Effective Employment Practice for Early Learning and Childcare Settings
# Effective Employment Practice

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1 Introduction

Being an employer is a complex business, and although this guidance provides a lot of useful information and good practice pointers, you are strongly advised to seek further guidance and further information if you are unsure of your ground.

Early Years Scotland strongly recommends that employers check employment and associated legislation to ensure that they are applying current and relevant information. Failure to follow fair and safe employment practices and/ or comply with employment and associated legislation can lead to the employer being brought before an employment tribunal and/or committing an offence. ACAS have an employers’ helpline telephone number 08457 474747 and provide a wealth of information on their website www.acas.org.uk. A list of other useful contacts where further advice can be gained is given in section 9 of this publication.

The guidance refers to employers who operate in the Early Learning and Childcare sector and those whom they employ. The information and good practice it highlights are easily adapted and can be applied to a wider range of organisations.

Accompanying the guidance are sample formats to support safe and fair employment practices. The formats are presented in such a way that they can be adapted and amended to suit the specific requirements of individual employers or organisations. When using the formats employers should ensure that they insert information that is relevant and correct for specific posts and for the individual employee concerned.

Early Years Scotland strongly advises employers to seek further guidance and information if they are unsure of their ground in matters concerning the employment of individuals.
2 Being an Employer

The success of an organisation or business relies heavily on everyone performing well and it should be emphasised that the people involved in an organisation are its greatest asset. Their performance, motivation and commitment underpin the organisation’s success. Managers and employers should make it a priority to recruit the right people to work in the organisation and adopt good management practices that aim to get the best out of the workforce, motivate and develop individuals, and support staff retention and career progression.

An employer is an individual or organisation that engages the services of a person to undertake a specific role and function/s in return for payment.

2.1 Responsibilities

Irrespective of whether you run a large or small business, whether you are a volunteer member of a management group or owner of a facility, or whether it is your first experience of being an employer, the associated duties and responsibilities of being an employer are the same and include, for example:

- Providing written Terms and Conditions of Employment/Contract of Employment
- Paying salaries regularly and promptly
- Paying Tax and National Insurance, where it applies
- Appointing and managing new staff and providing induction.
- Providing a staff handbook, policies and procedures, information and resources to do the job
- Providing on-going support through meetings, supervision and appraisal
- Understanding the relationship between staff and the employer
- Keeping personnel records and ensuring the secure handling, use, storage and retention of personal and/or sensitive information
- Conducting disciplinary and grievance hearings
- Complying with all legal obligations, e.g. employee statutory rights, employee health and safety, non-discriminatory practice, regulatory framework for the sector
- Supporting continuing professional development (CPD) and personal development of employees.
- In this publication the duties and responsibilities of the employer will be examined in more detail and suggestions made that will help the employer to adopt good practice models and procedures in matters affecting the employment of staff.

2.2 Employers’ Liability

An employer must, by law, have insurance cover for their employees (paid or unpaid) to cover injury or illness suffered by them or damage caused to their property as a consequence of their employment. The employer must display a Certificate of Insurance showing that they have this cover in place. Early Years Scotland provides an insurance package for its members, which includes employers’ liability.

If the employee is required to use their car on business for the employer, for example, during outings and transporting children, shopping for supplies, representing the employer at meetings, then the employer must check that the employee’s personal car insurance provides business cover for this purpose.

2.3 Policies and Procedures

All employers must have written policies and procedures that clearly specify how they will conduct their role as employers to ensure that all matters relating to employment are handled openly, consistently, fairly and in compliance with the law. The policies and procedures should cover the following areas:

- Recruiting, selecting and managing staff
- Handling Discipline and Grievance
- Whistleblowing
• Complaints
• Equal opportunities and anti-discriminatory practice
• Handling and storing of personal information
• Operating within the relevant regulatory framework
• Complying with employment law and other associated legislation
• Ensuring employee health, safety and welfare
• Providing professional learning and development opportunities.

Failure to follow good employment practice and to comply with employment and associated legislation may lead to the employer being taken to an employment tribunal.

In this guide, information is provided to assist organisations to adopt robust, fair and safe employment practices, which will help them establish and maintain good employment relations with their employees.
3 Background Context for Working in Early Learning and Childcare Settings

3.1 The Care Inspectorate

The childcare sector operates under the regulatory framework of the Regulation of Care (Scotland) Act 2001. The Act set up the Scottish Commission for the Regulation of Care, known as the Care Commission. In April 2011 the work of the Care Commission passed to a new body, the Care Inspectorate and it is governed by the Public Services Reform (Scotland) Act 2010.

The Care Inspectorate has the responsibility for registering and regulating all care services, including Early Learning and Childcare Settings. The Act provides the Care Inspectorate with powers relating to the core elements of regulation, i.e. registration, inspection, complaints and enforcement.

3.2 The Scottish Social Services Council

The Regulation of Care (Scotland) Act 2001 also introduced requirements on the regulation of the social care workforce. The Scottish Social Services Council (SSSC) has a duty to promote high standards of conduct and practice among social care workers, and in their education and training. Like the Care Inspectorate, the SSSC promotes the reputation and quality of social care and is involved in helping to ensure safer recruitment, effective management and the continuing professional development (CPD) of workers employed in the field of social services, including day care services for children.

The SSSC has Codes of Practice for Social Service Workers and Employers, which present agreed standards of conduct and practice within which employers and employees must operate. The codes require that employers:

- adhere to the standards set
- support social service workers in meeting their code
- take appropriate action when workers do not meet expected standards of conduct and that workers:
  - maintain the conduct that is expected of them
  - ensure the well-being and safety of service users.

The SSSC also has a duty to maintain a register of social service workers, including staff employed in Early Learning and Childcare Settings. Referring to the Codes of Practice will help employers understand their role in employing social care service workers, and will give them insight into the qualities and attributes they should be looking for when assessing a person’s suitability and fitness for a post in the care services. The Care Inspectorate, in undertaking its duty to inspect services, will pay due regard to how the setting and its employees apply the Codes of Practice.

Employers in Early Learning and Childcare settings must also ensure that the people they employ are suitable to work with children. Under the Protection of Vulnerable Groups (Scotland) Act 2007, employers/organisations will commit an offence if they knowingly employ someone (paid or unpaid) who has been disqualified from working with children.

3.3 Protecting Vulnerable Groups Scheme

The Scottish Government has introduced a membership scheme that has replaced the disclosure arrangements for people who work with vulnerable groups. Childcare workers must obtain a satisfactory PVG Scheme Record to be employed in a childcare position. This scheme applies to staff, paid and unpaid and volunteers who undertake regulated work in Early Learning and Childcare Settings. The PVG Scheme is managed and delivered by Disclosure Scotland and Volunteer Scotland.
Volunteer Scotland provides access to the PVG Scheme for volunteers and paid staff working with vulnerable groups in the voluntary sector in Scotland. Volunteer Scotland also provides a range of advice, guidance and training on the PVG Scheme for the voluntary sector and provides free PVG Scheme checks for volunteers working in the qualifying voluntary sector.

Disclosure Scotland is able to provide access to criminal records, including the Disqualified from Working with Children List (the List) and other relevant information held by the police and other government departments to people who need to prove whether or not they have any criminal convictions. The information provided by Disclosure Scotland and by the applicants themselves, through a self-declaration form and discussion at interview, should assist employers to make safe recruitment decisions. However, it must be stressed that the information obtained through the PVG Scheme is just one part of the process for checking an applicant’s suitability for a post. Interviews, taking up references, checking with previous employers, obtaining medical references, checking registration with professional bodies etc., are also part of the decision making process for assessing a person’s suitability and making decisions on whether to appoint.

### 3.4 Protection of Vulnerable Groups Act 2007

The Protection of Vulnerable Groups (Scotland) Act 2007 created two main offences. One for organisations who employ a person who is on the barred list for the type of regulated work they are doing and the second for barred individuals who put themselves forward for regulated work while barred. This means that it is an offence for a barred person - and for an organisation to permit that person - to undertake work with children or protected adults if they are barred from that type of regulated work. If someone is on the list, this will be released as part of a PVG check for a childcare position.

The process of determining whether an individual is unsuitable to work with children or protected adults, is triggered by an organisation referral, court referral, vetting information or the individual being named in a relevant inquiry report. Listing is the inclusion of an individual on a list or lists under the PVG Scheme. Disclosure Scotland maintains the PVG children’s list and PVG adults’ list.

When assessing the suitability of a person for such a post, the employer is entitled to ask the applicant to reveal details of all convictions, whether spent or not. During the interview the employer can request that an open and measured discussion takes place on the subject of offences. Where a conviction or related information is revealed, the information must not be used to unfairly discriminate against the applicant when considering them for a position.

Employers in Early Learning and Childcare Settings must make it clear to applicants for posts within the sector that the position is exempt from the provisions of the Rehabilitation of Offenders Act 1974, and is subject to a PVG check under the Protection of Vulnerable Groups (Scotland) Act 2007. Where a conviction or related information is revealed, the information must not be used to unfairly discriminate against the applicant when considering them for a position. Applicants must be informed that disclosing an offence does not necessarily exclude a person from the job, but the nature of offence in relation to the requirements of the post must be taken into account. Applicants must be made aware that failure to reveal information that is directly relevant to the position sought, at the interview, could lead to the withdrawal of an offer of employment.

The receipt of an unsatisfactory PVG Membership Record/ Scheme update would also lead to the offer of employment being withdrawn.

### 3.5 Registered Body: Disclosure Scotland; Volunteer Scotland

In order for an individual’s application to the PVG Scheme to be dealt with it must be endorsed by a body, registered in advance with Disclosure Scotland or Volunteer Scotland. Each group/body will nominate a lead person or signatory who will be responsible for administering the scheme. The registered body is bound by the Code of Practice, drawn up by the Scottish Government to govern the use of information provided by the PVG process.

Every organisation enrolled with Volunteer Scotland must have a secure handling, use and storage of Disclosure information policy. Volunteer Scotland can provide you with a copy of this policy.
There is no charge to voluntary organisations to register with Volunteer Scotland. PVG Scheme Records and Updates for volunteers are free of charge from the Volunteer Scotland if the organisation qualifies. Applications for paid employees attract a fee.

Employers or organisations may find it worth checking whether the local authority has put systems in place to assist groups in its area to apply for PVG Scheme membership. The local Family Information Service, Volunteer Centre or Council for Voluntary Services are likely to have the details, if help is available locally.
4 Recruiting and Selecting Staff

This section provides guidance on recruiting and selecting staff and contains: Management Guidance, Recruitment and Selection Policy, Checklist, supporting information and sample letters and forms.

4.1 Management Guidance

Establishing confidence in staff from the outset is facilitated if the employer uses recognised and well established recruitment and selection procedures, and adopts good post-appointment people management practices.

An employee is someone who works under a contract to carry out a defined role and responsibilities and who the employer has significant control over in the work that they do. If eligible, an employee will have any tax and national insurance contributions due deducted from their salary by the employer before receiving their pay.

4.1.1 Employment Status

An individual may work for an organisation as an employee, a worker or a self-employed worker. The individual's status is of great importance, an employee will benefit from the full raft of employment legislation, a worker benefits only in part and a self-employed worker will receive very little or no employment protection. Before proceeding with the recruitment process it is important to define which category the individual will fall into. It can be difficult to determine the status of an individual therefore additional guidance can be found on the following websites:

- HMRC [www.hmrc.gov.uk/employment-status/index.htm](http://www.hmrc.gov.uk/employment-status/index.htm)

4.1.2 Confidence in Employees

Employers in Early Year and Childcare Settings must ensure that the people they employ are suitable and fit to work with children. They must ensure that staff and volunteers are recruited and selected through a rigorous process, which takes account of safe recruitment practices. These include:

- carrying out a risk assessment to determine the need for the employee to have Protecting Vulnerable Groups (PVG) Scheme Membership
- inviting applicants for a post to complete a self-declaration form about their fitness and suitability to work with children
- obtaining Protecting Vulnerable Groups (PVG) Scheme Membership through Disclosure Scotland/ Volunteer Scotland, which includes a check against the Disqualified from Working with Children List if the post is for a childcare position
- taking up references, including medical, when applicable
- conducting an interview which asks a range of questions to explore each candidate’s skills and aptitudes, as well as issues of convictions/charges
- cross referencing to the register of the Scottish Social Services Council (SSSC) or other professional organisations, e.g. General Teaching Council.
- establishing the individual’s right to work in the UK.

Employers must understand that they will commit an offence, under the Protection of Vulnerable Groups (Scotland) Act 2007 if they knowingly employ someone (paid or unpaid) for a childcare position who has been disqualified from working with children.

Assessing an applicant’s suitability and fitness for a post also requires the employer to consider whether they:

- have the skills, knowledge and experience relevant to the roles and responsibilities they will be asked to undertake
- are physically and mentally fit in relation to the role they have applied for. It must be stressed that under the Equality Act 2010 it is against the law to discriminate against people with a disability.
- show integrity and are of good character.
Employers must consider and be prepared to make reasonable adjustments in the workplace to enable someone with a disability to undertake the post.

The information below may make referrals to childcare and education situations, but it can be applied equally as well by other employing organisations to support effective recruitment and selection.

4.1.3 Stages in Recruitment

Recruiting and selecting staff, paid or unpaid, is not an everyday occurrence, but when it needs to be done an employer can make the task much easier by following some practical, universally recognised and confidential recruitment procedures aim to make the whole process:

• Effective: attracts interest and enough suitable applicants to the post
• Efficient: well planned. Recruiting is a costly business and selecting the right person for the job takes time, thought and careful planning
• Fair: all applicants are treated fairly, honestly and courteously
• Compliant with legislation: by law, an employer cannot discriminate on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

When a post involves working with children, the employer must follow safe recruitment practices and if the work is regulated comply with the requirements of the Protecting Vulnerable Groups (PVG) Scheme.

Employers should be aware that recruiting and selecting staff takes time and that it needs to be planned, if the right person is to be recruited. A number of things have to be done from the moment either a new post is identified or someone leaves and until a successful replacement is found. The following information provides clear steps to recruitment

Establishing a small group of relief staff, paid or unpaid, who are members of the Protecting Vulnerable Groups (PVG) Scheme to step into the gap temporarily, if it is a regulated childcare position, is a good practice measure that will help to avoid hasty, and sometimes very costly recruitment mistakes.

Inform

When a staff member leaves a registered Early Learning and Childcare Setting, and/or new staff are recruited, it is important to notify the relevant authorities as well as the children, parents and other members of staff. It is essential that Disclosure Scotland and Social Care and Social Work Improvement Scotland (SCSWIS), known as the Care Inspectorate, are notified when a staff member leaves and when a replacement or an additional new member of staff is appointed.

Begin with a Job Analysis

The group must first of all refer to its own recruitment policy, which will provide clear statements about what should be done. (See Early Years Scotland's Sample Policy.)

The early recruitment stage offers the employer time to reflect on the job to be done and to define as clearly as possible the expectations that will be placed on any new staff member. Undertaking a job analysis helps the employer to consider the following:

• What does the job entail?
• Is the post the same as before or is it different? Is the job still necessary? Have circumstances changed? Is recruitment necessary?
• Will terms and conditions remain the same or will they need to be changed?
• Will the remit need to be changed?
• What are future staff resource needs?
• What are the lines of communication and accountability?

The job analysis will help the employer to provide a clear job description to potential applicants and a clear job remit to the successful applicant. It helps the employer to establish a clear statement about the job vacancy which can then be used to set criteria for shortlisting and interviewing applicants for the job. It will help the employer to identify:
• the key responsibilities of the job (see sample job remits 4.6;4.7)
• job requirements, e.g. Protecting Vulnerable Groups (PVG) Scheme Membership, type and level of qualification required, essential and desirable skills and qualities needed, any special requirements for the post
• working relationships, e.g. with children, parents and families, staff colleagues, employer, other agencies and interested parties
• working environment, e.g. the workplace settings, terms and conditions of employment, lines of accountability, potential opportunities for workforce development
• the kind of person they would like to see appointed to the post, for example what personal capabilities they might need.

In considering the responsibilities and duties of the post and the type of person required, a picture begins to emerge, and the employer is able to draw up a person specification outlining the experience, skills, and qualities that they want the successful applicant to have. Using this type of specification indicates the requirements for the job and assists each member of the shortlisting /interviewing team to be fair and consistent in the selection process.

Advertise the Job Vacancy

Early Years Scotland recommends that all job vacancies are advertised as widely as possible. Employers should give consideration as to where to place the advertisement, for example, in local and/or national newspapers, on websites, at job centres, in the careers office, in local shop windows, etc. It is important to note that the use of word of mouth recruitment on its own could be considered as indirect discrimination as it places limitations on the potential number of people hearing about the vacancy. Also, to ensure equality of opportunity the content and placing of the advert should make it clear that applicants are welcomed from all sectors of the community.

The text of the advert should be informative to attract and encourage potential applicants to respond. It should include:

• the name of the organisation - include the logo, if there is one
• the job title
• whether the job is full-time or part-time, permanent, fixed term or temporary
• a brief outline of the vacant position
• details of experience, training, qualifications required. Specify any special requirements, for example, a Gaelic or Urdu speaker the salary/wage and the scale this relates to, if applicable
• the name and telephone number of the person to contact for further information and application forms
• the closing date for applications
• a statement about your equal opportunities policy.

It is helpful to give an indication of pay and qualifications as it can help to reduce the number of unsuitable applications.

If applicable, the advert must also include a statement pointing out that the post is subject to Protecting Vulnerable Groups (PVG) Scheme Membership.

The Advertisement

The purpose of the advertisement is to give a summary description of the post and who the application is to be returned to. (See sample adverts 4.4.3; 4.4.4)

Responses to a job advert can vary from a few enquiries to hundreds. It is useful and saves time to pull together items that need to be sent or made available online to individuals who respond to the advert into an application package. It also ensures that all potential applicants receive the same information and that they all have the same opportunity to consider whether or not to apply for the post. An application package should contain the following:

• a letter to the potential applicant
• a job description
• an application form
• a self-declaration form and envelope, if the post is subject to Protecting Vulnerable Groups (PVG) Scheme Membership
• an equal opportunities monitoring form
• information about when applicants will be informed of whether they have been called for interview and date/s of interview.
The application materials should provide sufficient information to potential applicants to enable them to make a
decision about whether they want to apply for the post or not.

They should also provide reassurance to potential applicants that all information received is confidential and that
it will be stored securely and disposed of safely when decisions at each stage of the process of recruitment, have
been made.

The job advert does not include all the information applicants may require. By including a job description in the
application package the prospective employer can give potential applicants a fuller picture of the job on offer than is
depicted in the advert.

The job description briefly describes the main purpose of the job and will give information about the tasks,
responsibilities and scope of the job. It will outline lines of accountability and conditions of service. It will also clearly
state that the successful applicant must be or must become a member of the Protecting Vulnerable Groups (PVG)
Scheme. PVG Scheme Membership will always be required if the post is a regulated childcare position.

The job description should be informative, clear and unambiguous, and should provide enough information to enable
potential applicants to make a decision about whether to apply for the post. It is helpful if it provides information
about:

  • job title and purpose of job
  • name and location of workplace
  • days and hours of work
  • brief description of key responsibilities and tasks
  • brief description of skills and qualities looked for
  • lines of accountability
  • working conditions, for example, being a member of team, working with parents, putting out/away equipment,
    attendance at meetings, the organisation’s management structure
  • outline details of pay and conditions, probationary period, if any
  • requirement to make a self-declaration and to be a member of, or to apply for membership of the Protecting
    Vulnerable Groups (PVG) Scheme, if successful and if applicable
  • requirement to be registered, if applicable, with the Scottish Social Services Council and to hold, or be working
    towards, a nationally recognised relevant qualification
  • information about codes of practice to be followed
  • reassurance about the confidentiality of information being given.

Early Years Scotland recommends that potential applicants for a post complete and return an application form.
Using a standardised application form assists the recruitment process as it promotes equality of opportunity by
giving all applicants the same questions to answer as well as providing the employer with the information they
want, rather than just what the applicant wants to tell them. Similarly, in the early stages of selection it facilitates the
separating out of personal details so that shortlisting decisions are made without reference to personal information,
for example, sex, marital status or age of the applicant. Also, applicants for the post usually find it easier to complete
a standard form rather than write an application on the basis of what they think a prospective employer wants to
know about. Asking potential applicants to complete and return the application form:

  • makes it easier to compare like with like
  • helps in the initial selection process
  • informs discussion at interview
  • provides a written record of the applicant’s statement on education, qualifications, experience, eligibility to work
    with children, etc.

Confidentiality

Employers must understand that application forms contain private and personal information relating to individual
applicants and that they must be dealt with in the strictest confidence. Returned application forms should be handled
by a specified person who has the responsibility for their safe handling and storage during the recruitment process.
The forms and associated materials, for example, references, certificates, should only be seen and read by those
with authority and on a need to know basis, usually the interviewing panel.
Self-declaration

It was stated earlier that employers in Early Learning and Childcare Settings must ensure that the people they employ are suitable and fit to work with children. Therefore, they must ensure that their recruitment process takes account of safe recruitment practices and includes the opportunity for potential applicants to make a confidential declaration about any circumstances, criminal or otherwise that may affect their suitability for the post.

The employer must make sure that potential applicants are made aware that failure to declare information that is directly relevant to the post being sought at this stage could lead to the offer of employment being withdrawn, if it emerges at a later stage.

A self-declaration form enclosed with the application form, offers the applicant a format for making disclosures about criminal charges and convictions, and/or other information that they think is relevant. The self-disclosure helps the interviewing panel to explore with the applicant the nature of offences and/or convictions and whether or not they are pertinent to the post being offered.

It cannot be emphasised strongly enough that an applicant’s self-declaration form contains highly confidential pieces of information. Early Years Scotland strongly recommends that it is only referred to for the purpose of interviewing, not shortlisting, and that it is read only by those with authority and on a need to know basis. To facilitate this it is imperative that the self-declaration form is returned in a separate, clearly identified sealed envelope along with the application form and only opened for those applicants who are called for interview. The self-declarations of applicants who are not called for interview should either be returned unopened to the applicant or safely destroyed unopened, by shredding, burning or pulping.

Employers should understand that disclosing an offence does not necessarily exclude a person from the job. The nature of the offence, convictions and other information disclosed have to be taken into account and decisions made about their relevance to working in an Early Learning and Childcare Setting and coming into contact with children and vulnerable adults. However, it should also be understood that employers will commit an offence if they knowingly employ (paid or unpaid), to work with children, someone who has been barred from working with children.

It should be noted that employers can choose to leave asking potential candidates to make a self-declaration until a later stage in the recruitment process. For example employers can decide to ask only those who are called for interview to complete a self-declaration form and to bring it along to the interview. Or, they could just ask the successful applicant to provide a self-disclosure once a decision has been made to appoint. Whatever method an employer decides to use they must respect confidentiality of information, as described above, and assess its relevance to working with children or other vulnerable groups. If an employer is unsure of the relevance of the information disclosed by an applicant they should acknowledge this to the candidate and seek further advice, for example, from Disclosure Scotland or the Volunteer Scotland.

The self-declaration form is just one aspect of safe recruitment practice. Seeking and checking references, holding an open and measured discussion on any information disclosed by applicants during the interview and ensuring good management practices are followed are other aspects that contribute to safer recruitment practice. Taken together with the legal requirement for Protecting Vulnerable Groups (PVG) Scheme Membership for those who work in a childcare position, proof of qualifications and the right to work in the UK, this provides a measure of reassurance to users of the service that the people looking after their children are suitable to do so.

Equal Opportunity Monitoring Form

Including a form in the application package that invites potential applicants to provide information about their ethnic background, gender, age etc. helps the employer to build up a profile of applicants seeking to work with the organisation. The form provides a monitoring tool which can be used to assess whether the organisation’s or company’s equal opportunities policy in relation to the employment of staff is being achieved. This information should only be used for monitoring purposes and should not have any impact on individual recruitment decisions.

Short Listing

Employers can receive many enquiries about a post leading to a number of applications being made. The range and quality of applications will vary and it is helpful to draw up a shortlist of candidates who are suitable for interview. In
the shortlisting process employers should be looking to match the criteria/specifications identified in the job analysis to the information given by applicants for the post. Each member of the interviewing panel should be given copies of all the applications so that they can match them against the agreed criteria.

It is good practice to separate, if possible, all personal information from the application so that the shortlisting process is fair. Doing this ensures that shortlisting decisions are made objectively on the basis of the information the applicant has provided about their competence, skills and qualities to do the job, rather than being influenced by their personal profile. Similarly, if self-declaration forms are used at this stage, they should not feature in the shortlisting process. They remain unopened and are only opened for applicants called to interview.

Generally between four to six candidates is a reasonable number to call for interview, in any one day. It is important to remember that only applicants who meet the criteria should be called for interview otherwise claims of unfair treatment may be lodged against the organisation. Once the decisions are made about whom to call for interview, the order and times of interviews should be agreed and applicants notified of the interview time, date and directions to the place of interview. It is important to ask applicants called to interview if they have any specific access needs, so that reasonable adjustments can be made to enable them to attend and take part in the interview.

It is good practice to notify applicants who are not shortlisted for interview that they have been unsuccessful in their application. A telephone call or a brief letter sent to the applicant with the returned and unopened self-declaration form would suffice. Another way would be to state in the application package that if an applicant has not heard by a specified date, that they will not be called for interview.

All copies of application forms should be returned to a specified person for secure storage until the interviews when members of the interviewing panel will need to see those of the people they have called for interview.

It is usual for the application forms of all applicants who have been unsuccessful to be stored securely in a central file and safely destroyed, usually after a period of three to six months. The application form of the successful applicant should be securely stored in his/her personnel file.

References

It is essential to take up references of all applicants called to interview as they contribute to safe recruitment practice as well as providing additional information about an individual applicant.

