Maternity, Adoption and Paternity Policy

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|  |  |  |  |

# Contents

[1. Introduction 4](#_Toc111052602)

[2. Purpose / Policy Statement 4](#_Toc111052603)

[3. Scope 5](#_Toc111052604)

[4. Definitions 5](#_Toc111052605)

[5. Roles and Responsibilities 6](#_Toc111052606)

[5.1. Integrated Care Board 6](#_Toc111052607)

[5.2. Chief Executive 6](#_Toc111052608)

[5.3. Policy Authors 6](#_Toc111052609)

[5.4. Executive Chief People Officer 6](#_Toc111052610)

[5.5. Line Managers 7](#_Toc111052611)

[5.6. All Staff 7](#_Toc111052612)

[6. Continuous Service and Fixed Term Contracts 7](#_Toc111052613)

[6.1. Continuous Service 7](#_Toc111052614)

[6.2. Fixed Term Contracts (or Employees on Training Contracts) 7](#_Toc111052615)

[7. Entitlements and Application 8](#_Toc111052616)

[7.1. Occupational Maternity Pay (OMP) 8](#_Toc111052617)

[7.2. Statutory Maternity Pay (SMP) / Maternity Allowance 9](#_Toc111052618)

[8. During Pregnancy 10](#_Toc111052619)

[8.1. Health and Safety 10](#_Toc111052620)

[8.2. Timing of Maternity Leave 11](#_Toc111052621)

[8.3. Notice Requirements 11](#_Toc111052622)

[9. Time Off for Antenatal Care 12](#_Toc111052623)

[10. Sickness Absence 13](#_Toc111052624)

[11. Premature Confinement 13](#_Toc111052625)

[12. Infant Mortality, Still Birth or Miscarriage 14](#_Toc111052626)

[13. Adoption Leave 14](#_Toc111052627)

[13.8. Fostering for Adoption 15](#_Toc111052628)

[13.9. Adoption Disruption 15](#_Toc111052629)

[13.10. Overseas Adoption 15](#_Toc111052630)

[14. During Maternity/Adoption Leave 16](#_Toc111052631)

[14.1. Contractual Rights During Maternity/Adoption Leave 16](#_Toc111052632)

[14.2. Annual Leave 16](#_Toc111052633)

[14.3. NHS Pension Scheme 17](#_Toc111052634)

[14.4. Contact During Maternity/Adoption Leave 17](#_Toc111052635)

[14.5. Keeping-in-Touch Days 17](#_Toc111052636)

[15. Return to Work 18](#_Toc111052637)

[15.1. Returning to Work after Maternity/Adoption Leave 18](#_Toc111052638)

[15.2. Repayment of Occupational Maternity/Adoptions Pay (OM/AP) 19](#_Toc111052639)

[15.3. Breast Feeding and Facilities 19](#_Toc111052640)

[16. Paternity Leave 20](#_Toc111052641)

[17. Transfer of Maternity/Adoption Leave – Shared Parental Leave 20](#_Toc111052642)

[18. Parental Leave 21](#_Toc111052643)

[19. Organisational Change 21](#_Toc111052644)

[20. Monitoring Compliance 21](#_Toc111052645)

[21. Staff Training 21](#_Toc111052646)

[22. Arrangements For Review 22](#_Toc111052647)

[23. Associated Policies, Guidance And Documents 22](#_Toc111052648)

[24. References 22](#_Toc111052649)

[25. Equality Impact Assessment 22](#_Toc111052650)

[Appendix A - Equality Impact Assessment 23](#_Toc111052651)

## Introduction

This policy sets out the rights of employees to statutory and occupational maternity or adoption leave and pay. It also sets out rights of employees for paternity pay and leave.

The Integrated Care Board (ICB) recognises that, from time to time, employees may have questions or concerns relating to their rights. The ICB wishes to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. As the provisions are complex, pregnant employees or those staff who are adopting a child are advised to seek clarification regarding the relevant procedures through their line manager, in conjunction with the HR Team.

All pregnant employees (regardless of length of service) have the right in law to take up to 52 weeks’ maternity leave and to resume work afterwards.

Employees having a child placed for adoption with them will be entitled to adoption leave and pay in line with the maternity provisions.

All employees who take maternity/adoption leave have the right to return to work at any time (except during the first two weeks from the day of childbirth) subject to the notification procedures set out below.

Calculation of maternity and adoption payments to which an employee is entitled (as set out below) will be made in accordance with national Agenda for Change terms & conditions and/or statutory entitlements.

## Purpose / Policy Statement

The purpose of this document is to describe the ICB’s arrangements relating to maternity leave and maternity pay including adoption. It also set out entitlements for Paternity Leave.

The ICB recognises the valuable contribution that working parents make to the organisation and therefore seeks to offer pay and benefits that exceed the statutory provisions to reward and retain employees.

