change her mind) other than in 3 limited circumstances: 1. the father/partner dies (mum can revoke her notice and stay on maternity leave if she hasn't already returned to work); 2. neither parent is eligible for SPL; 3. the mother changes her mind in the first 6 weeks following birth (again providing she hasn't returned to work). In this case only the mother may give her employer a further maternity leave curtailment notice if she wishes.

## Curtailing SMP or MA to 'create' ShPP

- Returning to work doesn't end the mother's SMP period – mother **must give her employer a 'maternity pay curtailment notice'**. If this is given:
  - After her return to work – the SMP period ends **the same week she gives her employer the notice**
  - Before her return to work – the SMP period ends on the **date the mother specifies in the notice** (her 'pay curtailment date')
  - The 'pay curtailment date' must be at least 8 weeks' from the date the mother gives her employer the notice

- **Returning to work doesn't end the SMP period** it continues to 'run in the background'. So, for example, if the mother is off work sick during her 39 week statutory maternity pay period she will receive statutory maternity pay, not sick pay – even if she breaks her leg skiing!
- Mother **must give her employer written notice to end her SMP period**. This must be given at least 9 weeks before her SMP period is due to end (8 weeks notice plus at least 1 week of ShPP).
- **Once the 39 SMP period has ended the mother has missed the boat!** She can't 'convert' SMP into ShPP – even if she has taken less than 39 weeks of SMP.
- **What information will the employer receive?** If the mother is the employee the employer will get a 'maternity pay curtailment notice' or notice that she has curtailed her maternity allowance period (MA is a benefit so she will need to tell Jobcentre Plus that she wants to curtail this).
- If your employee is the dad/partner they will give you a **signed declaration from the mother confirming that she has curtailed her SMP or MA period**.



## How does an employer know if their employee qualifies for SPL or ShPP?

- **The employee will tell their employer!** To a large extent this is a self-certifying system
- **There are tools for employees** that enable them to check if they are eligible and give the correct information
- **Employers will know if their employees meets some of the conditions** (e.g. 26 weeks service at 'qualifying week' and if qualifies for maternity or paternity pay)
- **Employers will get a declaration from the other parent** (i.e. the person they don't employ), confirming they meet the 'employment and earnings test'

- **Does the other parent meet the 'employment and earnings test'?** – Employers are entitled to rely on the information provided by their employee – which will include a declaration from the other parent. The declaration from the other parent will include their name, address and national insurance number.
- **Don't forget the 'employment and earnings test' has a very low threshold** (£30 on average in any 13 weeks in the 66 week period leading up to the baby's due date). Because the test period goes up to the baby's due date, the other parent could be unemployed at the time their partner (the employed parent) give notice to their employer that they are eligible for SPL and ShPP and still meet the 'employment and earnings test'.

## Notice of entitlement to SPL/ShPP

**8 weeks before they take SPL or ShPP** the employee will give their employer:

- **Notice of entitlement to SPL and/or ShPP** – Including how leave and pay will be shared between the parents and a non-binding indication of when the employee proposes to take the SPL allocated to them.
- **A declaration that they meet the eligibility criteria** (e.g. have main responsibility for caring for the child, will have 26 weeks service at the ‘qualifying week’ and/or that they qualify for maternity/paternity pay)
- **A declaration from the other parent** – Including that they meet the “employment and earnings test” (i.e. earned £30 a week in 13 weeks of the 66 week test period)

- Employee may give notice of entitlement at same time that they book periods of SPL and/or ShPP.
- Notice of entitlement could be given before the mother goes off work on maternity leave, whilst she is on maternity leave.
- Notice of entitlement can be given after the employee has returned to work after taking maternity or paternity leave.
- The purpose of the non-binding indication of when the employee will take their leave is to give the employer a ‘heads up’. The employer is entitled to discuss the leave plans with the employee and suggest an alternative pattern or dates for the leave.
- The employee will normally get a minimum of 8 weeks notice.

