

**NHS Education for Scotland**

**Maternity & Breastfeeding Support Policy**

**Paternity (Maternity Support) Policy**

**Adoption & Fostering Policy**

**and**

**Shared Parental Leave Policy**

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# General Introduction

## 1.1 Introduction

Preparing to become a parent is an exciting time. NHS Education for Scotland (NES) understands this and appreciates that employees preparing for parenthood need to be supported and fully informed of their NHS and statutory rights and entitlements. This policy is designed to guide you through your options relating to maternity, paternity, adoption or shared parental leave and pay, and explains the steps you need to take at different stages to ensure that you receive the benefits you are entitled to.

It is hoped that all the answers you need will be contained in these pages, but if you have any queries please do not hesitate to contact your HR Business Partner or Associate Business Partner for further advice and discussion.

Provisions in this Policy are in line with legislation and the NHS Terms & Conditions of Service Handbook.

## 1.2 Scope

This Policy applies to all NES employees (i.e. those with a contract of employment issued by NES). The Policy does not apply to secondees, agency workers or external consultants.

## 1.3 Glossary

<b>Pay Related Terms</b>	
SMP	Statutory Maternity Pay
OMP	Occupational Maternity Pay
MA	Maternity Allowance
SPP	Statutory Paternity Pay
SAP	Statutory Adoption Pay
ShPP	Shared Parental Pay
QW	Qualifying Week (15 <sup>th</sup> week before due date)
<b>Leave Related Terms</b>	
OML	Ordinary Maternity Leave (weeks 1 to 26)
AML	Additional Maternity Leave (weeks 27 to 52)
SPL	Statutory Paternity Leave
MLP	Maternity Leave Period
MATB1	The certificate issued by the midwife confirming the expected date of childbirth.
Continuous Service	Service with one or more NHS organisations including the Northern Ireland Health Services.

# **Maternity & Breastfeeding Support Policy**

## **1. Introduction**

### **1.1 Policy Purpose**

The Maternity & Breastfeeding Support Policy sets out the provisions of NHS Education for Scotland (NES) regarding employee entitlements to maternity leave and pay. It is designed to enable managers to handle these issues in a consistent manner. The policy should be viewed by managers and employees as a first point of reference for the many questions facing colleagues who are pregnant, or acting as maternity supporters. The policy demonstrates NES's commitment to being "family friendly" employer and is aimed at maximising the retention of our skilled workforce.

### **1.2 Policy Statement**

NES aims to ensure that employees:

- ✦ Receive those "Maternity Rights" as detailed in the NHS Terms & Conditions of Service Handbook, subject to qualifying periods of service.
- ✦ Are provided with a benefit that will offer support if the employee wishes to interrupt their service to have a child and encourage their return to work.
- ✦ Are provided with appropriate maternity leave.

The general purpose of this policy is to ensure that both management and employees understand their rights and obligations prior to, during and following maternity leave. The intention is to put in place a channel for communication and instil confidence that employees are being treated equitably and fairly.

This policy covers time off for antenatal care, maternity leave and maternity pay and should be read in conjunction with current legislation and conditions applied by the NHS Terms & Conditions of Service Handbook.

The provisions of this Policy are as set out in Section 15 of the NHS Terms & Conditions of Service Handbook, however, they apply to all individuals employed by NES including Doctors, Dentists, the Senior Management cohort and those employed at Executive Level.

### **1.3 Legislative Framework**

This policy incorporates, and in some areas extends, the statutory requirements as laid down in the Maternity Allowance and Statutory Maternity Pay Regulations 1994, the Employment Act 2002, the Work and Families Act 2006 and the Equality Act 2010. It reflects the NHS Terms & Conditions of Service Handbook.

## **2. Employee rights and entitlements during pregnancy**

### **2.1 When should I tell NES that I am pregnant?**

You should think carefully about when to tell NES that you are pregnant – the legislation which protects you at work only applies once your employer knows you are pregnant. In any case, you **must** notify NES in writing by the 15<sup>th</sup> week before your baby is due (i.e. when you are around 25 weeks pregnant) unless this is not practically possible.

Please see Appendix 1 for a copy of the Informal Notification of Pregnancy Letter Template which can be used to advise your Line Manager and HR & OD of your pregnancy in the first instance.

### **2.2 Health & Safety at Work**

To ensure the safety of you and your baby it is essential that you and your manager complete a risk assessment as soon as possible after you have notified NES of your pregnancy. If this has not yet been done, speak to your manager about it and review NES Health & Safety Procedure 15 for New & Expectant Mothers, available on the NES intranet at:

[http://intranet.nes.scot.nhs.uk/hands/saftey\\_management\\_system/default.asp](http://intranet.nes.scot.nhs.uk/hands/saftey_management_system/default.asp)

During this assessment you should raise any related concerns you may have with your manager. There may be a need for further risk assessments to be undertaken as your pregnancy progresses and on your return to work following maternity leave.

If a risk assessment finds, or your doctor states in writing, that you or your baby are being put at risk through the performance of your present duties, NES will make every effort to find suitable alternative employment at your present rate of pay. If this is not possible it may be necessary to arrange for you to be suspended on full pay for the remainder of your pregnancy. Please be assured that this action will only be taken as a last resort and after thorough consultation with you.

## **2.3 Midwife, GP, Hospital and Antenatal Appointments**

You are entitled to reasonable time off with pay to receive your antenatal care; this is not restricted to medical examinations and may include other measures recommended by your GP or midwife, e.g. relaxation and parentcraft classes.

NES realises that this may unavoidably take place during working hours. However, we do expect that you will attempt to organise appointment times around your normal working hours whenever possible.

You are requested to show your line manager an appointment card when requesting the time off, with the exception of your first appointment.

Time off for appointments must be recorded on a Special Leave Form which should be signed by your line manager and forwarded to HR & OD for processing.

[http://intranet.nes.scot.nhs.uk/HR/standard\\_forms/default.asp](http://intranet.nes.scot.nhs.uk/HR/standard_forms/default.asp)

## **2.4 Support from the Occupational Health Service**

If your GP or midwife recommends more frequent attendance at appointments your manager may suggest arranging a referral to the Occupational Health Service. The information Occupational Health provides can enable NES to discuss your health with you and ensure we can provide any support that you need, e.g. making any reasonable adjustments to ensure you are able to continue the particular work you perform without risk to you or your baby.

## **3. Maternity Leave**

### **3.1 What is my maternity leave entitlement?**

Irrespective of your length of service and hours worked, you are entitled to 52 weeks' maternity leave, comprised of 26 weeks' Ordinary Maternity Leave and 26 weeks' Additional Maternity Leave. Your contractual rights are unaffected during either of these periods, with the exception of your right to remuneration.

### **3.2 Are there any criteria I must fulfil to qualify for maternity leave?**

To qualify for maternity leave you must formally notify NES of your pregnancy. Notification must be in the form of a letter addressed to HR & OD which should be submitted by the 15<sup>th</sup> week before your baby is due. The following information should be included in your letter:

- ✦ That you intend to take maternity leave;

- † The date you wish maternity leave to commence, which can be any time from the beginning of the 11th week before your due date;
- † That you intend to return to work with the same or another NHS employer for a minimum of three months following the end of maternity leave, if applicable.

Please see Appendix 2 for a copy of the Formal Notification of Pregnancy Letter Template.

### MATB1 Form

You should supply NES with your MATB1 form as soon as you receive it from your GP or midwife; this is usually when you are around 22 weeks pregnant. NES recommends that you retain a copy of your MATB1 form for your personal records.

### **3.3 The Maternity Interview with HR**

Upon receipt of your formal notification of pregnancy, HR & OD will contact you to arrange a meeting known as the Maternity Interview. At the meeting, the HR Representative will guide you through this policy, discussing your entitlements with you and answering any additional questions you may have. After the meeting, you will receive a letter confirming:

- † Your pay and leave entitlements under this policy and your statutory entitlements
- † Your expected return to work date, based on your leave entitlement or your specified earlier date of return date
- † How you will be taking any annual leave accrued before/during your maternity leave
- † The need for you to give at least 28 days' written notice if you wish to return to work before the expected return date

### **3.4 What if I change my mind about when I want my maternity leave to start?**

You are entitled to request a change to the agreed start date of your maternity leave. You must provide NES with at least 28 days notice if you wish to request a change, unless this is not practically possible.

### **3.5 Employment Rights and Obligations During Maternity Leave**

Whilst on maternity leave, you will continue to be employed and retain all of your contractual rights with the exception of your right to remuneration. You will also continue to be bound by the obligations of trust and confidence, good faith, the prohibition of disclosure of confidential information and the participation in any competing business.

You must not undertake work for another employer during your maternity leave without prior permission from NES, including bank work via NHS Scotland or other agencies.

You should also note that the following of NES's policies continue to apply during your period of leave:

- † Disciplinary Policy & Procedures
- † Grievance Policy
- † Hospitality Policy

If you have any questions about any of these policies or obligations, please do not hesitate to contact your line manager or HR Business Partner.

### **3.6 Compulsory Maternity Leave**

Legislation dictates that there is a compulsory period of maternity leave of two weeks after the date your baby is born. If the baby arrives later than expected and you have exhausted your maternity leave, your entitlement will be extended accordingly to cover the compulsory two weeks leave.

### **3.7 What will happen to my post when I am on maternity leave?**

Before your maternity leave begins your line manager will meet with you to discuss practicalities and the arrangements that will be put in place to cover your work during your maternity leave. You will already have had your HR Maternity Interview by this stage and will be aware of your maternity pay and leave entitlements.

The meeting with your line manager will provide an opportunity for discussion about:

- † Final arrangements for your maternity leave;
- † How your work will be managed/covered during your maternity leave, including who will take over tasks and handover arrangements; † Voluntary arrangements for keeping in touch, including:
  - Your right to Keeping In Touch (KIT) Days and whether you want to use these;
  - How your line manager will keep in touch with you, what information you expect to receive from your line manager and how you would like to receive it;
  - How you will keep your line manager informed of any developments which may affect your return to work. † How you plan to manage your accrued annual/public holiday leave; † Any other concerns you may have.

Please see section 9, below, for information on Return to Work arrangements.

### **3.8 Annual Leave and Public Holiday Leave**

Annual leave and public holiday leave will continue to accrue as normal during maternity leave.

The maternity leave period may not be interrupted by periods of annual/public holiday leave. Accrued leave must be taken either before maternity leave commences or after it ends.

Employees should plan how to use the annual leave and public holiday leave which accrues during the maternity leave period carefully and may wish to use this at the end of the maternity leave period, before they return to work. Employees should be aware that, after they return to work, they will only be able to carry forward one week's annual leave to the new annual leave year.

### **3.9 What happens with my pension when I am on maternity leave?**

Your pension rights and contributions will be dealt with in accordance with the provisions of the NHS Superannuation Regulations. It is recommended that you should check with SPPA regarding how your leave will impact upon your own pension contributions, NES's contributions and your entitlements under the pension scheme.

### **3.10 Will I receive increments during my maternity leave?**

Maternity leave, whether paid or unpaid, shall count as service for annual increments and for the purposes of any service qualification period for additional annual leave. The expectation is that an employee on maternity leave would progress through a Knowledge & Skills Framework gateway on the due date, if concerns had not been raised about their ability to meet their KSF outline prior to maternity leave.

## **4. Sickness Absence**

### **4.1 Sickness Absence during Pregnancy**

*Absences occurring more than four weeks before your due date* If you are absent from work due to sickness, as supported by a medical statement of incapacity for work or a self certificate in accordance with the NES Management of Sickness Absence Policy, your absence will be treated as sick leave in accordance with normal sick leave provisions.

Odd days of pregnancy-related illness during this period will not automatically bring your maternity leave forward, provided that you are medically fit to continue working until the maternity leave start date that you have agreed with NES.

### Absences within four weeks of your due date

If you are absent from work due to sickness (whether the condition is pregnancy-related or not) during the last 4 weeks before your due date, your maternity leave will be brought forward and will commence either at the beginning of the 4<sup>th</sup> week before your due date, or at the beginning of the next week after you were last at work, whichever is the later.

