

## Open Agenda

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### Memorandum for Executive Council

#### SUBJECT

Employment Rights Ordinance – Maternity, Paternity and Adoption Leave and the Labour Regulating Authority

Memorandum by the Chairman Social and Community Development Committee

#### ADVICE SOUGHT

**Executive Council is asked to advise whether:**

- 1.1 a mandate for the introduction of statutory maternity, paternity and adoption leave and pay periods should be given;**
- 1.2 The recommendations in respect to the Labour Regulating Authority should be agreed; and**
- 1.3 These changes to come into force on 1 April 2020.**

#### BACKGROUND & CONSIDERATIONS

**Statutory maternity, paternity and adoption leave and pay periods**

2. Under the Ten Year Plan Goal ‘Altogether Better for Children and Young People’ SHG has stated that ‘we will introduce paid maternity, paternity and adoption leave on the Island’. The assertion sits within the wider intention to encourage the St Helenian population to increase (currently there are more deaths than births) and to ensure that any family considering having or adopting a child is not at risk of poverty or unemployment as a result of that decision.
3. Many employers on St Helena already have their own maternity and paternity leave policy. Appendix A summarises the policies of St Helena’s biggest employers. The smaller employers we have spoken to as part of the Employment Rights Committee consultation in October-November 2018 told us that they also had maternity leave policies, although the extent of the provisions largely differed between employers.
4. The International Labour Office (ILO) created the first global standard in 1919 aimed at protecting working women before and after childbirth: the Maternity Protection Convention. The standard was revised in 1952 and now calls for a minimum 12-week leave although a 14-week leave is recommended.

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5. During the consultation period, administered by the Employment Rights Committee in October-November 2018, employers we spoke to told us that they could manage adopting a 14-week statutory maternity leave period (all large employers already offer over 14 weeks maternity leave, but this would be a change for some small employers). However, the small employers told us that providing full pay during the 14-week period would be a very large risk to the viability of their business, and as most of the small businesses are labour intensive, their costs would be two-fold – paying maternity leave pay and paying for a temporary replacement, often at higher wages to attract someone just for the short term.
6. The Social and Community Development Committee therefore recommended that an allowance of 14-weeks maternity leave becomes statutory, of which at least four weeks is paid as full pay.
7. There was no significant issue during the consultation with making two weeks paid paternity leave statutory. In fact there was some encouragement by employers in this regard as they felt that fathers would benefit from encouragement to spend time at home with their new children.
8. The Social and Community Development Committee therefore recommended that an allowance of two weeks paternity leave becomes statutory, of which the two weeks is paid as full pay.
9. Furthermore, the Social and Community Development Committee recommend:
  - (a) that an allowance of four weeks adoption leave becomes statutory, of which the four weeks is paid as full pay
  - (b) that the relative allowance is given as normal, if the baby dies or if the baby is stillborn after the 24th week of pregnancy
  - (c) that the full pay allowance for maternity, paternity and adoption pay is provided after 26 weeks of service (which is normally deemed to be the probation period) and
  - (d) Parents should have the right to request additional maternity/paternity/adoption leave and/or the ability to return to work on a part-time basis. Requests should be made to the employer at least 28 days in advance of the expected return date in order that the employer can fully consider such requests.

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### Changes to the Labour Regulating Authority

10. As per Chapter II of the Employment Rights Ordinance, it is the duty of the Labour Regulating Authority, amongst other things, to 'promote and protect the rights of employees granted under this Ordinance'. There was concerns as to whether the Labour Regulating Authority is able to do a promotion role, as they are also meant to be an impartial arbitrator, for example encouraging people to make claims against their employers may be contrary to their impartiality.
11. The role of promotion is still important, and the Social and Community Development Committee recommends that the role of promoting the contents of the Employment Rights Ordinance should fall to the Employment Rights Committee.
12. The Employment Rights Committee is currently manned by volunteers. On recommendation from the Assistant Financial Secretary, it is suggested that in order to fulfil the role of promotion:
  - (a) The Employment Rights Committee are given a small annual budget to afford promotion, approximately £200, which would come under the Payments on Behalf of the Crown budget.
  - (b) A member of the Chamber of Commerce is requested to join the Employment Rights Committee as an additional member as they may be able to support the promotional activities.
  - (c) Members of the Employment Rights Committee not employed by SHG or a Legislative Council Member are paid remuneration for their time, because it is anticipated that more work shall be required to take on this role, over and above what is reasonably expected of a volunteer.
13. The issue has also been raised as to how far 'promotion' is taken. Currently promotion is in the form of raising awareness of the existence and contents of the law, so that a person who may feel like they have a case can make contact with the Labour Regulatory Authority (with or without advice from the public solicitor, lay advocate or human rights office). Some suggestion has been made to inspect registered business premises and speak to employees/employers to establish if the law is being practised, however this would take significant resources and is likely to be unaffordable under current budgetary constraints. However, the Employment Rights Committee has begun work on a communication campaign to raise awareness of employee rights, as recommended by the Labour Market Strategy.

