



# Shared Parental Leave Policy and Procedure

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## SECTION 1 - Policy statement

1. ORR is committed to being a good modern employer and to offering people and family friendly employment policies that support business needs. This approach supports employee motivation and work life balance. It also helps retain talented employees.

### Purpose

2. Shared parental leave (SPL) is a statutory entitlement to flexible parental leave and pay, available to both parents on an equal basis. Legislative provisions to implement SPL are set out in the Children and Families Act 2014 and statutory instruments made under the powers in the Act.
3. SPL aims to:
  - allow working parents to share the care of their children
  - enable working fathers to take a more active role in caring for their children
  - reduce the gender bias that currently impacts on women's careers.
4. Where a woman and her partner meet the qualifying conditions for SPL, the woman can end her maternity leave and pay, or commit to ending it at a future date and share the untaken balance of maternity leave and pay as SPL and pay. For adoptive parents, the primary adopter will have to bring their adoption leave period to an end before they or their partner are entitled to SPL.

### Scope

5. This policy and related procedure apply to all employees who meet the eligibility criteria (length of service and economic activity) for SPL as set out in the shared parental leave procedure. Each parent will need to qualify for leave and pay in their own right. This policy applies to births where the expected week of childbirth begins on or after 5 April 2015 and to adoptions where a child is matched or placed for adoption on or after 5 April 2015.

## Policy principles

6. The following principles and values underpin this policy.
  - Protection – retained protection for pregnant women and mothers immediately before and after childbirth.
  - Flexibility – increased flexibility for employers and employees giving a choice on how employment and caring is shared between parents.
  - Simplicity – straightforward procedures, easy to access and manage.
  - Shared responsibility – a system more balanced between genders that allows negotiation of leave patterns between employer and working parents.

## General Data Protection Regulations and Data Protection Act 2018

7. Personal data collected as part of this policy will be processed in accordance with the ORR's Data Protection Policy, [Privacy Notice](#) and Records Retention schedule. The Privacy Notice explains what personal data ORR holds about you, how we collect it, and how we will use and may share information about you. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the ORR's security incident process immediately. It may also constitute a disciplinary offence, which will be dealt with under the ORR's disciplinary procedure.

## Further information

Further information about SPL is available in the Shared Parental Leave Procedures in Section 2 of this document and the "How to" Guides for Employees and Line Managers.

## SECTION 2 - Shared Parental Leave Procedures Guidance for Employee and Line Managers

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### Introduction

1. Shared parental leave (SPL) and shared parental pay (ShPP) provides parents with the opportunity to share the care of their child in the first year whilst balancing their work and retaining their link to the labour market.
2. SPL is available to both parents, including adopters and their partners, with main caring responsibilities for a child. It is a statutory entitlement in addition to those for maternity, paternity and adoption leave. SPL allows eligible parents the choice to end the mother's maternity leave and pay, or the primary adopter's adoption leave and pay early, and share the untaken balance as SPL and pay after the compulsory maternity leave period, or first two weeks adoption leave.
3. This procedure should be used by employees and line managers for the application and management of SPL within ORR. It supports the SPL policy and should be used in conjunction with the how to guides. Where necessary, line managers should consult HR for advice.
4. A flowchart showing a summary of the eligibility overview is at [Annex A](#).

## Definitions

5. In this document the following terms and definitions apply:
- Mother – the birth mother of the child
  - Primary adopter – the person with whom the adoptive child is expected to be placed and who has primary care for the child
  - Partner – this can be a child’s biological father, the mother’s partner, or the primary adopter’s partner who can be their husband/wife, civil partner or partner living in an enduring relationship with them and the child
  - Parent – refers to the birth parents of the child and to adoptive parents or intended parents in surrogacy arrangements
  - Expected week of childbirth (EWC) in relation to a child means the week, beginning on a Sunday, in which the doctor or midwife expects the child to be born.

