

A Consultation on the NHS Scotland 'Once for Scotland' Workforce Policies

Supporting the Work-Life Balance

October 2022

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Background and responding to this consultation

Vision

The 'Once for Scotland' Workforce Policies Programme is designed to review and transform existing workforce policies (previously known as Partnership Information Network (PIN) Policies) in line with our vision:

'Once for Scotland Workforce policies will promote NHSScotland as a modern, exemplar employer; showcasing our core values, and promoting consistent employment policy and practice that supports the implementation of the Staff Governance Standard and effective recruitment and retention.'

Principles

The Scottish Workforce and Staff Governance (SWAG) Committee agreed that the following principles would govern the development work and future model:

1. The overriding purpose of future policy review exercises will be to create single, standardised policies that will be used consistently and seamlessly across NHSScotland.
2. Policies will be presented in a refreshed and reinvigorated format on a digital platform in a more user friendly and meaningful way, with staff and managers at the centre, whilst still being accessible to all groups of staff in alternative formats.
3. Policies will be developed and reviewed more quickly and efficiently, with accountability for delivery shared between employers, staffside and professional organisations and the Scottish Government.
4. There will be collective responsibility for each PIN Policy in terms of providing governance and leadership around future policy development or review.
5. Existing national PIN policies set good practice standards that have been negotiated and agreed in partnership and the starting presumption should be that these standards will apply at the core of future Once for Scotland policies.
6. Where a national PIN policy has been recently reviewed and is legally compliant, the expectation is that there should be minimal changes in relation to policy standards and therefore the focus is adopting that version to the Once for Scotland policy style.

7. Policies should be developed with robust engagement and take account of good practice locally and within other employers.
8. A new model for PIN policy review will be developed that improves the timeframe and efficiency of PIN policy review.
9. Once policies are agreed, they will be implemented consistently and fully across NHSScotland.
10. In future policies will be more focused on key standards and information and implemented across NHSScotland. The implementation will be supported by processes and procedures that will be nationally or locally agreed as appropriate.

Supporting the Work-Life Balance Policies

This consultation paper covers the suite of policies within the [Supporting the Work-Life Balance PIN](#) refresh:

- Flexible Work Pattern Policy [covering previous Model Flexible Working Policy, Model Job-share Policy, Model Reduced Working Year Policy and Model Annualised Hours Policy]
- Retirement Policy [incorporating the NHSScotland Interim National Arrangement on Retire and Return]
- Career Break Policy
- Special Leave Policy
- Maternity Policy [previously known as the Model Maternity Leave Policy]
- New Parent Support Policy [previously known as the Maternity Support (Paternity) Leave Policy]
- Shared Maternity and Shared Adoption Policy [previously known as the Model Shared Parental Leave Policy]
- Parental Leave Policy
- Breastfeeding Policy
- Adoption, Fostering and Kinship Policy [previously known as the Model Adoption Leave and Fostering Policy]

The above 10 policies within the consultation accompany the Flexible Work Location Policy. The refresh of the Model Homeworking Policy within the extant Supporting the Work-Life Balance PIN was prioritised ahead of the other policies in this suite. Renamed the Flexible Work Location Policy, the policy was approved but not implemented in autumn 2021. Timescales for policy implementation are dependent on

an agreed terms and conditions position. This is subject to UK Staff Council discussions.

The [NHSScotland Interim National Arrangement on Retire and Return](#) was published on 30 August 2022. The implemented arrangement, which has full operational status and authority, has been incorporated in the refreshed Retirement Policy.

Engagement Model

The emphasis is on moving to more dynamic and interactive engagement within a quicker process and with more direct feedback. The one month consultation period will run from 26 October to 25 November 2022 inclusive with necessary flexibility to ensure maximum feedback. The consultation follows the regional engagement events pre-policy (January 2020) and mid-policy development (March 2020). Delegates were invited to participate in a follow up survey in the summer of 2021. This allowed delegates to reflect on what had been said at the mid-policy development engagement events and provide an opportunity to add any new perspectives.

The approach, agreed by the Scottish Workforce and Staff Governance (SWAG) Committee, minimises the need for the traditional 2-3 month formal consultation process. The consultation reflects this new model of engagement, and recognises that the extant PIN policies have already been agreed in partnership.

What is included within the consultation?

The consultation focuses on the Supporting the Work Life Balance suite of policies. Each policy includes the following sections:

- Aim
- Scope (Who it applies to and What can be raised under the policy)
- Definitions
- Roles and responsibilities (specific to the policy and in addition to standard roles and responsibilities which underpin all NHSScotland workforce policies)
- Procedure

The policy references supporting documents, each with a descriptor on what this entails, for your consideration.

Please note: supporting documents are not part of the consultation. These will be drafted following the consultation when responses have been analysed and the policy is developed in a final draft.

Standard sections that apply to all policies, for example, Principles and Values, Employee Support, Roles and Responsibilities are available on the [NHSScotland Workforce Policies](#) website.

The questions set out in the consultation seek to understand if the refreshed policies reflect our vision for NHSScotland workforce policies, and to identify any gaps in the policies or proposed supporting documents. The consultation also includes an equalities section to gather views on the potential impacts of each policy on protected characteristics equalities groups.

Responding to this Consultation

We are inviting responses to this consultation by Friday 25 November 2022.

Please respond to this consultation using the Scottish Government's consultation hub. [Access and respond to this consultation online](#). You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of Friday 25 November 2022.

If you are unable to respond using our consultation hub, please complete and return the Respondent Information Form to:

'Once for Scotland' Workforce Policies Programme
Scottish Government
GR, Workforce Practice Unit, Health Workforce Directorate
St Andrew's House
Regent Road
Edinburgh EH1 3DG

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via the consultation hub, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our [privacy policy](#).

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public on the [consultation hub](#). If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses may be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or at Lynn.Hunter@gov.scot

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online on the [consultation hub](#). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. This will enable us to finalise the NHSScotland Workforce Policies for Scottish Workforce & Staff Governance (SWAG) Committee approval and Cabinet Secretary agreement.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

1. Flexible Work Pattern Policy

1.1. Aim

- 1.1.1. To provide a framework to support:
- employees when considering and requesting options for a flexible work pattern
 - managers when considering, agreeing or proposing options for a flexible work pattern

1.2. Scope

- 1.2.1. This policy applies to all employees.
- 1.2.2. If the arrangement is about a change to work location, please refer to the Flexible Work Location Policy.
- 1.2.3. This policy complies with current legislation and meets the aims of the [Public Sector Equality Duty](#) of the [Equality Act 2010](#).

1.3. Definitions

- 1.3.1. Examples of flexible work patterns include:
- 1.3.2. **Annualised hours** is where contracted hours are calculated as a total number of hours over the year instead of a weekly number of hours. The employee's working pattern may consist of both fixed and unallocated shifts. With reasonable notice, the employer can use unallocated shifts for surges in demand.
- 1.3.3. **Compressed hours** is a working pattern where employees complete their contracted hours within fewer working days. For example, they may work 37.5 hours over 4 days instead of 5 days.
- 1.3.4. **Flexi-time** is a system where employees can choose when they work, subject to working an agreed number of hours over a specified reference period. Employees may have a core period of the day when they must be at work. It allows employees to carry over a debit or credit of hours between reference periods.
- 1.3.5. **Job-sharing** is a form of part-time working where 2 or more people share the responsibility for a job in a structured way.
- 1.3.6. **Part-time** is where an employee is contracted to work less than the recognised full-time hours.

1.3.7. A **reduced working year** is a work pattern with agreed periods when the employee does not work. The salary of the post is reduced proportionately to the hours worked. An example of a reduced working year is a term-time contract.

1.3.8. **Self-rostering** is an arrangement where team members schedule their shifts while maintaining agreed service levels.

1.3.9. **Voluntary reduced working hours** allows employees to request a reduction in their contracted hours for a temporary period.

1.3.10. This list is not exhaustive.

1.4. Roles and responsibilities

1.4.1. There is a range of standard expectations which underpin all policies. Read more about standard [roles and responsibilities](#). In addition, the following specific responsibilities apply to this policy.

1.4.2. Manager

1.4.3. The manager should:

- apply the Flexible Work Pattern Policy fairly and consistently
- consider all applications and make sure they do not unreasonably refuse an employee request
- make sure requests for a flexible work pattern are responded to promptly and, if declined, provide reasons for refusal
- assess roles and duties to establish suitability for flexible working in response to an employee request
- plan for effective team working
- complete all appropriate contractual documentation if a change is agreed
- update appropriate systems to reflect the new work pattern
- review working arrangements with the employee regularly, at least once per year, or if circumstances change

1.4.4. Employee

1.4.5. The employee should:

- consider working arrangements that balance their own needs with the needs of colleagues and the service
- initiate a review of working arrangements if circumstances change
- participate in a regular review of working arrangements

1.5. Procedure

1.5.1. Flexible work pattern arrangements can be temporary or permanent. They offer flexibility around how and when an employee carries out their role.

1.5.2. These working arrangements must balance the needs of the individual and their role with the following organisational factors:

- patient or service user experience
- staff experience
- service delivery and service capacity

1.5.3. When considering the situations in which a flexible work pattern may be suitable, please refer to the following:

- Guide for managers [guide to help managers use and understand the Flexible Work Pattern Policy]
- Guide for employees [guide to help employees use and understand the Flexible Work Pattern Policy]

1.5.4. Request by employee

1.5.5. The procedure for flexible work patterns is outlined in the Flexible Work Pattern Policy flowchart. [visual and text alternative flowcharts outlining the key steps in the Flexible Work Pattern Policy]

1.5.6. Employees who request flexible work pattern arrangements should discuss them with their manager in the first instance.

1.5.7. Discussions should consider the needs of the service and the health, safety, and wellbeing of the employee. The issues that must be considered by both parties are outlined in the guides for managers and employees.

1.5.8. The discussions should also consider the parts of the job that:

- can be done with an alternative work pattern
- must be done during standard hours for that service

1.5.9. The employee should complete:

- Flexible work pattern application form
- if the request includes home as a work location, the employee must also complete a Health, safety, and wellbeing self-assessment [self-assessment form to identify and assess risks to home or hybrid working arrangements]

1.5.10. Once completed, the employee should send both forms to their manager.

1.5.11. The manager must acknowledge the employee's request within 7 calendar days. They should then arrange a meeting to discuss it with the

employee within 28 calendar days. If necessary and agreed by all parties, the manager can extend the time.

1.5.12. Agreement

1.5.13. The employee will be entitled to all terms and conditions relevant to the flexible work pattern agreement. Leave entitlement will change to reflect contracted hours.

1.5.14. Under this policy, when the manager and employee agree to a change, both parties should sign a Flexible work pattern agreement. [template for written agreement for flexible work pattern to be agreed and signed by both parties]

1.5.15. Once the manager agrees the employee's flexible work pattern proposal, the written agreement should confirm their hours and working pattern. It should also confirm if this is a temporary or permanent change. If this is a permanent change, the employee's terms of employment will be permanently varied. The employee will have no automatic right to revert to their previous working arrangements.

1.5.16. Review

1.5.17. The manager and employee should review working arrangements at least once a year. It could form part of the job planning process for medical and dental staff. For all other employees, it could form part of the appraisal process.

1.5.18. An employee or manager can request a review at any point. A review should also take place where circumstances or requirements change.

1.5.19. Refusal of the request

1.5.20. An employee's request for a flexible work pattern should be supported where possible. A manager should only refuse a request for valid service or organisational reasons where one or more of the following apply:

- adverse impact on service delivery and quality
- adverse impact on work colleagues
- health, safety, and wellbeing considerations

1.5.21. A manager may decide to refuse the employee's request. If so, their decision, including the reasons for refusal, should be confirmed in writing within 7 calendar days. More detail is provided in the following documents:

- Guide for managers [guide to help managers use and understand the Flexible Work Pattern Policy]

- Guide for employees [guide to help employees use and understand the Flexible Work Pattern Policy]

1.5.22. Appeal process

1.5.23. The employee will have a right to appeal within 14 calendar days against the decision to refuse the request. When exercising this right, the employee must identify the reason for their appeal.

1.5.24. The appeal panel Chair, in accordance with the [scheme of delegation](#), will be responsible for identifying membership of the appeal hearing panel.

1.5.25. The appeal panel Chair will also inform all parties of the arrangements in writing no later than 14 calendar days before the hearing.

1.5.26. Outcome

1.5.27. Following the appeal hearing, the Chair will write to all relevant parties within 7 calendar days to confirm the outcome. The letter should include the rationale behind any decision regarding the employee's grounds for appeal.

1.5.28. The outcome of the appeal will be final for this application.

1.5.29. Related policies:

- Flexible Work Location

1.6. Supporting documentation

It is proposed that the supporting documents listed below will be developed to support the policy. Supporting documents are not part of the consultation. These will be drafted following the consultation when responses have been analysed and the policy is developed in a final draft.

- **Employee guide**
Descriptor: guide to help employees use and understand the Flexible Work Pattern Policy. This will include the areas that must be considered by all parties as part of a flexible work pattern review or as part of a request.
- **Manager guide**
Descriptor: guide to help managers use and understand the Flexible Work Pattern Policy. This will include the areas that must be considered by all parties as part of a flexible work pattern review or as part of a request.
- **Flexible work pattern policy flowchart**
Descriptor: visual and text alternative flowcharts outlining the key steps in the Flexible Work Pattern Policy.
- **Flexible work pattern application form**
Descriptor: form to request a change in work pattern (note this is the same document used for flexible work location requests).
- **Flexible work pattern agreement**
Descriptor: template for written agreement for flexible work pattern to be agreed and signed by both parties (note this is the same document used for flexible work location requests).
- **Calculation tools**
Descriptor: tools to support the calculation of hours, for example, on term-time working.

