

# **MATERNITY, PATERNITY AND ADOPTION LEAVE POLICY (No. 11)**

**If you require a copy of this policy in an alternative format (for example large print, easy read) or would like any assistance in relation to the content of this policy, please contact the Equality and Diversity team on 01803 656680.**

**Document Information**

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Flexible Working Policy (No 4)			
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Shared Parental Leave Policy (H16)			
Risk Assessment for New and Expectant Mothers			

**Amendment History**

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## 1. Policy Statement

- 1.1 The aim of this policy is to give guidance on the maternity, paternity and adoption leave and pay entitlements within South Devon Healthcare NHS Foundation Trust (SDHCT) (hereafter referred to as the Trust).

## 2. Scope

- 2.1 This policy applies to all employees of the Trust on Agenda for Change & Medical and Dental terms and conditions. Staff who transferred from Torbay & Southern Devon Health & Care NHS Trust will be covered by the Torbay & Southern Devon's Maternity, Paternity And Adoption Leave Policy HR 11.

## 3. Equality Impact Assessment

- 3.1 The Trust is committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): sexual orientation, gender, age, gender re-assignment, pregnancy and maternity, disability, religion or belief, race, marriage and civil partnership. In addition to these nine, the Trust will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.
- 3.2 The Trust is committed to ensuring all services, policies, projects and strategies undergo equality analysis.

## 4. General policy provisions for maternity and adoption leave

### 4.1 Contractual Rights

- 4.1.1 During maternity leave (both paid and unpaid) an employee retains all of their normal contractual rights except the right to remuneration.

### 4.2 Continuous Service

- 4.2.1 For the purposes of calculating whether the employee meets the 12 months continuous service with one or more NHS employers' qualification the following provisions shall apply:

- NHS employers include health authorities, NHS Boards, NHS Trusts, Primary Care Trusts and the Northern Ireland Health Service;
- A break in service of three months or less will be disregarded (though not count as service).

- 4.2.2 The following breaks in service will also be disregarded (though not count as service):

- Employment under the terms of an honorary contract;
- Employment as a locum with a general practitioner for a period not exceeding 12 months;
- A period of up to 12 months spent abroad as part of a definite programme of postgraduate training on the advice of the Postgraduate Dean or College or Faculty Advisor in the speciality concerned;

- A period of voluntary service overseas with a recognised international relief organisation for a period of 12 months;
- Absence on an employment break scheme;
- Absence on maternity or adoption leave (paid or unpaid) as provided under this agreement;
- Employers have the discretion to extend the 12 month periods referred to above.

4.2.3 Employment as a trainee with a General Medical Practitioner in accordance with the provisions of the Trainee Practitioner Scheme shall count as service.

#### 4.3 **Increments**

4.3.1 Absence on maternity or adoption leave whether ordinary or additional shall count as time towards the normal annual increment on the employee's banding scale, and will not defer the normal incremental date.

4.3.2 In the event of a pay award or annual increment being implemented before the paid maternity/adoption leave period begins, maternity/adoption pay will be calculated as though the pay award or annual increment had effect throughout the entire Statutory Maternity Pay/Statutory Adoption Pay calculation period. If such a pay award is agreed retrospectively, maternity/adoption pay will be re-calculated on the same basis.

4.3.3 In the event of a pay award or annual increment being implemented during the paid maternity/adoption leave period, maternity/adoption pay due from the date of the pay award or annual increment will be increased accordingly. If such a pay award is agreed retrospectively, maternity/adoption pay will be re-calculated on the same basis.

#### 4.4 **Annual Leave**

4.4.1 Annual leave and bank holidays are accrued at the normal rate during maternity/adoption leave.

4.4.2 Where the amount of accrued annual leave would exceed normal carry over provisions, it may be mutually beneficial to both the employee and employer for the employee to take annual leave before and/or after the formal (paid and unpaid) maternity leave period. The amount of annual leave to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Refer to the Annual Leave Policy for further information.

4.4.3 Employees who arrange to change their contractual working hours on return to work from maternity leave will have their annual leave entitlement calculated on a pro-rata basis proportional to the date on which they return to work.

#### 4.5 **Pensions**

4.5.1 Pension rights and contributions shall be dealt with in accordance with the provisions of the NHS Superannuation Regulations.

4.5.2 During the paid maternity, paternity or adoption leave period pension contributions will be based on the pay that the employee actually receives.

- 4.5.3 During unpaid maternity, paternity or adoption leave, pension contributions will be based on the employee's rate of pay immediately before any unpaid maternity/adoption leave begins. A pension debt will be accumulated whilst the employee is on unpaid leave which will be automatically recovered from the employee's salary when they return to work. This will be deducted throughout a time scale equal to that of the period of unpaid leave. The employee will receive a letter from the Payroll and Pensions Department on returning to work reminding them of the above and confirming the amount of monies owed.
- 4.5.4 Whilst an employee is on paid and/or unpaid maternity, paternity or adoption leave and paying pension contributions as stated above, the employee's pension record is not affected and pension service is credited as if the employee is working their normal contract.
- 4.5.4 Any enquiries regarding pensions should be directed to the Pensions Manager on (01803) 653303.

#### 4.6 **Keeping-In-Touch Days (KIT)**

- 4.6.1 In addition to the voluntary arrangements of maintaining contact during your absence you will be able to attend work on days, as agreed with your line manager. These are known as keeping in touch (KIT) days. This will enable you to work, undertake training or activities to keep in touch with the workplace for up to 10 days during the maternity leave period (paid and unpaid) without bringing that period to an end. You will be paid at your normal rate of pay for the hours worked less appropriate maternity/paternity/adoption leave payment. Working for part of any day will count as one KIT day. Any such work must be by agreement by either party and will not extend the leave period. To organise the KIT days your line manager will be maintaining reasonable contact with you during your absence from work. For each KIT day arranged, you and your manager must complete the "Keep in Touch (KIT) day claim form" (appendix A).
- 4.6.2 The Trust has no right to require the employee to carry out any work, and the employee has no right to undertake any work, during his/her additional maternity/additional paternity/adoption leave. Any work undertaken, including the amount of salary paid for any work done on keeping-in-touch days, is entirely a matter for agreement between the Trust and the employee.
- 4.6.3 Once the keeping-in-touch days have been used up, the employee will lose any further entitlement to statutory maternity/paternity/adoption pay for any week in which he/she agrees to work for the Trust. It may also bring the additional paternity leave period to an end.