Early Years Scotland recommends that employers should seek references prior to interview. The employer should write to referees of the shortlisted applicants, enclosing particulars about the post and person’s role and responsibilities. An applicant may send references with the application form, or offer to bring them to the interview. It is good practice to verify them with the person who has written them.

Sometimes, a medical reference might be required to support someone’s suitability for the post. It is advised that employers do not carry out any medical checks on applicants. These checks should only be carried out with individuals after the job offer has been made. It is acceptable to make job offers subject to medical checks if this is applicable to the job. In these instances a confidential request should be made to the person’s general practitioner, giving details of the post and the roles and responsibilities the person will be expected to undertake. The request for a medical reference should be made only with the permission of the person concerned. It should also be noted that an application for a medical reference may incur a cost and it should be made clear who is expected to bear this cost.

Right to Work in the UK

The responsibility lies with the employer to make sure, before it employs an individual, that the person has the right to work in the UK.

Under the Immigration, Asylum and Nationality Act 2006, employers should, prior to allowing a job applicant to start work, take the following steps to check whether he or she has the right to work in the UK:

- Require the job applicant to produce one or two original documents in defined combinations, indicating that he or she has the right to work in the UK.
- Check that the documents appear to relate to the job applicant.
- Keep a copy of the documents.
Effective Employment Practice

To verify a job applicant’s right to work in the UK, the employer is required to see, and keep a copy of either one document, or two documents in defined combinations, from either list A or list B. Lists A and B are attached as an appendix to this document (as these documents can go out of date please check the following website for further guidance on list A and B: [www.gov.uk/check-job-applicant-right-to-work](http://www.gov.uk/check-job-applicant-right-to-work)).

Failure to comply with the provisions of the Immigration, Asylum and Nationality Act 2006 can lead to significant fines for an organisation.

The Interview

The main purpose of the interview is to provide an opportunity for the interviewing panel to assess a candidate’s suitability for the post. It should also help the candidate to find out about the job, the organisation, and the people they will be working with. The interview should provide an opportunity for both parties to assess, through questioning, discussion and probing, which of the applicants is best matched to the requirements of the post and who will fit in well with the organisation, and vice-versa.

It should be remembered that interviews can be stressful for all concerned. Adopting and following a well planned procedure will help to make it less so for both the interviewing panel and the applicants. When planning the interview give consideration to the following:

Prior to the Interview

Pre-interview planning is essential. Decisions need to be made about:

- who should be on the interviewing panel and the extent of their authority to make an offer of appointment. It is common and good practice for the interviewing panel to be delegated authority to make an offer of appointment subject to previously agreed conditions. Ensure the interviewing panel know the terms and conditions of the post, as the candidate will ask questions about them.
- who will welcome the applicants when they come for interview and show them into the interview room? How will the room and seating be arranged? By ensuring that someone is met and made to feel comfortable at the outset will help them to relax.
- how to begin the interview. For example, the chair of the panel should welcome the applicant and introduce the other members. Some information about the format, length and structure of the interview should be given, as well as a summary of the organisation’s work and the post the applicant has applied for. Keep this brief to ensure that there is enough time for the interview and for the applicant to be able to ask questions about the organisation.
- how to conduct the interview and the questions to be asked and explored. It is helpful if the planned questions are shared among the panel so that everyone has a role to play. Ensure the questions are relevant and relate directly to the needs of the job.

Construct the questions so as to avoid simple yes or no answers and which invite applicants to share their experiences and opinions. It is useful to make the first question one that will help the candidate settle down and talk with confidence. Generally, questions about current job and previous employment history provide a good, familiar starting point. Follow with planned questions, ensuring the same questions are asked of each candidate to ensure equality of opportunity, although it is realistic to invite expansion of individual answers and to follow through with additional questions on relevant points that emerge in an applicant’s answer. (See document 4.4.19 Sample Interview Questions for a Childcare Position)

In any interview for a post that involves regular contact with children, that is a regulated work position, an open and measured discussion on the subject of offences must form part of the interview. The interviewing panel and the applicant for the post must both clearly understand that although convictions or charges and relevant non-conviction information will be taken into consideration during the interviewing and selecting process, self-disclosure will not necessarily prevent an application from succeeding. This discussion provides a means of gathering information which the interviewing panel must use when they are considering the nature of the offence, convictions and other information disclosed, and making decisions about whether or not the disclosures are relevant to working in Early Learning and Childcare Settings and to coming into contact with children. However, it must be emphasised to applicants that failure to reveal information at interview that is directly relevant to the position sought, could lead to the withdrawal of an offer of employment.
• applicants who might have specific needs, for example, sensory impairments, speech impediment or other disabilities. Under the Equality Act 2010, it is against the law to discriminate against people with a disability. Reasonable adjustments may have to be made to the place of interview to enable applicants with specific access needs to attend and take part in the interview
• reading again the application forms, references and other information received from the applicants to refresh the memory on the selection criteria applied to the post
• what information will be given to the applicants. They will need to know when and how they will be informed of the panel’s decision and that information provided by them on the application and self-disclosure form is treated in the strictest confidence and will be stored for a specific period of time, usually three months, and then it is safely destroyed if they are unsuccessful in their application. Information provided by the successful candidate will be stored securely in their personnel file.

All posts identified as regulated childcare work are subject to Protecting Vulnerable Groups (PVG) Scheme registration and employers have the responsibility to ensure that their employees comply. If the post is subject to PVG Scheme Membership it is essential that all applicants are informed about how they apply for scheme membership and how the process is conducted. A decision should be made regarding whether the employing organisation or the applicant will be responsible for paying for the PVG Check. This should be made clear at interview.

It is important for the interviewing panel to understand that the interview is as much about the applicant finding out about the organisation, the job on offer and whether or not they would like to work with the organisation. Many applicants will ask questions about the job’s terms and conditions, for example, about holiday entitlement, starting salary and how it will be paid, any probationary period, flexible working arrangements or training and development opportunities. The panel must be clear about what it has the authority to offer to applicants and they should be prepared to answer their questions, openly and honestly.

Increasingly it is common practice to have the written terms and conditions available for applicants to read and ask questions about at the interview. This enables both the panel and applicants to fully explore the terms and conditions under which the post is offered, thereby avoiding misunderstandings between the employer and the successful applicant at a later stage, when the written terms and conditions are issued and accepted by the employee.

• the length of each interview. Generally they last between half an hour and an hour. Make sure the applicant is given enough time to ask any questions they might have. It is good practice to stagger the interviews and give time between each one for the panel to make notes, have a comfort break and prepare for the next interview. It can be helpful to appoint a note taker to record the full discussion, leaving panel members free to just jot down important points.

During the Interview

Giving careful consideration to the format and structure of the interview undoubtedly makes for a smoother, less stressful and more professional interview. Having a clear procedure for the interview and explaining it to the candidate at the start will also help to establish credibility in the panel’s ability to interview.

The chairperson of the interviewing panel has the responsibility to move the interview through its stages and should lead on the main areas of questioning. It is usual to use the start of the interview to establish a rapport with the applicant and to demonstrate professionalism and credibility in the competence of the panel to interview. Seek for common ground to help the candidate relax and perform well. Keep eye contact, listen to what they have to say, be aware of the non-verbal communication that is taking place and avoid bias and discrimination.

• Ask the same questions of all the applicants. Explore the applicant’s answers with them. It is necessary to get the applicant to talk. Use verbal invitations for example, ‘I’m interested in what you said about... can you expand…’ ‘You made an interesting point about... how did you come to form that opinion?’ ‘Tell us a bit more about that aspect of your work, I found what you were saying really interesting.’ Give non-verbal signs of encouragement and understanding, for example, smiling, nodding of the head and eye contact, etc. Encourage them to share their thoughts about the post and to talk about relevant previous experience and training and what they have learned from them. Invite them to express their views and opinions about particular issues relevant to the job and to share what they think they can contribute to the organisation.

• In respect of self disclosure information, the panel must ensure that potential applicants are made aware that failure to declare information that is directly relevant to the post being sought at this stage could lead to the offer of employment being withdrawn, if it emerges at a later stage. An open and honest discussion should
be encouraged and information gathered about the circumstances relating to the disclosure. Whilst the nature of the offence, any convictions and/or other information disclosed has to be taken into account, the interviewing panel must keep an open mind and make measured, objective responses to the information disclosed by an applicant.

- If members of the panel are unsure whether the information disclosed is relevant, they can reasonably state that they will seek further expert advice, confidentially from a specified source, for example, Social Care and Social Work Improvement Scotland (SCSWIS) which uses the day to day name the Care Inspectorate, Disclosure Scotland, Volunteer Scotland or a lawyer.
- The interview is as much about the applicant finding out about the organisation, the job on offer and whether or not they would like to work with you. The panel should be prepared to answer questions and to provide enough time for the applicant to ask them.
- Make notes about the applicant's performance very discreetly during the interview, or better still immediately after the interview and before interviewing the next candidate.

After the interview

After the interview, individual panel members should write up any notes of their assessment of each candidate; noting down points strongly for or against. It is useful to use an interview assessment form at this point to ensure notes accurately reflect the candidates' responses and performance. It can be useful to refer to the person specification and use a scoring system.

Sufficient time should be allocated for each member of the panel to give an individual assessment of each candidate. This ensures that all points of view, impressions and assessments are heard before a general panel discussion takes place. The panel discussion should focus on linking the candidate’s performance to the criteria laid down in the job and person specification and only after this is done should the panel move to compare candidates with each other. It is important to note that there are many areas, for example, interpersonal skills, disclosure information where judgements can be highly subjective. It is important that any points of view expressed by panel members should be supported with evidence from the candidate’s performance or related materials. In respect of disclosures made, the nature of the offence, convictions and other information disclosed has to be taken into account and decisions made about its relevance to working in an early education and childcare service and coming into contact with children. The disclosure of offences and/or convictions does not necessarily exclude a person from consideration for the job.

However, if the panel is unsure about its relevance they should seek expert advice, for example from Disclosure Scotland, Volunteer Scotland or a lawyer, before dismissing the applicant as unsuitable.

Discussion and analysis should continue until all panel members are agreed on one particular candidate. Once the panel has agreed on a candidate, the candidate should be informed of their success by letter or telephone and offered the post, subject to the conditions discussed at the interview. The letter or telephone call is regarded in law as an offer of employment and the agreement becomes a contract when the successful candidate accepts the offer of employment.

If the post is not accepted by the first choice candidate, the panel’s analysis of each candidate’s suitability for the post should have identified whether there is an alternative candidate.

Unsuccessful Applicants

After the offer of employment has been accepted by the successful applicant, all unsuccessful applicants should be informed of the outcome of their interview. It is good practice to offer them feedback on their interview performance and assessment. Where it is appropriate, make it clear to them that they will be considered if they apply for further vacancies. If an applicant was unsuccessful solely because of information they provided about offences and convictions it is good practice to explain to them that this was the reason for their lack of success.

No Suitable Applicants

Sometimes, after shortlisting and interviewing, no candidate is considered to be worthy of appointment or recall for further assessment. In these circumstances it is good practice to re-advertise, making it clear whether or not previous applicants can re-apply.
Retention of Applicant Information

All applicants for a job have the right to request access to information, including shortlisting and interviewing records, held about them. This should be granted, taking account of the provisions of the Data Protection Act 1998.

Information on the successful applicant should be retained in the individual's confidential personnel file. Information on unsuccessful candidates should be retained in a central, secure confidential file (for example for feedback requests) for a period of no more than six months and then safely destroyed by shredding, pulping or burning.

Information pertaining to the PVG Scheme must be stored in a locked non-portable container and access must be restricted to named individuals. The information must be destroyed when it is finished with by secure means that is by shredding, burning or pulping once a recruitment decision has been made. The information will not be retained for longer than is relevant to the group’s needs. It may be kept to allow for any dispute about the accuracy of a disclosure or a recruitment decision to be made and considered.

For the successful applicant a confidential record may be kept detailing:

- the issue date of entry into the Protecting Vulnerable Groups (PVG) Scheme Membership
- the name of the person
- the type of PVG check obtained
- the position in question
- the unique reference number issued by the Disclosure Scotland
- the recruitment decision taken.

The record should be kept in a separate folder within the employee's personnel file in a secure location. The folder is confidential and is only open to named individuals and the employee concerned.

4.2 Recruitment and Selection Policy

This document sets out the organisation’s policy on recruitment and selection. The organisation is committed to a policy of treating all its employees and job applicants equally and to recruit the best person for each vacancy. No employee or potential employee shall receive less favourable treatment or consideration during recruitment and selection on the grounds of race, colour, religion or belief, nationality, ethnic origin, sexual orientation, gender, age, disability, marital status or part-time status or will be disadvantaged by any conditions of employment that cannot be justified as necessary on operational grounds.

Scope

This policy is applicable to the recruitment and selection of all employees of the organisation, irrespective of whether a contract is fixed term, part time or is of a permanent duration. The policy will be made available to all employees and applies to both internal and external recruitment.

Policy Aims

The organisation aims at all times to recruit the person who is most suited to the particular job. Recruitment will be solely on the basis of the applicant's abilities and individual merit as measured against the criteria for the job. Qualifications, experience and skills will be assessed at the level that is relevant to the job.

Recruitment Process

The recruitment process will be followed in accordance with the following steps:

- When a staff member leaves a registered early years setting and/or new staff are recruited all relevant authorities including SCSWIS and Disclosure Scotland, will be notified as well as the children, parents and other members of staff.
- Prior to embarking on the process of recruitment, the employer will ensure that there is an up-to-date job description for the post and a clearly drafted person specification and skills and competence list.
- Jobs will be advertised using a variety of methods such as newspapers, job centres, websites, careers office and local shop windows.
• Standard application packs and application forms will be sent to all applicants.
• Applicants will complete a self-declaration form.
• All candidates will be asked at the first interview stage to provide documentary evidence of their right to work in the UK, to ensure compliance with the Immigration, Asylum and Nationality Act 2006. A photocopy of the accepted documentation will be taken by the organisation.
• Interviews will assess candidates against job-related criteria only.
• References will be requested and verified during the recruitment process. Where applicable the successful applicant may be asked to undertake pre-employment medical checks.
• Where applicable Membership of the Protecting Vulnerable Groups (PVG) Scheme will be checked; and if currently the applicant is not a member this should be discussed at interview with the applicant being informed that the post is dependent on this check being successfully completed.
• Written records of interviews, reasons for decisions made at each stage of the process and reasons for appointment or non-appointment will be kept by the organisation for no more than six months, unless a longer period can be justified and is in compliance with the Data Protection Act 1998. Records will then be disposed of securely.

Equal Opportunities

Information on ethnic origin, sex, disability, religion, sexual orientation and marital status will be collected in order to monitor the numbers of applications from different groups. This information will not be used in the selection process or for any other use other than this purpose.

The recruitment and selection process for disabled candidates will take into account such adjustments to working arrangements or physical features of the workplace/station/premises as are reasonable to accommodate their needs and be such that they are not placed at a substantial disadvantage compared with non-disabled candidates.

Line managers conducting recruitment interviews will ensure that the questions that they ask job applicants are not in any way discriminatory or unnecessarily intrusive. The interview will focus on the needs of the job and skills needed to perform it effectively.

Self-Declaration

The recruitment process will provide an opportunity for potential applicants to make a confidential declaration about any circumstances, criminal or otherwise that may affect their suitability for the post. The declaration will be returned from the applicant in a sealed envelope along with their application form. This declaration will only be viewed by those making recruitment decisions. Declaration forms will only be opened if the applicant reaches interview stage. All unopened disclosure forms will be safely destroyed.

Appeals Procedure

Any employee who has concerns about any aspect of this policy or its operation should discuss this with their manager in the first instance and then, if appropriate, use the organisation’s Grievance Policy and Procedure.

4.3 Recruitment and Selection Checklist

• Refer to the Recruitment Policy.
• Inform relevant authorities, parents, children and other staff members when a member of staff leaves.
• Inform Social Care and Social Work Improvement Scotland (SCSWIS) known as the Care Inspectorate and Disclosure Scotland when a member of staff leaves.
• Inform Early Years Scotland if applicable.
• Confirm which staff and committee members will be involved in the recruitment process.
• Carry out job analysis and produce job description and person specification.
• Draft the job advert.
• Decide where to advertise the job.
• Prepare the Application Pack and issue to all job applicants. The pack should contain:
  - Application Form
  - Job Description
  - Self-Declaration Form
  - Equal Opportunities Monitoring Form
  - Information about the recruitment process
- Ensure guidance is given on the self-declaration process and envelopes are provided to applicants.
- Carry out short listing.
- Confirm interview schedule and the format of the interview.
- Write to shortlisted candidates to invite them to interview.
- Ask short listed candidates to bring proof of their qualifications and right to work in the UK to the interview.
- Make any reasonable adjustments to the recruitment process if candidates have a disability and request this.
- Request references (this can be done before or after interviews).
- Review self-disclosure information.
- Carry out interviews.
- Select the successful candidate.
- Make the job offer verbally follow up and confirm in writing making it clear that the offer is subject to satisfactory
  - References being received, if not already obtained
  - Protecting Vulnerable Groups (PVG) Scheme Membership or Record
- Carry out the relevant checks i.e. Protecting Vulnerable Groups (PVG) Scheme Membership and Medical Check
- Write to unsuccessful candidates (this stage may be delayed until the successful candidate has an unconditional
  offer and has accepted this offer).
- Once checks are completed write to confirm unconditional offer of employment.
- Retain all documentation from the recruitment process for all candidates for a period of 6 month.
- Inform SCSWIS - the Care Inspectorate, when a new member of staff is appointed.

4.4 Supporting Information, Letters and Forms

NOTE: If you are viewing this book in electronic form, please click on the title to open a copy of the document.

4.4.1 Example of a Recruitment Schedule
4.4.2 Guidance Notes for Advertising
4.4.3 Sample Adverts
4.4.4 Sample Job Application Form
4.4.5 Sample Job Description
4.4.6 Sample Skills and Competences-Early Years Manager
4.4.7 Sample Early Years Manager Job Description
4.4.8 Sample Practitioner Job Description
4.4.9 Sample Job Description for Nursery Assistant-Support Worker
4.4.10 Sample Letter to Potential Applicants
4.4.11 Sample Equal Opportunity Monitoring Form
4.4.12 Sample Person Shortlisting and Interview Specification Guide
4.4.13 Sample Shortlisting Guide
4.4.14 Sample Letter to Unsuccessful Applicants after Shortlisting
4.4.15 Sample Letter Inviting Applicants to Interview
4.4.16 Sample Letter Seeking References
4.4.17 Guidance Notes on Interview Procedures for the Panel
4.4.18 Information for Interviewees Notes for the Panel
4.4.19 Sample Interview Questions for a Childcare Position
4.4.20 Sample Interview Questions for an Early Years Manager Position
4.4.21 Sample Format for Assessing Applicants at Interview
4.4.22 Sample Letter of Appointment
4.4.23 Sample Letter to Unsuccessful Applicants after Interview 1
4.4.24 Sample Letter to Unsuccessful Applicants after Interview 2
4.4.25 Sample Letter Seeking Medical Reference and Consent Form
4.4.26 Sample Format for Employee Personal Details
4.4.27 Indefinite right to work in the UK (List A)
4.4.28 Limited right to work in the UK (List B)
4.4.29 Sample Format for Self- Disclosure
5 Management Practices: Part 1

This section contains management guidance, policies, and supporting letters and sample formats.

5.1 Starting a New Employee

5.1.1 Registration with the Scottish Social Services Council

Employees working in a childcare position must be or become registered with the Scottish Social Services Council (SSSC). The SSSC has a duty to keep a register of people working in the social services sector and includes personnel working in Early Learning and Childcare Settings. To be registered the employee must hold or be working towards an accredited qualification that is relevant to the role and functions that they carry out. They must adhere to the SSSC’s Code of Practice and show evidence of past registration training and learning to maintain registration.

5.1.2 Protecting Vulnerable Groups (PVG) Scheme

Early Years Scotland cannot stress strongly enough that organisations who engage individuals to work, paid or unpaid, with children and young people must comply with the Regulation of Care (Scotland) Act 2001 and the Protection of Vulnerable Groups (Scotland) Act, 2007. Individuals who are offered a childcare position, for example, as a play leader or as a play leader assistant, must have gained PVG Scheme Membership before they take up post to:

- ensure that they are not disqualified from working with children
- support other information as to their suitability for the post. Employers should note that establishing a person’s PVG Scheme Membership is only a part of effective and safe recruitment practice. PVG Scheme Membership does not in itself confirm that a person is suitable to work with children. It is important that employers follow other employment practices such as those contained in the Recruitment and Selection Pack, for example, seeking references, checking qualifications, holding interviews, and those described in the following pages, for example, induction, supervision and monitoring regular employee performance.

The group’s lead signatory should ask the staff member to complete an application for a PVG Scheme Membership. At the meeting the applicant will complete the PVG Scheme application form, provide the required original proof of identity, which will be checked and verified by the lead signatory who will then pass the completed application to Volunteer Scotland for onward processing by Disclosure Scotland.

5.1.3 Contract of Employment

A contract of employment exists as soon as an employee accepts the employer’s offer of work. It can be written or verbal and it is the basis of a legal contract between the employer and the new employee. It is advisable to issue a written contract of employment to avoid any misunderstanding relating to the terms and conditions offered. If the employer withdraws the offer after it has been accepted, the new employee may have grounds to claim damages. Therefore, it is essential that those involved in the recruitment and selection process clearly understand the extent of their responsibility and authority in regard to the terms and conditions offered in the course of recruitment. The contract of employment must be issued to the employee within the first 8 weeks of employment.

5.1.4 Induction

It is good employment practice to arrange a programme of induction for new employees as it helps to establish a sound foundation for future working relationships and practices. It also helps new employees to settle quickly and gives them the opportunity to meet the people they are to work with while they become familiar with
the way the organisation operates and the realities of their job and associated responsibilities. A well structured induction period avoids the confusion that can arise for many new employees when they are ‘thrown in at the deep end’ and should include:

- planned introductions and introductory meetings with managers (which may be management committee members), with other staff members, with service users and external agencies, including Early Years Scotland (where applicable)
- an explanation of conditions of service
- an explanation of the organisation’s values, aims and objectives
- information about codes of practice, policies, rules and procedures, including health and safety that have to be followed and the consequences for the employee if they are breached
- an explanation of the way the organisation works
- a briefing about what is expected of them as an employee
- a discussion about any specific training or qualification that may be required
- providing the employee with the resources required to do the job and opportunities to shadow a co-worker where possible time to read relevant literature, information packs, reports, etc.

The induction process should gradually be integrated into the employee’s normal working period.

Giving new employees a staff handbook containing policies and information about the above provides a good starting point in the induction process and offers a context for the employee to discuss, ask questions, confirm their understanding, and find out more about the organisation they work for. A handbook is a consistent and succinct way of providing all employees with the same information in a resource that gives them a quick and easy reference to a range of information about the organisation, including its vision and goals, its code of practice, policies and procedures, the regulatory and legislative framework it operates under, organisational working practices, employee terms and conditions, employee welfare arrangements and pension schemes, resources that are available to staff, and any trade union agreements.

5.1.5 Probationary Period

Some employers may like to include a probationary period as part of the job offer. The length of the probationary period should be set to allow employees to settle into the organisation, to learn the new job and to receive any required training. It can be anything from three to six months, or it can be extended for a short period if it is felt necessary by the employer and agreed with the employee. The probationary period should not exceed 9 months. A probationary period provides both the employer and employee time to gauge whether they suit each other. For the employer, regular contact and discussion with the employee at this early stage can provide the best opportunity for the employer to assess whether the new employee understands what the job is about and how the organisation operates. It provides an opportunity for the employee to become familiar with the role and for the employer to assess a new employee’s performance at an early stage and to assess their potential long-term competence and suitability for the post. For the employee, the probationary period gives them time to gauge whether they will be satisfied and motivated enough to want to stay in the post.

The employee’s statutory rights must be upheld during this period and employers must ensure that all the rights the employee is entitled to during this period are adhered to.

Probationary periods should not be used by employers to exploit new employees nor to put them under pressure. It should be a supervised, constructive period when the employer can observe and assess the employee in the workplace and regularly meet with them:

- to discuss the employee’s understanding of the job and review how things are going
- to identify any shortcomings and ways of overcoming them
- to make an honest and objective assessment of the employee’s competence and commitment.

If, at any time during the probationary period, either side wishes to end the appointment they may do so without obligation, other than the statutory period of notice. However, good employment practice advocates that employers constructively use the disciplinary code of practice rather than just dismissing the person, so that the individual is helped to identify gaps and to overcome any shortcomings in their approach and ability to undertake the work they were employed to do.
At the end of the probationary period it is helpful if the employer and employee get together to review the period. This probationary review formally brings to an end the probationary period and reaffirms the contract of employment. It provides both the employer and the employee with an opportunity to discuss the usefulness of the induction programme, to reflect on the job and its responsibilities and to make adjustments if necessary. It offers the opportunity to explore developing relationships with work colleagues, as well the opportunity to identify future work priorities and learning and development needs.

5.1.6 Job Remit

The remit is a detailed expansion of the job description and should be given to new employees when they start work. It is a specific statement for the employee about:

- the purpose of the job they are employed to do
- to whom they are accountable
- the main duties the employee is expected to undertake
- the main responsibilities of the employee.

It should be informative, clear and unambiguous. Its length and complexity will vary according to the job involved.

The job an employee undertakes is seldom static. As skills develop and roles evolve, and as organisational requirements change, the need to review and amend job remits becomes necessary. The employer, in consultation with the employee, can identify changes and demands on staff as roles evolve. Hence a review of an employee’s remit can take place between the employee and the employer at any time, but generally it is considered at the annual appraisal. The employer and the employee must both agree to any changes to a previously agreed remit.

5.1.7 Personnel Files

Employers must keep individual personnel files for all of their employees containing relevant personal details and information relating to the employee’s terms of employment, the period of employment and training and development record. In keeping information about individual employees the employer should ensure that they observe legislation pertaining to the Data Protection Act. It must be securely stored and access to it must be limited/restricted.