## Additional Evidence on Request

On receipt of the Notice of Entitlement to SPL and/or ShPP, the employer has **14 days to request** (if they wish):

- A copy of the birth certificate or proof of adoption
- The name and address of the partner's employer

The employee has 14 days to provide this information from date of request for it.

If the employee fails to provide this information on request they aren't eligible for SPL and/or ShPP

- **The employer is not required to check if the other parent (i.e. the person they don't employ) meets the 'employment and earnings test'** but can ask for the name and address of their employer if they wish.
- Remember the test period is the 66 weeks leading up to the baby's due date so the other parent could be unemployed at the date the employee gives notice of entitlement. If there is no employer, e.g. if the other parent is self-employed, or not employed but has worked recently, the employee must provide a **declaration that there is no employer**.
- **If the employer asks for additional information they should be consistent in how they apply their policy to avoid the risk of discrimination claims.** Could reserve the right to request if good reason or request in a sample of cases.
- **If the employee doesn't provide the additional information on request they are not entitled to take SPL and/or ShPP** - eligibility hinges on all of the criteria being satisfied, including providing a copy of the birth certificate/proof of adoption and/or details for the other parents employer.
- **If the child has been born** at the time of the request, the employee must provide either a copy of the birth certificate or a signed declaration stating the date and place of birth if the certificate has not been issued.
- **If the child has not been born** the employee must provide a copy of the birth certificate within 14 days of the birth (or a signed declaration stating the date and place of birth if the certificate has not been issued).

## Booking leave

- Employee must give **8 weeks notice** of periods of SPL
- They have up to **3 'booking notices' per parent** (more if the employer agrees to this) and can use these to book up to **3 single blocks of consecutive weeks of leave**
- Can use a **single notice** to request two or more periods of leave (this is called a **discontinuous leave request**) - Employer can agree, suggest a different pattern/dates or refuse & require leave to be taken as consecutive weeks
- **Notice to vary** leave already booked **counts towards the cap of 3 notices**

- Minimum amount of SPL or ShPP that can be taken is one week. Any maternity leave and/or pay taken by mother reduces the amount of SPL and ShPP that can be 'created'. So in practice it is unlikely that there will be 50/37 weeks to share.
- A single 'booking notice' may be used to book a **single block of consecutive weeks leave** or to request **two or more blocks of consecutive weeks of leave**, e.g. 4 weeks in each of the months of June, August, and October (this is called a **discontinuous leave request**).
- **Employee has the right to take up to 3 separate block of consecutive weeks of SPL if booked in 3 separate 'booking notices'**
- Where a **discontinuous leave request is made. The employer has 14 days to agree, suggest an alternative pattern or dates or reject the request.** Where no agreement is reached in the 14 day discussion period, **the employee can withdraw the 'booking notice' at any point up to the end of day 15 and it won't count towards the cap of 3 notices.**
- If a discontinuous leave request is refused and the employee does not withdraw the 'booking notice' by day 15 they have **5 days to tell their employer when they will start their single block of consecutive weeks leave.** If they fail to give a start date the **default is that the leave will start on the first day of the first period of discontinuous leave requested.**

- **Tom's 3<sup>rd</sup> Booking notice** –This is discontinuous leave request (2 or more periods of leave requested in a single notice). So triggers 'discontinuous leave request rules'.

#### **Discontinuous leave request rules**

- There is a **2 week discussion period**. During this time the employer can
  - **Agree** to the request for discontinuous leave
  - **Suggest different dates/weeks for Tom to take his leave or a different pattern of leave** (e.g. 6 weeks followed by 2 weeks)
  - **Reject** the request and require Tom to take the 8 weeks leave that he is entitled to take as a single block of consecutive weeks
- If Tom and his employer haven't reached agreement by the end of the 2 weeks **Tom can withdraw the notice at any time up to day 15** (i.e. the day after the 2 week discussion period).
- **If Tom withdraws the notice by day 15 it won't count towards the cap of 3 notices. He can give his employer a further notice.**
- **If he doesn't withdraw the notice he has 5 days from the date the employer rejects the request to tell his employer when he will start his single block of 8 consecutive weeks' of leave.** This can't be any earlier than 8 weeks from the date Tom requested discontinuous leave (so the employer gets at least 6 weeks notice, allowing for the discussion period).
- **If Tom fails to choose a date the 8 weeks leave must start on the first day of what would have been the first block of discontinuous leave.**