## Roles and responsibilities

6. The individual roles and responsibilities of line managers and employees in the application process are set out in the following guidance:
- **How to: apply for shared parental leave – Advice for Employees**
  - **How to: consider shared parental leave requests – Advice for Line Managers**

## Eligibility

7. SPL and ShPP applies to births with a due date on or after 5 April 2015 and to adoptions where a child is matched or placed for adoption on or after 5 April 2015. The “due date” on the maternity certificate (form MATB1) will be used to establish eligibility, irrespective of the actual birth date.
8. To qualify for statutory SPL and ShPP, both parents (mother/primary adopter and her partner) must meet an economic activity test relating to employment and earnings and an individual test relating to duration of service as well as having main caring responsibility for the child:

### **Stage 1 - the joint or economic activity test**

9. In order to qualify, an employed person must have a partner who:
- shares the care of the child and
  - declares that they meet the employment and earnings test. This requires them to have worked for any 26 out of the 66 weeks leading up to the due date or the adoption matching date and earned at least £30 gross a week for any 13 of those 66 weeks.

### **Stage 2 - the individual test**

10. To be eligible for SPL, each parent must have at least 26 weeks’ continuous service with the same employer by the end of the 15th week, before the due date or adoption matching date. They must also still be working for the same employer when they intend to take the leave.

11. To be eligible for ShPP each parent must have 26 weeks' continuous service with the same employer at the 15th week before the expected week of childbirth or adoption placement date. Earnings for the eight week period prior to the 15th week before the baby is due must be over the lower earnings limit.
12. Employees adopting through an approved agency and applying for an adoption order, or eligible and intending to apply for a parental order in a surrogacy arrangement, may also be eligible for SPL. This can be done once they have accessed adoption leave and pay, subject to the eligibility criteria. Information on approved adoption agencies and parental orders can be found in the frequently asked questions.
13. The mother/primary adopter and their partner need to jointly consider whether they meet the qualifying criteria for SPL. This also applies to prospective parents who have a child placed with them under fostering to adopt arrangements.

## Entitlement

14. Shared parental leave (SPL) and shared parental pay (ShPP) is a joint entitlement.
15. Before any SPL and SHPP can be taken, maternity/adoption leave and pay must have ended or there must be a commitment to bring the maternity/adoption leave and pay to an end at a later date.
16. All employed mothers/primary adopters (including intended parents in surrogacy arrangements) are entitled to 52 weeks of statutory maternity/adoption leave regardless of their length of service. Entitlements to different levels of paid leave and how and when to provide notification are set out in ORR's maternity and adoption policy.
17. After the two week compulsory maternity leave period, a mother will be able to bring her maternity leave to an end early and convert the balance of leave into SPL. If eligible, both parents then have the choice to share the untaken balance of maternity leave as SPL and ShPP.
18. A primary adopter is required to take two weeks statutory adoption leave after the start date of the statutory adoption leave period (which can start up to 14 days before the placement) before they can bring their adoption leave to an early end and convert the balance into SPL. If eligible, both primary and secondary adopters will then have the choice to share the untaken balance of adoption leave as SPL and ShPP.
19. SPL can be taken by the partner concurrently with the mother/primary adopter on maternity/adoption leave or both parents can be on SPL together. The combined leave taken by the parents must not exceed their joint entitlement.
20. If circumstances change and the mother/primary adopter and/or their partner no longer have caring responsibility for the child, they must immediately inform their line managers that they are no longer entitled to SPL.

## False declaration

21. If the employee fraudulently or negligently gives incorrect information, or makes a false statement or declaration about their circumstances, this will be considered a disciplinary offence. Action will be taken in accordance with ORR's disciplinary procedures.

## Pay

22. ORR will pay ShPP as follows.

- Eligible employees will be entitled to claim ShPP of up to 39 weeks (less any weeks of statutory maternity pay, maternity allowance or statutory adoption pay already claimed) within one year from the birth or placement.
- For 26 of those weeks leave, occupational ShPP will be paid at full pay less any weeks statutory maternity pay, maternity allowance or statutory adoption pay and leave already taken.
- The remaining 26 weeks of SPL will be paid at statutory rate for 13 weeks and 13 weeks unpaid. This mirrors ORR's occupational maternity pay arrangements.
- Regardless of whether one or both parents work in the Civil Service, the amount of ShPP entitlement is counted down from when the 39 weeks of statutory maternity pay, maternity allowance or statutory adoption pay starts.
- ORR will not pay more than 26 weeks full maternity pay, adoption pay or ShPP in aggregate to an eligible couple within the Civil Service, as this is a joint entitlement.
- SPL and ShPP can be taken at any time during the first year following the birth or placement for adoption, so long as the compulsory maternity period, or two weeks adoption leave, has been taken.