## **4.2 Monitoring Pregnancy-Related Sickness**

Pregnancy-related sickness absence should be monitored and recorded in accordance with NES's sickness policy. However, sickness which occurs during pregnancy or maternity leave should not be included in any existing or future sickness absence issue that is being managed under the sickness policy.

In all circumstances, you should notify your manager of the reasons for your absence as soon as is reasonably practicable. On occasions where it is unclear whether absence is pregnancy-related, advice should be sought from your GP or the Occupational Health Service.

## **4.3 Sickness during the Maternity Leave Period**

Any sickness during the maternity leave period will be treated as maternity leave.

## **4.4 Sickness Absence after the Maternity Leave Period**

If you are unable to return to work at the expected date of return to work due to sickness, the normal sickness notification procedures will apply. Any sickness that occurs after you have returned from maternity leave will be taken into account in the normal way.

## **5. Premature Birth**

If your baby is born before the due date you will be entitled to the same amount of maternity leave and pay as if your baby was born at full term.

If your baby is born before the 11<sup>th</sup> week before the due date and you have worked during the actual week of childbirth, maternity leave will start on the first day of your absence.

If your baby is born before the 11<sup>th</sup> week before the due date and you have been certified sick during the actual week of childbirth, maternity leave will start the day after the birth.

If your baby is born before the 11<sup>th</sup> week before the due date and needs to stay in hospital, you may split your maternity leave entitlement. You must take a minimum of two weeks' leave immediately following the birth, but the rest can be taken once your baby is discharged from hospital. If you find yourself in this situation please ensure that you keep your line manager up to date regarding your plans and NES will always strive to accommodate your needs sensitively.

## 6. Still Birth & Miscarriage

NES understands that members of staff who have a still born baby, or who suffer from a miscarriage must be treated with sensitivity and understanding.

If your baby is still born from the 24<sup>th</sup> week of pregnancy onwards you are eligible for maternity leave and pay.

Prior to the 24<sup>th</sup> week of pregnancy you will receive the normal sick leave entitlements. Provisions will apply in line with the NES Management of Sickness Absence Policy.

If you find yourself in either of these situations please get in touch with your line manager and/or HR for support.

## 7. Maternity Pay

All NHS employees will receive payment for the first 39 weeks of their maternity leave – this is known as the “maternity pay period”. The type of Maternity Pay that each employee is eligible for is based on their length of service and National Insurance contributions:

Type of Maternity Pay	Length of NHS Service
Maternity Allowance	0 to 25 weeks as at the <b>15<sup>th</sup> week</b> before the expected week of childbirth
Statutory Provision (SMP only)	At least 26 weeks as at the <b>15<sup>th</sup> week</b> before the expected week of childbirth
NHS Contractual Maternity Pay Scheme	At least 52 weeks as at the <b>11<sup>th</sup> week</b> before the expected week of childbirth

## 7.1 Maternity Allowance

### Eligibility

If you have up to 25 weeks service as at the 15<sup>th</sup> week before your baby is due, it is likely that you will be entitled to receive **Maternity Allowance** from the Benefits Agency, but you must contact them to confirm this.

### Method of Payment

Maternity Allowance will be paid to you directly by the Benefits Agency and your NES salary will be stopped for the duration of your maternity leave.

For further details or to claim this entitlement, please contact your local Benefits Agency or refer to:

<https://www.gov.uk/maternity-allowance/how-to-claim>

Please note that you must still submit a copy of your MATB1 to HR as you are eligible for Maternity Leave.

## 7.2 Statutory Provision (SMP only)

### Eligibility

If you have at least 26 weeks service as at the 15<sup>th</sup> week before your baby is due, but do not have enough service to qualify for the NHS Contractual Maternity Pay Scheme, you will be entitled to receive **Statutory Maternity Pay**. This will be paid to you by NES in the same manner as your normal salary.

### Rates of Pay

Statutory Maternity Pay (SMP) is payable over 39 weeks at two different rates:

**Weeks 1 to 6** – 90% of the employee's average weekly earnings (higher rate SMP);

**Weeks 7 to 39** – lower rate SMP or 90% of the employee's average weekly earnings, whichever is the lesser amount.

SMP amounts are set by the Government and generally increase in April of each year, current rates can be found at:

<https://www.gov.uk/maternity-pay-leave/pay>

### Calculation of Payment Amounts

Your average weekly earnings are based on the gross average weekly earnings received during the 8 weeks prior to the qualifying week, i.e. weeks 17-24 of your pregnancy. All income that is subject to tax and National Insurance deductions counts in the average, including overtime.

It is therefore important you are aware that if for any reason your earnings during that period are reduced, this will affect the calculation of your average

earnings. It is recommended that careful consideration should be given to the decision to work shorter hours, take unpaid leave, etc.

### 7.3 NHS Contractual Maternity Pay Scheme

#### Eligibility

An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the **NHS Contractual Maternity Pay Scheme** if:

- (i) She has 12 months' continuous service with one or more NHS employers at the beginning of the 11<sup>th</sup> week before the expected week of childbirth (the Qualifying Week);
- (ii) She notifies her employer in writing before the end of the 15<sup>th</sup> week before the expected week of childbirth (or if this is not possible as soon as is reasonably practicable thereafter) of the following:
  - ✚ Her intention to take maternity leave;
  - ✚ The date she wishes to start her maternity leave;
  - ✚ That she intends to return to work with the same or another NHS employer for a minimum of 3 months after her maternity leave has ended;
  - ✚ She must also provide a MATB1 form from her midwife or GP giving the expected date of childbirth.

#### Rates of Pay

The NHS Contractual Maternity Pay Scheme is paid at the following rates:

Weeks	Amount Payable
1 to 8	Equivalent to full pay. [In fact this payment consists of a combination of SMP and Occupational Maternity Pay.]
9 to 26	Half pay + SMP
27 to 39	Lower rate SMP
40 to 52	Nil (weeks 40 to 52 are unpaid).

#### Method of Payment

Please note that by prior agreement with the employer this entitlement may be paid in a different way, e.g. a combination of full pay and half pay or a fixed amount spread equally over the maternity leave period.

Your maternity pay will be paid through the payroll as normal on a monthly basis, and is subject to tax and NI deductions.

#### Calculation of Payment Amounts

Your average weekly earnings are based on the gross average weekly earnings received during the 8 weeks prior to the qualifying week. All income that is subject to tax and National Insurance deductions counts in the

average, including overtime. It is therefore important that you are aware that if for any reason your earnings during that period are down, this will affect the calculation of your average earnings. It is recommended that careful consideration should be given to the decision to work shorter hours, take unpaid leave, etc.

The exception to this is where you have been on unpaid or half-paid sickness absence during the period used for calculating earnings. In this case, average weekly earnings will be calculated on the basis of notional full sick pay. Any pay awards or annual increments implemented during the paid maternity leave period will be reflected in an increase in the maternity payments which you receive from the effective date of such awards or increments.

### **7.3.1 What happens if I claim NHS Contractual Maternity Pay, then decide not to return to work?**

If you intend to return to work after your maternity leave, but then later change your mind and do not return to work for at least three months, you will have to repay the Occupational Maternity Pay you have received, but not the SMP.

Please remember that you will be required to give the appropriate written notice that you wish to resign.

### **7.3.2 Help with Childcare Costs**

NES offers a childcare voucher scheme with Edenred; however, this is closed to new members with the introduction of the UK Government's Tax Free Childcare scheme effective from October 2018. New members will be required to join this scheme and information can be found here:

<https://www.gov.uk/tax-free-childcare>

### **7.3.3 What if I am entitled to claim NHS Contractual Maternity Pay, but I know I don't want to return to work?**

Employees who are eligible for this Maternity Pay Scheme but who have opted at the outset not to return to work after the birth of their baby are entitled to receive the Statutory Provision as detailed in Section 7.2 above.

## **7.4 Maternity pay for colleagues with more than one employer**

Having more than one employer does not affect your right to receive maternity pay in respect of your NES position. Provided that you meet the eligibility criteria described above regarding length of NHS service you will be entitled to receive statutory and/or contractual maternity pay from NES as appropriate.

Colleagues with more than one employer who do not meet the eligibility criteria regarding length of NHS service in respect of their NES post should contact JobCentrePlus for advice about whether they are entitled to receive Maternity Allowance.

## **8. Keeping in Touch during Maternity Leave**

Many colleagues like to keep in touch with their colleagues and be kept aware of what is happening in the workplace while on maternity leave. Before your maternity leave commences, you should discuss and agree any voluntary “keeping in touch” arrangements with your line manager, including:

- ✦ Arrangements that may help you keep in touch with developments at work and, nearer the time of your return, help facilitate your return to the workplace;
- ✦ Arrangements that will keep NES informed of any developments that may affect your intended date of return.

### **8.1 Keeping In Touch (KIT) Days**

Employees are entitled to work up to a maximum of 10 KIT days during their maternity leave period. KIT days will not extend the maternity leave period or bring the maternity leave period to an end.

To facilitate the process of keeping in touch, it is important that employees and their line managers have early discussion to plan and make arrangements for KIT Days before maternity leave commences.

KIT days may be worked consecutively, or on a one-off basis, and can be used to include training or other activities which enable the employee to keep in touch with the workplace.

Although employees may not work a KIT day during the two weeks immediately after giving birth, there are no other restrictions on when KIT days may be worked, however, they must be mutually agreed between the employee and their line manager and neither party may insist upon it.

### **8.2 Payment for KIT Days**

If the KIT day is worked during unpaid maternity leave, the employee will be paid at their basic daily rate.

If the KIT day is worked during the 39 week maternity pay period, payment will be at the employee’s basic daily rate less the appropriate maternity leave payment.

Working for part of any day will count as one KIT day.

To take up the opportunity to volunteer to work KIT days, NES will provide reimbursement of reasonable childcare costs or childcare facilities, when the care is provided by an approved childcare provider.

### **8.3 Breastfeeding during a KIT Day**

Any employee who is breastfeeding must be risk assessed and facilities should be provided in accordance with Section 10 below.

## **9. Return to Work**

### **9.1 Your return to work date**

Unless notified otherwise, NES will expect you to return to work at the end of your full maternity leave, or at the end of any additional period of accrued annual leave that has been agreed with your line manager.

If you wish to return earlier than this you will need to provide at least 28 days of written notice of your intention (please see Appendix 3). If you do not, we may postpone your return until the 28 days have elapsed or your Ordinary Maternity Leave has expired.

It is compulsory that you do not return to work within 2 weeks of the date of childbirth.

If you do not return to work following your period of maternity leave you will not automatically lose your right to return. However, if you do not return you must give an explanation. If no proper explanation is given, your absence is likely to be treated as unauthorised and as such you may be subject disciplinary proceedings.

### **9.2 Your first day back at work**

Your line manager will arrange to meet with you as soon as is practicable following your return to work. Your line manager will be responsible for dealing with any housekeeping matters and ensuring that you settle back into the office smoothly. In order to assist further in this regard, your line manager will also:

- ✦ Arrange a catch-up meeting to update you on developments in your absence which have not previously been notified to you;
- ✦ Discuss arrangements for handing work back to you;
- ✦ Arrange for you to meet with other work colleagues to enable you to re-familiarise yourself with the workload and any relevant systems;
- ✦ Discuss any training needs and ensure that these are addressed as soon as possible;
- ✦ Introduce you to any new members of the team;
- ✦ Advise you on your entitlement to parental leave;
- ✦ Confirm your right to require flexible working arrangements;

- † Discuss the provision of support should you wish to breastfeed;
- † Discuss any recommendations your GP or the Occupational Health Service have made in relation to your health and wellbeing following your return from maternity leave (carrying out a risk assessment and implementing any resulting actions as appropriate); † Discuss any other operational matters as appropriate.

Work will be handed back to you on a gradual basis with the aim that you will be up to speed and handling a workload appropriate for your contracted hours within an agreed period following your return from maternity leave.