In addition, the ICB also seeks to ensure that pregnant employees/adopting employees are provided every opportunity to return to work, in a manner that suits their change in circumstances by offering them the right to apply for flexible working. Therefore, this policy aims to ensure that:

* + Both line managers and employees fully understand their legal obligations throughout the various stages of pregnancy and adoption/maternity leave.
  + The health and safety of expectant mothers and their unborn babies are safeguarded and protected in the workplace.
  + Employees have access to information and support from the ICB, in order that they can properly plan and prepare for their adoption/maternity leave and their return to work.
  + Expectant mothers/primary carers in adoption are treated fairly whilst at work and when they return from adoption/maternity leave. Expectant mothers are protected from suffering any detriment or discrimination for reasons related to their pregnancy.

## Scope

This policy applies to all employees of the ICB. Those on fixed term contracts are afforded the same rights as permanent employees.

Whilst there are some aspects of this policy which may be relevant to bank workers, for absolute clarity on entitlement, appropriate advice and guidance should be sought from HR.

## Definitions

* Statutory Maternity Pay (SMP) - Statutory Maternity Pay is a State benefit for women on maternity leave, the conditions for which and the amount of which are determined by the Government, but it is paid by the employer.
* Statutory Adoption Pay (SAP) – is a State benefit for the primary carer in an adoption arrangement, the conditions for which and the amount of which are determined by the Government, but it is paid by the employer.
* Occupational Maternity Pay (OMP) - Occupational Maternity pay is provided by the ICB to give enhanced benefits to members of staff who meet the qualifying criteria and who intend to return to work following maternity leave.
* Occupational Adoption Pay (OAP) – Occupational Adoption pay is provided by the ICB to give enhanced benefits to member of staff who meet the qualifying criteria and who intend to return to work following adoption leave.
* Continuous service - For the purposes of this policy the ICB will recognise service with other NHS organisations provided it is continuous.
* MATB1 - Certificate obtained from a G.P. or midwife at 21 weeks pregnancy or thereabouts.
* Expected Week of Confinement (EWC) - This is the week in which the baby is due.
* Qualifying period for SMP - is the 15th week before the expected week of confinement (EWC).
* OAL/OML and AML – Adoption Leave/Maternity leave of 52 weeks comprises of 26 weeks Ordinary Adoption/Maternity Leave (OAL/OML) followed immediately by 26 weeks' Additional Adoption/Maternity Leave (AML).
* Shared Parental Leave (SPL) - A legal entitlement for eligible parents of babies due, or children placed for adoption.
* **Adoption - the legal process by which a child or a group of siblings who cannot be brought up within their birth family become full, permanent and legal members of their new family.** This can include surrogacy**.**
* Adopter - they are the primary carer in the adoption arrangement made by an official adoption agency, or they are the intended parent through a surrogacy arrangement and commit to applying for a parental or adoption order.

## Roles and Responsibilities

### Integrated Care Board

* + 1. The ICB Board is accountable and responsible for ensuring that the ICB has effective processes for the management of maternity/adoption leave and pay in accordance with relevant legislation and best practice guidance.

### Chief Executive

* + 1. The Chief Executive is accountable for the policy and procedure being in place to ensure fair and equitable approach to maternity/adoption leave and pay for employees.

### Policy Authors

* + 1. Policy authors are responsible for ensuring that this document is updated when any changes are made to the NHS Agenda for Change Terms and Conditions for Service for maternity/adoption leave and pay.

### Executive Chief People Officer

* + 1. The Executive Chief People Officer oversees the implementation of this policy and is responsible for ensuring that managers take action to meet the organisation’s obligations to ensure equity and consistency.

### Line Managers

* + 1. Managers are responsible for:
  + Applying the arrangements described in this policy
  + Carrying out a pregnancy risk assessment with the employee (form available on the intranet [HR Forms](https://nhs.sharepoint.com/sites/99F_Connect/SitePages/HR-Forms-%26-Documents.aspx)).
  + Submitting completed documents to ensure that payroll and other administrative arrangements can be completed at the appropriate time
  + Maintaining contact with an employee on maternity/adoption leave in accordance with this policy, organising Keep in Touch days and payment as appropriate.
  + Support and arrange facilities for breastfeeding where requested.

### All Staff

* + 1. Employees are responsible for:
  + Notifying their line manager of their pregnancy or adoption.
  + Participating in the pregnancy risk assessment
  + Presenting either:
    - the MATB1 and participating in the completion of the documentation for this policy.
    - Documentary evidence of the date of placement from the adoption agency.
    - In the case of surrogacy, at least 15 weeks notice of the expected week of birth and a written statement of the intent to apply for a parental order and
  + Complying with the requirements of this policy.

## Continuous Service and Fixed Term Contracts

### Continuous Service

* + 1. For the purpose of calculating continuous service, the ICB will take into account employment with other NHS organisations in accordance with national Agenda for Change terms & conditions, including how any breaks in service should be treated.

