**MATERNITY LEAVE AND PAY**

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| Applicability  | This policy applies to all employees in NHS Portsmouth Clinical Commissioning Group |
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1. **INTRODUCTION**

1.1. This policy sets out the rights and responsibilities of employees who are pregnant or have recently given birth and gives details of the arrangements for antenatal care, pregnancy-related illness, and maternity leave and pay.

1.2. Employees may have questions or concerns relating to maternity leave and pay. Open discussion is encouraged to ensure that questions and problems can be resolved as quickly as possible. As the maternity provisions are complex, an employee can clarify the relevant procedures with the line manager or the HR People Centre to ensure that they are followed correctly.

1.3. The policy is intended to promote an employee's awareness of their rights and entitlements during, and following pregnancy and conforms to the NHS Staff Council Conditions of Service, the Employment Act 2002 and other current legislation.

1.4. Appendix 1 shows full details of all notification rules, all qualification criteria, rates of statutory and occupational pay and additional requirements.

2. **NOTIFICATION OF PREGNANCY**

2.1. On becoming pregnant, an employee should notify her line manager as soon as possible. This is important as there are health and safety considerations for the organisation.

2.2. The employee is required to inform her line manager in writing of:
- the fact that she is pregnant;
- her expected week of childbirth; and
- the date on which she intends to start her maternity leave.

2.3. 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.

2.4. Form M1 (Appendix 2) should be completed no later than the end of the 15th week before the EWC and signed by the employee and their line manager or equivalent.

2.5. The line manager will forward all notification information to the Corporate Finance team and HR People Centre.

2.6. The employee is permitted to bring forward her maternity leave start date, provided that she advises her line manager in writing at least 28 days before the new start date or, if that is not possible, as soon as reasonably practicable. The employee may also postpone her maternity leave start date, provided that she advises her line manager in writing at least 28 days before the original proposed start date, or, if that is not possible, as soon as reasonably practicable.
2.7. The HR People Centre will formally respond in writing to the employee's notification of her leave plans within 28 days, confirming the date on which she is expected to return to work if she takes her full 52-week entitlement to maternity leave.

3. **TIME OFF FOR ANTENATAL CARE & REST FACILITIES**

3.1. Once an employee has advised her line manager that she is pregnant, she will be entitled to take reasonable paid time off work to attend antenatal appointments as advised by her doctor, registered midwife or registered health visitor.

3.2. Except in the case of the first appointment, in order to be entitled to take time off for antenatal care, the employee is required to produce a certificate from her doctor, registered midwife or registered health visitor, stating that she is pregnant. 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.

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

3.4. The employee should endeavour to give her 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.

3.5. An expectant father or the partner of a pregnant woman is entitled to unpaid time off to accompany the woman to up to 2 ante-natal appointments.

3.6. **Rest Facilities**

There is a requirement for employers to provide suitable rest facilities for pregnant women or breastfeeding mothers. These facilities should be conveniently located in relation to sanitary facilities and should where possible include the facility to lie down.

4. **HEALTH & SAFETY**

4.1. Employers have a duty to take care of the health and safety of all employees. Employers are 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 her health and safety or the health and safety of her baby and the risk arises from either processes, working conditions or physical, chemical or biological agents in the workplace. If applicable, the employee will be provided with information as to any risks identified in the risk assessment. If the risk assessment reveals that the employee would be exposed to health hazards in carrying out her normal job duties, steps as are reasonably necessary to avoid those risks, such as
altering the employee's working conditions will be taken. In some cases, this may mean offering the employee suitable alternative work (if available) on terms and conditions that are not substantially less favourable.

4.2. If it is not possible to alter the employee's working conditions to remove the risks to her health and there is no suitable alternative work available to offer her on a temporary basis, she may be suspended from work on maternity grounds until such time as there are no longer any risks to her health. This may be for the remainder of her pregnancy until the commencement of her maternity leave. If an employee is suspended in these circumstances, her employment will continue during the period of the suspension and it does not in any way affect her statutory or contractual employment and maternity rights. The employee will be entitled to her normal salary and contractual benefits during the period of her suspension, unless she has unreasonably refused an offer of suitable alternative employment.

4.3. Advice is available from the HR People Centre.

5. SICKNESS ABSENCE

5.1. If an employee is absent from work during pregnancy owing to sickness, she will receive normal statutory or contractual sick pay in the same manner as she would during any other sickness absence provided that she has not yet begun maternity leave. If, however, the employee is absent from work due to a pregnancy-related illness after the beginning of the fourth week before her expected week of childbirth, her maternity leave will start automatically.

