

The Scottish Government

Directorate for Health Workforce, Leadership and Service Reform
NHS Pay and Conditions



Scottish Government
Riaghaltas na h-Alba
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Dear Colleague

REVISIONS TO AGENDA FOR CHANGE HANDBOOK

SECTION 15: LEAVE AND PAY FOR NEW PARENTS

SECTION 23: CHILD BEREAVEMENT LEAVE

1. The UK Staff Council has agreed two new sections of the Agenda for Change Handbook covering *Leave and Pay for New Parents* and *Child Bereavement Leave*. The Scottish Terms and Conditions Committee have agreed that these can be included in the Scottish Handbook, with suitable annotations reflecting the Scottish context. Copies of the new sections are attached as Annex A and B.

2. These new provisions are effective from 1 April 2019.

3. The Scottish Agenda for Change Handbook has been updated and can be found on the Management Steering Group website at:
www.msg.scot.nhs.uk/pay/agenda-for-change

Enquiries

4. Employees should direct their personal enquiries regarding this matter to their employing NHS Board or Special Health Board. This circular can be found online at:

www.sehd.scot.nhs.uk

Yours sincerely

SHIRLEY ROGERS
Director of EU Exit and Transition,
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3 September 2019

Addressees

For action

Chief Executives,
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**NATIONAL HEALTH SERVICE
APPROVAL OF REMUNERATION AND CONDITIONS OF SERVICE**

In accordance with regulations 2 and 3 of the National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991 (S.I. 1991/537) the remuneration and conditions of service set out in the attached Scottish Government Health Workforce Directorate circular of 3 September 2019 – PCS(AFC)2019/7 – in respect of Leave and Pay for New Parents and Child Bereavement Leave are hereby approved for the purposes of the said Regulations.



SHIRLEY ROGERS

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3 September 2019

Section 15: Leave and pay for new parents

Introduction

- 15.1 All employees will have the right to take 52 weeks of maternity and / or adoption leave, or up to 52 weeks of shared parental leave (minus any maternity or adoption leave taken).
- 15.2 Employees can choose to end their maternity or adoption leave to access shared parental leave.
- 15.3 Paragraphs 15.14 to 15.17 of this section set out the eligibility requirements for maternity, adoption, and shared parental leave and pay for NHS employees under the NHS occupational scheme.
- 15.4 Paragraphs 15.18 to 15.43 of this section set out the maternity and adoption leave and pay entitlements of NHS employees under the NHS occupational scheme.
- 15.5 Paragraphs 15.44 to 15.64 of this section set out the shared parental leave and pay entitlements of NHS employees under the NHS occupational scheme.
- 15.6 Paragraphs 15.65 to 15.82 set out arrangements for Keeping in Touch days and shared parental leave in touch days, and arrangements for returning to work.
- 15.7 Paragraphs 15.83 to 15.98 detail miscellaneous provisions for maternity, adoption and shared parental leave situations.
- 15.8 Paragraphs 15.99 to 15.105 give information about the position of staff who are not covered by these schemes because they do not have the necessary service or do not intend to return to NHS employment.
- 15.9 Paragraphs 15.106 to 15.109 define the service that can be counted towards the 12 month continuous service qualification required for maternity, adoption and shared parental leave and pay and which breaks in service may be disregarded for this purpose.
- 15.10 Paragraphs 15.110 to 15.116 outline the leave and pay available for partners of new parents (paternity leave).
- 15.11 Paragraph 15.117 explains how to get further information about employees' statutory entitlements.
- 15.12 Where, locally, staff and employer representatives agree arrangements which provide benefits to staff beyond those provided by this section, those local arrangements will apply.
- 15.13 Employers should have due regard to the need to eliminate discrimination and advance equality of opportunity under their public sector equality duty.

Eligibility for occupational maternity, adoption, and shared parental leave and pay

Maternity leave and pay:

- 15.14 An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the NHS occupational maternity pay scheme if:
- i) they have 12 months' continuous service (see paragraphs 15.106 to 15.109) with one or more NHS employers at the beginning of the 11th week before the expected week of childbirth;
 - ii) they notify their employer in writing before the end of the 15th week before the expected date of childbirth (or if this is not possible, as soon as is reasonably practicable thereafter):
 - (a) of their intention to take maternity leave;
 - (b) of the date they wish to start their maternity leave – they can choose when to start their maternity leave – this can usually be any date from the beginning of the 11th week before the baby is born (but see paragraph 15.24);
 - (c) that they intend to return to work with the same or another NHS employer for a minimum period of three months after their maternity leave has ended;
 - (d) and provide a MATB1 form from their midwife or GP giving the expected date of childbirth.