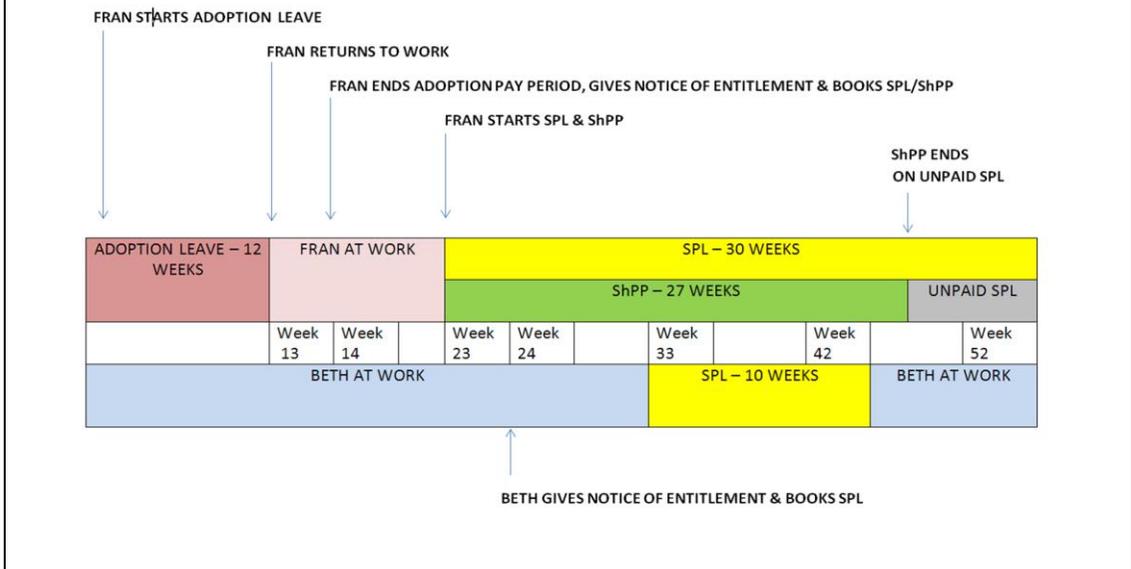
## What about adoption?

- Adopters can opt into SPL and ShPP if one of them is **eligible for adoption leave or pay** and they **meet the eligibility criteria for SPL and ShPP**
- The trigger points are:
  - **Notification of matching** for adoption (rather than the due date)
  - **Placement** of the child with the adopter (rather than birth)

For example, adopter must have worked for you for 26 weeks at end of the **15<sup>th</sup> week before they are notified of a match**

- Adopters who meet the eligibility criteria will also be entitled to take SPL and ShPP.
- SPL must be taken within **52 weeks of placement for adoption**.
- **Adopter required to take 2 weeks adoption leave before can take SPL** (for consistency with arrangements for maternity leave). The 'adoption leave weeks' can be taken before placement with the family (i.e. can start SPL on placement).
- **Adopter required to take 2 weeks of statutory adoption pay before can take ShPP.**
- Other changes to the adoption regime in April 2015: **adoption leave will become a 'day one right' and statutory adoption pay will be enhanced to 90% of salary in the first 6 weeks** (to mirror the arrangements for maternity leave and pay).
- New groups qualify for adoption leave and pay:
  - Parental Order parents – the intended parents in a surrogacy arrangement where the parents are eligible for and intend to apply for a Parental Order making them the legal parent of the child. If the intended parents aren't eligible for or don't apply for a PO they don't qualify for SPL and ShPP
  - Fostering to adopt (local authority adoptions) – This is where the people who are planning to adopt a child foster that child first. This happens where the local authority is keen to get the child into the care of its prospective parents asap

