

PROPOSED AMENDMENT TO THE PSC MOA 2015

The following has been amended in order to comply with changes to Isle of Man Social Security Legislation.

Ref:	Amendment PSC M&C / M&C 15 -046																																																														
Re:	Title: Appendix 3, section 7 – Scheme for Sickness and Maternity Leave																																																														
Proposal:	Amendment to text to reflect the changes to the sickness scheme including amendment to unabated sick pay option and inclusion of Annex D – (Personal Injury involving a third person – form of undertaking)																																																														
Existing Regulation:	<p style="text-align: right;">(Article 31)</p> <p style="text-align: center;">APPENDIX 3</p> <p style="text-align: center;">SECTION 7</p> <p style="text-align: center;">SCHEME FOR SICKNESS AND MATERNITY LEAVE</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">NATIONAL</th> <th style="text-align: right;">National Page</th> </tr> </thead> <tbody> <tr> <td>(A) Sickness Scheme</td> <td style="text-align: right;">1</td> </tr> <tr> <td> Application</td> <td style="text-align: right;">1</td> </tr> <tr> <td> Conditions for Admission to Scheme</td> <td style="text-align: right;">1</td> </tr> <tr> <td> Sickness and Accident Allowances to be Treated as Separate Entitlements</td> <td style="text-align: right;">1</td> </tr> <tr> <td> Employees Excluded from the Scheme on</td> <td style="text-align: right;">1</td> </tr> <tr> <td>Medical Grounds</td> <td></td> </tr> <tr> <td> Allowance</td> <td style="text-align: right;">2</td> </tr> <tr> <td> Calculation of Period of Allowance</td> <td style="text-align: right;">2</td> </tr> <tr> <td> Normal Earnings</td> <td style="text-align: right;">2</td> </tr> <tr> <td> National Insurance Benefit and Incapacity Benefit</td> <td style="text-align: right;">3</td> </tr> <tr> <td> Widows and Married Women Opting out of</td> <td style="text-align: right;">3</td> </tr> <tr> <td>National Insurance</td> <td></td> </tr> <tr> <td> Disablement Pensions – Treatment Allowances</td> <td style="text-align: right;">3</td> </tr> <tr> <td>Employment not attracting National Insurance (Health)</td> <td style="text-align: right;">3</td> </tr> <tr> <td> Contributions</td> <td></td> </tr> <tr> <td> Employee whose wife is working</td> <td style="text-align: right;">3</td> </tr> <tr> <td> Sickness during Holidays</td> <td style="text-align: right;">4</td> </tr> <tr> <td> Exclusion from Benefits</td> <td style="text-align: right;">4</td> </tr> <tr> <td> Accident – Third Party Claim</td> <td style="text-align: right;">4</td> </tr> <tr> <td> Certification of Sickness</td> <td style="text-align: right;">4</td> </tr> <tr> <td> Medical Examination during period of Absence</td> <td style="text-align: right;">5</td> </tr> <tr> <td> Payments not to admit Liability under Workman’s</td> <td style="text-align: right;">5</td> </tr> <tr> <td>Compensation Acts, etc</td> <td></td> </tr> <tr> <td> Part-Time Employees</td> <td style="text-align: right;">5</td> </tr> <tr> <td> Personal Injury Allowances to Merge</td> <td style="text-align: right;">6</td> </tr> <tr> <td> Contact with Infectious Diseases, etc – Person Deemed to be Incapable of Work</td> <td style="text-align: right;">6</td> </tr> <tr> <td> Victims of Crimes of Violence</td> <td style="text-align: right;">6</td> </tr> <tr> <td> Re-imburement of Cost of Doctor’s Statements</td> <td style="text-align: right;">6</td> </tr> <tr> <td> Industrial Disease or Accident</td> <td style="text-align: right;">6</td> </tr> <tr> <td>(B) Maternity Leave Scheme</td> <td style="text-align: right;">1</td> </tr> </tbody> </table>	NATIONAL	National Page	(A) Sickness Scheme	1	Application	1	Conditions for Admission to Scheme	1	Sickness and Accident Allowances to be Treated as Separate Entitlements	1	Employees Excluded from the Scheme on	1	Medical Grounds		Allowance	2	Calculation of Period of Allowance	2	Normal Earnings	2	National Insurance Benefit and Incapacity Benefit	3	Widows and Married Women Opting out of	3	National Insurance		Disablement Pensions – Treatment Allowances	3	Employment not attracting National Insurance (Health)	3	Contributions		Employee whose wife is working	3	Sickness during Holidays	4	Exclusion from Benefits	4	Accident – Third Party Claim	4	Certification of Sickness	4	Medical Examination during period of Absence	5	Payments not to admit Liability under Workman’s	5	Compensation Acts, etc		Part-Time Employees	5	Personal Injury Allowances to Merge	6	Contact with Infectious Diseases, etc – Person Deemed to be Incapable of Work	6	Victims of Crimes of Violence	6	Re-imburement of Cost of Doctor’s Statements	6	Industrial Disease or Accident	6	(B) Maternity Leave Scheme	1
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Appendix

Maternity Provisions

SECTION 7

SCHEME FOR SICKNESS AND MATERNITY LEAVE

(A) SICKNESS SCHEME

1. APPLICATION

(a) This is a scheme to supplement Incapacity Benefit by the payment of allowances during absence from work through sickness, disease or disablement arising either in the normal course or through accident not associated with employment with a local authority hereinafter called "normal sickness") or out of and in the course of such employment, but not attributable to an employee's own misconduct (hereinafter referred to as "industrial disease or accident"). Absence shall be regarded as due to industrial disease or accident when it accords with the provisions of paragraph 25.

(b) The Scheme is intended to secure that, during such absence and for the periods referred to in paragraph 5, the employee shall receive by way of the allowance and Incapacity Benefit not more than the sum of his or her normal earnings, as defined in paragraph 7. Any other state benefit or pension which an employee would receive when at work is not affected by this Scheme.

2. CONDITIONS FOR ADMISSION TO SCHEME

(a) Medical Examination

(i) As a condition of admission to the Scheme, a local authority may require an employee on engagement, to submit to a medical examination by a registered medical practitioner nominated by the Authority, and to be recommended by such medical practitioner for admission, provided that this condition shall not apply to an employee who had, prior to commencing date of this Scheme, been admitted to an existing scheme and had remained continuously employed with a local authority. The local authority shall notify the employee in writing if, after such a medical examination, the employee is not admitted to the Scheme.

(ii) In the absence of such a requirement or such a notice by the authority, an employee shall be deemed to be admitted to the Scheme subject to having established the qualification for benefit referred to in paragraph (b) below.

(b) Service

(i) The following shall count as service for the purpose of qualifying for entitlement:

(a) Service with any public authority to which the Superannuation Interchange Rules apply;

(b) Periods of unpaid sickness absence or other unpaid leave of absence so long as the engagement continues.

(ii) "Service" means continuous service, save that a break in service of less than six weeks shall be disregarded. If any one break in service extends to more than six weeks, service prior to such break and any other service which has been disallowed for the purpose of sick pay entitlement shall not be taken into account for the purpose of calculating continuous service.

(iii) Any break in service before taking up employment with the local authority must not exceed six weeks.

3. SICKNESS AND ACCIDENT ALLOWANCES TO BE TREATED AS SEPARATE ENTITLEMENTS

The allowances in respect of (a) normal sickness and (b) absence due to industrial disease or accident are entirely separate and periods of absence in respect of one shall not be set against the other for the purpose of paragraph 6 of the Scheme.

4. EMPLOYEES EXCLUDED FROM THE SCHEME ON MEDICAL GROUNDS

Where an employee, excluded from the Scheme on medical grounds, is absent due to industrial disease or accident, the employee shall be entitled to an allowance as if he or she had been admitted to the Scheme.

5. ALLOWANCE

(a) Within any span of 12 months, payment of allowance shall be for the following periods according to length of service.

During 1st year of service	1 month's full pay and (after completing 4 months' service) 2 months' half pay.
During 2nd year of service	2 months' full pay and 2 months' half pay
During 3rd year of service	4 months' full pay and 4 months' half pay
During 4th & 5th year of service	5 months' full pay and 5 months' half pay
After 5 years	6 months' full pay and 6 months' half pay

Provided that a local authority may, at its discretion, extend the period of allowance in an individual case if the circumstances so justify.

(b) In the case of "full pay" periods the allowances shall be of an amount which, when added to:

- (i) Sickness benefit receivable under the Social Security Acts 1975-1982;
- (ii) Incapacity Benefit;
- (iii) Compensation payments under the Workmen's Compensation Acts and for the Employers' Liability Acts, or
- (iv) Any payments under any Acts amending, altering or affecting those Acts or at Common Law will secure the employee the equivalent of normal earnings as defined in paragraph 7.

(c) In the case of "half pay" periods the allowance is:

- (i) Where an employee is entitled to Incapacity Benefit, a sum equal to half

normal earnings as defined in paragraph 7 plus an amount equivalent to the Incapacity Benefit entitlement and other benefits receivable under paragraph 5(b)(iii) and (iv), so long as the total sum does not exceed normal earnings as defined in paragraph 7.

(ii) Where an employee is excluded from Incapacity Benefit, a sum equal to half normal earnings as defined in paragraph 7, provided that it does not, when added to any benefits receivable under paragraph 5(b), exceed normal earnings as defined in paragraph 7.

(d) For employees subject to retaining fee arrangements during periods of the year when schools are closed, the period of entitlement to allowance during their fourth and subsequent years' service shall be 20 weeks full pay and 20 weeks' half pay.

Note: The words "state benefit" and "sickness benefit" shall be deemed to include invalidity benefit under the Social Security Acts 1975-1982, where receivable.

6. CALCULATION OF PERIOD OF ALLOWANCE

(a) The period during which the allowance shall be paid in respect of any period of absence shall be ascertained by deducting from the employee's entitlement any period, or the aggregate of periods, of paid absence during the twelve months immediately preceding the first day of absence. As provided in paragraph 3, sickness absence and absence due to industrial disease or accident shall be treated separately for this purpose.

(b) A period of absence due to injury sustained by an employee for which damages are recovered from a third party shall be treated on terms of paragraph 16 of the Scheme.

7. NORMAL EARNINGS

(a) For the purposes of this Section normal earnings are the earnings that would be paid during a period of normal working but excluding:

- (i) casual overtime payments;
- (ii) casual standby payments;
- (iii) payment of a higher grade rate than an employees' normal rate of wages where on the day immediately prior to absence due to sickness the employee has been receiving that payment for less than four weeks; and

(b) In respect of subsequent account of sickness or industrial disease or accident as defined in paragraph 25 a higher earner shall be entitled as part of normal earnings to a sum equal to his/her average bonus earnings. This is to be determined by reference to the average bonus earned per hour over the preceding three months or any other period agreed locally. For an employee in receipt of a self-financing lead-in payment, as provided for in National Section 3, paragraph 3, there shall be paid, as part of normal earnings, a sum equal to his/her lead-in payment.

8. NATIONAL INSURANCE BENEFIT AND INCAPACITY BENEFIT

The National Insurance Benefit and Incapacity Benefit to be taken into account for the calculation of the allowance shall be the full benefit to which the employee is entitled on the basis that the employee has satisfied, so far as is

possible, the contribution conditions and, so far as the employee is required by the employing authority to do so, the conditions for the reporting of sickness and the claiming of benefit and Incapacity Benefit under the relevant legislation. The employee shall be under an obligation to declare his or her entitlement to benefit and any subsequent alterations in circumstances affecting such entitlement.

9. WIDOWS AND MARRIED WOMEN OPTING OUT OF NATIONAL INSURANCE

Widows and married women exercising their right to be excepted from the payment of full rate National Insurance contributions shall be deemed to be insured in their own right for all National Insurance benefits detailed. Widows and married women exercising such a right are entitled to receive Incapacity Benefit.

10. DISABLEMENT PENSIONS – TREATMENT ALLOWANCES

Where an employee enters hospital and receives a treatment allowance, the dependency element only of the treatment allowance shall be taken into account for the calculation of the allowance and the employee's personal element shall be ignored.