5.2 Statutory Rights and Associated Legislation

The Employment Rights Act (1996) established basic rights for employees, and over the years they have become entitled to a wide range of statutory rights which have a standing in law that cannot be interfered with or waived. In the UK, employment legislation is subject to review and frequent changes. It is increasingly being influenced by European legislation, mainly in the form of Directives and it is imperative that employers keep abreast and apply the legislation that is current and relevant to their employees. Other UK legislation also impacts on the statutory rights of employees, including:

- Equality Act 2010 which includes information relating to discrimination on the grounds of Age, Disability, Race and Sex. The Equality Act also contains the right of men and women to receive equal pay for equal work.
- Health & Safety at Work Act 1974
- Social Security Act 1986
- Social Security and Housing Benefit Act 1982
- Trade Unions and Labour Relations Act 1974
- Trade Unions and Labour Relations (Consolidation) Act 1992
- Trade Union Reform and Employment Rights Act 1993
- Employment Act 2002
- Employment Relations Act 2004

For this reason the rights of employees outlined below are not exhaustive, nor should they be relied on as a full explanation of the duties placed on employers by statute. In all matters relating to statutory rights, employers must ensure that they are applying all current and relevant legislation, as it applies to their employees.
Early Years Scotland cannot emphasise strongly enough to employers the importance of regularly checking the rules on who qualifies for a right and its time limit by referring to current and relevant employment legislation, related guidance and other associated legislation. For example, some rights apply to all employees as soon as they start work. Others require various qualifying conditions to be fulfilled before a particular right can be claimed. Employers must grasp the fact that employee statutory rights have a standing in law that cannot be waived. They should be very aware that employee rights are subject to frequent changes. Whenever using this resource, Early Years Scotland strongly recommends that employers check current and any proposed changes to employee rights to ensure they implement them in full, as they apply to their employees. The employer must understand that failure to comply can lead to them being taken to a tribunal. Further advice and information can be sought from the contacts listed in section 9.

The following descriptions provide a brief summary of some of the statutory rights to which an employee is entitled. Please see Section 9 Useful Contacts where fuller information and advice about the statutory rights of employees can be obtained.

5.2.1 Contract of Employment and the Written Terms and Conditions of Employment

All employees who are employed for more than one month are entitled to a written statement showing their main terms and conditions of employment. The employer must issue the statement to all new employees as soon as possible and certainly within eight weeks of the beginning of employment, otherwise an employee can complain to an Employment Tribunal that they have not received a written statement within the specified time.

The statement sets out the main obligations of the employer to the employee and should include, amongst other things, details about pay, hours, holidays, probationary period if one applies, notice period and other rights to which the employee is entitled under the terms of the contract. It should also include an additional note on discipline and grievance procedures and, if applicable, the consequences of any change in circumstances relating to PVG Scheme Membership requirements and registration with the Scottish Social Services Council. Some employers provide fuller information about these and other organisational conditions and procedures in other documents, for example, in a comprehensive staff handbook. Where this is the case the written statement only needs to refer to where the employee can obtain copies of them to read.

Both the employer and employee are bound by the terms that have been offered, accepted and agreed. If there are any changes to be made to the employee’s terms and conditions, then they must be consulted on, agreed and notified in writing to the employee. It is good practice to review annually, usually at the annual appraisal, the written statement with the aim of improving and adding to the terms and conditions.

A contract of employment can be purchased from Early Years Scotland.

5.2.2 Notice of Termination

Under legislation, both the employer and employee are normally entitled to the following minimum notice of termination of employment:

- after one month’s employment a minimum of one week’s notice must be given
- after two years employment two weeks’ notice must be given
- after three years employment three weeks’ notice must be given and so on up to twelve years employment or more when twelve weeks’ notice must be given.

5.2.3 Unfair Dismissal

As of April 2012 an employee will not be able to claim unfair dismissal until they have two years’ service.

5.2.4 Itemised Payslip

Along with their wages, employees must be given an itemised pay slip giving details of gross pay, any deductions made and net pay. The slip should also state the employer’s name, the employee’s name and the period for which the payment is made.
5.2.5 Minimum Wage

The national minimum wage aims to provide employees with decent minimum pay standards and fairness in the workplace. It applies to nearly all workers entitling them to be paid at least the level of the statutory national minimum wage. Employers are required by law to pay no less than the minimum wage. The hourly rate is frequently reviewed and is often subject to change, usually in the October of each year.

ACAS, and Her Majesty’s Revenue and Customs (HMRC) will provide information on current minimum wage levels. Please see section 9 Useful Contacts.

It is good practice to anticipate possible increases in the national minimum wage when setting wage levels. In doing so employers are able to comply immediately and employees are not disadvantaged because of lack of foresight. Besides the minimum wage there are other considerations that an employer could take into account when setting rates of pay in order to provide a fair wage for the postholder. For example, the national/local average wage for the job, the employee’s length of service, the level of qualifications held by the employee, or the level of inflation could be considered when making decisions about rates of pay.

It is good practice to monitor and review pay conditions on a regular basis to ensure that employees are receiving, as far as possible, a fair remuneration for the job.

5.2.6 Part-time Workers

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 gives part-time workers the right not to be treated less favourably than full-time employees with regard to their terms and conditions of employment. This means (at time of writing) that part-time workers not only have the same statutory rights as full-time workers but also the same contractual rights, for example, to be paid the same hourly rate as full-time workers, to be given a minimum of 5.6 weeks paid pro-rata annual leave entitlement, to be given the same training and development opportunities as a full-time employee.

5.2.7 Paid Leave

Regulations implementing the European Working Time directive include the employee’s statutory right to 5.6 weeks paid leave a year. There is no qualifying period for this right and all employees accrue entitlement to leave from the day they start work. The paid leave can include statutory holidays, for example, Christmas and Easter such inclusions must be specified within the employee’s written terms and conditions of employment.

For part-time employees the leave entitlement is calculated pro-rata to the number of weeks worked in the holiday year.

It should be noted that employers may provide employees with more paid annual leave than this, the 5.6 weeks is the legal minimum that can be offered.

The calculation of term time holidays can become a complex issue therefore the following guidance has been provided:

5.2.8 Holiday Entitlement for Term Time Staff

Currently the formula for calculating holiday entitlement for term time workers is:

The number of hours worked per week ... multiplied by the number of weeks worked per year ... divided by 46.4 ... multiplied by 5.6 ... and the answer is the number of hours holiday entitlement.

This calculation applies where the member of staff works during term time but takes the holidays outwith the weeks worked e.g. works 39 weeks of the year and gets holidays outwith this time.

The statutory minimum holiday entitlement includes public holidays provided that this is stated in the contract of employment.
5.2.9 Rest Breaks

Employers must make sure that employees are allowed to take rest breaks, but they are not required to ensure a worker actually takes a break. An adult worker is entitled to twenty minutes if working for six hours or more. This is not in addition to a lunch break. Whether the break is paid or not is a matter for agreement between the employer and employees.

If the employee is under 18 but over school leaving age they are classed as a Young Worker. Young workers must be given a rest break of 30 minutes when they are required to work for more than 4 1/2 hours. Full details of working time limits for young workers can be found on the following website: [www.gov.uk/maximum-weekly-working-hours](http://www.gov.uk/maximum-weekly-working-hours)

5.2.10 Income Tax and National Insurance

The employer is responsible for paying employees, and if the employee is liable, making the correct tax and National Insurance deductions. Early Years Scotland recommends that all employers register with the Her Majesty’s Revenue and Customs (HMRC), who will issue the appropriate forms for registration together with information and guidance to enable an organisation to operate the Tax and National Insurance deduction system.

The employer is liable to pay the employer’s percentage of National Insurance on their employees’ earnings, if the earnings are above the threshold in the current tax year. Similarly, employees will have to pay income tax and/or national insurance if they are paid above this threshold. As the level of income at which tax and national insurance contributions become payable can change in any budget, it is important to check the current level with the local HMRC Office or their Employers Helpline Tel: 08457 143143.

Employees may also be liable to pay income tax at basic rate if they have another job and they consider their employment with you to be their second job. As an employer you have a duty to establish the status of the employee with regard to other employment, otherwise you may be held liable for any unpaid tax at a later date. All employees should be asked to produce a P45 form, which their previous employer has given them, or to sign a P46 to say that the job with you is their only, or main, job. A flow chart included in this pack provides assistance to the employer to follow the right registration procedures for the payment of tax and national insurance for each of their employees where it is applicable.

It is important to realise that when awarding a pay rise that the employee may be brought into the tax and national insurance threshold. The employer needs to be alert to this and take the necessary action to deduct the appropriate contributions, if this happens.

5.2.11 Pensions

It is important that employers support and facilitate employees to make regular savings towards a retirement pension. Pensions are a complex area and detailed professional knowledge and advice should be sought to ensure the right schemes are applied. Every employer must comply with workplace pension law. Employers must enrol their eligible employees in a workplace pension scheme. Automatic enrolment in workplace pension schemes started in 2012 and will continue until 2018. Every employer will have a date from when the automatic enrolment duties come into force. This is called an employer’s ‘staging date’. Management committees can find the staging date that applies to them by visiting [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk) and entering their PAYE reference number. Additional help and information for employers and employees is available on the websites [www.pensionsadvisoryservice.org.uk](http://www.pensionsadvisoryservice.org.uk) and [www.gov.uk/workplace-pensions](http://www.gov.uk/workplace-pensions).

5.3 Supporting Employees

Once the initial stages of employment have been worked through it is essential to support and maintain good working relationships if employees are going to remain motivated and stay with the organisation. The key elements to making a success of this are:

- regular review and planning
- staff team meetings and staff/committee meetings
- annual job reviews/appraisals
- opportunities for professional development and learning
- effective communication.
Implementing these standard employer management practices gives employees time, both individually and collectively, to feel valued, supported and encouraged in their role. They demonstrate employer commitment to supporting individual employees and helps the line manager to quickly understand the work of the individual and their role within the organisation, thus enabling them both to fulfil their role and responsibilities more effectively.

5.3.1 Review and Planning

In most instances it is the immediate line manager who will conduct review and planning, or support and supervision as it is sometimes called, with individual members of staff. However, where there is an employing management committee someone capable and appropriate should be delegated to undertake the task. Where this is the case it is good practice to designate one named person from the committee to undertake the role for all staff members.

Review and planning provides a regular structured opportunity for individual staff members to discuss with their line-manager or other designated person their day-to-day work issues and to receive support and encouragement in their role. It also offers a framework for:

- monitoring and evaluating the employee’s work and work performance
- clarifying and setting objectives
- sharing information
- identifying training and progress and development needs
- expressing feelings about the work
- enabling employees to contribute to the success of the organisation.

Through review and planning individuals are able to develop a shared responsibility with their line manager for defining work objectives, action planning, implementation and evaluation. As a consequence, individual staff members become more effective in their work and key contributors to achieving the organisation’s aims, objectives and business targets. They are helped to make connections between their work and the organisation’s aims and plans. Effective review and planning requires the building up of trust and respect between the employee and the employer by sensitive but firm carrying out of the line management function, which is to:

- help employees to do their job by encouraging, developing and motivating individuals.
- help employees to understand where they fit into the organisation as a whole by explaining and integrating the organisation’s strategic aims and business plans into the work the employee undertakes.
- improve personal performance and the quality of service by providing critical analysis of feedback on performance, by giving advice, by offering learning and development opportunities, by giving praise.
- engender confidence, mutual trust, respect and commitment to the organisation by recognising achievement, by sharing information, by learning from each other, by presenting new opportunities, by testing ideas.
- make the employee’s contribution known by ensuring the employer receives feedback, for example about the employee’s work, about training needs, and about developing or emerging trends in the work role.

For review and planning to be effective it is useful if the employee prepares notes and gives a copy to the line manager prior to the meeting. At the start of the meeting the line manager may also add items to the list of issues for discussion. A useful structure for both the employee and line-manager to bear in mind when preparing and making notes for a supervision session may be the following three focal points:

- The work: includes all the things the employee has being doing, or should have been doing, since the last session. Focus on matters which are at the front of both the line manager’s and employee’s consciousness about the recent past and present. For example, was the employee clear about what they were expected to do and achieve? Has it been done? Were deadlines met? How successful has it been? What is the evidence? Were customers satisfied? What was the quality of the work? The line manager should give recognition to what has been achieved. Any difficulties which have impeded the work being satisfactorily carried out should be identified and discussed to examine alternative ways of dealing with them. Occasionally, it is useful if the employee and line manager refer to the individual’s job remit to ensure no aspect of responsibility is being forgotten or overlooked.
- The team: includes relationships with others, for example, close work colleagues, managers and others with whom they have contact. It also includes developing knowledge and understanding of the roles and boundaries within the team and assessing the effectiveness of communication within the team.
- The individual: includes any issues relating to the individual’s work and circumstances such as job satisfaction, problems affecting work, conduct, skills and knowledge development needs.
It is good practice to make a brief confidential record of the meeting to keep in the employee’s personnel file. A copy of the record should also be given to the employee. The record should contain a brief note on the items discussed and outcomes, agreed future work plans and objectives, agreed action points, including who is responsible and timescales involved.

**Key points for effective review and planning:**

- hold regular sessions, 4-6 weekly intervals. Avoid cancelling
- prepare, so as to know what is to be discussed and what is to be achieved
- ensure privacy and confidentiality; keep the session free from disruption
- be constructive and positive
- focus on how matters can be improved
- agree specific recommendations/priorities
- keep a record of the session, which can be used as the starting point for the next session.

It is hard for everyone when issues of poor performance or conduct have to be raised. The important thing is to take a constructive approach. Explain to the employee why the issue is being raised, focus on the facts of the matter and seek a response from the employee about what happened and why. Together, identify the causes of the poor performance and agree on a plan for making improvements.

Agree arrangements to monitor progress, for example, at the next review and plan meeting or set up a specific meeting. However, if poor performance or conduct continues, the employer should begin to explore longer-term solutions and discuss future actions with the employee, for example raising formal disciplinary procedures and the possible consequence of these.

Regular reviewing and planning is a key component of good management practice. Its value should not be underestimated nor should it be seen as a low priority. The processes involved, for example, of supporting individual employees, communicating and sharing information, shared problem solving, giving direction, reviewing and evaluating the individual’s work and performance are vital in establishing and sustaining the employee’s confidence, motivation and sense of being valued. Failure in these areas more often than not leads to poor work performance, low morale, loss of employee confidence and poor staff retention. All of which undoubtedly will have an effect not only on an individual employee but also on the organisation’s ability to successfully achieve its aims and business targets.

**5.3.2 Meetings**

Where there is more than one staff member in an organisation it is good practice to allow staff to hold regular meetings because coming together offers them the opportunity to:

- discuss and evaluate what’s happening in the work situation
- share information and discuss future developments or possible next steps
- support and learn from each other
- strengthen the working relationship
- identify competencies within the staff team so as to utilise individual strengths more effectively.

In organisations where there is a management committee, it is important that staff, or staff representatives, are asked to management group meetings to report on their work and to share and discuss future plans or resource needs. They should also be invited to express their ideas and views on matters relating to the work and development of the organisation in order to engender commitment, enthusiasm and a sense of being valued in their role. However, it must be emphasised that as an employee they are present in an information giving and advisory capacity only, they do not have the right to vote nor to make decisions on matters that fall within the management committee responsibility.

**5.3.3 Staff Appraisal**

Staff appraisals, or job reviews, are usually held annually, although they can be held after a particular piece of work or project has been completed. Appraisal is like review and planning but provides a more focused and structured opportunity to help employees assess how they are performing in their role.

Like review and planning, an appraisal is more effective if those involved understand the process and are prepared. It should also be understood that, if review and planning sessions have been regular and effective between the employer
and employee, the appraisal should offer no surprises, as all the concerns and successes that are discussed will
be an aggregate of all the sessions held up to the appraisal meeting.

Before the appraisal the appraisee (employee) and the appraiser (line manager or, in the case of employing
committees, the designated person/s from the committee) should think carefully about what should be covered.
The line manager or the appointed person conducting the appraisal needs to think about how they will sensitively
and constructively draw out the employee's thoughts and feelings about how they are doing in the job. (Guidance
notes would be useful; see Early Years Scotland's Staff Development Policy.) During the appraisal the appraiser
has a responsibility to:

• set the scene, context and purpose of the appraisal
• encourage the employee to openly discuss his/her performance and his/her strengths and weaknesses by
  exploring with the employee and providing feedback on what has gone well; what has not gone so well; what
  has helped or hindered them in their work. It is useful to focus on significant areas or high priority tasks that
  they have been involved with, rather than a minute examination of every part of their remit.
• discuss how far objectives and tasks have been met and identify strong points within the employee's work
  and how they have contributed to the organisation's success. Emphasis should be placed on the good work
  done and the employee’s achievements celebrated.
• explore relationships, for example between members of the team, between the employee and the manager.
• acknowledge and discuss the employee’s capabilities and identify their continuing professional development
  (CPD). Explore how the needs will be met so that the employee can improve their value in their current role
  and, over the long term to the organisation as a whole.
• discuss priority areas for the coming year and, identify and agree key tasks for the employee that help the
  organisation achieve its objectives.
• engender positive reactions and commitment in the employee and a sense of being a valued member of staff.

A confidential note should be drawn up summarising points of discussion and detailing any outcomes and agreed
follow-up points. These may include:

• changes to the job remit since the last appraisal
• changes in procedures and policies
• priority objectives and tasks, including timescales
• learning and development plans.

The notes should also specify who is responsible for carrying out any follow-on points and the timescale in which
they ought to be done. The timescale may range from immediate to long term. The notes should be agreed and
signed by both the employee and the appraiser. A copy is made and given to the employee. The other is stored in
the employee’s personnel file and is used as the starting point for the next review.

If others are involved in an employee’s appraisal (for example an Early Years Scotland Support and Development
Officer) at an Early Years Practitioner’s appraisal, their role must be clearly defined and explained to the
employee at the outset to avoid misunderstandings.

5.3.4 Professional Development

Many childcare workers are obliged to register with SSSC and obtain relevant qualifications for their job and to
fulfil conditions of Continuing Professional Development (CPD).

Employers, through the line-management function, should aim to assist staff to develop to their full potential as
employees. They should have a written staff training and development policy and should endeavour to:

• allocate a proportion of their budget to staff training and development.
• provide induction training for new members of staff.
• provide training for those changing posts or who are asked to take on new responsibilities and practices.
• organise programmes of training on working procedures and policy.
• draw up with each member of staff an individual learning and development plan and ensure they are
  implemented. Staff should be encouraged to work towards relevant qualifications.

Employers should be aware of the current and future training needs of staff and the organisation. They should
plan to meet future needs and give consideration to how they can assist staff members to access training courses,
seminars and other learning and development opportunities. For example, by:
• helping staff to identify their learning and development needs
• ensuring adequate cover is provided when a staff member is undertaking training (particularly relevant in daycare settings)
• reimbursing fees and expenses, for example, if a staff member attends an approved course
• offering appropriate time paid or time taken off in lieu
• approving a period of study leave, for example, if a staff member is taking an exam or has an assignment to complete.

For many employers making provision to support employee development can be difficult but failure to do so is shortsighted. Employers who invest and provide opportunities for ongoing learning and development are more likely to find that employees stay longer, are more committed to the organisation and use their new or enhanced knowledge and skills to:

• improve practice, both on personal and organisational level
• support and motivate others through sharing their learning
• take up new opportunities within the organisation
• assist the organisation in achieving its aims and objectives.

Providing learning and development opportunities to employees might not always mean that they need to go on a course, nor that it will cost a lot of money; for example, shadowing someone, e-learning, being mentored, having the opportunity to reflect on practice, visiting other workplaces or reading relevant literature offer other ways to address learning and development needs.

5.4 Policies

5.4.1 Probationary Period Policy

Purpose

The purpose of this policy is to outline the process for managing a probationary period.

The use of probationary periods

In this organisation, all new starters will have a probationary period written into their contract of employment. The length of this probationary period will depend on the nature of their work, but it is likely to be between three and six months in length.

The purpose of the probationary period is to allow time for the organisation to assess the work of the employee and to determine if the employee has a long term future with the organisation.

Managing the probationary period

As part of the induction process, all line managers should ensure that new employees are aware of their probationary period. Details of the probationary period will also be included in the contract of employment. The line manager should discuss the expectations of the employee with him/her during the induction process. The line manager should carry out regular reviews with the employee throughout the induction process. The purpose of these reviews will be for the line manager to discuss the employee’s performance. If the line manager has any concerns regarding performance they should use these meetings to inform the employee of any concerns, and to indicate whether the probationary period is proceeding successfully or not.

Concerns during the probationary period

Although review dates will be set during the induction process/probationary period it is important that any concerns are brought to the attention of the employee when they arise so that the employee has an opportunity to address those concerns. Regular contact between the employee and the line manager during the induction process/probationary period should enable this to happen and timely steps taken to address the concerns.
Review meetings should be held in private and notes must be taken of any meeting. If targets or actions are agreed as a result of the meeting these should be confirmed in writing to the employee.

It is acceptable to extend the probationary period if there has not been a reasonable amount of time for the employee to display performance in the role.

**Support during the probationary period**

All new employees need help and support as they settle into the new job. The line manager is responsible for ensuring that all required training is provided as soon as possible. The line manager is also responsible for ensuring that the employee is made aware of relevant company procedures, and is introduced to all members of the team and appropriate other agencies.

The organisation wants probationary periods to be completed successfully, and every support will be given to ensure that this happens.

**Terminating the employment before the probationary period has been completed**

It will be usual for employees to complete the full probationary period. The length of time has been set to allow employees to settle into the organisation, to learn the new job and to receive any required training. However, in some circumstances it might become apparent that the employee has some fundamental difficulties with the work. On speaking to the employee it might become apparent that the employee is not going to be able to meet the required standards.

In such a situation the line manager should consider terminating employment. It is suggested that the line manager takes advice from ACAS or a qualified individual before terminating employment.

**Terminating employment at the end of the probationary period**

Employees will always be made aware that there are concerns about standards of performance before the probationary period ends. Induction and probationary review meetings will provide support for this to happen. If the employee has not met the required standards of performance, despite all the help and support that has been offered, a decision will be taken to terminate the probationary period. This decision must be made before the probationary period has ended.

Any line manager who thinks that it will be necessary to terminate an employee’s contract at the end of the probationary period should seek guidance from ACAS or a qualified individual.

**Confirming successful completion of the probationary period**

It is important that employees are made aware if they have successfully completed the probationary period. The line manager is responsible for informing the employee that they have successfully completed the probationary period.

**Discovery of irregularities during the probationary period**

On some occasions it might become apparent that the employee has not been honest about his/her previous experience or qualifications when applying to the organisation. If the employee has been dishonest this is a potential breach of contract, which could result in immediate termination of the contract of employment. If a line manager does discover that there are some irregularities then s/he should seek advice from ACAS or a qualified individual immediately and an appropriate course of action will be discussed.

**Range of problems during the probationary period**

It should be noted that ‘successful performance’ does not just mean the outputs from the job. A probationary period can be unsuccessful for other reasons — such as persistent lateness, persistent absenteeism, unacceptable behaviour etc.
5.4.2 Staff Appraisal Policy and Procedure

Policy

The organisation’s policy is that each employee will be appraised annually.

The summary of this appraisal should be a fair representation of the dialogue and is to be referred to as a working document, throughout the forthcoming year.

The benefits of appraisal in terms of improved communication and enhanced performance both for the individual and for the organisation will only be achieved by the continuous commitment of all those involved.

The organisation’s appraisal scheme has been designed to meet the following objectives:

• To assist staff in performing their job to the best of their ability, maximising their job satisfaction and their contribution to helping the organisation meet its objectives.
• To identify individual learning and development needs and opportunities.
• To highlight the potential that each individual has to develop within their current or a future position.
• To align with the regular review and planning meetings that happen during the year.

Procedure

1. Appraisal interviews will occur annually. They are intended to take place during (Insert months when meetings will happen). New and newly-promoted employees will be appraised in the third month of their new job.
2. Appraisal interviews will be carried out by the job-holder’s line manager either on a one-to-one basis or with other committee members present.
3. Dates, times and locations will be arranged by the line manager and communicated to the job holder.
4. All relevant information regarding performance (including review and planning documentation) will be gathered prior to the appraisal meeting.
5. The job-holder and line manager should consider the questions contained in the Annual Appraisal form prior to the review meeting.
6. The Appraisal meeting should be held and the Annual Appraisal form should be completed.
7. The final form will be completed by the job-holders line manager and sent to the job holder for approval and sign off.
8. A copy of the annual appraisal will be retained by the line manager and the job-holder and discussed at review and planning meetings during the year.

5.4.3 Holiday Policy

Purpose

The purpose of this policy is to set out the requirements relating to the entitlement and taking of annual leave.

The law


Employees are entitled to a minimum of 5.6 weeks paid holiday per annum. The eight public holidays can be taken as part of this amount - the eight public holidays are also taken as paid leave. It should be made clear in the contract of employment whether public holidays are part of the leave entitlement.

Holiday entitlement

The holiday entitlement for employees is as set out in their contract of employment. (Further guidance on how to calculate term time holidays can be found in the supporting guidance for managers on page 8)

Payment during holiday

Employees receive their normal rate of pay on any days which are taken as part of their annual holiday entitlement.
Holiday year

The organisation’s holiday year runs from [insert month] to [insert month]. Employees should take their full holiday entitlement during that 12 month period.

Carrying holiday forward

Employees will not typically be allowed to carry holiday entitlement forward from one year to the next; however in some organisations according to the employer’s discretion there may be flexibility.

Booking of holiday

Employees should apply for holiday in writing to their line manager. For any holiday of one week or more the employee should apply at least six weeks in advance of the proposed start of the holiday. For any holiday of less than one week the employee should apply at least three weeks in advance of the proposed start of the holiday.

The decision on whether to allow the requested holiday will be communicated to the employee in writing.