## Fran and Beth



- Same principles apply to parents who adopt as those that apply to birth parents. **One of the adopters must be eligible for adoption leave and/or pay.**
- SPL can be taken from **date of placement for adoption** and must be **completed within 52 weeks of placement** (any SPL not taken by then is lost).
- **The person who is eligible for adoption leave and/or pay must take at least 2 weeks of leave and/or pay.** So there are up to 50 weeks of SPL and up to 37 weeks of ShPP that can potentially be shared.

### Fran and Beth

**Date of placement for adoption** – Fran starts adoption leave and claims statutory adoption pay.

- **Week 13** – Fran returns to work (12 weeks of adoption leave and pay need to be deducted from any entitlement to SPL/ShPP (52 weeks less 12 = 40 weeks of SPL / 39 weeks less 12 = 27 weeks of ShPP).
- **Week 15** – Fran ends her statutory adoption pay period gives notice to her employer of her entitlement to SPL and ShPP. She also books SPL from week 23 – 52 (30 weeks leave).
- **Week 24** – Beth gives notice of her entitlement to SPL to her employer. She also books SPL from week 33- 42 (10 weeks)

## Right to Return

- **Same job** if weeks of maternity, adoption, paternity and SPL **total 26 weeks or less in aggregate**
- **Same or similar job if total more than 26 weeks in aggregate** (same job unless it is not reasonably practicable, in which case it must be a suitable and appropriate job)
- **Unpaid parental leave of up to 4 weeks is disregarded.** Parental leave of 5 weeks or more triggers same or similar.

### Return to work:

- Employee has right to return to same job after SPL + any other period of relevant statutory leave of 26 weeks or less in total for same child
- Otherwise return to same job after SPL unless if not reasonably practicable – they return to another job (suitable & appropriate).

## Redundancy

- Employee on SPL is a 'priority' over other employees at risk of redundancy (go to the top of the queue for suitable other vacancy, along with employees on maternity and paternity leave)

### Redundancy:

- Employee on SPL is a 'priority' over other employees at risk of redundancy - same as provided to employees on maternity leave.
- Entitled to be offered suitable alternative vacancy
- To be a suitable alternative vacancy both of the following criteria must be met:
- The work must both suitable in relation to the employee and appropriate for them to do in the circumstances.
- Terms and conditions, must not be substantially less favourable than previous contract

## Protection from detriment

- An employee is protected from detriment arising from:
  - taking, seeking to take, or making use of the benefits of shared parental leave (SPL)
  - an employer believing that the employee was likely to take SPL
  - refusing to come into work on SPLiT days
- Dismissal relating to the above would constitute unfair dismissal (no qualifying period)

Protection from any detriment because:

- Employee took, sought to take, or made use of the benefits of, SPL.
- Employer believed that the employee was likely to take SPL.
- Employee undertook, considered undertaking, or refused to undertake work (reasonable contact & SPLiT Days)
- Note: protection from detriment provisions come into effect on 1 December 2014

Dismissal:

- Protection against unfair dismissal applies from 1 December 2014
- Automatically unfair dismissal if dismissal is because :
  - the employee took, sought to take, or made use of the benefits of, SPL
  - the employer believed that the employee was likely to take SPL
  - the employee undertook, considered undertaking, or refused to undertake work (reasonable contact and SPLiT)
  - If in redundancy situation the requirements regarding suitable, alternative vacancies not been complied with.

## Guidance and help

- Parent guide: <https://www.gov.uk/shared-parental-leave-and-pay>
- Employer guide: <https://www.gov.uk/shared-parental-leave-and-pay-employer-guide>
- Technical guidance for employers – <https://www.www.bit.ly/1r21Xu1>
- Acas guide on shared parental leave – [www.acas.org.uk/spl](http://www.acas.org.uk/spl)