



Family/Special Leave Policy and Procedure

March 2022

History of Changes

Version	Description of Change	Authored by	Date
1.1	Changes to reflect changes in Employment Legislation	Debbie Kerr	04/09/14
1.2	Changes to reflect changes in Employment Legislation	Debbie Kerr	19/10/16
1.3	Minor changes – National Policy to come	Debbie Kerr	03/22

Policy

1. Introduction

Borders College recognises its staff as one of its best assets. In order to provide support and to recognise that, at times, personal considerations will need to take precedence this policy is to offer practical help by way of additional leave in specific circumstances.

2. Scope

Provided any specific criteria are met this policy and procedure is available and applicable to all staff dependent on their particular circumstances.

3. Key Principles

3.1 This policy is part of the College's commitment to family friendly working and seeks to benefit the welfare of individual members of staff; retain valued employees; improve morale and performance; and enhance the reputation of Borders College as an employer of choice.

4. Responsibilities

- 4.1 The SLT is responsible for overseeing compliance with the principles of this policy.
- 4.2 The Head of HR is responsible for the implementation of this policy.
- 4.3 Line Managers are responsible for ensuring compliance with this policy.
- 4.4 All staff are responsible for adhering to this policy.

5. Related Documents

- 5.1 Staff Handbook
- 5.2 Employment Law
- 5.3 HMRC website
- 5.4 ACAS web site

6. Review

This policy and procedure will be reviewed every three years or more often if necessary.

7. Procedure

7.1 Parental Leave

- 7.1.1 Members of staff who have at least one year's continuous service will be entitled to 18 weeks' unpaid parental leave upon the birth of their child. This leave may be taken at any time up to the child's eighteenth birthday. This right also applies to members of staff who have acquired formal responsibility for a child, e.g. guardians.
- 7.1.2 Members of staff who have at least one year's continuous service who adopt a child will also be entitled to 18 weeks' unpaid leave. The child must be under the age of 18.
- 7.1.3 Parents can take unpaid parental leave for up to 18 weeks up until the child's eighteenth birthday.
- 7.1.4 Members of staff who work part-time will receive a pro-rated amount of unpaid leave.
- 7.1.5 A member of staff may not take parental leave in periods of less than one week (although parents of disabled children may take leave in days which will count only as individual days).
- 7.1.6 A member of staff may not take more than four weeks' leave per year per child.
- 7.1.7 Applications for parental leave must be made in writing to the line manager and the member of staff may be required to provide evidence of their responsibility for the child and the child's age.
- 7.1.8 Members of staff must give at least 21 calendar days' notice of an intention to take parental leave and should specify the dates.
- 7.1.9 Partners may take time off immediately after the birth and parents immediately after an adoption provided that they give 21 days' notice of the expected week of the child's birth or adoption and specify the duration of the leave.
- 7.1.10 It may be necessary to postpone parental leave for up to six months (unless it is being taken immediately after a child is born or adopted provided the staff member has given 21 calendar days' notice of their intention to take Parental Leave at this time) where the business could not cope or would be harmed by a member of staff's absence. Postponement will be confirmed in writing no later than 7 days after the member of staff's notice to take leave. This will state the reasons for the postponement and set out the new dates of parental leave.

7.1.11 Members of staff will remain employed during the parental leave period. Certain contractual terms continue to apply. In particular, the employer's obligation of trust and confidence, terms concerning notice, redundancy compensation, disciplinary and grievance procedures. Also, the member of staff's obligation of good faith and any express term prohibiting disclosure of confidential information or participation in a competing business.

7.1.12 Where both parents are employed by the College, each will be entitled to leave.

7.1.13 Members of staff returning from parental leave of four weeks or less will be reinstated in their previous jobs. In extenuating circumstances, parental leave may be extended at the College's discretion. Members of staff returning from parental leave of more than four weeks will be reinstated in their previous jobs wherever possible or, if not offered similar jobs which have the same or better status, terms and conditions as the previous jobs.

7.2 Time Off for Dependents

7.2.1 Whilst members of staff have rights to paid holidays, it is recognised that there may be occasions, due to an emergency arising connected with a member of staff's immediate family or household, when unpaid leave with or without notice may be required. It is envisaged that in most cases one or two days at the most will be needed to deal with an immediate problem and make any longer-term arrangements.