OR — use this wording where holidays must be taken during closure periods:

‘It is important to note that employees are required to take their annual leave during closure times. Employees should discuss holiday dates with their line manager at the beginning of each holiday year.

No employee should book a holiday until they have received confirmation that they will be allowed to take the holiday from work. The group accepts no responsibility for the loss of deposits or other monies if employees book holidays in this way.

Holiday entitlement if an employee leaves during the holiday year

If an employee leaves the organisation during a holiday year, the holiday entitlement that the employee would have been allowed up to the date of leaving will be calculated on a pro-rata basis.

If the employee has outstanding holiday entitlement, the corresponding amount of money will be paid to the employee in the final salary payment.

If the employee has taken more than the pro-rata holiday entitlement, this amount of money will be deducted from the employee in the final salary payment.

If the amount of holiday taken equates to more money than the final salary payment, the employee will not receive a final salary payment, but will not be required to pay back the additional amount to the organisation.

Maternity leave

When an employee is on maternity leave her annual leave entitlement continues to accrue. The woman is not required to take her annual leave during her maternity leave, but will be entitled to take it at a later date.

5.5 Sample Letters and Formats

NOTE: If you are viewing this book in electronic form, please click on the title to open a copy of the document.

5.5.1 Format for Monitoring Induction
5.5.2 Format for Performance Review Discussion with a New Employee 3-6month
5.5.3 Format for Review and Planning, Supervision Notes
5.5.4 Format for Review and Planning, Supervision Record
5.5.5 Format for Appraisal/Annual Review
5.5.6 Format for Employee Individual Learning and Development Plan
5.5.7 Sample Letter to Confirm Changes to an Employee’s Terms & Conditions of Employment
5.5.8 Her Majesty’s Revenue and Customs (HMRC) Flow Chart
5.5.9 Calculating Holiday Pay
5.5.10 Annual Leave Entitlement Record Form
5.5.11 Letter confirming unsuccessful completion of probationary period
5.5.12 Letter confirming successful completion of probationary period
5.5.13 Sickness Absence Flowchart
6 Management Practices: Part 2

This section contains management guidance, policies, supporting letters, flowcharts and checklist.

6.1 Management Guidance

Problems can arise in any work situation. Most of the time, they can be dealt with through good communication links and an open and honest working relationship between the employee and employer. However, even with good supervision, review procedures and staff policies in place things can still go wrong. Early Years Scotland recommends as good practice, a written document setting out the disciplinary and grievance procedures and actions that will be followed, if the need arises. Having a written document helps to avoid misunderstandings and promotes fairness and consistency in the treatment of individuals and in the conduct of industrial relations. Sample policies have been provided as part of this pack. Employers are required to specify the procedures and disciplinary actions which exist. From the start employees should be aware of types of conduct that are likely to lead to disciplinary action. Staff should be given copies of the group’s policies and procedures on disciplinary and grievance.

6.1.1 The ACAS Code of Practice on Disciplinary and Grievance Procedures

The Code is designed to help employers, employees and their representatives deal with disciplinary and grievance situations in the workplace.

- Disciplinary situations include misconduct and/or poor performance. If employers have a separate capability procedure they may prefer to address performance issues under this procedure. If so, however, the basic principles of fairness set out in this Code should still be followed, albeit that they may need to be adapted.
- Grievances are concerns, problems or complaints that employees raise with their employers.

The Code is not legally binding and so a failure to follow its recommendations will not, on its own, make the employer liable to legal proceedings. Employment tribunals will, however, take the provisions of the Code into account where relevant. A failure to adhere to the Code’s recommendations is highly likely, in practice, to make any dismissal unfair.

Whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:

- Employers and employees should raise and deal with issues promptly and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Employers and employees should act consistently.
- Employers should carry out any necessary investigations, to establish the facts of the case.
- Employers should inform employees of the basis of the problem and give them an opportunity to put their case in response before any decisions are made.
- Employers should allow employees to be accompanied at any formal disciplinary or grievance meeting.
- Employers should allow an employee to appeal against any formal decision made.

It should be emphasised that disciplinary procedures should not be viewed as a means of imposing sanctions but as a way of helping and encouraging improvement in an employee whose conduct or performance is unsatisfactory.

Visit: [www.acas.org.uk](http://www.acas.org.uk)

6.1.2 Disciplinary Outcomes

Informal Resolution

When someone is not performing satisfactorily or is misbehaving at work the first priority should be to help them to improve. The employer should have an informal discussion with the employee and make sure that they understand
what they are doing wrong and what they have to do to reach the necessary standard. A brief note of the date on which the issue was discussed and what action was agreed should be made. The situation should be monitored to see if things improve. However, if despite the employer’s best efforts to resolve things informally, matters fail to improve, formal disciplinary procedures are called for.

**Formal Resolution**

If the issue can’t be resolved informally or the matter is very serious, then it should be dealt with in accordance with the Revised ACAS Code of Practice on Discipline and Grievance Procedures. The employer should take the following steps:

*Establish the facts:*

It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing. In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing. There is no statutory right for an employee to be accompanied at a formal investigatory meeting.

*Inform the employee of the problem:*

If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification. The notification should also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting.

*Hold a meeting with the employee to discuss the problem:*

The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case. Employers and employees (and their companions) should make every effort to attend the meeting. At the meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a sufficient opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witnesses they should give advance notice that they intend to do this.

*Allow the employee to be accompanied at the meeting:*

Workers have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- a formal warning being issued; or
- the taking of some other disciplinary action; or
- the confirmation of a warning or some other disciplinary action (appeal hearings).

The chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for workers to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for a worker to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site. The companion should be allowed to address the hearing to put and sum up the worker’s case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker’s behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.
Decide on appropriate action:

After the meeting decide whether or not disciplinary or any other action is justified and inform the employee accordingly in writing. Where misconduct is confirmed or the employee is found to be performing unsatisfactorily it is usual to give the employee a written warning. A further act of misconduct or failure to improve performance within a set period would normally result in a final written warning. If an employee’s first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee’s actions have had, or are liable to have, a serious or harmful impact on the organisation. A first or final written warning should set out the nature of the misconduct or poor performance and the change in behaviour or improvement in performance required (with timescale). The employee should be told how long the warning will remain current. The employee should be informed of the consequences of further misconduct, or failure to improve performance, within the set period following a final warning. For instance that it may result in dismissal.

A decision to dismiss should only be taken by a manager who has the authority to do so. The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct. Disciplinary rules should give examples of acts which the employer regards as acts of gross misconduct. These may vary according to the nature of the organisation and what it does, but might include things such as theft or fraud, physical violence, gross negligence or serious insubordination. Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available.

Provide employees with an opportunity to appeal:

Where an employee feels that disciplinary action taken against them is wrong or unjust they should appeal against the decision. Appeals should be heard without unreasonable delay and at an agreed time and place. Employees should let employers know the grounds for their appeal in writing. The appeal should be dealt with impartially and wherever possible, by a manager who has not previously been involved in the case. Workers have a statutory right to be accompanied at appeal hearings. Employees should be informed in writing of the results of the appeal hearing as soon as possible.

Dealing with Delays

If the employee is genuinely unable to attend any meeting, for example, through illness, the employer must offer another reasonable date. If the employer cannot make the meeting, an alternative date must be offered. If the person the employee has chosen to accompany him/her cannot make the date of the meeting, the employee must propose another date and time which should be no more than five days later than the original date. If this second meeting is missed, the law considers the procedure to be at an end and the employer can proceed with the dismissal or disciplinary action based on the evidence available.

Instant Dismissal

No employee should be dismissed for a first breach of discipline unless it is considered to be gross misconduct.

It is almost always unfair to dismiss an employee without first making any investigation of the circumstances. However, in very rare cases it has been known for tribunals to rule that an instant dismissal was fair because the circumstances made an investigation unnecessary. For example, an employee who engaged in serious misconduct in front of witnesses and there was no likely explanation or mitigating circumstances.

Rather than make a judgement on an instant dismissal it is advisable to suspend an employee whilst the matter is fully investigated. A fair disciplinary process should always be followed before dismissing for gross misconduct.

It is important to note that as of April 2012 an employee cannot take a case of unfair dismissal against an employer until he or she has been employed by them for two years. However anyone who started before this date will only need one year’s service in order to make an unfair dismissal claim.
There are some important exceptions to this rule. Some dismissals are automatically unfair whenever they occur, for example, an employer cannot fairly dismiss a woman for becoming pregnant or a trade union steward or trade union health and safety representative for carrying out legitimate duties.

**Dealing with Grievances Issues**

Grievances are raised by individuals bringing to the attention of management concerns or complaints about their working environment, terms and conditions, work place relationships, health and safety, equal opportunities, new working practices and organisational change.

For example, an employee may raise a grievance about actions taken by a work colleague or colleagues, such as bullying and harassment, or being subject to racial abuse.

Like disciplinary issues, the process of dealing with a grievance can be eased by trying to talk it through informally to reach a resolution. Offering the employee the opportunity to air their grievance informally gives the employer the chance to resolve the matter as quickly and amicably as possible and helps to build better working relationships and a culture of openness and fairness across an organisation. However if this doesn’t work, more formal procedures should be followed. These are outlined below:

The employees should raise the matter formally and without unreasonable delay with a manager who is not the subject of the grievance. This should be done in writing and should set out the nature of the grievance.

Employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received. Employers, employees and their companions should make every effort to attend the meeting. Employees should be allowed to explain their grievance and how they think it should be resolved. Consideration should be given to adjourning the meeting for any investigation that may be necessary. Workers have a statutory right to be accompanied by a companion at a grievance meeting. The chosen companion may be a fellow worker, a trade union representative or an official employed by a trade union. Following the meeting decide on what action, if any, to take. Decisions should be communicated to the employee, in writing, without unreasonable delay and, where appropriate, should set out what action the employer intends to take to resolve the grievance. The employee should be informed that they can appeal if they are not content with the action taken.

Where an employee feels that their grievance has not been satisfactorily resolved they should appeal. The appeal process should be followed without unreasonable delay. They should let their employer know the grounds for their appeal in writing. Appeals should be heard at a time and place which should be notified to the employee in advance. The appeal should be dealt with impartially and wherever possible by a manager who has not previously been involved in the case. Workers have a statutory right to be accompanied at any such appeal hearing. The outcome of the appeal should be communicated to the employee in writing. As with discipline, records of grievance proceedings and meetings must be kept confidential.

Employers should be aware that having to discipline a member of staff or having to handle a grievance raised by a staff member is never a comfortable process. The ACAS Code of Practice on Disciplinary and Grievance procedures recommends a process for employers to follow. Unreasonable failure to follow the provisions contained in the Code will, in most cases, lead an employment tribunal to find that the employee’s dismissal was unfair.

Early Years Scotland advises employers to seek guidance and further information on these matters to ensure they comply fully with the legislation and follow recommended codes of practice.

**6.1.3 Redundancy**

Sometimes, and for a variety of reasons, for example, business failure, reorganisation or because the requirement for a particular post has ceased, the employer can make employees redundant. A redundancy situation occurs when either of the following occurs:

- the employer has ceased, or intends to cease carrying on business
- the requirements for employees to carry out work of a particular kind, or to carry it out in the place in which they are employed, has ceased or diminished.
Redundancy can also occur where there has been reorganisation, or changes to working practices or processes mean that the employer needs fewer people to carry out the work.

In these circumstances, the employees affected may be entitled to redundancy pay, if qualifying conditions are met. To qualify, an employee must have a minimum of two complete years of service regardless of hours worked. There is no upper or lower age limit on the entitlement of statutory redundancy pay. Employees do not qualify for statutory redundancy pay if:

- offered suitable alternative employment
- guilty of misconduct
- industrial action is taking place and a redundancy notice is given.

In any redundancy situation the obligation on the employer to consult is absolute. The recognised trade union or employee representative should also be consulted, if there is one. While under notice of redundancy employees have the right to reasonable time off work, with pay, to look for alternative work, providing they meet the qualifying conditions.

Early Years Scotland recommends that it is good practice to extend these rights to all employees. If the employer refuses time off or payment the employee can take a complaint to a tribunal. As redundancy settlements vary depending on the age of the employee, his/her length of service and weekly pay, Early Years Scotland recommends that employers set aside a contingency fund to cover any potential redundancy payments, if ever they should occur. Where redundancy occurs, employees being made redundant must be given a notice of dismissal. This should be set out in the employment contract. If the employee has:

- less than two years service, then the notice must be at least one week
- more than two years service, then it is at least one week for every year of service up to a maximum of twelve weeks, or more if the contract gives a longer period.

The employer can offer payment in lieu of notice.

### 6.1.4 Retirement

The removal of the default retirement age started from 6 April 2011. Employers will not be able to issue new notifications of retirement using the default retirement age of 65 on or after 6 April 2011.

It is still possible for employers to have a compulsory retirement age if it can be objectively justified. The Department for Business, Information and Skills (BIS) gives the examples of air traffic controllers and police officers as possible professions where having a retirement age could be justifiable. These are called “employer-justified retirement ages” (EJRAs).

To have a compulsory retirement age an employer has to show that it has a “legitimate aim” and that the retirement is a “proportionate means of achieving that aim”. For example, it might be possible to demonstrate that the retirement age is a health and safety issue. However, to use such an argument an employer will have to provide evidence to show that an older age is linked to health and safety issues, and will have to demonstrate that retirement is a proportionate means of addressing those issues.

Employers who wish to adopt a compulsory retirement age are advised to contact ACAS or a qualified individual for further guidance.

### 6.1.5 Absence Management

From time to time organisations may have issues or concerns regarding the levels of sickness absence. The impact of high levels of sickness absence is often felt on the service an organisation provides, the morale of staff and the teamwork in an organisation. There are a number of steps an organisation can take to manage sickness absence.

These are:

- Implement an effective sickness absence policy to communicate the organisations overall approach to absence and the specific procedures for dealing with all absences.
• Carry out a brief return to work interview with all employees who are absent from work.
• Set out the level of absence which may trigger management action.
• Improve the individual health of employees through a variety of health promotion actions.

Sickness absence should always be managed consistently and issues or concerns should be addressed at an early stage.

6.1.6 Sickness Absence Policy and Procedure

Policy

The organisation aims to secure the attendance of all employees throughout the working week. However, it recognises that a certain level of absence may be necessary due to sickness.

It is the organisation’s policy to offer security of employment during such periods, subject to operational requirements and the conditions below.

Procedure

Notification and certification

If the employee is unable to attend, he or she must notify their manager by INSERT TIME on the first day of absence, indicating if possible when he or she expects to return to work.

The employee must complete a self-certification form for the first seven calendar days of all sickness absences and give it to their manager. This form can be completed on the employee’s return to work if their absence lasts less than seven calendar days.

If the employee is absent by the eighth day (including Saturday and Sunday), they must send a fit note, issued by their GP, to their manager. Current fit notes must cover subsequent periods of absence. The employee should also keep in touch with their manager regarding their condition and likely return to work date.

If the employee does not follow this procedure, they may be dealt with under the organisation’s disciplinary procedure.

Private medical certificates

In some circumstances the organisation may require the employee to provide private fit notes for all absences from work due to sickness, regardless of their duration. The organisation will reimburse him or her fully for the cost of obtaining these certificates. Examples of such circumstances include:

• a history of exceptional absenteeism
• an appearance or disposition such that management are concerned that the employee may not be receiving adequate medical attention.

Return to work

The employee will not be allowed to return to work until their GP deems that they are fit to return. Requests for temporary adjustments to the employee’s working conditions will be considered by the organisation and will be accommodated wherever possible and if organisational circumstances permit.

In the case of extended periods of absence, the organisation may require that the employee’s fitness to return is confirmed by a medical practitioner of the organisation’s choice.

Regardless of their length of absence, the employee will be interviewed by their manager on their return to work in order to:

• check on the employee’s fitness to return
• ensure that all the support the employee needs is in place
• bring the employee up to date on any changes.
**Fit notes**

An employee’s GP might indicate on a fit note that the employee “may be fit for work”. If this option is selected the GP will also identify potential amendments that should be made, selecting from:

- Phased return to work
- Amended duties
- Altered hours
- Workplace adaptations

If a fit note is received the line manager will contact the employee and arrange for a meeting. At this meeting the suggested amendments will be discussed with the aim of facilitating the employee’s return to work.

If the suggested amendments are not possible the employee will remain on sick leave. If amendments are possible the employee will return to work, but regular reviews will be carried out to ensure that the amendments are adequate. It should be noted that any amendments are not to be viewed as a permanent change to the contract of employment.

**Medical examination**

The organisation reserves the right to require the employee to be examined by a practitioner of its choice in order to seek a medical opinion.

**Access to medical reports**

In order to gain as much information about the employee’s medical condition as possible, the organisation may also request the employee’s permission to contact his or her GP and ask for a medical report on the employee’s condition. The employee may ask to see this report.

**Extended absences**

The organisation will be sympathetic when an employee is ill, but the employee should appreciate that if they are persistently absent through ill-health or long-term injury or incapacity, it will not be possible for the situation to continue indefinitely, and their employment may be reviewed or terminated. Termination will not take place without:

- full consultation with the employee
- medical investigation
- a consideration of alternative employment.

Where a return to work does prove possible, the organisation may require that the employee’s fitness to return is confirmed by a practitioner of the organisation’s choice.

**Meetings/home visits**

During any absence it is important that the employee keeps in touch so that their manager is kept informed of the employee’s health and likely return-to-work date. The employee will therefore be periodically asked to attend meetings with their manager on work premises, for the purpose of providing information and facilitating an effective return to work.

If the employee is too unwell or physically unable to attend the office, the organisation reserves the right to visit him or her at home.

**Disability**

If the employee has a condition that means they might be considered disabled within the meaning of the Equality Act 2010, the organisation will attempt to make reasonable adjustments to their job to accommodate their requirements. The employee will be fully consulted at all times. If reasonable adjustments or alternative employment prove not to be viable options, and there is no likelihood of a return to work in the near future, a decision to dismiss may be the inevitable outcome.
Effective Employment Practice

Dismissal and the right to appeal

In the event of a dismissal, the reason for the dismissal and the circumstances leading up to that decision will be documented in writing to the employee. The employee may appeal against their dismissal by writing, within two working days of their receipt of the dismissal letter, to a member of the management committee, owner or director of the organisation, stating the grounds on which they wish to appeal.

The appeal will be heard in accordance with the organisation’s disciplinary procedure. This right also applies to ‘action short of dismissal’ such as transfers, demotion and alteration of duties.

Statutory sick pay (SSP)

In most cases, employees between the ages of 16 and 65 will be entitled to claim statutory sick pay as long as they receive average earnings above the lower earnings limit. More information on this can be found [www.hmrc.gov.uk/paye/rates-thresholds.htm](http://www.hmrc.gov.uk/paye/rates-thresholds.htm).

NB: For SSP purposes an “employee” is classed as someone who attracts employers’ liability for Class 1 National Insurance Contributions, or would if his or her income was high enough. SSP is paid only from the fourth consecutive day of sickness - period of incapacity to work (PIW). Further periods of qualifying sickness absence within 56 days of the first is treated as one PIW.

NB: See the Sickness Absence Flowchart Document 5.13 in Management Practices Part One

6.1.7 Unusual or Unexpected Absence Policy

Definition

The purpose of this policy is to address absence that is not related to sickness see below, holidays, maternity/paternity/adoption/parental/dependency leave, career breaks or sabbaticals.

Absence due to medical appointments

Employees that have a medical appointment (e.g. dentist, doctor, hospital) should inform their line manager as soon as they receive notification of the appointment, if the appointment will require them to be absent during working time. Wherever possible, appointments should be made outwith working time.

Employees may be required to produce evidence of the appointment, if requested by the line manager. Employees will be expected to attend work before and after the appointment if this is possible.

(Decide which of the following is applicable to your group)

- Employees will be allowed absence with pay for the appointment. OR
- Employees will not receive payment whilst absent due to a medical appointment OR
- Employees will be required to make up the time that is lost due to attending a medical appointment. The arrangements for making up this lost time will be agreed with the line manager.

This policy does not apply to ante-natal appointments which are addressed in a separate policy. Absence due to travel difficulties

If an employee is unable to attend work due to travel difficulties (for example, a strike relating to public transport, the employee’s car will not start; severe traffic disruption) the employee must inform his/her line manager as soon as possible. This should be within one hour of the usual starting time.

If possible, employees should carry out work from home. If this is not possible:

(Decide which of the following is applicable to your group)

- Employees will be required to take the absence as a day’s holiday OR
- Employees will be paid as normal for the day’s absence OR
- Employees will be required to take the day as unpaid leave OR
• The decision regarding payment for that day will be at the discretion of the management committee

OR

• Employees will be expected to make up the lost hours at a time to be agreed with the line manager.

Absence due to other difficulties

If an employee is unable to attend work due to a personal difficulty that is not covered by dependent leave (e.g. illness of a pet, need to stay in for a tradesman) this absence will be taken as:

(Decide which of the following is applicable to your group)

• A day’s holiday OR
• Unpaid leave OR
• Absence, for which payment will be at the discretion of the management

Alternatively, it might be acceptable for the employee to make up the time in agreement with the line manager.

6.1.8 Adverse Weather Conditions and Work

Early Years Scotland would emphasise that it is important that Early Learning and Childcare Settings recognise the need to safely maintain services during adverse weather conditions (or other emergency situations), whilst properly discharging its duty of care to employees.

Paying Staff Wages

This information is based on the principle that in accordance with an employee’s contract of employment they are required to attend for duty in order to receive payment unless the building where they work is closed. Where the building has been closed, for example by the landlord, and the employee is ready, willing and able to work, they are then entitled to payment of salary.

However, when travel disruptions occur, there is no legal right for staff to be paid by an employer for travel delays (unless the travel itself is constituted as working time or in some situations where the employer provides the transport). It is the responsibility of the employee to get to work. If the employee does not come to work, the employer is under no obligation to pay them.

However, Early Years Scotland recommends that employers consider the best practice advantages to payment or arranging time off in lieu of payment, flexi or home-working alternatives to retain good levels of staff morale, engagement and commitment to the service. This is also likely to promote goodwill amongst employees if they feel that their employer is being flexible.

If employees do work from home on anything other than a one-off basis, the employer will need to bear in mind such issues as insurance, health and safety and security. Employers are responsible for the health, safety and welfare of their employees wherever they work.

Absence or lateness

If an employee does not turn up for work, or turns up late, because of adverse weather or disruptions to public transport, in the strict legal sense the employer is entitled to treat the absence in the same way as any other unauthorised absence. As a general rule in law employees must be ready and willing to perform their duties and therefore if they are absent from work without authorisation they are not entitled to be paid.

In practice, this response is rare because good employers recognise that there is a degree of give and take in the employment relationship. It is more common when employees are viewed as abusing the weather circumstances.

However, if an employer does take this position they must investigate the employee’s reasons for non-attendance before stopping his or her pay. If they do not they may face claims of unlawful deductions from wages or constructive dismissal. Employers should collect objective proof of the transport disruption and consider the success of other staff in getting in from the same area. They are also required to treat all employees consistently to avoid the risk of discrimination claims.
Closure of schools or care facilities and employee rights

If schools or care facilities are closed due to the weather, employees who do not have alternative childcare options may be in the position that, while they could get into work despite the weather, it is necessary for them to spend the day looking after their children.

Such circumstances will almost certainly fall within the dependant leave regime under s.57 (A) of the Employment Rights Act 1996, which includes the employee’s right to take a reasonable amount of time off: because of the unexpected disruption or termination of arrangements for the care of a dependant; or to deal with an incident that occurs unexpectedly in a period during which an educational establishment is responsible for the employee’s child.

Time off in these circumstances is unpaid (unless the employer chooses to pay employees or the contract provides for paid leave through, for example, a carer’s leave agreement) and should last only for as long as necessary to deal with the immediate situation. If a closure is scheduled to last a week, the employer might reasonably expect the employee to make some alternative arrangements within that time to permit him or her to return to work. Employees must tell their employer as soon as reasonably practicable why they are away and how long they expect the absence to last.

It would be unlawful for the employer to dismiss or to impose some other detriment (above and beyond stopping pay if there is no agreement to paid leave), because the employee is absent on these grounds. The employee is not obliged to provide the employer with evidence that the school or care facility is closed as a prior condition to it allowing the leave (though this evidence may be available on the website of the school or local authority). If the employer suspects that the employee has procured the time off through a misrepresentation it can implement its disciplinary process, at which stage it would be appropriate to seek evidence of the closure.

If the employee is able to and does work from home, the right to time off for dependants does not come into play and the employee should still be paid. Dependant leave absences are designed to be both short and unpaid, and the reasonableness of the length of absence depends on the individual employee’s personal circumstances to a substantial extent. It may also be covered by a local agreement that limits the number of days paid leave.

Health and safety issues

Employers have a general duty under Section 2 of the Health and Safety at Work etc Act 1974 to ensure, so far as is reasonably practicable, the health, safety and welfare of their employees at work. Failure in this duty can result in criminal sanctions. There are also general duties on employees and there is also an implied term in every contract of employment that the employer will take reasonable steps to protect the health and safety of its workers in the workplace.

Severe weather may have a number of implications for an employer. If, for example, its employees work outside or have to drive as part of their job, they might be unable to perform their duties. Their health may also be at greater risk if they work in the open air. The employer will need to ensure that it complies with its health and safety obligations with regard to providing a safe system of work, for example by carrying out risk assessments, and ensuring that employees have suitable clothing and adequate rest breaks.

A risk assessment gives employers an opportunity to identify those things in the workplace that could cause harm to their employees, or others who use or have access to the workplace, so that they can weigh up whether they have taken sufficient precautions or need to do more to prevent harm.

Employers should not encourage their employees to travel in dangerous weather, either during working hours or when travelling to and from work. While an employer would not normally be liable for the acts of its employees when travelling to and from work, the courts have shown an increasing willingness to hold an employer liable for the acts of its employees taking place outside working hours where the act is closely connected with what the employer authorised or expected of the employee in the performance of his or her employment.