## **9.2 Post-natal Care**

On your return to work paid time off will be provided for post-natal care, such as attendance at health clinics. Appointment letters/cards must be provided on request.

## **9.3 Your Rights on Returning to Work**

Following maternity leave, you have the right to return to work under your previous terms and conditions, as if you had not been absent. However, if a redundancy situation occurs during your maternity leave you are entitled to be offered any suitable alternative vacancies that are available. If no suitable alternative positions exist you will be treated in accordance with your contractual and statutory rights.

## **9.4 Flexible Working Requests**

If you wish to return to work on reduced hours, on a job share basis or on any other flexible working pattern, NES has a duty to consider this and will seek to facilitate it whenever possible, subject to the business needs of the organisation. Applications should be made under NES Flexible Working Policy and you should note the timescales required by the policy when making any application.

If your request for flexible working is approved, and provided it is possible, you will return to work on a different working pattern but in the same job. If this is not possible, NES will provide written, objectively justifiable reasons for this and you will, wherever possible, be given the option to return to a role at the same pay band and undertaking work of a similar nature and status to that which you held and undertook prior to your maternity leave.

In some cases, it may not be possible for you to have your flexible working request accommodated either in your existing role or through the provision of an alternative role.

## **9.5 Sickness following the end of maternity leave**

In the event of illness following the date the employee was due to return to work, normal sick leave provisions will apply as necessary.

## **9.6 Moving to another NHS Employer immediately after maternity leave**

If you decide to return to a different NHS Employer at the end of your maternity leave you are required to provide NES with a copy of your contract within 3 months of the end of your maternity leave. If you do not provide this information we will be entitled to reclaim your occupational maternity pay, less any SMP you received.

Equally, if you are receiving occupational maternity pay and decide not to return to work for at least three months, you will be required to repay the occupational maternity pay you received, less the SMP received.

## **9.7 Failure to return to work**

If you notify NES of your intention to return to work, or move to a different NHS employer, and you fail to make a physical return to your post within 15 months of the beginning of your maternity leave, you will be liable to refund the whole of your maternity pay, less any Statutory Maternity Pay received. In cases where NES considers that to enforce this provision would cause undue hardship or distress, NES has the discretion to waive our right to recovery.

If you are physically unable to return to work within the 15 month timescale due to illness, your absence will be managed in accordance with the terms of the NES Management of Sickness Absence Policy.

## **9.8 Support from Occupational Health**

Returning to work after having a baby can be very difficult. The Occupational Health Service can offer support and assistance which may be required to address any difficulties you are experiencing in your return to work. If you feel that visiting the Occupational Health Service may assist you, you can arrange a management referral through your line manager and HR Business Partner, or alternatively you may prefer to do a confidential self-referral. Please consult the NES Occupational Health & Wellbeing Policy for more information.

## **10. Breastfeeding Support**

Many mothers continue to breast feed after they return to work. Your Health Visitor is the best person to advise you on this subject, but the Occupational Health Service is also available if you wish to talk things over. If you do return to work whilst still breast-feeding, NES will ensure that a risk assessment is undertaken and that appropriate facilities are put in place for the storage of breast milk. To enable us to ensure the right facilities are available for you, please tell us about your plans as early as possible before your return to work.

If a risk assessment finds, or your doctor states in writing, that the performance of your present duties is preventing you from successfully breastfeeding your child, NES will make every effort to support you in this regard. Suitable rest facilities, a private room for expressing milk and refrigerated storage facilities will be provided. If you feel unable to discuss

this sensitive matter with your line manager please contact a member of the HR team or your staff side representative.

## **11. Miscellaneous Provisions**

### **11.1 Fixed-term contracts or training contracts**

#### **Employees with 12 months service**

Employees subject to fixed-term or training contracts which expire after the 11<sup>th</sup> week before the expected week of childbirth and who satisfy the conditions in Section 7.3 above shall have their contracts extended for 52 weeks to enable them to receive paid contractual and statutory maternity leave and the remaining 13 weeks of unpaid maternity leave.

Absence on maternity leave (paid and unpaid) of up to 52 weeks before a further NHS appointment shall not constitute a break in service.

#### **Employees with less than 12 months service**

Employees who do not satisfy the conditions in Section 7.3, but who have at least 26 weeks' continuous service with NES assessed at the 15<sup>th</sup> week before the expected week of childbirth may be entitled to receive Statutory Maternity Pay

Employees on fixed-term contracts who do not meet the 12 months' continuous service condition set out in section 7.3 may still be entitled to Statutory Maternity Pay.

If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred, you will not be required to repay any occupational maternity pay you may receive.

If your fixed term contract expires during or after the 15<sup>th</sup> week before your due date, and you have been employed by an NHS employer for a continuous period of at least 26 weeks up to the 15<sup>th</sup> week before your due date, you will be entitled to receive SMP from NES and your contract of employment will be extended for the sole purpose of allowing you to receive SMP.

## **12. Dignity At Work**

NES is committed to providing all reasonable support to employees who are pregnant or new mothers. Colleagues should be sensitive to this issue and should adopt a supportive attitude towards such employees. Every employee has the right to be treated with dignity at work and this requirement is particularly relevant and important to employees who are pregnant or who

have recently given birth. It is a requirement of this policy that all NES employees respect this principle.

### **13. Resolution of Disagreements**

No request for leave under this Policy will be unreasonably withheld. Should a disagreement arise, employees have the right to raise a formal grievance. It may be preferable in such circumstances, however, for line managers to seek advice on resolving the matter from an appropriate member of the HR Department and a Trade Union/Professional Organisation representative.

### **14. Contractual Continuity of Service**

In accordance with the NHS Terms & Conditions of Service Handbook, absence on maternity leave, whether paid or unpaid, of up to 52 weeks shall not constitute a break in service.

### **14. Monitoring, Review and Evaluation**

This policy will be monitored, reviewed and evaluated every two years, taking into consideration legislative changes and developments in good practice to ensure that it meets the needs of all employees.

### **Appendix 1 – INFORMAL NOTIFICATION OF PREGNANCY TEMPLATE**

Date

Employee Name & Address

Name

HR Department

NHS Education for Scotland

Office Address

Dear **NAME**

Please accept this letter as notification that I am expecting a baby. The expected date of childbirth is **DATE**.

I look forward to hearing from you with further information on the maternity process.

Yours sincerely

EMPLOYEE NAME

NOTES:

- † This letter can be submitted by the employee to HR & OD when the employee's pregnancy has been confirmed.
- † In all cases, the employee must submit the Formal Notification of Pregnancy to HR & OD by the 15th week before their Expected Date of Childbirth.

**Appendix 2 – FORMAL NOTIFICATION OF PREGNANCY TEMPLATE**

Date

Employee Name & Address

Name  
HR Department  
NHS Education for Scotland  
Office Address

Dear **NAME**

I am writing to advise that my pregnancy has been confirmed by my GP/Midwife and I now attach my MATB1 Form. My expected week of childbirth is **DATE**.

I would like to confirm that I intend to take maternity leave of **XX weeks / leave work to have my baby** (delete as appropriate).

I would like my maternity leave to commence on **DATE**. I can confirm that I have discussed this with my line manager, **NAME**, who is aware of my intentions.

Yours sincerely

EMPLOYEE NAME

Enc(1): MATB1 Form

NOTES:

† In all cases, the employee must submit the Formal Notification of Pregnancy to HR & OD by the 15th week before their Expected Date of Childbirth.

**Appendix 3 – CONFIRMATION OF RETURN TO WORK TEMPLATE**

Date

Employee Name & Address

Name  
HR Department  
NHS Education for Scotland  
Office Address

Dear NAME

I am writing to confirm that I would like to:

\* Return to work on the date previously agreed.

**OR**

\* Return to work earlier/later than agreed. I would be most grateful if I could now return to work on DATE.

**OR**

\* Resign from my post as XXX. My formal resignation letter is enclosed.

Yours sincerely

## EMPLOYEE NAME

Enc(1): Resignation Letter

### NOTES:

- † If requesting to return to work on an alternative date, 8 weeks' notice is required.
- † In all cases, the employee must submit the Formal Notification of Pregnancy to HR by the 15th week before their Expected Date of Childbirth.

### Appendix 4

### MATERNITY POLICY TIMELINE

Your pregnancy will last for 40 weeks, please find below an outline of the important actions you need to take at work to enable NES to support you during this special period.

Your Pregnancy Week Number	Maternity Policy: what's important this week?
4	From this time onwards you can <b>think about</b> when you might want to <b>share your news</b> with your line manager and colleagues.
5	
6	
7	Remember, <b>legislation</b> only protects you when you tell your employer about your pregnancy.
8	
9	
10	
11	<b>Appendix 1</b> contains the Informal Notification of Pregnancy Letter Template.
12	<b>Don't forget that you can ask for a maternity health and safety assessment <u>at any time</u> during your pregnancy.</b>
13	
14	
15	Although it's still early days, you might want to <b>think about</b> when you want your <b>maternity leave</b> to begin and how long you would like to take on leave.
16	
17	
18	
19	By week 22 you should have received your <b>MATB1 Form</b> from your Midwife or GP. Remember this is an important document that you must <b>submit to HR</b> . <b>Always keep a copy for yourself too.</b>
20	
21	
22	
23	
24	
25	<b>You must tell NES about your pregnancy this week if you haven't already.</b> Send the Formal Notification of Pregnancy Letter (Appendix 2) to HR along with your MATB1 Form, and don't forget to let your line manager know.  If you have <b>at least 26 weeks NHS service</b> by now you will qualify for <b>Statutory Maternity Pay</b> . If not, you will receive <b>Maternity Allowance</b> .
26	Your <b>Maternity Interview with HR</b> will take place during weeks 26 to 28 (if it hasn't happened already).
27	
28	

<b>29</b>	If you have <b>at least 52 weeks NHS service</b> by now you will qualify for the <b>NHS Contractual Maternity Pay Scheme</b> .  For all staff, <b>this is the earliest your maternity leave can commence</b> (11 weeks before your due date).
<b>30</b>	
<b>31</b>	
<b>32</b>	
<b>33</b>	
<b>34</b>	
<b>35</b>	
<b>36</b>	
<b>37</b>	If you are absent due to illness (whether pregnancy-related or not) within 4 weeks of your due date, your maternity leave will start early.
<b>38</b>	
<b>39</b>	
<b>40</b>	<b>Your due date is this week! GOOD LUCK!!</b>

# **Paternity (Maternity Support) Policy**

## **1. Introduction**

With the intention of helping working parents achieve a more balanced work and family life, the NES Paternity (Maternity Support) Policy aims to ensure that employees are aware of the benefits and entitlements available to new parents and the partners of new parents.

NES recognises that biological and adoptive fathers, nominated carers and same-sex partners have a need and desire to spend time at home during a period of family extension, be that the birth or adoption of a child. This Policy aims to implement best practice in the processing of applications, and management of employees who wish to take paternity (maternity support) leave and return to work following this leave.

This policy takes into account the requirements the Paternity and Adoption Leave Regulations 2002, the Employment Act 2002, and NHS PIN Guidelines on Family Friendly Policies.

### **1.1 Types of Paternity Leave**

***Paternity Leave:*** An employee's entitlement to leave from work for the purpose of caring for a child or supporting the mother following birth.

***Adoptive Paternity Leave:*** An employee's entitlement to leave from work for the purpose of caring for an adopted child or supporting the adopter.

***Ordinary Statutory Paternity Leave or OSPL:*** Two weeks leave, to be taken in the first 8 weeks following the birth or adoptive placement of the child.

## **2. Scope**

This policy applies to all staff employed by NHS Education for Scotland, including those on fixed term contracts. The policy does not apply to individuals employed by agencies, or to other contractors.

## **3. Entitlement to Ordinary Statutory Paternity Leave (OSPL)**

All employees, irrespective of length of service, are entitled to two weeks Ordinary Statutory Paternity Leave to care for their child and/or support the child's mother/adopter in the weeks following birth/adoption placement provided they have, or expect to have, responsibility for the child's upbringing.