7.2.2 Circumstances where a member of staff can take time off include:

- to provide assistance when a dependent falls ill, gives birth, is injured or assaulted
- to make arrangements for the provision of care for a dependent who is ill or injured
- to deal with a breakdown in a dependent's care arrangements
- to deal with an incident involving a child during the time when an educational establishment has care of that child

(A dependent is the partner, child or parent of the member of staff, or someone who lives with the member of staff as part of their family)

7.2.3 Requests for time off for dependents should be made to the line manager as soon as possible. The member of staff should state the reason for the absence and indicate how long he/she expects to be away from work.

7.2.4 Up to one day with pay will be given to deal with an emergency. This would include accompanying a defendant to hospital if it is an emergency, rather than a prearranged appointment. Such leave will not normally be granted more than once in any thirteen-week period.

- 7.2.5 **Serious illness** – up to three days paid leave may be given in the event of a serious illness affecting a dependent. Such leave will not normally be granted more than once in any thirteen-week period and may only be granted in circumstances where the illness is classed as ‘serious’ by the medical profession.
- 7.2.6 **Long-term illness of a dependent** – the College would deal sympathetically with requests for long-term unpaid leave in situations of long-term serious illness. Arrangements for reduced or rearranged working hours on a temporary basis would also be considered.
- 7.2.7 **Family Bereavement** – up to five days compassionate leave with pay will be given in the event of a death in the family involving the member of staff’s mother, father, spouse, children, brother, sister, guardian, in-laws, or other dependent (see above).
- 7.2.8 The absence of members of staff – even where it is unpaid – affects the efficiency of the College’s business and members of staff are expected to keep requests for such leave to a minimum and to use it to cover only the “emergencies” with which it is designed to assist. Where members of staff know in advance that they are going to need time off, they may be able to take this as part of their holiday entitlement or be entitled to parental leave.

7.3 Requests for Flexible Working

- 7.3.1 All employees have the right to request a flexible working arrangement.
- 7.3.2 Flexible working arrangements may include changes to an employee’s days or hours of work, job-sharing, working school term- time only or working from home.
- 7.3.3 Whilst the College is not obliged to grant flexible working requests, the College does have a legal duty to consider such requests seriously. The College may only refuse a request where there are sound and objective business reasons for doing so.
- 7.3.4 **Eligibility for Flexible Working**
To be eligible to apply for flexible working, an employee must:
- Have 26 weeks’ continuous service with the College
 - Have not made a request to work flexibly in the previous 12 months
- 7.3.5 **Procedure**
The employee must start the process with a written application to their line manager to work flexibly. The application should be submitted as far in advance as possible and provide clear information to the College about the employee’s desired working pattern, including days, hours, times and preferred start date.

Before making an application for flexible working, employees should give consideration to the following factors:

- Which working pattern would be best for them
- Any financial implications the change requested may have on them (e.g. in cases where the desired working pattern will involve a drop-in salary)
- What effect, if any, making the change requested would have on the College and how such effect might be dealt with.

The application should include a statement to the effect that the application is a request for flexible working and a contract variation and must include written statements providing clear information on each of the following matters:

1. the change applied for and the date on which it is proposed that the change should come into effect
2. what effect, if any, the employee thinks making the change applied for would have on the College and how, in their opinion, any such effect might be dealt with
3. state that this is a statutory request and whether a previous application has been made to the College, and if so, when it was made. All requests, including appeals must be dealt with within six months
4. to help the College consider the request please also provide details of the reason for your application

The employee can be accompanied by a work colleague at any meeting.

The legislation limits the grounds upon which applications can be refused and refusal is limited at present to the following grounds:

- the burden of additional cost
- detrimental effect on the College's ability to meet customer demand
- the inability to reorganise work among existing workers
- inability to recruit additional workers
- detrimental impact on quality
- detrimental impact on performance
- insufficiency of work during the periods the employee has requested to work
- planned structural changes

The manager who conducted the meeting is required to write to the employee either to agree to the request contained in the application and confirm a start date for the new work pattern or provide an explanation which refers to the grounds upon which applications may be refused and why the application cannot be granted.

The College must also inform the employee of their right to appeal the decision. The appeal must be in writing and set out the grounds for the appeal.