### Fixed Term Contracts (or Employees on Training Contracts)

* + 1. Employees subject to fixed term or training contracts which expire after the 11th week before the EWC and who meet the eligibility and notification criteria set out below will have their contract extended so as to allow them to receive the 52 weeks’ leave which includes Occupational and Statutory Maternity Pay and the remaining 13 weeks of unpaid leave.
    2. If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred, the repayment provisions set out in this policy will not apply.
    3. Staff on fixed term contracts who do not meet the 12 months’ continuous service condition may still be entitled to Statutory Maternity Pay or Maternity Allowance as detailed in the below sections.
    4. Any maternity absence (paid and unpaid) up to 52 weeks before a further NHS appointment will not constitute a break in service.

## Entitlements and Application

### Occupational Maternity Pay (OMP)

* + 1. Employees with more than one year’s continuous service with the NHS by the 11th week before the Expected Week of Childbirth (EWC) are entitled to receive Occupational Maternity Pay which lasts for a total of 39 weeks and comprises:
  + 8 weeks at full weekly pay;
  + 18 weeks at half weekly pay plus lower rate of Statutory Maternity Pay (SMP); and
  + 13 weeks at lower rate of SMP.
    1. This is providing that the employee has informed the ICB of their intention to return to work for the NHS for at least 3 months following the end of the period of maternity leave. Employees are also entitled to an additional 13 weeks’ unpaid occupational leave.
    2. The following points should be noted in respect of the payment of Occupational Maternity Pay:
  + During the first 8 weeks of absence, the full pay that is received by the employee will be offset against payments made by way of SMP (lower or higher as applicable), or Maternity Allowance for employees not eligible for SMP;
  + If half weekly pay plus SMP totals more than the employee’s normal week’s pay, the half pay will be reduced in order for payments to be maintained at the normal weekly level;
  + Occupational Maternity Pay (OMP) will only be paid if the employee declares their intention to return to work for the ICB or another NHS organisation for a period of three months following the end of the maternity leave period;
  + For employees who decide prior to the commencement of maternity leave that they will not be returning to work within the NHS for a minimum period of 3 months following maternity leave, the period that would normally be paid at OMP will only be paid at SMP;
  + If an employee receives OMP and, at a later date, decides that they will not be returning to work for the ICB or another NHS organisation, they will be obliged to repay any OMP received during the maternity leave period;
  + If an employee is unsure whether or not they will be returning to the ICB or another NHS organisation following maternity leave, they will be required to put OMP ‘on hold’ until they have decided whether or not they will be returning to work for a period of at least 3 months. If the decision is taken to return to work, the payment of OMP can be paid either upon the return to work (as a lump sum) or can be commenced at any point during the period of maternity leave.
    1. By prior agreement with the employer, occupational maternity pay may be paid in a different way, for example, a combination of full pay and half pay, or a fixed amount spread equally over the maternity leave period.
    2. In exceptional circumstances, for example, in the case of a multiple birth, sick pre-term babies or disability, the unpaid element of leave may be extended beyond 13 weeks. Requests for this should be submitted in writing to the employee’s’ line manager who may seek advice from the HR Service.

### Statutory Maternity Pay (SMP) / Maternity Allowance

* + 1. Employees with more than 26 weeks but less than one year’s continuous service by the 15th week before Expected Week of Childbirth (EW) are entitled to receive Statutory Maternity Pay which lasts for a total of 39 weeks and comprises:
  + 6 weeks at 90% of weekly earnings; and
  + 33 weeks at the standard rate of SMP.
    1. The unpaid occupational leave element comprises up to 13 weeks’ unpaid leave, making a total of 52 weeks.
    2. In order to qualify for SMP, the employee must also:
  + Have average earnings of not less than the lower earnings limit for the payment of National Insurance contributions for the 8 weeks ending with the 15th week before the EWC;
  + Still be pregnant at the 11th week before the baby is due, or have had the baby by that time; and
  + Have advised the ICB of the date that they intend to commence maternity leave and provided a Mat B1 certificate.
    1. There are two rates of SMP which can be payable:

**The Higher Rate:**

* + Is only payable in the first 6 weeks of the Maternity Pay Period (MPP);
  + Is paid at 90% of the average weekly earnings (as detailed above);
  + However, if SMP at the higher rate is greater than 90% of the employee’s average earnings, SMP at the higher rate will be paid for 6 weeks.

**The Lower Rate:**

* + Is payable for up to 39 weeks. However, if the higher rate is payable for a portion of the MPP, the lower rate will only be paid for 33 weeks (after the higher rate has ended.
  + Is a fixed amount, which is normally reviewed each year. Please contact the Payroll Service to find out the current lower rate of SMP.
    1. Statutory Maternity Pay is treated as earnings and is therefore subject to PAYE and National Insurance deductions.
    2. Employees with less than 26 weeks’ continuous service by the 15th week before the Expected Week of Childbirth (EWC) should contact the Jobcentre Plus to establish whether they have any entitlement to pay during maternity leave, either Statutory Maternity Pay (SMP) or Maternity Allowance.

