



## SCOTTISH EXECUTIVE

Health Department  
Human Resources Directorate

Dear Colleague

### **MATERNITY, PATERNITY, ADOPTION AND RELATED LEAVE**

#### **Summary**

1. This circular notifies employers of changes to the following General Whitley Council agreements:

Section 6: Maternity Leave

Section 7, Sub-section F: Balancing Work and Personal Life

2. Replacement pages containing the revised agreements are attached.

3. These revised agreements take account of improvements in statutory maternity, paternity and adoption leave and pay provisions introduced from 6 April 2003 together with a number of other changes, in particular:

#### **Maternity Leave and Pay**

An increase in the amount of paid maternity leave to include an extra 8 weeks:

- the first 4 extra weeks at half pay plus Statutory Maternity Pay;
- the remaining 4 weeks at the standard rate of Statutory Maternity Pay.

19 September 2003

#### **Addresses**

##### For action

Chief Executives,  
NHSScotland Boards and Special  
Health Boards

Chief Executive, Common Services  
Agency

Chief Executive, State Hospital

Chief Executives, NHSScotland  
Trusts

##### For information

Chief Executive, Health Education  
Board for Scotland  
Executive Director, NHS Education  
for Scotland  
Members, Scottish Partnership Forum  
Members, HR Forum

#### **Enquiries to:**

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### **Paternity Leave and Pay**

- an entitlement to two weeks paternity leave at full pay;
- an entitlement to reasonable paid time off to attend ante-natal classes.

### **Adoption Leave and Pay**

- an entitlement to adoption leave in line with maternity leave for all adoptions of children under age 18.

### **Effective Date of Changes**

4. These revised agreements for pay and leave apply :
- In respect of maternity to all pregnant employees whose expected week of childbirth begins on or after 1 October 2003 or;
  - In respect of adoption where an adoption agency notifies the adopter of a match with a child on or after the 1 October 2003 or;
  - In respect of paternity, to employees whose babies are expected be born or are born on or after the 1 October 2003.

Discussions continue about further improvements in the paid maternity and adoption leave provision from October 2004, and how these might best be structured.

### **Scottish Ministers' Approval**

5. Employers should implement this agreement, which has been approved by Scottish Ministers under Regulation 3 of the National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991 (SI 1991 No 537). A copy of the formal approval is attached.

### **Action**

6. NHS Boards, Special Health Boards, and NHSScotland Trusts who employ staff on national contractual arrangements should make the appropriate arrangements to implement these arrangements.

### **Enquiries**

7. Employees should direct their personal enquiries to their employing NHS Board, Special Health Board or NHSScotland Trust.

8. Employers are asked to make their own arrangements for obtaining any additional copies of the Circular. This circular can also be viewed on <http://www.show.scot.nhs.uk/sehd/pcs.asp>.

Yours sincerely

MICHAEL PALMER  
Assistant Director of Human Resources (Workforce and Policy).

**NATIONAL HEALTH SERVICE  
APPROVAL OF REMUNERATION AND CONDITIONS OF SERVICE**

In accordance with Regulation 2 and Regulation 3 of the National Health Service (Remuneration and Conditions of Service) (Scotland) Regulations 1991 (SI 1991 No 537) the Remuneration and Conditions of Service set out in the attached Scottish Executive Health Department letter of 19 September 2003 (NHS Circular PCS(GC)2003/1) records an agreement determined by the NHS Management Advisory Panel for Health Services (Great Britain) and is hereby approved for the purpose of the said Regulations.

**MIKE PALMER**  
(A member of the staff of Scottish Ministers)  
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Scottish Executive  
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EDINBURGH  
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19 September 2003

## SECTION 6

### MATERNITY LEAVE AND PAY

#### Introduction

1. **Part A** of this Section sets out the maternity leave and pay entitlements of NHS employees under the NHS contractual maternity leave scheme.
2. **Part B** gives information about the position of staff who are not covered by this scheme because they do not have the necessary service or do not intend to return to NHS employment.
3. **Part C** defines the service that can be counted towards the twelve month continuous service qualification set out in paragraph 5.1 below and which breaks in service may be disregarded for this purpose.
4. **Part D** explains how to get further information about employees' statutory entitlements.

#### **PART A**

#### Eligibility

5. An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the NHS contractual maternity pay scheme if:
  - 5.1 she has twelve months continuous service (see Part C) with one or more NHS employers at the beginning of the eleventh week before the expected week of childbirth;
  - 5.2 she notifies her employer in writing before the end of the 15<sup>th</sup> week before the expected date of childbirth (or if this is not possible, as soon as is reasonably practicable thereafter):
    - 5.2.1 of her intention to take maternity leave;
    - 5.2.2 of the date she wishes to start her maternity leave (but see paragraph 6 below);
    - 5.2.3 that she intends to return to work with the same or another NHS employer for a minimum period of three months after her maternity leave has ended;
    - 5.2.4 and provides a MATB1 form from her midwife or GP giving the expected date of childbirth.