The next line of management should then hold an appeal meeting. If the appeal is upheld, then a meeting need not take place and the employee will be notified of the decision.

The appeal decision must be notified in writing.

7.4 Adoption Leave

- 7.4.1 If you adopt a child, either you or your partner will be entitled to Adoption Leave. Adoption leave can be taken by either partner adopting a child jointly, regardless of your gender. To obtain the benefit of these rights, you must comply with the qualifying conditions that are outlined below i.e. as for Maternity.

Where you meet the eligibility criteria, you are entitled to 52 weeks' Maternity or Adoption Leave, in order to care for a new baby or a newly adopted child who is up to 18 years of age.

Maternity and Adoption Leave is made up of 26 weeks' Ordinary Leave, followed by 26 weeks' Additional Leave. Additional Maternity Leave (AML) or Additional Adoption Leave (AAL) follows immediately after the end of your Ordinary Leave. There can be no gap between the two types of leave.

New mothers and adoptive parents have the right to transfer all, or part, of their AML or AAL entitlement to the other parent.

Further details are available from the HR Department.

7.5 Maternity Policy

- 7.5.1 The College's policy is to comply with both the letter and spirit of the law on maternity rights. To this end, it's aim is to inform all female employees, regardless of marital status, of their entitlements to statutory maternity rights and to ensure that those rights are understood by employees who qualify.

Definitions

Ordinary Maternity Leave	OML – A period of absence from work totalling 26 weeks, for which payment may be made dependent on satisfying the qualifying conditions.
Additional Maternity Leave	AML – This is a period of absence from work, which lasts for a further 26 weeks after Ordinary Maternity Leave for which payment may be made for 13 weeks and the remaining 13 weeks unpaid.

7.5.2 Procedure

1. Pregnant employees are encouraged to advise the Health and Safety Manager of their pregnancy at an early stage so that risk assessment can be carried out. You should notify the HR Department of your pregnancy and of the expected date of birth as soon as is reasonably practicable and by no later than the end of the 15th week before the EWC. This should be done by completing form "Notification of Maternity Leave/Resignation Due to Pregnancy". The HR Department will check your entitlement to statutory maternity rights and inform you accordingly.

2. Once the appropriate notice has been given, a pregnant employee can vary the date of commencement of their OML provided that notice of the change is given at least 28 days before the date that is being changed or the new date, whichever is the earlier. If that is not reasonably practicable, then the notice of the variation of the date must be given as soon as is reasonably practicable.
3. Once the HR Department has received notification of the date of commencement of OML they will write to the employee concerned within 28 days of receiving the relevant notification to provide the employee with notification of the date when OML will end and the dates on which OML and AML will end. If the employee requests a variation, then a similar notice will be sent to the employee confirming the new end dates. A new mother has the right, following the two-week compulsory maternity leave period, to transfer all or some of the remaining OML or AML to the other parent. Further details are available from the HR Department.
4. You should provide a certificate from your doctor of midwife (MATB1) confirming the Expected Week of Childbirth (EWC). This is normally available after the 26th week of pregnancy.
5. The maximum entitlement to SMP is 39 weeks payment. Employees will receive the higher rate of SMP (90%) in respect of the first six weeks of ordinary maternity leave and the lower rate of SMP for the remaining 33 weeks.
6. During ordinary maternity leave all contractual benefits except basic salary will be maintained. During the additional leave, the employee is entitled to the benefit of her employer's implied obligation of trust and confidence and any terms relating to notice of termination by the employer, redundancy pay and disciplinary and grievance procedures. The employee remains bound by her implied obligation of good faith and any terms as to notice of termination by her, disclosure of confidential information, acceptance of gifts or other benefits and participation in any other business. However, no contractual benefits or entitlements will apply during this period.
7. Keeping in Touch Days

During the maternity leave period it is permissible for the College and/or the employee to maintain reasonable contact by telephone, e-mail, newsletter etc.

Employees on maternity leave are permitted to do up to 10 days' work for the College and are entitled to be paid for such work.

Arrangements for these provisions will be discussed prior to maternity leave commencing or as soon as is reasonably practicable.
8. All employees are eligible for ordinary maternity leave and additional maternity leave.

