

## TRUST POLICY

**MATERNITY, PATERNITY AND ADOPTION LEAVE**

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All document profile details are recorded on the last page.

All documents must be reviewed by the last day of the month shown under “review date”, or before this if changes occur in the meantime.

**FAST FIND:**

For eligibility for paid parental leave, see the [Eligibility Flowchart](#).

For details of maternity, paternity and adoption leave pay provision, see [section 8](#).

For details of maternity, paternity and adoption leave provision and Keeping In Touch (KIT), see [section 9](#) and [section 10](#).

See action cards [MPA1](#) and [MPA3](#) for checklists for line managers and employees on maternity/adoption leave

See action card [MPA2](#) for information on paternity and additional paternity leave.

**DOCUMENT OVERVIEW:**

This document sets out the following:

- Health and safety considerations for pregnant employees
- The leave and pay entitlements of NHS employees under the NHS contractual and statutory maternity, paternity and adoption leave schemes
- How the Trust will ensure fair and consistent provision of maternity, paternity and adoption leave

This document may be made available to the public and persons outside of the Trust as part of the Trust's compliance with the Freedom of Information Act 2000

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## MATERNITY, PATERNITY AND ADOPTION LEAVE

### Note:

This document contains a large amount of complex information. Contact an HR advisor for help or guidance if unsure of the terms and conditions which apply to maternity, paternity or adoption leave.

### 1. INTRODUCTION

This Policy has been drawn up in light of the Maternity and Parental Leave Regulations 1999, the Maternity and Parental Leave (Amendment) Regulations 2002, the Maternity and Parental Leave etc (Amendment) Regulations 2006, and the Additional Paternity Leave Regulations 2010.

This document covers the requirements and benefits of both the NHS and Statutory schemes. It cannot, however, cover all possible circumstances; therefore, line managers and employees are encouraged to contact a member of the HR team to discuss the details of entitlements.

This policy document operates in conjunction with the related action cards and the standard letters related to parental leave, links to which are available on the main policy page

### 2. DEFINITIONS

Word/Term	Descriptor
Maternity leave	A period of absence from work, to which a woman is legally entitled during the months immediately before and after childbirth
Adoption leave	Leave of absence granted to a parent in the event of the adoption of a child
Paternity leave	Leave of absence to a father, or partner in a same sex relationship in the event of the birth or adoption of a child
Expected Week of Childbirth (EWC)	The week, beginning with midnight Saturday/Sunday, in which it is expected that childbirth will occur
Employee	Individual who has entered into, or works under a contract of employment with the Trust
Worker	Individual who carries out work for the Trust on a casual basis, or via an agency

### 3. PURPOSE

This document sets out the following:

- Health and safety considerations for pregnant employees
- The leave and pay entitlements of NHS employees under the NHS contractual and statutory schemes
- How the Trust will ensure fair and consistent provision of maternity, paternity and adoption leave

### 4. ROLES AND RESPONSIBILITIES

Post/Group	Details
Director of HR and OD	Ultimate responsibility for ensuring the correct operation and review of this policy
HR Team	Providing advice and assistance to line managers and employees about the use of this policy
Line Managers	<ul style="list-style-type: none"> <li>• Receiving applications for parental leave</li> <li>• Maintaining KIT arrangements with employees on parental leave</li> <li>• Carrying out risk assessments relating to new and expectant mothers</li> </ul>
Risk Department	<ul style="list-style-type: none"> <li>• Providing advice on risk assessment processes for expectant and nursing mothers</li> </ul>

## 5. MATERNITY LEAVE - HEALTH AND SAFETY OF EMPLOYEES PRE- AND POST-BIRTH

Line managers are responsible for carrying out risk assessments of the working conditions of any female employee who is pregnant, has recently given birth (within the last 6 months) or is breastfeeding. It may be necessary to review the risk assessment at intervals, depending on any changes to working conditions or the factors relating to pregnancy or childbirth which are affecting the employee directly.