1.7. Consultation questions

We are inviting responses to this consultation using the Scottish Government's consultation hub. The following questions are set.

In your response, all questions have the option to answer yes or no. You are invited to provide further comment in a free text box. If you wish to make specific reference to a section of the policy, please quote the relevant numbered line in this consultation document.

1. Do you feel there are any gaps in the policy?
2. Do you feel there are any gaps in the proposed list of supporting documents?
3. Do you have any other comments to make on the policy?
4. Do you have any views on the potential impacts of this policy on equalities groups?

It is against the law to discriminate against someone because of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. These are protected characteristics under the Equality Act, 2010.

2. Retirement Policy

2.1. Aim

- 2.1.1. To provide a framework to support employees:
- in a smooth transition from work to retirement
 - who wish to retire and return to employment

2.2. Scope

- 2.2.1. This policy applies to all employees.
- 2.2.2. The retire and return route is not available to staff who retire because of:
- ill health
 - organisational change
 - the pension category of efficiency of the service
- 2.2.3. The identification of other possible employment for staff in these categories using the appropriate policy. Please refer to the following policies:
- [Attendance Policy](#)
 - [Capability Policy](#)
 - NHS Board's Organisational Change Policy
- 2.2.4. This policy complies with current legislation and meets the aims of the [Public Sector Equality Duty](#) of the [Equality Act 2010](#)

2.3. Definitions

- 2.3.1. A **job family** is a high-level grouping of roles with a common purpose or similar responsibilities, such as nursing and midwifery or support services.
- 2.3.2. **Phased retirement** is a planned, agreed reduction of working time in the period leading up to the date when an individual can access their pension.
- 2.3.3. **Retire and return** is an accelerated route to return to work on fewer hours or in an alternate role while accessing a pension at the same time.
- 2.3.4. **Retirement** is the date at which an employee accesses their pension.
- 2.3.5. **Scottish Public Pensions Agency (SPPA)** is the government body that manages pensions for NHSScotland employees.

2.4. Roles and responsibilities

2.4.1. There is a range of standard expectations which underpin all policies. Read more about standard [roles and responsibilities](#). In addition, the following specific responsibilities apply to this policy.

2.4.2. Manager

2.4.3. The manager should:

- support the employee through the application process for retirement
- process all required documents quickly to make sure there is no delay in pension payments
- provide time off and funding to support the employee's participation in retirement preparation courses
- consider all retire and return applications fairly and consistently, and make sure they do not unreasonably refuse an employee request
- make sure retire and return requests receive a prompt response, and if declined, provide reasons for refusal
- complete all appropriate contractual documentation
- update appropriate systems

2.4.4. Employee

2.4.5. The employee should:

- plan for applying for their pension
- contact the SPPA or other pension provider with sufficient time to obtain information about their personal pension situation
- apply for phased retirement within the timescale stated in the policy
- check any breaks in service required if returning to work and any restriction on hours of work once re-employed, so their pension is not affected

2.5. Procedure

2.5.1. Employees considering retirement should notify their manager at least 6 months before their planned retirement date, particularly if they wish to access phased retirement. To allow payment of their pension on time, the employee must complete the following documents:

- NHS pension application
- formal notification of termination of employment

2.5.2. Employees must submit the completed documents to their manager no later than 4 months before retirement.

2.5.3. To support employees in their transition to retirement, they will have the opportunity to attend a pre-retirement course and access phased retirement.

2.5.4. Phased retirement

2.5.5. This policy allows for a gradual voluntary reduction in working hours 3 months before the employee's retirement date. It provides time to adjust to working fewer hours and prepare for retirement. The employee will be entitled to reduce their working week by the following amount:

- third month before retiral – 20% of contracted hours
- second month before retiral – 40% of contracted hours
- last month before retiral – 60% of contracted hours

2.5.6. Employees will receive their salary during this time as if they are at work working their contracted hours. They will also retain their annual leave entitlement at their contracted hours during the phased retirement.

2.5.7. The policy aims to support employees in the transition to retirement. Using annual leave during a phased retirement to bring forward their last working day will not usually be allowed. Employees should take most of their annual leave before their phased retirement starts to support rest and recuperation.

2.5.8. Employees are entitled to only one period of phased retirement. Employees can take their period of phased retirement before they access their pension, or it can form part of their retire and return agreement, if applicable.

2.5.9. Employees should advise their manager of their intention to access a phased retirement at least 6 months before their retirement date to qualify for it. The manager and the employee should then discuss and agree on the employee's working arrangements during the phased retirement period. For example, what days will the employee work and what aspects of their post will they continue with during their phased retirement. The work carried out by the employee must be based on the needs of the service. The organisation may apply this policy if the employee gives less than 6 months' notice, and it can arrange cover.

2.5.10. Retire and return

2.5.11. There is no right for an employee to return to work automatically following their retirement. However, this policy offers an accelerated route to support a return to work, where appropriate, and potentially benefits both employer and employee.

2.5.12. The employee should complete a retire and return application form [form to request the accelerated route to return to work following retirement] for consideration at the same time as they apply for their pension. The manager and employee should then discuss and agree options for a return to work. A

manager with sufficient seniority to understand broader workforce implications and plans must authorise the application. The completed retire and return application form should then be held in the employee's personal file.

2.5.13. Return to the existing post

2.5.14. When considering an application, the manager needs to assess the needs of the post and the service. This should include potential barriers such as:

- any planned service redesign
- the availability of posts to support redeployment. Refer to the [Redeployment Policy](#)
- the need for the post to be full-time or the requirement for on-call

2.5.15. The employer may explore other options if they cannot consider a return to the existing post. For example, the returner can be considered for posts within the same job family.

2.5.16. Alternatively, the returner can apply for advertised posts on these websites through open competition:

- [NHSScotland Recruitment](#)
- [GP Jobs](#)
- [Practice Jobs](#)

2.5.17. Return to a different band or role

2.5.18. A returner can apply for a post in the same job family either at a different grade or elsewhere in the service. The employee should approach their manager to see if there is a suitable vacancy to match their skills and experience. Unless there are statutory or redeployment requirements to consider other employees first, their application for the vacancy should be considered before others. For example, a retired physiotherapy team leader returning to a band 5 physiotherapist post. Re-employment into the same job family will not require the usual recruitment process for appointment.

2.5.19. Re-employment to a different job family, for example, from nursing to administrative services, must be made through normal recruitment processes. The employer will appoint the individual on a substantive or fixed-term contract, depending on the advertised post.

2.5.20. Return to a bank contract

2.5.21. A returner may wish for more flexibility in their working pattern. Therefore, continuing with an existing bank contract or returning to a contract for service with the staff bank may be considered.

2.5.22. Contractual issues

2.5.23. The employee will need to resign from their original NHS contract of employment so they can be terminated from payroll. If the individual intends to access their NHS pension, they must complete the relevant paperwork at least 4 months before their retirement date.

2.5.24. On re-employment, the employer will offer a new contract for the part-time or alternate role. This contract will normally be made on a permanent basis unless the post would have been advertised as fixed-term contract, had it not been filled by the returner.

2.5.25. Under employment law, the individual's continuity of employment will be broken if there is a break of more than one week (measured Sunday to Saturday) between retirement and return. If there is a break of less than one week between retirement and return, continuity of employment will be retained. If continuity of employment is broken this will effect statutory entitlements and an employee's ability to raise certain claims at an Employment Tribunal.

2.5.26. NHS Terms and Conditions cover NHS entitlements, such as annual leave and sick pay. The NHS Terms and Conditions set out the maximum break allowed before previous NHS reckonable service is discounted. Each entitlement, such as sick pay, annual leave, or redundancy, has maximum break provisions.

2.5.27. The individual will be re-employed on the most recent pay point on their basic salary scale if returning to their current, or an equivalent, post. This rate of pay will not include any protection of earnings applicable to their previous role, or any allowances unless they relate to the new role.

2.5.28. If returning to a lower-graded post, they will be placed on a point on the pay scale that reflects their years of experience. In most cases this will be

the top of the new pay scale in line with the terms and conditions [Directors Letter [DL\(2021\)47](#)].

2.5.29. Employers should work with Medical and Dental Consultants to agree the most appropriate way for them to be re-employed in the service. Associate specialists will be re-employed on a locum Consultant basis.

2.5.30. Executive Directors, who are appointed members of an NHS Board, may retire and return to a different post in the same job family. To return to their previous Executive Director post on a part-time basis will require consideration in line with the Ministerial appointments process.

2.5.31. A retire and returner under state pension age will be automatically enrolled into the pension scheme, unless they opt out within a month of return.

2.5.32. Appeal process

2.5.33. The employee will have a right to appeal within 14 calendar days against a decision to refuse the request. When exercising this right, the employee must identify the reason for their appeal.

2.5.34. The appeal panel Chair, in accordance with the [scheme of delegation](#), will be responsible for identifying membership of the appeal hearing panel.

2.5.35. The appeal panel Chair will also inform all parties of the arrangements in writing no later than 14 calendar days before the hearing.

2.5.36. Outcome

2.5.37. Following the appeal hearing, the Chair will write to all relevant parties within 7 calendar days to confirm the outcome. The letter should include the rationale behind any decision regarding the employee's grounds for appeal.

2.5.38. The outcome of the appeal will be final for this application.

2.6. Supporting documentation

It is proposed that the supporting documents listed below will be developed to support the policy. Supporting documents are not part of the consultation. These will be drafted following the consultation when responses have been analysed and the policy is developed in a final draft.

- **Employee guide**
Descriptor: guide to help employees use and understand the Retirement Policy.
- **Manager guide**
Descriptor: guide to help managers use and understand the Retirement Policy.
- **Retirement policy flowchart**
Descriptor: visual and text alternative flowcharts outlining the key steps in the Retirement Policy.
- **Retire and return application form**
Descriptor: form to request the accelerated route to return to work following retirement.

2.7. Consultation questions

We are inviting responses to this consultation using the Scottish Government's consultation hub. The following questions are set.

In your response, all questions have the option to answer yes or no. You are invited to provide further comment in a free text box. If you wish to make specific reference to a section of the policy, please quote the relevant numbered line in this consultation document.

1. Do you feel there are any gaps in the policy?
2. Do you feel there are any gaps in the proposed list of supporting documents?
3. Do you have any other comments to make on the policy?
4. Do you have any views on the potential impacts of this policy on equalities groups?

It is against the law to discriminate against someone because of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. These are protected characteristics under the Equality Act, 2010.

3. Career Break Policy

3.1. Aim

3.1.1. To enable employees to take an extended unpaid career break and return to work in the NHS later.

3.2. Scope

3.2.1. This policy applies to all employees with at least 12 months' continuous service with one or more NHS employers.

3.2.2. This policy complies with current legislation and meets the aims of the [Public Sector Equality Duty](#) of the [Equality Act 2010](#)

3.2.3. NHSScotland staff should not use this policy to deal with short-term emergencies. It would be more appropriate to use other forms of leave, such as special leave. [Special Leave Policy]

3.3. Definitions

3.3.1. A **career break** is an extended unpaid break for a specified time to allow for situations such as:

- caring for a dependent
- continuing childcare following a period of maternity or adoption leave
- education and training
- voluntary work

3.3.2. **Keeping in touch (KIT) days** help employees on a career break keep up to date with any changes at work or maintain their professional registration where appropriate. They also support employees in returning to the workplace after a career break.

3.3.3. **Scottish Public Pensions Agency (SPPA)** is the government body that manages pensions for NHSScotland employees.

3.4. Roles and responsibilities

3.4.1. There is a range of standard expectations which underpin all policies. Read more about standard [roles and responsibilities](#). In addition, the following specific responsibilities apply to this policy.

3.4.2. Manager

3.4.3. The manager should:

- apply the policy in a fair and consistent way

- record the agreed leave on the appropriate systems
- agree on the method and regularity of contact during the career break with the employee
- offer opportunities for KIT activities
- support employees returning to the workplace in their previous post or to a similar vacant post at the same grade

3.4.4. **Employee**

3.4.5. The employee should:

- fully consider the implications and potential loss of any contractual rights before committing to a career break
- get information about the impact on their pension from the [SPPA](#)
- advise their manager of any changes in circumstances, including change of address or contact details
- retain professional registration, meet revalidation requirements, and maintain professional knowledge throughout their career break

3.5. Procedure

3.5.1. Employees should not use the Career Break Policy to take up alternative employment. However, there may be specific circumstances where alternative employment is approved, such as:

- moving abroad for a fixed period due to a partner's work commitments
- undertaking bank work shifts to maintain clinical skills
- work while undertaking further education to achieve professional qualifications

3.5.2. The minimum period for a career break is 3 months, and the maximum is 5 years. Career breaks can be taken as a single period or as more than one break. However, the total periods of absence cannot exceed 5 years. Employees can extend their career break to a maximum of 5 years with appropriate notice and mutual agreement.

3.5.3. Employees should be made aware that there is no guarantee of reemployment however every effort should be made to identify a suitable alternative post for the employee to return to.

3.5.4. **How to apply**

3.5.5. Employees who request a career break should discuss it with their manager in the first instance. Discussions should consider the needs of the service and the employee.