## During Pregnancy

### Health and Safety

* + 1. The ICB has a duty to take care of the health and safety of all employees. It is also required to carry out a risk assessment to assess the workplace risks to women who are pregnant, have recently given birth or are breastfeeding, where the work is of a kind that could involve a risk of harm or danger to their health and safety or the health and safety of their baby and the risk arises from either processes, working conditions or physical, chemical or biological agents in the workplace.
    2. If the risk assessment reveals that the employee would be exposed to health hazards in carrying out their normal job duties, the ICB will take such steps as are reasonably necessary to avoid those risks, such as altering the employee's working conditions. In some cases, this may mean offering the employee suitable alternative work (if available) on terms and conditions that are not substantially less favourable. It may be necessary to obtain a medical opinion from the Occupational Health Service as to the suitability of the work offered.
    3. If it is not possible for the ICB to alter the employee's working conditions to remove the risks to their health and there is no suitable alternative work available to offer on a temporary basis, the ICB may suspend the employee from work on maternity grounds until such time as there are no longer any risks to their health. This may be for the remainder of the pregnancy until the commencement of maternity leave. If an employee is suspended in these circumstances, their employment will continue during the period of the suspension and it does not in any way affect their statutory or contractual employment and maternity rights. The employee will be entitled to their normal salary and contractual benefits during the period of suspension, unless they have unreasonably refused an offer of suitable alternative employment.

### Timing of Maternity Leave

* + 1. Maternity leave can start at any time after the beginning of the 11th week before the employee's expected week of childbirth (unless the child is born prematurely before that date in which case it will start earlier).
    2. Maternity leave will start on whichever date is the earlier of:
  + The employee's chosen start date;
  + The day after the employee gives birth; or
  + The day after any day on which the employee is absent for a pregnancy-related reason in the four weeks before the expected week of childbirth.
    1. If the employee gives birth before their maternity leave was due to start, they must notify the ICB in writing of the date of the birth as soon as reasonably practicable.
    2. The law obliges all employees to take a minimum of two weeks of maternity leave immediately after the birth of the child.

### Notice Requirements

* + 1. On becoming pregnant, an employee should notify their line manager as soon as possible. This is important as there are health and safety considerations for the ICB (see 5.1 above).
    2. By the end of the qualifying week, or as soon as reasonably practicable afterwards, the employee is required to inform the ICB in writing of:
  + The fact that they are pregnant;
  + Expected week of childbirth; and
  + Date on which they intend to start maternity leave.
    1. The employee must also provide a MAT B1 form which is a certificate from a doctor or midwife confirming the expected week of childbirth. The form must have either the doctor's name and address or the midwife's name and registration number on it.
    2. The employee is permitted to bring forward their maternity leave start date, provided that they advise the ICB in writing at least 28 days before the new start date or, if that is not possible, as soon as reasonably practicable.
    3. The employee may also postpone their maternity leave start date, provided that they advise the ICB in writing at least 28 days before the original proposed start date or, if that is not possible, as soon as reasonably practicable.
    4. The ICB will formally respond in writing to the employee's notification of leave plans within 28 days, confirming the date on which they are expected to return to work if they take the full 52-week entitlement to maternity leave.
    5. The employee is required to give at least 28 days' notice of the date that they want their statutory maternity pay to begin. If it is not possible for the employee to give 28 days' notice, for example if the baby arrives early, they should tell the ICB as soon as reasonably practicable.
    6. The proforma to be used when making an application for maternity leave can be found on the intranet [HR Forms](https://nhs.sharepoint.com/sites/99F_Connect/SitePages/HR-Forms-%26-Documents.aspx)

## Time Off for Antenatal Care

Pregnant employees regardless of their length of service or hours worked have the right to paid time off work for antenatal care. In order to be entitled to take time off for antenatal care, the employee may be required to produce a certificate from the doctor, registered midwife or registered health visitor. Except in the case of the first appointment, the employee should also produce evidence of the appointment, such as a medical certificate or appointment card, if requested to do so.

Antenatal care may include relaxation and parent craft classes that the doctor, midwife or health visitor has advised to attend in addition to medical examinations.

The employee should endeavour to give the line manager as much notice as possible of antenatal appointments and, wherever possible, try to arrange them as near to the start or end of the working day as possible.

An employee whose partner is pregnant will be entitled to unpaid leave to attend two antenatal appointments, up to a maximum of six and half hours per appointment.

A partner includes a spouse, civil partner (of either sex) or a person with whom there is a long term relationship.

Further information can be found on the Government website <https://www.gov.uk/working-when-pregnant-your-rights>

## Sickness Absence

If an employee is absent from work during pregnancy owing to sickness, they will receive normal statutory or contractual sick pay in the same manner as they would during any other sickness absence, provided that they have not yet begun ordinary maternity leave.

If, however, the employee is absent from work due to a pregnancy-related illness after the beginning of the fourth week before expected week of childbirth, the period of maternity leave will start automatically.