### 5.1 Risk assessment

The risk assessment must take the following factors into account:

- The employee's job content
- Any exposure to hazardous substances (physical, chemical or biological agents)
- Any information already known about the employee's condition (e.g. multiple birth)
- If the employee's normal duties would prevent her from successfully breastfeeding her child (see provisions in 5.4 below)

Use the [Risk Assessment for New and Expectant Mothers](#) form.

### 5.2 Actions following risk assessment

If the risk assessment shows that the employee or her child would be at risk when carrying out her normal duties, or if a medical practitioner considers there is a risk, the line manager is responsible for taking the following actions:

- Adjusting working hours and/or conditions to reduce the risk to an acceptable level
- Providing suitable alternative work **at the employee's normal rate of pay**
- Suspending the employee on full pay until she is able to return to her normal duties (always take HR advice before considering suspension)

### 5.3 Antenatal care

Pregnant employees have the right to paid time off for antenatal care, which includes relaxation and parentcraft classes.

### 5.4 Postnatal care and breastfeeding mothers

Women who have recently given birth (within 6 months) have the right to paid time off for postnatal care.

In addition, the Trust must provide the following for employees who are breastfeeding:

- A clean, healthy and safe work environment
- suitable access to private facilities to enable them to express and store milk in an appropriate refrigerator
- consideration of any requests for flexible working arrangements

## 6. ENTITLEMENTS TO MATERNITY, PATERNITY AND ADOPTION LEAVE

The legal entitlements to maternity, paternity and adoption leave are as follows:

- **Maternity leave** – a total of 52 weeks, paid and unpaid
- **Paternity leave** – two weeks' paid leave
- **Adoption leave** – a total of 52 weeks, paid and unpaid (in addition to the legal requirement, the Trust will also allow reasonable time off to attend official meetings in the adoption process)
- **Additional Paternity Leave (shared maternity/adoption leave entitlement)** – up to 26 weeks leave. The statutory rate only is paid; there is no NHS contractual scheme for shared maternity/adoption leave (see 9.2 below)

Whether an employee qualifies for the NHS Contractual Scheme or Statutory Maternity, Paternity or Adoption pay depends upon eligibility – see the eligibility flowchart (see link on main policy page).

## 7. ELIGIBILITY FOR MATERNITY, PATERNITY AND ADOPTION PAY SCHEMES

The eligibility requirements for both the NHS Contractual schemes and the Statutory schemes are shown in the flowchart (see link on main policy page)

## 8. MATERNITY, PATERNITY AND ADOPTION LEAVE PAY

### 8.1 Amount of pay

**Maternity and Adoption:** Where an employee intends to return to work for the Trust or another NHS Employer for a minimum of 3 months†, the amount of pay which may be received is as follows:

<b>First 8 weeks</b>	<b>Full pay</b> , less any Statutory Maternity/Adoption Pay or Maternity Allowance (including any dependents' allowances)
<b>Next 18 weeks</b>	<b>Half pay</b> plus any Statutory Maternity/Adoption Pay or Maternity Allowance (including any dependents' allowances), provided that the total does not exceed full pay
<b>Next 13 weeks</b>	Any Statutory Maternity/Adoption Pay or Maternity Allowances that they are entitled to under the statutory scheme

By prior arrangement with the Trust, pay from the NHS scheme may be made in a different way, such as a combination of full pay and half pay, or a fixed amount spread equally over the maternity leave period.

**Paternity:** two weeks' pay will be made, calculated on the basis of notional full time pay.

†For the purposes of this calculation, bank work cannot be counted towards the 3 months.