23. Payment of occupational ShPP is conditional upon eligible employees:

- being in paid service at the time their SPL begins and having one year's Civil Service service.

## Ante-natal and pre-adoption appointments

24. Pregnant women are entitled to reasonable **paid** leave to attend ante-natal appointments. Fathers, or an expectant mother's partner, have a statutory right to take unpaid time off work to accompany a pregnant woman to attend up to two ante-natal appointments. There is no qualifying length of service required in order to exercise this right. Managers have discretion to agree up to two hours **paid special leave** for such appointments, within reasonable limits. Details are in ORR's paternity and leave policies.
25. This statutory right is available to the husband, civil partner, or partner of the pregnant woman, to the father or parent of the expected child, or to intended parents in surrogacy cases who meet specified conditions relating to Parental Orders under the Human Embryology and Fertilisation Act 2008.
26. The mother retains the right to decide if her partner, or the intended parents in surrogacy arrangements, can attend these appointments with her.
27. Adopters, including prospective adopters with whom a child is placed under a "fostering to adopt" arrangement are eligible for paid time off to attend pre-adoption appointments.

## Requesting leave for ante-natal or adoption appointments

28. A mother's partner has the right to take unpaid time off in order to attend two ante-natal appointments. This covers the actual time needed to attend the appointments up to a limit of six and half hours per appointment. Employees should advise their line manager of the

appointment dates and times as early as possible. Managers have discretion to agree up to two hours **paid special leave** for such appointments, within reasonable limits.

29. The primary adopter is entitled to take paid time off work to attend up to five pre-adoption appointments. The secondary adopter or partner is entitled to take unpaid time off to attend up to two pre-adoption appointments. This covers the actual time needed to attend the appointments and is limited to six and half hours per appointment. Managers have discretion to agree up to two hours **paid special leave** for such appointments, within reasonable limits.
30. If requested, adoptive parents will need to provide evidence to their line managers that the local authority has requested their attendance at adoption meetings.
31. Line managers and employees should discuss whether working from home or flexibly around appointments would help minimise their absence from work.

## Notice to end maternity leave

32. A mother on maternity leave can end her maternity leave either by returning to work or by giving eight weeks' notice that she will end her leave and/or pay on a date following the two week compulsory period after the birth of her child. Notice must be given using the SPL and ShPP form. Where notice to end maternity leave is accompanied with notification by the mother or her partner to take SPL, the notice to end maternity leave is binding.
33. The maternity leave will end on that date, whether or not the mother returns to work, unless the mother revokes any notice given prior to childbirth, within six weeks following the birth.
34. Ending or committing to end maternity leave and pay on a specific date determines the number of weeks entitlement to SPL and ShPP. Eligible parents can share the remaining balance of leave as SPL (up to 50 weeks) and ShPP (up to 37 weeks). If the mother returns to work in advance of the date given on the notice, the entitlement to SPL and ShPP will still be based on the original end date.

## Notice to end adoption leave

35. To end their adoption leave and/or pay, primary adopters on adoption leave must give at least eight weeks' notice and have taken the first two weeks as statutory adoption leave. This notice must also be at least one week before the last day of the statutory adoption leave period. Notice must be given using the SPL and ShPP form.
36. Adoption leave will end on the date notified, whether or not the adopter returns to work.
37. Ending or committing to end adoption leave on a specific date determines the number of weeks entitlement to SPL and ShPP. Eligible parents can share the remaining untaken balance of leave as SPL (up to 50 weeks) and ShPP (up to 37 weeks). If the primary adopter returns to work in advance of the date given on the notice, the entitlement to SPL and ShPP will still be based on the original end date.

## Revoking a binding notice to end maternity leave

38. To opt into SPL, a birth mother will have given binding notice to end her maternity leave early without taking her full maternity entitlement.

39. She can revoke binding notice given prior to childbirth, up to six weeks following childbirth, providing she has not returned to work. This is because returning to work will automatically end her maternity leave.
40. Her partner must immediately inform their employer of any change to their entitlement to SPL.
41. If a birth mother has revoked her notice in the six weeks following childbirth, she can still submit binding notice to end maternity leave at a later date, by giving eight weeks' notice.