### **Changing the Maternity Leave Start Date**

6. If the employee subsequently wants to change the date from which she wishes her leave to start she should notify her employer at least 28 days beforehand (or, if this is not possible, as soon as is reasonably practicable beforehand).

### **Confirming Maternity Leave and Pay**

7. Following discussion with the employee, the employer should confirm in writing:
  - 7.1 the employee's paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);
  - 7.2 unless an earlier return date has been given by the employee, her expected return date based on her 52 weeks paid and unpaid leave entitlement under this agreement, and
  - 7.3 the length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal maternity leave period (see paragraphs 37 and 38 below);
  - 7.4 the need for the employee to give at least 28 days notice if she wishes to return to work before the expected return date.

### **Keeping in Touch**

8. Before going on leave, the employer and the employee should also discuss and agree any voluntary arrangements for keeping in touch during the employee's maternity leave including:
  - 8.1 any voluntary arrangements that the employee may find helpful to help her keep in touch with developments at work and, nearer the time of her return, to help facilitate her return to work;
  - 8.2 keeping the employer in touch with any developments that may affect her intended date of return.

### **Paid Maternity Leave**

#### **Amount of Pay**

9. Where an employee intends to return to work the amount of contractual maternity pay receivable is as follows:
  - 9.1 for the first 8 weeks of absence, the employee will receive full pay, less any Statutory Maternity Pay or Maternity Allowance (including any dependants Allowances) receivable;

- 9.2 for the following 14 weeks, the employee will receive half of full pay plus any Statutory Maternity Pay or Maternity Allowance (including any dependants allowances) receivable providing the total receivable does not exceed full pay;
  - 9.3 for the following four weeks, the employee will receive the standard rate of Statutory Maternity Pay or Maternity Allowance.
10. By prior agreement with the employer this entitlement 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.

### **Calculation of Maternity Pay**

11. Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Maternity Pay entitlements, subject to the following qualifications:
- 11.1 in the event of a pay award or annual increment being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or annual increment had effect throughout the entire Statutory Maternity Pay calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis.
  - 11.2 in the event of a pay award or annual increment being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or annual increment should be increased accordingly. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis.
  - 11.3 In the case of an employee on unpaid sick absence or on sick absence attracting half pay during the whole or part of the period used for calculating average weekly earnings in accordance with the earnings rules for Statutory Maternity Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay.

### **Unpaid Contractual Maternity Leave**

12. Employees will also be entitled to 26 weeks unpaid leave.

### **Commencement and Duration of Leave**

13. An employee may begin her maternity leave at any time between the eleventh week before the expected week of childbirth and the expected week of childbirth provided she gives the required notice.

### **Sickness Prior to Childbirth**

14. If an employee is off work ill, or becomes ill, with a pregnancy related illness during the last 4 weeks before the expected week of childbirth, maternity leave will normally

commence at the beginning of the fourth week before the expected week of childbirth or the beginning of the fourth week before the expected week of childbirth or the beginning of the next week after the employee last worked whichever is the later. absence prior to the last 4 weeks before the expected week of childbirth, supported by a medical statement of incapacity for work, or a self certificate, shall be treated as sick leave in accordance with normal sick leave provisions.

15. Odd days of pregnancy related illness during this period may be disregarded if the employee wishes to continue working till the maternity leave start date previously notified to the employer.

### **Premature Birth**

16. 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 her baby was born at full term.
17. 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. Where an employee's baby is born before the eleventh 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 at the beginning of the actual week of childbirth.
19. Where an employee's baby is born before the eleventh week before the expected week of childbirth and the baby is in hospital the employee may split her maternity leave entitlement, taking a minimum period of two weeks leave immediately after childbirth and the rest of her leave following her baby's discharge from hospital.

### **Still Birth**

20. Where an employee's baby is born dead after the 24<sup>th</sup> week of pregnancy the employee will be entitled to the same amount of maternity leave and pay as if her baby was born alive.

### **Miscarriage**

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

### **Health and Safety of Employees Pre and Post Birth**

22. Where an employee is pregnant, has recently given birth or is breastfeeding, the employer should carry out a risk assessment of her working conditions. If it is found, or a medical practitioner considers, that an employee or her child would be at risk were she to continue with her normal duties the employer should provide suitable alternative work for which the employee will receive her normal rate of pay. Where it is not reasonably practicable to offer suitable alternative work the employee should be suspended on full pay.



23. These provisions also apply to an employee who is breastfeeding if it is found that her normal duties would prevent her from successfully breastfeeding her child.