11. Where the total of State benefits and Incapacity Benefit paid to an employee exceeds the amount of benefits received by an employee during a week of full normal employment that excess shall be taken into account in calculating an allowance under the Sick Pay Scheme. However, where a widow or widowed mother has opted out of paying full National Insurance contributions the amount taken into account when calculating an allowance under the sick pay scheme will be the amount by which total state benefit and Incapacity Benefit receivable had full contributions been paid exceeds the benefit received by an employee in a week of full normal employment

12. EMPLOYMENT NOT ATTRACTING NATIONAL INSURANCE (HEALTH) CONTRIBUTIONS

Where an employment does not attract a National Insurance contribution it shall nevertheless be regarded as attracting State benefit or the minimum level of Incapacity Benefit for the purpose of calculating an allowance under this scheme.

13. EMPLOYEE WHOSE WIFE IS WORKING

When, as a result of his wife being at work, a husband receives no allowance for her in the calculations of his State benefit, only the benefit actually receivable shall be taken into account in the calculation of the allowance.

14. SICKNESS DURING HOLIDAYS

(a) Where an employee is receiving sickness pay he or she should continue to receive such pay if a public or extra-statutory holiday occurs during sick leave. Where an employee has exhausted his or her period of entitlement to sickness pay, no payment should be made (other than Incapacity Benefit if applicable) in respect of a public or extra-statutory holiday occurring during the

period of sick leave.

(b) An employee absent on unpaid sickness leave is not entitled to payment in lieu of a public or extra-statutory holiday falling during such absence, save in the case of an employee excluded on medical grounds shall be entitled to holiday pay in respect of public or extra-statutory holidays occurring during the portion of sickness absence in respect of which, had the employee been admitted to the Scheme, he or she would have received an allowance.

(c) An employee who falls sick during the course of annual leave shall be regarded as being on sick leave from the date of a doctor's statement and shall be entitled to take the balance of holiday at a later date after return to work, provided the balance of holiday is taken before the 31st March following the absence.

(d) The special payment to be made to an employee in the School Meals Service during a school holiday is a payment during a period of non-employment. In the case of an employee who is absent due to sickness immediately prior to the commencement of a school holiday period, sickness pay shall cease at the beginning of the school holiday period and the special payment shall commence. Similarly, an employee who is sick during the school holidays is not entitled to sickness allowance and will continue to receive the special payment. The amount of State benefit receivable shall not be deducted from the special payment. However, where an employee has an entitlement to Incapacity Benefit the employee will receive a sum equal to the special payment plus an amount equivalent to the Incapacity Benefit entitlement.

15. EXCLUSION FROM BENEFIT

(a) An employee whose absence on account of sickness is due or attributable to:

- (i) the employee's own misconduct; or
- (ii) active participation in sport as a profession; or
- (iii) injury while working in the employee's own time on his or her own account for private gain, or for another employer, shall not be entitled to an allowance under this Scheme, except at the discretion of the employing authority.

(b) Where the absence is due to participation in sport as an amateur, the employee shall be entitled to an allowance. Where the employee is covered for this risk by a form of insurance or other benefit which includes an element in respect of loss of wages, the local authority shall be entitled, if desired, to take account of such element in assessing the allowance.

16. ACCIDENT – THIRD PARTY CLAIM

(a) An employee who is absent as a result of an accident shall not be entitled to an allowance if damages may be receivable from a third party. In this event, the authority may, having regard to the circumstances of the case, advance to the employee a sum not exceeding the allowance provided under this Scheme, subject to the employee undertaking to refund, from any damages received, the total amount of such allowance or such part thereof as the authority may, having regard to the amount of damages recovered, determine

after consultation with the employee or the representative of the employee.

(b) In the event of an employee being dissatisfied at the determination by the authority, the matter may be referred, either jointly or at the request of either party, to the Joint Secretaries of the National Council for advice. Any period of absence in such a case where a refund of the monies advanced is made in full shall not be taken into account for the purpose of paragraph 6 of the Scheme. Where however, the refund is made in part only, the employing authority may at its discretion decide to what extent, if any, the period of absence shall be taken into account for the purpose of paragraph 6 above.

17. CERTIFICATION OF SICKNESS

(a) An employee shall not be entitled to claim an allowance unless:

- (i) notification is made immediately to the officer prescribed for this purpose by the authority;
- (ii) further notification is furnished to the authority as may be required but not later than the fourth day of absence;
- (iii) a doctor's statement is furnished to the authority not later than the eighth calendar day of absence;
- (iv) subsequent doctor's statements are submitted to the authority at the same intervals as they are required for national insurance purposes in those cases where the sickness absence extends beyond the period covered by the initial statement and at similar intervals during a period of entitlement to Incapacity Benefit.
- (v) on return to work a statement is signed detailing the reasons for all absences up to and including seven days.

(b) In cases where the first doctor's statement covers a period exceeding fourteen days or where more than one statement is necessary, the employee must, before returning to work, obtain a final statement as to fitness to resume duties.

Notes:

- (a) Production to the authority of the official statement(s) required by the Department of Health and Social Care shall be permissible.
- (b) A local authority may, at its discretion, accept a statement of a Christian Science practitioner in a particular case according to its merits.
- (c) Absence on account of sickness on the day before or day following a public or extra-statutory holiday must be supported by a self certificate.

18. MEDICAL EXAMINATION DURING PERIOD OF ABSENCE

(a) An employee shall, if required at any time, submit to a medical examination by a registered medical practitioner nominated by the authority, subject to the provisions of the Access to Medical Reports Act 1988 where applicable. In the event of a difference in medical opinion as to the employee's fitness for work, the matter shall, at the request of the authority or of the employee, be submitted to an independent medical referee chosen jointly by the authority and its employee.

(b) In the event of the referee pronouncing the employee as fit to resume work, the allowance under the Scheme shall cease with effect from the date on which the referee determines that the employee should return to work.

19. PAYMENTS NOT TO ADMIT LIABILITY UNDER WORKMEN'S COMPENSATION ACTS, ETC

Any payments under this Scheme, shall not be an admission of liability under the Workmen's Compensation Acts, the Employers' Liability Acts and Acts amending, altering or affecting those Acts or at Common Law.

20. PART-TIME EMPLOYEES

(a) This Scheme shall apply to a part-time employee in regular employment with a local authority as the employee's sole employment.

(b) A local authority may apply the scheme to a part-time employee with other employment on such terms, including deduction of National Insurance benefit, as it may be decided. This provision is not intended to exclude such part-time employees from the Scheme but rather as a form of protection to the employing authority against the risk incidental to other employment and as cover for the position in relation to National Insurance benefits. There will be a presumption in favour of inclusion in the Scheme if consent to other employment is given by the authority and if satisfactory arrangements are made with the other employer, if necessary, as to recovery of benefit for the days in respect of which an allowance under the scheme is paid; if the employee works for another employer concurrently and the employment is separate and distinct, there is liability for the employee's contributions in each employment and the contributions are payable in each regardless of the amount paid in other employments. (Each employment has its own earnings period, for example weekly contributions may be paid in one and monthly contributions in the other.) Where, however, an employee receives separate entitlements to Incapacity Benefit under more than one contract of employment the authority will offset any such payments only in respect of the contract(s) of employment with that employee to which it is a party. Where a local authority decides not to admit such a part-time employee to the Scheme, notice in writing to that effect shall be given.

21. PERSONAL INJURY ALLOWANCES TO MERGE

Any allowance under this Scheme shall be reduced by an amount equivalent to any monies received by an employee under any scheme made under the Personal Injuries (Emergency Provisions) Acts.

22. CONTACT WITH INFECTIOUS DISEASES, ETC – PERSON DEEMED TO BE INCAPABLE OF WORK

(a) An employee who is not incapable of work, but who is deemed in accordance with the Social Security Acts 1975-1982 to be incapable of work, shall be entitled to an allowance under the Scheme, for this purpose paragraph 2(b) of the Scheme shall not apply.

(b) A period of absence on this account shall not be reckoned against the employee's entitlement to allowance during absence due to normal sickness or industrial disease or accident.

23. VICTIMS OF CRIMES OF VIOLENCE

(a) Where an employee is absent from work because of an injury in respect of which a claim will be to the Criminal Injuries Compensation Board and where the employee is otherwise qualified to receive sickness and accident allowances in accordance with the Scheme, an accident allowance shall be disbursed to the employee without a requirement to refund any portion of it from any sum which the Compensation Board may award.

(b) Where an award has been made by the Compensation Board, the employing authority may discount, wholly or partly, the period of absence occasioned by the injury in calculating the employee's future entitlement to sickness and accident allowances as the authority may see fit on consideration of all the material circumstances.

Note: Hospital Outpatients

The National Council does not propose to make any regulations covering the payments to be made to employees required to attend hospital as out-patients after the expiration of periods of sick leave. It is recommended that local authorities sympathetically consider cases of this kind on their respective merits.

24. REIMBURSEMENT OF COST OF DOCTORS' STATEMENTS

Where for the purpose of qualifying for an allowance under this Scheme an authority requires a doctor's statement from an employee, the authority shall reimburse the employee the cost of such a statement on provision of a receipt.

25. INDUSTRIAL DISEASE OR ACCIDENT

Where an employee is absent from work as a result of an industrial disease or accident (as defined in paragraph 1[a]) the employee shall be entitled to the provisions of the sickness pay scheme relating to the industrial disease or accident, provided that the employee has complied with the following conditions:

(a) Any accident arising out of an in the course of employment with the authority must be reported and recorded in accordance with the procedures laid down by the authority. The accident will be subject to investigation and report by an officer authorised for the purpose by the authority.

(b) Where an employee seeks medical advice about an illness which is suspected or alleged to result from the nature of his or her employment the employee reports accordingly to the authority at the first opportunity.

(c) Certification of absence due to industrial disease or accident is made as required under the provisions of paragraph 17.

(d) In the case of the first, and any subsequent absence, due to industrial disease or accident an employee shall submit, at any time during such absence, if so required by the employing authority to a medical examination by a registered medical practitioner nominated by the authority. In the event that the authority's doctor is not satisfied that the absence is due to an industrial disease or accident the employee shall have right of appeal to an independent medical referee chosen jointly by the authority and the employee.

(e) Failure to meet these conditions will render the employee liable to exclusion from the provisions of the occupational sickness pay scheme relating to industrial disease or accident. However, the employee shall have right of appeal through the normal machinery where differences arise out of application of this paragraph.

Temporary Injury Allowance – see MOA Article 52

(Article 33)
SECTION 7

(B) MATERNITY LEAVE SCHEME

Statutory rights in accordance with the Employment Act 2006 came into force for babies due on or after 30th September 2007.

1. Maternity Provisions

1.1 In accordance with and in addition to statutory provision, the National Council's scheme provides separate maternity provisions for:

(i) Female workers employed with more than two years' continuous local government service, and

(ii) Female workers who do not qualify under (i) with at least one year's continuous local government service.

(iii) Female workers who do not qualify under (i) or (ii)

1.2 Female workers continue to be employed by the Authority whilst on maternity leave

2. Ante-Natal Care

2.1 All pregnant employees are entitled to time off to keep appointments for ante-natal care made on the advice of a registered medical practitioner or registered midwife. For her first appointment, the employee must be prepared to show on request:

- A certificate from a registered medical practitioner or registered midwife confirming that she is pregnant, and
- An appointment card or some other document showing that an appointment has been made

2.2 The employee will be paid at her normal hourly rate of pay during the period of time off.

3. Maternity Leave

3.1 Every pregnant employee is entitled to at least 26 weeks Ordinary Maternity Leave (OML), regardless of length of service. The contract of employment continues during OML. During her OML period the employee will continue to receive all her contractual benefits other than salary or wages. Maternity pay is detailed in paragraph 9 below.

3.2 An employee who has completed 26 weeks' continuous employment by the beginning of the 14th week before the expected week of childbirth is entitled to 26 weeks Additional Maternity Leave (AML). AML begins at the end of OML. Some terms of the contract continue during AML.