In order to qualify for this leave, employees must meet one of the following criteria:

Birth	Adoption
(a) employee must be the biological father of the child	
(b) employee must be married to the mother of the child, but not the child's biological father	(a) employee must be married to the child's adopter
(c) employee must be the partner* of the mother, but not the child's biological father	(b) employee must be the partner* of the child's adopter
(d) employee must be the same-sex partner of the child's mother	(c) employee must be the same-sex partner of the child's adopter
(e) employee must be the legal guardian of the child	

*\* in the case of a "partner" as stated above, the employee must be in an enduring family relationship, but not a blood relative.*

Ordinary Statutory Paternity Leave can only be taken in blocks of one week, which may be consecutive. Leave cannot be taken as odd days. If leave is taken as two separate weeks the full entitlement must be taken within eight weeks from the first day of the week of the birth/adoption.

If the child is born early, or placed for adoption early, OSPL must be completed by eight weeks after the date on which the birth or placement was originally expected.

An employee's entitlement to leave is not increased by the birth, expected birth, or placement of more than one child as a result of the same pregnancy or adoption.

#### 4. Notification of Ordinary Statutory Paternity Leave

Employees are requested to notify their line managers as soon as is reasonably practicable of the expected date of birth of their baby and are required to give written notice of their intention to take OSPL in, or before, the 15<sup>th</sup> week before the expected week of childbirth (EWC) (please see **Appendix 2**). Where this is not possible, employees are requested to give written notice as soon as is reasonably practicable. The notice must specify:

- † The baby's EWC.
- † Length of leave the employee has chosen to take.
- † The date the employee has chosen to begin the leave in respect of the options available.
- † A copy of the MAT B1 Form or a copy of the Matching Certificate from the Adoption Agency should also be provided.

An employee may vary the specified start date by giving 28 days notice, or as much notice as is reasonably practicable.

There may be occasions when agreed arrangements for taking OSPL need to be deferred at short notice, for example, in cases when the child needs medical treatment immediately following birth. If such an event occurs, the employee should discuss the situation with their line manager in the first instance and then contact their Associate HR Business Partner/HR Business Partner for advice.

## **5. Ordinary Statutory Paternity Pay**

Although all employees are entitled to take up to two weeks Ordinary Statutory Paternity Leave (OSPL), not everyone is entitled to receive payment during this leave. Please see **Appendix 1** for the qualifying criteria.

## **6. Still Birth**

*NB: This section applies to Ordinary and Additional Statutory Paternity Leave.*

In the event of a still birth, or infant mortality, a qualifying employee will be entitled to paid leave if the baby is stillborn after 24 weeks of pregnancy. Prior to the 24<sup>th</sup> week of pregnancy, line managers must give consideration to granting the employee a reasonable period of special leave given the very difficult circumstances.

If the baby is born alive at any point of the pregnancy but subsequently dies, Ordinary Statutory Paternity Leave may be taken within 8 weeks of the birth.

## **7. Entitlement to Time Off for Ante-Natal Care**

*NB: This section applies to Ordinary Statutory Paternity Leave.*

Reasonable paid time off to attend ante-natal classes will be provided by NES. Members of staff are requested to discuss their requirements with their line managers at the earliest opportunity.

## **8. Work During the Ordinary Statutory Paternity Leave Period**

An employee must not undertake any paid work during the OSPL period. In cases where this happens, OSPL and any related pay will automatically stop and the leave will be treated as unauthorised absence.

## **9. Bank Staff**

If a Bank employee has worked for each of the 26 weeks (which may include 2 weeks annual leave) by the 15<sup>th</sup> week before the baby is due or by the date when the child is placed for adoption the employee will be entitled to Ordinary Paternity Leave and Pay, and Additional Paternity Leave and Pay provided that the employee has earned, during that time, enough to pay National Insurance Contributions on their average earnings.

## **10. Return to Work after Ordinary Statutory Paternity Leave**

Employees returning to work after one or two weeks OSPL are entitled to return to the same job as before, on the same terms and conditions of employment as before, unless a redundancy situation arises.

If an employee cannot return to work at the end of their OSPL because of illness, they will be required to follow the procedure for notification and certification of sickness absence as set out in the NES Sickness Absence Policy.

If an employee decides to resign from their post at the end of OSPL they are required to give written notice in line with their contractual terms and conditions.

Employees have the right not to be subjected to a detriment or dismissed for having taken, or sought, any period of Paternity Leave.

## **11. False Information**

Where a person either fraudulently or negligently gives incorrect information or makes a false statement or declaration for the purpose of claiming paternity benefits, NES's Disciplinary Policy and Procedures may be applied.

## **12. Policy Review**

This policy will be reviewed two years from its effective date to ensure that the arrangements put in place are appropriate for NES and in line with appropriate legislation.

**Ratified by the Staff Governance Committee on 19<sup>th</sup> January 2012**

**Updated in accordance with changes to the NHS Terms & Conditions of Service Handbook and UK legislation on 11<sup>th</sup> September 2013.**

**Entitlement to Paternity Leave & Pay**  
**QUICK REFERENCE GUIDE**

An employee’s entitlement to paternity leave and pay is dependant on the length of service they have with the NHS as at the 15<sup>th</sup> week before their baby will be born or placed for adoption. Please see below for further information.

<b>Length of NHS Service</b>	<b>Paternity Leave Entitlement</b>	<b>Paternity Pay Entitlement</b>
<b>Less than 26 weeks</b> by the 15 <sup>th</sup> week before the expected week of childbirth or date the baby is placed for adoption	Entitled to 2 weeks Ordinary Statutory Paternity Leave.	No entitlement to pay.
<b>26 weeks</b> by the 15 <sup>th</sup> week before the expected week of childbirth or date the baby is placed for adoption, <b>but less than 1 year.</b>	Entitled to 2 weeks Ordinary Statutory Paternity Leave.	Entitled to receive pay at the <b>statutory rate</b> for the 2 weeks Ordinary Statutory Paternity Leave.
<b>1 year or over</b> by the 15 <sup>th</sup> week before the expected week of childbirth or date the baby is placed for adoption.	Entitled to 2 weeks Ordinary Statutory Paternity Leave.	Entitled to receive <b>full pay</b> for the 2 weeks Ordinary Statutory Paternity Leave.

**REQUEST FOR ORDINARY STATUTORY PATERNITY LEAVE OR ADOPTIVE PATERNITY LEAVE**

*In respect of paternity leave this form must be returned by the end of the 15<sup>th</sup> week before the EWC, or as soon as is reasonably practicable. Employees must give as much notice as possible of absence dates proposed (28 days or as soon as is reasonably practicable).*

*In respect of adoptive paternity leave the form must be returned within 7 days of being notified of a match with a child or as soon as reasonably practicable.*

*Please complete this form and send it to your line manager for approval.*

*Your manager will discuss with the Human Resources Directorate as appropriate and will give them a copy of your request for record keeping purposes. Any changes to this request should be updated on both your copies.*

*Please attach a copy of the necessary documentation to support your request.*

Name:
Department/Location:
Amount of leave requested:  <i>(maximum 2 consecutive weeks paternity leave, may be taken from the date of birth/date of placement and within 8 weeks of birth/date of placement)</i>
Total working days absent:
Return to work date:
Start of the week in which baby is due*:  or  Date on which placement is expected**:  <i>(Enter the Sunday at the start of the week the doctor has advised/week of placement)</i>
If you are entitled to unpaid paternity leave only please indicate whether you wish to continue to contribute to SPPA on your return to work. <i>(delete as appropriate)</i> YES/NO

*\* A copy of the MAT B1 Form should be attached to this form, or provided as soon as possible.*

*\*\*A copy of the notification letter of a match with a child from the Adoption Agency, which includes possible placement dates, should be attached or provided as soon as possible.*

<b>Start date for Ordinary Statutory Paternity leave and pay:</b>	
<input type="checkbox"/>	On the day the baby is born
<input type="checkbox"/>	A set number of days after the baby is born, please specify:
<input type="checkbox"/>	On a predetermined date, which is after the EWC, please specify:

**Ordinary Statutory Paternity Leave and Pay Request**

I request authorisation for Ordinary Statutory Paternity Pay and Leave as follows:

(Please tick as appropriate)

**Paternity Pay**

Statutory Pay

Full Pay.

I have attached a copy of the MAT B1 Form to my application.  
(please delete as appropriate)

YES/NO

**Adoptive Paternity Pay**

Statutory Pay

Full Pay.

I have attached a copy of the Matching Certificate to my application.  
(please delete as appropriate)

YES/NO

**Paternity Leave**

Unpaid Ordinary Paternity Leave (under 26 weeks service)  
week/2 weeks please delete)

(1

Paid Ordinary Paternity Leave  
(1 week/2 weeks please delete)

**Adoptive Paternity Leave**

Unpaid Ordinary Adoptive Paternity Leave (under 26 weeks service)  
week/2 weeks please delete)

(1

Paid Ordinary Adoptive Paternity Leave  
(1 week/2 weeks please delete)

**For ALL Ordinary Paternity Leave:**

I declare that: (delete as appropriate)

My spouse/partner and I are adopting the child jointly **or**  
I am the father of the baby or the partner to the baby's mother **and**  
I will be responsible for the child's upbringing **and**  
I will be taking time off to support the child's mother, or care for the child.

Signature .....

Date .....

Name (to be printed) .....

Designation .....

Office Base .....

***Please complete if changing Ordinary Statutory Paternity Leave or Adoptive Paternity Leave start date***

28 days notice given (if reasonably practicable): YES/NO

Date changed from: .....

Date changed to: .....

---

**To be completed by the Line Manager**

Checked and approved by: .....(Line Manager)

Print name: .....

Form received: Date .....

MAT B1/Matching Certificate received: Date.....

Full notice given (28 days): YES / NO

---

**To be completed by Human Resources**

Confirmation letter sent: YES/NO

Payroll notified: YES/NO

Signed ..... Date .....

Print Name .....

**Paternity (Maternity Support) Policy – Appendix 3**



# **Adoption & Fostering Policy**

## **1. Introduction**

This document sets out the policy of NHS Education for Scotland (NES) in relation to employee entitlements for leave and pay where appropriate in relation to adoption or fostering. NES aims to deal sensitively and sympathetically with employees who are considering being the primary carer in adopting or fostering a child, and who require time off during the adoption process.

NES recognises that the needs of adoptive or foster parents are at least as great as those of natural parents in establishing a relationship with the child and in developing new routines. The Adoption and Fostering Policy is therefore designed to enable a member of staff who wishes to adopt or foster a child to take a period of leave to enable the family to adjust to new circumstances.

Where both parents are employed by NES, leave can be shared or taken in entirety by the primary carer. However, in certain circumstances eg where adoption involves a child with special needs, leave may be requested by both prospective parents. NES also recognises that a single person may adopt/foster a child.

The policy should be viewed by Line Managers and employees as a first point reference for the many questions facing employees who are considering adopting or fostering a child.

## **2. Fostering**

Fostering can be for varying lengths of time, from very short term to long term fostering and NES will adopt a flexible approach to this. Staff should therefore discuss their intention to foster with their line manager as soon as possible to determine the level of support they consider appropriate to their circumstances.

For very short term fostering it would be more appropriate to consider time off under the Special Leave Policy. For longer term fostering, the manager should consider providing time off under the arrangements for adoption leave/pay (outlined below), parental leave or employment breaks.

### 3. Adoption

#### 3.1 Types of adoption covered by this Policy

In line with Section 35 of the NHS Terms & Conditions of Service Handbook, this policy outlines the entitlements of members of staff who are newly matched with a child.

In cases of adoption by a step-parent or existing foster-parent, employees should discuss their requirements for leave with their line manager. In accordance with Section 35.28, there is scope for local arrangements for the amount of leave and pay in addition to time off for local meetings.

#### 3.2 Eligibility for Adoption Leave

To be eligible for the benefits of Adoption Leave you must:

- ✦ Be identified as the **primary carer** (employees not identified as the primary carer in an adoption will be able to receive Paternity Leave and Pay (if appropriate));
- ✦ Be adopting a child who is **under 18** years of age.