9. If an employee intends to return to work immediately after the end of additional maternity leave, she does not have to give notice of her return.
10. If an employee wishes to return to work before the date on which the College notified her that her additional maternity leave ends, she must give the College 8 weeks' notice of her date of return.
11. If an employee attempts to return earlier than the end of her ordinary or additional maternity leave, without giving the College 8 weeks' notice, the College may postpone her return to work until 8 weeks' notice has been given. However, the College cannot use this provision to postpone the return beyond the end of the relevant period of maternity leave.
12. On receiving details of the varied date of return, written confirmation will be sent to the employee setting out her expected return date and confirming her restart details, including the job to which she will return.
13. A letter will be sent to any employee who has not returned by the end of the additional maternity leave. This will state that her right to return to work has not been lost, however the College may take appropriate disciplinary action under the College Disciplinary Procedures.
14. The College will endeavour to ensure that, wherever possible, employees can exercise their full rights on returning to work following ordinary maternity leave (i.e. that they return to the job they left, on no less favourable terms and conditions of employment than if they had not been away).
15. Where it is not reasonably practicable to allow the employee to return to her old job after additional maternity leave, she will be offered suitable alternative employment.
16. Where the employee has to be offered suitable alternative employment, she will be advised of this as soon as possible after she has notified her date of return. A meeting will then be arranged with the employee to discuss the implications of the changed work.
17. In whatever capacity she returns to work, the employee's continuous service will be preserved, and the period of her additional maternity leave will count, provided she exercises her right to return properly.
18. Any employee who is dissatisfied with any decision made in respect of her maternity rights should use the College's formal grievance procedure.

7.5.3 Support Staff

Ordinary Maternity Leave

All support staff, regardless of length of service, are entitled to 26 weeks of unpaid leave beginning from a date not earlier than the eleventh week before the expected week of childbirth (EWC) unless childbirth has taken place prior to this.

All support staff will have the right to return to work at the College where they comply with the notification requirements.

All support staff will accrue annual leave entitlement when on maternity leave.

Support Staff, whose average weekly earnings are not less than the lower earnings limit for National Insurance contributions liability, will be entitled to SMP (6 weeks at 9/10ths of average weekly earnings and 33 weeks at the lower rate of SMP).

In addition, Occupational Maternity Pay of five tenths pay will be paid for 12 weeks. The employee shall refund to the College the amount of maternity pay paid to her for the twelve-week period at five-tenths pay or such part thereof as the College may, at its discretion, decide if she does not return to work within the time limits specified and remain at work for at least three months.

If you have earnings less than the lower earnings limit for National Insurance contributions, you should contact the DSS with the possibility of being eligible for Maternity Allowance.

Additional Maternity Leave

All support staff will be entitled to an extended period of maternity leave of a further 26 weeks.

If you give written notice to the College that you do not intend to return to work at the end of your additional maternity leave period, then the College will make payment to you for leave accrued during the maternity leave period.

If you notify the College that you do intend to return at the end of your additional maternity leave period, the College will ensure that you are paid for, or receive, leave accrued during the maternity leave.

7.5.4 Lecturing Staff

Ordinary Maternity Leave

All lecturers, regardless of length of service, are entitled to 26 weeks of unpaid leave beginning from a date not earlier than the eleventh week before the expected week of childbirth (EWC) unless childbirth has taken place prior to this.

All lecturers will have the right to return to work at the College where they comply with the notification requirements.

All permanent lecturers will accrue annual leave entitlement when on maternity leave.

Lecturers whose average weekly earnings are not less than the lower earnings limit for National Insurance contributions will be entitled to maternity leave with pay (13 weeks at full salary and 26 weeks at the lower rate of Statutory Maternity Pay (SMP)).

If you have earnings less than the lower earnings limit for National Insurance contributions, you should contact the DSS with the possibility of being eligible for Maternity Allowance.

Additional Maternity Leave

All lecturers, either permanent or temporary, will be entitled to an additional period of maternity leave of a further 26 weeks.

If you are a permanent lecturer and give written notice to the College that you do not intend to return to work at the end of your maternity leave period, then the College will make payment to you for leave accrued during the maternity leave period.

If you are a permanent lecturer and notify the College that you do intend to return at the end of your maternity leave period, the College will ensure that you are paid for, or receive, leave accrued during the maternity leave period. The total holiday entitlement for any leave year will, however, not exceed 60 days inclusive of public holidays.