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14. The Labour Regulating Authority is currently a person appointed by the Governor to investigate claims made by employees, where employers have acted contrary to provisions within the Employment Rights Ordinance. This has been in place since 2013, and feedback from the Labour Regulating Authority, Chief Magistrate, Nicholas Aldridge, is that whilst this has been working relatively satisfactory, it would be beneficial that as well as a legal representative chairing the Labour Regulating Authority, two further members were appointed to assist, namely a representative of private sector employers and a member of an organisation representative of employees. Executive Council is asked to endorse this recommendation.

### FINANCIAL IMPLICATIONS

15. The introduction of statutory maternity, paternity and adoption pay will have no financial impact on SHG because the policies which currently exist are compliant with the recommendations.

16. Remuneration should be introduced for the two new members of the Labour Regulating Authority and this will be of the sum of £30 per meeting (attendance for 1+ hours). It is expected for there to be 10 meetings per annum. The total cost in this regard is £600 per annum.

17. Remuneration should be introduced for the members of the Employment Rights Committee and this will be of the sum of £30 per person per meeting (attendance for 1+ hours). Remuneration will not be paid to SHG employees or any member of Legislative Council, therefore two existing members will be remunerated alongside one new member (should a member of the Chamber of Commerce be included within the Committee). It is expected for there to be five meetings per annum. The total cost in this regard is £450 per annum.

18. The Employment Rights Committee is also recommended to be given a small annual budget to afford promotion, approximately £200.

19. The total requested would be £1,250 per annum. These payments would come under the Payments on Behalf of the Crown budget.

### ECONOMIC IMPLICATIONS

20. The economic implications in terms of introducing statutory maternity, paternity and adoption leave and pay have been outlined in Appendix A.

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<b>CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES</b>	21. N/A
<b>PUBLIC / SOCIAL IMPACT</b>	22. It is recognised that the introduction of statutory maternity, paternity and adoption leave and pay will protect parents on St Helena from poverty.
<b>ENVIRONMENTAL IMPACT</b>	23. There are no environmental impacts identified.
<b>PREVIOUS CONSULTATION / COMMITTEE INPUT</b>	24. There was a six-week consultation process which occurred in October/November 2018. The consultation responses are provided within the Appendix A. The consultation responses were used to develop the recommendation. 25. As drafting of the change to legislation did not occur prior to the planned 1 April 2019 implementation, SCDC confirmed that the changes should be implemented in parallel to the update to the Minimum Wage on 1 April 2020.
<b>PUBLIC REACTION</b>	26. As part of the consultation process, press releases were provided to inform the public that this review was being undertaken and that the introduction was scheduled for 2019.
<b>PUBLICITY</b>	27. Those who participated in the consultation will be informed directly. 28. The decision will be covered in the media briefing following the Executive Council meeting. 29. It is recommended, when agreement is reached, that separate publicity is provided along with interviews via the radio.
<b>SUPPORT TO STRATEGIC OBJECTIVES</b>	30. This paper supports the following Goals and intentions in the Ten Year Plan: (a) Altogether Better for Children and Young People: We will introduce paid maternity, paternity and adoption leave on the Island (b) Altogether Wealthier: We will reduce inequality and poverty

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### **LINK TO SUSTAINABLE ECONOMIC DEVELOPMENT PLAN GOALS**

31. It fits with the following SEDP goal: 7. Developing, maintaining and attracting a skilled workforce.

### **OPEN /CLOSED AGENDA ITEM**

32. This paper is Suitable for the Open Agenda

AAG

Corporate Support  
Corporate Services

*04<sup>th</sup> December 2019*

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