#### 4.7 **Returning on flexible working arrangements**

- 4.7.1 The right to request flexible working arrangements is available to all employees with at least 26 weeks continuous service on the date of their application.
- 4.7.2 Where possible, any request from the returning employee for consideration to changes to contracted hours should be discussed with the line manager prior to their return to work in accordance with the Flexible Working Policy (HR29).
- 4.7.3 The Trust fully support flexible working and recognise the value of retaining staff. However, whilst every endeavour will be made to accommodate flexible working

requests, the decision as to what can be offered to the returning employee must be in line with the needs of the service.

- 4.7.4 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.

#### 4.8 **Fixed Term Contracts**

##### 4.8.1 Maternity Leave

Employees subject to fixed-term or training contracts which expire after the eleventh week before the expected week of childbirth, and who have at least 12 months continuous NHS service prior to the eleventh week before their expected week of childbirth, shall have their contracts extended so as to allow them to receive the 26 weeks paid contractual maternity leave.

##### 4.8.2 Adoption Leave

Employees subject to fixed-term or training contracts which expire after the notification of being matched for adoption, and who have at least 12 months continuous NHS service prior to being notified of being matched for adoption, shall have their contracts extended so as to allow them to receive the 26 weeks paid contractual adoption leave.

- 4.8.3 Employees who are absent from work for 52 weeks prior to their return to work in their next appointment, will maintain continuous service.

- 4.8.4 If there is no right of return to be exercised because the contract would have ended if pregnancy/adoption/paternity leave had not occurred, the repayment provisions set out in this policy will not apply.

- 4.8.5 Employees on fixed-term contracts who do not meet the conditions set out in this policy may still be entitled to Statutory Maternity Pay or Statutory Adoption Pay.

#### 4.9 **Rotational training contracts**

- 4.9.1 Where an employee is on a planned rotation of appointments with one or more NHS employer as part of an agreed programme of training, she shall have the right to return to work in the same post or in the next planned post irrespective of whether the contract would otherwise have ended if pregnancy and childbirth/adoption had not occurred. In such circumstances the employee's contract will be extended to enable them to complete the agreed programme of training.

- 4.9.2 If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth/adoption had not occurred, the repayment provisions set out in this policy will not apply.

### 5. **Further information**

- 5.1 There are some issues that may arise during pregnancy, maternity, adoption and paternity leave which may not be covered by this policy. If you would like further information and advice on these matters, or if you wish to clarify and discuss any other issues covered in the policy in greater detail, please contact the HR department.



- 5.2 The Trust provides access to a Childcare Co-ordinator. The Childcare Co-ordinator provides information on childcare and provisions available locally.
- 5.3 The Childcare Co-ordinator can be contacted on (01803) 654150.
- 5.4 Further information is available in the “Q & A for new and expectant mums” (appendix D) and the “Flowchart for new and expectant mums” (appendix E).
- 5.5 Further Information about pregnancy and maternity rights in the workplace can also be obtained on the government website:

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

<https://gov.uk/paternity-pay-leave>

<https://www.gov.uk/adoption-plan-leave>

## **6. Training and awareness**

- 6.1 Advice and support will be provided by the HR team to support staff and managers in adhering to this policy and their understanding of dealing with maternity, paternity and adoption matters.
- 6.2 The HR team will raise awareness of this policy through the publication of information on iCare and to advise staff of changes to the policy through the staff bulletin and ratification processes.

## **7. References**

- 7.1 NHS Terms and Conditions Handbook
- 7.2 Pension Scheme Regulations
- 7.3 <https://www.gov.uk>

## **8. Monitoring, audit and review procedures**

- 8.1 This policy will be monitored and audited on a regular basis. A full review will take place every two years by the Directorate of Workforce and Organisational Development unless legislative changes determine otherwise.

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# **SECTION ONE**

## **MATERNITY LEAVE**

## SECTION ONE – MATERNITY LEAVE

### 9 Introduction

- 9.1 This information has been produced to give you guidance on the maternity leave and maternity pay entitlements within the Trust.
- 9.2 Maternity leave and maternity pay entitlements are governed by NHS regulations as well as statutory legislation. Therefore the information contained in this policy is specific to NHS employees. Please contact the HR department if you require further information.

### 10 Ante-natal care

- 10.1 All pregnant employees are entitled to time off in order to attend ante-natal appointments. If these appointments fall during working hours, time off shall be paid at the normal rate.
- 10.2 Employees are expected, where possible to attend work prior to, or return to work following, ante-natal appointments.
- 10.3 Employees should notify their line manager of the time of their ante-natal appointment. Additional time off needed in respect of ante-natal care, e.g. aqua-natal or parent-craft classes) must be arranged with the employee's line manager, or another appropriate manager.

### 11 Meeting with your line manager

- 11.1 You are required to attend a meeting with your line manager prior to week 25 of your pregnancy. At this meeting you will be asked to advise the date on which you intend to commence your maternity leave. You will also complete the Maternity Leave/Pay Application Form (appendix B). You are required to submit your MATB1 certificate, provided by your midwife or GP as soon as it is available, to your manager, who will forward it with the completed Maternity Leave/Pay Application Form (appendix B) to the HR department, at Hengrave House, Torbay Hospital. On receipt of this paperwork HR will check your maternity entitlements and a confirmation letter will be sent to you, copied to your line manager and the payroll department.

### 12 Confirming maternity entitlements

- 12.1 Following your meeting with your manager, you will receive written confirmation of:
- Your entitlement to paid and/or unpaid maternity leave (or statutory entitlements if you do not qualify under this agreement);
  - Your expected return date based on your entitlement under this agreement;
  - The length of any period of accrued annual leave, which in negotiation with your manager, may be taken prior to or at the end of your maternity leave;
  - Your requirement to provide eight weeks' notice of the date on which you intend to return to work, if this is before the expected return date.
- 12.2 You may commence maternity leave at any time between the eleventh week before the expected week of childbirth and the expected week of childbirth, provided you give the required 28 days' notice.

- 12.3 Should you subsequently wish to change the date on which you commence maternity leave, you should provide written notification to your manager at least 28 days prior to the date on which you intend to commence maternity leave (or, if this is not possible, as soon as is reasonably practicable beforehand).
- 12.4 As well as a copy of this information remaining on your personal file, copies will also be forwarded to the payroll department and retained in the HR department.
- 12.5 Prior to commencing maternity leave, you are advised to discuss and agree with your manager any voluntary arrangements for maintaining contact during your absence. This will include awareness of developments within the role and work place and measures to help facilitate your return to work. You will also be expected to advise your manager of any circumstances that may affect your intended date of return.