5.2. An employee who is ill whilst on maternity leave is not entitled to sick pay.

5.3. An employee who has returned from maternity leave and is incapable of work due to illness is entitled to sick pay in accordance with the provisions of her conditions of service.

5.4. If there is a risk of Rubella at the workplace, a pregnant employee should speak to their line manager who will seek advice from the HR People Centre.

5.5. 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 her maternity leave entitlement, taking a minimum period of two weeks' leave immediately after childbirth and the rest of her leave following the baby's discharge from hospital.

5.6. In the event of a still birth after the 24th week of pregnancy the employee will be entitled to the same amount of maternity leave and pay as if her baby was born alive.

5.7. Where an employee has a miscarriage before the 25th week of pregnancy, normal sickness absence provisions will apply as necessary.
5.8. It is recognised that this will be a difficult and traumatic time and would encourage the use of the Employee Assistance Programme. This service is available to all employees.

6. MATERNITY LEAVE

6.1. All pregnant employees are entitled to take up to 26 weeks' ordinary maternity leave and up to 26 weeks' additional maternity leave, making a total of 52 weeks. This is regardless of the number of hours they work or their length of service. Additional maternity leave begins on the day after ordinary maternity leave ends.

6.2. Ordinary maternity leave can start at any time after the beginning of the 11th week before the employee's expected week of childbirth (unless her child is born prematurely before that date in which case it will start earlier).

6.3. 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.

6.4. If the employee gives birth before her maternity leave was due to start, the HR People Centre must be notified in writing of the date of the birth as soon as reasonably practicable.

6.5. The law obliges all employees to take a minimum of two weeks of maternity leave immediately after the birth of the child. This is known as "Compulsory maternity leave".

7. MATERNITY PAY

7.1. Types of maternity pay

There are 2 types of maternity pay that an eligible employee receives if they meet the qualification criteria, these are:

   • Statutory maternity pay (SMP)
   • Occupational maternity pay (OMP)

Qualification criteria and rates of pay for statutory and occupational maternity pay are shown in Appendix 1.

7.2. Statutory maternity pay

Statutory maternity pay is treated as earnings and is therefore subject to PAYE and national insurance deductions.
Payment of SMP cannot start prior to the 11th week before the employee’s expected week of childbirth. Statutory maternity pay can start from any day of the week in accordance with the date the employee starts her maternity leave.

Statutory maternity pay is payable whether or not the employee intends to return to work after her maternity leave.

Employees who are not entitled to SMP may be entitled to receive maternity allowance (MA) payable by the Government.

If the employee becomes eligible for a pay rise between the start of the original calculation period and the end of her maternity leave (whether ordinary maternity leave or additional maternity leave), the higher or standard rate of SMP will be recalculated to take account of the employee’s pay rise, regardless of whether SMP has already been paid. This means that the employee’s SMP will be recalculated and increased retrospectively, or that she may qualify for SMP if she did not previously. The employee will be paid a lump sum to make up any difference between SMP already paid and the amount payable as a result of the pay rise.

7.3. Occupational Maternity Pay

OMP details are available in Appendix 1.

7.4. Combining Statutory and Occupational Maternity Benefits

Many employees will qualify under both payment types. In such cases the employee will be entitled to a combination of the two payments. Employees who are eligible under both the SMP and OMP schemes should note that any OMP payments will be offset against SMP (or MA) in order not to exceed full pay where applicable.

8. REQUIREMENT TO REPAY OCCUPATIONAL MATERNITY PAY

8.1. OMP is paid on the basis that an employee will return to work following maternity leave.

If an employee becomes pregnant whilst on existing maternity leave and starts maternity leave again prior to returning for the set period, then the requirement to return to work will be deferred until the end of the second maternity period (where applicable).

8.2. Failure to return to work

8.2.1. An employee must return to work with the same employer or another NHS employer for a minimum of 3 months, within 15 months of the beginning of her maternity leave or they will be required to repay the CCG the occupational element of the pay. In exceptional 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 recover.

This repayment will be gross rather than net.

8.2.2. Any period of return to work after maternity leave ends but in between blocks of shared parental leave (where taken) will count towards the length of return to work needed in order to retain the occupational maternity pay received under the occupational maternity scheme.

9. RIGHTS DURING MATERNITY LEAVE

During ordinary maternity leave and additional maternity leave, all terms and conditions of the employee's contract except normal pay will continue.

10. PENSION CONTRIBUTIONS

Pension contributions will continue to be made during any period when the employee is receiving SMP/OMP but not during any period of unpaid maternity leave. On return to work, arrears of contributions will be recovered and deducted from salary immediately upon return.