If the employee is absent from work wholly or partly because of pregnancy during the four weeks before the expected week of childbirth, they must notify the ICB in writing of this as soon as reasonably practicable.

Sickness absence for the reason of pregnancy will not count towards triggers under the [Absence Management Policy](049%20Maternity%20Adoption%20and%20Paternity%20Policy).

## Premature Confinement

Where an employee’s baby is born alive prematurely, the employee will be entitled to the same amount of maternity leave and pay as if their baby was born at full term.

Where an employee’s baby is born before the 11th week before the expected week of childbirth and the employee has worked during the actual week of childbirth, maternity leave will start on the first day of the employee’s absence.

Where an employee’s baby is born before the 11th week before the expected week of childbirth and the employee has been absent from work on certified sickness absence during the actual week of childbirth, maternity leave will start the day after the day of birth.

Where an employee’s baby is born before the 11th week before the expected week of childbirth and the baby is in hospital, the employee may split their maternity leave entitlement, taking a minimum period of two weeks’ leave immediately after childbirth and the rest of their leave following their baby’s discharge from hospital.

## Infant Mortality, Still Birth or Miscarriage

Where an employee’s baby is still born or subsequently dies after the end of the 24th week of pregnancy, the employee will be entitled to the same amount of maternity leave and pay as if their baby was born alive. In addition, the employee also be eligible for child bereavement leave and pay. Further details are included in the ICB’s [Special Leave Policy](049%20Maternity%20Adoption%20and%20Paternity%20Policy).

Where an employee has a miscarriage before the start of the 25th week of pregnancy, normal sickness absence provisions will apply as necessary.

In cases where an employee has exhausted their right to contractual sick pay, provision for paid time off at this time may be given under the provisions of the [Special Leave Policy](049%20Maternity%20Adoption%20and%20Paternity%20Policy).

The provisions relating to child bereavement leave and pay (as set out in the [Special Leave Policy](049%20Maternity%20Adoption%20and%20Paternity%20Policy)) are extended to employees in these circumstances where they are the ‘intended’ legal parent through surrogacy.

## Adoption Leave

Adoption leave and pay entitlements apply to eligible staff where a child who is under 18 years of age is newly placed for adoption within the UK. Entitlement is in line with the provisions of this policy as set out above.

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

* + They are the primary carer in the adoption arrangement made by an official adoption agency, or they are the intended parent through a surrogacy arrangement and commit to applying for a parental or adoption order (see https://www.gov.uk/legal-rights-when-usingsurrogates-and-donors).
  + They have 12 months’ continuous service with the NHS employers by either the beginning of the week in which they are notified of being matched with a child for adoption; or the 15th week before the baby’s due date, if applying via a surrogacy arrangement and where the employee is eligible and intends to apply for a parental order.
  + They notify the employer in writing before the end of the week in which they are notified of being matched with a child for adoption, or by the 15th week before the baby’s due date if applying via a surrogacy arrangement, the following:
    - Their intention to take adoption leave.
    - The date on which they wish to start their adoption leave; and
    - Their intention to return to work with the same or another NHS employer for a minimum period of three months after their adoption leave has ended, and
* Provide written confirmation from the placing authority of the matching decision or a parental statutory declaration that they intend to apply for a parental order in the case of a surrogacy arrangement.

A proforma to be used when making an application for adoption leave is available on the intranet [HR Forms](https://nhs.sharepoint.com/sites/99F_Connect/SitePages/HR-Forms-%26-Documents.aspx)

Adoption leave and pay is not available in circumstances where a child is not newly matched for adoption, for example, when a stepparent is adopting a partner’s children.

Only one period of leave will be available, irrespective of whether more than one child is placed for adoption as part of the same arrangement.

Adoption leave and pay will be available to individuals who adopt or to one member of a couple were both are employed by the ICB. The other member of the couple may be entitled to paternity leave and pay.

Reasonable time off to attend official meetings in the adoption process should also be given.

### Fostering for Adoption

* + 1. Prospective adopters who have been approved by their adoption agency under a ‘concurrent’ or ‘fostering for adoption’ arrangement may choose to start their adoption leave when a fostering placement is made or when the child is matched with them for adoption. Only one set of adoption leave is payable per placement. Receipt of fostering allowances and payments during the fostering phase of the placement will not affect any adoption pay under this policy.

### Adoption Disruption

* + 1. If the child’s placement ends during the adoption leave period, the adopter will be entitled to continue adoption leave and receive the appropriate pay for that time.

### Overseas Adoption

* + 1. For an employee to qualify for adoption leave and/or pay resulting from an overseas adoption, they must:
  + Tell their employer the date of the official notification (permission from an UK authority for an adoption abroad) and the estimated date that the child will arrive in the UK. This must be done within 28 days of receipt of the official notification;
  + Tell the employer the actual date the child arrives in the UK within 28 days of this date;
  + Provide the employer with a minimum of 28 days’ notice of when they wish to commence their adoption leave and pay (noting that adoption leave can only commence after the child has entered the UK and must start no later than 28 days after the child has entered the UK); and
  + Provide appropriate documentation and proof of the adoption to the employer including, but not limited to, the official notification and evidence that the child has entered the UK.