Temperature at Work

For those who get to work it is not uncommon for members to face heating failures or heating systems that are simply inadequate. Regulation 7 of the Workplace (Health, Safety and Welfare) Regulations 1992 (SI 1992/3004), states that during working hours, the temperature in all workplaces inside buildings shall be reasonable. However,
the Regulations do not provide a minimum workplace temperature. Whether or not a temperature is reasonable will depend on factors such as the nature of the workplace and the type of work that is being carried out. The Health and Safety Executive provides guidance on the Regulations, which recommends a minimum temperature of 16°C for workplaces where the activity is mainly sedentary, such as offices. For workplaces where much of the work involves physical effort, the minimum recommended temperature is 13°C.

In the absence of a policy and procedures, written or established through custom and practice, reference should be made to the Directgov and ACAS websites. The websites provide guidance to employers and employees about travel disruption and rights at work. Early Years Scotland recommends that service providers read and consider the guidance provided in relation to the circumstances in their service and reach decisions that are consistent with good practice and uphold the rights of employees.

Directgov website: [www.gov.uk/browse/employing-people](http://www.gov.uk/browse/employing-people)

ACAS website: [www.acas.org.uk](http://www.acas.org.uk). ACAS also has a telephone helpline: 08457 474 747

### 6.1.9 Disciplinary Policy and Procedure

#### Purpose and scope

The organisation’s aim is to encourage improvement in individual conduct or performance. This procedure sets out the action that will be taken when disciplinary rules are breached.

#### Principles

The procedure is designed to establish the facts quickly and to deal with disciplinary issues consistently. No disciplinary action will be taken until the matter has been fully investigated. The employee will be advised in writing of the nature of the complaint against him or her and the arrangements for the hearing.

The employees will have the opportunity to state their case at every stage at a disciplinary hearing and be represented or accompanied, if they wish, by a trade union representative or a work colleague.

An employee has the right to appeal against any disciplinary penalty. An appeal meeting will be arranged as soon as possible and will be conducted by a more senior manager if possible.

#### Informal warnings

It will usually be appropriate for an employee to receive an informal warning prior to formal disciplinary action being taken. This will be for the purpose of allowing the employee a chance to address the issue without formal proceedings. An informal warning is not recorded in writing.

#### The formal procedure

At the conclusion of the disciplinary hearing, any of the following actions may be deemed to be appropriate.

**Stage 1 - First warning**

If conduct or performance is unsatisfactory, the employee will be given a formal disciplinary warning. Such warnings will be recorded, but disregarded after [insert timeframe, eg six months] of satisfactory service.

**Stage 2 - Final written warning**

If the offence is serious, or there is no improvement in standards, or if a further offence of a similar kind occurs, a final written warning will be given. This will include the reason for the warning and a note that if no improvement results within [insert timeframe, eg nine months] action at Stage 3 will be taken.

**Stage 3 - Dismissal or action short of dismissal**

If the conduct or performance has failed to improve, the employee may suffer demotion, disciplinary transfer, loss of seniority (as allowed in the contract) or dismissal.
Gross misconduct

If an employee has committed an offence of the following nature (this list is not exhaustive), the normal consequence will be dismissal without notice or payment in lieu of notice:

• theft,
• bribery, including the giving, receiving or facilitating of bribes
• damage to property,
• fraud,
• incapacity for work due to being under the influence of alcohol or illegal drugs,
• physical assault and
• gross insubordination.

NOTE: Each organisation should review this list and add any additional events they feel would fall into the category of gross misconduct.

The employee may be suspended while the alleged gross misconduct is being investigated. During this time he or she will be paid their normal pay rate. Any decision to dismiss will be taken by the employer after full investigation. When this investigation has been completed the employee will be invited to attend a disciplinary meeting (at which s/he will be entitled to representation) to respond to the allegations.

In cases of misconduct (situations less serious than gross misconduct) it might also be appropriate to suspend the employee if this assists with the investigation.

Appeals

An employee who wishes to appeal against any disciplinary decision must do so within five working days. The employer will hear the appeal and decide the case as impartially as possible. Any disciplinary penalty imposed will be reviewed at the appeal and the result will be confirmed in writing.

6.1.10 Grievance Policy and Procedure

Policy

It is the organisation’s policy to encourage employees with grievances relating to their employment to use the procedure below to seek satisfactory solutions. The organisation will try to resolve grievances as quickly as possible to the satisfaction of the individual(s) concerned. Where this is not possible, every effort will be made to explain the reasons for the decision.

If employees are not satisfied with the outcome, they have the right to pursue their grievance to the next stage. It is hoped that most grievances will be resolved during the informal discussion. Employees who have raised grievances will be treated fairly at all times before, during and after the grievance hearing(s).

Procedure

Informal stage

If you have a grievance about your employment you should discuss it informally with your immediate manager. Your immediate manager will attempt to resolve this matter informally. Where attempts to resolve the matter informally do not work, it may be appropriate for you to raise a formal grievance under this procedure.

Stage 1

If you feel that the matter has not been resolved satisfactorily through informal discussions, you must put your grievance in writing to your immediate manager. You will receive a reply within five working days and a meeting will be arranged. You, any relevant witnesses and the manager will attend the meeting. You may choose to be accompanied by a colleague or trade union official. The manager will give a response within five working days of the meeting and will inform the employee of the appeals procedure.
Stage 2 - Appeal

If you are not satisfied with the manager’s response, you may appeal, in writing, to the relevant manager. Where possible the appeal should be dealt with by a manager who is impartial and has not been previously involved in the grievance. A meeting will be arranged, constituted as in Stage 1. The manager will give a response within five working days of the meeting. This decision will be final.

Investigations

The organisation is committed to ensuring that all grievances are investigated fully. This may involve carrying out interviews with the employee concerned and third parties such as witnesses, colleagues and managers, as well as analysing written records and information. The investigation report will be made available to all the parties concerned. The identity of witnesses will be kept confidential where necessary.

Notes

1. You may raise a complaint directly with a senior manager if it:
   • concerns your immediate manager
   • is of too personal or sensitive a nature to raise with your immediate manager.

2. Complaints concerning discrimination, bullying or harassment by your immediate manager may be raised directly with a senior manager. This may be done informally or formally, ie at Stage 2 of the procedure.

3. If your complaint concerns an alleged wrongdoing or criminal offence by someone within the organisation, you should raise it immediately with a director, ie at Stage 3 of the procedure. See the Public Interest Disclosure Act 1998 (known as the Whistle-blowers’ Act) for details of the additional protection available for protected disclosures.

4. The grievance procedure should not be used for appeals against disciplinary decisions, as that is the purpose of the disciplinary appeals procedure. If, however, you have a complaint against the behaviour of a manager during the course of a disciplinary case, you may raise it as a grievance with a senior manager. The disciplinary procedure may be suspended for a short period if necessary until the grievance can be considered.

5. Employees are encouraged to raise grievances and will not suffer any detriment from doing so. If your grievance is found to be malicious or to have been made in bad faith, however, you will be subject to the organisation’s disciplinary procedure.

6. A second management representative from another function may be invited to attend formal grievance meetings to act as a witness and note-taker.

7. The timescales listed above will be adhered to wherever possible. Where there are good reasons, eg the need for further investigation or the lack of availability of witnesses or companions, each party can request that the other agrees to an extension of the permitted timescale.

8. The organisation reserves the right to seek assistance from external facilitators at any stage in the grievance procedure.

9. For senior managers/directors and employees during their first year of employment, the organisation reserves the right to speed up the decision making process and may choose to follow a shortened version of the above procedure.

10. This procedure is for guidance only and does not form part of employees’ contractual rights. The contents may be subject to revision from time to time.

   NB: The Capability policy should not be used in cases of misconduct. The disciplinary policy is the correct policy to use in these circumstances.
6.1.11 Capability Procedure

Groups may wish to use this Capability Procedure where there is an issue in terms of a staff member’s ability to do their job. This procedure runs parallel with, but is not part of the Disciplinary Policy. The Capability Procedure should be used to improve performance where the reason for underperformance is a lack of skill, inadequate training and lack of support.

If the member of staff is underperforming in their role due to carelessness, negligence or lack of effort then this should be treated as misconduct and dealt with under the disciplinary policy. (Please see 6.2.7 Capability Procedure, 6.2.8 Letter to confirm informal performance meeting, 6.2.9 Performance Improvement Plan, 6.2.10 Sample Capability Letters)

6.1.12 Redundancy Policy

Introduction

From time to time the organisation may require fewer employees to work because of economic, technological or business-related reasons. This could result in some employee redundancies.

The purpose of this policy is to lay out how the organisation will manage impending employee redundancies and, if necessary, any decision to implement proposed redundancies. It is the organisation’s intention to avoid redundancies wherever possible, and if they should be unavoidable to mitigate their effect.

Furthermore, this policy reflects the organisation’s commitment to full employee consultation and to provide appropriate support to staff should redundancies take place.

This policy also applies to any situation where fewer employees are required due to a reorganisation of work.

Alternatives to redundancy

Before making any compulsory redundancies the organisation will first take all reasonable steps to identify feasible alternatives to meet the needs of the business. These will include:

(a) restriction of external recruitment;
(b) introduction of flexible working hours/days;
(c) consideration of terminating or restricting the engagement of temporary/agency staff;
(d) voluntary reduction in remuneration; and

Voluntary redundancy

In the event of proposed redundancies the organisation will invite all affected staff to apply for voluntary redundancy. Employees who are not directly affected by the redundancy proposal may also apply. The application period will be limited to a specific period of time. The organisation may at its absolute discretion accept or reject any application and is under no obligation to discuss its reason(s) with the applicant.

When an application for voluntary redundancy is accepted, the employee will be notified in writing and invited to a meeting with a relevant manager to discuss the next steps and the redundancy payment that is available. Once the employee’s application has been accepted and the employee has agreed to the redundancy payment at the meeting, the organisation is under no obligation whatsoever to accept a withdrawal of his or her application.

Where 20 or more redundancies are to take place at one establishment within a 90 day period the organisation will seek further advice regarding rules regarding the collective consultation process.

Consultation and information

The organisation is committed to providing full and proper information employees during the consultation process. This consultation may be carried out with trade union representatives/elected representatives or directly with employees depending on the needs of the organisation.
Wherever practicable the organisation will endeavour to incorporate the views of trade union/employee representatives and employees into its management of the proposed redundancies.

Information provided will include the reason(s) for the proposed redundancies;

- numbers and categories of employees affected, specifying those whom it is proposing to make redundant;
- proposed method of selecting those for redundancy;
- proposed method of carrying out the redundancies;
- time period over which the redundancy dismissals will take place; and
- proposed method of calculating redundancy payments (where non-statutory payments are to be made).

*Individual consultation*

The organisation will enter into individual consultation with all employees provisionally selected for redundancy who are ‘at risk’. Each employee will be given information about the proposed method of redundancy selection, including any selection criteria to be used. They will be informed subsequently of the basis for their selection and be invited to make representations to their relevant manager about their redundancy selection before any final decision about who is to be given notice of dismissal is taken.

*Redundancy selection*

The selection criteria to be used in the case of redundancy will change from time to time to reflect the needs of the organisation. The criteria to be used will be fair and robust in application and will vary with each redundancy exercise; however, they may consist of skills, attendance record, discipline record and qualifications.

*Alternative work*

The organisation will make every reasonable effort to identify and offer suitable alternative work to those employees whom it proposes to make redundant. In the first instance, these employees will be notified of all existing vacancies when they are notified of their selection for redundancy. They will be given the opportunity to discuss these vacancies with the relevant manager(s). Further meetings may be necessary for the employee and relevant manager(s) to explore the individual’s suitability. Any offer of suitable alternative work which is accepted by the employee will be subject to a statutory trial period of four weeks.

If the new position is subsequently deemed unsuitable by the organisation the employee’s employment will be terminated at the end of the trial period. S/he will receive a statutory redundancy payment based on the date on which their original job became redundant. In these circumstances, should another suitable alternative job be available, the employee will be offered that job and be subject to a further trial period of four weeks.

Should the organisation consider a vacancy to be suitable as an offer of alternative work, but the employee unreasonably refuses that offer, or, having taken up the offer resigns that position before the end of the trial four week period, the employee will forfeit their right to a statutory redundancy payment.

Any period of four weeks may be extended by the organisation because of the need for re-training without affecting the employee’s right to a statutory redundancy payment.

The organisation reserves the absolute right to make a decision about the employee’s termination of employment.

Special consideration will be given to providing suitable alternative work for those on maternity leave on the date of their proposed redundancy dismissal.

The duty of the organisation to seek suitable alternative work for redundant employees will continue up to and including the date of the employee’s termination of employment.

The organisation reserves the right to select the best candidate for any job where there is more than one suitable candidate and may apply appointment selection criteria. During any period of redundancies the organisation will ‘ring-fence’ any vacancies as being open only to internal candidates unless there are circumstances where it reasonably believes there are no suitable internal candidates.
Time off to look for work/undergo training

Any employee under notice of redundancy dismissal who has at least two years’ continuous service will be granted reasonable time off to look for alternative work with another employer. This will also include reasonable time off to attend interviews or to undergo training for alternative work. Appropriate time off will be arranged with the employee’s line manager.

Support for redundant employees

The organisation will make every reasonable attempt to support any employee who is made redundant. Statutory redundancy payments

Those employees with two or more years’ continuous service with the organisation will be entitled to receive a statutory redundancy payment. This will be calculated according to their age, length of service and final gross weekly pay subject to the statutory maximum (based on the maximum rate of a week’s pay at the time of the redundancy dismissal).

Notice and termination of employment

The organisation may decide to waive its right for the redundant employee to work his or her contractual notice.

If this situation is brought about by the organisation a payment in-lieu of notice (PILON) will be made.

Depending upon whether there is a PILON clause in the employee’s employment contract, the payment will be made free of income tax and National Insurance contributions up to a sum of £30,000.

If this situation is brought about by the employee the organisation will consider whether it is prepared to agree to a shorter notice period. The employee may serve statutory counter notice. It is normal practice for the organisation to accept such notice, unless there are exceptional circumstances.

6.1.13 Retirement Policy

Introduction

The purpose of this policy is to set out the organisation’s approach to the retirement of employees. It should be used where the organisation does not use an employer justified retirement age and employees may choose when they retire. Further guidance on this area is included in the management guidance section.

Retirement age

The organisation does not operate a compulsory retirement age for its employees.

The organisation is committed to equal opportunities for all its employees. The organisation recognises the contributions of a diverse workforce, including the skills and experience of older employees. It believes that employees should, wherever possible, be permitted to continue working for as long as they wish to do so.

The organisation operates a flexible retirement policy and employees may voluntarily retire at a time of their choosing.

Retirement procedure

If an employee has decided that he/she wishes to retire, he/she should inform their manager in writing as far in advance as possible and, in any event, in accordance with his/her notice period as set out in his/her contract of employment. This will assist the organisation with its succession planning.

The organisation will write to the employee acknowledging the employee’s notice to retire.

The organisation will arrange a meeting with the employee to discuss arrangements for retirement, including the intended retirement date, succession and handover plans, pension details and phased retirement, if applicable.
NB: Employees should consider their pension provision and take independent financial advice before making any decision in relation to retirement.

6.2 Letters, Flow Charts and Checklist

NOTE: If you are viewing this book in electronic form, please click on the title to open a copy of the document.

- 6.2.1 Sample Disciplinary Letters for the Employer
- 6.2.2 Sample Grievance Letters for the Employer
- 6.2.3 Format for Investigative Interview Notes
- 6.2.4 Disciplinary Misconduct Flowchart
- 6.2.5 Formal Grievance Flowchart
- 6.2.6 Redundancy Checklist
- 6.2.7 Capability Procedure
- 6.2.8 Letter to confirm informal performance meeting
- 6.2.9 Performance Improvement Plan
- 6.2.10 Sample Capability Letters for Employers
7 Family Friendly Guidance

7.1 Management Guidance

7.1.1 What is meant by Family Friendly workplace practices?

The Organisation for Economic Co-operation and Development (OECD) defines family-friendly workplace arrangements as ‘those practices that facilitate the reconciliation of work and family life, and which firms introduce to complement statutory requirements. Family-friendly arrangements include: extra-statutory leave from work arrangements; employer-provided childcare, OSH-care, and elderly care supports and flexible working time arrangements.’

7.1.2 Part-time Workers

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 gives part-time workers the right not to be treated less favourably than full-time employees with regard to their terms and conditions of employment. This means that part-time workers not only have the same statutory rights as full-time workers but also the same contractual rights, for example, to be paid the same hourly rate as full-time workers, to be given the minimum of 5.6 weeks paid pro-rata statutory annual leave entitlement, to be given the same training and development opportunities as a full-time employee.

7.1.3 Pregnant Employees

Employees have the right not to suffer unfair treatment at work on the grounds of pregnancy. All pregnant employees are entitled to paid time off for antenatal care, which includes not only medical examinations, but also relaxation and parent craft classes. These rights apply regardless of the employee’s length of service or hours of work.

7.1.4 Maternity Leave

Regardless of length of service and hours worked, a pregnant employee is entitled to take 26 weeks’ ordinary maternity leave (OML) followed immediately by 26 weeks’ additional maternity leave (AML). The employee must notify her employer in writing no later than the end of the 15th week before her expected week of childbirth (EWC) and provide the following information:

- Inform the employer that she is pregnant
- The expected week in which the child is due (EWC). (The employee will be provided with a certificate called a MAT B1 form from her midwife this form states the EWC and should be passed to the employer.)
- When the employee wants the maternity leave to start (this date cannot be earlier than the 11th week before the EWC)

Once the employer has been correctly notified of the date on which an employee intends to begin her maternity leave the employer must respond in writing within 28 days, informing her of the date on which her maternity leave will end. The employee must give 8 weeks’ notice if she wishes to change the return date.

If a woman is absent from work for a pregnancy-related illness in the four-week period before her expected week of childbirth maternity leave will automatically commence.

During both ordinary and additional maternity leave, employees are entitled to all terms and conditions of employment that would have applied if they had not been absent, except for the terms and conditions regarding remuneration.

Employers are legally obliged to take account of health and safety risks to women who are pregnant, women who are breast feeding and women who have given birth in the last six months. If a risk cannot be avoided, the employer must offer suitable alternative work if it is available or, if not, suspend the employee on full pay for as long as
necessary to protect her health and safety. Employers and pregnant employees should also note that all women are obliged to take at least two weeks after the birth, beginning with the date of the birth, before returning to work. It is a criminal offence to allow a woman to return to work during this period. Further information and help on maternity rights can be sought from the ACAS helpline or the Revenue and Customs helpline for employers.

**Keeping in Touch Days**

Employees are entitled to work for up to 10 days during their maternity leave without affecting eligibility for Statutory Maternity Pay. These days could be for training, or just ‘keeping in touch’. Any work carried out on a day constitutes one days’ work. This means that if an employee attends a two hour meeting this will count as one of the ten Keeping In Touch days available.

**Statutory Maternity Pay**

If the employee has at least 26 weeks’ service at the start of the 15th week before the EWC and has average weekly earnings at least equal to the lower earnings limit for National Insurance contributions they will be entitled to receive statutory maternity pay (SMP).

Maternity pay is payable at two rates for a maximum of 39 weeks. For the first six weeks of absence the employee will be paid at the higher rate of 90% of the employee’s average earnings. After this time the employee will be paid at the lower statutory rate which is in force at the time.

If the employee does not qualify for maternity pay they may be able to claim maternity allowance. Visit [www.direct.gov.uk](http://www.direct.gov.uk)

**7.1.5 Paternity Leave and Pay**

An employee who is the biological father of a child, or the mother’s husband, civil partner or partner, and who has been continuously employed for 26 weeks by the end of the 15th week before the child’s expected week of birth will qualify for the right to ordinary paternity leave. An employee who qualifies for ordinary paternity leave may elect to take either one week’s leave or two consecutive weeks’ leave. There is no provision in the legislation for employees to take their ordinary paternity leave in instalments. Employees taking ordinary paternity leave will qualify for statutory paternity pay during their absence if they have average weekly earnings equal to or greater than the current lower earnings limit for national insurance contributions purposes.

The Additional Paternity Leave Regulations 2010 gives additional paternity rights to fathers of children due on or after 3 April 2011. An employee who qualifies for additional paternity leave may elect to take up to 26 weeks' additional paternity leave within the first year of the child’s life provided that the mother has returned to work. The earliest that additional paternity leave can commence is 20 weeks after the date the child was born.

**7.1.6 Parental Leave**

Employees are entitled to take up to 18 weeks unpaid leave. Parental Leave can be taken any time before the child’s 18th birthday.

**7.1.7 Adoption**

An employee who has adopted a child, or who is one of a couple who have jointly adopted a child, has the qualified right to take up to 26 weeks’ ordinary adoption leave, followed immediately (unless the child’s placement has already been disrupted) by up to 26 weeks’ additional adoption leave. If the child’s placement ends during the adoption leave, the employee may elect to remain on adoption leave for up to eight weeks after the end of the placement.

To qualify for adoption leave, an employee must:

- be matched with a child for adoption by an approved adoption agency, or be one of a couple who have been jointly matched with a child for adoption;
- have been continuously employed by his or her employer for 26 or more weeks by the end of the week in which he or she is notified of being matched with a child for adoption; and
- have notified the agency that he or she agrees that the child should be placed with him or her for adoption and on the date of placement.
The right to adoption leave is available to one member only of a couple who have had a child placed with them for adoption. It is up to the adoptive parents to decide which of them takes the adoption leave. The partner of an individual who adopts, or the other member of a couple who are adopting jointly, may, however, be entitled to a period of paid paternity leave.

### 7.1.8 Flexible Working

Section 47 of the Employment Act 2002 entitles parents to request flexible working practices from their employer, if qualifying conditions are met. However, there is no guaranteed right to work flexibly, but employers must seriously consider requests for flexible working and provide sufficiently good reasons if they refuse. An employee can request a change in working conditions, for example, hours of work, the times required to work, where required to work, to enable him or her to care for a child under seventeen, or under eighteen if disabled, if the qualifying conditions are met. In making such a request the employee must:

- make it clear that it is a request to change working conditions
- explain why he/she is eligible
- explain the effects on the employer
- propose how the employer deals with the effects.

On receipt of a request under this provision, employers must consider it in accordance with specified procedural regulations. The request can be refused, but it should be noted that the employee has the right of appeal against a negative decision.

### 7.1.9 Time off for Dependents

This right allows employees to take a reasonable amount of time off work to deal with unexpected or sudden emergencies that befall their dependants and to make any longer term arrangements that might be necessary. Dependents are a spouse, a partner, children or parents of the employee. It also includes someone who reasonably relies on the employee for assistance, for example, this may be where the employee is the primary carer or is the only person who can help in an emergency. While the legislation does not specify the length of time off that is reasonable, in most cases one or two days should be sufficient to deal with the problem, but in some instances it could be longer.

Employees are entitled to this right from day one of starting a job. The right does not include an entitlement to pay, so whether or not an employee is paid is left up to the employer’s discretion or is included as part of the contractual conditions of employment between them.

Circumstances that might be covered include:

- if a dependant falls ill, or has been injured or assaulted
- making longer term care arrangements for a dependant who is ill or injured
- dealing with a death of a dependant
- dealing with unexpected disruption or breakdown of care arrangements for a dependant
- dealing with an unexpected incident involving the employee’s child during school hours.

### 7.2 Maternity Policy for Pregnant Employees

This policy sets out the statutory rights and responsibilities of employees who are pregnant or have recently given birth.

**Maternity Leave**

When you receive medical confirmation that you are pregnant, you should notify your manager of this, the expected week of childbirth (EWC) and the date on which you want or expect to begin maternity leave (which must not be a date earlier than the 11th week before the EWC). The medical practitioner responsible for your maternity care will provide you with a form MATB1 after your 20th week of pregnancy. This should be passed to your manager.
As soon as practicable after the notification of your pregnancy, arrangements will be made for you to meet with your manager. This will be an informal interview, the purpose of which is to ensure that:

- you understand your right to ordinary maternity leave and additional maternity leave, including the requirements for you to give appropriate notice
- the right to return to work after maternity leave is explained, together with any potential opportunities for flexible working
- arrangements for time off are known, and any possible health and safety concerns are discussed
- you know your entitlements to payment during maternity leave.

Arrangements for cover during the period of maternity leave and for enabling you to keep in touch with any developments at work are important for ensuring smooth transitions at each stage. Before starting maternity leave you will be informed of the arrangements for covering your work and also for remaining in contact whilst you are on leave. These arrangements will be finalised in consultation with you. If you have staff reporting to you, we will try to involve you in all decisions relating to the temporary reporting arrangements to cover your maternity leave.

You have the right to return to your own job after ordinary maternity leave or to a suitable alternative one if this is not practicable after your additional maternity leave.

**Time off for ante-natal care**

You are entitled to take time off during your normal working hours to receive ante-natal care. You should try to arrange your appointments at the start or end of your working day, whenever possible. Ante-natal care includes:

- appointments with your GP
- hospital clinics
- relaxation classes.

You may be required to produce an appointment card or some other document confirming all appointments other than the first. You should advise your manager that you will be absent as far in advance of your appointment as possible.

There will be no deduction from your salary for attendance at authorised ante-natal appointments, including any time spent travelling to and waiting for the appointment.

**Ordinary maternity leave (OML)**

You are entitled to take 26 weeks’ ordinary maternity leave, irrespective of your length of service or the number of hours worked each week, provided you comply with certain notification requirements (see below).

**Additional maternity leave (AML)**

If you qualify for ordinary maternity leave you will also qualify for AML. This is a further 26 week period that starts the day after your OML ends.

**Compulsory maternity leave**

Legislation prohibits you from returning to work during the two week period (four weeks if you work in a factory) immediately after the birth of your child.