### **13 Eligibility to maternity pay and leave**

#### **13.1 Calculation of maternity pay**

- 13.1.1 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Maternity Pay (SMP) entitlements, subject to the qualifications in the NHS terms and conditions handbook, Section 15.23 'Calculation of maternity pay'.
- 13.1.2 Your entitlement to receive any payment, including SMP is dependent upon your National Insurance (NI) contributions. If applicable, SMP will be paid concurrently for 39 weeks leave and/or pay that you receive from the Trusts for 26 weeks.
- 13.1.3 Employees who do not pay NI contributions, and do not therefore qualify for SMP may be eligible to claim Maternity Allowance from the Department of Work and Pensions.
- 13.1.4 Pay is usually paid in line with either statutory to contractual entitlements, e.g. for full allowance - eight weeks at full pay, 18 weeks at half pay + SMP, followed by 12 weeks of SMP. To choose to receive equal payments spread across the period of your maternity leave tick the appropriate box when completing the "*Maternity or Adoption Leave/Pay Application Form*" (*Appendix B*).

#### **13.2 Compulsory maternity leave**

- 13.2.1 Employees are not permitted to work, including working from home, for the two week period immediately following the birth of their baby.

#### **13.3 Maternity leave**

- 13.3.1 The amount of maternity leave and pay you are entitled to depends on your length of NHS service prior to becoming pregnant and your intentions following maternity leave. You are not obliged to confirm at this stage your intentions regarding returning to work following maternity leave, although you will be asked to sign a Maternity Leave/Pay Application (appendix B) to indicate your intentions. Without this indication there is no way of providing guidance on your entitlement to allow you to plan your time or finances during and following your maternity leave.
- 13.3.2 You will be asked your intentions regarding returning to work, not returning to work following maternity leave or where you may be undecided at this stage of your

pregnancy, what your intentions are. This, combined with your length of continuous service with the NHS will determine the amount of maternity leave and pay you are entitled to. Appendix C provides a quick glance explanation of this entitlement. However, please note that payment can vary depending on individual circumstances.

## 14 Entitlements for employees returning to work

### 14.1 12 months continuous NHS service (NHS Contractual Maternity Leave Scheme)

An employee who indicates that they intend to return to work for a minimum of three months following maternity leave, and who has at least 12 months continuous NHS service prior to the eleventh week before their expected week of childbirth will be advised of the following entitlement:

39 weeks paid leave, during which the employee will receive maternity pay as follows:

- Full pay for the first eight weeks, less any SMP or Maternity Allowance (including any dependents' allowances) receivable;
- Half pay plus SMP or Maternity Allowance (including any dependents' allowances) receivable, for the remaining 18 weeks providing the total receivable does not exceed full pay;
- SMP or Maternity Allowance that they are entitled to under the statutory scheme for the remaining 13 weeks.

Followed by 13 weeks unpaid leave

Employees to whom this entitlement applies are required to return for a minimum period of three months. This can be to different hours of work, a different post or a different NHS employer.

### 14.2 At least 26 weeks' continuous NHS service (Statutory Maternity Scheme)

An employee who indicates that they intend to return to work for a minimum of three months following maternity leave, and who has at least 26 weeks continuous NHS service prior to the fifteenth week before their expected week of childbirth will be advised of the following entitlement:

39 weeks paid leave, during which the employee will receive:

- 90% of their average weekly earnings for the first six weeks;
- SMP for the remaining 33 weeks;
- Followed by 13 weeks unpaid leave.

If the employee later decides that they do not wish to return to work after their maternity leave and resigns from their employment with the Trust, they do not have to repay the statutory entitlement.

### 14.3 Less than 26 weeks' continuous NHS service

An employee who indicates that they intend to return to work following maternity leave, and who has up to 26 weeks continuous NHS service prior to the fifteenth week before their expected week of childbirth will be advised of the following entitlement:

- 52 weeks unpaid leave;
- Irrespective of their entitlement to SMP and/or Maternity Allowance, the employee will have a statutory entitlement to 52 weeks unpaid leave.

Employees who do not pay NI contributions, and do not therefore qualify for SMP may be eligible to claim Maternity Allowance from the Department of Work and Pensions. They may also qualify for a Sure Start Maternity Grant from the Department of Work and Pensions.

## **15 Entitlements for employees not returning to work**

### **15.1 At least 26 weeks' continuous NHS service**

An employee who indicates that they do not intend to return to work following maternity leave, but who has at least 26 weeks continuous NHS service prior to the fifteenth week before their expected week of childbirth will be advised of the following entitlement:

39 weeks paid leave, during which the employee will receive:

- 90% of their average weekly earnings for the first six weeks;
- SMP for the remaining 33 weeks;
- Followed by 13 weeks unpaid leave.

### **15.2 Less than 26 weeks' continuous NHS service**

An employee who indicates that they do not intend to return to work following maternity leave, but who has up to 26 weeks continuous NHS service prior to the fifteenth week before their expected week of childbirth will be advised of the following entitlement:

- 52 weeks unpaid leave

## **16 Employees undecided whether or not to return to work following maternity leave**

16.1 Employees indicating that they are undecided whether or not to return to work following maternity leave will be paid in the first instance as if they were not returning. Should they then decide to return to work, any further monies owed to them will be paid, less the amount which has already been paid. This will be paid at the end of the leave period. All other conditions applicable to those employees who indicate that they intend to return to work will apply.

16.2 Should the employee decide not to return to work following maternity leave, they are advised to write a resignation letter to their line manager giving the notice required by their contract of employment.

## **17 Health and safety of employees pre and post birth**

17.1 Where an employee is pregnant or has recently given birth or is breastfeeding, the manager may need to take specific measures to safeguard the health of employee and that of their unborn child or children. The measures taken will depend upon the

type of work that is done and the work environment. For further information refer to Risk Assessment for New and Expectant Mothers (HR40).

17.2 If it is found that there is a risk to health and safety to a new or expectant mother, or their child or children if they were to continue with their normal duties the Trust will:

- Temporarily adjust your working conditions and/or hours of work, or if that is not possible;
- You should be offered suitable alternative work (at the same rate of pay) if available, or if that is not possible;
- You should be suspended from work on paid leave for as long as necessary, to protect your health and safety, and that of your baby.

17.3 The line manager is able to refer any expectant employee to the Occupational Health Department if they have any concerns with regard to the workplace, the duties of their job or their health.

## **18 Premature birth**

18.1 Where an employee's baby is born before the eleventh week before the expected week of childbirth and they have 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.

18.2 Where an employee's baby is born before the eleventh 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.

18.3 With the agreement of the line manager, if the employee's baby is born prior to the eleventh week before the expected week of childbirth and if the baby is in hospital, the employee may choose to split their maternity leave entitlement. This would enable them to take an agreed short period of maternity leave immediately after their baby is born and then return to take the balance when the baby is allowed home from hospital.