### 8.2 Calculation of maternity/adoption pay

Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Maternity/Adoption Leave entitlements, subject to the following calculations:

<b>If a pay award or annual increment is implemented before the start of paid maternity/adoption leave</b>	Calculate Maternity/Adoption Pay as though the pay award or increment had effect for the <u>whole</u> calculation period
<b>If a pay award or annual increment is implemented during the period of paid maternity/adoption leave</b>	Increase Maternity/Adoption Pay from the date of the pay award or annual increment
<b>If a pay award or annual increment is awarded during the period of paid maternity/adoption leave and backdated</b>	Re-calculate Maternity/Adoption Pay on this basis
<b>If the employee is on sick leave and in half pay or no pay for the qualifying period</b>	Calculate Maternity/Adoption Pay on the basis of notional full sick pay

### 8.3 Unpaid contractual leave

Employees are entitled to take a further 13 weeks' unpaid leave in addition to their paid maternity/adoption leave, to bring the total leave available to 52 weeks. The unpaid period may be extended by local agreement in exceptional circumstances, such as where there has been a multiple birth or the baby has severe health problems (e.g. sick pre-term baby).

### 8.4 Deductions from maternity, paternity or adoption pay

All maternity, paternity and adoption pay is subject to tax, National Insurance and pension deductions (where the employee is a member of the NHS pension scheme).

### 8.5 Employee not returning to work

Where the employee opts to not return to work for the Trust or for another NHS employer, Statutory Maternity/Adoption Pay will apply. This will be paid at 90% of the average weekly earnings for the first 6 weeks of maternity/adoption leave and to a flat rate sum for the following 33 weeks.

## 9. MATERNITY, PATERNITY AND ADOPTION LEAVE PROVISION

### 9.1 Applying for maternity, paternity or adoption leave and pay

- Line managers are responsible for following the directions in action card MPA1
- Employees are responsible for following the directions in action card MPA3
- See action card MPA2 for details of paternity leave and additional paternity leave

### 9.2 Commencement of leave

- **Maternity** - An employee may begin her maternity leave at any time between 11 weeks before the expected week of childbirth (EWC) and the EWC itself, provided she gives the required notice. If the employee subsequently wants to change the start date of maternity leave, she is required to give 56 days' notice, or if this is not possible, as soon as is reasonably practicable
- **Adoption** – from the date the parents formally take on care of the child, or up to 14 days beforehand. The start date may be changed with 56 days' notice (or as soon as is reasonably practicable)
- **Paternity** – from the date of birth of the child or any time within the first 8 weeks of the child's life, or within the first 8 weeks of adoption. Paternity leave must be taken in one block and not in odd days
- **Additional Paternity leave** – at any time between 20 weeks after the date the child was born (or adopted) and the child's first birthday

### 9.3 Special conditions – maternity

SICKNESS PRIOR TO CHILDBIRTH	
Employee off sick prior to last four weeks before EWC	If self-certificated or medically certificated, treat as normal sick leave
Employee off sick with pregnancy-related illness during last four weeks before EWC	Maternity leave will start at the beginning of 4 <sup>th</sup> week before EWC, <u>or</u> beginning of the next week following last day employee worked, whichever is the later
Odd days of pregnancy-related illness	Disregard if the employee wishes to continue working until the maternity leave start date already notified
PRE-TERM BIRTH	
Pre-term baby born alive	Employee is entitled to same amount of maternity leave and pay as if the baby was born full-term
Pre-term baby born before 11 <sup>th</sup> week before EWC and the employee has worked during the week of childbirth	Maternity leave will start on the first day of the employee's absence
Pre-term baby born before 11 <sup>th</sup> week before EWC and employee has been on certified sickness absence during week of childbirth	Maternity leave will start on the first day of the employee's absence
Pre-term baby born before 11 <sup>th</sup> week before EWC and the baby is in hospital	Employee may split maternity leave, taking a minimum of 2 weeks immediately after childbirth and the remainder following the baby's discharge from hospital
STILL BIRTH	
Still birth after 24 <sup>th</sup> week of pregnancy/ death of a child occurring after a live birth	Employee entitled to same amount of maternity leave and pay as if the baby had been born alive <b>Note: Paternity Leave may be taken if the child is stillborn after 24 weeks of pregnancy</b>
MISCARRIAGE	
Miscarriage before 24 <sup>th</sup> week of pregnancy	Normal sick leave provisions apply

### 9.4 SURROGACY AGREEMENTS

In the case of a surrogacy agreement, the Trust has made the following provisions:

- The leave eligibility will be the same as that for Adoption Leave
- The pay entitlement will depend on the circumstances of each case. there are currently no provisions for Statutory Surrogacy Pay
- The spouse/partner of a woman taking on a surrogate baby will be entitled to Paternity Leave and Pay
- Documentary evidence of the birth and the Parental Order issued by the court is required

## 10. KEEPING IN TOUCH (KIT)

### 10.1 Keeping in touch system

Keeping In Touch consists of two components to assist the employee and employer:

- Voluntary arrangements to enable the employee and line manager to maintain contact during maternity/adoption leave, to enable the employee to keep in touch with developments at work and facilitate a smooth return to work, including any developments that may affect the return to work
- Provision of Keeping In Touch (KIT) days which enable the employee to come into work whilst still on maternity/adoption leave

### 10.2 Provision of KIT days

KIT days are intended to facilitate a smooth return for women returning from maternity/adoption leave, or a spouse/partner who has opted to share a maternity/adoption leave entitlement. The Trust's provision of KIT days will be as follows:

- The employee and line manager should discuss and agree how KIT days will be used prior to the start of maternity/adoption leave; **they cannot be insisted upon by either side**
- An employee may work **a maximum of 10 KIT days** without bringing maternity/adoption leave to an end
- Any KIT days will not affect the date of return from maternity/adoption leave
- KIT days may not be taken during the two weeks' compulsory maternity leave following the birth of the baby
- KIT days may be taken individually or consecutively, and can include training activities
- Working for part of any one day will count as a KIT day
- Pay will be at standard daily rate less any maternity/adoption leave payment for that day

Ensure an appropriate risk assessment is made to take account of infection control issues and any factors which could have an impact on the employee breastfeeding (see section 5 above).

## 11. RETURN TO WORK

**Note: see also the return to work flowchart in action card MPA3**

### 11.1 Standard arrangements

- An employee has the right to return to work to her original employment and on no less favourable working conditions
- An employee intending to return to work at the end of a full maternity/adoption leave period will not be required to give any further notification to the Trust
- Employees wishing to return early from maternity/adoption leave must give a minimum of 28 days notice. However, employees are requested to give 56 days' notice of return, if at all possible, to enable sufficient notice for any cover arrangements that are in place
- In the event of organisational change during the period of maternity leave, the usual rights to consultation will apply

### 11.2 Returning on flexible working arrangements

Employees have a right to request flexible working and the Trust has a duty to consider these requests. The following options are available:

- returning to the same job with reduced/different hours†
- returning to a job of a similar nature and status to the one held prior to their maternity/adoption leave
- returning on a flexible basis for an agreed temporary period before moving back into her original job

†Where the Trust is unable to accommodate a request for reduced or different hours of work, written, objectively justifiable reasons **must** be provided. The Trust cannot commit to finding alternative work **at the same grade and status**

### **11.3 Sickness following maternity leave**

In the event of sickness immediately following maternity/adoption leave, normal sick leave provisions and management will apply.

### **11.4 Failure to return to work**

Any employee who fails to return to work within **15 months** of the start date of maternity/adoption leave is liable to repay all pay, less any Statutory Maternity/Adoption Pay. The Trust is able to waive the right to recovery where it would cause undue hardship or distress.

## **12. OTHER CONTRACTUAL ISSUES**

Whilst on maternity/adoption leave (paid and unpaid), employees retain all contractual rights except those directly related to the amount of maternity/adoption pay given.