3.3 In order to take advantage of the right to OML and AML (if qualified) the employee must give the proper notification (see paragraph 4)

4. Notice Periods

4.1 No later than the end of the 15th week before her expected week of childbirth (or as soon as is reasonably practicable) the employee must complete the Statement of Intention (see Annex A) notifying the employer of:

- The expected date of childbirth
 - The intended date of finishing work and OML commencing (which shall not be earlier than beginning of 11th week before expected week of childbirth)
- The employee can vary the date that maternity leave will start provided that notice in writing is given at least 28 days prior to the new date commencing (or as soon as is reasonably practicable).

4.2 The employer will ensure that, within 28 days of receiving appropriate notice, the employee is advised of the date the maternity leave period will end (see model letter at Annex B). If the employer is entitled to AML, the end date will be calculated on the assumption that she is taking it.

4.3 If the employee changes the date her leave will start, the employer must notify her of the amended end date within 28 days of the start of her leave.

4.4 An employee who intends to return to work earlier than the end of her maternity leave period, shall give her employer not less than 28 days' notice of the date on which she intends to return. Where an employee qualifies for AML, but only wishes to take OML, she must give 28 days' notice of her return to work. Should such notice not be given, the return date may be postponed by the employer to allow for the appropriate 28 days notice (but not to a date later than the end of her OML or AML).

4.5 If because of an interruption of work (whether due to industrial action or some other reason) it is unreasonable to expect the employee to return on the notified day, she may instead return when work resumes, or as soon as reasonably practicable thereafter.

4.6 An employee must give the normal notice (see Article 27) if she does not intend to return to work after her maternity leave.

5. Statement of Intention

5.1 An employee who is pregnant should advise her employer and complete the Statement of Intention at Annex A as soon as possible and no later than 15 weeks before the expected date of childbirth (or as soon as is reasonably practicable). On receipt of the completed form the employer should:

- a) retain a copy;
- b) send a copy to the appropriate Pay Section
- c) send a copy to the Office of Human Resources (as appropriate)
- d) arrange for a letter of confirmation to be issued to the employee within

28 days of receipt of her notification (see model letter at Annex B)

5.2 The appropriate Pay Section and Public Service Pensions Authority should also be notified of any unpaid leave taken by the employee.

6. Definitions

a) Definition of 'Childbirth'

'Childbirth' for the purposes of these Regulations is defined as the birth of a living child or the birth of a child whether living or not after 24 weeks of pregnancy.

b) Definition of 'Expected week of Childbirth'

The week, beginning at midnight between Saturday and Sunday, in which it is expected that the baby will be born.

c) Definition of 'A Week's Pay'

Normal weekly wage is defined in Appendix 3, Section 7(A) paragraph 7, in addition:

- For a bonus earner (contractual), a sum equal to average bonus earnings, this to be determined by reference to the average bonus earned per hour over the preceding three months or any other period agreed locally.

7. Premature Birth

7.1 In the event of premature birth (even if this is before the 11th week before the expected week of childbirth) maternity leave will start on the day after the birth and all the normal provisions of the scheme will apply. Qualifying period for AML will still be calculated based on the expected week of childbirth.

8. Still Birth or Death of a Baby

8.1 In the unfortunate event of still birth after 24 weeks of pregnancy, or the death of the baby shortly after birth, the employee will still be entitled to the maternity provisions for which she is eligible, specifically Maternity Leave and Maternity Pay.

9. Maternity Pay

9.1 There is no statutory requirement to pay an employee whilst on maternity leave; however details of contractual pay are detailed in 9.3 below.

9.2 A qualifying condition for entitlement to maternity pay is that an employee returns to work for a period of at least three months. This requirement may be varied at the discretion of the Authority on good cause being shown.

9.3 An employee who is entitled to maternity leave (as set out in 3.2) and has attained the relevant length of continuous service by the beginning of the 11th week before the expected week of childbirth will also be entitled to maternity pay as follows:

At least 1 year continuous service

- 6 weeks at nine-tenths of a week's pay (less if employee is not

eligible for Department of Health and Social Care Maternity Allowance (MA)), followed by 12 weeks at half a week's pay (without deduction unless combined pay and MA or any dependent's allowances exceeds full pay)

More than 2 years continuous service

6 weeks at nine-tenths of a week's pay (less if employee is not eligible for Department of Health and Social Care Maternity Allowance (MA))

(the first 6 weeks is payable whether or not the employee returns to work following maternity leave – see 11.1 below)

followed by 12 weeks at half a week's pay (without deduction unless combined pay and MA or any dependent's allowances exceeds full pay)

10. Maternity Allowance

10.1 Employees may be eligible to claim maternity allowance from DSC. Where this is granted during the first 6 weeks of maternity pay, the allowance will be offset against pay. No allowance will be deducted during periods of half pay.

10.2 Employees who have completed the 'Option to Draw Unabated Sick/Maternity/Adoption/Paternity Pay' form at Annex C will have maternity pay made in the first 6 weeks of maternity leave in accordance with 9.3 above, as they have agreed not to claim maternity allowance in that option.

11. Repayment of Maternity Pay

11.1 If an employee, with less than two years' continuous service at the time maternity leave commences, does not return to work on or before the end of her entitlement to maternity leave and complete at least 13 weeks paid service she may be required to repay all pay paid to her during the period of maternity leave (see 9.3 above). This requirement may be varied at the discretion of the Authority on good cause being shown.

If an employee with more than two years' continuous service at the time maternity leave commences, does not return to work on or before the end of her entitlement to maternity leave and complete at least 13 weeks paid service, she may be required to repay the 12 weeks half pay paid to her during the period of maternity leave. This requirement may be varied at the discretion of the Authority on good cause being shown. The first 6 weeks is payable whether or not the employee returns to work following maternity leave. (See 9.3 above)

11.2 If an employee fails to return to work after maternity leave her last day of service for pay and related purposes will be taken as her last day at work before commencing maternity leave. If she returns, but does not complete 13 weeks' service, normal notice periods will apply.

11.3 Repayment may be waived if the employee provides medical evidence that she will be unable to return to work at the end of the period of maternity leave because the baby is disabled and as a result, requires continuous attention at home. Medical evidence should be sent to the Chief Executive not later than 3 weeks before the maternity leave is due to cease. (See Annex A 'Statement of Intention and Undertaking to Repay Payment' Note 2.)

11.4 Repayment may also be waived if the employee provides medical evidence (in respect of herself or her baby) that she is unable to honour her

stated intention to return to work at the end of the period of maternity leave. (See Annex A 'Statement of Intention and Undertaking to Repay Payment' Note 3.)

11.5 An employee who is required to repay salary or wages received during the period of maternity/adoption leave in accordance with sub-paragraph (d) of Option B will be eligible for the refund of National Insurance Contributions paid in respect of the pay received in this period. (See Annex A 'Statement of Intention and Undertaking to Repay Payment' Note 4.)

12. Annual Leave

12.1 Contractual annual leave allowance continues to accrue during periods of OML.

12.2 No contractual annual leave allowance will accrue during AML.

12.3 Public and Privilege holidays falling during unpaid leave will be unpaid.

12.4 During periods of unpaid maternity leave when contractual leave does not accrue, statutory leave will accrue (provision for a minimum of 4 weeks paid leave per annum in total, incorporating both contractual and statutory leave). Accrued statutory leave cannot be carried forward into a new leave year.

12.5 Where possible, to avoid the loss of annual leave, an employee should try and take any unused, accrued annual leave, prior to going on maternity leave. The provisions in relation to carrying over leave referred to in Article 17 still apply.

12.6 Should an employee return to work on reduced hours, credits of annual leave accrued prior to and during maternity leave will be proportionate to the contract in force at the time of accrual.

13. Health and Safety

13.1 Definition of the term 'New and Expectant Mothers'

13.1.1 Includes women: who are pregnant, who have given birth within the last 6 months, or who are breastfeeding.

13.2 Suspension from work on Maternity grounds:

13.2.1 When assessing risks in the workplace, the employing authority should pay particular attention to risks that could affect the health and safety of new or expectant mothers or their babies. If a risk remains which could damage the health and safety of a new or expectant mother or her baby, the employing authority should make sure she is not exposed to that risk.

13.2.2 If necessary, suitable alternative work may be offered if available. If such alternative work is not available and it is deemed appropriate, the employing authority may consider instigating suspension from work on maternity grounds; this may be prior to commencement of maternity leave, or when maternity leave has expired. Whilst on maternity suspension, an employee will be paid her normal remuneration.

13.2.3 If an employee unreasonably refuses an offer of suitable alternative work, no remuneration will be payable for the period during which the offer applies.

13.3 Risk Assessment:

13.3.1 Employing authorities are required to assess risks to the health and safety of new and expectant mothers and their babies, who may be particularly at risk from different physical, biological and chemical agents, processes and working conditions. These risks will vary depending on the employee's health and at different stages of pregnancy. Assistance in this respect can be sought from the Department's Health & Safety Adviser, or the Government Health & Safety Adviser.

13.3.2 If an employee believes there is a risk to her health or safety, or to that of her baby, which has not been considered in the risk assessment, she should bring the risk to the attention of her employing authority.

13.3.3 If risks are identified by the assessment, information about them should be given to all women of childbearing age in the workplace. Employers should explain what they will do to make sure that new and expectant mothers are not exposed to the risks that could cause them harm. They should also inform them of the need to receive written notification of pregnancy/ breastfeeding as early as possible.

14. Sick Absence During or Following Pregnancy

14.1 An employee who is absent from work due to illness will normally be able to take sick leave (in accordance with provisions of Appendix 3, Section 7 (A)) until she starts maternity leave on the date notified. If the illness is unrelated to her pregnancy, she can remain on sick leave right up to the date of the baby's birth, or until the date she has notified as the date on which she intends her maternity leave to start.

14.2 If the illness is pregnancy related, the maternity leave period will start automatically on the day after the first day of absence following the beginning of the 4th week before the expected week of childbirth.

15. Return to work after Maternity Leave

15.1 An employee who resumes work after OML is entitled to return to the same job on the same terms and conditions as if she had not been absent, unless a redundancy situation has arisen (see paragraph 16).

15.2 An employee who resumes work after AML is also entitled to return to the same job on the same terms and conditions as if she had not been absent, unless a redundancy situation has arisen; however, if there is some other reason why it is not reasonably practicable for her to return to her original job, she is entitled to be offered suitable alternative work.

15.3 Employees who wish to vary their working pattern on return from maternity leave may have the right to request flexible working (see Appendix 19).

16. Redundancy during Maternity Leave

16.1 Should a redundancy situation arise, there is statutory entitlement for an employee on maternity leave to be made an offer of any suitable alternative vacancy available. If an employee on OML or AML is made redundant, her maternity leave period comes to an end.

**Annex A
MATERNITY & ADOPTION**

STATEMENT OF INTENTION AND UNDERTAKING TO REPAY PAYMENT

Maternity

This form should be completed by the employee no later than 15 weeks before the expected date of childbirth (or if that is not reasonably practicable, as soon as is reasonably practicable) and given to the Line Manager (see Appendix 3, Section 7(B), paragraph 5).

The Line Manager will require sight of a certificate from a registered medical practitioner or mid-wife stating the expected week of childbirth.

Adoption

This form should be completed by the employee within 7 days of the date of receiving notification of being matched with a child and at least 28 days notice must be given to the line manager in advance of the date adoption leave is to commence (where these notice periods are not practicable, then as soon as is reasonably practicable). See Appendix 3, Section 7(B), paragraph 4 for further information regarding these notice periods.

Full Name:.....

Please read the notes overleaf and then complete either Option A or Option B

OPTION A

I shall be terminating my employment on20..... and do not intend to return work in accordance with the provisions of Appendix 3, Section 7(B).

Signed:.....

Department:.....

Dated:.....

OPTION B

* please delete as appropriate

(a) I intend for my Ordinary Maternity/Adoption* Leave of 26 weeks (OML/OAL) to commence:

(Maternity: not earlier than beginning of the 11th week before the expected week of childbirth)

(Adoption: no later than the date of the child's placement and no sooner than 14 days before the expected date of placement)

I do/do not* qualify for Additional Maternity/Adoption Leave* (AML/AAL), of 26 weeks which will commence at the end of OML/AAL

(b) I expect the week of childbirth (midnight between Saturday and Sunday in which the baby is actually born) to be the week beginning the20.....

(c) I understand that I must give not less than 28 days notice if I intend to return to work earlier than the end of my maternity leave period.