## During Maternity/Adoption Leave

### Contractual Rights During Maternity/Adoption Leave

* + 1. During ordinary maternity leave and additional maternity leave, all terms and conditions of the employee's contract except normal pay. Pay progression will continue to apply.
    2. Salary will be replaced by the Occupational Maternity Pay and/or Statutory Maternity Pay where the employee is eligible. This means that while sums payable by way of salary will cease, all other benefits will remain in place. For example, annual leave entitlement will continue to accrue, and pension contributions will continue to be paid.
    3. An employee on maternity/adoption leave will progress through their pay-step on the date that the pay step is due unless a pay-step review meeting has taken place prior to the commencement of leave which confirmed that the required standards for pay progression would not be met. If a pay-step review cannot be conducted prior to the pay-step date, the pay-step point should be automatically applied in the individual’s absence. Please refer to the [Pay Progression Policy](049%20Maternity%20Adoption%20and%20Paternity%20Policy).

### Annual Leave

* + 1. Employees will continue to accrue both statutory and any additional contractual annual leave entitlement, including bank holidays, during maternity/adoption leave period.
    2. An employee who has requested maternity/adoption leave will be required to discuss with their manager any outstanding entitlement of annual leave before the commencement of the maternity/adoption leave period. The ICB may:
  + Require the employee to take such outstanding annual leave before commencing maternity/adoption leave;
  + Agree in conjunction with the relevant Head of Service that the employee should carry the leave over and take it on return to work after maternity leave; or
  + In exceptional circumstances, discuss with the employee, payment in lieu for annual leave entitlement in excess of the statutory minimum (as if the employee were leaving).
    1. These options will be discussed with the employee prior to the start of the maternity/adoption leave and approach agreed. The amount of outstanding annual leave at the point an employee wishes to take maternity/adoption leave will be dependent on the time of year. However, it should be noted that there is a general expectation that staff take annual leave throughout the year and employees would be expected to take accrued annual leave by the time they commence the period of maternity/adoption leave.

### NHS Pension Scheme

* + 1. If the employee is a member of the NHS Pension Scheme, contributions will continue to be deducted from salary during period of paid maternity/adoption leave. However, to ensure that pensionable service is not broken, pension contributions will be due to be paid on any periods of unpaid leave. Any outstanding contributions will be recovered when the employee returns to work. It may be advisable for the employee to contact the Payroll Service regarding these arrangements.
    2. For those employees who have less than 2 years’ service and who will not be returning to work following maternity/adoption leave, there may be entitlement to a refund of pension contributions. The employee should contact the Payroll Service for further information.

### Contact During Maternity/Adoption Leave

* + 1. The ICB reserves the right to maintain reasonable contact with employees during maternity/adoption leave. This may be to discuss employee’s plans for return to work, to discuss any special arrangements to be made or training to be given to ease their return to work or to update them on developments at work during their absence.

### Keeping-in-Touch Days

* + 1. Employees can agree to work for the ICB (or to attend training/meetings) for up to 10 days during their maternity/adoption leave without that work bringing their maternity leave to an end and without loss of a week's statutory pay. These are known as "keeping-in-touch" days (KIT). Any work carried out on a day will constitute one KIT day for these purposes.
    2. The ICB has no right to require employees to carry out any work and employees have no obligation to undertake any work during their maternity/adoption leave. Any work undertaken on KIT days is entirely a matter for agreement between an employee and the ICB.
    3. For KIT days worked, the employee will be paid at their basic daily rate for the hours worked, less any occupational or statutory maternity/adoption payments. If a KIT day is worked in the full pay period, the employer will make arrangements to ensure the employee receives a day of paid leave in lieu once the employee has returned to work. If a KIT day is worked on a day of leave in the half pay period, the employer will make arrangements to ensure the employee receives a half day of paid leave in lieu once the employee has returned to work.
    4. An employee may not work during the first two weeks of maternity or adoption leave.