All staff, regardless of length of service, are entitled to take a maximum of 52 weeks adoption leave. This is made up of 26 weeks Ordinary Adoption Leave and 26 weeks Additional Adoption Leave.

#### 3.3 Requesting Adoption Leave

When requesting Adoption Leave you must produce a letter from Social Services or the Adoption Agency confirming the intention to adopt and verifying that the child will be placed with you.

The earliest that adoption leave and statutory adoption pay can begin is 14 days before the expected date of placement of the child, and the latest it can start is on the date of placement itself.

The date of placement should be given to your manager as soon as it is known and the date when you intend to begin your adoption leave should be given in writing to your manager at least 28 days prior to commencing leave. It is recognised however that this will not always be practically possible and in cases where placements are confirmed in a shorter time frame you must notify your manager as soon as you have had the date of placement confirmed.

Please complete the Form included as Appendix 1 of this Policy at your earliest convenience.

### 3.4 Employment Rights and Obligations During Adoption Leave

Whilst on adoption leave, you will continue to be employed and retain all of your contractual rights with the exception of your right to remuneration. You will also continue to be bound by the obligations of trust and confidence, good faith, the prohibition of disclosure of confidential information and the participation in any competing business.

You must not undertake work for another employer during your adoption leave without prior permission from NES, including bank work via NHS Scotland or other agencies.

You should also note that the following of NES's policies continue to apply during your period of leave:

- † Disciplinary Policy & Procedures
- † Grievance Policy
- † Hospitality Policy

If you have any questions about any of these policies or obligations, please do not hesitate to contact your line manager or HR Business Partner.

### 3.5 Pre-adoption Paid Leave

All employees are entitled to reasonable paid time off for interviews/appointments with Social Workers, Adoption Agencies, Solicitors etc. Individuals who wish to take advantage of pre-adoption paid leave should advise their line manager in writing as soon as they are notified by the Adoption Agency that a child is to be placed with them for adoption and that time off may be required.

The Adoption Agency must be the one which is legally approved within the UK and proof of appointment will be required to support requests for leave to attend court sessions, interviews and any other meetings required as part of the adoption process.

In normal circumstances a maximum of 5 days (one working week) will be available for this purpose.

### 3.5 Eligibility for Adoption Pay

Eligibility for Adoption Pay is dependent on your length of service with the NHS:

- † Employees with **12 months of continuous service** with one or more NHS employer will be eligible for full **Occupational Adoption Leave and Pay**.
- † Employees who do not meet the criteria for Occupational Adoption Pay but have **at least 26 weeks' service** by the week you are notified of your adoption match will be eligible for **Statutory Adoption Leave and Pay**.

- † Employees who have **less than 26 weeks NHS service** by the week you are notified of your adoption match will be eligible for Adoption Leave but will not be eligible for Adoption Pay. Individuals who find themselves in this situation may be able to get **Adoption Allowance via their local council** instead. Your Family Placement Worker should be able to provide further advice on this.

### 3.6 Types of Adoption Pay

#### 3.6.1 Occupational Adoption Pay

If you have 12 months' continuous service within the NHS, and you are the primary carer in the adoption, you will be entitled to receive:

- † 8 weeks on the equivalent of your normal full pay (made up of Statutory Adoption Pay plus a percentage of your normal pay); † 18 weeks on half pay, plus Statutory Adoption Pay (SAP); † 13 weeks on SAP only.

Please note that you **must** return to work for a minimum of 3 months after your period of Adoption Leave if you take advantage of the Occupational Adoption Pay scheme. Failure to do so will mean that you are required to repay the Occupational proportion of the pay received.

#### 3.6.2 Statutory Adoption Pay

If you have at least 26 weeks' continuous NHS service, but less than one year's you will be entitled to receive:

- † 39 weeks' Statutory Adoption Pay (SAP).

Statutory Adoption Pay rates are set by the government and generally increase annually, every April. Please refer to <https://www.gov.uk/adoptionpay-leave/overview> for information on current rates.

### 3.7 Annual Leave & Public Holiday Leave

Annual leave and public holiday leave will continue to accrue as normal during any period of Adoption Leave. Where the amount of accrued adoption leave would exceed normal carry over provisions, you may find it beneficial to take annual leave before and/or after the formal adoption leave period. The amount of annual leave to be taken in this way or carried over should be discussed and agreed with your manager.

### 3.8 Sickness Absence

Any sickness **during the adoption leave period** will be treated as adoption leave.

If you are ***unable to return to work at the expected date of return*** due to sickness, normal sickness notification procedures will apply and your absence will be managed in accordance with the provisions of the NES Management of Sickness Absence Policy.

### **3.9 Breakdown of Adoption**

If a child does not remain in your care for the full period of adoption leave, you should notify your line manager or HR Business Partner/Associate Business Partner.

NES recognises that this may be a very difficult time, and you will be able to remain on Adoption Leave for a further 8 weeks following the breakdown of the adoption. After this time you should make arrangements to return to work.

Please bear in mind that the Employee Assistance Scheme and Occupational Health Service are always available to provide advice and support should you require them.

### **3.10 Returning to Work**

You have the right to return to work on the same terms and conditions you enjoyed before you went on adoption leave. In addition, continuity of service is preserved for statutory purposes for all paid and unpaid periods of adoption leave.

If you would like to take advantage of the flexible working arrangements which NES offers, you should make an application under the NES Flexible Working Policy & Procedures.

You must give 8 weeks' notice, in writing, to your line manager of the date you intend to return to work if this changes from that previously notified to NES.

#### ***3.10.1 Employees who do not intend to return to work***

If you do not intend to return to work following a period of adoption leave, you must resign from your post in the normal way and must be mindful of your contractual notice period.

If you are entitled to Occupational Adoption Pay but do not wish to return to work after your period of Adoption Leave you should inform your line manager and HR Business Partner/Associate Business Partner of this. In these circumstances you will be advised to take Statutory Adoption Pay only.

#### **3.10.2 Help with Childcare Costs**

For further information regarding help with childcare costs, please see section

### **3.11 Leave for Secondary Carers**

Where you will be the secondary carer for the adoptive child you may claim paternity leave in accordance with this policy.

### **3.12 Adoption by Partners both working for NES**

Where you and your partner are intending to adopt a child and both of you work for NES, each partner will be entitled to pre-adoption leave as stated in Section 3.5

Subject to eligibility, both partners can share full single adoption leave entitlement in any ratio.

### **3.13 Keeping in Touch (KIT) Days**

'Keeping in touch' (KIT) days are intended to facilitate a smooth return to work for primary carers who are absent on Adoption Leave. You may attend work for up to ten days during the adoption leave period. Please note that working on KIT days must be undertaken by mutual agreement, and neither you nor your line manager can insist upon them.

Any work done on any day during adoption pay or adoption leave period will count as a whole KIT day, up to the 10-day maximum.

You will be paid for the KIT day at your basic daily rate, less the appropriate adoption leave payment.

### **3.14 Superannuation**

Whilst on adoption leave superannuation contributions are based on the pensionable pay an employee receives during the period of paid adoption leave.

If unpaid adoption leave is taken, the employee may elect to continue to contribute to the superannuation scheme and contributions are based on the pensionable pay received immediately before the period of unpaid adoption leave. This may be raised with the local HR Officer, who should ensure that this information is detailed on the notification of change form. It should be noted that this may be paid on return to work.

Employees may opt out of the pension scheme whilst on adoption leave. No additional contributions are made and there is a break in superannuable service. This means that an employee will not accrue any service and will not be covered for the scheme benefits such as life insurance for this period. On

returning to work the scheme may be rejoined. By opting out, the final pension is based on completed service less the period of unpaid contributions.

### **3.15 Incremental Date**

Any absence under this policy will count towards the normal increment and will not defer the normal incremental date.

### **3.16 Fixed term contracts**

An employee on a fixed term contract, satisfying the conditions for paid entitlement to leave, and whose contract expires between 11 weeks before the date of adoption, will have their contracts extended to enable them to receive 52 weeks Adoption Leave.

## **4. Policy Review**

This policy will be reviewed two years from its effective date to ensure that the arrangements put in place are appropriate for NES and in line with appropriate legislation.

**Ratified by the NES Board on 18<sup>th</sup> July 2006.**

**Updated in accordance with the NHS Terms & Conditions of Service Handbook and UK legislation on 16<sup>th</sup> September 2013.**

APPENDIX 1

### **Notification of adoption/fostering absence and/or Application for adoption/fostering leave pay**

<b>To be completed by Employee:</b>	
Name	
Address	
Staff Pay No	
Job Title	
Place of Work	
Start date and length of service	
Type of contract (eg permanent, fixed-term etc)	
Expected Date of Adoption/Fostering	

Date Adoption Leave to Commence	
Date Adoption Leave to End	

<b>To be completed by Employee who intends/may intend to return to work</b>	
I am aware that my application for Adoption/Foster leave will be considered in accordance with the conditions of service, which have been explained to me. I enclose a copy of the Certificate of Adoption/Fostering and declare that I shall return to work for an NHS employer for at least a period of 3 months:	
	(Please tick appropriate box)
No later than 26 weeks from the start of my period of adoption/fostering	
No later than 52 weeks from the start of my period of adoption/fostering	
I am uncertain at this time as to whether I will return to work.	

I understand that if I do not return to work for a period of at least 3 months, I am to repay any payments made to me as set out in the Conditions of Service.

Signed.....

Date.....

<b>To be completed by Employee who does not intend to return to work</b>
I intend to resign and my last working day will be .....
I have read and understood the Terms and Conditions set out and enclose a copy of my Certificate of Adoption
Signed..... Date.....

<b>To be completed by Line Manager</b>	
I am aware that the applicant intends to return to work following a period of adoption/foster leave:	
	(Please tick appropriate box)
No later than 26 weeks from the start of the adoption/foster leave	

No later than 52 weeks from the start of the period of adoption/foster leave	
OR	
I am aware the applicant does not intend to return to work	
The applicant is not sure whether they will return to work	
I acknowledge receipt of the application form	
Signed..... Date.....	

<b>To be completed by HR</b>	
	(Please tick appropriate box)
The applicant intends to return to work/may return to work following the adoption/foster leave and is entitled to leave as detailed in the enclosed copy letter	
The applicant intends to resign following the adoption and is entitled to pay as detailed in the enclosed copy letter	
Signed..... Date.....	

## Shared Parental Leave Policy NHS Education for Scotland

### **1. Policy Purpose**

Part of the Children and Families Act, the Shared Parental Leave Regulations 2014 came into force on 1<sup>st</sup> October 2014. Their purpose is to provide eligible parents with more flexibility in considering how best to care for, and bond with, their child. All eligible employees have a statutory right to take Shared Parental Leave, and there may also be an entitlement to Shared Parental Pay. This policy sets out the statutory rights and responsibilities of employees who wish to take statutory Shared Parental Leave and statutory Shared Parental Pay. NHS Terms and Conditions also offer some enhancements to members of staff who meet certain eligibility criteria and these are also outlined below.

NHS Education for Scotland (NES) recognises that, from time to time, employees may have questions or concerns relating to their shared parental rights. It is the organisation's policy to encourage open communication with employees to ensure that questions and problems can be resolved as quickly as possible. Employees can contact their line manager or HR Business Partner for discussion at any time.

This policy extends to all NES employees.

### **2. Introduction**

Shared Parental Leave (SPL) is a form of leave available to working parents following the birth or adoption of a child. It applies in respect of children who are expected to be born on or after 5<sup>th</sup> April 2015. It is also available where an adoption agency places a child with you and/or your partner on or after 5<sup>th</sup> April 2015.

In the case of adoption, it provides a more flexible alternative to the default system whereby one partner may qualify for up to 52 weeks' adoption leave and the other partner may qualify for only 2 weeks paternity leave.

Under the SPL system, up to 50 weeks of the adoption leave may be designated as SPL. Parents can choose how to split their allocation of SPL – leave may be taken at the same time or at different times, and parents can also choose to take leave in more than one block.