## **19 Miscarriage**

19.1 Where an employee has a miscarriage before the 25<sup>th</sup> week of pregnancy, normal sick leave provisions will apply as necessary.

## **20 Still birth/baby death**

20.1 In the event of a still birth from the 24<sup>th</sup> week of pregnancy (inclusive of the 24<sup>th</sup> week), or if the baby dies within the maternity leave period, the employee will be entitled to their full maternity leave entitlements.

## **21 Sickness and absence during pregnancy**

21.1 If the employee falls sick prior to the intended start date of their maternity leave, and the sickness is unrelated to the pregnancy, the absence shall be treated as sick leave in the usual way until the agreed start date of the maternity leave.

21.2 If during weeks 29 to 35 of the pregnancy medical opinion expresses that the employee or their unborn child or children would be at risk or that they would be



incapable of carrying out all or part of their duties, but are not advised to refrain from work, the provisions at section 17.2 will apply.

- 21.3 If the employee is absent from work for a pregnancy related illness during the four weeks before the expected week of childbirth, regardless of when they have said that they wanted maternity leave to commence, maternity leave will start automatically on the first day after the first day of sickness absence.

## **22 Sickiness during maternity leave**

- 22.1 The employee will not be entitled to sick pay during the period of maternity leave.

## **23 Sickiness following maternity leave**

- 23.1 Sickness absence from the expected date of return to work will be treated as sick leave and appropriate medical certificates will be required.

## **24 Returning to work**

- 24.1 An employee returning from Ordinary Maternity Leave (OML) has the right to return to their job under the same terms and conditions. OML is the first 26 weeks of leave.

- 24.2 An employee returning from Additional Maternity Leave (AML) has the right to return to their job on the same terms and conditions unless not reasonably practicable, in which case there is a right for them to return to a suitable and appropriate alternative job on the same terms and conditions. AML is the 26 weeks following OML.

- 24.3 An employee who intends to return to work at the end of their full maternity leave will not be required to give any further notification, although if they wish to return early from AML they must give at least eight weeks' notice.

- 24.4 Employees who indicate that they intend to return to work following maternity leave are required to return for a minimum period of three months.

- 24.5 The Trusts have the right to recover monies owed by employees who subsequently fail to return to work for the NHS for a minimum of three months after the expiry of this leave. In accordance with the conditions of service if you should fail to return to work, you will be liable to refund the Trust the maternity/adoption pay received, with the exception of any amount due under statutory regulations.

## **25 Post-natal care and breastfeeding mothers**

- 25.1 Women who have recently given birth may have paid time off for post-natal care, e.g. attendance at health clinics.

## **SECTION TWO**

### **PATERNITY LEAVE**

## SECTION TWO –PATERNITY LEAVE

### 26 Introduction

- 26.1 This information has been provided to give guidance on the paternity pay and leave entitlements within the Trust. This is part of a portfolio of rights and benefits designed to give support to the husband, civil partner or partner and covers the leave and pay rights for the male or female partner of a pregnant woman or in a family adopting a child.
- 26.2 Paternity leave and pay entitlements are governed by NHS regulations, as well as statutory legislation. The information contained in this policy is specific to NHS employees.

### 27 Attendance at ante-natal appointments or meetings for an adoption

- 27.1 The Trust allows employees who are eligible for paternity leave, reasonable time off in order to attend ante-natal appointments with their partner, or in the case of adoption, reasonable time off to attend meetings arranging the adoption of a child. If these appointments fall during working hours, time off shall be paid at the normal rate.
- 27.2 Employees are expected, where possible to attend work prior to, or return to work following, such appointments.
- 27.3 Employees should notify their line manager of the time of the ante-natal appointment or adoption meeting and any additional time off must be arranged with their line manager's authorisation.

### 28 Eligibility for ordinary paternity pay and leave

- 28.1 In order to qualify for ordinary paternity pay and leave, the employee must have or expect to have responsibility for the child's upbringing and is either the biological father or adopter of the child, or the husband, civil partner or partner of the child's mother or adopter. The employee must provide a copy of the MATB1 or matching certificate in the case of adoption. Ordinary paternity leave is an entitlement to two weeks' leave to be taken as either one week or two consecutive weeks leave.

#### 28.2 12 months continuous NHS service (Trust scheme)

An employee who has 12 months continuous NHS service at the beginning of the week in which the baby is due or at the beginning of the week in which they are notified of having been matched with a child for adoption, shall be entitled to two weeks paternity leave during which they will receive full pay.

#### 28.3 At least 26 weeks' continuous NHS service (Statutory scheme)

An employee who has at least 26 weeks continuous NHS service prior to the fifteenth week before their partner's expected week of childbirth or prior to the week in which they are notified of having been matched with a child for adoption, shall be entitled to two weeks paternity leave during which they will receive Statutory Paternity Pay or 90% of their normal salary, whichever is the lesser.

#### 28.4 Less than 26 weeks' continuous NHS service

An employee who has less than 26 weeks continuous NHS service prior to the fifteenth week before their partner's expected week of childbirth or prior to the week in which they are notified of having been matched with a child for adoption, shall be entitled to two weeks unpaid paternity leave.

- 28.5 Paternity leave may be taken as a two week block, or in two blocks of one week.
- 28.6 All leave must be taken within 56 days of the child's birth or placement for adoption. If the child is born early, all leave must be taken within the period from the actual date of birth up to 56 days after the first day of the expected week of birth.
- 28.7 Paternity leave may be taken from the date on which the child is born or placed for adoption, or on a predetermined date following this.
- 28.8 The employee's entitlement to receive Statutory Paternity Pay (SPP) is dependent upon their National Insurance contributions, and if applicable, will be paid concurrently with the two weeks leave and/or pay that they receive from the organisation.
- 28.9 Employees who do not qualify for SPP may be eligible for other statutory benefits whilst on paternity leave.

## **29 Notification**

- 29.1 Employees should notify their manager in writing of their intention to take paternity leave and pay by the end of the 15<sup>th</sup> week before the baby is expected to be born or within seven days of the notification of adoption.
- 29.2 Using the Paternity Leave Request Form – PAT1 (appendix F), employees are required to provide the following information at least 28 days prior to commencing paternity leave:
- The child's expected date of birth or date of placement;
  - Adoptive parents taking paternity leave should provide a matching certificate issued by the adoption agency;
  - Details of when and how you intend to take paternity leave;
  - When you plan your paternity leave to begin.
- 29.3 Your manager will forward a copy of the PAT1 form to the HR department, who will in turn process the information with the payroll department.
- 29.4 You should receive written confirmation of your arrangements for paternity leave from the HR department within 28 days of their receipt of your PAT1 form.
- 29.5 You are required to give at least 28 days' notice should you wish to change the dates of your paternity leave. If you are unable to give this notice, notification should be made as soon as is reasonably practicable.