Adoption leave and pay:

- 15.15 An employee working full-time or part-time will be entitled to paid and unpaid adoption leave under the NHS occupational adoption pay scheme if:
- i) they are the primary carer in the adoption arrangement made by an official adoption agency, or they are the intended parent through a surrogacy arrangement and commit to applying for a parental or adoption order (see <https://www.gov.uk/legal-rights-when-usingsurrogates-and-donors>); and
 - ii) they have 12 months' continuous service (see paragraphs 15.106 to 15.109) with one or more NHS employers by either:
 - a) the beginning of the week in which they are notified of being matched with a child for adoption; or
 - b) the 15th week before the baby's due date if applying via a surrogacy arrangement and where the employee is eligible and intends to apply for a parental order;

- iii) they notify their employer in writing before the end of the week in which they are notified of being matched with a child for adoption, or by the 15th week before the baby's due date if applying via a surrogacy arrangement:
 - (a) of their intention to take adoption leave;
 - (b) of the date they wish to start their adoption leave;
 - (c) that they intend to return to work with the same or another NHS employer for a minimum period of three months after their adoption leave has ended;
 - (d) and provide written confirmation from their placing authority of the matching decision or a parental statutory declaration that they intend to apply for a parental order in the case of a surrogacy arrangement.

Shared parental leave and pay:

15.16 Shared parental leave and pay can be taken at any time within one year from the birth or placement for adoption, providing two weeks' compulsory maternity or adoption leave has been taken first.

15.17 An employee working full-time or part-time will be entitled to paid and unpaid shared parental leave under the NHS occupational shared parental leave and pay scheme if:

- i) they have 12 months' continuous service (see paragraphs 15.106 to 15.109) with one or more NHS employers at the beginning of the 11th week before the expected week of childbirth, or at the beginning of the week in which they are notified of being matched with a child for adoption, or by the 15th week before the baby's due date if applying via a surrogacy arrangement;
- ii) they notify their employer of their wish to take shared parental leave and provide a minimum of eight weeks' notice, through the submission of a booking notification form or other local process, which will confirm:
 - (a) their intention to take shared parental leave;
 - (b) the date(s) they wish to access shared parental leave (noting that two weeks compulsory maternity or adoption leave must be taken by the mother or primary adopter before they can access shared parental leave);
 - (c) that they intend to return to work with the same or another NHS employer for a minimum period of three months after their shared parental leave has ended;
 - (d) that the mother or primary adopter has returned to work following maternity or adoption leave, or has provided the binding notice confirming that they intend to bring their

maternity or adoption leave and pay entitlements to an early end.

- iii) they confirm that the other parent meets the statutory “employment and earnings test” by being an employed or self-employed earner in the UK for a total of 26 weeks (not necessarily continuously) in the 66 weeks preceding the week the child is due to be born or matched for adoption. The individual must have earned at least an average of £30 (gross) a week in 13 of those 26 weeks (not necessarily continuously). This amount can be amended from time to time by the Secretary of State.

Maternity leave

Changing the maternity leave start date

- 15.18 If the employee subsequently wants to change the date from which they wish their leave to start, they should notify their employer at least 28 days beforehand (or, if this is not possible, as soon as is reasonably practicable beforehand).

Confirming maternity leave and pay

- 15.19 Following discussion with the employee, the employer should confirm in writing:
- i) the employee’s paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);
 - ii) unless an earlier return date has been given, by the employee, their expected return date, based on their 52 weeks paid and unpaid leave entitlement under this agreement;
 - iii) the length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal maternity leave period (see paragraphs 15.93 and 15.94);
 - iv) the need for the employee to give at least 28 days of notice if they wish to return to work before the expected return date.

Paid maternity leave: amount of pay

- 15.20 Where an employee intends to return to work the amount of occupational maternity pay receivable is as follows:
- i) for the first eight weeks of absence the employee will receive full pay, less any Statutory Maternity Pay or maternity allowance (including any dependants’ allowances) receivable;
 - ii) for the next 18 weeks the employee will receive half of full pay, plus any Statutory Maternity Pay or maternity allowance (including any

dependents' allowances) receivable, providing the total receivable does not exceed full pay;

- iii) for the next 13 weeks, the employee will receive any Statutory Maternity Pay or maternity allowance that they are entitled to under the statutory scheme;
- iv) for the final 13 weeks, the employee will receive no pay.

15.21 By prior agreement with the employer, occupational maternity pay may be paid in a different way, for example a combination of full pay and half pay, or a fixed amount spread equally over the maternity leave period. Where occupational maternity pay has been paid in a different way, and the employee subsequently chooses to access shared parental leave and pay, the employer may need to recalculate payments to ensure that there has not been any over or underpayment of entitlements.

Calculation of maternity pay

15.22 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Maternity Pay entitlements, subject to the following qualifications:

- i) in the event of a pay award or move to a higher pay point being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or new pay point had effect throughout the entire Statutory Maternity Pay calculation period. If such a pay award was agreed retrospectively, the maternity pay should be recalculated on the same basis;
- ii) in the event of a pay award or move to a higher pay point being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or new pay point should be increased accordingly. If such a pay award was agreed retrospectively the maternity pay should be re-calculated on the same basis;
- iii) in the case of an employee on unpaid sick absence or on sick absence attracting half pay during the whole or part of the period used for calculating average weekly earnings, in accordance with the earnings rules for Statutory Maternity Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay as set out in the provisions at section 14.4 and 14.5 of this agreement.

Unpaid occupational leave

15.23 Employees are also entitled to take a further 13 weeks as unpaid leave to bring the total of leave to 52 weeks. However, this may be extended by local agreement in exceptional circumstances, for example, where employees have sick pre-term babies or multiple births.