## Providing notification for SPL

42. For parents to access SPL and ShPP, the mother/primary adopter will first need to give their employer at least eight weeks' notice of their intention to end maternity/adoption leave. Where notice to end maternity leave is accompanied with notification by the mother or her partner to take SPL, the notice to end maternity leave is binding. The mother's/primary adopter's maternity/adoption leave and maternity/adoption pay period will cease on the day specified on the notice.
43. Notification periods for SPL are the same for the mother/primary adopter and their partner in maternity, adoption, and surrogacy arrangements.
44. An employee will need to give their line manager at least **eight weeks' notice of intention** to take SPL using the SPL and SHPP form. This includes a non-binding indication of the expected pattern of leave to give an early indication to line managers of the intended leave pattern.
45. The notice can be submitted at any time, provided that at least eight weeks' notice is given for each period of leave. Early notification allows employees and line managers to begin discussions about dates and patterns of leave sooner and plan for absences. If the notification is submitted only eight weeks before the first day of the first period of leave this notification will also become the binding notice of SPL (detailed below). More detailed information on notice periods is in frequently asked questions and how to guides.
47. Line managers may request the following as evidence to ensure an employee's entitlement to SPL:
  - **A copy of the child's birth certificate or, if unavailable, a declaration signed by both parents stating the date and location of birth** – If the request is made before the birth of the child this must be provided within 14 days of the child's birth. If the request is made after the birth of the child this must be provided within 14 days of the request.

or

  - **A copy of a matching document issued by the adoption agency, notifying that the child is to be placed with the primary adopter** – This must be provided by the employee within 14 days of the request.

and

  - **The name and address of their partner's employer** – This must be provided within 14 days of the request.

## Fostering to adopt

48. In fostering to adopt arrangements 'looked after children' are placed with approved foster parents who agree to adopt the child with little or no notice, if parental rights of the birth parents are terminated.
49. In these circumstances, employees will be unable to provide the usual notice required prior to their absence on adoption leave. Foster to adopt parents are specially trained in placements that are likely to lead to adoption. Therefore, prospective parents in this situation are encouraged to have early discussions with their line manager to help prepare for absences at short notice.

## SPL pattern requests

50. SPL allows working parents to take short periods of leave in **minimum one-week blocks**. This enables them to intersperse periods of work with periods of leave and to take leave at the same time if they choose to. Each employed parent agrees their pattern of leave with their line manager.
51. To confirm their leave requirements, an employee must provide their line manager with **binding notice of SPL** on SPL and ShPP form, signed by them and their partner. This must be received at least eight weeks before the employee intends to be absent on SPL. It does not need to include details of all the requested SPL and all discontinuous weeks. Any subsequent leave requests will require an eight week notice period and be subjected to the limit of three notifications. This limit includes the initial request of SPL and any previously notified SPL requests. There can only be **three formal notifications for leave** or changes to periods of SPL overall.
52. Line managers will need to check that their employee meets the qualifying criteria for SPL and ShPP. They should consider the needs of the business before agreeing any periods of discontinuous weeks of SPL in a single notice. At no point will the respective line managers of each parent be expected to contact one another.
53. During the first two weeks of the eight week notice period, the line manager and employee should discuss and agree sign-off of the leave pattern(s). An employee may withdraw a notice without penalty in these two weeks.
54. If the employee and line manager cannot reach agreement, the employee is entitled to take their SPL in a single block commencing on a date specified by the employee. This start date can be provided up to five days after the two week discussion period, provided the leave period starts no sooner than eight weeks from the submission of the original notification.
55. If a line manager fails to respond to an employee's notice of SPL and requested pattern, the SPL will revert to the default position of a continuous period of leave for the total amount of SPL requested in the pattern. The employee will have five days from the end of the two week discussion period to notify their line manager of when that continuous period will start. This must not be within eight weeks of the original submission of the request, but can be later. If the employee does not specify a start date then the SPL will start on the first date stated in their original request.

## Requests to change SPL patterns

56. Once an employee has submitted **notice of a period of SPL** they will only be able to withdraw that request within the two week discussion period at the beginning of the eight weeks' notice. To make changes after this point they would need to submit a **formal change notification**, which would be included in the limit of up to three notifications overall.
57. If already within a period of agreed leave, this will continue until agreement of newleave pattern is reached and the required notice period is completed. Notice periods may be waived due to unforeseen circumstances.
58. Changes which are mutually beneficial to the business and the employee can be made without this counting towards the limit of three notifications.