7.6 Paternity Leave

7.6.1 Eligibility

To qualify for paternity, leave a member of staff has to:

- a) be taking the leave for the purpose of caring for a child or supporting the child's mother
- b) have complied with any request by the College to produce for inspection evidence of the entitlement (in the form of a declaration)
- c) have given the appropriate period of notice
- d) have been continuously employed for a period of not less than 26 weeks ending with the week immediately preceding the 14th week before the expected week of the child's birth
- e) have, or expect to have, responsibility for the upbringing of the child
- f) be the biological father of the child, or be married to, or be the partner of the child's mother

7.6.2 The definition of partner in the Paternity and Adoption Leave Regulations 2002 is as follows:

"Partner, in relation to a child's mother or adopter, means a person (whether of a different sex or the same sex) who lives with the mother or adopter in an enduring family relationship but is not blood relative."

7.6.3 How Long is Paternity Leave?

Paternity leave can be a maximum of 2 consecutive weeks. Eligible members of staff can choose to take either 1 week or 2 consecutive weeks. They are not entitled to take individual days.

In the case of multiple birth, there is only one entitlement to leave.

7.6.4 When Can Leave Start?

Leave cannot start until the baby is born. Paternity leave can start on any day of the week as long as the member of staff has given the required notice, but it must be completed within 56 days of the actual date of birth of the child or, if the child is born earlier than expected, between the birth and 56 days from the first day of the expected week of birth.

7.6.5 What Notification Requirements Apply?

A member of staff must notify the College that they intend to take paternity leave by the end of the 15th week before the baby is due or, if this is not possible, as soon as is reasonably practicable or the date of being matched with a child.

A member of staff can ask for leave to start on the day the baby is born, on a particular day after the baby is due or a certain number of days after the birth.

7.6.6 Statutory Paternity Pay

To qualify for SPP, a member of staff must advise the College that they want to receive SPP at least 28 days before they want pay to start. In many cases, that notice will already be given at the same time as a member of staff notifies the College that they wish to take leave.

The notice has to specify the expected week of the baby's birth, whether the member of staff wishes to take 1 or 2 weeks leave and when they wish to the leave to start.

To qualify for SPP a member of staff is also required to give the College a signed declaration on Inland Revenue form SC3, available from the HR Department.

A member of staff can change their mind about when they want the leave to start. If they want to change the date of the start of their leave, then they are required to give the College 28 days' notice before the start of the leave (whether that day is the day birth is expected, the specified number of days after the birth or the specification of a particular date).

If it is not practicable to give the required notice, a member of staff should give the notice as soon as is reasonably practicable. This may arise where the baby is born early.

7.6.7 How Much SPP?

SPP will be paid at the same flat rate as statutory maternity pay. This will be the current rate of SPP per week or 90% of average earnings if this is less than the current rate of SPP.

7.6.8 Return to Work

The contract of employment continues as normal throughout the paternity leave period. Holidays will continue to accrue during paternity leave. Employers contributions to pension schemes will be worked out as if the member of staff were working normally and being paid as usual for doing so.

At the end of paternity leave, the member of staff is entitled to return to the same job as they were doing before they went on paternity leave, on the same terms and conditions that would have applied had they not been absent.

In addition to the legal rights detailed above, the College will provide a maximum of 5 days paid leave for partners with at least 5 years' service, to be taken at or around the time of the birth of their child or date of placement of an adopted child. Suitable evidence of the relationship may be requested.

7.6.9 Shared Parental Leave and Pay Mothers/Adopters

Shared paternal leave and pay mothers/adopters are able to choose to end their maternity/adoption leave and pay early (at any point from two weeks after the birth or after two weeks of adoption leave/pay) and share their untaken pay and leave with their partner. Shared parental leave and pay can be stopped and started and parents can be off at the same time if they wish.

Parents must notify their employers of their plans under SPL eight weeks before they become eligible for it, and all shared leave and pay must be taken between the birth and the child's first birthday or the date of placement and the first anniversary of that date.

Further details are available from the HR Department.

Status:	Approved by JCCP
Policy Dated:	March 2022
Author:	Head of HR and Development
Review Date:	March 2025
Equality Impact Assessed:	March 2022