(d) I undertake to repay, if asked to do so, any salary or wages paid to me in respect of the period of maternity/adoption leave, less the amount of any maternity/adoption allowance which the Department of Health and Social Care certifies I would have received in the absence of paid maternity/adoption leave, if I do not return to work in the Department/Authority at the end of the period of maternity/adoption leave to which I am entitled and complete a further 13 weeks' paid service.

Signed:.....

Department:.....

Date:.....

Please refer to the Notes below

NOTES:

1. Entitlement to Maternity/Adoption Leave and Pay is detailed in full in Appendix 3, Section 7(B) of the Whitley Council Memorandum of Agreement
2. Repayment may be waived if the employee provides medical evidence that she will be unable to return to work at the end of the period of maternity leave because the baby is disabled and as a result, requires continuous attention at home. Medical evidence should be sent to the Chief Executive not later than 3 weeks before the maternity leave is due to cease.
3. Repayment may also be waived if the employee provides medical evidence (in respect of herself or her baby) that she is unable to honour her stated intention to return to work at the end of the period of maternity leave.
4. An employee who is required to repay salary or wages received during the period of maternity/adoption leave in accordance with sub-paragraph (d) of Option B will be eligible for the refund of National Insurance Contributions paid in respect of the pay received in this period.

NOTE: A copy of the completed form should be retained by the line manager and copies sent to:

- a) the appropriate Pay Section
- b) the Office of Human Resources (as appropriate)

Annex B

MODEL LETTER TO ACKNOWLEDGE NOTIFICATION OF MATERNITY LEAVE

Date:

Dear [name of employee]

Congratulations and thank you for advising me of your pregnancy and the date your baby is due, being [Date]. This letter is to provide details of your maternity leave.

As we have discussed, you are eligible for [26 weeks' OML / 52 weeks' maternity leave (26 weeks' OML plus 26 weeks' AML) – delete as appropriate]. Given your chosen start date of [insert date], your maternity leave will end on [insert date].

If you want to change the date your leave starts you must, if at all possible, tell me at least 28 days before your proposed new start date, or 28 days before [insert date leave starts] (your original start date), whichever is the sooner. If you decide to return to work before [insert date leave ends], you must give me at least 28 days' notice.

*[Insert details of any contractual pay offered during maternity leave]

Contractual annual leave entitlement will accrue during OML, statutory leave will accrue during AML. We will determine your leave entitlement in the near future and discuss when this might be taken.

It is my aim to ensure that your health and safety as a pregnant mother are protected while you are working, and that you are not exposed to risk. I will arrange for a specific risk assessment of your job and we will discuss what actions to take if any problems are identified. If you have any further concerns, following this assessment and specifically in relation to your pregnancy, please let me know immediately.

If you decide not to return to work, you must still give me proper notice. If you have any questions about any aspect of your maternity entitlement, please do not hesitate to get in touch with me.

Yours sincerely,

* Details of contractual pay must be specified. If unsure as to the amount of contractual pay to be offered please liaise with your HR Adviser, Office of Human Resources.

Annex C

Option to Draw Unabated Sick/Maternity/Adoption/Paternity Pay

To avoid as far as possible the work of adjusting

sick/maternity/adoption/paternity pay, employees who give the undertaking set out below may receive such pay without abatement, within the limit of their normal entitlement.

Full name of employee

(block capitals please)

Department

(This form, when completed, should be returned to the Line Manager for onward transmission as detailed below)

FORM OF UNDERTAKING

1. I wish to take advantage of the arrangement to draw unabated sick/maternity/adoption/paternity pay as an alternative to drawing separately national insurance benefit and sick/maternity/adoption/paternity pay abated by the amount of that benefit for so long as I may be eligible for sick/maternity/adoption/paternity leave on full pay. In return, I agree not to receive incapacity benefit or maternity/adoption/paternity allowance under the Social Security Acts.

2. I wish to be given reasonable notice by my pay section of the date on which I shall cease to be eligible for sick leave on full pay.

3. I shall inform my pay section immediately if, despite signing this undertaking, I receive any incapacity benefit or maternity/adoption/paternity allowance under the Social Security Acts. I also authorise the Isle of Man Department of Health and Social Care to furnish my department with particulars of any sickness or injury benefit or allowance drawn by me unless I give the written notice referred to in 4(b) below.

4. I understand that this undertaking will not apply:-

(a) if I cease to be entitled to full sick pay; or

(b) if I give written notice to my department that I no longer wish to draw unabated sick pay but to adopt the alternative of claiming national insurance benefit and sick pay abated by the amount of that benefit;

(c) if I cease to be a member of the Department/Public Service.

Signed: _____

Date: _____

Witnessed by: _____

(*Accounting Officer/Divisional Head/Line Manager) * Delete as appropriate

cc: Office of Human Resources (as appropriate) and Pay Section

**Proposed
Amendment**

:

Proposed amendments in Red

APPENDIX 3

(Article 31)

SECTION 7

SCHEME FOR SICKNESS AND MATERNITY LEAVE

Section

(A) Sickness Scheme

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Appendix

Maternity Provisions

SECTION 7

SCHEME FOR SICKNESS AND MATERNITY LEAVE

(A) SICKNESS SCHEME

1. APPLICATION

Special arrangements exist for employees to choose to be paid in full for periods of sick absence – this is known as the option to draw unabated sick pay. Without these arrangements, sick pay would have to be reduced by the amount of Social Security benefit claimable from Social

Security although the total income receivable in either case will be the same.

The arrangements exist only to provide a simpler method for the payment of sick pay for both employees and pay sections, but they can only apply when an employee is entitled to be paid **their normal earnings** while on sick leave.

Therefore PSC employees will receive full pay without abatement (i.e. without deduction of national insurance benefit) provided the appropriate declaration is completed.

Sick pay is treated like pay in that it is subject to deduction of income tax and national insurance contributions. There should be no difference between normal pay (excluding overtime and intermittent allowances) and sick pay.

Absence shall be regarded as due to industrial disease or accident when it accord with the provisions of paragraph 17.

2. SICKNESS AND ACCIDENT ALLOWANCES TO BE TREATED AS SEPARATE ENTITLEMENTS

The allowances in respect of (a) normal sickness and (b) absence due to industrial disease or accident are entirely separate and periods of absence in respect of one shall not be set against the other for the purpose of section 4 of the Scheme.

3. CONDITIONS OF CONTRACTUAL SICK PAY

(a) Within any span of 12 months, payment of contractual sick pay shall be for the following periods according to length of service.

<u>During 1st year of service</u>	<u>1 month's full pay and (after completing</u>
	<u>4 months' service) 2 months' half pay.</u>
<u>During 2nd year of service</u>	<u>2 months' full pay and 2 months' half pay</u>
<u>During 3rd year of service</u>	<u>4 months' full pay and 4 months' half pay</u>
<u>During 4th & 5th year of service</u>	<u>5 months' full pay and 5 months' half pay</u>
<u>After 5 years</u>	<u>6 months' full pay and 6 months' half pay</u>

Provided that a stationed employer may, at its discretion, extend the period of sick pay in an individual case if the circumstances so justify.

(b) In the case of "half pay" periods, half pay is defined as half normal earnings, as defined in section 5.

- (c) For employees subject to retaining fee arrangements during periods of the year when schools are closed, the period of entitlement to sick pay during their fourth and subsequent years' service shall be 20 weeks full pay and 20 weeks' half pay.

4. CALCULATION OF PERIOD OF SICK PAY

- (a) The period during which sick pay shall be paid in respect of any period of sickness absence shall be ascertained by deducting from the employee's entitlement any period, or the aggregate of periods, of paid sickness absence during the twelve months immediately preceding the first day of absence. As provided in paragraph 2, sickness absence and absence due to industrial disease or accident shall be treated separately for this purpose.
- (b) A period of absence due to injury sustained by an employee for which damages are recovered from a third party shall be treated on terms of section 8 of the Scheme.

5. NORMAL EARNINGS

For the purposes of this Section normal earnings are the earnings that would be paid during a period of normal working but excluding:

- (i) casual overtime payments;
- (ii) casual standby payments;
- (iii) payment of a higher grade rate than an employees' normal rate of wages where on the day immediately prior to absence due to sickness the employee has been receiving that payment for less than four weeks.

6. SICKNESS DURING HOLIDAYS

- (a) Where an employee is receiving sickness pay he or she should continue to receive such pay if a public or extra-statutory holiday occurs during sick leave. Where an employee has exhausted his or her period of entitlement to sickness pay, no payment should be made in respect of a public or extra-statutory holiday occurring during the period of sick leave.
- (b) An employee absent on unpaid sickness leave is not entitled to payment in lieu of a public or extra-statutory holiday falling during such absence, save in the case of an employee excluded on medical grounds shall be entitled to holiday pay in respect of public or extra-statutory holidays occurring during the portion of sickness absence in respect of which, had the employee been admitted to the Scheme, he or she would have received sick pay.
- (c) An employee who falls sick during the course of annual leave shall be regarded as being on sick leave from the date of a doctor's statement and shall be entitled to take the balance of holiday at a later date after return to work, provided the balance

of holiday is taken before the 31st March following the absence.

- (d) The special payment to be made to an employee in the School Meals Service during a school holiday is a payment during a period of non-employment. In the case of an employee who is absent due to sickness immediately prior to the commencement of a school holiday period, sickness pay shall cease at the beginning of the school holiday period and the special payment shall commence. Similarly, an employee who is sick during the school holidays is not entitled to sick pay and will continue to receive the special payment.

7. EXCLUSION FROM BENEFIT

- (a) An employee whose absence on account of sickness is due or attributable to:
- (i) the employee's own misconduct; or
 - (ii) active participation in sport as a profession; or
 - (iii) injury while working in the employee's own time on his or her own account for private gain, or for another employer, shall not be entitled to an allowance under this Scheme, except at the discretion of the stationed employer.
- (b) Where the absence is due to participation in sport as an amateur, the employee shall be entitled to sick pay. Where the employee is covered for this risk by a form of insurance or other benefit which includes an element in respect of loss of wages, the stationed employer shall be entitled, if desired, to take account of such element in assessing sick pay.

8. ACCIDENT – THIRD PARTY CLAIM

An employee who is absent from work as the result of an injury caused by the negligence of a third party is not entitled to receive sick pay if damages may be recoverable from the third party. Where there is a possibility of a claim for damages against a third party the following procedure should be adopted:-

- (a) The employee must be required immediately to sign the form of undertaking which is attached at Annex D and recommended to seek legal advice on making a claim which should include a specific amount for loss of earnings including any potential pay increases. (Where the employee is unable to sign the form due to his injuries alternative arrangements should be made e.g. a witnessed mark on the form or the spouse's signature).
- (b) It should be explained to the employee that, on signing the undertaking the employee will receive "an advance" which will be recoverable from any damages received from the third party; the employee should also be assured that no attempt will be made to recover the monies advanced in the event of:-
- (i) the claim not being pursued for any reason on legal advice; or

- (ii) the claim for damages being unsuccessful; or
- (iii) the claim being successful but the payment of the damages cannot be enforced.

In the event of an employee being partially successful, advice should be sought from the HR Advisers in the Office of Human Resources.

- (c) The employee should be advised to claim sickness benefit from Social Security and seek the Department's advice on the consequences of any long-term benefits (e.g. national retirement pension) so that any potential losses can be included with the claim.
- (d) The "advance" should be a sum equal to the amount of sick pay which would have been paid if the absence had been due to ordinary sickness, however:-
 - (i) No ITIP or NI deductions that would be made if the advance had been sick pay should be forwarded to the Treasury or Social Security);
 - (ii) The amount of sickness benefit which the employee is entitled to claim under the Social Security Acts must be deducted from the payment.

Note

The advance should not be issued with the normal pay slip unless the slip clearly states that it is an advance and not remuneration in the form of pay. In the unfortunate event of the employee's injuries being such that there is not a reasonable prospect of sufficient recovery to allow him to return to work the provisions of Article 31 and Appendix 7 of the MOA concerning premature retirement on ill health grounds should be followed.