## Return to Work

### Returning to Work after Maternity/Adoption Leave

* + 1. The employee may return to work at any time during maternity/adoption leave (following the minimum period of two weeks), provided that the appropriate notification is given.
    2. There is no requirement for an employee to notify the ICB of their intention to return to work, unless they are intending to return before the end of full period of maternity/adoption leave (52 weeks). However, if they wish to return earlier, then at least 28 days’ notice must be given.
    3. An employee has the right to resume working in their job under their job under their original contract and on no less favourable terms and conditions.
    4. Unpaid occupational leave may be extended by agreement in exceptional circumstances. However, employees should refer to the section regarding repayment of occupational maternity/adoption pay.
    5. If the employee decides during maternity/adoption leave that they do not wish to return to work, they should give written notice of resignation to the ICB as soon as possible and in accordance with the terms of their contract of employment.
    6. A successful application for an employment break to coincide with the ending of maternity/adoption leave is not considered a return to work. Therefore, the terms regarding the return to work and repayment of occupational maternity/adoption pay remain. The provisions in relation to employment breaks are set out in the [Special Leave Policy](049%20Maternity%20Adoption%20and%20Paternity%20Policy).
    7. If, at the end of maternity/adoption leave, the employee wishes to return to work on different hours, the ICB has a duty to facilitate this wherever possible. If this is not possible for the employee to return to the same job but on different hours, the employer must provide written, justifiable reasons for this and the employee should return to the same pay band and work of a similar nature and status to that which they held prior to their maternity/adoption absence.
    8. If it is agreed that the employee will return to work on a flexible basis, including changed or reduced hours, for an agreed temporary period, this will not affect the employee’s right to return to their job under their original contract at the end of the agreed period.
    9. Any request for flexible working should be made under the ICB’s [Flexible Working Policy](049%20Maternity%20Adoption%20and%20Paternity%20Policy). Any application for a change to working pattern or hours should be made 3 months before the return to work.
    10. Failure to return to work by the end of maternity/adoption leave will be treated as an unauthorised absence unless the employee is sick and notifies the ICB accordingly in line with the [Absence Management Policy](049%20Maternity%20Adoption%20and%20Paternity%20Policy), or another period of leave (such as annual leave) has been agreed.

### Repayment of Occupational Maternity/Adoptions Pay (OM/AP)

* + 1. Payments in are made on the understanding that the employee will return to work with the ICB or another NHS organisation for a period of at least three months following the end of their maternity/adoption leave period.
    2. If an employee who has notified their employer of their intention to return to work for the same or a different NHS employer fails to do so within 15 months of the beginning of their maternity/adoption leave, they will be liable to refund the whole of their maternity or adoption pay, less any Statutory Maternity, Adoption or Shared Parental Pay received.

### Breast Feeding and Facilities

* + 1. New mothers remain protected under Health and Safety legislation after returning from maternity leave within 6 months of the birth and are breastfeeding. A risk assessment should immediately be carried out on return to work to identify and remove any risks to either the employee or their baby’s health.
    2. An appropriate space can be provided to support breastfeeding.
    3. Parents will only be permitted to breastfeed their babies, during their normal break periods. However, managers are reminded that they should consider requests for flexible working arrangements to support breastfeeding women at work.
    4. A storage facility for expressed breast milk for babies will be identified on request.

## Paternity Leave

If an employee has or expects to have responsibility for the child's upbringing or are the biological father of the child or the mother's husband or partner (including same sex relationships) and have worked continuously for the NHS for 12 months at the point at which leave is requested, they may apply for paternity leave.

All eligible employees are entitled to paternity leave of two weeks.

Employees granted paternity leave will receive full pay during this period. Full pay will be calculated on the basis of the average weekly earnings rules used for calculating occupational maternity/adoption pay entitlement. The employee will receive full pay less any statutory paternity pay receivable.

Where an employee is not eligible for occupational paternity leave and pay, they may be eligible for statutory paternity leave/pay. Further details can be found on the government website <https://www.gov.uk/employers-paternity-pay-leave/eligibility>.

Employees can seek guidance and support regarding paternity leave from the HR Team and/or the Payroll Team. A proforma to be used when making an application for paternity leave is available on the intranet [HR Forms](https://nhs.sharepoint.com/sites/99F_Connect/SitePages/HR-Forms-%26-Documents.aspx).

## Transfer of Maternity/Adoption Leave – Shared Parental Leave

Shared Parental Leave (SPL) enables eligible mothers and adopters to choose how to share the care of their child during the first year following birth or adoption. Its purpose is to give parents more flexibility in considering how to best care for their child. It commits mothers and adopters to ending their maternity/adoption lave and pay at a future date and to share the untaken balance of leave and pay as shared parental leave with their partner, or to return to work early from maternity/adoption leave and opt in to shared parental leave and pay at a later date.

For more details, please refer to the ICB’s [Shared Parental Leave Policy](049%20Maternity%20Adoption%20and%20Paternity%20Policy) which sets out the provisions, details of eligibility requirements as well as advice as to how maternity/adoption leave can be curtailed. The policy also sets out the notice periods required by employees and what evidence must be provided. Information relating to entitlement to shared parental pay is also included.

## Parental Leave

Parental leave aims to provide support to working parents who wish to take an extended period of unpaid time off to care for their child(ren). Parental leave gives an entitlement of 18 weeks’ unpaid leave for each child and can be added to periods of maternity, paternity or adoption leave. Details of the provisions relating to parental leave and eligibility requirements are set out in the ICB’s [Parental Leave Policy](049%20Maternity%20Adoption%20and%20Paternity%20Policy).