### **Return to Work**

24. An employee who intends to return to work at the end of her full maternity leave will not be required to give any further notification to the employer, although if she wishes to return early she must give at least 28 days notice.
25. An employee has the right to return to her job under her original contract and on no less favourable terms and conditions.

### **Returning on Flexible Working Arrangements**

26. If at the end of maternity leave the employee wishes to return to work on different hours the NHS employer has a duty to facilitate this wherever possible, with the employee returning to work on different hours in the same job. If this is not possible the employer must provide written, objectively justifiable reasons for this and the employee should return to the same grade and work of a similar nature and status to that which they held prior to their maternity absence.
27. 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 employees right to return to her job under her original contract at the end of the agreed period.

### **Sickness following the End of Maternity Leave**

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

### **Failure to Return to Work**

29. If an employee who has notified her employer of her intention to return to work for the same or a different NHS employer in accordance with paragraph 5.2.3 above fails to do so within 15 months of the beginning of her maternity leave she will be liable to refund the whole of her maternity pay, less any Statutory Maternity Pay, received. In cases where the employer considers that to enforce this provision would cause undue hardship or distress the employer will have the discretion to waive their rights to recovery.

## **MISCELLANEOUS PROVISIONS**

### **Fixed -Term Contracts or Training Contracts**

30. Employees subject to fixed-term or training contracts which expire after the eleventh week before the expected week of childbirth, and who satisfy the conditions in paragraph 5.1, 5.2.1, 5.2.2 and 5.2.4, shall have their contracts extended so as to allow

them to receive the 26 weeks paid contractual maternity leave set out in paragraph 9 above.

31. Absence on maternity leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service.
32. 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 paragraph 29 above will not apply.
33. Employees on fixed-term contracts who do not meet the twelve months continuous service condition set out in paragraph 5.1 above may still be entitled to Statutory Maternity Pay.

#### **Rotational Training Contracts**

34. Where an employee is on a planned rotation of appointments with one or more NHS employers 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 had not occurred. In such circumstances the employee's contract will be extended to enable the practitioner to complete the agreed programme of training.

#### **Contractual Rights**

35. During maternity leave (both paid and unpaid) an employee retains all of her contractual rights except remuneration.

#### **Increments**

36. Maternity leave, whether paid or unpaid, shall count as service for annual increments and for the purposes of any service qualification period for additional annual leave.

#### **Accrual of Annual Leave**

37. Annual leave will continue to accrue during maternity leave, whether paid or unpaid, provided for by this agreement.
38. Where the amount of accrued annual leave would exceed normal carry over provisions, it may be mutually beneficial to both the employer and employee 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 the employer.

#### **Pensions**

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

**Antenatal Care**

40. Pregnant employees have the right to paid time off for antenatal care. Antenatal care may include relaxation and parentcraft classes as well as appointments for antenatal care.

**PART B**

**Employees Not Returning to NHS Employment or with Less Than Twelve Months Continuous Service**

41. An employee who satisfies the conditions in paragraph 5, except that she does not intend to work with the same or another NHS employer for a minimum period of three months after her maternity leave is ended, will be entitled to pay equivalent to Statutory Maternity Pay, which is paid at 90% of her average weekly earnings for the first 6 weeks of her maternity leave and to a flat rate sum for the following 20 weeks.
42. If an employee does not satisfy the conditions in paragraph 5 for contractual maternity pay she may still be entitled to Statutory Maternity Pay. Statutory Maternity Pay will be paid regardless of whether she satisfies the conditions in paragraph 5. If her earnings are too low for her to qualify for Statutory Maternity Pay, or she does not qualify for another reason, she should be advised to claim Maternity Allowance from her local Job Centre Plus or social security office.
43. Employees who fall into the category set out in paragraph 42 will also qualify for twenty six weeks unpaid maternity leave. Part D contains further information on statutory maternity entitlements.

## **PART C**

### **Continuous Service**

44. For the purposes of calculating whether the employee meets the twelve months continuous service with one or more NHS employers qualification set out in paragraph 5.1 the following provisions shall apply:-
- 44.1 NHS employers includes NHSScotland Boards and Special Health Boards, NHSScotland Trusts and Primary Care Trusts.
- 44.2 a break in service of three months or less will be disregarded (though not count as service);
- 44.3 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 twelve months;
  - a period of up to twelve 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 twelve months which may exceptionally be extended for twelve months at the discretion of the employer which recruits the employee on her return;
  - absence on a employment break scheme in accordance with the provisions of Section 7 of the General Council Handbook;
  - absence on maternity leave (paid or unpaid) as provided for under this agreement.
45. Employers may at their discretion extend the period specified in paragraphs 44.2 and 44.3.
46. Employment as a trainee with a General Medical Practitioner in accordance with the provisions of the Trainee Practitioner Scheme shall similarly be disregarded and count as service.
47. Employers have the discretion to count other previous NHS service or service with other employers.