9. CERTIFICATION OF SICKNESS

- (a) An employee shall not be entitled to claim sick pay unless:
 - (i) notification is made immediately to the officer prescribed for this purpose by the stationed employer;
 - (ii) further notification is furnished to the stationed employer as may be required but not later than the fourth day of absence;
 - (iii) a doctor's statement is furnished to the stationed employer not later than the eighth calendar day of absence;
 - (iv) subsequent doctor's statements are submitted to the stationed employer at the same intervals as they are required for national insurance purposes in those cases where the sickness absence extends beyond the period covered by the initial statement.
 - (v) on return to work a statement is signed detailing the reasons for all absences up to and including seven days.
- (b) In cases where the first doctor's statement covers a period

exceeding fourteen days or where more than one statement is necessary, the employee must, before returning to work, obtain a final statement as to fitness to resume duties.

Notes:

- (a) A stationed employer may, at its discretion, accept a statement of a Health Care Professional as defined in the Health Care Professionals Act 2014 in a particular case according to its merits.
- (b) Absence on account of sickness on the day before or day following a public or extra-statutory holiday must be supported by a self certificate.

Original doctor's medical certificates should be returned to the member of staff once a manager has taken a copy for their file.

10. NOTIFICATION OF PROGRESSION TO HALF OR NIL PAY

Employees will receive notice as to when they are to progress to half or nil pay. In addition the employee will be reminded to complete a Social Security SC1 form (claim for Incapacity Benefit), upon receiving the pre-notification of progression to half pay.

Managers (or delegates) are required to notify employees as soon as they themselves are informed as to when the employee will go on to half or nil pay and should resend any notification 4 weeks prior to any reduction. Failure to do so may result in the employee not receiving incapacity benefit.

11. INCAPACITY BENEFIT

Prior to an employee going on to half sick pay, they must submit a completed Incapacity Benefit Claim Form (SC1) directly to the Social Security office, along with all original doctor's medical certificates.

Completion and submission of the SC1 is the responsibility of the employee and should also include details of any secondary employment.

12. MEDICAL EXAMINATION DURING PERIOD OF ABSENCE

(a) An employee shall, if required at any time, submit to a medical examination by a registered medical practitioner nominated by the stationed employer, subject to the provisions of the Health Records and Reports Act 1993 where applicable. In the event of a difference in medical opinion as to the employee's fitness for work, the matter shall, at the request of the stationed employer or of the employee, be submitted to an independent medical referee chosen jointly by the authority and its employee.

(b) In the event of the referee pronouncing the employee as fit to resume work, sick pay shall cease with effect from the date on which the referee determines that the employee should return to work.

13. PAYMENTS NOT TO ADMIT LIABILITY UNDER WORKMEN'S

COMPENSATION ACTS, ETC

Any payments under this Scheme, shall not be an admission of liability under the Workmen's Compensation Acts, the Employers' Liability Acts and Acts amending, altering or affecting those Acts or at Common Law.

14. PART-TIME EMPLOYEES

This Scheme shall apply to a part-time employee in regular employment under PSC Manual & Craft terms and conditions. Sick pay for part-time employees should be based on their normal rate of pay for the hours they are contracted to work.

15 CONTACT WITH INFECTIOUS DISEASES, ETC – PERSON DEEMED TO BE INCAPABLE OF WORK

- (a) An employee who is not incapable of work, but who is deemed in accordance with the Social Security Contributions and Benefits Act 1992(as that Act of Parliament has effect in the Isle of Man) to be incapable of work, shall be entitled to sick pay under the Scheme.
- (b) A period of absence on this account shall not be reckoned against the employee's entitlement to allowance during absence due to normal sickness or industrial disease or accident.

16. ABSENCE DUE TO INJURIES AS A RESULT OF AN ASSAULT ON DUTY

If there is any doubt whether or not an absence is directly attributable to an assault on duty, the stationed employer should be asked to seek the advice of the Commission's Occupational Health Practitioner. If the circumstances of the assault on duty are such that there is a possibility of recovering damages from a third party the employee should be advised to act as in the case of an employee injured due to an accident involving a third party, (see section 8) for the purposes of a claim and required to sign an undertaking, using the form at Annex D.

The pay of an employee during an absence to injury as a result of an assault in the course of duty or an assault while not on duty but clearly connected with official duty shall be as follows:-

(a) if a claim for damages is not to be made, full sick pay, paid irrespective of the amount the employee would have received under the sick pay rules plus additions in respect of overtime, shift disturbance, or night duty allowances regularly received (calculated on average hours worked over the calendar quarter immediately preceding, unless such work is of a purely seasonal character when an estimate should be made of what he would have received had he not been forced to miss work because of the assault);

(b) if a claim for damages is to be made – an advance equivalent to the amount which would have been paid under (a) above, if no claim for

damages had been made, subject to refund if the claim is successful.

The provisions of section 8(b) will apply if the employee is unable to claim damages from the third party, or if the claim is wholly unsuccessful, or if the claim is partly successful.

17. DAMAGES AWARDED – TREATMENT OF NATIONAL INSURANCE AND INCOME TAX PAYMENTS

If a claim for damages is wholly or partly successful, any advances are subject to refund and the employee's income tax and contribution payments may need to be adjusted. The advice of the Assessor of Income Tax and Social Security Division should be sought in each case.

18. DAMAGES AWARDED – RECKONING OF ABSENCE FOR SICK ABSENCE PURPOSES

Where there has been a successful claim for damages and all or part of the "advance" has been repaid, the period of absence due to injury shall be expunged from reckoning against the maximum periods of paid sick absence as set out in section 3 as follows:

- (a) **ASSUALT WHILE ON DUTY**:- total period of sick absence due to the assault irrespective of result of any claim made;
- (b) **ACCIDENT (ON OR OFF DUTY) DUE TO THE NEGLIGENCE OF A THIRD party**:- a period running from the date on which the paid absence due to the injury began, up to the date on which the total sum repaid to the department would be expended when set against the pay advanced.

(c) **VICTIMS OF CRIMES OF VIOLENCE**

(i) Where an employee is absent from work because of an injury in respect of which a claim will be to the Criminal Injuries Compensation Board and where the employee is otherwise qualified to receive sick pay and accident allowance in accordance with the Scheme, an accident allowance shall be disbursed to the employee without a requirement to refund any portion of it from any sum which the Compensation Board may award.

(ii) Where an award has been made by the Compensation Board, the employing authority may discount, wholly or partly, the period of absence occasioned by the injury in calculating the employee's future entitlement to sick pay and accident allowances as the authority may see fit on consideration of all the material circumstances.

NOTE

Where no repayment is made, absences due to the negligence of a third party will be treated as sick leave for the purposes of this section.

19. INDUSTRIAL DISEASE OR ACCIDENT

Where an employee is absent from work as a result of an industrial disease or accident the employee shall be entitled to the provisions of the sickness pay scheme relating to the industrial disease or accident, provided that the employee has complied with the following conditions:

- (a) Any accident arising out of and in the course of employment with the stationed employer must be reported and recorded in accordance with the procedures laid down by the Public Services Commission. The accident will be subject to investigation and report by an officer authorised for the purpose by the Public Services Commission (or delegate).
- (b) Where an employee seeks medical advice about an illness which is suspected or alleged to result from the nature of his or her employment the employee reports accordingly to the stationed employer at the first opportunity.
- (c) Certification of absence due to industrial disease or accident is made as required under the provisions of section 9.
- (d) In the case of the first, and any subsequent absence, due to industrial disease or accident an employee shall submit, at any time during such absence, if so required by the stationed employer to a medical examination by a registered medical practitioner nominated by the stationed employer. In the event that the stationed employer's doctor is not satisfied that the absence is due to an industrial disease or accident the employee shall have right of appeal to an independent medical referee chosen jointly by the stationed employer and the employee.
- (e) Failure to meet these conditions will render the employee liable to exclusion from the provisions of the occupational sickness pay scheme relating to industrial disease or accident. However, the employee shall have right of appeal through the normal machinery where differences arise out of application of this paragraph.

20. Temporary Injury Allowance – see MOA Article 52.

(Article 31)

APPENDIX 3

SECTION 7

SCHEME FOR SICKNESS AND MATERNITY LEAVE

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~~Appendix~~

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SECTION 7

~~SCHEME FOR SICKNESS AND MATERNITY LEAVE~~

~~(A) SICKNESS SCHEME~~

~~1. APPLICATION~~

~~(a) This is a scheme to supplement Incapacity Benefit by the payment of allowances during absence from work through sickness, disease or disablement arising either in the normal course or through accident not associated with employment with a local authority hereinafter called "normal sickness") or out of and in the course of such employment, but not attributable to an employee's own misconduct (hereinafter referred to as "industrial disease or accident"). Absence shall be regarded as due to industrial disease or accident when it accords with the provisions of paragraph 25.~~

~~(b) The Scheme is intended to secure that, during such absence and for the periods referred to in paragraph 5, the employee shall receive by way of the allowance and Incapacity Benefit not more than the sum of his or her normal earnings, as defined in paragraph 7. Any other state benefit or pension which an employee would receive when at work is not affected by this Scheme.~~

~~2. CONDITIONS FOR ADMISSION TO SCHEME~~

~~(a) Medical Examination~~

~~(i) As a condition of admission to the Scheme, a local authority may require an employee on engagement, to submit to a medical examination by a registered medical practitioner nominated by the Authority, and to be recommended by such medical practitioner for admission, provided that this condition shall not apply to an employee who had, prior to commencing date of this Scheme, been admitted to an existing scheme and had remained continuously employed with a local authority. The local authority shall notify the employee in writing if, after such a medical examination, the employee is not admitted to the Scheme.~~

~~(ii) In the absence of such a requirement or such a notice by the authority, an employee shall be deemed to be admitted to the Scheme subject to having established the qualification for benefit referred to in paragraph (b) below.~~

~~(b) Service~~

~~(i) — The following shall count as service for the purpose of qualifying for entitlement:~~

~~(a) — Service with any public authority to which the Superannuation Interchange Rules apply;~~

~~(b) — Periods of unpaid sickness absence or other unpaid leave of absence so long as the engagement continues.~~

~~(ii) — "Service" means continuous service, save that a break in service of less than six weeks shall be disregarded. If any one break in service extends to more than six weeks, service prior to such break and any other service which has been disallowed for the purpose of sick pay entitlement shall not be taken into account for the purpose of calculating continuous service.~~

~~(iii) — Any break in service before taking up employment with the local authority must not exceed six weeks.~~

~~3. — SICKNESS AND ACCIDENT ALLOWANCES TO BE TREATED AS SEPARATE ENTITLEMENTS~~

~~— The allowances in respect of (a) normal sickness and (b) absence due to industrial disease or accident are entirely separate and periods of absence in respect of one shall not be set against the other for the purpose of paragraph 6 of the Scheme.~~

~~4. — EMPLOYEES EXCLUDED FROM THE SCHEME ON MEDICAL GROUNDS~~

~~— Where an employee, excluded from the Scheme on medical grounds, is absent due to industrial disease or accident, the employee shall be entitled to an allowance as if he or she had been admitted to the Scheme.~~

~~5. — ALLOWANCE~~

~~(a) — Within any span of 12 months, payment of allowance shall be for the following periods according to length of service.~~

~~During 1st year of service — 1 month's full pay and (after completing 4 months' service) 2 months' half pay.~~

~~During 2nd year of service — 2 months' full pay and 2 months' half pay~~

~~During 3rd year of service — 4 months' full pay and 4 months' half pay~~

~~During 4th & 5th year of service — 5 months' full pay and 5 months' half pay~~

~~After 5 years — 6 months' full pay and 6 months' half pay~~

~~Provided that a local authority may, at its discretion, extend the period of allowance in an individual case if the circumstances so justify.~~

~~(b) — In the case of "full pay" periods the allowances shall be of an amount which, when added to:~~

~~(i) — Sickness benefit receivable under the Social Security Acts 1975-1982;~~

~~(ii) — Incapacity Benefit;~~

~~(iii) — Compensation payments under the Workmen's Compensation Acts and~~

for the Employers' Liability Acts, or

(iv) — Any payments under any Acts amending, altering or affecting those Acts or at Common Law will secure the employee the equivalent of normal earnings as defined in paragraph 7.