- 3.5.6. If they wish to proceed with an application, the employee should complete the Career break application form. [form to request a career break]
Employees should send their completed form to their manager at least 3 months before their requested career break start date.
- 3.5.7. The manager must acknowledge the employee's request within 7 calendar days. They should then arrange a meeting to discuss it with the employee within 28 calendar days. If necessary and agreed upon by all parties, the manager can extend the timing of the meeting.
- 3.5.8. The manager and employee should agree on the method and regularity of contact during the career break. The employee is not required to attend KIT days, but the manager should offer them to support employees:
- returning to the workplace
 - maintaining professional registration requirements
- 3.5.9. Up to 10 days each year can be taken as KIT days. KIT days are paid as if at work.
- 3.5.10. **Agreement**
- 3.5.11. When the manager agrees to the employee's career break, both parties should sign a Career break agreement. [template for written agreement for career break to be agreed and signed by both parties]
- 3.5.12. The written agreement should confirm the employee's career break period.
- 3.5.13. **Refusal of the request**
- 3.5.14. An employee's request for a career break should be supported where possible. A manager should only refuse a request for valid service or organisational reasons such as the adverse impact on:
- service delivery and quality
 - work colleagues
- 3.5.15. A manager may decide to refuse the employee's request. If so, their decision, including the reasons for refusal, should be confirmed in writing within 7 calendar days. More detail is provided in the following documents:
- Guide for managers [guide to help managers use and understand the Career Break Policy]
 - Guide for employees [guide to help employees use and understand the Career Break Policy]

3.5.16. **Appeal process**

3.5.17. The employee will have a right to appeal within 14 calendar days against the decision to refuse the request. When exercising this right, the employee must identify the reason for their appeal.

3.5.18. The appeal panel Chair, in accordance with the [scheme of delegation](#), will be responsible for identifying membership of the appeal hearing panel.

3.5.19. The appeal panel Chair will also inform all parties of the arrangements in writing no later than 14 calendar days before the hearing.

3.5.20. **Outcome**

3.5.21. Following the appeal hearing, the Chair will write to all relevant parties within 7 calendar days to confirm the outcome. The letter should include the rationale behind any decision regarding the employee's grounds for appeal.

3.5.22. The outcome of the appeal will be final for this application.

3.5.23. **Contractual issues**

3.5.24. A career break will continue to count as continuous NHS service for statutory purposes. However, the break period will not count as reckonable service towards service-based entitlements such as:

- incremental credit
- annual leave
- sick leave
- redundancy

3.5.25. Any periods of NHS employment during the break, such as KIT days, will count towards these service-based entitlements. If an employee on a career break returns to work afterwards, they will not lose their entitlements accrued before the break.

3.5.26. Employees may choose not to return to NHS employment after their career break. Service-based entitlements accrued before their career break will be subject to any break in service rules if they return to NHS employment at a later date.

3.5.27. There may be an entitlement to statutory sick pay but no occupational sick pay during the career break.

3.5.28. For a limited time, members can continue to pay into their NHS pension scheme. The employer will continue to make contributions during this time.

Before requesting a career break, members of the scheme should check the potential impact on their pension with [SPPA](#).

3.5.29. Employees with a lease car should review their contract to check the implications of a career break. It may be possible to continue the lease, but the employee may be responsible for ongoing costs. A fee may apply if the employee terminates the lease.

3.5.30. **Organisational change**

3.5.31. The Organisational Change Policy applies to employees on a career break. Where redeployment attempts are unsuccessful, redundancy procedures will apply. Employers will calculate redundancy payments using NHS Terms and Conditions guidance.

3.5.32. An employer could propose organisational change during an employee's career break that impacts the:

- agreed role they will return to
- range of opportunities available on return

3.5.33. In that case, the individual must be:

- advised of the change
- consulted with regarding the change
- offered the opportunity to return to work and be considered within the affected cohort

3.5.34. **Return to work**

3.5.35. Employees who wish to return early from a career break should normally provide 3 months' notice to allow for a post to be identified. The manager should accommodate an early return to work if they can support it with less than 3 months' notice.

3.5.36. On return from a career break the following apply:

- if the employee returns to work within one year, the same job will be available, as far as is reasonably practicable
- if the break is longer than one year, every effort will be made to place the employee in a post of a similar grade and responsibility to that held prior to the career break

3.5.37. For career breaks of more than a year, the employee and the manager should meet to start the redeployment process 3 months before it ends. The manager will support the employee in finding a post.

3.5.38. When returning, the employee may need a period of induction depending on the length of their career break.

3.5.39. It may be possible to offer the employee re-employment on a part-time basis for up to 3 months to ease their transition back to work. They would then return to the normal hours for the role. The option of temporary part-time re-employment should be discussed with the relevant manager when planning the employee's return to work.

3.5.40. The employee will be paid in line with the terms and conditions of the post that they return to.

3.5.41. If the employee decides they do not wish to return to work at any point during the career break, they should resign from their role. Employees should send their written resignation to their manager no later than 3 months before their return date.

3.6. Supporting documentation

It is proposed that the supporting documents listed below will be developed to support the policy. Supporting documents are not part of the consultation. These will be drafted following the consultation when responses have been analysed and the policy is developed in a final draft.

- **Employee guide**
Descriptor: guide to help employees use and understand the Career Break Policy.
- **Manager guide**
Descriptor: guide to help managers use and understand the Career Break Policy.
- **Career break policy flowchart**
Descriptor: visual and text alternative flowcharts outlining the key steps in the Career Break Policy.
- **Career break application form**
Descriptor: form to request a career break.
- **Career break agreement**
Descriptor: template for written agreement for career break to be agreed and signed by both parties.

3.7. Consultation questions

We are inviting responses to this consultation using the Scottish Government's consultation hub. The following questions are set.

In your response, all questions have the option to answer yes or no. You are invited to provide further comment in a free text box. If you wish to make specific reference to a section of the policy, please quote the relevant numbered line in this consultation document.

1. Do you feel there are any gaps in the policy?
2. Do you feel there are any gaps in the proposed list of supporting documents?
3. Do you have any other comments to make on the policy?
4. Do you have any views on the potential impacts of this policy on equalities groups?

It is against the law to discriminate against someone because of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. These are protected characteristics under the Equality Act, 2010.

4. Special Leave Policy

4.1. Aim

4.1.1. To provide a supportive and person-centred response where everyday arrangements break down, or urgent and unforeseen situations arise, such as:

- the sudden and immediate need to provide care to a family member, a dependent, a close friend, or a colleague
- the death or serious illness of a family member, a dependent, a close friend, or a colleague
- emergencies or unexpected domestic situations

4.1.2. In addition, the policy provides child bereavement leave, time off to undertake civic and public duties, and attending specialist clinical appointments.

4.2. Scope

4.2.1. This policy applies to all employees.

4.2.2. This policy complies with current legislation and meets the aims of the [Public Sector Equality Duty](#) of the [Equality Act 2010](#)

4.3. Definitions

4.3.1. A **carer** is someone who has responsibility for a family member, partner, friend, or another individual who relies on the employee.

4.3.2. **Civic and public duties** are activities that contribute to society. Examples of essential civic and public duties that need a statutory entitlement to request planned leave in advance include:

- jury service
- armed forces reservists
- and children's hearings

4.3.3. A **domestic emergency** is an unplanned situation in the home, such as a flood or fire.

4.3.4. An **emergency or unexpected situation** is when an employee needs to take unplanned time off. Examples include:

- an employee's child has an accident at school
- a dependent has an accident in a care home

4.3.5. **Planned leave** is when an employee requests leave in advance, largely for civic and public duties.

4.3.6. **Unplanned leave** is when an employee requests leave at short notice to respond to an emergency or unexpected situation.

4.3.7. This list is not exhaustive.

4.4. Roles and responsibilities

4.4.1. There is a range of standard expectations which underpin all policies. Read more about standard [roles and responsibilities](#). In addition, the following specific responsibilities apply to this policy.

4.4.2. Manager

4.4.3. The manager should:

- apply the policy in a fair, consistent, and sympathetic way
- maintain confidentiality at all times and not place pressure on the employee to share sensitive information
- discuss with the employee if a flexible approach to the working hours or shift length could provide the necessary time off
- record the agreed leave on the appropriate systems

4.4.4. Employee

4.4.5. The employee should:

- advise their manager of the situation as soon as possible
- consider if a flexible approach to the working hours or shift length could provide the necessary time off
- keep in regular contact with their manager during special leave
- attempt to make alternative arrangements, such as when childcare plans break down, to allow the employee to return to work as soon as possible

4.5. Procedure

4.5.1. When employees become aware of a situation requiring special leave, they should contact their manager by telephone unless they have agreed to other arrangements. They should also:

- contact their manager as soon as possible, as the need to request special leave could occur before or during the working day
- use a third party to report their absence only in exceptional circumstances, where it is not practicably possible for them to do so themselves
- keep in touch with their manager during the period of absence

4.5.2. In these circumstances, the manager and employee should discuss the following:

- reason for requesting special leave
- likely duration of absence
- expected return to work date
- arrangements for keeping in contact during the absence

4.5.3. The manager should also:

- make arrangements to cover the work of the employee as necessary
- update the appropriate systems
- keep in touch with the employee during the period of absence

4.5.4. Situations where the manager may grant paid special leave and the amount of leave typically given are detailed in the following documents:

- Guide for managers [guide to help managers use and understand the Special Leave Policy]
- Guide for employees [guide to help employees use and understand the Special Leave Policy]

4.5.5. These guides outline the entitlements to special leave under NHS terms and conditions. However, there may be exceptional situations where the manager considers it reasonable to offer time off for other purposes. The manager should consider the reason for the employee's leave request while ensuring fairness and consistency with other employees.

4.5.6. A manager should not unreasonably withhold an employee's request for special leave. Should a disagreement arise, the employee has the right to raise matters under the [Grievance Policy](#). It may be appropriate for either party to seek advice on resolving the matter from HR colleagues or a trade union representative. They should seek early resolution wherever possible.

4.5.7. Related policies:

- Flexible Work Pattern
- Career Break
- Parental Leave

4.6. Supporting documentation

It is proposed that the supporting documents listed below will be developed to support the policy. Supporting documents are not part of the consultation. These will be drafted following the consultation when responses have been analysed and the policy is developed in a final draft.

- **Employee guide**
Descriptor: guide to help employees use and understand the Special Leave Policy. This will include examples of situations where special leave may be granted as well as the amount of leave typically given.
- **Manager guide**
Descriptor: guide to help managers use and understand the Special Leave Policy. This will include examples of situations where special leave may be granted as well as the amount of leave typically given.
- **Special leave policy flowchart**
Descriptor: visual and text alternative flowcharts outlining the key steps in the Special Leave Policy.

4.7. Consultation questions

We are inviting responses to this consultation using the Scottish Government's consultation hub. The following questions are set.

In your response, all questions have the option to answer yes or no. You are invited to provide further comment in a free text box. If you wish to make specific reference to a section of the policy, please quote the relevant numbered line in this consultation document.

1. Do you feel there are any gaps in the policy?
2. Do you feel there are any gaps in the proposed list of supporting documents?
3. Do you have any other comments to make on the policy?
4. Do you have any views on the potential impacts of this policy on equalities groups?

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5. Maternity Policy

5.1. Aim

5.1.1. The Maternity Policy aims to:

- outline the eligibility procedure employees must use to request maternity leave
- provide details about employees' statutory and contractual rights
- confirm maternity pay arrangements

5.2. Scope

5.2.1. This policy applies to all employees who meet the eligibility criteria. It also applies to bank, agency, and sessional workers who meet specific eligibility criteria.

5.2.2. This policy complies with current legislation and meets the aims of the [Public Sector Equality Duty](#) of the [Equality Act 2010](#)

5.3. Definitions

5.3.1. **Employing Board** is the employer of an individual who is the subject of a placement agreement.

5.3.2. **Expected week of childbirth (EWC)** is the week, starting on a Sunday, in which the doctor or midwife expects the individual to give birth.

5.3.3. The **intended parent** or **intended parents** are employees who cannot or choose not to conceive on their own and use surrogacy or adoption.

5.3.4. **Keeping in touch (KIT) days** help employees on maternity leave keep up to date with any changes at work or maintain their professional registration where appropriate. They also support employees in returning to the workplace after maternity leave.

5.3.5. A **miscarriage** is when an employee has a miscarriage before the 24th week of pregnancy.

5.3.6. **Placement Board** is the organisation providing a training placement to an individual who is not their employee. A placement agreement must be in place.

5.3.7. A **pregnant employee** is when an employee carries and gives birth to a baby.

5.3.8. **Pre-term birth** is when an employee's baby is born prematurely.

5.3.9. **Qualifying week** is the 15th week before the expected week of childbirth (EWC) and determines maternity pay entitlements.

5.3.10. A **stillbirth** is when an employee's baby is stillborn after the 24th week of pregnancy.

5.3.11. A **surrogate** is when an employee carries and gives birth to a baby for another person or couple.

5.4. Roles and responsibilities

5.4.1. There is a range of standard expectations which underpin all policies. Read more about standard [roles and responsibilities](#). In addition, the following specific responsibilities apply to this policy.

5.4.2. Manager

5.4.3. The manager should:

- make sure pregnant employees, workers, agency workers, and those returning from maternity leave complete a maternity risk assessment [risk assessment to be undertaken by the manager]
- provide a prompt response to a notification of maternity leave
- plan for effective team working, including KIT days
- make sure the employee receives regular communication in departmental, organisational, and career opportunities
- action return to work considerations, such as breastfeeding [Breastfeeding Policy]

5.4.4. Employee

5.4.5. The employee should:

- notify their manager by the 15th week before their EWC with the required evidence
- talk to their manager about their intentions for maternity leave, return to work, and KIT days as applicable
- maintain their professional registration

5.4.6. Employees, workers, and agency workers should also take responsibility for their health and safety at work in support of their maternity risk assessment.

5.5. Procedure

5.5.1. The employee should notify their manager of their intention to take maternity leave by submitting a Maternity leave form [form to notify manager]

of intention to take maternity leave]. The employee should submit the form by the end of the 15th week before the EWC. If this does not happen, they should submit the form as soon as possible.

5.5.2. The manager should forward the maternity leave form and the employee's Maternity Certificate (MATB1 form) in line with local arrangements.