11. ANNUAL LEAVE AND BANK HOLIDAY ENTITLEMENT

11.1. Annual leave entitlement continues to accrue throughout the whole leave period. Bank holidays will accrue as they fall, with a substitute day’s leave being provided.

Part-time staff will accrue annual leave and bank holiday entitlement on a pro rata basis according to the amount of their contractual hours.

Annual leave and bank holiday entitlement should, wherever possible, be used in the year it is due. However, where an employee is unable to take all the annual leave and bank holiday entitlement due to the timing of maternity leave, any untaken annual leave and bank holiday entitlement will be carried over into the following year. Once carried over to the next year, the carry over must however be used up during that year.

The employee and the line manager should discuss before the maternity leave commences when the best time to take the annual leave and bank holiday entitlement would be. This is often immediately prior to maternity leave commencing or immediately after leave ends but it does not have to be.

If an employee does not return to work after maternity leave, she will accrue annual leave and bank holidays up to the end of her employment.
12. **CHILDCARE VOUCHERS**

Childcare vouchers are available, which entitle employees to savings on childcare costs. The voucher can be used to pay for most types of childcare and are non-taxable and exempt from National Insurance contributions.

For more information about the scheme and vouchers, please contact the HR People Centre.

13. **SALARY SACRIFICE**

13.1. The childcare voucher scheme operates by way of salary sacrifice, where an amount is sacrificed from the employees gross salary, in return for an equivalent value of childcare vouchers on which no tax or national insurance is payable.

In order to assess what impact salary sacrifice may have on maternity pay please contact the HR People Centre.

13.2. There is an entitlement to continuing non cash benefits (i.e. childcare vouchers) throughout both ordinary maternity leave and additional maternity leave. This obligation continues to apply even though the employee may not be receiving any salary or wages that can be sacrificed. Eg; during periods of only SMP or during nil pay.

13.3. Further information can be obtained from the HR People Centre.

14. **CONTACT DURING MATERNITY LEAVE**

14.1. Shortly before an employee’s maternity leave starts, the line manager will discuss the arrangements for her to keep in touch during her leave, should she wish to do so. The line manager reserves the right in any event to maintain reasonable contact with the employee from time to time during her maternity leave. This may be to discuss the employee's plans for return to work, to discuss any special arrangements to be made or training to be given to ease her return to work or simply to update her on developments at work during her leave.

14.2. **Keeping-in-touch days**

In agreement with the employer, an employee may do a maximum of 10 days' work/training without it affecting their entitlement to maternity leave or pay.

Keeping in touch days can be used in order to undertake work that is within the contract of employment. This may include training or any activity undertaken for the purposes of keeping in touch with the workplace. The KIT days can be taken at any time during maternity leave, except during the first two weeks immediately following childbirth. Arrangements should be made by mutual agreement between the line manager and employee.
If an employee works during maternity leave, the KIT Pay Claim form should be completed and sent to the HR People Centre. The HR People Centre will forward a copy to payroll.

The employee will be paid for any work that she does during the 10 days, and this will be offset against any maternity pay for the day that pay is due.

Any amount of work done on a KIT day counts as one of the 10 KIT days allowed. Therefore, if an employee comes in for a one hour training session and does no other work that day, the employee will still have used up one of the 10 KIT days allowed. Although, the KIT form will only record the actual hours worked.

The line manager cannot insist that an employee carries out any work and the employee is protected from suffering a detriment or being dismissed for refusing to do so. Equally, the employee cannot insist on being given any work to do.

Should any work be undertaken during maternity leave, this will not extend the total duration of the maternity leave period.

**NB:** The employee cannot carry out any work during the first two weeks following the birth of the child. It is an offence to permit an employee to work during this period (compulsory maternity leave) and the employer may incur a fine.

If a mother takes shared parental leave she may also if agreed, be able to take SPLIT days in addition to any KIT days she has previously taken during maternity leave. Please see the Shared Parental leave policy for further details.

### 15. RETURNING TO WORK

15.1. The employee will have been formally advised in writing by the HR People Centre of the date on which she is expected to return to work if she takes her full 52-week entitlement to maternity leave. The employee is expected to return on this date, unless she notifies the line manager otherwise. If she is unable to attend work at the end of her maternity leave due to sickness or injury, the normal arrangements for sickness absence will apply. In any other case, late return without prior authorisation will be treated as unauthorised absence.

While the employee is under no obligation to do so, it would assist the line manager if she confirms as soon as convenient during her maternity leave that she will be returning to work as expected.