(c) — In the case of "half pay" periods the allowance is:

(i) — Where an employee is entitled to Incapacity Benefit, a sum equal to half normal earnings as defined in paragraph 7 plus an amount equivalent to the Incapacity Benefit entitlement and other benefits receivable under paragraph 5(b)(iii) and (iv), so long as the total sum does not exceed normal earnings as defined in paragraph 7.

(ii) — Where an employee is excluded from Incapacity Benefit, a sum equal to half normal earnings as defined in paragraph 7, provided that it does not, when added to any benefits receivable under paragraph 5(b), exceed normal earnings as defined in paragraph 7.

(d) — For employees subject to retaining fee arrangements during periods of the year when schools are closed, the period of entitlement to allowance during their fourth and subsequent years' service shall be 20 weeks full pay and 20 weeks' half pay.

—— Note: The words "state benefit" and "sickness benefit" shall be deemed to include invalidity benefit under the Social Security Acts 1975-1982, where receivable.

6. — CALCULATION OF PERIOD OF ALLOWANCE

(a) — The period during which the allowance shall be paid in respect of any period of absence shall be ascertained by deducting from the employee's entitlement any period, or the aggregate of periods, of paid absence during the twelve months immediately preceding the first day of absence. As provided in paragraph 3, sickness absence and absence due to industrial disease or accident shall be treated separately for this purpose.

(b) — A period of absence due to injury sustained by an employee for which damages are recovered from a third party shall be treated on terms of paragraph 16 of the Scheme.

7. — NORMAL EARNINGS

(a) — For the purposes of this Section normal earnings are the earnings that would be paid during a period of normal working but excluding:

(i) — casual overtime payments;

(ii) — casual standby payments;

(iii) — payment of a higher grade rate than an employees' normal rate of wages where on the day immediately prior to absence due to sickness the employee has been receiving that payment for less than four weeks; and

(b) — In respect of subsequent account of sickness or industrial disease or accident as defined in paragraph 25 a higher earner shall be entitled as part of normal earnings to a sum equal to his/her average bonus earnings. This is to be determined by reference to the average bonus earned per hour over the preceding three months or any other period agreed locally. For an employee in receipt of a self-financing lead in payment, as provided for in National Section 3,

~~paragraph 3, there shall be paid, as part of normal earnings, a sum equal to his/her lead-in payment.~~

~~8. NATIONAL INSURANCE BENEFIT AND INCAPACITY BENEFIT~~

~~—The National Insurance Benefit and Incapacity Benefit to be taken into account for the calculation of the allowance shall be the full benefit to which the employee is entitled on the basis that the employee has satisfied, so far as is possible, the contribution conditions and, so far as the employee is required by the employing authority to do so, the conditions for the reporting of sickness and the claiming of benefit and Incapacity Benefit under the relevant legislation. The employee shall be under an obligation to declare his or her entitlement to benefit and any subsequent alterations in circumstances affecting such entitlement.~~

~~9. WIDOWS AND MARRIED WOMEN OPTING OUT OF NATIONAL INSURANCE~~

~~—Widows and married women exercising their right to be excepted from the payment of full rate National Insurance contributions shall be deemed to be insured in their own right for all National Insurance benefits detailed. Widows and married women exercising such a right are entitled to receive Incapacity Benefit.~~

~~10. DISABLEMENT PENSIONS — TREATMENT ALLOWANCES~~

~~—Where an employee enters hospital and receives a treatment allowance, the dependency element only of the treatment allowance shall be taken into account for the calculation of the allowance and the employee's personal element shall be ignored.~~

~~11. —Where the total of State benefits and Incapacity Benefit paid to an employee exceeds the amount of benefits received by an employee during a week of full normal employment that excess shall be taken into account in calculating an allowance under the Sick Pay Scheme. However, where a widow or widowed mother has opted out of paying full National Insurance contributions the amount taken into account when calculating an allowance under the sick pay scheme will be the amount by which total state benefit and Incapacity Benefit receivable had full contributions been paid exceeds the benefit received by an employee in a week of full normal employment~~

~~12. EMPLOYMENT NOT ATTRACTING NATIONAL INSURANCE (HEALTH) CONTRIBUTIONS~~

~~Where an employment does not attract a National Insurance contribution it shall nevertheless be regarded as attracting State benefit or the minimum level of Incapacity Benefit for the purpose of calculating an allowance under this scheme.~~

~~13. EMPLOYEE WHOSE WIFE IS WORKING~~

~~—When, as a result of his wife being at work, a husband receives no allowance for her in the calculations of his State benefit, only the benefit actually receivable shall be taken into account in the calculation of the allowance.~~

14. — SICKNESS DURING HOLIDAYS

~~(a) — Where an employee is receiving sickness pay he or she should continue to receive such pay if a public or extra-statutory holiday occurs during sick leave. Where an employee has exhausted his or her period of entitlement to sickness pay, no payment should be made (other than Incapacity Benefit if applicable) in respect of a public or extra-statutory holiday occurring during the period of sick leave.~~

~~(b) — An employee absent on unpaid sickness leave is not entitled to payment in lieu of a public or extra-statutory holiday falling during such absence, save in the case of an employee excluded on medical grounds shall be entitled to holiday pay in respect of public or extra-statutory holidays occurring during the portion of sickness absence in respect of which, had the employee been admitted to the Scheme, he or she would have received an allowance.~~

~~(c) — An employee who falls sick during the course of annual leave shall be regarded as being on sick leave from the date of a doctor's statement and shall be entitled to take the balance of holiday at a later date after return to work, provided the balance of holiday is taken before the 31st March following the absence.~~

~~(d) — The special payment to be made to an employee in the School Meals Service during a school holiday is a payment during a period of non-employment. In the case of an employee who is absent due to sickness immediately prior to the commencement of a school holiday period, sickness pay shall cease at the beginning of the school holiday period and the special payment shall commence. Similarly, an employee who is sick during the school holidays is not entitled to sickness allowance and will continue to receive the special payment. The amount of State benefit receivable shall not be deducted from the special payment. However, where an employee has an entitlement to Incapacity Benefit the employee will receive a sum equal to the special payment plus an amount equivalent to the Incapacity Benefit entitlement.~~

15. — EXCLUSION FROM BENEFIT

~~(a) — An employee whose absence on account of sickness is due or attributable to:~~

~~(i) — the employee's own misconduct; or~~

~~(ii) — active participation in sport as a profession; or~~

~~(iii) — injury while working in the employee's own time on his or her own account for private gain, or for another employer, shall not be entitled to an allowance under this Scheme, except at the discretion of the employing authority.~~

~~(b) — Where the absence is due to participation in sport as an amateur, the employee shall be entitled to an allowance. Where the employee is covered for this risk by a form of insurance or other benefit which includes an element in respect of loss of wages, the local authority shall be entitled, if desired, to take account of such element in assessing the allowance.~~

16. — ACCIDENT — THIRD PARTY CLAIM

~~(a) — An employee who is absent as a result of an accident shall not be entitled to an allowance if damages may be receivable from a third party. In this event, the authority may, having regard to the circumstances of the case, advance to the employee a sum not exceeding the allowance provided under this Scheme, subject to the employee undertaking to refund, from any damages received, the total amount of such allowance or such part thereof as the authority may, having regard to the amount of damages recovered, determine after consultation with the employee or the representative of the employee.~~

~~(b) — In the event of an employee being dissatisfied at the determination by the authority, the matter may be referred, either jointly or at the request of either party, to the Joint Secretaries of the National Council for advice. Any period of absence in such a case where a refund of the monies advanced is made in full shall not be taken into account for the purpose of paragraph 6 of the Scheme. Where however, the refund is made in part only, the employing authority may at its discretion decide to what extent, if any, the period of absence shall be taken into account for the purpose of paragraph 6 above.~~

~~17. — CERTIFICATION OF SICKNESS~~

~~(a) — An employee shall not be entitled to claim an allowance unless:~~

~~(i) — notification is made immediately to the officer prescribed for this purpose by the authority;~~

~~(ii) — further notification is furnished to the authority as may be required but not later than the fourth day of absence;~~

~~(iii) — a doctor's statement is furnished to the authority not later than the eighth calendar day of absence;~~

~~(iv) — subsequent doctor's statements are submitted to the authority at the same intervals as they are required for national insurance purposes in those cases where the sickness absence extends beyond the period covered by the initial statement and at similar intervals during a period of entitlement to Incapacity Benefit.~~

~~(v) — on return to work a statement is signed detailing the reasons for all absences up to and including seven days.~~

~~(b) — In cases where the first doctor's statement covers a period exceeding fourteen days or where more than one statement is necessary, the employee must, before returning to work, obtain a final statement as to fitness to resume duties.~~

~~Notes:~~

~~(a) — Production to the authority of the official statement(s) required by the Department of Health and Social Care shall be permissible.~~

~~(b) — A local authority may, at its discretion, accept a statement of a Christian Science practitioner in a particular case according to its merits.~~

~~(c) — Absence on account of sickness on the day before or day following a public or extra-statutory holiday must be supported by a self-certificate.~~

~~18. — MEDICAL EXAMINATION DURING PERIOD OF ABSENCE~~

~~(a) — An employee shall, if required at any time, submit to a medical examination by a registered medical practitioner nominated by the authority, subject to the provisions of the Access to Medical Reports Act 1988 where applicable. In the event of a difference in medical opinion as to the employee's~~

~~fitness for work, the matter shall, at the request of the authority or of the employee, be submitted to an independent medical referee chosen jointly by the authority and its employee.~~

~~(b) — In the event of the referee pronouncing the employee as fit to resume work, the allowance under the Scheme shall cease with effect from the date on which the referee determines that the employee should return to work.~~

~~19. — PAYMENTS NOT TO ADMIT LIABILITY UNDER WORKMEN'S COMPENSATION ACTS, ETC~~

~~— Any payments under this Scheme, shall not be an admission of liability under the Workmen's Compensation Acts, the Employers' Liability Acts and Acts amending, altering or affecting those Acts or at Common Law.~~

~~20. — PART-TIME EMPLOYEES~~

~~(a) — This Scheme shall apply to a part time employee in regular employment with a local authority as the employee's sole employment.~~

~~(b) — A local authority may apply the scheme to a part time employee with other employment on such terms, including deduction of National Insurance benefit, as it may be decided. This provision is not intended to exclude such part time employees from the Scheme but rather as a form of protection to the employing authority against the risk incidental to other employment and as cover for the position in relation to National Insurance benefits. There will be a presumption in favour of inclusion in the Scheme if consent to other employment is given by the authority and if satisfactory arrangements are made with the other employer, if necessary, as to recovery of benefit for the days in respect of which an allowance under the scheme is paid; if the employee works for another employer concurrently and the employment is separate and distinct, there is liability for the employee's contributions in each employment and the contributions are payable in each regardless of the amount paid in other employments. (Each employment has its own earnings period, for example weekly contributions may be paid in one and monthly contributions in the other.) Where, however, an employee receives separate entitlements to Incapacity Benefit under more than one contract of employment the authority will offset any such payments only in respect of the contract(s) of employment with that employee to which it is a party. Where a local authority decides not to admit such a part time employee to the Scheme, notice in writing to that effect shall be given.~~

~~21. — PERSONAL INJURY ALLOWANCES TO MERGE~~

~~— Any allowance under this Scheme shall be reduced by an amount equivalent to any monies received by an employee under any scheme made under the Personal Injuries (Emergency Provisions) Acts.~~

~~22. — CONTACT WITH INFECTIOUS DISEASES, ETC — PERSON DEEMED TO BE INCAPABLE OF WORK~~

~~(a) — An employee who is not incapable of work, but who is deemed in accordance with the Social Security Acts 1975-1982 to be incapable of work, shall be entitled to an allowance under the Scheme, for this purpose paragraph~~

~~2(b) of the Scheme shall not apply.~~

~~(b) — A period of absence on this account shall not be reckoned against the employee's entitlement to allowance during absence due to normal sickness or industrial disease or accident.~~

~~23. — VICTIMS OF CRIMES OF VIOLENCE~~

~~(a) — Where an employee is absent from work because of an injury in respect of which a claim will be to the Criminal Injuries Compensation Board and where the employee is otherwise qualified to receive sickness and accident allowances in accordance with the Scheme, an accident allowance shall be disbursed to the employee without a requirement to refund any portion of it from any sum which the Compensation Board may award.~~