5.5.3. As soon as the employee has notified their manager that they are pregnant, they should complete a Maternity risk assessment. [risk assessment to be undertaken by the manager] It may be completed before the employee submits their maternity leave form. [form to notify manager of intention to take maternity leave]

5.5.4. The employee will receive confirmation of the maternity leave and maternity pay arrangements in writing within 28 days.

5.5.5. The written confirmation will include:

- paid and unpaid leave entitlements, or statutory entitlements if the employee does not qualify
- period of accrued annual leave to be taken by the employee at the end of the formal maternity leave period
- expected return date, based on 52 weeks of paid and unpaid leave entitlement
- early return date, if requested

5.5.6. The employee must give at least 28 days' notice if they wish to return to work before the expected return date.

5.5.7. **Maternity leave**

5.5.8. **Maternity leave eligibility**

5.5.9. All employees will have a right to take 52 weeks of maternity leave, whether or not they return to NHS employment, provided they comply with the notification requirements. No minimum length of service is required to be eligible for maternity leave. The employer cannot refuse maternity leave or change the amount of leave the employee wants to take.

5.5.10. **Maternity leave entitlement**

5.5.11. Employees must take at least 2 weeks of maternity leave immediately after their child's birth.

5.5.12. Employees can start maternity leave 11 weeks before their EWC unless the baby is born before the 11th week.

- 5.5.13. Maternity leave cannot start later than the birth of the baby.
- 5.5.14. An employee can change the start date of their maternity leave. To do so, they should give their manager at least 28 days' notice of the new date. If this is not achievable, the employee must inform their manager of the date change as soon as possible.
- 5.5.15. If an employee is absent from work wholly or partly because of pregnancy during the last 4 weeks before their EWC, the employee's maternity leave will start from the second day of continuous absence.
- 5.5.16. **KIT days**
- 5.5.17. Before going on maternity leave, the manager and the employee should discuss and agree voluntary arrangements for keeping in touch during the employee's leave, including:
- making them aware of developments at work and to support their return
 - supporting employees to maintain their professional registration
 - advising the employer about developments that may affect their intended date of return
- 5.5.18. Employees can return to work for up to 10 days without bringing their maternity leave or SMP to an end. KIT days are optional but help to facilitate a smooth return to work for employees returning from maternity leave.
- 5.5.19. An employee cannot take KIT days within the first 2 weeks following childbirth. Any KIT days taken will not extend the maternity leave period.
- 5.5.20. KIT days can be consecutive or not and can include training or other activities which enable the employee to keep in touch with the workplace. Working for part of any day will count as one KIT day. Managers must carry out a risk assessment for any breastfeeding employee. The employer must provide breastfeeding facilities.
- 5.5.21. KIT days are paid as if at work, less any Occupational Maternity Pay (OMP) or Statutory Maternity Pay (SMP) if the employee is not eligible for OMP.
- 5.5.22. **Maternity pay**
- 5.5.23. **Maternity pay eligibility**
- 5.5.24. To qualify for paid maternity leave, an employee must meet the following eligibility criteria. To be eligible for SMP, they must have completed at least 26 weeks of continuous employment with their employer by the end of their

qualifying week. To be eligible for OMP, they must have completed 12 months' continuous service with one or more NHS employer at the beginning of the 11th week before the EWC.

5.5.25. **Statutory Maternity Pay (SMP)**

5.5.26. SMP is a benefit for employees on maternity leave. The UK Government determines the conditions and amount, but the employer pays it:

- The first 6 weeks of maternity leave are paid at 90% of the employee's normal weekly earnings.
- The next 33 weeks are paid at a standard SMP rate, or 90% of normal weekly earnings if this is less.

5.5.27. Normal weekly earnings are calculated based on a statutory calculation which takes into account earnings over the 8 weeks before the end of the qualifying week.

5.5.28. Employer and employee pension contributions will continue to be paid for the first 39 weeks.

5.5.29. SMP may start on any day of the week.

5.5.30. To qualify for SMP, an employee must have:

- completed at least 26 weeks of continuous employment with their NHS employer
- average earnings above the [lower earnings limit](#) for National Insurance contributions during the 8 weeks before the end of the qualifying week
- followed the application procedures set out in this policy.

5.5.31. All eligible employees will receive SMP regardless of whether they intend to return to work after maternity leave.

5.5.32. **Occupational Maternity Pay (OMP)**

5.5.33. OMP gives enhanced benefits to employees who intend to return to work for at least 3 months after maternity leave.

5.5.34. Employees will receive full pay for the first 8 weeks of maternity leave. They will also get SMP or maternity allowance including any dependents' allowances. The total receivable will not exceed full pay.

5.5.35. For the next 18 weeks, employees will receive half pay. They will also get SMP or maternity allowance including any dependents' allowances. The total receivable will not exceed full pay.

- 5.5.36. For the next 13 weeks of maternity leave, employees will receive any SMP or maternity allowance entitlement including any dependents' allowances.
- 5.5.37. To qualify for OMP, employees must have completed 12 months' continuous service with one or more NHS employer at the beginning of the 11th week before the expected week of childbirth.
- 5.5.38. The employee must also notify their employer by completing the maternity leave form [form to notify manager of intention to take maternity leave]. They must complete the form before the end of the 15th week before their EWC. If it is not achievable, they must complete it as soon as possible.
- 5.5.39. To calculate continuous service eligibility criteria, the employer should consult the [NHS Terms and Conditions of Service Handbook](#).
- 5.5.40. **Unpaid leave**
- 5.5.41. In addition to a period of paid leave, eligible employees are also entitled to take a further 13 weeks of unpaid leave to bring their total maternity leave period to 52 weeks. In exceptional circumstances, unpaid leave may be extended by local agreement. For example, where employees have sick pre-term babies or multiple births.
- 5.5.42. By prior agreement with the employer, OMP 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.
- 5.5.43. **Employees not returning to NHS employment**
- 5.5.44. If an employee does not return to NHS employment for a minimum of 3 months after their maternity leave has ended, the individual must repay their OMP maternity pay in accordance with the [NHS Terms and Conditions of Service Handbook](#).
- 5.5.45. **Maternity allowance (MA)**
- 5.5.46. Employees who do not meet SMP or OMP criteria should contact their local Jobcentre Plus office to ask about MA. The employer does not pay MA. Instead, payment is paid directly by the UK Government.
- 5.5.47. **Bank and agency staff**
- 5.5.48. Bank staff have no entitlement to OMP or maternity leave. However, they may be entitled to SMP, depending on their level of earnings. The employer

may review entitlement to OMP in exceptional cases, such as if the worker can demonstrate regular work patterns over an extended period.

5.5.49. Agency staff may be entitled to maternity leave and SMP if they are considered an employee of the agency. This should be checked with the relevant agency.

5.5.50. Returning to work

5.5.51. Employees returning from maternity leave have the right to return to their job under their original contract and on no less favourable terms and conditions.

5.5.52. Employees on a fixed-term or training contract

5.5.53. Employees may be on a fixed-term or training contract that expires the 11th week before their EWC. If they satisfy the eligibility criteria, their contract will be extended by such period as to allow them to be eligible to receive 52 weeks of maternity leave, and OMP or SMP.

5.5.54. Rotational training contracts

5.5.55. Employees such as doctors and dentists on the Scottish Medical Training Programme are employed on regional training contracts. They must notify their manager within the Placement Board about their intention to take maternity leave. The Placement Board will arrange to do a Maternity risk assessment. [risk assessment to be undertaken by the manager]

5.5.56. The Placement Board will also notify the Employing Board of the employees' intention to take maternity leave. The Employing Board will confirm the employee's maternity pay entitlement.

5.5.57. An employee on a rotational training contract should refer to the [NHS Terms and Conditions of Service Handbook](#).

5.5.58. Occupational child bereavement leave

5.5.59. Employees who experience a stillbirth from the 24th week of pregnancy will be eligible for paid occupational child bereavement leave. It is in addition to maternity pay and leave. Employees and managers should refer to the Special Leave Policy. [Special Leave Policy]

5.5.60. In Vitro Fertilisation (IVF)

5.5.61. Employees attending medical appointments for IVF treatment should refer to the Special Leave Policy. [Special Leave Policy]

5.5.62. An employee becomes pregnant once they have reached the embryo transfer stage. The employee should notify their manager of their pregnancy as outlined in this policy.

5.5.63. Antenatal care

5.5.64. Pregnant employees and eligible agency workers have the right to paid time off for antenatal care. Antenatal care may include relaxation and parentcraft classes that the employee's doctor, midwife, or health visitor has advised them to attend, in addition to medical examinations. To be eligible, agency workers must have completed their 12-week qualifying period. In addition, they must not take on a different role with the hirer or have breaks during or between assignments.

5.5.65. Employees and eligible agency workers who need time off for antenatal care must provide a certificate from their doctor, registered midwife, or registered health visitor. Except for the first appointment, they should also produce evidence of the appointment, such as a medical certificate or appointment card.

5.5.66. Employees must give their manager advance notice of antenatal appointments. They must also try to arrange appointments outside working hours or at the start or end of the working day. However, it is recognised that this may not always be possible.

5.5.67. Eligibility for employees to be accompanied at antenatal appointments is provided in the New Parent Support Policy. [New Parent Support Policy]

5.5.68. Postnatal care

5.5.69. Employees who have recently given birth should have paid time off for postnatal care. It may include attendance at health clinics. Employees must provide evidence of appointments if required.

5.5.70. The employee should give their manager advance notice of postnatal appointments. They must also try to arrange them outside working hours, or at the start or end of the working day. However, it is recognised that this may not always be possible.

5.5.71. Surrogacy

5.5.72. A surrogate employee is entitled to maternity leave and pay as outlined in this policy.

5.5.73. When the surrogate employee notifies their manager of their pregnancy, they must follow the procedures outlined in this policy.

5.5.74. Resolution of disagreements

5.5.75. Should a disagreement arise, the employee has the right to raise matters under the [Grievance Policy](#). It may be appropriate for either party to seek advice on resolving the matter from HR colleagues or a trade union representative. They should seek early resolution wherever possible.

5.5.76. Related policies:

- New Parent Support Policy
- Parental Leave Policy
- Shared Maternity and Shared Adoption Policy
- Adoption, Fostering and Kinship Policy
- Special Leave Policy
- Attendance Policy

5.6. Supporting documentation

It is proposed that the supporting documents listed below will be developed to support the policy. Supporting documents are not part of the consultation. These will be drafted following the consultation when responses have been analysed and the policy is developed in a final draft.

- **Employee guide**
Descriptor: guide to help employees use and understand the Maternity Policy.
- **Manager guide**
Descriptor: guide to help managers use and understand the Maternity Policy.
- **Maternity policy flowchart**
Descriptor: visual and text alternative flowcharts outlining the key steps in the Maternity Policy.
- **Maternity leave form**
Descriptor: form to notify manager of intention to take maternity leave.
- **Maternity risk assessment**
Descriptor: risk assessment to be undertaken by the manager. This covers (1) on notification of pregnancy, (2) return to work within 6 months of having a baby and (3) breastfeeding.
- **Calculation tools**
Descriptor: tools to support the calculation of maternity leave.

5.7. Consultation questions

We are inviting responses to this consultation using the Scottish Government's consultation hub. The following questions are set.

In your response, all questions have the option to answer yes or no. You are invited to provide further comment in a free text box. If you wish to make specific reference to a section of the policy, please quote the relevant numbered line in this consultation document.

1. Do you feel there are any gaps in the policy?
2. Do you feel there are any gaps in the proposed list of supporting documents?
3. Do you have any other comments to make on the policy?
4. Do you have any views on the potential impacts of this policy on equalities groups?

It is against the law to discriminate against someone because of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. These are protected characteristics under the Equality Act, 2010.

6. New Parent Support Policy

6.1. Aim

- 6.1.1. The New Parent Support Policy aims to:
- outline the procedure that eligible employees must use to request new parent support leave, also known as paternity leave
 - provide details about employees' statutory and contractual rights to new parent support pay, also known as paternity pay

6.2. Scope

- 6.2.1. This policy applies to all employees who meet the eligibility criteria.
- 6.2.2. This policy complies with current legislation and meets the aims of the [Public Sector Equality Duty](#) of the [Equality Act 2010](#)

6.3. Definitions

- 6.3.1. **Child** is a person who is under the age of 18 when they are placed with the adopter for adoption (for the purposes of new parent support leave).
- 6.3.2. The **due date** is the estimated date of childbirth.
- 6.3.3. The **intended parent** or **intended parents** are employees who cannot or choose not to conceive on their own and use surrogacy or adoption.
- 6.3.4. **Occupational Paternity Pay (OPP)** is a payment the NHS provides to support employees in taking new parent support leave.
- 6.3.5. A **Partner**, whether opposite or same sex, is a person living with the mother or birth parent in an enduring family relationship. They cannot be an immediate relative of the mother or birth parent.
- 6.3.6. **Paternity leave** is the statutory name for new parent support leave.
- 6.3.7. **Statutory Paternity Pay (SPP)** is a payment provided by the government to support employees in taking new parent support leave.