**PART D**

**Information about Maternity Rights and Statutory Maternity Pay**

48. Information about all maternity rights is contained in the following Department of Trade and Industry (DTI) booklet:-

***Maternity Rights: a guide for employers and employees  
(URN 99/1191)***

Copies of the booklet can be obtained by telephoning 0870 1502 500.

It is also available from the DTI web site at:-

<http://www.dti.gov.uk/er/individual/maternity.pdf>

49. Information on Statutory Maternity Pay and Maternity Allowance entitlements is contained in the following Department for Work and Pensions (DWP) booklet:-

***A Guide to Maternity Benefits (NI 17A)***

Copies of the booklet can be obtained from local benefits offices

Further information on Statutory Maternity Pay and Maternity Allowance entitlements is also available on the DWP website at:-

<http://www.dwp.gov.uk/lifeevent/famchild/index.htm>

## SECTION 7

### **F: Balancing Work and Personal Life**

#### **1. General**

- 1.1 NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments.
- 1.2 Leave arrangements should be part of an integrated policy of efficient and employee friendly employment practices, and this part of the agreement should be seen as operating in conjunction with other sections, particularly the Employment Break Scheme, Flexing Work Positively and Caring for Children and Adults sections.
- 1.3 Arrangements should be agreed between employers and local trade union representatives.
- 1.4 A dependant is someone who is an employee's parent, wife, husband, partner, child or is someone who relies on the employee in a particular emergency.

#### **2. Forms of Leave**

##### **Parental Leave**

- 2.1 This should be a separate provision from either maternity or paternity leave and should provide an untransferable individual right to at least 13 weeks leave (18 weeks if child is disabled). Leave is normally unpaid, but may be paid by local agreement.
- 2.2 Parental leave should be applicable to any employee with twelve months service in the NHS who has nominated caring responsibility for a child under age 14(18 in cases of adoption or disabled children).
- 2.3 Leave arrangements need to be as flexible as possible, so that leave may be taken in a variety of ways by local agreement. Parental leave can be added to periods of paternity or maternity leave.
- 2.4 Notice periods should not be unnecessarily lengthy and should reflect the period of leave required. Employers should only postpone leave in exceptional circumstances and give written reasons. Employees may also postpone or cancel leave that has been booked with local agreement.
- 2.5 During parental leave the employee retains all of his/her contractual rights, except remuneration, and should return to the same job after it. Pension rights and contributions shall be dealt with in accordance with NHS Superannuation Regulations. Periods of parental leave should be regarded as continuous service.
- 2.6 It is good practice for employers to maintain contact (within agreed protocols) with employees while they are on parental leave.

### **Paternity Leave and Pay and Ante-Natal Leave**

- 2.7 There will be an entitlement to two weeks paid paternity leave per birth.
- 2.8 This will apply to biological and adoptive fathers, nominated carers, and same sex partners.
- 2.9 Eligibility will be twelve months service. Those with less service will be entitled to unpaid leave subject to local agreement.
- 2.10 Local agreements should specify the period during which leave can be taken and whether it must be taken in a continuous block or may be split up over a specific period.
- 2.11 An employee must give his employer a completed form SC3 *Becoming a parent* at least 28 days before they want leave to start.
- 2.12 Reasonable paid time off to attend ante-natal classes will also be given

### **Adoption Leave and Pay**

- 2.13 This will be available to people wishing to adopt a child and who have primary care responsibilities for that child.
- 2.14 The leave should cover official meetings in the adoption process as well as time after the adoption itself.
- 2.15 The agreement for time off after the adoption should cover circumstances where the child is initially unknown to the adoptive parents. If there is an established relationship with the child, such as fostering prior to adoption, time off for official meetings only should be considered.
- 2.16 Where the child is below age 18 adoption leave and pay will be in line with the maternity leave and pay provisions which are set out in Section 6 of the GWC Handbook.
- 2.17 If the same employer employs both parents the period of leave and pay may be shared. If one parent is identified as the primary carer, then s/he should be entitled to the majority of the leave with the other person being entitled to paternity leave and pay.

### **Leave/Time Off for Domestic Reasons**

- 2.18 This form of leave should cover a range of needs, from genuine domestic emergencies through to bereavement.
- 2.19 The agreement should cover all employees.
- 2.20 There will be no service qualification for this form of leave



- 2.21 Payment may be made by local agreement, but the expectation is that relatively short periods of leave for emergencies will be paid.
- 2.22 If the need for time off continues, other options may be considered, such as a career break.
- 2.23 Applicants for the above forms of leave should be entitled to a written explanation if the application is declined.
- 2.24 Appeals against decisions to decline an application for leave should be made through the Grievance Procedure.

### **3. Monitoring and Review**

- 3.1 All applications and outcomes should be recorded, and each leave provision should be annually reviewed by employers in partnership with local staff side representatives.