~~(b) — Where an award has been made by the Compensation Board, the employing authority may discount, wholly or partly, the period of absence occasioned by the injury in calculating the employee's future entitlement to sickness and accident allowances as the authority may see fit on consideration of all the material circumstances.~~

~~———— Note: Hospital Outpatients~~

~~———— The National Council does not propose to make any regulations covering the payments to be made to employees required to attend hospital as outpatients after the expiration of periods of sick leave. It is recommended that local authorities sympathetically consider cases of this kind on their respective merits.~~

~~24. — REIMBURSEMENT OF COST OF DOCTORS' STATEMENTS~~

~~———— Where for the purpose of qualifying for an allowance under this Scheme an authority requires a doctor's statement from an employee, the authority shall reimburse the employee the cost of such a statement on provision of a receipt.~~

~~25. — INDUSTRIAL DISEASE OR ACCIDENT~~

~~———— Where an employee is absent from work as a result of an industrial disease or accident (as defined in paragraph 1[a]) the employee shall be entitled to the provisions of the sickness pay scheme relating to the industrial disease or accident, provided that the employee has complied with the following conditions:~~

~~(a) — Any accident arising out of an in the course of employment with the authority must be reported and recorded in accordance with the procedures laid down by the authority. The accident will be subject to investigation and report by an officer authorised for the purpose by the authority.~~

~~(b) — Where an employee seeks medical advice about an illness which is suspected or alleged to result from the nature of his or her employment the employee reports accordingly to the authority at the first opportunity.~~

~~(c) — Certification of absence due to industrial disease or accident is made as required under the provisions of paragraph 17.~~

~~(d) — In the case of the first, and any subsequent absence, due to industrial disease or accident an employee shall submit, at any time during such absence, if so required by the employing authority to a medical examination by a registered medical practitioner nominated by the authority. In the event that the authority's doctor is not satisfied that the absence is due to an industrial disease or accident the employee shall have right of appeal to an independent medical referee chosen jointly by the authority and the employee.~~

~~(e) — Failure to meet these conditions will render the employee liable to exclusion from the provisions of the occupational sickness pay scheme relating to industrial disease or accident. However, the employee shall have right of appeal through the normal machinery where differences arise out of application of this paragraph.~~

~~Temporary Injury Allowance — see MOA Article 52~~

~~(Article 33)
SECTION 7~~

(B) MATERNITY LEAVE SCHEME

Statutory rights in accordance with the Employment Act 2006 came into force for babies due on or after 30th September 2007.

1. Maternity Provisions

1.1 In accordance with and in addition to statutory provision, the National Council's scheme provides separate maternity provisions for:

- (i) Female workers employed with more than two years' continuous local government service, and
- (ii) Female workers who do not qualify under (i) with at least one year's continuous local government service.
- (iii) Female workers who do not qualify under (i) or (ii)

1.2 Female workers continue to be employed by the Authority whilst on maternity leave

2. Ante-Natal Care

2.1 All pregnant employees are entitled to time off to keep appointments for ante-natal care made on the advice of a registered medical practitioner or registered midwife. For her first appointment, the employee must be prepared to show on request:

- A certificate from a registered medical practitioner or registered midwife confirming that she is pregnant, and
- An appointment card or some other document showing that an appointment has been made

2.2 The employee will be paid at her normal hourly rate of pay during the period of time off.

3. Maternity Leave

3.1 Every pregnant employee is entitled to at least 26 weeks Ordinary Maternity Leave (OML), regardless of length of service. The contract of employment continues during OML. During her OML period the employee will continue to receive all her contractual benefits other than salary or wages. Maternity pay is detailed in paragraph 9 below.

3.2 An employee who has completed 26 weeks' continuous employment by the beginning of the 14th week before the expected week of childbirth is entitled to 26 weeks Additional Maternity Leave (AML). AML begins at the end of OML. Some terms of the contract continue during AML.

3.3 In order to take advantage of the right to OML and AML (if qualified) the employee must give the proper notification (see paragraph 4)

4. Notice Periods

4.1 No later than the end of the 15th week before her expected week of childbirth (or as soon as is reasonably practicable) the employee must complete the Statement of Intention (see Annex A) notifying the employer of:

- The expected date of childbirth
 - The intended date of finishing work and OML commencing (which shall not be earlier than beginning of 11th week before expected week of childbirth)
- The employee can vary the date that maternity leave will start provided that notice in writing is given at least 28 days prior to the new date commencing (or as soon as is reasonably practicable).

4.2 The employer will ensure that, within 28 days of receiving appropriate notice, the employee is advised of the date the maternity leave period will end (see model letter at Annex B). If the employer is entitled to AML, the end date will be calculated on the assumption that she is taking it.

4.3 If the employee changes the date her leave will start, the employer must notify her of the amended end date within 28 days of the start of her leave.

4.4 An employee who intends to return to work earlier than the end of her maternity leave period, shall give her employer not less than 28 days' notice of the date on which she intends to return. Where an employee qualifies for AML, but only wishes to take OML, she must give 28 days' notice of her return to work. Should such notice not be given, the return date may be postponed by the employer to allow for the appropriate 28 days notice (but not to a date later than the end of her OML or AML).

4.5 If because of an interruption of work (whether due to industrial action or some other reason) it is unreasonable to expect the employee to return on the notified day, she may instead return when work resumes, or as soon as reasonably practicable thereafter.

4.6 An employee must give the normal notice (see Article 27) if she does not intend to return to work after her maternity leave.

5. Statement of Intention

5.1 An employee who is pregnant should advise her employer and complete the Statement of Intention at Annex A as soon as possible and no later than 15 weeks before the expected date of childbirth (or as soon as is reasonably practicable). On receipt of the completed form the employer should:

- a) retain a copy;
- b) send a copy to the appropriate Pay Section
- c) send a copy to the Office of Human Resources (as appropriate)
- d) arrange for a letter of confirmation to be issued to the employee within 28 days of receipt of her notification (see model letter at Annex B)

5.2 The appropriate Pay Section and Public Service Pensions Authority should also be notified of any unpaid leave taken by the employee.

6. Definitions

a) Definition of 'Childbirth'

'Childbirth' for the purposes of these Regulations is defined as the birth of a living child or the birth of a child whether living or not after 24 weeks of pregnancy.

b) Definition of 'Expected week of Childbirth'

The week, beginning at midnight between Saturday and Sunday, in which it is expected that the baby will be born.

c) Definition of 'A Week's Pay'

Normal weekly wage is defined in Appendix 3, Section 7(A) paragraph 7, in addition:

- For a bonus earner (contractual), a sum equal to average bonus earnings, this to be determined by reference to the average bonus earned per hour over the preceding three months or any other period agreed locally.

7. Premature Birth

7.1 In the event of premature birth (even if this is before the 11th week before the expected week of childbirth) maternity leave will start on the day after the birth and all the normal provisions of the scheme will apply. Qualifying period for AML will still be calculated based on the expected week of childbirth.

8. Still Birth or Death of a Baby

8.1 In the unfortunate event of still birth after 24 weeks of pregnancy, or the death of the baby shortly after birth, the employee will still be entitled to the maternity provisions for which she is eligible, specifically Maternity Leave and Maternity Pay.

9. Maternity Pay

9.1 There is no statutory requirement to pay an employee whilst on maternity leave; however details of contractual pay are detailed in 9.3 below.

9.2 A qualifying condition for entitlement to maternity pay is that an employee returns to work for a period of at least three months. This requirement may be varied at the discretion of the Authority on good cause being shown.

9.3 An employee who is entitled to maternity leave (as set out in 3.2) and has attained the relevant length of continuous service by the beginning of the 11th week before the expected week of childbirth will also be entitled to maternity pay as follows:

At least 1 year continuous service

- 6 weeks at nine-tenths of a week's pay (less if employee is not eligible for Department of Health and Social Care Maternity Allowance (MA)), followed by 12 weeks at half a week's pay (without deduction unless combined pay and MA or any dependent's allowances exceeds full pay)

More than 2 years continuous service

6 weeks at nine-tenths of a week's pay (less if employee is not eligible for Department of Health and Social Care Maternity Allowance (MA)) (the first 6 weeks is payable whether or not the employee returns to work following maternity leave – see 11.1 below) followed by 12 weeks at half a week's pay (without deduction unless combined pay and MA or any dependent's allowances exceeds full pay)

10. Maternity Allowance

10.1 Employees may be eligible to claim maternity allowance from DSC. Where this is granted during the first 6 weeks of maternity pay, the allowance will be offset against pay. No allowance will be deducted during periods of half pay.

10.2 Employees who have completed the 'Option to Draw Unabated Sick/Maternity/Adoption/Paternity Pay' form at Annex C will have maternity pay made in the first 6 weeks of maternity leave in accordance with 9.3 above, as they have agreed not to claim maternity allowance in that option.

11. Repayment of Maternity Pay

11.1 If an employee, with less than two years' continuous service at the time maternity leave commences, does not return to work on or before the end of her entitlement to maternity leave and complete at least 13 weeks paid service she may be required to repay all pay paid to her during the period of maternity leave (see 9.3 above). This requirement may be varied at the discretion of the Authority on good cause being shown.

If an employee with more than two years' continuous service at the time maternity leave commences, does not return to work on or before the end of her entitlement to maternity leave and complete at least 13 weeks paid service, she may be required to repay the 12 weeks half pay paid to her during the period of maternity leave. This requirement may be varied at the discretion of the Authority on good cause being shown. The first 6 weeks is payable whether or not the employee returns to work following maternity leave. (See 9.3 above)

11.2 If an employee fails to return to work after maternity leave her last day of service for pay and related purposes will be taken as her last day at work before commencing maternity leave. If she returns, but does not complete 13 weeks' service, normal notice periods will apply.

11.3 Repayment may be waived if the employee provides medical evidence

that she will be unable to return to work at the end of the period of maternity leave because the baby is disabled and as a result, requires continuous attention at home. Medical evidence should be sent to the Chief Executive not later than 3 weeks before the maternity leave is due to cease. (See Annex A 'Statement of Intention and Undertaking to Repay Payment' Note 2.)

11.4 Repayment may also be waived if the employee provides medical evidence (in respect of herself or her baby) that she is unable to honour her stated intention to return to work at the end of the period of maternity leave. (See Annex A 'Statement of Intention and Undertaking to Repay Payment' Note 3.)

11.5 An employee who is required to repay salary or wages received during the period of maternity/adoption leave in accordance with sub-paragraph (d) of Option B will be eligible for the refund of National Insurance Contributions paid in respect of the pay received in this period. (See Annex A 'Statement of Intention and Undertaking to Repay Payment' Note 4.)

12. Annual Leave

12.1 Contractual annual leave allowance continues to accrue during periods of OML.

12.2 No contractual annual leave allowance will accrue during AML.

12.3 Public and Privilege holidays falling during unpaid leave will be unpaid.

12.4 During periods of unpaid maternity leave when contractual leave does not accrue, statutory leave will accrue (provision for a minimum of 4 weeks paid leave per annum in total, incorporating both contractual and statutory leave). Accrued statutory leave cannot be carried forward into a new leave year.

12.5 Where possible, to avoid the loss of annual leave, an employee should try and take any unused, accrued annual leave, prior to going on maternity leave. The provisions in relation to carrying over leave referred to in Article 17 still apply.

12.6 Should an employee return to work on reduced hours, credits of annual leave accrued prior to and during maternity leave will be proportionate to the contract in force at the time of accrual.

13. Health and Safety

13.1 Definition of the term 'New and Expectant Mothers'

13.1.1 Includes women: who are pregnant, who have given birth within the last 6 months, or who are breastfeeding.

13.2 Suspension from work on Maternity grounds:

13.2.1 When assessing risks in the workplace, the employing authority should pay particular attention to risks that could affect the health and safety of new or expectant mothers or their babies. If a risk remains which could damage the health and safety of a new or expectant mother or her baby, the employing authority should make sure she is not exposed to that risk.

13.2.2 If necessary, suitable alternative work may be offered if available. If such alternative work is not available and it is deemed appropriate, the employing authority may consider instigating suspension from work on maternity grounds; this may be prior to commencement of maternity leave, or when maternity leave has expired. Whilst on maternity suspension, an employee will be paid her normal remuneration.