Commencement and duration of maternity leave

- 15.24 An employee may begin their maternity leave at any time between 11 weeks before the expected week of childbirth and the expected week of childbirth, provided they give the required notice.

Sickness prior to childbirth

- 15.25 If an employee is off work ill, or becomes ill, with a pregnancy-related illness during the last four weeks before the expected week of childbirth, maternity leave will normally commence at the beginning of the 4th week before the expected week of childbirth or the beginning of the next week after the employee last worked, whichever is the later. Absence prior to the last four weeks before the expected week of childbirth, supported by a medical statement of incapacity for work, or a self-certificate, shall be treated as sickness absence in accordance with normal leave provisions.
- 15.26 Odd days of pregnancy-related illness during this period may be disregarded if the employee wishes to continue working till the maternity leave start date previously notified to the employer.

Pre-term birth

- 15.27 Where an employee's baby is born alive prematurely, the employee will be entitled to the same amount of maternity leave and pay as if their baby was born at full term.
- 15.28 Where an employee's baby is born before the 11th week before the expected week of childbirth and the employee has worked during the actual week of childbirth, maternity leave will start on the first day of the employee's absence.
- 15.29 Where an employee's baby is born before the 11th week before the expected week of childbirth and the employee has been absent from work on certified sickness absence during the actual week of childbirth, maternity leave will start the day after the day of birth.
- 15.30 Where an employee's baby is born before the 11th week before the expected week of childbirth and the baby is in hospital, the employee may split their maternity leave entitlement, taking a minimum period of two weeks' leave immediately after childbirth and the rest of their leave following their baby's discharge from hospital.

Still birth

- 15.31 In the event where an employee's baby is stillborn after the end of the 24th week of pregnancy, the employee will be entitled to the same amount of maternity leave and pay as if their baby was born alive.

Miscarriage

- 15.32 In the event where an employee has a miscarriage before the start of the 25th week of pregnancy, normal sickness absence provisions will apply as necessary.

Health and safety of employees pre and post birth

- 15.33 Where an employee is pregnant or has recently given birth or is breastfeeding, the employer must carry out a risk assessment of their working conditions. If it is found, or a medical practitioner considers, that an employee or the child would be at risk were they to continue with their normal duties, the employer should provide suitable alternative work for which the employee will receive their normal rate of pay. Where it is not reasonably practicable to offer suitable alternative work, the employee should be suspended on full pay.
- 15.34 These provisions also apply to an employee who is breastfeeding if it is found that their normal duties would prevent them from successfully breastfeeding their child.

Adoption leave Changing the adoption leave start date

- 15.35 If the employee subsequently needs to change the date from which they wish their leave to start, they should notify their employer at least 28 days beforehand (or, if this is not possible, as soon as is reasonably practicable beforehand).

Confirming adoption leave and pay

- 15.36 Following discussion with the employee, the employer should confirm in writing:
- i) the employee's paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);
 - ii) unless an earlier return date has been given by the employee, their expected return date, based on their 52 weeks paid and unpaid leave entitlement under this agreement; and
 - iii) the length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal adoption leave period (see paragraphs 15.93 and 15.94);
 - iv) the need for the employee to give at least 28 days of notice if they wish to return to work before the expected return date.

Paid adoption leave: amount of pay

- 15.37 Where an employee intends to return to work, the amount of occupational adoption pay receivable is as follows:
- i) for the first eight weeks of absence the employee will receive full pay, less any Statutory Adoption Pay receivable;
 - ii) for the next 18 weeks the employee will receive half of full pay, plus any Statutory Adoption Pay receivable, providing the total receivable does not exceed full pay;
 - iii) for the next 13 weeks, the employee will receive any Statutory Adoption Pay that they are entitled to under the statutory scheme;
 - iv) for the final 13 weeks, the employee will receive no pay.
- 15.38 By prior agreement with the employer, occupational adoption pay may be paid in a different way, for example a combination of full pay and half pay, or a fixed amount spread equally over the adoption leave period. Where occupational adoption pay has been paid in a different way, and the employee subsequently chooses to access shared parental leave and pay, the employer may need to recalculate payments to ensure that there has not been any over or underpayment of entitlements.

Calculation of adoption pay

- 15.39 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Adoption Pay entitlements, subject to the following qualifications:
- i) in the event of a pay award or move to a higher pay point being implemented before the paid adoption leave period begins, the adoption pay should be calculated as though the pay award or new pay point had effect throughout the entire Statutory Adoption Pay calculation period. If such a pay award was agreed retrospectively, the adoption pay should be recalculated on the same basis;
 - ii) in the event of a pay award or move to a higher pay point being implemented during the paid adoption leave period, the adoption pay due from the date of the pay award or new pay point should be increased accordingly. If such a pay award was agreed retrospectively the adoption pay should be re-calculated on the same basis;
 - iii) in the case of an employee on unpaid sick absence or on sick absence attracting half pay during the whole or part of the period used for calculating average weekly earnings, in accordance with the earnings rules for Statutory Adoption Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay as set out in the provisions at section 14.4 and 14.5 of this agreement.