15.2. If the employee wishes to return to work earlier than the expected return date, she must give at least 28 days’ notice of her date of early return, preferably in writing. If she fails to do so, her line manager may postpone her return to such a date as will give 28 days’ notice, provided that this is not later than the expected return date.
15.3. On resuming work after ordinary maternity leave, the employee is entitled to return to the same job as she occupied before commencing maternity leave on the same terms and conditions of employment as if she had not been absent.

On resuming work after additional maternity leave, again she is entitled to return to the same job as she occupied before commencing maternity leave on the same terms and conditions of employment as if she had not been absent. However, if it is not reasonably practicable to allow the employee to return to the same job, the line manager may offer the employee suitable alternative work, on terms and conditions that are no less favourable than would have applied if she had not been absent.

15.4. The management of resources is an on-going process. It is therefore possible that operational needs may change the job requirements for an individual or a group of employees which includes an employee on maternity leave. In such instances it is acceptable to proceed with the changes whilst the woman is on leave so long as the woman is informed of all such issues and her rights and needs are taken fully into account on the same basis as if she were at work.

15.5. An employee who worked full-time prior to her maternity leave has no automatic right to return to work on a part-time basis or to make other changes to her working patterns. However, all requests for part-time work or other flexible working arrangements will be considered in line with the operational requirements. If an employee would like this option to be considered, she should write to her line manager setting out her proposals as soon as possible in advance of her return date, so that there is adequate time for full consideration of the request. The procedure for dealing with such requests is set out in the flexible working policy.

15.6. If the employee decides not to return to work after maternity leave, she must give notice of resignation as soon as possible and in accordance with the terms of her contract of employment. If the employee has received occupational maternity pay she will be required to repay the 18 weeks half pay that she received during her maternity leave period.

Section 8 provides information on the length of return to work required in order to retain occupational maternity pay scheme.

16. **TRANSFER OF MATERNITY LEAVE - ADDITIONAL PATERNITY LEAVE AND PAY**

This section only applies to employees with an expected due date of before 5 April 2015 (Potentially some employees may still be taking additional paternity leave until April 2016 - This section will be disregarded from that date)

16.1. If an employee proposes to return to work early without using her full 52-week entitlement to maternity leave by giving proper notification of an early return in accordance with the rules set above, she may be eligible to transfer up to 26 weeks of her outstanding maternity leave (and outstanding
SMP) to her spouse, civil partner or partner, or the father of her child, to be taken as additional paternity leave (and additional statutory paternity pay) on her return to work.

16.2. The earliest that additional paternity leave may commence is 20 weeks after the date on which the employee’s child is born and it must end no later than 12 months after the date of birth. The minimum period of additional paternity leave is two consecutive weeks and the maximum period is 26 weeks. The employee must therefore have at least two weeks of her maternity leave that remains unexpired.

16.3. If the employee wishes to transfer part of her maternity leave entitlement in this way, she will be required to submit a written and signed declaration form to the employer of the spouse, civil partner, partner or father of the child, who may also make additional enquiries to verify its employee’s entitlement to additional paternity leave and pay.

17. SHARED PARENTAL LEAVE

This section on shared parental leave only applies to employees with an expected due date of on or after 5 April 2015

17.1. Shared parental leave is designed to give parents more flexibility in how to share the care of their child in the first year following birth. Parents will be able to share the period of leave, and can decide to be off work at the same time, back at work at the same time and/or take it in turns to have periods of leave to look after the child.

- Employed mothers are entitled to 52 weeks of maternity leave and 39 weeks of statutory maternity pay or maternity allowance (where eligible).

  If they choose to do so, an eligible mother can end her maternity leave/pay early and, the mother and/or her partner or the child's father, will be able to opt for shared parental leave/pay. If they both meet the qualifying requirements and both qualify, they will need to decide how they divide their total shared parental leave/pay entitlement between them.

- Paid ordinary paternity leave of two weeks will continue to be available to fathers and a mother's partner but must be taken prior to any period of shared parental leave being taken.

17.2. To qualify for shared parental leave, a mother must be entitled to maternity leave, or statutory maternity pay or maternity allowance and must share the main responsibility for caring for the child with the child's father or her partner. In addition, they will be required to follow a two step process to establish eligibility.
Please note:

In order to opt for shared parental leave, a binding notice to curtail (cut short) the maternity leave/pay must be given.

If a mother provides the employer with a maternity curtailment notice and all the relevant eligibility criteria and notice requirements are satisfied, the partner can begin a period of shared parental leave anytime from the date of the child's birth while the mother is still on maternity leave.

For example, the mother could submit a leave curtailment notice stating that her maternity leave will end three months from the date of the notice. The partner can take shared parental leave (with at least eight weeks' notice) after the mother has submitted the leave curtailment notice; he or she does not have to wait until those three months have passed.