In birth cases, SPL allows parents to take up to 52 weeks leave in total (2 of which must be Maternity Leave) after the birth of a child. Parents may take their leave at the same time or at different times.

### 3. Glossary of Terms

<b>SPL</b>	Shared Parental Leave
<b>ShPP</b>	Statutory Shared Parental Pay
<b>Mother</b>	The woman who gives birth to a child, or the adopter (the adopter means the person who is eligible for adoption leave and/or pay. They can be male or female.)
<b>Partner</b>	The child's biological father or the partner of the mother/adopter. This can be a spouse, civil partner or a partner who is living in an enduring relationship with the mother and the child.
<b>Continuous Leave</b>	A period of leave that is taken in one block, e.g. four weeks' leave.
<b>Discontinuous Leave</b>	A period of leave that is arranged around weeks where the employee will return to work e.g. an arrangement where an employee will work every other week for a period of three months.
<b>SPLIT Day</b>	Shared Parental Leave In Touch Day. Each parent can take up to 20 SPLIT days.
<b>Parental Leave</b>	Separate to SPL, entitles employees to take up to 18 weeks off work to look after a child's welfare. Under NHS Terms and Conditions of Service, employees receive 4 weeks on full pay and 14 weeks unpaid leave.
<b>Match</b>	When an adopter is approved to adopt a named child or children.
<b>Curtail</b>	Where an eligible mother brings her maternity/adoption leave, and if appropriate, pay or allowance entitlement to an end early. This may also be referred to as reducing the maternity/adoption leave period or reducing the maternity/adoption pay or Maternity Allowance period.
<b>Qualifying Week</b>	In <u>birth</u> cases, the qualifying week is the 15 <sup>th</sup> week before the expected week of childbirth.  In <u>adoption</u> cases, the qualifying week is the week the adoption agency notifies prospective parents that they have been matched with a child for adoption.

## 4. Who is entitled to Shared Parental Leave (SPL)?

You are entitled to take SPL in relation to the birth of a child if:

- a. You are the child's mother and share the main responsibility for the care of your child with the child's father (or your partner, if the father is not your partner);
- b. You are the child's father and share the main responsibility for the care of your child with the child's mother; or
- c. You are the mother's partner and share the main responsibility for the care of the child with the mother (where the child's father does not share the main responsibility with the mother).

You may also be entitled to SPL in relation to the adoption of a child if an adoption agency has placed a child with you and/or your partner for adoption and you intend to share the main responsibility for the care of the child with your partner.

### 4.1 Eligibility Criteria

In both birth and adoption cases, the following conditions must also be fulfilled:

- a. You must have at least 26 weeks continuous employment with an NHS employer by the end of the Qualifying Week and must still be employed by the NHS in the week before the leave is to be taken;
- b. The other parent, or, in adoption cases your partner, must have worked (in an employed or self-employed capacity) for at least 26 of the 66 weeks before the EWC or Qualifying Week and had average weekly earnings of at least £30 during 13 of those weeks;
- c. In birth cases, you and the other parent must give the necessary statutory notices and declarations as summarised below, including notice to end any maternity leave, statutory maternity pay (SMP) or maternity allowance (MA) periods.
- d. In adoption cases, you and your partner must give the necessary statutory notices and declarations as summarised below, including notice to end adoption leave or statutory adoption pay (SAP).
- e. In adoption cases, either you or your partner must also qualify for statutory adoption leave and/or SAP, and must take at least 2 weeks adoption leave and/or pay.

### 4.2 NES's responsibilities in relation to verifying employee eligibility

It is the employee's responsibility to check that they are eligible for Shared Parental Leave and Statutory Shared Parental Pay (ShPP). NES will grant leave and pay based on the information and declarations provided by our employees. If it is subsequently discovered that an employee has been incorrectly paid, NES will take steps to correct payroll records and recover wrongly paid funds as an overpayment of wages.

NES reserves the right to request copies of birth certificates, and employment details for employee's partners. It should be noted that if these requests are made by NES, employees have a legal requirement to comply within 14 calendar days.

If NES contacts another employer, NES will ensure that any actions it takes are fair, reasonable and consistent with other organisational policies.

## 5. I want to take Shared Parental Leave. What do I need to do?

### **Step 1: Opt In (Both Parents)**

If you are interested in taking Shared Parental Leave, and meet the eligibility criteria, the first step is to "opt-in" to the scheme. This means you must give NES written notice of your desire to take SPL at least 8 weeks before you would like your leave to commence. You can provide this written notice, and all the information NES requires, by completing the **Employee & Partner Declaration of Entitlement Form** which is included as Appendix 3 of this document.

**Step 2: Curtail your maternity or adoption leave (Mothers Only)** In birth cases, if you are the child's mother and are still on maternity leave, you must give NES at least 8 weeks' written notice to end your maternity leave before you can take Shared Parental Leave. You can do this by submitting the **Curtailment Letter** which can be found as Appendix 2 of this document.

In adoption cases, this is also the case if you are taking or intend to take adoption leave and want to opt-in to the SPL scheme.

Submission of the curtailment letter is usually binding and cannot be revoked. You can only revoke the curtailment letter if maternity or adoption leave has not yet ended and one of the following conditions apply:

- i. If you realise that neither you nor the other parent/your partner is eligible for Shared Parental Leave/Pay then you can revoke the curtailment of maternity or adoption leave. You must write to NES to confirm this and should ensure that this written notice is received by us no later than 8 weeks after the original submission of your curtailment letter.
- ii. If you submitted the curtailment letter before giving birth, you can revoke it by writing to NES no later than 8 weeks after submission, or 6 weeks after your baby is born, whichever is later;
- iii. If the other parent/your partner has died.

In birth cases, once you revoke a curtailment letter you cannot submit a second unless the revocation was given in the circumstances described in (ii) above.

In adoption cases, once you have revoked the curtailment letter you will be unable to opt back in to the Shared Parental Leave Scheme.

### **Step 3: Link up arrangements with Fathers/Partners**

In birth cases, if you are the child's father or the mother's partner, you will only be able to take SPL once the mother has either:

- i. Returned to work;
- ii. Given her employer a curtailment letter indicating when she will be ending her maternity leave;
- iii. Given a curtailment letter to the Benefits Agency to end her Maternity Allowance (if she is not entitled to maternity leave or SMP).

In adoption cases, if your partner is taking adoption leave or claiming Statutory Adoption Pay from their employer, you will only be able to take SPL once your partner has either:

- i. Returned to work;
- ii. Given their employer a curtailment notice to end adoption leave; or
- iii. Given their employer a curtailment notice to end Statutory Adoption Pay (if they are entitled to SAP but not adoption leave).

**Step 4: Book your Shared Parental Leave (Both Parents)** Any employee wishing to take SPL must give their line manager notification of their entitlement and intention at least 8 weeks before a period of SPL may commence.

Part of the eligibility criteria requires the employee to provide the organisation with correct notification. Notification must be ***in writing*** (emails are not acceptable) and must be within the timescales described in this policy. By completing the **Employee & Partner Notification of Entitlement Form**, employees will provide all information required to opt-in to the Shared Parental Leave Scheme. The **Shared Parental Leave Request Form** (Appendix 4) can be used to specify the leave dates you wish.

Within 14 days of receiving your Notification of Entitlement Form, NES is entitled to request some additional information from you:

- The name and business address of your partner's employer (if your partner is no longer employed or is self employed their contact details must be given instead);
- In birth cases, a copy of the child's birth certificate (or, where one has not been issued, a declaration as to the time and place of the birth);
- In adoption cases, documentary evidence of the name and address of the adoption agency, the date on which you were notified of having been matched with the child and the date on which the agency expects to place the child for adoption.

You must provide this information within 14 days of the request.

**Step 5: Compulsory Maternity/Adoption Leave & Paternity Leave** Mothers/adopters are reminded that they must take a minimum of 2 weeks maternity or adoption leave immediately after the birth or placement of a child.

Shared Parental Leave cannot commence before this 2 week period has elapsed.

Fathers/partners are reminded of their entitlement to Statutory Paternity Leave and encouraged to ensure that they use this entitlement before commencing Shared Parental Leave. Once SPL commences, any unused paternity leave is lost.

## **6. Booking Continuous and Discontinuous Leave**

Employees have the right to submit 3 Shared Parental Leave Request Forms for consideration. This is to enable employees to take up to 3 separate blocks of Shared Parental Leave. In exceptional circumstances NES may agree to accept more than 3 Request Forms but there is no obligation for us to do so.

Each request form may contain either:

- (a) a single leave period, giving the start and end date; or
- (b) two or more periods of discontinuous leave, where the employee intends to return to work between periods of leave.

SPL can only be taken in complete weeks but may begin on any day of the week. For example if a week of SPL began on a Tuesday it would finish on a Monday. Where an employee returns to work between periods of SPL, the next period of SPL can start on any day of the week.

The employee must book SPL by giving the correct notification at least 8 weeks before the date on which they wish to start the leave and (if applicable) receive ShPP.

### **6.1 Continuous leave requests**

Continuous leave is a single, unbroken period of leave. An employee has the right to take a continuous block of leave provided that it does not exceed the total number of weeks of SPL available to them (specified in the notice of entitlement) and the request has been received at least 8 weeks prior to the start of the leave.

An employee may submit up to 3 separate requests for continuous periods of leave.

Requests for continuous leave periods will be approved automatically by NES, provided that the correct notice period is provided by the employee.

### **6.2 Discontinuous leave requests**

In general, a Shared Parental Leave Request should set out a single continuous block of leave. NES may, in some cases, be willing to consider a period of discontinuous leave. Discontinuous leave can be defined as a set number of weeks of leave, taken over a longer period of time with breaks between the leave where the employee returns to work (for example, an arrangement where an employee will take 8 weeks SPL over a period of 12

weeks in the following pattern: 4 weeks leave, 4 weeks at work, 4 weeks leave.

Employees are encouraged to discuss requests for discontinuous leave with their line manager and HR in advance of submitting any Forms. This will allow more time to consider the request and hopefully agree a pattern of leave.

Periods of discontinuous leave must be no shorter than 1 week.

## **7. Responding to a Request for Shared Parental Leave (NES responsibilities)**

### **7.1 Timescales**

HR will process all leave requests as soon as possible and no later than 14 calendar days after they are received.

### **7.2 Automatic approval of continuous leave requests**

As per statutory guidance, requests for continuous leave will be approved in writing without the need for further meetings etc.

### **7.3 Discontinuous leave requests**

NES will consider all discontinuous leave notifications, but has the right to refuse these if they are not compatible with business needs. Decisions regarding the approval or decline of periods of discontinuous leave rest with the Directorate in which the employee is based.

If the Directorate is unable to agree a request straight away, there will be a 14 day discussion period. At the end of the period, NES will confirm any agreed arrangements in writing. If an agreement has not been reached, the employee will be entitled to take the full amount of requested SPL as one continuous block commencing on the start date given on the Request Form (for example, if three separate periods of 4 weeks each were requested, the employee will be entitled to one 12-week block of leave).

Alternatively, the employee can either:

- a. Choose a new start date (which must be at least 8 weeks after the original period of leave notice was given), and notify us of this new date within 5 days of the end of the discussion period; or
- b. Withdraw the request within 2 days of the end of the discussion period. If this happens the Leave Request will not be counted as one of the employee's 3 Requests and the employee may submit a new one if they choose.

## **8. Changing the dates or cancelling your SPL**

A period of SPL can be cancelled by notifying NES in writing, at least 8 weeks before the start date.

Employees can change the start date or duration of a period of SPL by notifying NES in writing at least 8 weeks before the start date.

Employees can change the end date for a period of leave by notifying NES in writing, at least 8 weeks before the original end date and the new end date.

Employees can change discontinuous periods of leave to continuous leave by notifying NES of their desire to do so at least 8 weeks before the start date.

Employees can request that continuous periods of leave are changed to discontinuous leave. NES will consider any such requests via the process described above.