Unpaid occupational leave

- 15.40 Employees are also entitled to take a further 13 weeks as unpaid leave to bring the total of leave to 52 weeks. However, this may be extended by local agreement in exceptional circumstances.

Fostering for adoption

- 15.41 Prospective adopters who have been approved by their adoption agency under a “concurrent” or “fostering for adoption” arrangement may choose to start their adoption leave when a fostering placement is made or when the child is matched with them for adoption. Only one set of adoption leave is payable per placement. Receipt of fostering allowances and payments during the fostering phase of placement will not affect any adoption pay payable under this agreement.

Adoption disruption

- 15.42 Should the adoption break down (“be disrupted”) the employee will be entitled to continue their adoption leave and receive the appropriate payment for that time.

Overseas adoption

- 15.43 For an employee to qualify for adoption leave and or pay resulting from an overseas adoption, they must:
- i) tell their employer the date of the official notification (permission from a GB authority for an adoption abroad) and the estimated date that the child will arrive in GB. This must be done within 28 days of receipt of the official notification;
 - ii) tell their employer the actual date the child arrives in GB within 28 days of this date;
 - iii) provide their employer with a minimum of 28 days’ notice of when they wish to commence their adoption leave and pay (noting that adoption leave can only commence after the child has entered GB and must start no later than 28 days after the child has entered GB);
 - iv) provide appropriate documentation and proof of the adoption to the employer including but not limited to the official notification and evidence that the child has entered GB.

Shared parental leave

- 15.44 In order to access enhanced shared parental leave, employees will be required to complete the appropriate forms produced by ACAS and available on the UK Government website (<https://www.gov.uk/shared-parental-leave-and-pay/applying-for-leave-and-pay>). As stated on the statutory forms, some employers may provide their own standard forms for employees to use. Employing organisations will need to be able to

satisfy themselves that they have all the information necessary to offer this enhanced benefit.

- 15.45 Employing organisations may at their discretion require the individual to provide additional information on their circumstances where this is reasonable and necessary to determine entitlements.
- 15.46 It is the responsibility of the employee to ensure that all information provided is accurate. Where inaccurate information is provided that leads to overpayment of statutory or occupational entitlements, the employing organisation will have a right to reclaim any overpayment. Providing deliberately inaccurate information may also lead to the employing organisation taking disciplinary or other action against the employee.
- 15.47 It is recommended that organisations develop their own local shared parental leave policy and processes in partnership with local staff sides to ensure application processes are consistent and to enable local audit procedures to be carried out where necessary, ensuring equality duties are met.

Booking and varying shared parental leave

- 15.48 Shared parental leave and pay must be taken within one year of the birth of the child, or the date the child was placed with the family in cases of adoption.
- 15.49 Following notification of their intention to take shared parental leave, an employee should provide notice to book a period of leave. The minimum period of notice to book or amend a period of leave shall be eight weeks.
- 15.50 An employee can provide up to three notices to book leave. This includes notices to vary a previously agreed pattern of leave.
- 15.51 Each of the three notices to book leave may include a single, continuous or discontinuous block of leave.
- 15.52 Requests for single blocks of leave cannot be refused.
- 15.53 Confirmed leave arrangements can be amended by the submission of a notice to vary the agreed period of leave. An employee can submit a notice to extend a period of leave, end it sooner than previously agreed or consolidate a number of discontinuous weeks in to a single block of leave using a variation notice. Eight weeks' notice must be given but flexibility should be provided in the event of early and late births.
- 15.54 In instances where discontinuous periods of leave are requested, employers are not bound to agree the requested pattern. A two-week discussion period between the employee and employer will commence on the date the employee submits the booking notice. The review will look at the requested pattern of leave and discuss possible alternatives. In the limited circumstances where the employer refuses the requested

pattern, they will explain the reason for the refusal. The employee cannot be prevented from taking the amount of leave they have requested within that notice, but the employer has authority over how and when it is taken.

- 15.55 In instances where a discontinuous period of leave has been refused and an alternative period has not been agreed during the discussion period, the total combined weeks' leave requested on that notice may be taken as a single continuous block. This should commence on a date specified by the employee but be no less than eight weeks from the date the original notice was provided to the employer. The employee has five days from the end of the two-week discussion period in which to confirm the date their leave will commence. In instances where the employee specifies no date, leave will commence on the start date of the first period of discontinuous leave that was originally applied for.
- 15.56 An employee is not entitled to withdraw a notice for a single continuous block of leave but may do so with the employer's express permission.
- 15.57 An employee may withdraw their notice to book discontinuous blocks of leave within 15 days of submitting their notice providing an agreement has not been reached with their employer about when they will be absent from work. Once the 15th day has passed any changes to a period of leave must be made by using a variation notice and a minimum of eight weeks' notice must be provided.
- 15.58 If a notice is withdrawn it will not count towards the three booking notifications cap.

Confirming shared parental leave and pay

- 15.59 Following discussion with the employee, the employer should confirm in writing:
- i) the employee's paid and unpaid shared parental leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under the agreement);
 - ii) the confirmed leave pattern, including start and end dates, for each block of shared parental leave the employee and employer have agreed will be taken;
 - iii) confirmation of the notification process and the required notice periods for instances where agreed blocks of leave need to be amended; and
 - iv) the length of any period of accrued annual leave which it has been agreed may be taken following the end of shared parental leave (see paragraphs 15.93 and 15.94).