**When does your maternity leave start?**

You can choose to start your maternity leave at any time after the start of the 11th week before the week in which your child is due, up until the birth of your child. The only exception to this is if you are absent from work wholly or partly because of your pregnancy at any time after the start of the fourth week before your child is due. In this case the company reserves the right to require you to start your maternity leave on the first day after your absence.

If you have properly notified the company (see below) of the date on which you wish to start your maternity leave, you may vary that date provided you notify in writing to your line manager of the variation at least 28 days before the new date.
Notification requirements

No later than the end of the 15th week before the expected week of childbirth (EWC) you must give notice in writing addressed to your line manager. That notice must state:

- that you are pregnant
- the week in which your child is due (note that for these purposes a week begins on a Sunday).
- when you want your maternity leave to start; this date cannot be earlier than the 11th week before the EWC.

You should enclose a Form MAT B1 signed by your GP or midwife with your letter which confirms the EWC.

As stated above, if you are absent from work wholly or partly because of pregnancy on the first day after the beginning of the fourth week before the EWC, your ordinary maternity leave will start the following day. You do not need to notify your line manager that you intend maternity leave to start, but you will not be entitled to OML unless you have notified your line manager as soon as is reasonably practicable that you are absent from work wholly or partly because of pregnancy and the date your absence began. Such notification must be in writing.

Similarly, if you give birth before your ordinary maternity leave has started, your OML period will begin on the day that follows childbirth. Again, in such circumstances you do not need to notify your line manager of the date on which you intend to start your OML period, but you are not entitled to OML unless you have notified your line manager as soon as is reasonably practicable that you have given birth and the date on which birth occurred. Such notification must be in writing.

If you notify your line manager of your intended start date or that your ordinary maternity leave period has been triggered due to premature absence or premature childbirth, we will notify you, in writing:

- of the date on which your ordinary maternity leave period will end
- of the date your additional maternity leave period will end.

The above notification will be given to you where we have been notified of:

- the intended start date, or that it has been triggered by premature absence or premature childbirth within 28 days from the date on which the company received the notification
- a variation, within 28 days of the date on which your ordinary maternity leave period started.

Stillbirth

The definition of childbirth is the birth of a child either living or dead, after 24 weeks of pregnancy. If you suffer a stillbirth you have the right to maternity leave.

Returning from maternity leave

You have the automatic right to come back to work following maternity leave and it is assumed that you will return unless you state otherwise. Although you are not required to give any formal notice of returning to work it helps us to plan for your return if you contact us in advance to discuss your return.

If you wish to return to work before your maternity leave has ended you must give at least eight weeks’ notice of the date on which you intend to return.

Maternity pay

If you have at least 26 weeks’ service at the start of the 15th week before your child is born you will normally be entitled to receive statutory maternity pay (SMP) whether or not you intend to return to work.

Maternity pay is payable at two rates for a maximum of 39 weeks. For the first six weeks of absence you will be paid at the higher rate of 90% of your average earnings. After this time you will be paid at the lower statutory rate which is in force at the time.

To be entitled to maternity pay, you must follow the notification procedure outlined in this policy.
Your maternity pay will be paid into your bank account on the same date that you would have received your salary and will be subject to the usual deductions for tax, National Insurance and where applicable pension contributions.

If you do not qualify for maternity pay you may be able to claim state maternity allowance.

**Contractual benefits**

You will continue to receive your contractual benefits during your ordinary maternity leave period and your additional maternity leave period (apart from remuneration).

**Holidays**

While you are on ordinary and additional maternity leave your contractual holiday entitlement and your statutory holiday entitlement under the Working Time Regulations continue to accrue.

**Health and safety**

If you are employed in a position which has been identified as posing a risk to your health or that of your unborn child, you will be notified immediately, and arrangements will be made to eliminate that risk.

For this reason you are required to notify your line manager as soon as you are aware that you are pregnant. Arrangements will then be made to alter your working conditions or, if this is not possible, you will be offered a suitable alternative job for the duration of your pregnancy.

If there is no alternative work we reserve the right to suspend you on full pay until you are no longer at risk. These alternative arrangements may continue for six months after the birth of your child if you are still considered to be at risk.

If you have any concerns about your own health and safety at any time, you should consult your line manager immediately.

**Returning to work**

If you return to work immediately after a period of ordinary maternity leave, you will return to work in the same job that you left. If, for health and safety reasons, you were doing a different job while you were pregnant, you may be required to return to that different job for a short time if you are still at risk when you return to work.

If you return to work from a period of additional maternity leave you will be entitled to return to the job in which you were employed before your absence. If that is not reasonably practicable for the company, then you will return to another job which is both suitable and appropriate in the circumstances.

Your right to return means that you return on terms and conditions no less favourable than those that would have been applied if you had not been absent and with the same level of seniority, pension rights and other similar rights.

If annual salary reviews occur during your period of absence, you will be notified of your reviewed salary at this time. You will receive your reviewed salary upon your return to work.

If you decide not to return to work, you should notify your line manager of your decision immediately. You must give notice in accordance with the terms of your contract.

**Keeping in touch days**

You are entitled to work for up to 10 days during your maternity leave without affecting your eligibility to SMP. These days could be for training, or just for ‘keeping in touch’. You are under no obligation to work these days, and your employer is under no obligation to offer you these days. Your employer will advise you if the opportunity for any such days arises.
7.3 Paternity Leave Policy

This policy sets out the leave that is allowed, and the associated arrangements. The policy deals with paternity leave.

Paternity leave following the birth of a child

You will be eligible for paternity leave and pay if you:

- are the father of the child or the husband or partner of the mother (including same-sex partner)
- have worked for the employer for a minimum of 26 weeks by the ‘notification week’ (ie the end of the 15th week before the expected week of childbirth (EWC)) or, for adoption paternity leave, by the end of the week in which the child’s adopter is notified of matching
- have or expect to have responsibility for the upbringing of the child if you are the father or
- expect to have the main responsibility for the upbringing of the child if you are the mother’s husband or partner but not the child’s father
- have given the correct notice.

Paternity leave following adoption

You will be eligible for paternity leave and pay on the adoption of a child if you:

- have or expect to have the main responsibility for the child’s upbringing
- are either married to or the partner of the child’s adopter
- have worked continuously for the company for 26 weeks ending with the week in which the child’s adopter is notified of having been matched with the child
- have given the correct notice and complied with any requirements to produce evidence.

Length of paternity leave

You can choose to take either one week or two consecutive weeks’ paternity leave (not occasional days or separate weeks). If the child is born before the EWC, paternity leave must be taken:

- within 56 days of that date or
- within 56 days of the actual date of birth of the child.

Only one period of leave will be available to you even if more than one child is born as the result of the same pregnancy, or you adopt more than one child.

Pay

During your paternity leave you may be entitled to statutory paternity pay (SPP) from the organisation. SPP will be at the rate which is in force at the time.

Paternity Leave Notice

Paternity leave following the birth of a child

You are required to inform your manager of your intention to take paternity leave in or before the 15th week before the EWC, unless this is not reasonably practicable. You will need to inform your manager in writing of:

- the week the baby is expected
- whether you wish to take one or two weeks’ leave
- when you want the leave to start.

You must inform the organisation, in writing, as soon as is reasonably practicable after the child’s birth, of the date on which the child was born.

You may be required to give your line manager a signed declaration that you wish to take paternity leave to care for a child or support the child’s mother and that you satisfy the eligibility criteria as set out at the beginning of this policy.
If you have given notice of your intention to take paternity leave and wish to change the date that your paternity leave begins, you must give written notice 28 days before the new period of leave is due to start.

**Paternity leave following the adoption of a child**

You must inform the organisation of your intention to take paternity leave no more than seven days after the date on which the adopter is notified of having been matched with the child. If that is not reasonably practicable, you must notify your employer as soon as possible. You will need to specify:

- the date on which the adopter was notified of having been matched with the child
- the date on which the child is expected to be placed with the adopter
- whether you wish to take one or two weeks’ leave
- when you want the leave to start.

**Contractual benefits**

You are entitled to your normal terms and conditions of employment, except for terms relating to remuneration throughout your paternity leave. You may however be entitled to SPP for this period. You will continue to remain bound by any obligations arising under your contract of employment.

**Return to work after paternity leave**

You are entitled to return to the same job following no more than two weeks’ paternity leave.

You have the right to return:

- with your seniority, pension rights and similar rights
- on terms and conditions not less favourable than those which would have applied if you had not been absent.

You will not be subject to any detriment by the company because you took or sought to take paternity leave.

### 7.4 Shared Parental Leave Policy

**Introduction and Scope**

Shared parental leave is a type of leave available to parents of babies due on or after 5 April 2015. This policy also applies where a child is adopted on or after 5 April 2015.

Shared parental leave enables mothers to commit to ending their maternity leave or adoption leave and pay at a future date and to share the untaken balance of leave and pay as shared parental leave (SPL) with their partner or return to work and opt into shared parental leave at a later date.

The provisions of the shared parental leave policy are complex therefore if you have any questions please raise these with your manager.

This policy sets out:

- The definitions under this shared parental leave policy
- Scope of the policy
- The amount of shared parental leave available
- Who is eligible to take shared parental leave
- Requesting shared parental leave
- The amount of leave available
- The employment rights during the leave
- Options for contact during the leave
Definitions

This policy refers to the following terms and abbreviations:

- **SPL**: Shared Parental Leave
- **Mother**: The woman who gives birth to a child or the adopter (the adopter means the person who is eligible for adoption leave and/or pay. They can be male or female)
- **Partner**: The father of the child, or the person who, at the date of the child's birth, is married to, the civil partner of, or the partner of the mother. This includes someone, of either sex, who lives with the mother and the child in an enduring family relationship but who is not the mother's child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew.
- **Expected Week of Childbirth (EWC)**: The week, starting on a Sunday, during which the mother's doctor or midwife expects her to give birth.
- **SSPP**: Statutory Shared Parental Pay
- **SPLIT day**: Shared Parental Leave In Touch Day

Scope of the SPL Policy

This policy applies to employees of the organisation, they may be the mother or the partner of any baby due on or after 5 April 2015.

If you are the mother then you must ensure your partner (where relevant) submits any notifications to take SPL to their own employer if they wish to take a period of SPL.

If you are the partner who is employed by the organisation, the mother must submit any notifications to her employer if she wishes to take a period of SPL.

The mother and the partner should ensure that they are each liaising with their own employer to ensure that requests for shared parental leave are handled as smoothly as possible.

Amount of SPL available

The amount of SPL available will depend on when the mother of the baby brings her maternity or adoption leave period to an end.

The first two weeks following the birth are known as compulsory maternity leave and this time can only be taken by the mother. This means that the mother cannot bring her maternity leave to an end and take SPL until two weeks after the birth. The maximum period that parents can take as SPL is 50 weeks between them (in practice this leave is likely to be less as the mother may use some of her maternity leave weeks before the birth of the baby). SPL leave must be taken within the 52 weeks of the birth.

SPL must be taken in blocks of at least one week and you can request to take SPL in one continuous block or you can make a request to take SLP as a number of discontinuous blocks. Further details of requesting SLP are provided in this policy.

Eligibility for SPL

For employees to be eligible to take shared parental leave, both parents must meet certain eligibility requirements.

The mother is eligible for shared parental leave if she:

- has at least 26 weeks’ continuous employment ending with the 15th week before the expected week of childbirth and remains in continuous employment with the organisation until the week before any period of shared parental leave that she takes;
- has, at the date of the child's birth, the main responsibility, apart from the partner, for the care of the child;
- is entitled to statutory maternity leave in respect of the child; and
- complies with the relevant maternity leave curtailment requirements (or has returned to work before the end of statutory maternity leave), and shared parental leave notice and evidence requirements.
In addition, for the mother to be eligible for shared parental leave, the partner must:

- have been employed or been a self-employed earner in at least 26 of the 66 weeks immediately preceding the expected week of childbirth;
- have average weekly earnings of at least the maternity allowance threshold for any 13 of those 66 weeks; and
- have, at the date of the child’s birth, the main responsibility, apart from the mother, for the care of the child.

The partner is eligible for shared parental leave if he/she:

- has at least 26 weeks’ continuous employment ending with the 15th week before the expected week of childbirth and remains in continuous employment with the organisation until the week before any period of shared parental leave that he/she takes;
- has, at the date of the child’s birth, the main responsibility, apart from the mother, for the care of the child; and
- complies with the relevant shared parental leave notice and evidence requirements.

In addition, for the partner to be eligible for shared parental leave, the mother must:

- have been employed or been a self-employed earner during at least 26 of the 66 weeks immediately preceding the expected week of childbirth
- have average weekly earnings of at least the maternity allowance threshold for any 13 of those 66 weeks;
- have, at the date of the child’s birth, the main responsibility, apart from the partner, for the care of the child;
- be entitled to statutory maternity leave, statutory maternity pay or maternity allowance in respect of the child; and
- comply with the relevant maternity leave or pay curtailment requirements (or have returned to work before the end of statutory maternity leave).

Notification requirements for SPL

The notification that the mother and the partner must give to the relevant employer to be able to take SPL are made up of 3 parts. They are:

- a “maternity leave curtailment notice” from the mother setting out when she proposes to end her maternity leave (unless the mother has already returned to work from maternity leave);
- a “notice of entitlement and intention” from the employee giving an initial, non-binding indication of each period of shared parental leave that he/she is requesting; and
- a “period of leave notice” from the employee setting out the start and end dates of each period of shared parental leave that he/she is requesting.

The notice periods set out in this policy show the minimum notice required by law. However, if you can provide notification further in advance this will aid the organisation in planning and accommodating requests for discontinuous leave.

If you have already decided on the pattern of SPL that you would like to take then you can provide all notifications at the same time.

Mother’s notice curtailing maternity leave

Before the mother or partner can take SPL, the mother must either return to work before the end of her maternity leave (by giving the required eight weeks’ notice of her planned return) or provide her employer with a maternity leave curtailment notice. The maternity leave curtailment notice must be in writing and state the date on which maternity leave is to end. That date must be:

- after the compulsory maternity leave period, which is the two weeks after birth;
- at least eight weeks after the date on which the mother gave the maternity leave curtailment notice to her employer; and
- at least one week before what would be the end of the additional maternity leave period.

The mother must provide her maternity leave curtailment notice at the same time she provides either her notice of entitlement and intention or a declaration of consent and entitlement signed by the mother confirming that her partner has given his/her employer a notice of entitlement and intention.
The mother can only withdraw the notice curtailing her maternity leave in limited circumstances.

**Employee’s notice of entitlement and intention**

If you would like to request a period of SPL, whether the mother or the partner, you must provide the organisation with a non-binding notice of entitlement and intention. Your notice of entitlement and intention must be in writing and provided at least eight weeks before the start date of the first period of SPL to be taken.

You must set out the following information:

If you are the mother:

- your name;
- your partner’s name;
- the start and end dates of any statutory maternity leave taken or to be taken by you;
- the total amount of shared parental leave available;
- the child’s expected week of birth and the child’s date of birth;
- how much shared parental leave the you and your partner each intend to take; and
- a non-binding indication as to when the you intend to take SPL (including the start and end dates for each period of leave).

Your notice of entitlement and intention must include a declaration signed by her that:

- you satisfy, or will satisfy, the eligibility requirements to take SPL;
- the information given in the notice of entitlement and intention is accurate; and
- you will immediately inform the organisation if you cease to care for the child.

In addition, your notice of entitlement and intention must include a declaration signed by your partner:

- specifying the partner’s name, address, and national insurance number;
- declaring that the partner satisfies, or will satisfy, the conditions set out above (see eligibility for SPL);
- declaring that the partner is the father of the child, or is married to, the civil partner of, or the partner of, the mother;
- declaring that the partner consents to the amount of leave that the you intend to take; and
- declaring that the partner consents to the employer processing the information in the partner’s declaration.

If you are the partner. Your notice of entitlement and intention must set out:

- your name;
- the mother’s name;
- the start and end dates of any periods of statutory maternity leave, statutory maternity pay or maternity allowance taken or to be taken by the mother;
- the total amount of SPL available;
- the child’s expected week of birth and the child’s date of birth;
- how much SPL the you and the mother each intend to take; and
- a non-binding indication as to when the you intend to take SPL (including the start and end dates for each period of leave).

The partner’s notice of entitlement and intention must include a declaration signed by the partner that:

- you satisfy, or will satisfy, the eligibility requirements to take SPL;
- the information given by the partner in the notice of entitlement and intention is accurate; and
- you will immediately inform the organisation if you cease to care for the child or if the mother informs you that she no longer meets the requirement to have curtailed her maternity leave or pay period.

In addition, the partner’s notice of entitlement and intention must include a declaration signed by the mother:

- specifying the mother’s name, address, and national insurance number;
- declaring that the mother satisfies, or will satisfy, the conditions set out above (see eligibility criteria) and she will notify the partner if she no longer qualifies for maternity leave, statutory maternity pay or maternity allowance;
• declaring that the mother consents to the amount of SPL that the partner intends to take;
• declaring that she will immediately inform the you if she no longer meets the requirement to have curtailed her maternity leave or pay period; and
• declaring that the mother consents to your employer processing the information in the mother’s declaration.

Within 14 days of receiving a notice of entitlement and intention from you (whether you are the mother or the partner) the organisation can request from you:

• a copy of the child’s birth certificate
• the name and address of the other parent’s employer (or a declaration that the other parent has no employer).

You will have 14 days from the date of the request to send the organisation the required information.

**Variation or cancellation of notice of entitlement and intention**

The employee can vary or cancel his/her proposed SPL dates following the submission of a notice of entitlement and intention, provided that he/she provides the organisation with a written notice. The written notice must contain specified information. You should speak to a manager for more details.

**Employee’s period of leave notice**

If you meet the eligibility criteria and you would like to take a period of SPL you must provide the organisation with a written notice setting out the start and end dates of each period of SPL. The organisation must be given at least eight weeks’ notice before the start date of the first period of shared parental leave. This notice can be given at the same time as a notice of entitlement and intention. This notice can be for either continuous or discontinuous periods of leave.

**Continuous Period of Shared Parental Leave**

If you are eligible and you follow the correct notification procedure and submit a request for a period of SPL which is in one continuous period you will be entitled to take that period of leave.

**Discontinuous Period of Shared Parental Leave**

You can submit a request for up to three periods of discontinuous SPL. The organisation will respond to the request within two weeks of the date that the request was submitted.

The employer has the following options:

• Consent to the pattern of leave requested;
• Propose an alternative pattern of SPL; or
• Refuse the pattern of discontinuous SPL requested.

A meeting will take place between you and a manager to discuss the request for SPL to discuss the request. If no agreement can be reached within two weeks of the date of the request then you will be entitled to take the leave as one continuous block of SPL.

You must choose to start SLP on a date that is at least eight weeks from the date on which the period of leave notice was originally given. You must notify the organisation within five days of the end of the two week discussion period of the date they intend to start the continuous period of SPL.

If the organisation has refused the request and no agreement has been reached within the two week discussion period you have the option to withdraw your request for SPL.

**Statutory Shared Parental Pay (SSPP)**

Statutory shared parental pay is available for eligible parents to share between them while on SPL. The number of weeks SSPP available will depend on how much statutory maternity pay or maternity allowance the mother has been paid when her maternity leave ends.
Rights during Shared Parental Leave

During the period of SPL all terms and conditions of employment (except normal pay) will continue.

Annual Leave during Shared Parental Leave

You will continue to accrue annual leave while on SPL.

Contact during Shared Parental Leave

The Company reserves the right to maintain reasonable contact with you during SPL. You can agree to work for up to 20 days during the period of SLP. This will not bring the period of SPL to an end. These are known as “Shared Parental Leave In Touch Days” SPLIT days.

Returning to Work after Shared Parental Leave

When you return to work after a period of SPL you are entitled to return to the same job if the period of leave is 26 weeks or less. Where the leave has exceeded 26 weeks the organisation will allow you to return to the same job unless it is not reasonably practical. In this case you will be offered a suitable and appropriate job on terms and conditions that are no less favourable.

7.5 Parental Leave Policy

The parental leave policy sets out the support available to employees with children aged 18 years old.

Entitlement

You are entitled to unpaid parental leave of a maximum of 18 weeks for each child. You also have the right to return to the same job or (if more than four weeks’ leave is taken) to a similar job with the same terms and conditions. Both natural and adoptive parents may exercise these rights.

Before taking parental leave

As soon as practicable after you have notified us that you intend to take parental leave, arrangements will be made for you to have an informal interview, with your line manager to discuss the following:

• you understand your rights to parental leave and the requirements to give appropriate notice (see below)
• the right to return to work is explained, together with any potential opportunities for flexible working
• arrangements for time off are known, and any possible health and safety concerns are discussed
• you are aware that the leave from work is unpaid.

Notice

Once you have given your employer notice of your intention to take parental leave, you must comply with any request to produce evidence of your entitlement. Leave must be taken in blocks of one week. If the child qualifies for a disability living allowance, however, the leave can be taken as single days or multiples of a day.

The notice given must specify your intention to take parental leave and the dates on which the period of leave is to begin and end.

Notice must be given 21 days before the date on which the leave is to begin.

If the operation of the business will be unduly disrupted by the parental leave, it may be postponed if absolutely necessary.

You are not entitled to parental leave unless you have complied with the request to produce evidence of your entitlement. In certain circumstances, your employer is entitled to postpone a period of parental leave.
Effective Employment Practice

The type of evidence that your employer may request should show:

- your responsibility or expected responsibility for the child in respect of whom you propose to take parental leave
- the child’s date of birth, or in the case of a child who was placed with you for adoption, the date on which the placement began, and
- in the case where your entitlement depends on whether the child is entitled to disability living allowance (ie after the child’s fifth birthday or for a period less than a week), the child’s entitlement to that allowance.

No request will be made unless it is reasonable.

**During parental leave**

Arrangements will be made for cover of your workload, and you will be kept in touch with any important work developments.

You are bound during the parental leave period by your implied obligation to the organisation of good faith and specific terms relating to:

- notice
- disclosure of confidential information
- acceptance of gifts
- whether you are participating in any other business.

The disciplinary and grievance procedures continue to apply, as does any entitlement to compensation for redundancy.

**Returning to work**

If the period of leave is four weeks or less, you have the right to return to the same job. If the period is more than four weeks (because it followed on from other statutory leave), then the right is to return to the same job. If that is not practicable, you have the right to return to a similar job which has the same terms and conditions as the old job.

If you are entitled to return to the same job, that means a right to return with the seniority, pension rights and similar rights, and on terms and conditions not less favourable than those which would have been applied if you had not been absent.

You will not to be subjected to any detriment by the company for taking or requesting parental leave.

### 7.6 Adoption Leave Policy

**Policy statement**

Every effort is made to support employees who are engaged in the process of adopting a child. This policy sets out the procedures that should be followed to ensure a smooth handover at the start and end of adoption leave.

**Adoption Leave**

As soon as practicable after the notification that you will be adopting a child, arrangements will be made for you to meet with your manager. This will be an informal interview, the purpose of which is to confirm that:

- your right to ordinary and additional adoption leave is understood, including the requirements to give appropriate notice
- the right to return is explained, together with any potential opportunities for flexible working arrangements
- arrangements for time off are known, and any possible health and safety concerns are discussed
- you know your entitlements to payment during adoption leave.
We recognise that orderly arrangements for cover during the period of adoption leave, and also for enabling you to keep in touch with any developments at work are important for ensuring smooth transitions at each stage. Before the start of adoption leave, you will be informed of the arrangements for covering your work and also for remaining in contact whilst you are on leave.

These arrangements will be finalised in consultation with you as far as possible. If you have staff reporting to you, you will be involved in all decisions relating to the temporary reporting arrangements to cover your adoption leave.

At least two weeks before you are due to return to work, you will be invited for an informal meeting with your line manager. This is in order to discuss any material points concerning your return to work. These include:

• updating you on developments at work
• providing you with the opportunity of indicating whether you wish to be considered for flexible working arrangements

The right to adoption leave

Adoption leave and pay will be available to:

• employees who adopt
• one member of a couple where the couple adopt jointly. In this case, the couple may choose which partner takes adoption leave.

Qualification

To qualify for adoption leave you must:

• be newly matched with a child for adoption by an approved adoption agency; this right will not therefore apply to step-parents adopting a stepchild
• have been employed continuously by the organisation for 26 weeks leading into the week in which you are notified of being matched with a child for adoption.

Length of leave

You are entitled to up to 26 weeks’ ordinary adoption leave followed immediately by up to 26 weeks’ additional adoption leave (presuming you qualify for the leave). This gives you a maximum of 52 weeks’ leave in total. When can adoption leave start?

Adoption leave can start:

• from the date of the child’s placement (whether this is earlier or later than expected) or
• from a fixed date which can be up to 14 days before the expected date of placement.

Adoption pay

Employees who qualify for adoption leave will also qualify for statutory adoption pay provided that their average weekly earnings are not less than the lower earnings limit for national insurance contributions. Statutory adoption pay is payable for up to 39 weeks at a rate set by the Government for the relevant tax year, or at 90% of the employee’s average weekly earnings, if this figure is lower than the Government’s set weekly rate.

Statutory adoption pay is treated as earnings and is therefore subject to PAYE and national insurance deductions.

Notification

You are required to inform your line manager in writing of your intention to take adoption leave within seven days of being notified that you have been matched with a child for adoption, unless this is not reasonably practicable. You will need to state:

• when the child is expected to be placed with you and
• when you want your adoption leave to start.
You will also have to provide us with a ‘matching certificate’ from the adoption agency.

You can change your mind about the date you want to start your adoption leave, but will have to inform your line manager at least 28 days in advance, unless this is not reasonably practicable.

We will write to you within 28 days of receiving your notice, setting out the date on which we expect you to return to work if the full entitlement to adoption leave is taken.

**Contractual benefits**

You will continue to receive your contractual benefits during your ordinary adoption leave period and your additional adoption leave period (apart from remuneration).

**Holidays**

While you are on ordinary and additional adoption leave both your contractual holiday entitlement and your statutory holiday entitlement under the Working Time Regulations continue to accrue.