6.4. Roles and responsibilities

- 6.4.1. There is a range of standard expectations which underpin all policies. Read more about standard [roles and responsibilities](#). In addition, the following specific responsibilities apply to this policy.
- 6.4.2. **Manager**

6.4.3. The manager should:

- provide a prompt response, in writing, to notifications by employees of their intention to take new parent support leave, setting out their entitlement to new parent support leave and new parent support pay, where applicable
- accept later notification of the employee's intention to take new parent support leave than the timeframes stipulated below, if there is good reason to do so
- be flexible to accommodate any changes to the new parent support leave start date

6.4.4. The employer should advise the employee about the following policies:

- Parental Leave Policy
- Shared Maternity and Shared Adoption Policy
- Flexible Work Location Policy
- Flexible Work Pattern Policy

6.4.5. **Employee**

6.4.6. The employee should:

- in the case of a birth child, notify their manager as soon as possible and at least 28 days before they want the new parent support leave to start, using the form [[Becoming a birth parent](#)]
- in the case of an adopted child, notify their manager no later than 7 days after the date on which they receive notification of the child being matched for adoption, using the form [[Becoming an adoptive or parental order parent](#)] and [[Adopting a child from abroad](#)]
- promptly update their manager if their new parent support leave start date needs to change

6.4.7. There are particular notification provisions if an employee is [adopting from overseas](#).

6.5. Procedure

6.5.1. Antenatal support

6.5.2. An employee or eligible agency worker may take unpaid time off to accompany a pregnant woman to an antenatal appointment. The employee must be the spouse or civil partner, partner, or nominated carer of a mother who gives birth to a child. Otherwise, they must be the biological father of the child.

6.5.3. This right is limited to 2 antenatal appointments for each pregnancy. The time taken for each appointment cannot exceed more than 6 and half hours, including travel and waiting time.

6.5.4. New parent support leave

6.5.5. An employee is entitled to take up to 2 weeks of new parent support leave. They must be the spouse or civil partner, partner, or nominated carer of a mother who gives birth to a child. Otherwise, they must be the biological father of the child.

6.5.6. New parent support leave is also available to employees on the birth of a child to a surrogate mother. The employee, spouse, or civil partner must be one of the child's biological parents who intends to apply for a parental order.

6.5.7. New parent support leave is also available to adoptive parent employees where a child is matched or newly placed with them for adoption. Either adoptive parent may take new parent support leave while the other parent has chosen to take adoption leave.

6.5.8. The employee must take their new parent support leave in a single block of either one or two consecutive weeks. They cannot take it in instalments.

6.5.9. New parent support leave can start either from the date the child is born or placed for adoption. In the case of overseas adoption, the start date is when the child arrives in the UK. Otherwise, it can start from a chosen number of days or weeks after that date.

6.5.10. The period of new parent support leave must end within 8 weeks of the date the child is:

- born, or the due date if the child is born early
- placed for adoption
- placed or arrives in the UK in the case of overseas adoptions

6.5.11. New parent support pay

6.5.12. Employees may be entitled to paid parental support leave if they meet the eligibility criteria for Statutory Paternity Pay (SPP) or Occupational Paternity Pay (OPP).

6.5.13. Only one period of new parent support pay is ordinarily available when there are multiple births, such as twins.

6.5.14. Statutory Paternity Pay (SPP)

6.5.15. Employees may be entitled to SPP during their new parent support leave.

6.5.16. To qualify for SPP, an employee must have:

- 26 weeks of continuous service at the end of the 15th week before the EWC or the end of the week, the adoption agency notifies them of a match. In the case of overseas adoptions, it is the date the child arrives in the UK or when the employee wants their pay to start
- average earnings above the [lower earnings limit](#) for National Insurance contributions during the 8 weeks before the end of the qualifying week
- followed the application procedures set out in this policy

6.5.17. SPP is the lesser of:

- the statutory weekly rate of SPP [[UK Government statutory paternity pay and leave guidance and forms](#)] or
- 90% of the employee's average weekly earnings

6.5.18. Occupational Paternity Pay (OPP)

6.5.19. Employees granted new parent support leave will receive full pay during this period if they have 12 months' continuous service with their or any other NHS employer before they take their new parent support leave.

6.5.20. Full pay will be calculated based on the average weekly earnings rules for calculating Statutory Maternity Pay (SMP) or Statutory Adoption Pay (SAP) entitlements. These are subject to the qualifications set out within sections 15.22 and 15.39 of the [NHS Terms and Conditions of Service Handbook](#).

6.5.21. The eligible employee will receive full pay less any SPP receivable.

6.5.22. To calculate continuous service eligibility criteria, the employer should consult the [NHS Terms and Conditions of Service Handbook](#).

6.5.23. Financial support

6.5.24. Employees who do not meet SPP or OPP criteria should ask about financial support by contacting their local Jobcentre Plus office.

6.5.25. Application process

6.5.26. Employees should notify their manager at least 28 days before they want new parent support leave and pay to start, using one of the following forms:

- [Becoming a birth parent](#)
- [Becoming an adoptive or parental order parent](#)
- [Adopting a child from abroad](#)

6.5.27. Resolution of disagreements

6.5.28. Should a disagreement arise, the employee has the right to raise matters under the [Grievance Policy](#). It may be appropriate for either party to seek advice on resolving the matter from HR colleagues or a trade union representative. They should seek early resolution wherever possible.

6.5.29. Related policies:

- Maternity Policy
- Parental Leave Policy
- Shared Maternity and Shared Adoption Policy
- Adoption, Fostering and Kinship Policy

6.6. Supporting documentation

It is proposed that the supporting documents listed below will be developed to support the policy. Supporting documents are not part of the consultation. These will be drafted following the consultation when responses have been analysed and the policy is developed in a final draft.

- **Employee guide**
Descriptor: guide to help employees use and understand the New Parent Support Policy.
- **Manager guide**
Descriptor: guide to help managers use and understand the New Parent Support Policy.
- **New Parent Support policy flowchart**
Descriptor: visual and text alternative flowcharts outlining the key steps in the New Parent Support Policy.
- **Statutory Paternity Pay and Leave forms**
Descriptor: form to notify manager of intention to take paternity leave to allow employees to access appropriate payment

[Statutory Paternity Pay and Leave: becoming a birth parent \(SC3\)](#)

[Statutory Paternity Pay and Leave: becoming an adoptive or parental order parent \(SC4\)](#)

[Statutory Paternity Pay and Leave: adopting a child from abroad \(SC5\)](#)

6.7. Consultation questions

We are inviting responses to this consultation using the Scottish Government's consultation hub. The following questions are set.

In your response, all questions have the option to answer yes or no. You are invited to provide further comment in a free text box. If you wish to make specific reference to a section of the policy, please quote the relevant numbered line in this consultation document.

1. Do you feel there are any gaps in the policy?
2. Do you feel there are any gaps in the proposed list of supporting documents?
3. Do you have any other comments to make on the policy?
4. Do you have any views on the potential impacts of this policy on equalities groups?

It is against the law to discriminate against someone because of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. These are protected characteristics under the Equality Act, 2010.

7. Shared Maternity and Shared Adoption Policy

7.1. Aim

- 7.1.1. The Shared Maternity and Shared Adoption Policy aims to:
- outline the procedure that eligible employees must use to request shared maternity and shared adoption leave
 - provide details about employees' statutory and contractual rights
 - confirm pay arrangements

7.2. Scope

- 7.2.1. This policy applies to all employees who meet the eligibility criteria.
- 7.2.2. This policy complies with current legislation and meets the aims of the [Public Sector Equality Duty](#) of the [Equality Act 2010](#)

7.3. Definitions

- 7.3.1. A **birth parent** is the individual who has given birth to the child.
- 7.3.2. **Expected week of childbirth (EWC)** is the week, starting on a Sunday, in which the doctor or midwife expects the individual to give birth.
- 7.3.3. The **Intended parent or intended parents** are employees who cannot or choose not to conceive on their own and use surrogacy or adoption.
- 7.3.4. A **partner** is a person living in an enduring family relationship with the primary parent and the child. A partner cannot be an immediate relative of the primary parent. A partner can be the second parent.
- 7.3.5. A **primary parent** is one of 2 people who will share responsibility for the child's upbringing. They may be the child's mother or father.
- 7.3.6. **Qualifying week** is the 15th week before the EWC and determines shared parental pay entitlements.
- 7.3.7. A **second parent** is the second of 2 people who will share responsibility for the child's upbringing. They may be the child's mother, father, or partner.
- 7.3.8. **Shared parental leave in touch (SPLIT) days** help employees on shared leave keep up to date with any changes at work or maintain their professional registration where appropriate. They also support employees in returning to the workplace after leave.

7.3.9. **Shared Parental Leave (SPL)** is the statutory right to choose to end maternity or adoption leave. The employee can then convert it into leave they can share with a second parent, subject to meeting eligibility rules.

7.3.10. **Shared Parental Pay (ShPP)** is the statutory right to convert statutory maternity pay into a payment that can be shared with a second parent. The payment is subject to meeting eligibility rules.

7.3.11. NHSScotland Workforce Policies are based on statutory entitlement. Any reference to shared parental leave or pay in this policy means statutory.

7.4. Roles and responsibilities

7.4.1. There is a range of standard expectations which underpin all policies. Read more about standard [roles and responsibilities](#). In addition, the following specific responsibilities apply to this policy.

7.4.2. Manager

7.4.3. The manager should:

- provide a prompt response to any requests for shared leave
- plan for effective team working, including SPLIT days
- make sure the employee receives regular communications, including departmental, organisational, and career opportunities
- action return to work requirements, for example, breastfeeding

7.4.4. Managers must take responsibility for the employee's health and safety at work as recorded in their maternity risk assessment when they are:

- returning from a period that included maternity leave
- breastfeeding

7.4.5. Employee

7.4.6. The employee should:

- notify their manager, adhere to timescales and provide all required information
- talk to their manager about their intentions for shared leave, return to work, and SPLIT days
- maintain their professional registration

7.4.7. Employees must take responsibility for their health and safety at work as recorded in their maternity risk assessment when they are:

- returning from a period that included maternity leave
- breastfeeding

7.4.8. Partners of NHS employees must demonstrate eligibility criteria and seek advice from their employer.

7.5. Procedure

7.5.1. SPL is available to working parents who want to share their leave following the birth or adoption of a child. Parents may be able to take SPL at the same time or at different times. It can be taken in up to 3 blocks for each eligible parent.

7.5.2. Whilst similar to maternity and adoption leave, SPL is different. With appropriate notice, employees can stop and start SPL and return to work between periods of leave. Examples include:

- during a busy periods
- completing a project

7.5.3. Eligible employees have the right to take up to 52 weeks of maternity or adoption leave. They can convert it to SPL for up to 50 of these weeks. Employees can choose to end their maternity or adoption leave to access SPL.

7.5.4. Eligible employees can take SPL and ShPP at any time within one year from the birth or placement for adoption. However, they must take 2 weeks' compulsory maternity or adoption leave first.

7.5.5. Both parents need to meet additional eligibility criteria depending on whether:

- both parents want to share SPL
- the primary parent wants to take SPL
- the second parent wants to take SPL

7.5.6. Entitlement to SPL for shared maternity leave

7.5.7. The birth parent has the right to take up to 52 weeks of maternity leave. They must take the first 2 weeks after the child's birth.

7.5.8. If the birth parent chooses, the remaining leave can be converted to SPL for up to 50 of these weeks. Employees can choose to end their maternity leave to access SPL.

7.5.9. Any maternity leave that employees take over the compulsory 2 week period is deducted from their SPL entitlement.

7.5.10. Other than the first 2 weeks after birth, employees can take SPL and ShPP at any time within one year from the birth.

7.5.11. Employees may be entitled to SPL if they are:

- the primary parent who intends sharing responsibility with the second parent
- the second parent who will be sharing responsibility with the primary parent

7.5.12. There may be occasions when the benefits of SPL mean that either the primary, second, or both parents want to take SPL.

7.5.13. Eligibility criteria

7.5.14. If both parents want to share SPL

7.5.15. If both parents want to share SPL, they must both have at least 26 weeks of continuous service with their employer by the end of the qualifying week. They must also stay with their employer until they start their SPL.

7.5.16. If the primary parent wants to take SPL

7.5.17. For the primary parent to take SPL, both parents must meet the eligibility criteria. The primary parent must have at least 26 weeks of continuous service with their employer by the end of the qualifying week. The primary parent must also stay employed by the same employer until they start SPL.

7.5.18. The second parent must have worked a minimum of 26 out of the 66 weeks before the EWC. These 26 weeks do not need to be in a row. In 13 of the 66 weeks, the second parent must also have earned at least the [statutory minimum earnings](#). The second parent can add up their highest-paying weeks to calculate their earnings. These weeks do not need to be consecutive. At the date of the child's birth, the second parent must have the main responsibility for their care.

7.5.19. If the second parent wants to take SPL

7.5.20. For the second parent to take SPL, the primary parent and the second parent must meet the following eligibility criteria.

7.5.21. The primary parent must have worked a minimum of 26 weeks out of the 66 weeks before the EWC. These 26 weeks do not need to be in a row. In 13 of the 66 weeks, the primary parent must also have earned at least the [statutory minimum earnings](#). The primary parent can add up their highest-paying weeks, to calculate their earnings. These weeks do not need to be consecutive. They must also be entitled to statutory maternity leave, statutory maternity pay, or maternity allowance in relation to the child. At the date of the child's birth, the primary parent must have the main responsibility for their care.

7.5.22. The second parent must have at least 26 weeks of continuous service with their employer by the end of the qualifying week. They must also stay with the same employer until they start their SPL.

7.5.23. At the date of the child's birth, the second parent must have the main responsibility for their care. The second parent is not eligible for shared parental leave if they assume parental responsibility after the child's date of birth.

7.5.24. Before taking SPL, second parents should consider using their new parent support leave [New Parent Support Policy]. Once SPL starts, the second parent will lose any untaken new parent support leave entitlement. SPL is additional to new parent support leave entitlement.

7.5.25. Shared Parental Pay (ShPP)

7.5.26. ShPP for birth parents

7.5.27. Birth parents may also be entitled to:

- Statutory ShPP
- Occupational ShPP

7.5.28. Statutory ShPP

7.5.29. An employee may be entitled to receive Statutory ShPP while on SPL.

7.5.30. In addition to meeting the SPL eligibility criteria, an employee must have average earnings above the [Lower Earnings Limit \(LEL\)](#). LEL is set by the UK Government each tax year.