Paid shared parental leave: amount of pay

- 15.60 Eligible employees will be entitled to claim up to 37 weeks of statutory shared parental leave pay (ShPP), less any weeks of statutory maternity pay, maternity allowance or statutory adoption pay that has already been claimed by either partner. ShPP can be claimed following the birth or placement of the child, but not at the same time as the compulsory two weeks of leave following the birth or placement of the child. ShPP is paid at a rate set by the government each year.
- 15.61 Where an employee intends to return to work after a period of shared parental leave, the maximum joint entitlement of an eligible couple to occupational shared parental pay will be as set out below. The maximum entitlement will only apply where either parent has not already received statutory or occupational maternity pay or statutory or occupational adoption pay in respect of the child. Where such pay (excluding pay during the compulsory two-week maternity/adoption leave period) has been received by either parent, the maximum joint entitlement set out below will reduce proportionate to the amount of maternity or adoption pay which has either been taken and paid to either parent, or notified as intending to be taken by either parent.
- i) for the first six weeks of absence the employee will receive full pay. Full pay is inclusive of any ShPP. The total receivable cannot exceed full pay;
 - ii) for the next 18 weeks of absence the employee will receive half of full pay plus any ShPP. The total receivable cannot exceed full pay;
 - iii) for the next 13 weeks, the employee will receive any ShPP that they are entitled to under the statutory scheme;
 - iv) for the final 13 weeks, the employee will receive no pay.
- 15.62 An NHS employer (as defined at Annex 1) will not pay more than 26 weeks, 8 weeks' full pay (including the two weeks' compulsory leave) and 18 weeks' half pay, to employees accessing occupational maternity or adoption or shared parental pay in aggregate to an eligible couple. This is irrespective of whether one or both parents are NHS employees as shared parental leave and pay is a joint entitlement.

Calculation of shared parental leave pay

- 15.63 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Shared Parental Pay entitlements, subject to the following qualifications:
- i) in the event of a pay award or move to a higher pay point being implemented before the paid shared parental leave period begins, the shared parental pay should be calculated as though the pay award or new pay point had effect throughout the entire Statutory Shared Parental Pay calculation period. If such a pay award was

agreed retrospectively, the shared parental pay should be re-calculated on the same basis;

- ii) in the event of a pay award or move to a higher pay point being implemented during the paid shared parental leave period, the shared parental pay due from the date of the pay award or new pay point should be increased accordingly. If such a pay award was agreed retrospectively the shared parental pay should be re-calculated on the same basis;
- iii) in the case of an employee on unpaid sick absence or on sick absence attracting half pay during the whole or part of the period used for calculating average weekly earnings, in accordance with the earnings rules for Statutory Shared Parental Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay.

Unpaid occupational leave

- 15.64 Employees are also entitled to take a further 13 weeks as unpaid leave to bring the total for shared parental leave to 50 weeks. However, this may be extended by local agreement in exceptional circumstances.

Keeping in touch during the maternity, adoption, or shared parental leave period

- 15.65 Before going on leave, the employer and the employee should also discuss and agree any voluntary arrangements for keeping in touch during the employee's maternity, adoption, or shared parental leave, including:
- i) any voluntary arrangements that may help them keep in touch with developments at work and, nearer the time of their return, to help facilitate their return to work;
 - ii) keeping the employer in touch with any developments that may affect their intended date of return.
- 15.66 To facilitate the process of keeping in touch, it is important that the employer and employee have early discussions to plan and make arrangements for "keeping in touch days" (KIT days), or "shared parental leave in touch" (SPLiT) days, before the employee's maternity leave, adoption leave, or shared parental leave takes place.
- 15.67 To enable employees to take up the opportunity to work KIT and SPLiT days, employers should consider the scope for reimbursement of reasonable childcare costs or the provision of childcare facilities.
- 15.68 KIT / SPLiT days are intended to facilitate a smooth return to work for employees returning from maternity, adoption, or shared parental leave.

- 15.69 An employee may work for up to a maximum of ten KIT days without bringing their maternity or adoption leave to an end. Any days of work will not extend the maternity / adoption leave period.
- 15.70 An employee may work up to a maximum of twenty SPLiT days without bringing their shared parental leave to an end. Any days of work will not extend the shared parental leave period. This will enable employees on shared parental leave to work either continuously or on odd days without bringing an end to their shared parental leave and pay.
- 15.71 An employee may not work during the two weeks of compulsory maternity or adoption leave.
- 15.72 Work can be consecutive or not and can include training or other activities which enable the employee to keep in touch with the workplace.
- 15.73 Any such work must be by agreement and neither the employer nor the employee can insist upon it.
- 15.74 For KIT /SPLiT days worked the employee will be paid at their basic daily rate for the hours worked, less any occupational or statutory maternity / adoption / shared parental leave payments. If a KIT /SPLiT day is worked in the full pay period, the employer will make arrangements to ensure the employee receives a day of paid leave in lieu once the employee has returned to work. If a KIT /SPLiT day is worked on a day of leave in the half pay period, the employer will make arrangements to ensure the employee receives a half day of paid leave in lieu once the employee had returned to work.
- 15.75 Working for part of any day will count as one KIT / SPLiT day.
- 15.76 A risk assessment must be carried out for any employee who is breastfeeding and facilities must be provided in accordance with paragraph 15.33-15.34. To ensure compliance with Workplace (Health, Safety and Welfare) Regulations 1992 employers must provide suitable rest facilities for workers who are pregnant or breastfeeding. Facilities should be suitably located and where necessary should provide appropriate facilities for the new or expectant mother to lie down. The NHS Staff Council Health Safety and Wellbeing Partnership Group have published further guidance on workplace health and safety standards.