## **30 Additional Paternity Leave**

- 30.1 Please note that this provision was abolished and has been replaced by Shared Parental Leave. Refer to the Shared Parental Leave Policy (H16) for further information.

**31 Miscellaneous provisions**

- 31.1 An employee who is absent on paternity leave is entitled to the benefit of their normal terms and conditions of employment except for terms relating to wages or salary throughout their paternity leave.
- 31.2 There is no entitlement to occupational sick pay during the period of paternity leave. However they may be entitled to Statutory Sick Pay (SSP).
- 31.3 An employee who is absent on paternity leave is bound by any obligation arising under their normal terms and conditions of employment.
- 31.4 An employee taking ordinary paternity leave is entitled to return to the job in which they were employed before their absence, on the same terms and conditions.
- 31.7 In the case of multiple births or adoptions, entitlement to paternity pay does not increase for each child.
- 31.8 In the event of a still birth from week 24 of the pregnancy, or the death of the baby during the period of paternity leave, the employee will be entitled to full paternity leave entitlements.

## **SECTION THREE**

## **ADOPTION LEAVE**

## SECTION THREE – ADOPTION LEAVE

### 32 Introduction

- 32.1 Adoption leave and pay are available to individuals who have the primary caring responsibilities for the adopted child or to one member of a couple where a couple adopt jointly (the couple must choose which partner takes adoption leave). The partner of an individual who adopts, or the other member of a couple who are adopting jointly, may be entitled to paternity leave and pay or its equivalent.
- 32.2 This policy covers the adoption leave and pay rights where a child is matched and placed for adoption within the UK. The measures may also be available where a child has been adopted overseas, although the detailed operation of the scheme may differ slightly for practical reasons.
- 32.4 This policy applies to placements of children who are aged under 18 and where that child is unknown to, or does not have an established relationship with, the adoptive parents.
- 32.5 Adoption leave and adoption pay entitlements are governed by NHS Regulations as well as statutory legislation. Therefore the information contained in this policy is specific to NHS employees. Please contact the HR Department if you require further information.

### 33 Official meetings

- 33.1 All employees are entitled to time off in order to attend official meetings in the adoption process. If these meetings fall during working hours, time off shall be paid at the normal rate.
- 33.2 In circumstances where there is an established relationship with the child, such as fostering prior to adoption, employees will be entitled to time off for official meetings.
- 33.3 Employees are expected, where possible to attend work prior to, or return to work following, official meetings.
- 33.4 Employees should notify their line manager of the time of their meetings. Additional time off needed in respect of the official process must be arranged with the employee's line manager.

### 34 Meeting with your line manager

- 34.1 You are required to inform your manager of your intention to take adoption leave within seven days of being notified by the Adoption Agency that you have been matched with a child for adoption. You will need to inform your manager of when the child is expected to be placed with you and when you intend your adoption leave and pay to commence. You must complete the Adoption Leave/Pay Application Form (appendix B) which your manager will forward with the adoption matching certificate to the HR department, at Hengrave House, Torbay Hospital. On receipt of this paperwork HR will check your entitlements and a confirmation letter will be sent to you, copied to your line manager and the payroll department.
- 34.2 You may commence adoption leave from the date of the child's placement or from a fixed date which can be up to 14 days before the expected date of placement, provided you give the required 28 days' notice.

- 34.3 Should you subsequently wish to change the date on which you commence adoption leave, you should provide written notification to your line manager at least 28 days in advance, unless it is not reasonably practicable, in which case, notice must be given as soon as possible.

### **35 Confirming adoption entitlements**

- 35.1 Following your meeting you will receive written confirmation of:

- Your entitlement to paid and/or unpaid adoption leave;
- Your expected return to work date, based on your entitlement to paid and/or unpaid leave and the date on which you intend to commence adoption leave;
- Any annual leave you may have, which in negotiation with your manager, may be taken prior to or at the end of your adoption leave;
- Your requirement to provide eight weeks' notice of the date on which you intend to return to work, if this is before the expected return date.

- 35.2 As well as a copy of this information remaining on your personal file copies will also be forwarded to the payroll department and retained in the HR department.

- 35.3 You are required to forward your matching certificate, available from an adoption agency, to your line manager. Adoption pay cannot be processed without this certificate.

- 35.4 Prior to commencing adoption leave, you are advised to discuss and agree with your manager any voluntary arrangements for maintaining contact during your absence. This will include awareness of developments within the role and work place and measures to help facilitate your return to work. You will also be expected to advise your manager of any circumstances that may affect your intended date of return.

### **36 Eligibility to adoption leave and pay**

- 36.1 Adoption leave and pay is available to the adopter of a child aged under 18 or the partner in a couple who is deemed to have the main caring responsibility for a child aged under 18, who is previously unknown to them, who has been matched with them for adoption. The second partner of a couple adopting a child is entitled to paternity leave and pay or its equivalent.

- 36.2 Calculation of Adoption Pay - Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Adoption Pay (SAP) entitlements.

#### 36.3 Adoption Leave

- 36.3.1 The amount of adoption leave and pay is the same as maternity leave and pay and depends on your length of service prior to being matched for adoption and your intentions following adoption leave. Adoption leave is 52 weeks, made up of 26 weeks Ordinary Adoption Leave and 26 weeks of Additional Adoption Leave. You are not obliged to confirm at this stage your intentions regarding returning to work following adoption leave, although you will be asked to sign 'Adoption Leave/Pay Application' (appendix B) to indicate your intentions. However, without this indication there is no way of providing guidance on your entitlement to allow you to plan your time or finances during and following your adoption leave.



36.3.2 You will be asked your intentions regarding returning to work, not returning to work following adoption leave or whether you are undecided at this stage of the adoption process, what your intentions are. This, combined with your length of continuous service with the NHS will determine the amount of adoption leave and pay you are entitled to. Appendix C provides a quick glance explanation of this entitlement. However, please note that payment can vary depending on individual circumstances.

36.3.3 Your entitlement to receive Statutory Adoption Pay (SAP) is dependent upon your National Insurance contributions, and if applicable, will be paid concurrently with the 39 weeks leave and/or pay that you receive from the Trust for 26 weeks.

### **37 Entitlements for employees returning to work**

#### **37.1 12 months continuous NHS service (Trust scheme)**

An employee who indicates that they intend to return to work following adoption leave, and who has at least 12 months continuous NHS service prior to being notified of being matched for adoption will be advised of the following entitlement:

39 weeks paid leave, during which the employee will receive:

- Full pay for the first eight weeks;
- Half pay plus SAP for the next 18 weeks (providing this does not exceed normal full pay);
- SAP for the remaining 13 weeks.