7.5.31. ShPP is paid at the Statutory Maternity Pay (SMP) rate or 90% of the normal weekly earnings of the employee claiming ShPP, whichever is lower.

7.5.32. Employees can share up to 37 weeks of Statutory ShPP.

7.5.33. Occupational ShPP

7.5.34. An employee may also qualify for Occupational ShPP if they:

- have a minimum of 12 months continuous NHS service at the beginning of the 11th week before their EWC
- satisfy the notification requirements in paragraph 15.17 of the [NHS Terms and Conditions of Service Handbook](#)
- intend to return to work for at least 3 months after the end of their SPL

7.5.35. The employee will receive full pay for the first 6 weeks of SPL, inclusive of any ShPP. They will then receive half pay for the next 18 weeks, plus any Statutory ShPP entitlement. The combined total will not exceed an employee's full pay.

7.5.36. For the next 13 weeks, the employee will receive any ShPP entitlement. They will receive no pay for the final 13 weeks of SPL.

7.5.37. Applying for SPL and pay for birth parents

7.5.38. Employees must apply for SPL and ShPP to their manager using the [Shared Parental Leave forms](#).

7.5.39. Employees should submit their completed forms to their manager no later than 8 weeks before they wish SPL to start.

7.5.40. Entitlement to SPL for shared adoption parents

7.5.41. The total SPL available to adoptive parents is 50 weeks. Employees can take SPL following new parent support leave after the adoption or placement of a child. Adoption leave already taken following the new parent support leave period is deducted from the 50-week SPL entitlement.

7.5.42. To be eligible for SPL, both adoptive parents must share responsibility for the child. Shared parental responsibility starts from the date the child is

placed with the parents if they're adopting or placement before formal adoption.

7.5.43. Eligibility criteria

7.5.44. If both parents want to share SPL

7.5.45. If both intended parents want to share SPL, the employees must both meet all the following eligibility criteria. The employees must have at least 26 weeks of continuous service with their employer by the end of the week they are matched with a child for adoption. They must also stay employed by the same employer until they start SPL.

7.5.46. If the primary parent wants to take SPL

7.5.47. For the intended primary parent to take SPL, both the intended parents must meet the relevant eligibility criteria. The primary parent must be entitled to statutory adoption leave. The intended primary parent must have at least 26 weeks of continuous service with their employer by the end of the week they are matched with a child for adoption. They must also stay employed by the same employer until they start SPL. At the date the child is placed with them for adoption, the primary parent must have the main responsibility for their care.

7.5.48. The second parent must have worked a minimum of 26 out of the 66 weeks before the week the child is placed. These 26 weeks do not need to be consecutive. In 13 of the 66 weeks, they must also have earned at least the [statutory minimum earnings](#).

7.5.49. The second parent can add up their highest-paying weeks to calculate their earnings. These weeks do not need to be consecutive. At the date the child is placed with them for adoption, the second parent must have the main responsibility for their care.

7.5.50. If the second parent wants to take SPL

7.5.51. For the intended second parent to take SPL, both the intended parents must meet the relevant eligibility criteria. The intended second parent must have at least 26 weeks of continuous service with their employer by the end of the week they are matched with a child for adoption. They must also stay

employed by the same employer until they start SPL. At the date the child is placed with them for adoption, the second parent must have the main responsibility for their care.

7.5.52. The primary parent must have worked a minimum of 26 out of the 66 weeks before the week the child is placed. These 26 weeks do not need to be consecutive. In 13 of the 66 weeks, they must also have earned at least the [statutory minimum earnings](#).

7.5.53. The primary parent can add up their highest-paying weeks to calculate their earnings. These weeks do not need to be consecutive. They must be entitled to statutory adoption leave or statutory adoption pay in respect of the relevant child. At the date the child is placed with them for adoption, the primary parent must have the main responsibility for their care.

7.5.54. Second parents should consider using their new parent support leave before taking SPL. Once SPL commences, the second parent will lose any untaken new parent support leave entitlement. SPL is additional to new parent support leave entitlement.

7.5.55. ShPP for adoptive parents

7.5.56. Intended parents may also be entitled to:

- Statutory ShPP
- Occupational ShPP

7.5.57. Statutory ShPP for adoptive parents

7.5.58. An employee may be entitled to receive Statutory ShPP while on SPL.

7.5.59. In addition to meeting the SPL eligibility criteria, an employee must have average earnings above the [Lower Earnings Limit \(LEL\)](#). LEL is set by the UK Government each tax year.

7.5.60. ShPP is paid at the Statutory Maternity Pay (SMP) rate or 90% of the normal weekly earnings of the employee claiming ShPP, whichever is lower.

7.5.61. Employees can share up to 37 weeks of Statutory ShPP.

7.5.62. Occupational ShPP for adoptive parents

7.5.63. An employee may also qualify for Occupational ShPP if they:

- have 12 months' continuous service with one or more NHS employers at the beginning of the week they are notified of being matched with a child for adoption
- intend to return to work for at least 3 months after the end of their SPL

7.5.64. The employee will receive full pay for the first 6 weeks of SPL, inclusive of any ShPP. They will then receive half pay for the next 18 weeks, plus any Statutory ShPP entitlement. The combined total will not exceed an employee's full pay.

7.5.65. For the next 13 weeks, the employee will receive any ShPP entitlement. They will receive no pay for the final 13 weeks of SPL.

7.5.66. Entitlement to SPL for surrogate parents

7.5.67. The total SPL available to parents using a surrogate is 50 weeks.

Employees can take SPL following new parent support leave. Any adoption leave already taken following the new parent support leave period is deducted from the 50-week SPL entitlement.

7.5.68. To be eligible for SPL, both parents using a surrogate must share responsibility under a parental order for the child from the child's due date or date of birth. [Regulation 3. SPL Regulations as modified by regulation 21 Leave (Parental Order Cases) Regulations]

7.5.69. Eligibility criteria

7.5.70. If both parents want to share SPL

7.5.71. If both intended parents want to share SPL, the employees must both meet all the following eligibility criteria. The employees must have at least 26 weeks of continuous service with their employer by the end of the surrogate's qualifying week. Each intended parent must also remain employed by the same employer until they start SPL.

7.5.72. If the primary parent wants to take SPL

7.5.73. For the intended primary parent to take SPL, both the intended parents must meet the relevant eligibility criteria. The intended primary parent must have at least 26 weeks of continuous service with their employer by the end of the surrogate's qualifying week. The intended parent must also stay employed by the same employer until they start SPL. At the date of the child's birth, the primary parent must have the main responsibility for the care of the child.

7.5.74. The second parent must have worked a minimum of 26 out of the 66 weeks before the due date. These 26 weeks do not need to be consecutive. In 13 of the 66 weeks, they must also have earned at least the [statutory minimum earnings](#).

7.5.75. The second parent can add up their highest-paying weeks to calculate their earnings. These weeks do not need to be consecutive. At the date of the child's birth, the second parent must have the main responsibility for the care of the child.

7.5.76. If the second parent wants to take SPL

7.5.77. For the intended second parent to take SPL, both intended parents must meet the relevant eligibility criteria. The intended second parent must have at least 26 weeks of continuous service with their employer by the end of the surrogate's qualifying week. They must also stay employed by the same employer until they start SPL. At the date of the child's birth, they must have the main responsibility for the care of the child.

7.5.78. The primary parent must have worked a minimum of 26 out of the 66 weeks before the due date. These 26 weeks do not need to be consecutive. In 13 of the 66 weeks, they must also have earned at least the [statutory minimum earnings](#). At the date of the child's birth, the primary parent must have the main responsibility for the care of the child.

7.5.79. The primary parent can add up their highest-paying weeks to calculate their earnings. These weeks do not need to be consecutive.

7.5.80. Second parents should consider using their new parent support leave before taking SPL. Once SPL commences, the second parent will lose any

untaken new parent support leave entitlement. SPL is additional to new parent support leave entitlement.

7.5.81. ShPP for surrogate parents

7.5.82. Intended parents may also be entitled to:

- Statutory ShPP
- Occupational ShPP

7.5.83. Statutory ShPP for surrogate parents

7.5.84. An employee may be entitled to receive Statutory ShPP while on SPL.

7.5.85. In addition to meeting the SPL eligibility criteria, an employee must have average earnings above the [Lower Earnings Limit \(LEL\)](#). LEL is set by the UK Government each tax year.

7.5.86. ShPP is paid at the Statutory Maternity Pay (SMP) rate or 90% of the normal weekly earnings of the employee claiming ShPP, whichever is lower.

7.5.87. Employees can share up to 37 weeks of Statutory ShPP.

7.5.88. Occupational ShPP for surrogate parents

7.5.89. An employee may also qualify for Occupational ShPP if they:

- have 12 months' continuous service with one or more NHS employers at the beginning of the 15th week before the baby's due date
- intend to return to work for at least 3 months after the end of their SPL

7.5.90. The employee will receive full pay for the first 6 weeks of SPL, inclusive of any ShPP. They will then receive half pay for the next 18 weeks, plus any Statutory ShPP entitlement. The combined total will not exceed an employee's full pay.

7.5.91. For the next 13 weeks, the employee will receive any ShPP entitlement. They will receive no pay for the final 13 weeks of SPL.

7.5.92. Applying for shared parental leave and pay for adoptive and surrogate parents

7.5.93. Employees must submit their intention for SPL and ShPP to their manager using the [Shared Parental Leave forms](#).

7.5.94. Employees should submit their completed forms to their manager no later than 8 weeks before they wish SPL to start.

7.5.95. SPLIT days

7.5.96. SPLIT days help employees on shared maternity and shared adoption leave:

- keep up to date with any changes at work
- maintain their professional registration, where appropriate
- support employees when returning to the workplace after maternity and adoption leave.

7.5.97. Each parent can work up to 20 SPLIT days without bringing their shared parental leave to an end. Up to 10 KIT days are also available to those on maternity or adoption leave.

7.5.98. SPLIT days are optional. The employee and their employer must agree to them.

7.5.99. Before going on SPL, the employee and their manager must agree on voluntary arrangements for keeping in touch.

7.5.100. Any SPLIT days taken will not extend the SPL period.

7.5.101. SPLIT days don't need to be consecutively. They can include training or other activities which enable the employee to keep in touch with the workplace. Working for part of any day will count as one SPLIT day.

7.5.102. SPLIT days are paid as if at work, less any Occupational ShPP or Statutory ShPP.

7.5.103. Extending SPL

7.5.104. Employees who have unused SPL and wish to extend their SPL period must inform their manager 8 weeks before the start of the extension.

7.5.105. Employees who have used all their SPL but wish to extend their SPL period may be able to request annual leave or parental leave. [Parental Leave Policy]

7.5.106. Approval for the request is subject to service needs. The employee may wish to consider other options, such as a career break. [Career Break Policy]

7.5.107. Returning to work

7.5.108. Employees who wish to end their SPL early and return to work must give their manager 28 days' notice.

7.5.109. Employees returning from SPL have the right to return to their job under their original contract and on no less favourable terms and conditions.

7.5.110. Employees who want to change their hours or other working arrangements on return from SPL should request the change under our flexible working policies:

- Flexible Work Pattern Policy
- Flexible Work Location Policy

7.5.111. Risk assessment

7.5.112. Before their return to work, a risk assessment must be completed for employees covered by the following policies:

- Maternity Policy
- Breastfeeding Policy

7.5.113. Not returning to work

7.5.114. Employees who decide not to return to work for 3 months do not need to repay the Statutory ShPP received. However, they must repay any Occupational ShPP. In cases where this would cause undue hardship or distress, employers will have the discretion to waive the rights to recovery.

7.5.115. Bank and agency staff

7.5.116. Bank staff have no entitlement to Occupational ShPP or shared maternity or shared adoption leave. However, they may be entitled to statutory ShPP, depending on their level of earnings. The employer may review entitlement to Occupational ShPP in exceptional cases, such as if the worker can demonstrate regular work patterns over an extended period.

7.5.117. Agency staff may be entitled to shared maternity or shared adoption leave and statutory ShPP if they are considered an employee of the agency. This should be checked with the relevant agency.

7.5.118. Employees on a fixed-term or training contract

7.5.119. For employees who are on a fixed-term or training contract which expires:

- after the 11th week before their EWC
- after the date of matching for adoption
- after the 15th week before the baby's due date if applying via surrogacy arrangement

If so, their contract will be extended by such period to allow them to receive 50 weeks of shared parental leave and Occupational ShPP or ShPP.

7.5.120. Rotational training contracts

7.5.121. Employees such as doctors and dentists on the Scottish Medical Training Programme are employed on regional training contracts. They must notify their manager within the Placement Board about their intention to take shared parental leave. The Placement Board will arrange a maternity risk assessment [risk assessment to be undertaken by the manager].

7.5.122. The Placement Board will also notify the Employing Board of the employees' intention to take shared parental leave. The Employing Board will confirm the employee's shared parental pay entitlement.

7.5.123. Resolution of disagreements

7.5.124. Should a disagreement arise, the employee has the right to raise matters under the [Grievance Policy](#). It may be appropriate for either party to

seek advice on resolving the matter from HR colleagues or a trade union representative. They should seek early resolution wherever possible.

7.5.125. **Related policies:**

- Maternity Policy
- New Parent Support Policy
- Parental Leave Policy
- Adoption, Fostering and Kinship Policy

7.6. Supporting documentation

It is proposed that the supporting documents listed below will be developed to support the policy. Supporting documents are not part of the consultation. These will be drafted following the consultation when responses have been analysed and the policy is developed in a final draft.