**Returning to work**

You have the right to resume working in the same job if returning to work from ordinary adoption leave. If you return to work after a period of additional adoption leave, you are entitled to return either to the same job, or if this is not reasonably practicable, to another suitable job that is on terms and conditions not less favourable.

You will not be subject to any detriment by the company because you took or sought to take adoption leave. If you wish to return to work before the end of your adoption leave period, you must give at least eight weeks’ advance notice in writing.

**Keeping in touch days**

You are entitled to work for up to 10 days during your adoption leave without affecting your eligibility to SAP. These days could be for training, or just for “keeping in touch”. You are under no obligation to work these days, and your employer is under no obligation to provide these days. Your employer will contact you if the opportunity for any such days arises.

**7.7 Flexible Working Policy**

Employees who have a minimum of 26 weeks’ continuous service and who have parental responsibility for a child under the age of 17 (under the age of 18 if the child is disabled) have the right to request flexible working and to have their request considered seriously by their employer.

Employees who have a minimum of 26 weeks’ continuous service and who have caring responsibilities for an adult aged 18 or over who is their spouse, partner or civil partner; a relative; or someone who lives at the same address also have the right to request flexible working.

A request for flexible working in this context can include a request for a change to the number of hours you work, a request for a change to the pattern of hours worked and a request to perform some or all of the work from your home.

Your employer will take all reasonable steps to accommodate your request for flexible working and will arrange a meeting with you within no more than 28 days of receiving your written request. The purpose of the meeting will be to discuss the changes proposed, the effects of the proposed changes and any possible alternative arrangements that might suit both parties.

Each request will be dealt with individually, taking into account the likely effects that the proposed changes to working hours or place of work are likely to have on the organisation. After consideration the organisation can refuse your request for flexible working.
Agreeing to one employee’s request will not therefore set a precedent or create a right for another employee to be granted a similar change to his/her working pattern.

If you wish to submit a request for flexible working you should do so in writing.

7.8 Checklist for Maternity Leave

- Issue maternity leave policy to staff.
- Employee informs employer she is pregnant.
- Carry out a risk assessment and take any necessary actions.
- Has the employee notified you of the pregnancy?
- Provide the MAT B1 form.
- Confirm when they want the maternity leave to start.
- Confirm the employee can take paid time off for ante-natal care.
- Confirm the employee’s entitlement to maternity pay.
- Plan how the employee will take their holiday entitlement.
- Maternity leave can start from the 11th week before the EWC.
- Discuss whether it is appropriate to plan in any Keeping in Touch days during the maternity leave (maximum of 10).
- Discuss with the employee when they plan to return from maternity leave (although employees are not required to give any formal notice of returning to work).
- Has the employee given appropriate notice of an early return to work?

7.9 Checklist for Paternity Leave

- Is the employee the father of the child or the husband or partner of the mother?
- Has the employee worked for the organisation for a minimum of 26 weeks at the notification week?
- Confirm that the employee can take one week or two consecutive weeks of paternity leave.
- Employee should notify the organisation in writing of their intention to take paternity leave.

The notification must include:

- Expected week of childbirth (EWC)
- Whether the employee wants to take 1 or 2 weeks paternity leave
- When they want the leave to start
- Confirm the pay the employee will be due during paternity leave.

Additional Paternity Leave (APL)

- Check the employee is eligible for APL.
- Check the baby was due on or after 3 April 2011
- The employee must give at least 8 weeks’ notice of their intention to take APL
- Employee must complete a self-certification to confirm their entitlement to take APL
- Confirm when APL can start and when it must end
- Confirm the Statutory Paternity Pay due
- Plan any Keeping in Touch days
- Discuss return to work after APL

7.10 Checklist for Flexible Working

Confirm the employee has 26 weeks service and is eligible to make a request for flexible working.
Confirm the employee has a child under the age of 17 (under the age of 18 for a child with a disability).

OR

- Confirm the employee has caring responsibilities for an adult over the age of 18.
- Ask the employee to submit a formal request for flexible working.
• Arrange a meeting with the employee within 28 days of receiving the request. Discuss the request.
• Within 14 days of the meeting write to the employee to confirm the outcome of the flexible working request.
• If appropriate amend the employee’s terms and conditions of employment with the new working pattern.

7.11 Sample Letter

NOTE: If you are viewing this book in electronic form, please click on the title to open a copy of the document.

7.11.1 Letter of confirmation from employer to employee who has notified their pregnancy
8 Associated Legislation

This section contains management guidance and policies on: Data Protection Act, Equality and Diversity, Anti-harassment and Bullying, Health and Safety, and associated legislation.

8.1 Associated Legislation

The following provides some background information to some of the associated legislation that employers need to comply with to meet their legal obligations as employers. However, it should be remembered that the law is subject to change and Early Years Scotland strongly advises employers to keep abreast of current and relevant legislation and to regularly check that they are complying in full with their legal obligations.

8.1.1 Data Protection Act

An organisation may have to register with the Information Commissioner’s Office if it holds personal information on computer, or manually stores personal information in such a way that specific information relating a specific individual is readily available. Information and advice on registration can be obtained from the Information Commissioner or a self assessment guide can be downloaded from the Data Protection Information Commissioners Office’s website.

The Data Protection Act also gives individuals the right to see information that is held about them. It is important to note that Disclosure information received from Disclosure Scotland/ Volunteer Scotland must be stored in separate secure conditions and access must be restricted to named individuals. The information must be destroyed by secure means, i.e. shredding, burning or pulping once a recruitment decision has been made, although it may be kept for a maximum of six months to allow for any dispute about the accuracy of a disclosure / PVG Scheme Record or a recruitment decision to be made and considered.

Recipients of Disclosure information may keep a confidential record of:

- the issue date of the Protecting of Vulnerable Groups Scheme Record
- the name of the subject
- the position in question
- the unique reference number issued by Disclosure Scotland
- the recruitment decision taken.

This record should be kept in a separate folder within the employee’s personnel file in a secure location. The folder is confidential and is only open to named individuals and the employee concerned.

8.1.2 Equal Opportunities and Anti-discrimination

The Equality Act 2010

The Act came into force on 1 October 2010. The purpose of the Act is to harmonise and strengthen previous legislation such as the Race Relations Act 1976 and the Disability Discrimination Act 1995. The act aims to provide a simpler and more consistent framework for the prevention of discrimination.

It is unlawful, under the Equality Act, for an employer to discriminate on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation; employers are required to afford equal treatment in terms and conditions of employment to men and women who are employed on ‘like’ work or work of equal value.

Discrimination can occur in many ways. The Equality Act 2010 provides protection to employees from:

- direct discrimination — this occurs where there is less favourable treatment of a person because of their racial or ethnic origin, because of a disability, because of gender or age, etc.
• indirect discrimination — this occurs where an employer applies requirements and conditions which, though applied equally to all, have a disproportionately detrimental effect on a particular group which cannot be justified
• harassment — this occurs when a person’s dignity has been violated or when the environment they are working in is intimidating, hostile, degrading, humiliating or offensive to them. Harassment can take many forms including physical, verbal and non-verbal conduct, for example, physical and/or verbal bullying, name calling, racial taunting etc.

It should be noted that discrimination is unlawful even where it has been unintentional.

Disability discrimination

The Equality Act 2010 covers Disability Discrimination and makes it unlawful for employers, regardless of the size of the organisation, to treat those with a disability less favourably because of their disability, unless they can show that the treatment in question is justified. The Act applies to both job applicants and employees, amongst others. It also protects against discrimination at work in regards to promotion, training and learning opportunities, benefits, etc.

The Act applies regardless of the length of service or hours worked. Under the Act the employer has to make reasonable adjustments to working conditions to avoid putting employees with a disability at a disadvantage. The employer is required to make reasonable adjustments to the work environment and working practices to enable someone with a disability to work effectively. The employer also has a duty to make reasonable adjustments if an employee becomes disabled during their employment, or if their disability gets worse.

Further information can be obtained from the Equality and Human Rights Commission.

The Equality Act 2010 introduced "discrimination by association". Someone can make a claim that they were discriminated against on the grounds of their being associated with someone who was disabled. A claim can also be taken of harassment on the grounds of association.

The opportunity to ask job applicants or candidates about their health is strictly limited under the Equality Act 2010. The Act requires that no questions be asked in writing or verbally about a candidate’s health before the employer makes an offer of employment, unless there are exempt reasons for doing so.

Age discrimination in employment and vocational training

Age discrimination is unlawful under the Equality Act 2010. The law includes discriminatory treatment based on the perception of someone’s age even if that perception is wrong. For example, an organisation decides not to recruit someone because they think that individual is aged over 60 years. In reality, the individual is only 50. The individual would still be covered by the legislation, as the discriminatory treatment was based on a perception of age.

In addition, the law covers discrimination by association - so discriminating against someone on the grounds of the age of someone they are associated with is also age discrimination.

8.1.3 Public Interest Disclosure Act 1998

Employees are entitled to expect fair and reasonable treatment from their employer, managers and work colleagues.

They should be enabled to use the appropriate internal procedures, that is, Grievance Procedure, if they feel they have been unfairly treated or discriminated against. In general, they should feel enabled through a culture of openness and transparency within the organisation to raise concerns with their employer in good faith, and without fear of victimisation or punishment. However, on rare occasions employees may feel the need to disclose or ‘blow the whistle’ about wrong doings or misconduct in the organisation. To take account of these generally very rare situations, employers should have a Whistleblowing Policy and internal procedures which are for the purpose of dealing with these types of disclosures by facilitating the identification and resolution of problems within the organisation speedily and effectively. The policy should be underpinned by the Public Interest Disclosure Act 1998 which protects people who raise concerns about wrongdoings in the workplace.
The Act aims to promote good governance and accountability in the public interest and makes provision about the kinds of disclosure which can be protected, the circumstances in which such disclosures are protected, and the persons who may be protected.

8.1.4 Health and Safety at Work

All employers, under the Health and Safety at Work Act, 1974 & Associated Regulations, have health and safety obligations to ensure that employees and the workplace are safe. They are required to provide for the health, safety and welfare of their employees. The legal obligations include:

- providing employees with adequate information, instruction, training and supervision to enable them to work safely
- making the workplace safe and without risk to health
- ensuring that safe systems of work are in place and followed, and that any plant or machinery is safe
- ensuring that articles and substances are moved, stored, used and disposed of safely
- providing adequate welfare facilities and practices
- ensuring the health, safety and welfare of persons, not in their employment, who might be affected by the undertaking and activities of the employer.

Employers should have a written statement of the safety policy, including emergency procedures and should ensure that their employees know and understand it.

Employers, under The Health and Safety (First Aid) Regulations, must ensure that:

- a first aid box is provided for employees
- a first aider is available to take charge in the event of an accident
- employees know where to locate the first aid box
- employees know who the first aider is
- accidents to employees are recorded.

and, the regulations impose an obligation on employers to ensure as far as is reasonably practicable:

- the health, safety and welfare of all their employees
- the health, safety and welfare of persons, not in their employment, who might be affected by the undertaking and activities of the employer.

Further information regarding first aid regulations can be found at [www.hse.gov.uk/firstaid/legislation.htm](http://www.hse.gov.uk/firstaid/legislation.htm)

Employers must raise awareness amongst their employees that they each have a responsibility to work safely and efficiently. They should ensure that employees are aware that they have a duty to take reasonable care of themselves and others who may be affected by their acts or omissions at work. Accidents and incidents that could lead to injury or damage should always be reported and recorded.

Employers should recognise that excessive levels of stress at work are a health and safety issue and that they have a duty to take all reasonably practicable measures to manage stress in the workplace. Excessive stress should not be seen as an inevitable part of modern life, nor as a sign of individual weakness. Employees suffering stress and stress-related illness should be encouraged to seek help and support and be reassured that they will not be subjected to unfair discrimination in any way. Employees must be made aware that they too have a duty to themselves and others to help minimise stress in the workplace and should take an active part in stress management initiatives introduced by the employer.

8.1.5 Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)

RIDDOR places a legal duty on employers, the self-employed and those in control of premises to report some work-related accidents, diseases and dangerous occurrences to the relevant enforcing authority for their work activity, usually the Health & Safety Executive (HSE) or the local authorities. For most organisations a reportable accident, case of disease or dangerous occurrence is a comparatively rare event. RIDDOR applies to all work activities but not to all incidences. The law requires employers to make a report if:
• there is an accident connected to work and an employee, or a self employed person working on the employer’s premises is killed or suffers a major injury (including as a result of physical violence); or a member of the public is killed or taken to hospital. In such circumstances an employer must notify the enforcing authority without delay and complete an accident form within ten days.

• there is an accident connected with work (including an act of physical violence) and an employee, or self employed person working on the employer’s premises, suffers an over three day injury, that is, an injury which is not major but results in the injured person being away from work for more than three days. The employer must complete and return an accident form to the enforcing authority within ten days.

• the employer is notified by a doctor that an employee suffers from a reportable work related disease. The employer must send a completed disease report form to the enforcing authority.

A report can be made either directly to the RIDDOR Incident Contact Centre or by completing a RIDDOR form, in writing or online, and sending it to the enforcing authority. The Incident Contact Centre provides a single point, user friendly, fast and effective service. There is no need to make any other reports to the Health and Safety Executive or to a local authority. The ICC will forward the report to the correct enforcing authority on the employer’s behalf. They will also send a copy of the report to the employer to correct, if necessary, and keep for on their records, thereby meeting the employer’s statutory obligation to keep records of all reportable incidents for inspection.

If an organisation is insured through Early Years Scotland’s RSA Scheme, the employer should send a copy of the completed RIDDOR form to Early Years Scotland.

For more information, a RIDDOR Explained booklet can be viewed and downloaded from the HSE website. Further information on RIDDOR can be found at [www.hse.gov.uk/riddor/riddor.htm](http://www.hse.gov.uk/riddor/riddor.htm)

8.1.6 Risk Assessment

Employers have a duty of care for their employees and should take all reasonable steps to adapt the workplace to suit the worker. The employer is required, in law, to assess the risks to the health, safety, and welfare of staff and others affected by the activities and to develop good working practices to prevent accidents and ill health from occurring. Where more than five staff, paid or unpaid, are employed the employer has a duty to:

• record significant findings of the risk assessment
• identify any group of employees, or other persons, who are regarded as being especially at risk.

Even where there are fewer than five employees, paid or unpaid, Early Years Scotland recommends that risk assessments are done and that the significant findings of the assessments are recorded.

The purpose of the risk assessment is:

To identify:

• hazards: anything that can cause harm
• risks: what they are and how could they cause harm
• persons at risk: anyone who might be affected by the hazard and
• the measures that are in place, or are needed to ensure the risk is controlled.

and

• to enable the employer to plan, introduce and monitor the measures taken
• to provide the employer with a clear justification of how they reached decisions
• about the measures taken.

Early Years Scotland can provide groups with advice and has produced written guidance, available from Early Years Scotland, on Health and Safety Risk Assessment.
8.2 Additional Information

8.2.1 Childcare and Early Years Registration and Qualifications

Early Learning and Childcare workers are defined as workers who are providing daycare for children. They must be aware of and understand their duties and obligations under the National Care Standards for Early Years and Care and the SSSC Code of Practice for Social Service Workers.

Early Learning and Childcare workers have to be registered with the SSSC or other approved professional bodies, for example, the General Teaching Council or the Nursing and Midwifery Council. Registration with the Council requires individuals in the social care workforce, which includes early education and childcare workers to:

- hold or be working towards achieving a relevant qualification, generally within three years of appointment
- work within the Code of Practice of the Social Service Workforce
- provide evidence of continuous professional development
- hold or gain membership of the Protecting Vulnerable Groups (PVG) Scheme.

To assist employers and workers the register is categorised under three functional areas which are based on the tasks undertaken by workers rather than job titles, which vary from setting to setting and may have little in common with each other.

The Early Years and Childcare Register has a category for support workers, a category for practitioners and a category for managers and lead practitioners.

Support workers are defined as workers who are assisting and helping others to provide support and care to children. They will work under supervision and may be given delegated responsibility for some tasks. For example:

- helping make the snack for children while adhering to and promoting healthy eating
- setting out and clearing away the day’s activities
- preparing and arranging resources as required
- helping to keep children safe
- contributing to supporting children’s play
- contributing to positive relationships
- reporting to the supervisor on children’s activities and learning
- seeking support from colleagues.

Practitioners are defined as workers who identify and meet the care, support and learning needs of children. They contribute to the development of quality assurance of informal learning activities and/or the curriculum. They may be given responsibility for the supervision of others in the workplace. For example:

- promoting children’s all-round development
- planning and organising the learning environment
- planning and implementing the curriculum framework for early education
- observing, assessing and recording children’s progress
- developing and promoting positive relationships
- working with parents to support their children’s learning and development
- providing leadership within the team
- line-managing colleagues
- protecting children’s rights.

Managers and lead practitioners are defined as workers who have overall responsibility for the development, management and quality assurance of the service, including the management of staff and resources, including financial. For example:

- co-ordinating, implementing and reviewing policies, procedures and practice to safeguard children and ensure their inclusion and participation
- co-ordinating and evaluating the curriculum for children’s early learning
- developing and implementing operational/business plans for the service
- recruiting, selecting and managing staff
- allocating and monitoring the quality of work undertaken by others.
• assessing and evaluating the level of quality of service provision
• managing the finance for the service/area of responsibility
• ensuring health and safety requirements are met
• establishing interagency links and working partnerships
• providing leadership and vision for the development of the service.

These examples list some of the tasks that Early Learning and Childcare workers will undertake in the different categories of the register. Whilst they may help to form the basis of a job description/remit the list is not exhaustive and it is the responsibility of the employer to define clearly the functions that it wants the worker to undertake and which category of registration they fit into. Early Years Scotland recommends the use of the National Occupational Standards: Children's Care Learning and Development, The Standard for Childhood Practice (2007), Continuous Learning Framework and SSSC Codes of Practice as reference points for employers for specifying the functions it wants an employee in an early years and childcare position to carry out.

The standards provide nationally agreed statements of competence and describe the work undertaken by support workers (Level 2), practitioners (Level 3) and managers lead practitioners (Level 9 or BA qualified or working towards) in the Early Learning and Childcare sector and also provide employers with a helpful tool which can be used when recruiting and selecting staff, in appraisal and monitoring performance, in identifying and meeting continuous professional learning and development needs.

The SSSC has specified the qualification criteria for registration of the early education and childcare workforce and they have identified a range of relevant qualifications for each category of the register that will be recognised by them for registration purposes.

Employers should seek advice from the SSSC about the qualifications recognised for registration for each of the categories of worker. For example, a support worker could either hold or be working towards achieving a Level 2 in Children’s Care, Learning and Development or a hold a Professional Development Award such as the classroom assistant award. A practitioner could hold or be working towards an HNC in Early Education and Childcare or a Level 3 qualification in Playwork or Children’s Care, Learning and Development or hold a National Nursery Examination Board Certificate (NNEB).

8.2.2 Scottish Social Services Council: Codes of Practice

The Codes of Practice published by the Scottish Social Services Council promote good practice and help raise the standards in social services, including childcare and education services. They underpin the regulation of the social services workforce in Scotland and describe the standards of conduct and practice to which service users and workers are expected to work.

All social services employers, including Early Years Scotland employing committees and the social services workforce, including staff working in Early Learning and Childcare Settings, must comply with the Codes. The employer’s Code requires them to adhere to the standards set out, to support social service workers to meet the standards and to take appropriate action if there is a breach of the Code. The Code of Practice for Social Service Workers is a list of statements describing the standards of professional conduct and practice required of them in their daily work. The statements include, among others, promoting the rights and interests of service users and carers, establishing and maintaining trust both of service users, carers and the general public and promoting independence whilst protecting service users from danger or harm. Services users and carers includes children, parents and families. Both Codes reflect good practice. They provide employers and employees with a useful reviewing tool to support reflection and improvement in daily working practices and contacts with service users and carers.

Employers must help new employees to understand their personal responsibility to comply with the Code and this should be reinforced by including reference to the requirement for adherence in the contract of employment and by providing a copy of the Code with the contract. The induction programme should also take account of the Codes and the accountability processes.

Employers, operating in the social services sector, should ensure that existing staff have copies of the Code and that they are fully aware and accept their personal responsibility to adhere to it. For example, existing staff could be asked to sign a form stating that they have received a copy of the Code and understand their responsibility to adhere to it. The signed form should be lodged in their personnel file. Copies of the Codes of Practice can be obtained from the Scottish Social Services Council.
The Early Years Scotland model contract for new staff in childcare settings includes a statement relating to this and Early Years Scotland is able to send a copy of the Codes with any model contracts purchased from the organisation.

8.2.3 Placements

The following guidelines and recommendations are provided to assist Early Learning and Childcare organisations that are sometimes asked to provide placements for students, volunteers and school pupils in the workplace.

Student placements in Early Learning and Childcare Settings

Early Years Scotland recognises and values the contribution that Early Years Scotland Settings make to developing the skills and competences of the future early years workforce. It recommends to settings who are asked to provide student placements to do so, wherever it is possible and practicable. Student placements should be welcomed into a setting as the experience:

- helps to underpin the students learning about working with children in the early years and helps them to connect theory to practice
- enables students to begin to realise the complexity and challenges of working effectively with young children
- adds value to their qualification and employability
- engenders commitment and motivation to pursue a career in working with children

Student placements also benefit a setting by:

- bringing current thinking, fresh ideas and perspectives into the setting
- offering challenges to practice that may lead to review and improvement
- contributing to staff development through assessing, coaching and mentoring of students
- enriching the range of people that children and others in the setting have to interact and form a relationship with
- establishing the setting as a place of good practice and as a contributor to the development of the Early Learning and Childcare workforce.

The placement should offer a worthwhile experience for the student whilst ensuring that children and others are not put at risk. In accepting student placements, settings have to be confident that the student is suitable to work with young children. It should ask for reassurance that appropriate procedures have been followed by the placing organisation, for example, colleges, training providers, to guarantee, as far as is possible, that the student is suitable. When asked to take a placement, a setting should be reassured in writing that the placing organisation has:

- checked membership of the Protecting Vulnerable Groups (PVG) Scheme and Scheme Record
- taken up and verified references, which may include medical references
- monitored and assessed the student’s competence to work with young children
- confidence in the student’s ability to work safely and appropriately in a work setting
- withdrawal procedures in place if the setting is unhappy with any aspects of the student’s conduct or working practices.

School placements

Sometimes, schools may ask an Early Learning and Childcare Setting to take one of their pupils on a work experience placement. Again, where it is possible, a setting should welcome the opportunity to support work experience placements.

There is no age restriction on obtaining membership of the Protecting Vulnerable Groups (PVG) Scheme and it could therefore be said that if schools want to place young people in an Early Learning and Childcare Setting for work experience then they, or the relevant Education Department or Careers Service, manage the process to gain membership of the Protecting Vulnerable Groups (PVG) Scheme for pupils before placing the young person in a childcare setting.
The setting could ask the school to seek membership of the Protecting Vulnerable Groups (PVG) Scheme, if they are approached to take a placement. The school retains the PGV Scheme information but a written statement attesting to a satisfactory outcome should be given to the setting when the placement starts.

However, in view of the fact that many school placements last no more than a week it is unlikely that PVG Scheme membership will be carried out. In their absence, an organisation could provide work experience, if they ensured the individual was supervised at all times.

Early Years Scotland would also add that:

- parents should be consulted as to their willingness to accept a placement and given information about the safeguards in place
- the placing school be asked to provide a written reference attesting to the young person’s suitability/fitness to be given work experience in a childcare position
- a school/group agreement is drawn up laying down conditions of placement and areas of responsibility.

A risk assessment must be undertaken. The decision to take a school placement should never be taken lightly. Settings should always speak to the placement school to be assured that a rigorous selection process is undertaken to ensure, as far as is possible, that the young person is a fit and suitable person to be placed on work experience in an Early Learning and Childcare Setting.

8.2.4 Volunteers

Volunteers who offer their services to regularly undertake work in the organisation should be welcomed, nurtured and valued. Although they are not paid for their work, nor are they entitled to the rights enjoyed by employees, they should be recruited and treated in the same way as if they were a paid employee. For instance, they should be asked to complete an application form for volunteers and to provide references. They should also be interviewed. If they are being recruited for a childcare position they must obtain a Protecting Vulnerable Groups (PVG) Scheme Record.

The employer should provide regular review sessions to monitor, support and motivate the volunteer. The volunteer should also be given opportunities to access training development and learning opportunities alongside their paid colleagues. Parents or carers, who occasionally help out on a rota basis in their child’s early years setting, are not classed as regular volunteers, nor are they normally required to hold Protecting Vulnerable Groups (PVG) Scheme Membership.

8.2.5 Informal requests for work experience

Sometimes, settings are approached by individuals not attached to a training provider or educational establishment, for work experience to enable them to gain experience to enter the workforce and/or to meet entry requirements for training and qualifications. In such instances, settings must practice safe recruitment practices and act as if they were employing a new member of staff or recruiting a regular volunteer to work in the setting. The individual must not be allowed to work in the setting until a Protecting Vulnerable Groups (PVG) Scheme Record is obtained and they should always work under supervision.

8.3 Policies

8.3.1 Employee Data Policy and Procedure

The Data Protection Act 1998 (DPA) regulates the way in which certain information about employees is held and used.

[Insert name of organisation] considers that many of the principles in the Act represent good practice, hence the need for us to comply with the Act.

This policy gives details about the type of information that the Organisation keeps about its employees and the purposes for which it keeps them.
Throughout employment and for as long a period as is necessary following the termination of employment, the organisation will keep information for purposes connected with an employee's employment.

These records may include:

- information gathered about an employee and any references obtained during recruitment
- details of terms of employment
- payroll, tax and National Insurance information
- performance information
- details of grade and job duties
- health records
- absence records, including holiday records and self-certification forms
- details of any disciplinary investigations and proceedings
- training records
- contact names and addresses
- correspondence with the organisation and other information provided to the organisation.