## Organisational Change

If there is a period of formal organisational change whilst an employee is on maternity/adoption leave, the provisions of the [Organisational Change Policy](049%20Maternity%20Adoption%20and%20Paternity%20Policy) with regard to consultation and process will be followed.

## Monitoring Compliance

The HR Team will be responsible for monitoring that this procedure is followed and may be consulted at any stage through the process to offer advice to those involved.

Monitoring information will be published and reported as appropriate.

Should the monitoring uncover any shortfalls in the implementation of the policy, the HR team will work with the relevant management team to draw up an action plan for improvement. This action plan may include, for example:

• training for line managers.

• A risk assessment.

## Staff Training

No essential (including mandatory) learning and development requirements have been identified for any staff groups, in order to fulfil the requirements stated within this policy.

Guidance can be sought from Human Resources team.

## Arrangements For Review

This policy will be reviewed no less frequently than every two years. An earlier review will be carried out in the event of any relevant changes in legislation, national or local policy/guidance, organisational change or other circumstances which mean the policy needs to be reviewed.

If only minor changes are required, the sponsoring Committee has authority to make these changes without referral to the Integrated Care Board. If more significant or substantial changes are required, the policy will need to be ratified by the relevant committee before final approval by the Integrated Care Board.

## Associated Policies, Guidance And Documents

#### [Associated Policies](049%20Maternity%20Adoption%20and%20Paternity%20Policy)

* Absence Management Policy.
* Special Leave Policy.
* Flexible Working Policy.
* Shared Parental Leave Policy.
* Organisational Change Policy.
* Parental Leave Policy.
* Pay Progression Guidance.

## References

* NHS Terms and Conditions of Service - any reference is to the latest edition.

## Equality Impact Assessment

The EIA has identified no equality issues with this policy.

The EIA has been included as Appendix A.

## Appendix A - Equality Impact Assessment

**INITIAL INFORMATION**

|  |  |
| --- | --- |
| **Name of policy:**  Maternity and Adoption  **Version number (if relevant):**  1.0 | **Directorate/Service**:  People Services |
| **Assessor’s Name and Job Title:**  Carolyn Druce, HR Business Partner | **Date:**  11th May 2022 |

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| --- |
| **OUTCOMES** |
| *Briefly describe the aim of the policy and state the intended outcomes for staff* |
| The purpose of this document is to describe the ICB’s arrangements relating to maternity leave and maternity pay including adoption. |
| **EVIDENCE** |
| *What data / information have you used to assess how this policy might impact on protected groups?* |
| The ICB monitors the composition of its workforce under the nine protected equality characteristics and reports on this annually. This information helps the ICB to assess the potential impact of its policies upon staff. |
| *Who have you consulted with to assess possible impact on protected groups? If you have not consulted other people, please explain why?* |
| Relevant Trade Unions have been consulted on the policy and any comments will be taken into consideration when the policy is published. |

**ANALYSIS OF IMPACT ON EQUALITY**

The Public Sector Equality Duty requires us to **eliminate** discrimination, **advance** equality of opportunity and **foster** good relations with protected groups. Consider how this policy / service will achieve these aims.

N.B. In some cases it is legal to treat people differently (objective justification).

* ***Positive outcome*** *– the policy/service eliminates discrimination, advances equality of opportunity and fosters good relations with protected groups*
* ***Negative outcome*** *–**protected group(s) could be disadvantaged or discriminated against*
* ***Neutral outcome***  *–**there is no effect currently on protected groups*

Please tick to show if outcome is likely to be positive, negative or neutral. Consider direct and indirect discrimination, harassment and victimisation.

| Protected  Group | Positive  outcome | Negative  outcome | Neutral  outcome | Reason(s) for outcome |
| --- | --- | --- | --- | --- |
| Age |  |  | x |  |
| Disability  (Physical and Mental/Learning) |  |  | x |  |
| Religion or belief |  |  | x |  |
| Sex (Gender) |  |  | x |  |
| Sexual  Orientation |  |  | x |  |
| Transgender / Gender Reassignment |  |  | x |  |
| Race and ethnicity |  |  | x |  |
| Pregnancy and maternity (including breastfeeding mothers) | x |  |  | Enables women to take time off for maternity leave and to return to work. Reference to the protections in the Organisational Change Policy. |
| Marriage or Civil Partnership | x |  |  | Includes partners in a Civil Partnership. |

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| **MONITORING OUTCOMES** |
| Monitoring is an ongoing process to check outcomes. It is different from a formal review which takes place at pre-agreed intervals. |
| *What methods will you use to monitor outcomes on protected groups?* |
| It is anticipated that any issues in respect of the implementation of the policy will be identified as a result of staff exercising their right via the ICB’s  Grievance Procedure. |

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| **REVIEW** |
| *How often will you review this policy / service?* |
| Every 2 years as a minimum and earlier if there are any significant changes in legislation, policy or good practice. |
| *If a review process is not in place, what plans do you have to establish one?* |
| N/A |