- **Employee guide**
Descriptor: guide to help employees use and understand the Shared Maternity and Shared Adoption Policy.
- **Manager guide**
Descriptor: guide to help managers use and understand the Shared Maternity and Shared Adoption Policy.
- **Shared Maternity and Shared Adoption policy flowchart**
Descriptor: visual and text alternative flowcharts outlining the key steps in the Shared Maternity and Shared Adoption Policy.
- **Shared Parental Leave Forms**
Descriptor: form for eligible parents to take Shared Parental Leave (SPL).
[Shared Parental Leave forms](#)

7.7. Consultation questions

We are inviting responses to this consultation using the Scottish Government's consultation hub. The following questions are set.

In your response, all questions have the option to answer yes or no. You are invited to provide further comment in a free text box. If you wish to make specific reference to a section of the policy, please quote the relevant numbered line in this consultation document.

1. Do you feel there are any gaps in the policy?
2. Do you feel there are any gaps in the proposed list of supporting documents?
3. Do you have any other comments to make on the policy?
4. Do you have any views on the potential impacts of this policy on equalities groups?

It is against the law to discriminate against someone because of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. These are protected characteristics under the Equality Act, 2010.

8. Parental Leave Policy

8.1. Aim

8.1.1. The Parental Leave Policy aims to:

- outline the eligibility procedure employees must use to request parental leave
- provide details about employees' statutory and contractual rights
- confirm parental leave pay arrangements

8.2. Scope

8.2.1. This policy applies to all employees who meet the eligibility criteria.

8.2.2. This Policy complies with current legislation and meets the aims of the [Public Sector Equality Duty](#) of the [Equality Act 2010](#)

8.3. Definitions

8.3.1. **Parent** is one of two people who will share the main responsibility for the child's upbringing whether by birth or adoption.

8.3.2. **Partner** is a person living in an enduring family relationship with the parent and the child. This may include step parents.

8.3.3. **Scottish Public Pensions Agency (SPPA)** is the government body that manages pensions for NHSScotland employees.

8.4. Roles and responsibilities

8.4.1. There is a range of standard expectations which underpin all policies. Read more about standard [roles and responsibilities](#). In addition, the following specific responsibilities apply to this policy.

8.4.2. **Manager**

8.4.3. The manager should:

- respond promptly to a request for parental leave
- apply the policy in a fair and consistent way
- record the agreed leave on the appropriate systems and transfer it to any future employer
- maintain contact with employees while they are on parental leave if the period of leave is more than 4 weeks
- review evidence provided by the employee and check the balance of parental leave remaining

8.4.4. In addition, managers cannot postpone parental leave if a request is made for it to start immediately on the birth or adoption of a child.

8.4.5. **Employee**

8.4.6. The employee should:

- make the request for parental leave to their manager, adhere to timescales, and provide all required information
- consider the duration and time of leave, balancing their own needs with the needs of colleagues and the service
- maintain contact with their manager while they are on parental leave if the period of leave is more than 4 weeks
- on taking up post advise of any parental leave take whilst working for another employer

8.5. Procedure

8.5.1. To assist employees with parental responsibilities to balance family and work commitments and spend time with their children.

8.5.2. **Parental leave eligibility**

8.5.3. To qualify for parental leave, an employee must meet the eligibility criteria. They must:

- have 12 months of continuous service with one or more NHS employers
- have or expect to have responsibility for a child
- be taking leave to spend time or otherwise care for the child

8.5.4. To have responsibility for a child, the employee must be the biological or adoptive parent or have parental responsibility in some other way. An example is a court order.

8.5.5. The employee may not live with the child. They may have separated from the other parent. However, they still have the right to parental leave if they keep parental responsibility for the child.

8.5.6. For more information, read the:

- Guide for managers [guide to help managers use and understand the Parental Leave Policy]
- Guide for employees [guide to help employees use and understand the Parental Leave Policy]

8.5.7. Entitlement

8.5.8. Employees are entitled to 18 weeks of leave for each child under 18. For NHSScotland employees, the first 4 weeks is paid leave. Pay will be as if at work and will reflect contractual hours. The remaining 14 weeks are unpaid.

8.5.9. Employees will be asked for evidence of entitlement when they make their first request for leave for a child.

8.5.10. The paid element must be taken before the child's 14th birthday or 18th birthday for an adopted child or a child with a disability.

8.5.11. Employees usually take parental leave in weekly blocks.

8.5.12. If an individual changes employer, the entitlement balance is not restored to 18 weeks. The individual should notify their new employer of any parental leave and pay already taken.

8.5.13. The employee can request to take parental leave as a separate entitlement or may choose to add to their:

- maternity leave [Maternity Policy]
- adoption leave [Adoption, Fostering and Kinship Policy]
- new parent support leave [New Parent Support Policy]
- shared maternity and shared adoption leave [Shared Maternity and Shared Adoption Policy]

8.5.14. Application process

8.5.15. Employees should request leave at least 3 weeks before the start of the leave using the Parental leave form. [form to request parental leave]

8.5.16. If the employee intends to take more than 4 weeks in a continuous block, they should normally give their manager 2 months' notice. If the manager is able to support a parental leave request with less than 2 months' notice, it should be accommodated.

8.5.17. Confirming parental leave

8.5.18. The manager will confirm parental leave dates in writing. In exceptional circumstances, the employer may ask the employee to postpone parental leave due to the needs of the service. The manager and employee should discuss and agree an alternative time to take parental leave. This should normally be within 6 months.

8.5.19. If the employee agrees to postpone parental leave, they can take it at a later date, even if it is:

- beyond the child's 14th birthday for paid parental leave
- after the child's 18th birthday for unpaid parental leave, an adopted child, or a child with a disability

8.5.20. The employee can postpone or cancel parental leave by giving reasonable notice.

8.5.21. Contractual rights of employee

8.5.22. During parental leave, the employee retains all contractual rights, except remuneration during any period of unpaid leave. They should return to the same job after their parental leave.

8.5.23. Employees should check how unpaid leave will impact their pension with the [SPPA](#).

8.5.24. Resolution of disagreements

8.5.25. Managers should not unreasonably withhold an employee's request for parental leave. Should a disagreement arise, the employee has the right to raise matters under the [Grievance Policy](#). It may be appropriate for either party to seek advice on resolving the matter from HR colleagues or a trade union representative. They should seek early resolution wherever possible.

8.5.26. Related policies:

- Maternity Policy
- New Parent Support Policy
- Shared Maternity and Shared Adoption Policy
- Adoption, Fostering and Kinship Policy
- Special Leave Policy

8.6. Supporting documentation

It is proposed that the supporting documents listed below will be developed to support the policy. Supporting documents are not part of the consultation. These will be drafted following the consultation when responses have been analysed and the policy is developed in a final draft.

- **Employee guide**
Descriptor: guide to help employees use and understand the Parental Leave Policy.
- **Manager guide**
Descriptor: guide to help managers use and understand the Parental Leave Policy.
- **Parental Leave policy flowchart**
Descriptor: visual and text alternative flowcharts outlining the key steps in the Parental Leave Policy.
- **Parental Leave Form**
Descriptor: form to request parental leave.

8.7. Consultation questions

We are inviting responses to this consultation using the Scottish Government's consultation hub. The following questions are set.

In your response, all questions have the option to answer yes or no. You are invited to provide further comment in a free text box. If you wish to make specific reference to a section of the policy, please quote the relevant numbered line in this consultation document.

1. Do you feel there are any gaps in the policy?
2. Do you feel there are any gaps in the proposed list of supporting documents?
3. Do you have any other comments to make on the policy?
4. Do you have any views on the potential impacts of this policy on equalities groups?

It is against the law to discriminate against someone because of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. These are protected characteristics under the Equality Act, 2010.

5. Should the entitlement to paid parental leave be extended to include step parents?

9. Breastfeeding Policy

9.1. Aim

9.1.1. This policy aims to:

- support and encourage employees who wish to continue to breastfeed in the workplace
- support employees to express human milk in the workplace, including milk to be donated

9.2. Scope

9.2.1. This policy applies to all employees who are:

- breastfeeding or chestfeeding
- producing milk for a baby

9.2.2. NHSScotland recognises that breastfeeding does not exclusively apply to employees who identify as women. For some, descriptors such as chestfeeding may be more appropriate, and in such cases this policy applies.

9.2.3. It also applies to workers including bank, agency, and sessional workers. References to employees should be taken to apply to such workers unless otherwise stated.

9.2.4. This policy complies with current legislation and meets the aims of the [Public Sector Equality Duty](#) of the [Equality Act 2010](#)

9.3. Definitions

9.3.1. **Donated human milk** is when an employee expresses milk for a baby not within their own household.

9.3.2. **Expressing** milk means extracting milk from the breast so it can be stored or fed to a baby. Mothers and birthing parents can express milk by hand or using an electric or manual pump.

9.4. Roles and responsibilities

9.4.1. There is a range of standard expectations which underpin all policies. Read more about standard [roles and responsibilities](#). In addition, the following specific responsibilities apply to this policy.

9.4.2. Employer

9.4.3. The employer should create a positive culture supporting breastfeeding in the workplace. They should also:

- make supportive and flexible arrangements so employees can breastfeed
- provide suitable facilities for breastfeeding mothers to rest
- provide adequate rest and meal breaks
- provide appropriate facilities so employees can express human milk and store it
- raise awareness of facilities available across the organisation

9.4.4. **Manager**

9.4.5. The manager should promote a supportive culture for breastfeeding in the workplace.

9.4.6. Before the employee starts maternity leave, the manager should make sure the employee is aware of the facilities and support available at work for:

- breastfeeding
- expressing and storing human milk

9.4.7. When the employee returns to work from maternity leave, the manager should:

- complete a Maternity risk assessment [risk assessment to be undertaken by the manager]
- advise the employee on the supportive and flexible arrangements for breastfeeding
- inform the employee about the facilities available for expressing milk and its safe storage in the workplace
- make sure time for breastfeeding and expressing milk is protected and undisturbed
- regularly review the arrangement to make sure it meets the needs of the employee and the service

9.4.8. **Employee**

9.4.9. The employee should

- consider what their needs may be to support breastfeeding on their return to work for discussion with their manager
- regularly review the arrangement with their manager to make sure it meets their needs and the needs of the service

9.5. Procedure

9.5.1. **Preparing to return to work**

9.5.2. Employees should meet their manager at least 4 weeks before their planned return or start date. At the meeting, they must discuss working arrangements that allow the individual to continue breastfeeding and to express and safely store human milk.

9.5.3. **Risk assessment**

9.5.4. On the employee's return to work or when they start work, the manager should complete a Maternity risk assessment [risk assessment to be undertaken by the manager]. It includes a section for employees currently breastfeeding and expressing milk.

9.5.5. The risk assessment will include identifying the location of breastfeeding facilities and identify other health and safety considerations, for example, lone working and night work.

9.5.6. If the employee's risk assessment or an appropriate health professional confirms that the employee's normal duties would prevent them from safely breastfeeding or expressing milk, the manager should first consider:

- making reasonable alterations to the employee's working conditions (including hours) to remove the relevant risk
- if changes cannot be reasonably made, then temporary redeployment, with the consent of the employee, should be considered

9.5.7. Where temporary redeployment is not possible, the employee should be placed on leave and paid as if at work for as long as is necessary to avoid the risks to the employee's health and safety.

9.5.8. **Time for breastfeeding**

9.5.9. The manager and employee should discuss and agree a plan for the time required for breastfeeding or expressing milk. There may be occasions when additional time is needed. The manager and employee should be flexible when creating the plan, to make sure it meets both the individual's needs and the needs of the service.

9.5.10. **Facilities**

9.5.11. The following facilities for breastfeeding mothers and birthing parents are recommended by the [Health and Safety Executive](#).

9.5.12. Areas for rest and expressing milk should be clean and warm with:

- a low comfortable chair and the facility to lie down
- a lock or an arrangement to ensure privacy
- handwashing facilities nearby
- an electric point for an electric pump

9.5.13. Facilities for storing human milk must provide:

- a clean area to store sterilising equipment
- dedicated space for storing expressed milk at 2–4°C until the employee takes it home

9.5.14. **Resolution of disagreements**

9.5.15. Should a disagreement arise, the employee has the right to raise matters under the [Grievance Policy](#). It may be appropriate for either party to seek advice on resolving the matter from HR colleagues or a trade union representative through early resolution wherever possible.

9.5.16. **Related policies:**

- Maternity Policy

9.6. Supporting documentation

It is proposed that the supporting documents listed below will be developed to support the policy. Supporting documents are not part of the consultation. These will be drafted following the consultation when responses have been analysed and the policy is developed in a final draft.

- **Employee guide**
Descriptor: guide to help employees use and understand the Breastfeeding Policy.
- **Manager guide**
Descriptor: guide to help managers use and understand the Breastfeeding Policy.
- **Breastfeeding policy flowchart**
Descriptor: visual and text alternative flowcharts outlining the key steps in the Breastfeeding Policy.
- **Maternity risk assessment**
Descriptor: risk assessment to be undertaken by the manager. This covers (1) on notification of pregnancy, (2) return to work within 6 months of having a baby and (3) breastfeeding.

9.7. Consultation questions

We are inviting responses to this consultation using the Scottish Government's consultation hub. The following questions are set.

In your response, all questions have the option to answer yes or no. You are invited to provide further comment in a free text box. If you wish to make specific reference to a section of the policy, please quote the relevant numbered line in this consultation document.

1. Do you feel there are any gaps in the policy?
2. Do you feel there are any gaps in the proposed list of supporting documents?
3. Do you have any other comments to make on the policy?
4. Do you have any views on the potential impacts of this policy on equalities groups?

It is against the law to discriminate against someone because of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. These are protected characteristics under the Equality Act, 2010.