## Managing SPL

59. It is important for employees and their line managers to keep in touch during extended periods of absence from the workplace. This enables line managers and employees to be kept updated on changes within the workplace or personal circumstances which can ease the employees return to work.

### SPL in Touch (SPLIT) Days

60. The right to maternity "Keeping in Touch" (KIT) days will cease once maternity leave ends, but parents can have up to 20 SPLIT days each to use whilst on SPL. Full pay will apply for these days and they may only be used with the agreement of the employer and the employee. It is anticipated that SPLIT days will be used to enable an employee to return to work for one or more days in the weeks they are absent on SPL for training/keeping up to speed with changes in work, part time working or a phased return to work.

## Leaving ORR

61. If an employee leaves ORR **and** the Civil Service as a whole during a period of SPL, they are no longer eligible for SPL and ShPP. An employee will need to **repay any occupational ShPP paid** during their SPL, excluding statutory ShPP
62. If an employee transfers to another government department, they remain in Civil Service employment. As there is no break in continuity of service their entitlement to SPL and pay is unlikely to be affected. However, if an employee has agreed an SPL pattern with their previous department they will need an early discussion of these arrangements with their new line manager to ensure they can be honoured.
63. If SPL is taken during a loan or secondment period, line managers and employees should refer to HR for guidance on loans and secondments. The secondment or loan agreement should be discussed by the contracting parties.

## Right to return

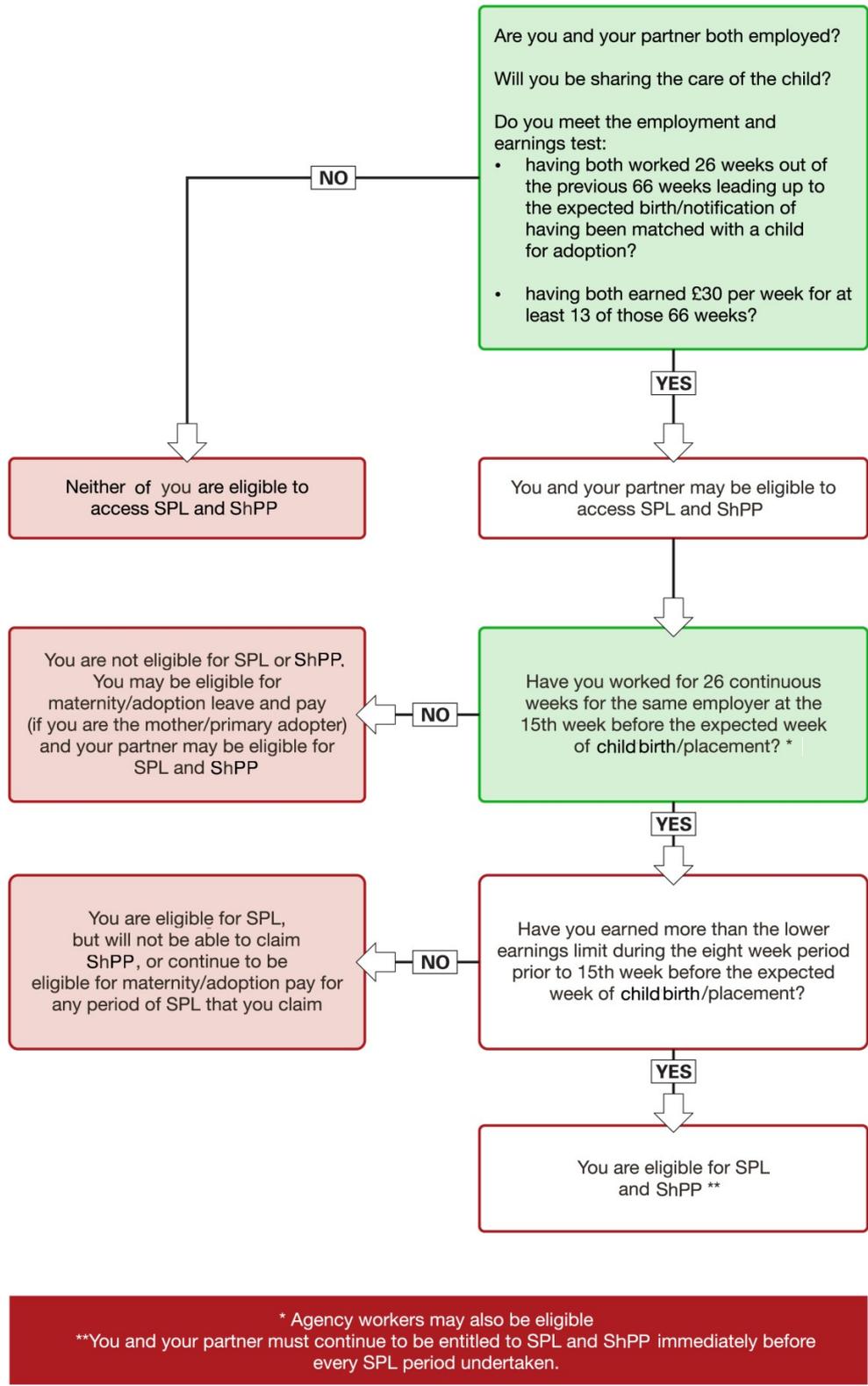
64. Employees who have ended their right to maternity or adoption leave will no longer benefit from any right associated with maternity or adoption leave. However, similar rights are provided under SPL.