### **12.1 Fixed term contracts or training contracts**

The following will apply in the event of an application for maternity/adoption leave:

- If the fixed term or training contract expires after the 11<sup>th</sup> week before EWC† **and** they satisfy the eligibility conditions in section 6 above, the contract will be extended to allow them the 52 weeks' maternity/adoption leave
- Maternity/adoption leave absence will not be counted as a break in service
- If the contract would have ended if pregnancy and childbirth (or adoption) had not occurred, there is no right of return to be exercised and the repayment requirements in 11.4 above will not apply
- Employees on fixed term contracts who do not have 12 months' continuous service may still be eligible for Statutory Maternity/Adoption Pay

‡ Or when a child is to be placed for adoption

### **12.2 Rotational training contracts**

For employees on rotational contracts which cover appointments with one or more NHS employer, the following applies:

- She will have the right to return to work in the same planned post or the next rotation, whether or not the contract would have ended if pregnancy and childbirth (or adoption) had not occurred
- The employee's contract will be extended to enable the employee to complete the agreed programme of training

### **12.3 Pay increments**

Pay increments are applied in the usual way whilst an employee is on maternity/adoption leave. The assumption is made that KSF gateways will be progressed through unless concerns had been raised prior to the employee starting maternity/adoption leave.

### **12.4 Accrual of annual leave**

- Annual leave, excluding statutory or bank holidays will accrue in the usual way
- Where the amount of annual leave exceeds normal carry-over provisions, the employee and line manager should discuss and agree how this will be used; it may be helpful to use extra leave before or after the maternity/adoption leave period
- Payment in lieu may be considered



## 12.5 Pensions

All pensions rights and contributions will be dealt with in accordance with the provisions of the NHS Superannuation Regulations.

## 12.6 Lease cars

Staff are entitled to retain lease cars during maternity/adoption leave (but not Additional Paternity Leave, unless the car is not required elsewhere; managers may use discretion).

## 13. CONTINUOUS SERVICE

When calculating an employee's continuous service for the purposes of maternity leave and pay entitlements, the following‡ will apply:

- NHS employers include health authorities, NHS boards, NHS trusts, primary care trusts and the Northern Ireland Health Service
- A break in service of less than **3 months** will be disregarded when calculating continuous service

‡Employers may extend this period at their discretion, and have the discretion to count other previous NHS service, or service with other employers

The following breaks in service will also be disregarded:

- Employment under the terms of an honorary contract
- Employment as a locum with a general practitioner for a period not exceeding 12 months
- A period of up to 12 months spend abroad as part of a postgraduate training programme taken on the advice of a postgraduate dean or college/faculty advisor in the specialty concerned
- A period of up to 12 months voluntary service overseas with a recognised international relief organisation (exceptionally this may be extended for a further 12 months by the employer which recruits the employee on her return)
- Absence on an employment break scheme in accordance with section 36 of the Agenda for Change handbook or the Trust's Career Break Policy
- Absence on maternity leave (paid or unpaid) as provided for under this agreement
- Employment as a trainee with a general medical practitioner in accordance with the provisions of the Trainee Practitioner Scheme

## 14. TRAINING

There is no specific training linked with this policy.

## 15. MONITORING OF COMPLIANCE

Criteria (objective to be measured)	Monitoring methodology	Lead responsible	Timescales	Reporting arrangements
Monitoring staff experience of maternity leave and return processes	Survey staff on return from maternity leave. Retrospective audit of staff experiences	HR Managers	Bi-annual	HR Management Team

## 16. REFERENCES

Her Majesty's Government (2011). Guidance on Maternity, Paternity and Adoption Leave. London: DirectGov website.

Sheffield Health and Social Care NHS Foundation Trust (2011). Maternity Policy and Procedure.

## MATERNITY LEAVE POLICY – DOCUMENT PROFILE

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RELATED TRUST DOCUMENTS	Action cards <a href="#">MPA1</a> , <a href="#">MPA2</a> and <a href="#">MPA3</a> ; <a href="#">Maternity, Paternity and Adoption Leave Eligibility flowchart</a> ; <a href="#">Return to Work following Maternity or Adoption Leave</a> (flowchart in MPA3); <a href="#">Form F189 Application for Maternity Leave / Pay</a> ; Maternity Leave standard letters
OTHER RELEVANT DOCUMENTS	<a href="#">Risk Assessment for New and Expectant Mothers</a>
EXTERNAL COMPLIANCE STANDARDS AND/OR LEGISLATION	<ul style="list-style-type: none"> <li>Maternity and Paternity Leave Regulations 1999 (amended 2011)</li> </ul>