10. Adoption, Fostering and Kinship Policy

10.1. Aim

10.1.1. The Adoption, Fostering and Kinship Care Policy aims to:

- outline the procedure eligible employees must use to request adoption leave, and the support available for fostering and kinship care
- provide details about employees' statutory and contractual rights
- confirm adoption pay arrangements

10.2. Scope

10.2.1. This policy applies to all employees who meet the eligibility criteria.

10.2.2. This policy complies with current legislation and meets the aims of the [Public Sector Equality Duty](#) of the [Equality Act 2010](#)

10.3. Definitions

10.3.1. **Adoption** is a process whereby an employee applies to become the legal parent of a child.

10.3.2. **Employing Board** is the employer of an individual who is the subject of a placement agreement.

10.3.3. **Fostering** is a process whereby an employee applies to become the legal carer of a child, usually for a limited time, but is not the legal parent.

10.3.4. **Intended parent** or **intended parents** are employees who cannot or choose not to conceive on their own and use surrogacy or adoption

10.3.5. **Keeping in touch (KIT) days** help employees on adoption leave:

- keep up to date with any changes at work
- maintain their professional registration where appropriate

10.3.6. KIT days also support employees when returning to the workplace after adoption leave.

10.3.7. A **kinship carer** is an employee related to the child through blood, marriage, civil partnership, or a person with whom the child has a pre-existing relationship who cares for the child if the child cannot remain with their parent or parents.

10.3.8. **Placement Board** is the organisation providing a training placement to an individual who is not their employee. A placement agreement must be in place.

10.4. Roles and responsibilities

10.4.1. There is a range of standard expectations which underpin all policies. Read more about standard [roles and responsibilities](#). In addition, the following specific responsibilities apply to this policy.

10.4.2. Manager

10.4.3. The manager should:

- obtain copies of relevant documentation to confirm eligibility
- respond promptly to a notification of leave
- plan for effective team working, including KIT days
- make sure the employee receives regular communication in departmental, organisational, and career opportunities
- action return to work requirements, for example, breastfeeding

10.4.4. Employee

10.4.5. The employee should:

- notify their manager of any placement dates of a child or children
- provide copies of relevant documentation to confirm eligibility
- talk to their manager about their intentions for adoption leave, return to work, and KIT days, as applicable
- maintain their professional registration

10.5. Procedure

10.5.1. Adoption procedure

10.5.2. When an adoption agency confirms a match with a child, the employee should notify their manager:

- before the end of the week they are notified by the adoption agency
- by the 15th week before the baby's due date if it is a surrogacy arrangement

10.5.3. The employee with primary carer responsibilities for the child should confirm their intention to take adoption leave by submitting an Adoption leave form. [form to notify manager of intention to take adoption leave] For details on the information employees should provide to their employer, please read the Employee guide. [guide to help employees use and understand the Adoption, Fostering and Kinship Care Policy]

10.5.4. The employee will receive confirmation of their adoption leave and pay arrangements in writing within 28 days.

- 10.5.5. The written confirmation will include the employee's:
- paid and unpaid leave entitlements, or statutory entitlements if the employee is not eligible for occupational leave and/or pay
 - period of accrued annual leave to be taken at the end of the formal adoption leave period or at a time agreed with their manager
 - expected return date, based on 52 weeks of paid and unpaid leave entitlement
 - early return date, if requested

10.5.6. The employee should give at least 28 days of notice if they wish to return to work before the expected return date.

10.5.7. There are particular notification provisions if an employee is adopting from overseas. For details, please read:

- Guide for managers [guide to help managers use and understand the Adoption, Fostering and Kinship Care Policy]
- Guide for employees [guide to help employees use and understand the Adoption, Fostering and Kinship Care Policy]

10.5.8. Adoption leave

10.5.9. Adoption leave eligibility

- 10.5.10. An employee will have the right to 52 weeks of adoption leave if they are:
- the primary carer in an adoption arrangement made by an official adoption agency
 - adopting a child from overseas and the adoption has been approved by the relevant UK authority
 - the parent through a surrogacy arrangement and committed to applying for a parental or adoption order

10.5.11. If adopting as a couple, only one parent can take adoption leave. The partner may access:

- New Parent Support Policy
- Shared Maternity and Shared Adoption Policy

10.5.12. Adoption leave entitlement

10.5.13. Employees who are eligible will have a right to take 52 weeks of adoption leave whether or not they return to NHS employment.

10.5.14. Pre-adoption leave

10.5.15. Reasonable time off should be given to attend official meetings in the adoption process, such as court sessions and interviews. When an adoption

agency confirms the placement of a child for adoption, the employee must advise their manager in writing as soon as possible.

10.5.16. A maximum of 5 working days pro rata is available to allow staff to attend these meetings. Proof of appointment will be required to support requests for leave.

10.5.17. The employee must give their manager advance notice of appointments. They must also try to arrange these meetings outside work hours or at the start or end of the working day. However, employers recognise that this may not always be possible.

10.5.18. KIT days

10.5.19. Before going on adoption leave, the employee and their manager must agree on voluntary arrangements for keeping in touch. It will help the employee to:

- keep up to date with developments at work and facilitate their return to work
- inform their manager of any circumstances that may affect their intended date of return
- maintain their professional registration

10.5.20. Employees can return to work for up to 10 days without bringing their adoption leave or pay to an end. KIT days are optional but help to facilitate a smooth return to work for employees returning from adoption leave.

10.5.21. KIT days don't need to be consecutive. They can include training or other activities which enable the employee to keep in touch with the workplace. Working for part of any day will count as one KIT day.

10.5.22. KIT days are paid as if at work, less any Occupational Adoption Pay (OAP) or Statutory Adoption Pay (SAP).

10.5.23. Adoption pay

10.5.24. Employees may be eligible for payment of OAP. If an employee is not eligible for OAP due to insufficient service, they may meet the criteria for payment of SAP.

10.5.25. Statutory Adoption Pay (SAP)

10.5.26. SAP is a benefit for employees on adoption leave. The UK Government determines the conditions and amount, but it is the employer who pays SAP to their employees.

10.5.27. Employees are paid 90% of their average earnings in the first 6 weeks of adoption leave. The next 33 weeks are paid at a standard SAP rate, or 90% of average earnings if this is less.

10.5.28. Average earnings are calculated based on earnings over the 8 weeks before the end of the qualifying week.

10.5.29. Contributions to the employee's pension will continue for this period.

10.5.30. SAP eligibility

10.5.31. To qualify for SAP, through adoption arrangements, an employee must have:

- 26 weeks of continuous service by the week they are matched with the child
- followed the application procedures set out in this policy
- average earnings above the lower earnings limit for National Insurance contributions during the 8 weeks before the end of the week they are matched with the child

Learn more about the [lower earnings limit](#).

10.5.32. To qualify for SAP, through surrogacy arrangements, an employee must have:

- 26 weeks of continuous service by the 15th week before the baby's due date
- followed the application procedures set out in this policy
- average earnings above the lower earnings limit for National Insurance contributions during the 8 weeks before the end of the week they are matched with the child

Learn more about the [lower earnings limit](#).

10.5.33. If the employee adopts a child from overseas, the service requirement is the same. There are additional requirements, including:

- a declaration giving the date the child is expected to enter the UK
- confirmation that the employee will not also claim for new parent support pay

10.5.34. The employee should complete an [Adopting a child from abroad form](#).

10.5.35. An employee's SAP can begin on the date the child is placed with them for adoption. It can be the following day, if the employee is at work on that date. Otherwise, SAP can begin on a predetermined date no more than 14 days before the date on which the child is expected to be placed with them.

In a surrogacy case, SAP starts on the day on which the child is born, or if the employee is at work on that date, the following day.

10.5.36. All eligible employees will receive SAP even if they do not intend to return to work after adoption leave.

10.5.37. Occupational Adoption Pay (OAP)

10.5.38. OAP provides enhanced benefits to employees who intend to return to work after adoption leave.

10.5.39. The employee will receive full pay for the first 8 weeks of adoption leave, plus any SAP entitlement. They'll then receive half pay for the next 18 weeks and SAP or adoption allowance if entitled. The total will not exceed an employee's full pay.

10.5.40. For the next 13 weeks, the employee will receive any SAP or adoption allowance entitlement. They will receive no pay for the final 13 weeks of adoption leave.

10.5.41. To qualify for OAP employees must have 12 months of continuous service with one or more NHS employers. The continuous service period ends with the:

- week the adoption agency matches them with a child
- 15th week before the baby's due date if applying via a surrogacy arrangement

10.5.42. To calculate continuous service eligibility criteria, the employer should consult the [NHS Terms and Conditions of Service Handbook](#).

10.5.43. There are notification requirements which must be fulfilled in order to be eligible for OAP. For more information, see:

- Guide for employees [guide to help employees use and understand the Adoption, Fostering and Kinship Care Policy]
- Adoption leave form [form to notify manager of intention to take adoption leave]

10.5.44. Employees returning to NHS employment

10.5.45. Employees who intend to return to NHS employment for at least 3 months after their adoption leave ends will be entitled to OAP.

10.5.46. Employees are also entitled to take a further 13 weeks of unpaid leave to bring their total adoption leave period to 52 weeks. In exceptional circumstances, an employee may have their unpaid leave extended by local agreement.

10.5.47. By prior agreement, an employer may pay the employee's OAP differently. For example, a fixed amount spread equally over the adoption leave period or a combination of full pay and half pay.

10.5.48. Employees not returning to NHS employment

10.5.49. Employees who do not return to NHS employment for a minimum of 3 months after adoption leave must repay their adoption pay less any SAP.

10.5.50. Adoption Allowance (AA)

10.5.51. Employees who do not meet SAP or OAP criteria should contact their local Jobcentre Plus office to ask about AA. Unlike SAP and OAP, AA is not paid by the employer. Instead, AA is paid directly by the UK Government.

10.5.52. Adoption Disruption

10.5.53. Should the adoption breakdown, the employee will be entitled to continue their adoption leave and receive the appropriate payment for that time.

10.5.54. Bank and agency staff

10.5.55. Bank staff are not entitled to OAP or adoption leave. However, they may be entitled to SAP, depending on their level of earnings. The employer may review entitlement to OAP in exceptional cases, such as if the worker can demonstrate regular work patterns over an extended period.

10.5.56. Agency staff may be entitled to adoption leave and SAP if they are considered an employee of the agency. This should be checked with the relevant agency.

10.5.57. Employees on a fixed-term or training contract

10.5.58. An employee may be on a fixed-term or training contract that expires between 11 weeks before and 6 weeks after the date of adoption. If this is the case, and they satisfy the eligibility criteria, the employer will extend the employee's employment contract so they receive 52 weeks of adoption leave, OAP, and SAP.

10.5.59. Rotational training contracts

10.5.60. Employees, such as doctors and dentists on the Scottish Medical Training programme, are employed on regional training contracts. They

must notify their manager within the Placement Board about their intention to take adoption leave.

10.5.61. The Placement Board will notify the Employing Board of the employees' intention to take adoption leave. The Employing Board will confirm the employees' adoption leave and pay entitlement. An employee on a rotational training contract may be able to rely on the provisions at 15.87 of the [NHS Terms and Conditions of Service Handbook](#).

10.5.62. Fostering procedure

10.5.63. Fostering can be short-term or long-term. Managers should adopt a flexible approach to this.

10.5.64. Employees should discuss their intention to foster with their manager as soon as possible to determine the appropriate level of support required.

10.5.65. For very short-term fostering, the manager should consider providing time off under the Special Leave Policy. However, approval is not guaranteed. For longer-term fostering, the manager should consider providing time off under the arrangements for:

- adoption leave where the placement of the child is prior to formal adoption
- parental leave [Parental Leave Policy]
- new parent support leave [New Parent Support Policy]
- career break [Career Break Policy]

10.5.66. Kinship procedure

10.5.67. Employees should discuss kinship arrangements with their manager as soon as possible to determine the appropriate level of support required.

10.5.68. Employees who need time off should request it under the following policies:

- Special Leave Policy
- Flexible Work Location Policy
- Flexible Work Pattern Policy
- Career Break Policy

10.5.69. Resolution of disagreements

10.5.70. Should a disagreement arise, the employee has the right to raise matters under the [Grievance Policy](#). It may be appropriate for either party to seek advice on resolving the matter from HR colleagues or a trade union representative. They should seek early resolution wherever possible.

10.5.71. Related policies:

- Maternity Policy
- New Parent Support Policy
- Shared Maternity and Shared Adoption Policy
- Parental Leave Policy

10.6. Supporting documentation

It is proposed that the supporting documents listed below will be developed to support the policy. Supporting documents are not part of the consultation. These will be drafted following the consultation when responses have been analysed and the policy is developed in a final draft.

- **Employee guide**
Descriptor: guide to help employees use and understand the Adoption, Fostering and Kinship Care Policy.
- **Manager guide**
Descriptor: guide to help managers use and understand the Adoption, Fostering and Kinship Care Policy.
- **Adoption, Fostering and Kinship Care policy flowchart**
Descriptor: visual and text alternative flowcharts outlining the key steps in the Adoption, Fostering and Kinship Care Policy.
- **Adoption Leave Form**
Descriptor: form to notify manager of intention to take adoption leave.
[Adopting a child from abroad form \(SC6\)](#)

10.7. Consultation questions

We are inviting responses to this consultation using the Scottish Government's consultation hub. The following questions are set.

In your response, all questions have the option to answer yes or no. You are invited to provide further comment in a free text box. If you wish to make specific reference to a section of the policy, please quote the relevant numbered line in this consultation document.

1. Do you feel there are any gaps in the policy?
2. Do you feel there are any gaps in the proposed list of supporting documents?
3. Do you have any other comments to make on the policy?
4. Do you have any views on the potential impacts of this policy on equalities groups?

It is against the law to discriminate against someone because of: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation. These are protected characteristics under the Equality Act, 2010.



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