In birth cases, there is no requirement to give 8 weeks' notice to change SPL dates when a child has been born earlier than the EWC, provided that the employee wanted to start SPL a certain length of time after birth. In such cases, employees should notify NES as soon as they can.

A notice to change or cancel SPL will count as one of the employee's 3 Requests unless:

- i. In the case of a birth, the variation is a result of the child being born earlier or later than the EWC;
- ii. In the case of adoption, the variation is the result of a child being placed earlier or later than the expected placement date;
- iii. The variation is at the request of NES; iv. NES agrees otherwise.

## **9. Pay during the Shared Parental Leave period**

Eligible employees may be entitled to receive pay during a period of Shared Parental Leave (SPL). The amount of weeks' pay available will depend on the amount by which the mother/adopter reduces their maternity/adoption pay period of maternity allowance period.

It is important to note that in cases where the mother/adopter has no entitlement to statutory maternity pay or maternity allowance, we are unable to provide Shared Parental Leave Pay for the father/partner/adopter.

In addition to meeting the eligibility requirements for SPL, an employee seeking to claim Shared Parental Leave Pay (ShPP) must further satisfy each of the following criteria:

- the mother/adopter must be/have been entitled to statutory maternity/adoption pay or maternity allowance and must have reduced their maternity/adoption pay period or maternity allowance period;
- the employee must intend to care for the child during the week in which ShPP is payable;
- the employee must have an average weekly earnings for the period of eight weeks leading up to and including the 15<sup>th</sup> week before the child's expected due date/matching date are not less than the lower earnings limit in force for national insurance contributions;

- the employee must remain in continuous employment until the first week of ShPP has begun;
- the employee must give proper notification in accordance with the rules set out below.

Where an employee is entitled to receive ShPP they must, at least eight weeks before receiving any ShPP, give their line manager written notice advising of their entitlement to ShPP. **To avoid duplication, if possible, this should be included as part of the notice of entitlement to take SPL.**

In addition to what must be included in the notice of entitlement to take SPL, any notice that advises of an entitlement for ShPP **must include**:

- the start and end dates of any maternity/adoption pay or maternity allowance;
- the total amount of ShPP available, the amount of ShPP the employee and their partner each intend to claim, and a non-binding indication of when the employee expects to claim ShPP;
- a signed declaration from the employee confirming that the information they have given is correct, that they meet, or will meet, the criteria for ShPP and that they will immediately inform the organisation should they cease to be eligible.

**It must be accompanied** by a signed declaration from the employee's partner confirming:

- their agreement to the employee claiming ShPP and for the organisation to process any ShPP payments to the employee;
- (in the case whether the partner is the mother/ adopter) that they have reduced their maternity/adoption pay or maternity allowance;
- (in the case whether the partner is the mother/ adopter) that they will immediately inform their partner should they cease to satisfy the eligibility conditions.

Any statutory ShPP due will be paid at a rate set by the Government for the relevant tax year.

#### † *Understanding how the leave and pay periods work together*

All members of staff are entitled to take leave of 52 weeks following the birth or placement of a child. The first 2 weeks of leave are compulsory maternity or adoption leave. The remaining 50 weeks can be used as either maternity, shared parental leave or a combination of the two.

All members of staff are entitled to receive pay for a period of 39 weeks following the birth or placement of a child. The amount of pay received is dependent upon the employee's length of service.

Please refer to appendices 6 and 7 for more information.

### **9.1 Occupational Shared Parental Leave Pay**

If you have been continuously employed by one or more NHS employer during the 12 month period ending with the Qualifying Week you may qualify for Occupational Shared Parental Leave Pay.

Your entitlement to occupational ShPP, as described in the following paragraphs, will be subject to deduction of any contractual maternity or paternity or adoption pay which you receive.

For the first 8 weeks of your Shared Parental Leave, occupational ShPP is at the level of your normal full pay, and includes any statutory Shared Parental Pay that may be due for that period.

For the next 18 weeks of Shared Parental Leave, occupational ShPP is half pay plus any statutory Shared Parental Pay that may be due for that period. However, the combined total will not exceed your normal full pay. If required, the amount of occupational ShPP will be reduced in order to achieve this limit.

Payment of occupational ShPP is conditional upon you returning to work for a period of at least 3 months after the end of your Shared Parental Leave. If you later decide not to return to work for this minimum period, you must repay any occupational ShPP (but not statutory ShPP) you have received. In cases where NES considers that enforcing this provision would cause undue hardship or distress, we have the discretion to waive our rights to recovery.

## **10. Useful Information**

### ***10.1 How is the amount of available Shared Parental Leave calculated?***

The total number of weeks Maternity/Adoption Leave taken by the mother is subtracted from 52. The remaining time is available to take by either parent as Shared Parental Leave.

For example, if an employee chooses to curtail her Maternity/Adoption Leave to 12 weeks, 40 weeks remain which can be used as Shared Parental Leave.

### ***10.2 How do the **Leave** period and the **Pay** period work together?***

All members of staff are entitled to take leave of 52 weeks following the birth or placement of a child. The first 2 weeks of leave are compulsory maternity or adoption leave. The remaining 50 weeks can be used as either maternity, shared parental leave or a combination of the two.

All members of staff are entitled to receive pay for a period of 39 weeks following the birth or placement of a child. The amount of pay received is dependent upon the employee's length of service.

Please refer to appendices 6 and 7 for more information.

### ***10.3 How does Shared Parental Leave affect a father/partner's entitlement to Paternity Leave?***

It is important to note that the father/partner/spouse may, if they wish, commence SPL immediately following the birth/placement of their child,

however, they may first choose to exhaust their entitlement to Paternity Leave or Pay (see NES Paternity Policy for more details). The father/partner/spouse may not take paternity leave or claim paternity pay once they commence Shared Parental Leave.

#### ***10.4 Can Maternity/Adoption Leave and Shared Parental Leave run simultaneously?***

Yes. Provided that the mother has given notice to curtail her maternity/adoption leave, then the partner can commence Shared Parental Leave while the mother is still using her maternity/adoption leave entitlement.

#### ***10.5 When should Shared Parental Leave begin and end?***

SPL will generally commence on the start date which has been agreed by the employee and their line manager.

SPL must end no later than one year after the birth/placement of the child. Any SPL not taken by the first birthday or first anniversary of placement for adoption is lost and may not be carried forward.

#### ***10.6 Fraudulent claims***

Where there is a suspicion that fraudulent information may have been provided or where NES has been informed by the HMRC that a fraudulent claim was made, the organisation will investigate the matter further in accordance with the NES Disciplinary Policy.

### **11. Terms and conditions during Shared Parental Leave**

During the period of SPL, the employee's contract of employment continues in force and they are entitled to receive all contractual benefits, except remuneration. In particular, any benefits in kind (such as use of a company car, laptop, mobile phone and gym membership) will continue and contractual annual leave and public holiday entitlement will continue to accrue.

Pension contributions will continue to be made during any period when the employee is receiving ShPP but not during any period of unpaid SPL. Employee contributions will be based on actual pay, while the organisation's contributions will be based on the salary that the employee would have received had they not been taking SPL.

### **12. Annual Leave/Public Holiday Leave**

SPL is granted in addition to an employee's normal entitlement to annual leave and public holiday leave. Leave is accrued throughout the SPL period.

### **13. Contact during Shared Parental Leave**

Before an employee's SPL begins, their line manager will discuss the arrangements for them to keep in touch during their leave. NES reserves the

right in any event to maintain reasonable contact from time to time during SPL.

#### **14. Shared Parental Leave In Touch (SPLIT) Days**

An employee can agree to work (or attend training) for up to 20 days during SPL without bringing their period of SPL to an end or impacting on their right to claim ShPP for that week. These are known as "Shared Parental Leave In Touch" or "SPLIT" days. Any work carried out on a day or part of a day shall constitute a day's work for these purposes.

NES has no right to require the employee to carry out any work, and is under no obligation to offer the employee any work, during the employee's SPL. Any work undertaken is a matter for agreement between NES and the employee. An employee taking a SPLIT day will be paid for any day worked. Any SPLIT days worked do not extend the period of SPL.

An employee, with the agreement of NES, may use SPLIT days to work part of a week during SPL. The organisation and the employee may use SPLIT days to affect a gradual return to work by the employee towards the end of a long period of SPL or to trial a possible flexible working pattern.

#### **15. Returning to work after Shared Parental Leave**

The employee will have been formally advised in writing by NES of the end date of any period of SPL and is expected to return on the next working day after this date, unless they notify NES otherwise. If unable to attend work due to sickness or injury, NES's normal arrangements for sickness absence will apply. In any other case, late return without prior authorisation will be treated as unauthorised absence.

If the employee wishes to return to work earlier than the expected return date, they may provide a written notice to vary the leave and must give the organisation at least eight weeks notice of their date of early return. This will count as one of the employee's notifications. If they have already used their three notifications to book and/or vary leave then NES is not obliged to accept the notice to return early but may do so if it is considered practicable.

On returning to work after SPL, the employee is entitled to return to the same job if the employee's aggregate total statutory maternity/paternity/adoption leave and SPL amounts to 26 weeks or less.

If their maternity/paternity/adoption leave and SPL amounts to more than 26 weeks in aggregate, the employee is entitled to return to the same job or, if this is not reasonably practicable, to another job which is both suitable and appropriate and on terms and conditions no less favourable.

#### **16. Help with Childcare Costs**

For further information regarding help with childcare costs, please see section 7.3.2 in the NES Maternity and Breastfeeding Support Policy

## **17. Special Circumstances and further information**

In certain situations, an employee's rights and requirements regarding SPL and ShPP may change. In these circumstances the organisation will abide by any statutory obligations and an employee should refer to the documents listed below and/or clarify any issues or queries with their HR Business Partner.

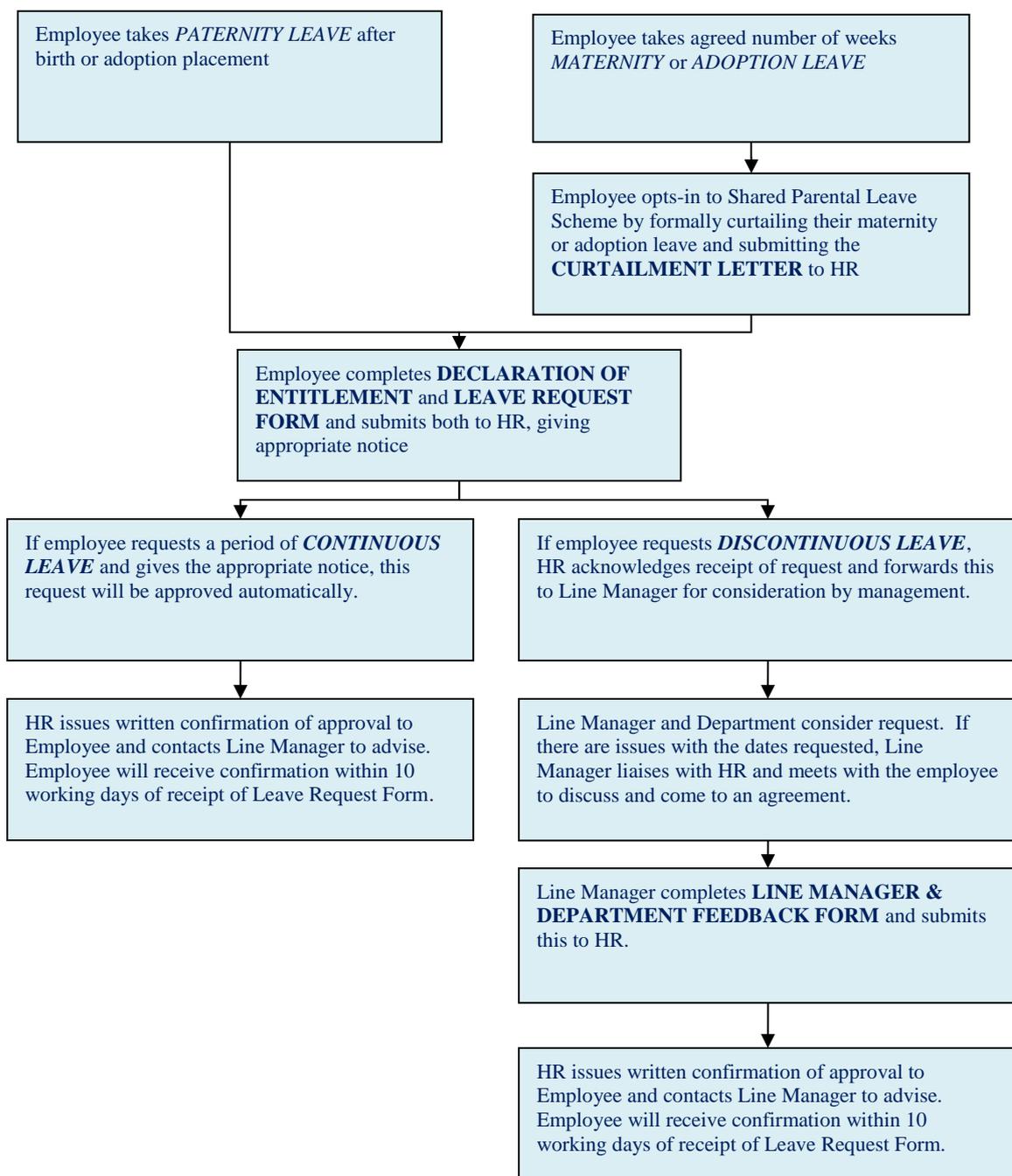
Law relating to this document:

- The Shared Parental Leave Regulations 2014
- The Shared Parental Pay (General) Regulations 2014
- The Maternity and Adoption Leave (Curtailed of Statutory Rights to Leave) Regulations 2014
- Employment Rights Act 1996
- Child and Families Act 2014
- Equality Act 2010

### **Appendix 1 – Process Overview**

**NHS Education for Scotland**  
***Shared Parental Leave Policy***

#### **Process Overview**



**Leave. Each request must be received at least 8 weeks before the proposed start date and the employee should receive confirmation of whether the leave is approved within 10 working days of HR's receipt of the request.**

## Appendix 2 - Maternity/Adoption Leave Curtailment Letter

Your Name  
 Your Address  
 Your Address  
 Your Address  
 Your Postcode

Date

Name

HR Business Partner/Associate Business Partner

NHS Education for Scotland

Office Address

Office Address

Office Address

Postcode

Dear Name,

### **Curtailment of Maternity Leave / Adoption Leave**

I am writing to advise you that I would like to curtail my **maternity/adoption** leave and opt-in to the Shared Parental Leave Scheme. Please accept this letter as a binding notice of my decision.

I am currently planning to take **XX** weeks **maternity/adoption** leave, commencing on **DATE** and ending on **DATE**. I am aware that this means I will have **XX** weeks available to take as Shared Parental Leave.

I am aware that my work history and service with NES means that I am entitled to receive **occupational maternity pay / statutory maternity pay / maternity allowance**. I can confirm that I will be receiving payment for the **XX** weeks that I am on maternity leave. I understand that as I have chosen to curtail my **maternity/adoption** pay period to **XX** weeks, the remainder (**39 minus XX weeks**) will be available as Shared Parental Pay.

I will submit the Employee & Partner Declaration of Entitlement and the Shared Parental Leave Request Forms in due course, I am aware that I must give 8 weeks' notice of my intention to take Shared Parental Leave. I have already completed and submitted the letters and forms as required by the **Maternity/Adoption** Policy and have discussed my decision to transfer to Shared Parental Leave with my Line Manager.

I look forward to receiving an acknowledgement of this letter.

Yours sincerely,

Your Name

## **Appendix 3 – Employee & Partner Declaration**

**NHS Education for Scotland  
Shared Parental Leave Policy**

**Employee & Partner Declaration of Entitlement**

**Section 1 - Employee Details: About You**

<b>Name</b>	
<b>Job Title</b>	
<b>Department</b>	
<b>Directorate</b>	
<b>Base Location</b>	
<b>NES Start Date</b>	

<b>Please give an indication of the number of weeks Shared Parental Leave you wish to take.</b> (Please note that this information is non-binding and can be altered at a later date).	
--	--

**Further Information**

- Is Shared Parental Leave being taken as the result of the birth or adoption of a child?

Birth  Adoption

- Please confirm your relationship to the child

Mother/Adopter

Father/Adopter

Spouse or Civil Partner or Partner of the Mother/Adopter

- Baby's date of birth or due date **or** expected or actual date of adoption placement

---

**Declaration**

I declare that I am eligible to take Shared Parental Leave and meet the eligibility conditions as described in Section 4.1 of the NES Shared Parental Leave Policy. I confirm that all information I have provided to NES is accurate and, should I cease to be eligible for Shared Parental Leave, I will inform the organisation immediately.

---

Signature

---

Print Name

---

Date

**Section 2 - About Your Partner**

<b>Name</b>	
<b>Home address</b>	
<b>National Insurance Number</b> (please state NONE if you have no NI number)	
<b>Name and business address of Employer</b>  (if you are self-employed or not currently in employment please state here)	

**Further Information**

Please confirm your relationship to the child

- Mother/Adopter
- Father/Adopter
- Spouse or Civil Partner or Partner of the Mother/Adopter

**Responsibility**

At the date of the child's birth or placement for adoption, did you have/will you have main parental responsibility for the child, along with your partner?

- Yes  No

**Eligibility for Shared Parental Leave**

In the 66 weeks leading up to your child's expected due date/adoption matching date, have you worked for at least 26 weeks and earned an average of at least £30 per week in any 13 of those weeks?

- Yes  No

**Maternity/Adoption Leave and Pay Dates**

If you are the mother/adopter and are entitled to receive maternity or adoption leave and/or pay from your current employer, please provide the following information:

<b>Maternity/Adoption Leave Start Date</b>		<b>Maternity/Adoption Pay Start Date</b>	
--	--	--	--

<b>Maternity/Adoption Leave End Date</b>		<b>Maternity/Adoption Pay End Date</b>	
<b>How many weeks' leave does this amount to?</b>			
<b>How many weeks remain in your maternity/adoption pay period?</b> <small>(The pay period is 39 weeks in total. Subtracting the number of weeks pay you have received from 39 will give the number of remaining weeks).</small>			

**Partner Shared Parental Leave Information**

If you are the partner, please provide details of the shared parental leave you are planning to take. Please provide leave start and end dates for all planned periods of leave. Please note that you or your partner should inform NES in writing if these dates change, you can do this by emailing [HR.Support@nes.scot.nhs.uk](mailto:HR.Support@nes.scot.nhs.uk).

**Partner: Start and end dates of all planned periods of shared parental leave**

**Section 3 - Employee Declaration**

I declare that I am eligible to take Shared Parental Leave and meet the eligibility conditions as described in Section 4.1 of the NES Shared Parental Leave Policy. I confirm that all information I have provided to NES is accurate and, should I cease to be eligible for Shared Parental Leave, I will inform the organisation immediately. I am aware of the number of weeks Shared Parental Leave my partner intends to take and am in agreement with this. I give my full consent for NES to process the information contained in this form.

---

Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

**\*\* This form should now be sent to the NES employee's HR Business Partner/Associate Business Partner \*\***

## Appendix 4 – Shared Parental Leave Request Form

### NHS Education for Scotland *Shared Parental Leave Policy*

#### Shared Parental Leave Request Form

<b>Name</b>	
<b>Job Title</b>	
<b>Department</b>	
<b>Directorate &amp; Location</b>	
<b>Line Manager</b>	

<b>Employees are entitled to submit up to 3 requests for Shared Parental Leave. How many requests have you submitted to date?</b>	
---	--

<ul style="list-style-type: none"><li>• <b>What type of Shared Parental Leave do you wish to request?</b> Continuous Leave <input type="checkbox"/>                      Discontinuous Leave <input type="checkbox"/></li><li>• <b>How many weeks Shared Parental Leave do you wish to request?</b> _____</li></ul>
---

Please use the space below to give the proposed start and end date(s) of your Shared Parental Leave and provide any additional information you feel may be helpful for your line manager/department to consider in relation to your request (this is especially important if you are requesting *Discontinuous Leave*). Please continue on a separate sheet if necessary.

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Date

## Appendix 5 – Line Manager & Department Feedback Form

**\*\* This form should now be sent to your HR Business Partner/Associate Business Partner \*\***

### **NHS Education for Scotland *Shared Parental Leave Policy***

#### **Discontinuous Leave: Line Manager & Department Feedback**

**1. Has this request for discontinuous leave been approved?**

Yes

No

**2. Have you met with the employee to discuss the request and your decision?**

Yes

No

**3. Please provide rationale for your decision to approve or reject the request below.**

\_\_\_\_\_  
Line Manager Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**\*\* This form should now be sent to your HR Business Partner/Associate Business Partner \*\***

## Appendix 6

### Understanding how the **Leave** and **Pay** periods work together in Shared Parental Leave

Week	Leave (Mother)	Leave (Partner)	Who is paid?
1	Compulsory Maternity Leave	Paternity Leave	Maternity/Paternity Pay Provisions Apply
2	Compulsory Maternity Leave	Paternity Leave	Maternity/Paternity Pay Provisions Apply
3			<b>NHS Employees</b> During weeks 3 to 39, the parent on leave for that week will receive payment.
4			
5			
6			
7			
8			
9			
10			

11	Maternity or Shared Parental Leave can be taken by the Mother during weeks 3 to 52.	The earliest the partner can commence Shared Parental Leave is week 3, they may be able to take Paternity Leave for the first 2 weeks.	If both parents are on leave during the same week, both will receive payment.			
12						
13						
14						
15						
16						
17						
18						
19						
20						
21				The partner's entitlement is calculated by deducting the total leave taken/to be taken by the mother from 52.	Their entitlement to leave is calculated by deducting the total weeks taken/to be taken by the mother from 52.	The leave and pay periods are for fixed numbers of weeks which are shared between both parents. As they are <i>shared</i> , these weeks are used up more quickly when leave is taken by both parents simultaneously.  (E.g. if both parents are on leave during weeks 3 to 9, then 14 weeks of leave and pay are used up).
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35						
36						
37						
38						
39						
40			UNPAID			
41			UNPAID			
42			UNPAID			
43			UNPAID			
44			UNPAID			
45			UNPAID			
46			UNPAID			
47			UNPAID			
48			UNPAID			
49			UNPAID			
50			UNPAID			
51			UNPAID			
52	UNPAID					

\* Pay for both parents during the first 2 weeks of maternity/paternity leave is subject to the provisions of the Maternity Policy and the Paternity Policy.

**Appendix 7**

**Quick Reference Guide**

† The earliest Shared Parental Leave can commence is the beginning of the 3<sup>rd</sup> week after the baby is born/adopted. The first two weeks are compulsory maternity/adoption leave for mothers/adopters (see the Maternity and/or Adoption Policies). Fathers/partners can take this time off as Paternity Leave (see the Paternity Policy).

- † There are 50 weeks of leave available to share between the mother/adopter and the father/partner.
- † There are 37 weeks of pay available to share between the mother/adopter and the father/partner.
- † The leave and pay taken by one party will reduce the amount that is left for the other party to take.
- † Leave and pay can be taken by each parent consecutively, or both parents can take time off, and receive pay (if appropriate), together.
- † The length of NHS service each parent/adopter has accrued will determine the amount of pay they are entitled to receive during Shared Parental Leave. Men who have been continuously employed by one or more NHS employer for 12 months by the 15<sup>th</sup> week before the baby's due date/adoption placement date are entitled to receive Occupational Shared Parental Pay in exactly the same way as women.
- † Rates of maternity pay and shared parental leave pay are the same.
- † Once an employee chooses to opt-in to the Shared Parental Leave Scheme, they cannot normally change their mind – the decision is binding.
- † Requests for “continuous leave” will be approved automatically.
- † Requests for “discontinuous leave” will be considered by the employee's Directorate and a business decision regarding whether or not to support it will be taken.