Return to work

- 15.77 An employee who intends to return to work at the end of their full maternity or adoption leave, or at the end of their shared parental leave, will not be required to give any further notification to the employer, although if they wish to return early, they must give at least 28 days' notice.
- 15.78 An employee has the right to return to their job under their original contract and on no less favourable terms and conditions.

Returning on flexible working arrangements

- 15.79 If, at the end of maternity, adoption, or shared parental leave, the employee wishes to return to work on different hours, the NHS employer has a duty to facilitate this, wherever possible. The employee will return to work on different hours, in the same job. If this is not possible, the employer must provide written, objectively justifiable reasons for this and the employee should return to the same pay band and work of a similar nature and status, to that which they held prior to their maternity / adoption / shared parental absence.
- 15.80 If it is agreed that the employee will return to work on a flexible basis, including changed or reduced hours, for an agreed temporary period, this will not affect the employee's right to return to their job under their original contract, at the end of the agreed period.

Sickness following the end of maternity, adoption, or shared parental leave

- 15.81 In the event of illness following the date the employee was due to return to work, normal sickness absence provisions will apply as necessary.

Failure to return to work

- 15.82 If an employee who has notified their employer of their intention to return to work for the same or a different NHS employer, in accordance with paragraph 15.14, 15.15 or 15.17 fails to do so within:
- i) 15 months of the beginning of their maternity / adoption leave, or
 - ii) three months of the end of their shared parental leave,

they will be liable to refund the whole of their maternity, adoption, or shared parental pay, less any Statutory Maternity, Adoption or Shared Parental Pay, received. In cases where the employer considers that to enforce this provision would cause undue hardship or distress, the employer will have the discretion to waive their rights to recovery.

Miscellaneous provisions for maternity, adoption and shared parental leave

Fixed-term contracts or training contracts

- 15.83 Employees subject to fixed-term or training contracts which expire after the 11th week before the expected week of childbirth, or the date of matching, or the 15th week before the baby's due date if applying via a surrogacy arrangement, and who satisfy the relevant conditions in paragraphs 15.14, 15.15 or 15.17 shall have their contracts extended so as to allow them to receive the 52 weeks, which includes paid occupational and statutory maternity / adoption / shared parental pay, and the remaining 13 weeks of unpaid maternity / adoption / shared parental leave.

- 15.84 Absence on maternity / adoption / shared parental leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service.
- 15.85 If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth / adoption / shared parental leave had not occurred or been taken, the repayment provisions set out in paragraph 15.82 will not apply.
- 15.86 Employees on fixed-term contracts who do not meet the 12 months' continuous service condition set out in paragraph 15.105 or 15.108, may still be entitled to Statutory Maternity / Adoption / Shared Parental Pay.

Rotational training contracts

- 15.87 Where an employee is on a planned rotation of appointments with one or more NHS employers, as part of an agreed programme of training, they shall have the right to return to work after a period of maternity, adoption or shared parental leave in the same post or in the next planned post, irrespective of whether the contract would otherwise have ended if pregnancy and childbirth/adoption/shared parental leave had not occurred. In such circumstances the employee's contract will be extended to enable the practitioner to complete the agreed programme of training.
- 15.88 To ensure equality of access to the provisions in this Section:
- a. where an employee changes employer because their training programme has required them to do so, and
 - b. this means they do not have enough statutory continuous service with their current employer to access statutory maternity pay, statutory adoption pay, or statutory shared parental pay, but
 - c. they would have had sufficient statutory continuous service to access statutory maternity pay, statutory adoption pay, or statutory shared parental pay had they not been required to change employer because of the training programme the employee shall be paid, by their current employer, the value of statutory maternity / adoption / shared parental pay they would have otherwise received if their statutory continuity had not been broken by their change of employer.
- 15.89 Where an employee does not have enough statutory continuity of service to access statutory maternity /adoption / shared parental pay as a result of being required as part of their training programme to work in a Crown Dependency, and they would have had sufficient statutory continuous service to access statutory maternity pay, statutory adoption pay, or statutory shared parental pay had they not been required to work in a Crown Dependency, the employee shall be paid, by their current employer, the value of statutory maternity / adoption / shared

parental pay they would have otherwise received if their statutory continuity had not been broken by working in a Crown Dependency.

Contractual rights

- 15.90 During maternity leave (both paid and unpaid) an employee retains all of their contractual rights, except remuneration.