Followed by 13 weeks unpaid leave.

Employees to whom this entitlement applies are required to return for a minimum period of three months. This can be to different hours of work, a different post or a different NHS employer.

#### **37.2 At least 26 weeks continuous NHS service (Statutory scheme)**

An employee who indicates that they intend to return to work following adoption leave, and who has at least 26 weeks continuous NHS service prior to being notified of being matched for adoption will be advised of the following entitlement:

- 39 weeks paid leave, during which the employee will receive:
  - 90% of their normal full pay for the first six weeks;
  - SAP for the remaining 33 weeks.

Followed by 13 weeks unpaid leave.

#### **37.3 Less than 26 weeks' continuous NHS service**

An employee who indicates that they intend to return to work following adoption leave, and who has up to 26 weeks continuous NHS service prior to being notified of being matched for adoption will be advised of the following entitlement:

- 52 weeks unpaid leave

Irrespective of their entitlement to Statutory Adoption Pay, the employee will have a statutory entitlement to 52 weeks unpaid leave.

Employees who do not pay National Insurance contributions, and do not therefore qualify for SAP may be able to claim an Allowance from the Department of Work and Pensions.

### **38 Entitlements for employees not returning to work**

38.1 An employee who indicates that they do not intend returning to work following adoption leave, but who has at least 26 weeks continuous NHS service prior to being notified of being matched for adoption will be advised of the following entitlement:

- 39 weeks paid leave, during which the employee will receive:
  - 90% of their normal full pay for the first six weeks;
  - SAP for the remaining 33 weeks.

Followed by 13 weeks unpaid leave

38.2 An employee who indicates that they do not intend returning to work following adoption leave, but who has less than 26 weeks continuous NHS service prior to being notified of being matched for adoption will be advised of the following entitlement:

- 52 weeks unpaid leave

### **39 Undecided whether or not to return to work following adoption leave**

39.1 Employees indicating that they are undecided whether or not to return to work following adoption leave will be paid in the first instance as if they were not returning. Should you then decide to return to work, any further monies owed to you will be paid, less the amount that has already been paid. This will be paid at the end of the leave period. All other conditions applicable to those employees who indicate that they intend to return to work will apply.

39.2 Should you decide not to return to work following maternity leave, you should write a letter of resignation to your line manager, giving requisite notice.

### **40 Disrupted placement during adoption leave**

40.1 In the event of an adoption being disrupted, time is provided to allow an employee time to come to terms with the ending of the placement or the child's death, before returning to work. It also gives time for the employee to give the requisite eight weeks' notice of their return to work.

#### **40.2 Events that constitute the adoption placement being disrupted**

40.2.1 Situations in which a child's placement is ended during the adoption leave include:

- Where an employee has begun a period of adoption leave before the placement of the child and the adoption agency notifies the employee that the child will not be placed with him or her;
- Where the child is returned to the adoption agency during adoption leave;
- Where the child dies during adoption leave.

40.2.2 In these situations, the employee's adoption leave period will end eight weeks after the end of:

- The week during which the employee is notified that the placement will not take place;
- The week during which the child's placement ends;
- The week during which the child dies.

40.2.3 Special provision is made for the situation in which the child's placement ends for any of the events above. The employee's adoption leave period would have ended within eight weeks of the week in which the event occurred.

40.2.4 In this situation, the employee's adoption leave continues until the normal expiry date. The adoption leave will continue until eight weeks after the week in which the event occurred. If the event occurs within eight weeks of the end of the employee's adoption leave, the employee's leave continues until the planned expiry date.

#### **41 Sickiness and absence during the adoption process and adoption leave**

41.1 Sickness prior to adoption leave - If the employee is sick prior to the date they intend to commence adoption leave, and that period of sickness continues past the intended start date, adoption leave will commence as planned.

41.2 Sickness during adoption leave - The employee will not be entitled to sick pay during the period of adoption leave.

41.3 Sickness following adoption leave - Sickness absence from the expected date of return to work will be treated as sick leave and appropriate medical certificates will be required.

#### **42 Returning to work**

42.1 An employee returning from Ordinary Adoption Leave has the right to return to their job under the same terms and conditions.

42.2 An employee returning from Additional Adoption Leave has the right to return to their job on the same terms and conditions unless not reasonably practicable, in which case there is a right to return to a suitable and appropriate alternative job on the same terms and conditions.

42.3 An employee who intends to return to work at the end of their full adoption leave will not be required to give any further notification, although if they wish to return early from Additional Adoption Leave they must give at least eight weeks' notice.

42.4 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.

42.5 The Trust has the right to recover monies owed by employees who subsequently fail to return to work for the NHS for a minimum of three months after the expiry of this leave. In accordance with the conditions of service if you should fail to return to work,

you will be liable to refund the Trust maternity/adoption pay received with the exception of any amount due under statutory regulations.

**43 Appendix A – Keep in Touch (KIT) days Claim Form**

Keep in Touch (KIT) days are intended to help you keep in touch with your workplace and could also help ease your eventual return to work. KIT day may include the following activities: training events and/or conferences, departmental meetings and away-days, appraisals, Agenda for Change matching panels.

All KIT days must be jointly agreed in advance by the manager and employee and a record of the actual time recorded below. Employees will not be entitled to claim for mileage or travel time associated with attending work on KIT days. Childcare costs arising from KIT days are to be paid for by the employee. KIT days do not extend the statutory or ordinary pay periods in any way.

Before you can participate in KIT days, it may be necessary to undertake a risk assessment to ensure there are no risks to women who have recently given birth and/or those who are breastfeeding.

KIT Day (date)	Activity	Total Hours
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
TOTAL		

Manager: ..... Date: .....  
 (Signed)

Employee: ..... Date: .....  
 (Signed)

**Line manager to send completed form to Payroll for payment and retain a copy of the form on the employee’s personnel file.**

**44 Appendix B – Maternity or Adoption Leave/Pay Application Form**

**1) Personal details**

<b>Name:</b>		<b>Job Title:</b>	
<b>Address:</b>			
<b>Department and Base:</b>		<b>Line Manager:</b>	
<b>Contract Type:</b>	Permanent <input type="checkbox"/>	<b>Line Manager Address:</b>	
	Temporary <input type="checkbox"/>		
<b>Employment Start Date:</b>		<b>Band:</b>	

**Mat B1 Certificate checked and retained.**

**Due date:** \_\_\_\_\_

**2) Entitlement**

Tick	Length of service:	Entitled to:	Comprising of:
	<b>Up to 26 weeks continuous NHS service at 15<sup>th</sup> week prior to EWC</b>	No Trust payment may be entitled to Maternity Allowance	<b>52 weeks unpaid leave</b>
	<b>Over 26 weeks continuous NHS service at 15<sup>th</sup> week prior to EWC</b>	Statutory payments	<b>39 weeks paid leave:</b> 6 weeks @ 90% of full pay; 33 weeks SMP; plus Up to 13 weeks unpaid leave
	<b>More than 12 months continuous service at 11<sup>th</sup> week prior to EWC</b>	Full Trust allowance	<b>39 weeks paid leave:</b> 8 weeks full pay; 18 weeks half pay + SMP; 13 weeks SMP; plus <b>Up to 13 weeks unpaid leave</b>

**3) Maternity Options**

**A:**  **Returning to Work after Childbirth**

I agree to return to work for this, or another NHS Trust for a minimum period of three months following the expiry of this period of maternity leave.