13.2.3 If an employee unreasonably refuses an offer of suitable alternative work, no remuneration will be payable for the period during which the offer applies.

13.3 Risk Assessment:

13.3.1 Employing authorities are required to assess risks to the health and safety of new and expectant mothers and their babies, who may be particularly at risk from different physical, biological and chemical agents, processes and working conditions. These risks will vary depending on the employee's health and at different stages of pregnancy. Assistance in this respect can be sought from the Department's Health & Safety Adviser, or the Government Health & Safety Adviser.

13.3.2 If an employee believes there is a risk to her health or safety, or to that of her baby, which has not been considered in the risk assessment, she should bring the risk to the attention of her employing authority.

13.3.3 If risks are identified by the assessment, information about them should be given to all women of childbearing age in the workplace. Employers should explain what they will do to make sure that new and expectant mothers are not exposed to the risks that could cause them harm. They should also inform them of the need to receive written notification of pregnancy/ breastfeeding as early as possible.

14. Sick Absence During or Following Pregnancy

14.1 An employee who is absent from work due to illness will normally be able to take sick leave (in accordance with provisions of Appendix 3, Section 7 (A)) until she starts maternity leave on the date notified. If the illness is unrelated to her pregnancy, she can remain on sick leave right up to the date of the baby's birth, or until the date she has notified as the date on which she intends her maternity leave to start.

14.2 If the illness is pregnancy related, the maternity leave period will start automatically on the day after the first day of absence following the beginning of the 4th week before the expected week of childbirth.

15. Return to work after Maternity Leave

15.1 An employee who resumes work after OML is entitled to return to the same job on the same terms and conditions as if she had not been absent, unless a redundancy situation has arisen (see paragraph 16).

15.2 An employee who resumes work after AML is also entitled to return to the same job on the same terms and conditions as if she had not been absent, unless a redundancy situation has arisen; however, if there is some other reason

why it is not reasonably practicable for her to return to her original job, she is entitled to be offered suitable alternative work.

15.3 Employees who wish to vary their working pattern on return from maternity leave may have the right to request flexible working (see Appendix 19).

16. Redundancy during Maternity Leave

16.1 Should a redundancy situation arise, there is statutory entitlement for an employee on maternity leave to be made an offer of any suitable alternative vacancy available. If an employee on OML or AML is made redundant, her maternity leave period comes to an end.

**Annex A
MATERNITY & ADOPTION**

STATEMENT OF INTENTION AND UNDERTAKING TO REPAY PAYMENT

Maternity

This form should be completed by the employee no later than 15 weeks before the expected date of childbirth (or if that is not reasonably practicable, as soon as is reasonably practicable) and given to the Line Manager (see Appendix 3, Section 7(B), paragraph 5).

The Line Manager will require sight of a certificate from a registered medical practitioner or mid-wife stating the expected week of childbirth.

Adoption

This form should be completed by the employee within 7 days of the date of receiving notification of being matched with a child and at least 28 days notice must be given to the line manager in advance of the date adoption leave is to commence (where these notice periods are not practicable, then as soon as is reasonably practicable). See Appendix 3, Section 7(B), paragraph 4 for further information regarding these notice periods.

Full Name:.....

Please read the notes overleaf and then complete either Option A or Option B

OPTION A

I shall be terminating my employment on20..... and do not intend to return work in accordance with the provisions of Appendix 3, Section 7(B).

Signed:.....

Department:.....

Dated:.....

OPTION B

* please delete as appropriate

(a) I intend for my Ordinary Maternity/Adoption* Leave of 26 weeks (OML/OAL) to commence:

(Maternity: not earlier than beginning of the 11th week before the expected week of childbirth)

(Adoption: no later than the date of the child's placement and no sooner than 14 days before the expected date of placement)

I do/do not* qualify for Additional Maternity/Adoption Leave* (AML/AAL), of 26 weeks which will commence at the end of OML/AAL

(b) I expect the week of childbirth (midnight between Saturday and Sunday in which the baby is actually born) to be the week beginning the20.....

(c) I understand that I must give not less than 28 days notice if I intend to return to work earlier than the end of my maternity leave period.

(d) I undertake to repay, if asked to do so, any salary or wages paid to me in respect of the period of maternity/adoption leave, less the amount of any maternity/adoption allowance which the Department of Health and Social Care certifies I would have received in the absence of paid maternity/adoption leave, if I do not return to work in the Department/Authority at the end of the period of maternity/adoption leave to which I am entitled and complete a further 13 weeks' paid service.

Signed:.....

Department:.....

Date:.....

Please refer to the Notes below

NOTES:

1. Entitlement to Maternity/Adoption Leave and Pay is detailed in full in Appendix 3, Section 7(B) of the Whitley Council Memorandum of Agreement
2. Repayment may be waived if the employee provides medical evidence that she will be unable to return to work at the end of the period of maternity leave because the baby is disabled and as a result, requires continuous attention at home. Medical evidence should be sent to the Chief Executive not later than 3 weeks before the maternity leave is due to cease.
3. Repayment may also be waived if the employee provides medical evidence (in respect of herself or her baby) that she is unable to honour her stated intention to return to work at the end of the period of maternity leave.
4. An employee who is required to repay salary or wages received during the period of maternity/adoption leave in accordance with sub-paragraph (d) of Option B will be eligible for the refund of National Insurance Contributions paid in respect of the pay received in this period.

NOTE: A copy of the completed form should be retained by the line manager and copies sent to:

- a) the appropriate Pay Section
- b) the Office of Human Resources (as appropriate)

Annex B

MODEL LETTER TO ACKNOWLEDGE NOTIFICATION OF MATERNITY LEAVE

Date:

Dear [name of employee]

Congratulations and thank you for advising me of your pregnancy and the date your baby is due, being [Date]. This letter is to provide details of your maternity leave.

As we have discussed, you are eligible for [26 weeks' OML / 52 weeks' maternity leave (26 weeks' OML plus 26 weeks' AML) – delete as appropriate]. Given your chosen start date of [insert date], your maternity leave will end on [insert date].

If you want to change the date your leave starts you must, if at all possible, tell me at least 28 days before your proposed new start date, or 28 days before [insert date leave starts] (your original start date), whichever is the sooner. If you decide to return to work before [insert date leave ends], you must give me at least 28 days' notice.

*[Insert details of any contractual pay offered during maternity leave]

Contractual annual leave entitlement will accrue during OML, statutory leave will accrue during AML. We will determine your leave entitlement in the near future and discuss when this might be taken.

It is my aim to ensure that your health and safety as a pregnant mother are protected while you are working, and that you are not exposed to risk. I will arrange for a specific risk assessment of your job and we will discuss what actions to take if any problems are identified. If you have any further concerns, following this assessment and specifically in relation to your pregnancy, please let me know immediately.

If you decide not to return to work, you must still give me proper notice. If you have any questions about any aspect of your maternity entitlement, please do not hesitate to get in touch with me.

Yours sincerely,

* Details of contractual pay must be specified. If unsure as to the amount of

contractual pay to be offered please liaise with your HR Adviser, Office of Human Resources.

Annex C

Option to Draw Unabated Maternity/Adoption/Paternity Pay

To avoid as far as possible the work of adjusting maternity/adoption/paternity pay, employees who give the undertaking set out below may receive such pay without abatement, within the limit of their normal entitlement.

- Full name of employee _____

(block capitals please)

- Department _____

(This form, when completed, should be returned to the Line Manager for onward transmission as detailed below)

FORM OF UNDERTAKING

1. I wish to take advantage of the arrangement to draw unabated maternity/adoption/paternity pay as an alternative to drawing separately national insurance benefit and maternity/adoption/paternity pay abated by the amount of that benefit for so long as I may be eligible for maternity/adoption/paternity leave on full pay. In return, I agree not to receive maternity/adoption/paternity allowance under the Social Security Acts.

3. I shall inform my pay section immediately if, despite signing this undertaking, I receive any maternity/adoption/paternity allowance under the Social Security Acts. I also authorise the Isle of Man Department of Health and Social Care to furnish my department with particulars of any sickness or injury benefit or allowance drawn by me.

4. I understand that this undertaking will not apply if I cease to be a member of the Department/Public Service.

- Signed: _____ Date: _____

Witnessed by: _____

(*Accounting Officer/Divisional Head/Line Manager) * Delete as appropriate

cc: Office of Human Resources (as appropriate) and Pay Section

PERSONAL INJURY INVOLVING A THIRD PARTY

FORM OF UNDERTAKING (SECTION 8 & 14)

1. In consideration of the Isle of Man Government advancing to me sums in accordance with Section 8 and 14 of the PSC Manual & Craft MOA 2015 during my absence from duty due to an accident in which I was involved on 20....., I undertake to refund to the Isle of Man Government, from any damages received, the total amount so advanced less:-

(a) such part of that amount as is proportionate to any contributory negligence or fault on my part or, if my claim is settled by a lump sum in which no amount is identifiable as loss of earnings, to refund the advance to the same extent as my total claim is successful or such other amount as is, in the opinion of the, Chief Financial Officer fair and reasonable;

(b) any such further sums in respect of National Insurance benefit as specified by the Social Security Division of Treasury

2. I authorise the Isle of Man Government to deduct any Superannuation Contributions, Subscriptions, Mortgage Interest or other deductions which I have authorised from my salary from the advance made to me at the rate(s) that they would have been deducted if I was still receiving my salary.

Signed:

Address:.....
.....
.....

Witness:

Date:

Annex-C

Option to Draw Unabated Sick/Maternity/Adoption/Paternity Pay

To avoid as far as possible the work of adjusting sick/maternity/adoption/paternity pay, employees who give the undertaking set out below may receive such pay without abatement, within the limit of their normal entitlement.

Full name of employee _____

(block capitals please)

Department _____

(This form, when completed, should be returned to the Line Manager for onward transmission as detailed below)

FORM OF UNDERTAKING

1. ~~I wish to take advantage of the arrangement to draw unabated sick/maternity/adoption/paternity pay as an alternative to drawing separately national insurance benefit and sick/maternity/adoption/paternity pay abated by the amount of that benefit for so long as I may be eligible for sick/maternity/adoption/paternity leave on full pay. In return, I agree not to receive incapacity benefit or maternity/adoption/paternity allowance under the Social Security Acts.~~

2. ~~I wish to be given reasonable notice by my pay section of the date on which I shall cease to be eligible for sick leave on full pay.~~

3. ~~I shall inform my pay section immediately if, despite signing this undertaking, I receive any incapacity benefit or maternity/adoption/paternity allowance under the Social Security Acts. I also authorise the Isle of Man Department of Health and Social Care to furnish my department with particulars of any sickness or injury benefit or allowance drawn by me unless I give the written notice referred to in 4(b) below.~~

4. ~~I understand that this undertaking will not apply:-~~

~~(a) if I cease to be entitled to full sick pay; or~~

~~(b) if I give written notice to my department that I no longer wish to draw unabated sick pay but to adopt the alternative of claiming national insurance benefit and sick pay abated by the amount of that benefit;~~

~~(c) if I cease to be a member of the Department/Public Service.~~

Signed: _____ Date: _____

Witnessed by: _____

(*Accounting Officer/Divisional Head/Line Manager) * Delete as appropriate

cc: Office of Human Resources (as appropriate) and Pay Section

Original partially signed document lost (2019)
Prospect & PSC.

Agreed and authorised by:

Signed on behalf of Prospect

Signed on behalf of Unite the Union

Signed on behalf of the Commission

M. C. Hewes

see agreed caveat agreed @ TIC 22/10/2020.

[Signature]

Date: 29-10-2020

Date: _____

Date: 29/10/2020

For Office of Human Resources Use Only

Instruction for implementation:

Passed to Bryan Douglas

By [Signature]

Date 29/10/2020

An IOM Government All Staff Notice prior to implementation is*/is not* required (*please delete as appropriate)

Signed [Signature]
Head of Industrial Relations and Policy Section

Date Regs updated:

Website [Signature]

Date 30-10-20

Previous Civil Service Regulation amendment reference (if any):

Notes/Special Instructions:
E.g. Communication to Pay Sections required