[Insert name of organisation] believes these uses are consistent with our employment relationship and with the principles of the DPA.

The information held will be for our management and administrative use only, but from time to time, we may need to disclose some information we hold about employees to relevant third parties. We may also transfer information to another group or organisation, solely for purposes connected with an employee’s career or the management of the organisation’s business.

It should also be noted that the organisation might hold the following information about an employee for which disclosure to any person will be made only when strictly necessary for the purposes set out below:

- an employee’s health, for the purposes of compliance with our health and safety and our occupational health obligations
- for the purposes of people management and administration, for example to consider how an employee’s health affects his or her ability to do his or her job and, if the employee is disabled, whether he or she requires any reasonable adjustment to be made to assist him or her at work
- the administration of insurance, pension, sick pay and any other related benefits
- in connection with convictions to enable us to assess an employee’s suitability for employment.

The organisation requires all employees to comply with the DPA in relation to the information about other staff. Failure to do so will be regarded as serious misconduct and will be dealt with in accordance with the organisation’s disciplinary policy and procedure. If an employee is in a position to deal with personal information about other employees, he or she will be given separate guidance on his or her obligations, and must ask if he or she is unsure.

The person with overall responsibility for compliance with the DPA is [insert name and job title].

8.3.2 Equality and Diversity Policy

[Insert name of organisation] believes that the success of a business depends on people. Capitalising on what is unique about individuals and drawing on their different perspectives and experiences will add value to the way we do business.

We will strive to access, recruit and develop talent from the widest possible talent pool so that we can gain an insight into different markets and generate greater creativity in anticipating customer needs.

We will constantly strive to create a productive environment, representative of and responsive to different cultures and groups, where everyone has an equal chance to succeed.

We all have a responsibility to embrace and support this vision and must continue to challenge behaviour and attitudes that prevent us from achieving this. Using fair, objective and innovative employment practices, our aim is to ensure that:
• All employees and potential employees are treated fairly and with respect at all stages of their employment.
• All employees have the right to be free from harassment and bullying of any description, or any other form of unwanted behaviour, whether based on sex, trans-gender status, marital status, civil partnership status, pregnancy, race, disability, age, political or religious belief or sexuality.
• All employees have an equal chance to contribute and to achieve their potential, irrespective of any defining feature that may give rise to unfair discrimination.

The diversity of the communities we serve is reflected at all levels within our workforce.

Gender

Women and men are fully and properly represented and rewarded for their contribution at all levels of the organisation through:

• challenging gender stereotypes
• supporting employees in balancing their life at work and at home
• supporting employees who become pregnant and taking active steps to facilitate their return to work after maternity leave.

Trans-gender status

People who plan to undergo, are undergoing, or have undergone gender re-assignment are protected against all forms of discrimination and harassment. The employer will take positive steps to support a trans-gender person and ensure they are treated with dignity and respect.

Marital status

People are treated fairly and equally in the workplace irrespective of their marital, civil partnership or family status.

Race

The racial and cultural diversity of our communities is represented at all levels of the organisation through:

• challenging racial stereotypes
• understanding, respecting and valuing different racial and cultural backgrounds and perspectives.

Disability

The abilities of disabled people are recognised and valued at all levels of the organisation through:

• focusing on what people can do rather than on what they cannot
• challenging stereotypes about people with disabilities
• making appropriate adjustments in the workplace to help people with disabilities achieve their full career potential.

Age

Age diversity within the workforce is promoted and valued through:

• challenging age stereotyping
• recognising the benefits of a mixed-age workforce.

Religious belief and political opinion

People are treated fairly in the workplace irrespective of their religious beliefs and practices or political opinions by recognising individuals’ freedom of belief and right to protection from intolerance and persecution.

HIV

Discrimination against an employee or potential employee on grounds that he or she has, or is thought to have, HIV or AIDS is not acceptable, and confidentiality will be respected in line with the wishes of an individual with HIV or AIDS.
Sexuality

People are treated fairly in the workplace irrespective of their sexuality through:

• respecting different lifestyles
• challenging negative stereotypical views.

8.3.3 Anti-harassment and Bullying Policy

Policy

Our aim is to provide a working environment that respects the rights of each employee and where colleagues treat each other with respect. Any behaviour that undermines this aim is unacceptable.

[Organisation Name] does not tolerate any form of harassment or bullying under any circumstances. While implementing and upholding the policy is the duty of all of our managers and supervisors, all employees have a responsibility to ensure that harassment does not occur in [Organisation Name].

Principles and procedures

The following procedure has been designed to inform employees about the type of behaviour that is unacceptable and provides employees who are the victims of harassment and bullying with a means of redress. [Organisation Name] will not tolerate harassment or bullying of:

• job applicants
• employees
• contractors
• agency workers
• the self-employed
• ex-employees.

This policy also applies to work related functions which are held outside of normal working hours, either on or off [Organisation Name] premises, such as Christmas parties, leaving celebrations, working lunches, etc.

Harassment

Definition

Harassment is unwanted conduct related to a relevant protected characteristic (an area covered by discrimination legislation) which has the purpose of effecting an individual’s dignity, or creating an intimidating, hostile, degrading, humiliating or offensive working environment for them.

Harassment will also occur where a colleague is treated less favourably because he or she has rejected or refused to submit to sex-based harassment, sexual harassment or gender reassignment harassment.

Where it cannot be established that there was an intention to offend, conduct will only be regarded as violating a person’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment if, taking all the circumstances into account it would be reasonable to come to that conclusion.

People can be subjected to harassment on a wide variety of grounds. Some examples are:

• Sex-based (purely because of gender) or sexual (sexual in nature)
• Sexual orientation
• Trans-sexualism (gender reassignment)
• Being married or a civil partner
• Race, nationality, ethnic origin, national origin or skin colour
• Disability itself or a reason relating to it
• Age
• Employment status, eg part-time, fixed-term
• Membership or non-membership of a trade union
• Carrying out health and safety duties
Effective Employment Practice

- Religion or religious beliefs or lack of either
- Deeply held personal beliefs or lack of them
- Political beliefs
- Criminal record
- Health, eg AIDS/HIV sufferers
- Physical characteristics
- Social class
- Willingness to challenge harassment — being ridiculed or victimised for raising a complaint.

Harassment is normally characterised by more than one incident of unacceptable behaviour, particularly if it reoccurs, once it has been made clear by the victim that they consider it offensive. One incident may constitute harassment, however, if it is sufficiently serious. Harassment on any grounds, including the above, will not be tolerated.

Harassment at work is unlawful under the Equality Act 2010.

[Organisation name] together with any managers or supervisors who fail to take steps to prevent harassment or investigate complaints may be held liable for their unlawful actions and be required to pay damages to the victim, as will the employee who has committed the act of harassment.

[Organisation name] will also be liable for harassment that comes from a third party (eg a customer or supplier) if that harassment occurs on at least two occasions, the organisation is aware that it has happened and does nothing to stop it happening.

Harassment on any grounds is also a criminal offence, primarily under the Protection from Harassment Act 1997. This means that colleagues who suffer harassment may contact the police, in the case of harassment from fellow employees or harassment by third parties. Those found guilty face fines or periods of imprisonment of up to two years.

Additionally, an employee harassed by a colleague may sue that colleague personally for the damage and distress caused. [Organisation name] may be held vicariously liable under the Protection from Harassment Act for any harassment perpetrated by an employee whenever the behaviour in question is closely connected to the employment relationship.

**Examples of harassment**

Employees must recognise that what is acceptable to one employee may not be acceptable to another.

Examples of harassment include:

- Verbal — crude language, open hostility, offensive jokes, suggestive remarks, innuendoes, rude or vulgar comments, malicious gossip and offensive songs.
- Non-verbal — wolf-whistles, obscene gestures, sexually suggestive posters / calendars, pornographic material (both paper-based and generated on a computer, including offensive screen-savers), graffiti, offensive letters, offensive e-mails, text messages on mobile phones and offensive objects.
- Physical — unnecessary touching, patting, pinching or brushing against another employee’s body, intimidating behaviour, assault and physical coercion.
- Coercion — pressure for sexual favours (eg to get a job or be promoted) and pressure to participate in political, religious or trade union groups, etc.
- Isolation or non-co-operation and exclusion from social activities.
- Intrusion — following, pestering, spying, etc.

**Bullying**

**Definition**

Bullying is a gradual wearing down process comprising a sustained form of psychological abuse that makes victims feel demeaned and inadequate. Bullying is defined as offensive, intimidating, malicious or insulting behaviour, or an abuse or misuse of power, which has the purpose, or effect of intimidating, belittling and humiliating the recipient, leading to loss of self-esteem for the victim and ultimately self-questioning his or her worth in the workplace and society as a whole.
Examples of bullying

Workplace bullying can range from extreme forms such as violence and intimidation to less obvious actions, like deliberately ignoring someone at work. These can be split into two categories:

The obvious:
- Shouting or swearing at people in public and private
- Persistent criticism
- Ignoring or deliberately excluding people
- Persecution through threats and instilling fear
- Spreading malicious rumours
- Constantly undervaluing effort
- Dispensing disciplinary action that is totally unjustified
- Spontaneous rages, often over trivial matters.

The less obvious:
- Withholding information or supplying incorrect information
- Deliberately sabotaging or impeding work performance
- Constantly changing targets
- Setting individuals up to fail by imposing impossible deadlines
- Removing areas of responsibility and imposing menial tasks
- Consistently blocking applications for holiday, promotion or training.

The actions listed must be viewed in terms of the distress they cause the individual. It is the perceptions of the recipient that determine whether any action or statement can be viewed as bullying.

The impact of harassment and bullying

Harassment and bullying can lead to illness, absenteeism, an apparent lack of commitment, poor performance and resignation. The damage, tension and conflict that harassment and bullying creates should not be underestimated. The result is not just poor morale, but higher labour turnover, reduced productivity, divided teams, poor service and poor product quality.

Public image can be badly damaged when incidents of harassment and bullying occur, particularly when they attract media attention. This can result in a loss of customers.

Enforcement

Any harassment or bullying will be classed as gross misconduct, for which employees may be summarily dismissed.

All employees will be informed of [Organisation name] policy towards harassment and bullying at induction training and through communication and awareness programmes. It will be stressed that all complaints of harassment will be treated seriously.

[Organisation name] expects all managers and supervisors to ensure that this policy and procedure is adhered to at all times and expects all employees to respect the dignity of their colleagues. The policy will be regularly monitored by the Organisation to ensure that it is achieving its aims and that managers and employees are confident about its application.

Training, communication and awareness

[Organisation name] recognises that a written policy is not sufficient to eliminate harassment and bullying. Prominent and regular communication, training and awareness sessions are important to ensure that all employees:
- Understand our commitment to prevent harassment and bullying
- Understand their responsibilities and role in the process
- Know how to seek advice and guidance
• Know how to make complaints and are confident they will be handled effectively.
• [Organisation name] is committed to communicating the policy effectively through:
  • Training and awareness programmes for all staff at all levels
  • Briefings for employee and trade union representatives
  • Posters
  • Notices on staff notice boards
  • A section in the staff handbook
  • Management guides
  • Employee guides
  • Counsellors/advisers who can guide employees through the policy and procedures
  • Articles in the staff magazine
  • Inclusion in briefing meetings
  • Induction.

Procedures

[Organisation name] recognises the sensitive nature of harassment and bullying. Employees who believe they are being harassed or bullied may wish to discuss their situation before deciding what action to take. [Organisation Name] operates an open door policy to discuss workplace problems and employees can discuss the matter with their manager on an informal basis.

[Organisation name] recognises that this may not always be appropriate in the circumstances, however. If this is the case, employees can discuss the situation with the next higher level of management.

Managers will:

• ensure the conversation remains confidential as far as possible;
• listen sympathetically;
• help individuals consider objectively what has happened;
• discuss what outcome the individual would wish to see;
• draw attention to available procedures and options;
• inform the individual of the legal liabilities involved;
• help weigh up the alternatives, but without pressure to adopt any particular course;
• assist the individual in dealing with the situation, if they ask for help.

Confidentiality will be maintained as far as possible. If an employee decides not to take any action to deal with the problem and the circumstances described are very serious, however, [Organisation name] reserves the right to investigate the situation. It has an overall duty of care to ensure the safety of all employees who may be adversely affected by the alleged harasser's / bully's behaviour.

Solutions

It is for the individual to decide which route to take in solving any problem that has occurred. There are two types of solution available — informal and formal.

Informal

Employees can choose to solve the matter themselves by approaching the harasser or bully, telling him or her that their behaviour is unwelcome and that it must stop. Otherwise a formal complaint will be made using the procedure outlined below.

If victims would find it difficult or embarrassing to raise the issue directly with the person creating the problem, support can be sought from a work colleague who can accompany the victim when speaking to the harasser or bully.

A third option, is that the victim can put his or her views in writing to the harasser or bully, telling him or her that their behaviour is unacceptable and that it must stop.

Formal

Where informal solutions fail, or serious harassment or bullying occurs, employees can bring a formal complaint in
the form of a grievance, with the procedure adapted to take account of the sensitivities of such situations. Each step and action under the formal complaints procedure will be taken without unreasonable delay.

Complaints will be investigated swiftly and confidentially while ensuring that the rights of both the alleged victim and the alleged harasser or bully are protected. Employees and witnesses can be assured that they will not be ridiculed or victimised for making, or assisting a colleague in making, a complaint, even if it is not upheld, as long as it is made in good faith. Everyone involved in the investigation, including witnesses, will be required to maintain confidentiality — a failure to do so will be a disciplinary matter. The procedure is as follows:

Step 1: Lodging a statement of grievance and conducting an investigation:

• The complaint should be put in writing, outlining the alleged incidents, when they occurred, the harm caused, the names of any witnesses and the name of the alleged harasser or bully.
• The written complaint should initially be lodged with the employee’s manager. If this would not be appropriate in the circumstances, it should be lodged with an alternative manager.
• An independent investigator will be appointed who has had no previous involvement with the situation and who will conduct investigatory interviews with the complainant, the individual against whom the complaint has been lodged and any relevant witnesses. The right to accompaniment will be provided to all those interviewed.
• The investigator will submit a full report to the senior manager who is to hear the grievance.

Step 2: Grievance meeting:

• The employee will be invited to a meeting with a senior manager to discuss the grievance and the result of the independent investigator’s report.
• The employee will be provided with the right to accompaniment.
• The timing and location of the meeting must be reasonable.
• The meeting will not take place until the senior manager has had a reasonable opportunity to consider the information contained in the employee’s grievance letter and the independent investigator’s report.
• The employee must take all reasonable steps to attend the meeting.
• The meeting must be conducted in a manner that enables the employee to explain his or her case and the senior manager to set out the results of the investigation.
• After the meeting the senior manager will inform the employee of his or her decision as to the grievance and notify the employee of the right to appeal against that decision if the employee is not satisfied with it.

Step 3: Hearing the appeal:

• If the employee wishes to appeal, he or she must inform the manager who is to hear the appeal who must be senior to the manager who heard the grievance.
• The employee will be invited to attend a further meeting.
• The employee will be provided with the right to accompaniment.
• The timing and location of the meeting will be reasonable.
• The employee must take all reasonable steps to attend the meeting.
• The meeting will be conducted in a manner that enables both sides to explain their cases.
• After the appeal meeting the manager who heard the appeal will inform the employee of the final decision, within 5 working days.

Full records will be kept of the grievance proceedings and copies of meeting records given to the complainant.

If, at the end of Step 1, the complaint is upheld the matter will be passed to the appropriate line manager to conduct a disciplinary hearing with the person who perpetrated the harassment or bullying.

Continuing to work together

Whether a complaint is upheld or not, [Organisation name] recognises that it may be difficult for the employees concerned to continue to work in close proximity to one another during the investigation or following the outcome of the proceedings. If this is the case [Organisation Name] will consider a voluntary request from either party to transfer to another job or work location. A transfer cannot always be guaranteed, however.
Monitoring

Where harassment or bullying has been found to have occurred and the perpetrator remains in employment, regular checks will be made to ensure that harassment has stopped and that there has been no victimisation or retaliation against the victim. [Organisation name] will also ensure that the employee who committed the act of harassment or bullying is not victimised in any way.

Malicious complaints

Where a complaint is blatantly untrue and has been brought out of spite, or for some other unacceptable motive, the complainant will be subject to [Organisation name] disciplinary procedure, as will any witnesses who have deliberately misled [Organisation name] during its investigations.

8.3.4 Health and Safety Policy

NOTE: This is a template Health and Safety policy and should be amended to meet each individual organisation’s needs.

Purpose

The purpose of this policy is to set out the responsibilities of both the employer and the employee in relation to health and safety.

Responsibility for health and safety

[Name] is responsible for the health and safety in this organisation (this should be a senior member of management). However, everyone in the organisation has responsibilities in relation to health and safety, as set out in this policy.

Responsibilities of the employer

The employer is responsible for ensuring that the employee’s health and safety is protected in all activities at work. In particular, the employer is responsible for ensuring that there is safe and adequate plant and equipment.

The employer will ensure that all plant and equipment is regularly inspected and maintained, in accordance with a maintenance schedule. All repairs will be carried out at the earliest opportunity. If any plant or equipment is judged to be damaged or unsuitable for use for any reason it will be put out of action, with clear signage.

• Safe premises and place of work

The employer will ensure that the premises are safe, and that all hazards are removed where possible. If it is not possible to remove a hazard clear signage will be displayed advising employees and any other visitors to the premises of the nature of the hazard and the precautions that should be taken.

• Competent and safe fellow employees

The employer will ensure that all employees receive the appropriate training so that they are competent in all their work duties. If any employee acts in a manner that is likely to put others in danger appropriate disciplinary action will be taken.

• A safe system of work

The employer will ensure that all processes of work are safe. If there are any hazards the employer will endeavour to remove them. If that is not possible appropriate signage will be displayed advising employees and any other visitors to the premises of the nature of the hazard and the precautions that should be taken.
Responsibilities of the employee

The employee is responsible for ensuring that his/her actions do not cause danger to themselves or to anyone else. The primary responsibilities of the employee are to:

• Not tamper with any equipment

Employees should not carry out any alterations to equipment which might compromise health and safety. Employees who do tamper with equipment are likely to face disciplinary action, which could include summary dismissal.

• Not use any equipment without receiving appropriate training

No employee should use any equipment without having the appropriate training. The employee is responsible for attending any training that is arranged, and completing any assessments that are required.

• Take reasonable care of their own health and safety

Employees are expected to act responsibly and to take care of their own health and safety. This includes wearing any necessary protective clothing and not acting in a dangerous manner. All employees must take care that their actions do not endanger any other employees or visitors to the company.

• Use equipment appropriately

Employees should use equipment for the purpose for which it is provided, and no other purpose. If any equipment is damaged or unfit for purpose in any way the employee is required to inform the employer immediately.

• Follow appropriate systems of work

All employees should follow the systems of work that have been specified by the employer. There should be no deviation from these systems without prior permission from the employer.

Personal protective equipment

The employer is responsible for supplying employees with any personal protective equipment (PPE) that is required. If an employee does not have the appropriate PPE for a specific task then the employee should inform the employer immediately and not perform that task until the PPE is available.

The employee is responsible for taking care of the PPE that has been issued. If any PPE is damaged the employer should be informed immediately. An employee is required to return all PPE that has been issued on leaving the organisation.

Chemicals and other substances

All chemicals and other substances that are hazardous to health must be stored and used in accordance with the manufacturers’ instructions. Such materials will have a COSHH (Control of Substances Hazardous to Health Regulations 2002) label on them, and the guidance on this label must be followed in full.

Risk assessments

All line managers are required to carry out regular risk assessments of the area and activities under their management. These risk assessments should be carried out annually at least, and some risk assessments will require more regular completion.

The risk assessments should be recorded in writing, with an agreed target date for any actions that have been identified.

If there are any risks that cannot be eliminated all employees working in that area must be made aware.
Manual handling

All employees who are involved in any lifting or carrying must attend training in relation to manual handling. This training must be renewed every two years. The line manager is responsible for ensuring that all employees requiring this training attend the training course at the appropriate time.

Accidents

Although every effort will be made to ensure a safe environment it is accepted that accidents can occur.

If an accident does occur this must be reported immediately to [Name of person responsible for health and safety]. It must also be recorded in the accident book.

If any of the following occur they must be reported to the Health and Safety Executive under the RIDDOR procedures (see www.riddor.gov.uk):

- Fatal accidents
- Major injuries
- Accidents resulting in a period of absence of more than 3 days
- Injuries to the public where they have to be taken to hospital

In addition, some work-related diseases and dangerous occurrences must be reported to the Health and Safety Executive. Following any accident the situation will be investigated to determine whether changes need to be made to equipment, training or systems to work so that a similar situation can be prevented in the future.
9 Useful Contacts

The information given in Effective Employment Practice is designed to help with some of the issues that may be encountered during the course of being an employer. It contains basic information and guidance on good practice, but it is not intended as a full statement of practice or of the laws that apply to employment. Below is a list of organisations which are able to give employers more advice on particular aspects of employment issues. It is strongly recommended that further advice is sought when unsure of the position to take.

**Employment Matters**

- **Advisory Conciliation and Arbitration Service (ACAS)**
  151 West George Street Glasgow G2 7JJ
  Tel: 0845747 4747
  Email: webteam@acas.org.uk
  www.acas.org.uk

- **Department of Trade and Industry (DTI)**
  Website gives details of all employment relations. www.dti.gov.uk.

- **National Minimum Wage Helpline**
  Tel: 0845 6000 1768
  www.tiger.gov.uk

- **HM Revenue and Customs Employer’s Helpline**
  Tel: 08457 143 143
  www.hmrc.gov.uk

- **Occupational Pensions Advisory Service**
  11 Belgrave Road
  London SW1V 1RB
  Tel: 0845 601 2923
  Email: enquiries@pensionsadvisoryservice.org.uk
  www.pensionsadvisoryservice.org.uk

- **Equality and Human Rights Commission**
  The Optima Building
  58 Robertson Street Glasgow G2 8DU
  Helpline: Tel: 0845 604 5510
  Email: scotlandhelpline@equalityhumanrights.com
  www.equalityhumanrights.com

**Data Protection**

- **The Office of Information Commissioner**
  Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF
  Tel: 01625 545 745

- **Registration of Social Care Workforce and Qualifications**
  Scottish Social Services Council
  Compass House,
  11 Riverside Drive Dundee DD1 4NY
  Tel: 01382 207 101 Lo-call: 0845 60 30 891
  Email: enquiries@sssc.uk.com
  www.sssc.uk.com
Regulations and Inspection of Daycare Services

- **Care Inspectorate**
  Compass House, 11 Riverside Drive Dundee DD1 4NY
  Tel: 08456009527
  Email: enquiries@careinspectorate.com
  [www.scswis.com](http://www.scswis.com)

Health and Safety at Work (including RIDDOR)

- **Health and Safety Executive**
  Tel: 08107 545 500 Minicom: 012920 808537
  Email: hseinformationservices@natbrit.com

  **RIDDOR**
  Tel: 0845 300 9923
  Email: riddor@natbrit.com
  For RIDDOR Incident Contact Centre: Tel: 0845 300 9923

Disclosures

- **Volunteer Scotland**
  Jubilee House, Forthside Way, Stirling FK8 1QZ
  Tel: 01786 849 777
  Email: disclosures@volunteerscotland.org.uk
  [www.volunteerscotland.org.uk](http://www.volunteerscotland.org.uk)

- **Disclosure Scotland**
  PO Box 250 Glasgow G51 1YU
  Telephone helpline: 0870 609 6006 Fax no: 0870 609 6996
  Email: info@disclosurescotland.co.uk
  [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)

- **APEX Scotland** (For information and advice about the employment of ex-offenders)
  Head Office, 9 Great Stuart Street, Edinburgh EH3 7TP
  Tel: 0131 220 0130 Fax: 0131 220 6796
  Email: admin@apexscotland.org.uk
  [www.apexscotland.org.uk](http://www.apexscotland.org.uk)
10 Glossary

For the purposes of this document:

**National Care Standards**: are sets of standards written for the social service sector, including Early Learning and Childcare Settings. The standards provide a framework for assessing the quality of a service as a whole. For the childcare and early years sector the National Care Standards: Children's Care, Learning and Development apply.

**National Occupational Standards (NOS)** are agreed statements of competence, which describe the work outcomes required for an individual to achieve the standard expected of them in a work situation. NOS are the foundation on which Scottish Vocational Qualifications are developed. They provide a useful tool to employers when drawing up job remits, identifying learning and development needs. For the childcare and early years sector the NOS: Children’s Care, Learning and Development are relevant. The NOS for Playwork may also be relevant to parts of the sector.

**Safely destroyed**: destroyed by burning, shredding or pulping

**Secure storage**: kept in a locked cabinet in a safe location. Access to information is restricted to named persons only

**Statutory responsibility**: a responsibility enshrined in law and/or regulation

**Statutory rights**: rights that are enshrined in law and/or regulation

**Abbreviations Used**

**ACAS**: Advisory, Conciliation and Arbitration Services, provides information on employment matters

**DT**: Department of Trade and Industry, provides information on employment matters

**DWCL**: Disqualified from Working with Children List

**HNC**: Higher National Certificate

**ICC**: Incident Contact Centre, for reporting of injuries, diseases and dangerous occurrences in the workplace

**NOS**: National Occupational Standards

**PVG**: Protecting of Vulnerable Groups Scheme

**RIDDOR**: Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995

**SSSC**: Scottish Social Services Council, the organisation responsible for registering the social service workforce, which includes childcare and early years workers

**SVQ**: Scottish Vocational Qualifications
11 References

- The Protection of Vulnerable Groups (Scotland) Act 2007
- Codes of Practice for Social Service Workers and Employers Scottish Social Service Council (2009)
- Codes of Practice Disciplinary and Grievance Procedures ACAS (April 2011)
- Continuous Learning Framework (CLF) Scottish Social Services Council
- The Standard for Childhood Practice (2007)
- National Occupational Standards (NOS)