I understand that if I do not return to work for the Trust or provide a letter of appointment from another NHS Trust within 15 months of commencement of Maternity Leave, I will be liable to refund payments over and above the statutory minimum as set out in option B.

**B:**  **Not Returning to Work after Childbirth**

I hereby apply for payment under the Agenda for Change conditions incorporating Statutory Maternity Pay provisions. I understand that the six weeks' pay (if due) plus twenty weeks unpaid maternity leave will be regarded as service. In addition, I hereby apply for any Statutory Maternity Pay to which I am entitled.

**C:**  **Undecided Whether to Return to Work after Childbirth**

I hereby apply for any entitlement to pay under option B. Should I return to duty under the conditions shown in option A any balance of pay will then be due.

**4) Confirmation of maternity leave dates**

Date the employee intends to start maternity leave (Sunday)	
Date following 39 weeks leave (paid leave period)	
Date due to return to work (based on 52 weeks maternity leave)	
Earliest date to commence maternity leave (11 weeks prior to EWC)	

**Employee requested equalised payments**

**5) When you sign this form you are confirming that you have been informed of the following matters:**

- ✓ I understand that any Trust or SMP payment commences no earlier than the 11<sup>th</sup> week before the EWC (unless childbirth occurs before then) and that SMP cannot be paid for any week (commencing Sunday) in which any work is done.
- ✓ I am aware that I must inform my employer if I start any other work after the 15<sup>th</sup> week prior to the expected week of confinement and before the entitlement to Statutory Maternity Pay is exhausted.
- ✓ I will inform my Line Manager/Human Resources of the date my baby is born.
- ✓ I understand that if I have pregnancy related absence past week 36 in my pregnancy, I will automatically begin maternity leave.
- ✓ I understand that to return to work sooner than the dates set out in my paperwork I will need to give eight weeks written notice to my line manager.
- ✓ I am aware that there are a maximum of ten "Keeping in Touch" days available for me to use. I have been informed these are to be booked in agreement with my line manager.
- ✓ I am aware that any pension related queries need to be directed to the Trust Pensions department on 653303.

**Employee:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
(Signed)

**Manager:** \_\_\_\_\_ **DATE:** \_\_\_\_\_  
(Signed)

**Send a copy of this completed form to: HR Department, Hengrave House, Torbay Hospital, Lowes Bridge, Torquay, TQ2 7AA**

**45 Appendix C – Maternity and Adoption Entitlements**

<b>Continuous NHS Service, Intention following maternity/adoption leave</b>	<b>More than 12 months continuous NHS service either at 11<sup>th</sup> week prior to EWC or at time of adoption notification</b>	<b>Less than 12 months but over 26 weeks continuous NHS service either at 15<sup>th</sup> week prior to EWC or at time of adoption notification</b>	<b>26 weeks or less continuous NHS service either at 15<sup>th</sup> week prior to EWC or at time of adoption notification</b>
<b>Intending to return to work following maternity/adoption leave</b>	39 weeks paid leave comprising: 8 weeks @ full pay 18 weeks @ half pay plus SMP/SAP 13 weeks of SMP/SAP Plus up to 13 weeks unpaid leave	39 weeks paid leave comprising: 6 weeks @ 90% of full pay 33 weeks @ SMP/SAP Plus up to 13 weeks unpaid leave	52 weeks unpaid leave
<b>Not intending to return to work following maternity/adoption leave</b>	39 weeks paid leave comprising: 6 weeks at 90% of full pay 33 weeks @ SMP/SAP Plus up to 13 weeks unpaid leave	39 weeks paid leave comprising: 6 weeks @ 90% of full pay 33 weeks @ SMP/SAP Plus up to 13 weeks unpaid leave	52 weeks unpaid leave
<b>Undecided whether or not to return to work following maternity/adoption leave</b>	Employee's indicating that they are undecided whether or not to return to work following maternity/adoption leave will be paid in the first instance as if they were not returning. Should they then decide to return to work, any further monies owed will be paid, less the amount which has already been paid.		

**The payment of Statutory Maternity/Adoption Pay (SMP/SAP) is dependent on the employee's National Insurance Contributions.**



**46 Appendix D - Q & A for new and expectant mums****Q What maternity pay am I entitled to?**

A

Length of service:	Entitled to:	Comprising of:
<b>Up to 26 weeks continuous NHS service at 15<sup>th</sup> week prior to EWC</b>	No Trust payment, may be entitled to Maternity Allowance	52 weeks unpaid leave
<b>Over 26 weeks continuous NHS service at 15<sup>th</sup> week prior to EWC</b>	Statutory payments	39 weeks paid leave: 6 weeks @ 90% of full pay 33 weeks SMP plus up to 13 weeks unpaid leave
<b>More than 12 months continuous service at 11<sup>th</sup> week prior to EWC</b>	Full Trust allowance	39 weeks paid leave: 8 weeks full pay 18 weeks half pay + SMP 13 weeks just SMP plus up to 13 weeks unpaid leave

**Q Can I have my occupational maternity pay divided equally throughout my maternity leave?**

A Yes, the pay can be equalised over the paid leave period (39 weeks). The amount paid by the Trust (8 weeks full pay and 18 weeks half pay) is divided amongst the nine month period; you will then receive SMP on top of that pay from month three to month nine.

**Q Do I still accrue annual leave and bank holidays whilst on maternity leave?**

A Yes, you accrue annual leave and bank holidays as normal.

**Q What if I decide I didn't want to return to work after my maternity leave?**

A You would owe the Trust the difference between the occupational maternity pay that you received and statutory maternity pay (outlined above). Providing you return to the NHS for at least a three month period you won't owe anything.