65. Under SPL, the right to return to the same job is maintained for *all employees* returning from any period of leave (maternity, paternity, adoption, or SPL) that totals 26 weeks or less in aggregate, even if the leave is taken in discontinuous blocks. Up to four weeks of unpaid parental leave are disregarded for the purpose of the right to return to the same job.
66. Employees also have the right to return to the same job, or, if it is not reasonably practical for the employer, enter another job which is both suitable and appropriate for them, if:
  - total SPL taken when added to any other period of relevant statutory leave is more than 26 weeks; or
  - a period of SPL was consecutive with a period of parental leave of more than four weeks; or
  - or a period of SPL was the last of two or more consecutive periods of relevant statutory leave of more than four weeks.
67. Line managers should follow ORR's guidance on risk assessments for new and expectant mothers throughout the pregnancy and on the mother's return from maternity and/or SPL in the six month period following birth.
68. If an employee would like to return to work using a different working pattern, this is considered in line with the right to request statutory flexible working. When considering an application for a different working pattern, line managers will try to accommodate the request, but there can be no guarantee that it will be allowed.

## Further information

69. For further information on the SPL application process, see the line manager and employee how to guides detailed on page 4 of this guidance, and the resources available on the Shared Parental Leave pages on the staff intranet.
70. Department for Business, Innovation and Skills and Advisory, Conciliation and Arbitration Service also have guidance on SPL.
71. If you have any questions on the Shared Parental Leave scheme, your entitlement or the application process, please contact Human Resources.

# Annex A - Flowchart to show overview eligibility



## Accessible version of eligibility flowchart

**Step 1** – Stage one of the eligibility criteria - Are you and your partner both employed? Will you be sharing the care of the child? Do you meet the employment and earnings test, having both worked 26 weeks out of the previous 66 weeks leading up to the expected birth/notification of having been matched with a child for adoption? Having both earned £30 per week for at least 13 of those 66 weeks?

**If no**, neither of you are eligible to access SPL and/or ShPP

**If yes**, you and your partner may be eligible to access SPL and/or ShPP. Go to **Step 2**

**Step 2** – Stage two of the eligibility criteria - Have you worked for 26 continuous weeks for the same employer at the 15th week before the expected week of confinement/placement (agency workers may also be eligible)?

**If no**, you are not eligible for SPL or ShPP. You may be eligible for maternity/adoption leave and pay (if you are the mother/primary adopter) and your partner may be eligible for SPL and ShPP.

**If yes**, Go to **Step 3**

**Step 3** - Have you earned more than the lower earnings limit, during the eight week period prior to 15th week before the expected week of confinement/placement?

**If no**, you are eligible for SPL, but will not be able to claim ShPP, or continue to be eligible for maternity/adoption pay for any period of SPL that you claim.

**If yes**, you are eligible for SPL and ShPP, you and your partner must continue to be entitled to SPL and ShPP immediately before every SPL period undertaken.