Pay progression

- 15.91 An employee on maternity / adoption / shared parental leave will progress through their pay step on the date the pay step is due unless a pay-step review meeting has taken place prior to the commencement of leave which confirmed that the required standards for pay progression would not be met. If a pay-step review cannot be conducted prior to the paystep date the pay-step point should be automatically applied in the individual's absence. Refer to Annex 23 (England) for further information.

Note: Scotland has its own established pay progression arrangements which will continue to operate until the revised approach negotiated through the Scottish Terms and Conditions Committee is put in place. The service will receive further communication about these in due course.

- 15.92 For staff on medical or dental contracts that are covered by this section the general principle will apply that there should be no detriment to pay progression or annual leave accrual as a result of taking maternity/adoption/shared parental leave.

Annual leave and public holidays

- 15.93 Employees on paid and unpaid maternity / adoption / shared parental leave retain their right to the annual leave and public holidays provided by Section 13 or such other terms and conditions as may be applicable to the employee.
- 15.94 Where unused annual leave and public holidays exceed local provisions for carry over to the next leave year it may be beneficial to the employer and employee for the employee to take the unused annual leave and public holidays before and/or after the agreed (paid and unpaid) maternity / adoption / shared parental leave period. The amount of annual leave and public holidays to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Payment in lieu may be considered as an option where accrual of annual leave and public holidays exceeds normal carry over provisions, providing this would not cause a breach in the Working Time Regulations 1998.

Pensions

- 15.95 Pension rights and contributions shall be dealt with in accordance with the provisions of the NHS Pension Scheme Regulations.

Antenatal care

- 15.96 Pregnant employees have the right to paid time off for antenatal care. Antenatal care includes relaxation and parent-craft classes as well as appointments for antenatal care.
- 15.97 The pregnant employee's partner will be entitled to unpaid leave to attend two ante natal appointments. Unpaid leave, up to a maximum of six and a half hours per appointment can be accessed. The pregnant employee's partner includes a spouse, civil partner (of either sex) or a person with whom she is in a long-term relationship. Further information can be found on the government website <https://www.gov.uk/working-when-pregnant-your-rights>.

Pre-adoption meetings

- 15.98 Employees being assessed for adoption have the right to reasonable paid time off for essential meetings.

Employees not returning to NHS employment

- 15.99 An employee who satisfies the conditions in paragraph 15.14, 15.15 or 15.17, except that they do not intend to work with the same or another NHS employer for a minimum period of three months after their maternity, adoption, or shared parental leave has ended, will be entitled to pay equivalent to Statutory Maternity / Adoption / Shared Parental Pay.
- 15.100 Statutory Maternity Pay (SMP) and Statutory Adoption Pay (SAP) is paid at 90 per cent of their average weekly earnings for the first six weeks of the maternity / adoption leave and to the statutory flat rate sum or 90 per cent of the average weekly earnings (whichever is lower) for the following 33 weeks.
- 15.101 Shared Parental Leave Pay (ShPP) is paid at a statutory flat rate sum or 90 per cent of an employee's average weekly earnings, whichever is the lower.

Employees with less than 12 months' continuous service

- 15.102 If an employee does not satisfy the conditions in paragraph 15.14 or 15.15 or 15.17 for occupational maternity / adoption / shared parental pay, they may be entitled to Statutory Maternity, Adoption or Shared Parental Pay. Statutory Maternity, Adoption or Shared Parental pay will be paid regardless of whether they satisfy the conditions in paragraph 15.14, 15.15 or 15.17.
- 15.103 If an employee's earnings are too low for them to qualify for Statutory Maternity / Adoption / Shared Parental Pay, or they do not qualify for another reason, they should be advised to claim maternity allowance (if applicable) or any other possible benefits from their local Job Centre Plus. Information on maternity allowance is available on the government website <https://www.gov.uk/maternity-allowance>.

15.104 All employees will have a right to take 52 weeks of maternity / adoption / shared parental leave whether or not they return to NHS employment.

15.105 Paragraph 15.117 contains further information on statutory entitlements.

Continuous service

15.106 For the purposes of calculating whether the employee meets the qualification set out in paragraph 15.14, 15.15 or 15.17 to have had 12 months of continuous service with one or more NHS employers, NHS employers include health authorities, NHS boards, NHS trusts, and the Northern Ireland Health Service and are set out in Annex 1. The following breaks in service will be disregarded (but do not count as service):

- i) a break in service of three months or less will be disregarded;
- ii) employment under the terms of an honorary contract;
- iii) employment as a locum in a general practice setting for a period not exceeding 12 months;
- iv) a period of up to 12 months spent abroad as part of a definite programme of postgraduate training on the advice of the postgraduate dean or college or faculty advisor in the speciality concerned;
- v) a period of voluntary service overseas with a recognised international relief organisation for a period of 12 months, which may exceptionally be extended for 12 months at the discretion of the employer which recruits the employee on their return;
- vi) absence on an employment break scheme in accordance with the provisions of Section 34 of this Handbook;
- vii) absence on maternity leave, adoption leave, or shared parental leave (paid or unpaid) as provided for under this agreement;
- vii) for doctors and dentists in training, time spent outside of NHS employment (employers not listed at Annex 1) in an Out of Programme (OOP) placement approved by the Postgraduate Dean;
- viii) for doctors and dentists in training, time spent employed in the health service of a UK Crown Dependency as part of an approved training programme.