**Q Can I apply for another job whilst on maternity leave?**

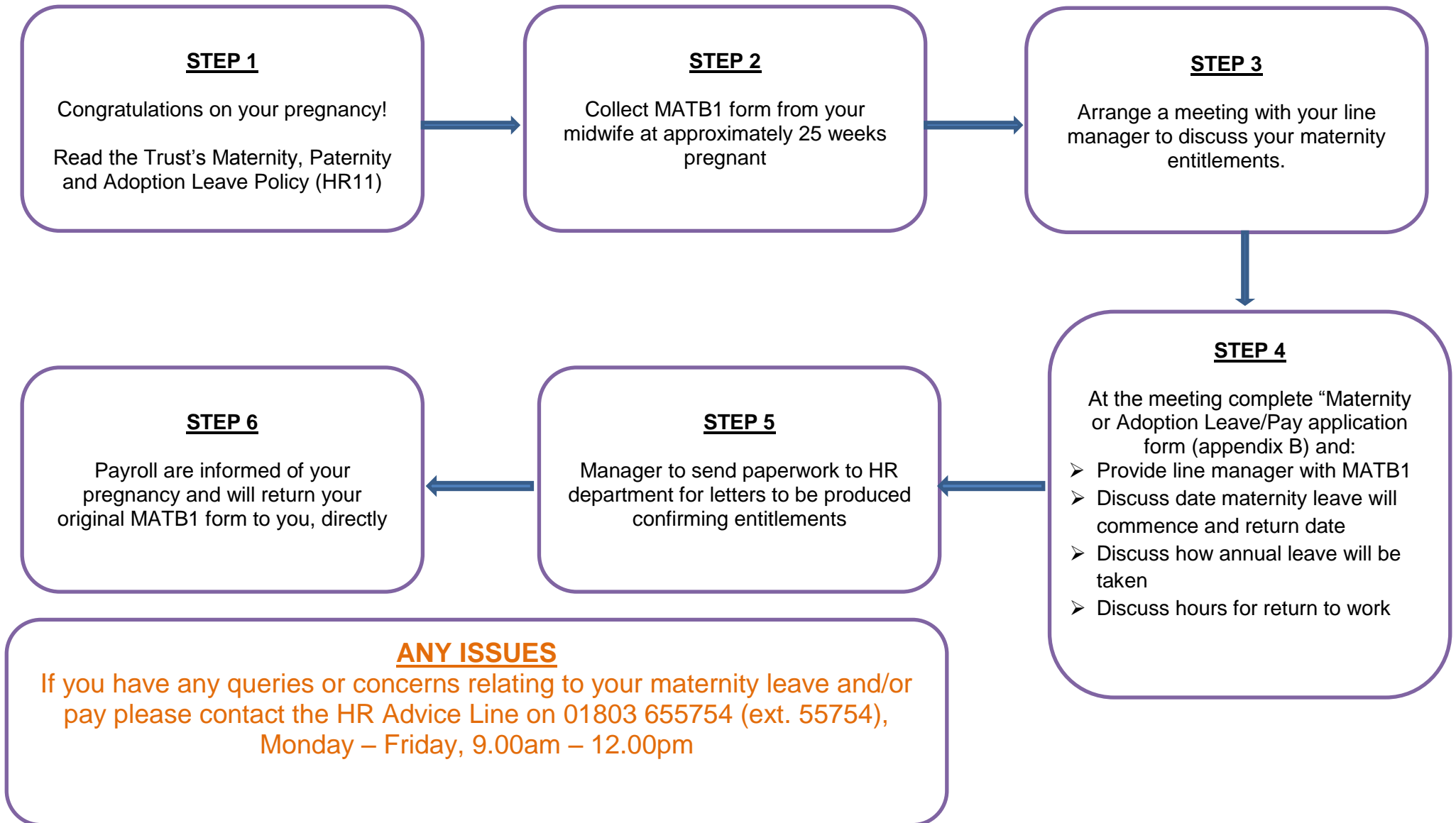
A Yes, however if the job is outside of the NHS then you would owe the difference between the occupational maternity pay that you received and statutory maternity pay. As long as the new job is within the NHS you wouldn't owe anything.

**Q When can I start my maternity leave?**

A You can start your maternity leave anywhere from 11 weeks before your expected week of childbirth (EWC).

- Q Does my maternity leave have to start on any particular day?**  
A Yes, maternity leave must start on a Sunday and the latest you can start your maternity leave is the last Sunday before your EWC.
- Q What period of time will my maternity pay be based on?**  
A You pay will be based on 15 weeks before your EWC, the eight week period before that.
- Q I am due an annual increment whilst on maternity leave, will I still receive that?**  
A Yes, you would be eligible in line with the Incremental Progression criteria.
- Q Being pregnant is making me feel poorly and I have been off sick, does that count towards my sickness and Bradford Score?**  
A Yes, sickness absence is not based on the reason for illness but the fact that you haven't attended work, however the Bradford Score works on a 12 month rolling period so it is likely that absence will have dropped off by the time you return from maternity leave. If you have any pregnancy related absence past your 36<sup>th</sup> week of pregnancy your maternity leave would automatically start.
- Q Do I lose annual leave from this financial year if I don't have time to take it before I start my maternity leave?**  
A No, annual leave can be carried forward to your return to work and the Trust would recommend that you take some of your annual leave when you return to work by returning on annual leave.
- Q I want to reduce my hours when I return from maternity leave, how do I do that?**  
A You need to complete and submit a Flexible Working Request to your manager (this document can be found on the Intranet). Please note if the request isn't agreed then you cannot submit another request for 12 months.

47 Appendix E – Flowchart for new and expectant mums



**48 Appendix F – Paternity Leave Request Form (PAT1)**

Name of employee:	
Address:	
Home telephone: Mobile telephone:	
Job title and hours:	
Base:	
Manager	

**Your dates for pay and leave**

The expected date of birth or placement is:

If the child has already been born or placed, the actual date of birth or placement was:

I want to be absent from work for:  weeks

Two consecutive weeks  (please tick)

Two blocks for one week\*  (please tick)

I would like my paternity leave to start on:

\*I would like my second week to start on:

**Your declaration**

You must be able to tick all five of the boxes below to get paid paternity leave and pay:

- I attach original/copy of the MATB1/Matching Certificate
- I am the child's father or adopter, or
- I am the husband / partner of the child's mother / adopter
- I have responsibility for the child's upbringing
- I will take time off work to support my partner for child care

Employee: ..... Date: .....  
 (Signed)

Office use only	2 weeks leave @ full pay	<input type="checkbox"/>
<b>Service:</b> <input type="text"/>	<b>Entitlement:</b> 2 weeks leave @ SPP or 90%	<input type="checkbox"/>
	2 weeks unpaid leave	<input type="checkbox"/>