15.107 Employers may at their discretion extend the period specified in paragraph 15.106.

15.108 Employment as a doctor in training in a general practice setting in accordance with the provisions of the Trainee Practitioner Scheme, shall not be regarded as a break in service and shall count as service.

- 15.109 Employers have the discretion to count other previous NHS service or service with other employers.

New parent support leave and pay (paternity leave)

- 15.110 This provision builds on statutory paternity leave and pay and applies to the father of the child (including adoptive fathers), the mother's spouse or partner (whether opposite or same sex) or nominated carer.
- 15.111 NHS organisations have scope locally to agree more favourable arrangements where they consider it necessary, or further periods of unpaid leave on an individual basis.
- 15.112 All eligible employees are entitled to two weeks of new parent support leave which can be taken around the time of the birth or the placement of the child for adoption.
- 15.113 Employees granted new parent support leave will receive full pay during this period if they have 12 months' continuous service with their or any other NHS employer before they take their leave.
- 15.114 Full pay will be calculated on the basis of the average weekly earnings rules used for calculating occupational maternity / adoption pay entitlements. The employee will receive full pay less any statutory paternity pay receivable.
- 15.115 Only one period of new parent support pay is ordinarily available when there is a multiple birth.
- 15.116 Employees who are not eligible for the two weeks of pay during their new parent support leave may still be entitled to statutory paternity pay subject to meeting the qualifying conditions described in the relevant legislation. Details of the qualifying conditions can be found on www.gov.uk.

Further information

- 15.117 There are occasions when employees are entitled to other statutory benefits / allowances and information about these and all statutory maternity, adoption, shared parental leave and paternity rights can be found on the Gov.uk website. Information about health and safety for new and expectant mothers at work can be found on the government website.

Note: This section, agreed by the UK Staff Council for application from 1 April 2019 includes provisions already put in place in Scotland on 2 April 2015 by [DL\(2015\)5](#), and subsequently included in the [Supporting the Work-Live Balance Partnership Information Network \(PIN\) policy](#). In Scotland, this section should be read in conjunction with the most up to date PIN policies which can be found at: www.staffgovernance.scot.nhs.uk

Section 23 Child bereavement leave

- 23.1 The NHS Staff Council is aware that employers in the NHS show compassion in circumstances where staff, who are parents, experience the death of a child. The provisions below are designed to set out a minimum national standard of leave and pay in these circumstances. These provisions do not prevent employers from exercising their local flexibility to provide leave and pay beyond these provisions.
- 23.2 For the purpose of this Section, a bereaved parent is anyone who had responsibility as one of the primary carers for a child who is now deceased. This includes adoptive parents, legal guardians, individuals who are fostering to adopt, and any other parent/child relationship that the employing organisation deems to be reasonable. For example, this may include grandparents who have had caring responsibilities for a child, or instances where someone other than the biological parent is the primary carer (this could be the case where the parents of the child have separated).
- 23.3 For this agreement, there is no requirement for the child to be under 18 years of age.
- 23.4 All bereaved parents will be eligible for a minimum of two weeks of child bereavement leave. A bereaved parent will not be required to demonstrate any eligibility criteria in order to access bereavement leave or pay.
- 23.5 All bereaved parents will be entitled to two weeks' occupational child bereavement pay which will include any entitlement to statutory parental bereavement pay. Pay is calculated on the basis of what the individual would have received had he/she been at work. This would normally be based on the previous three months at work or any other reference period that may be locally agreed.
- 23.6 Where both parents of a deceased child work in the same NHS organisation, the entitlements in this Section will apply to both members of staff.
- 23.7 Parents who experience a still birth from the 24th week of pregnancy will be eligible for these provisions, and will subsequently still be eligible for the provisions set out in this Handbook at Section 15. Bereavement leave and pay may be extended to members of staff, by local arrangement, in these circumstances where they were hoping to become parents under surrogacy arrangements.
- 23.8 Bereaved parents do not have to take the two weeks of leave in a continuous block. The employee should agree with their employer the leave they wish to take. Taking child bereavement leave is an individual choice, it is not compulsory for the employee to take child bereavement leave.

- 23.9 Bereaved parents may request to take child bereavement leave at any point up to 56 weeks following the death of the child. Should the parent wish to take child bereavement leave immediately following the death of a child they shall be able to do so upon informing their employer that they will be absent from work for this purpose. Should the parent wish to take child bereavement leave at another time, after the initial period following the death, they should give their employer reasonable notice of their intention to take the leave at this time.
- 23.10 The method for informing the employer of a child bereavement should follow locally agreed processes. Bereaved parents will at no point be required to produce the child's Death Certificate, or any other official documents, in order to access child bereavement leave or pay. The employer may ask for a written declaration from the employee, within a reasonable timeframe, in order to satisfy statutory requirements.

Note: In Scotland, this section should be read in conjunction with the most up to date PIN policies which can be found at:

www.staffgovernance.scot.nhs.uk