



# MATERNITY/PATERNITY/ADOPTION AND SHARED PARENTAL LEAVE POLICY

## **DOCUMENT INFORMATION**

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## **1. INTRODUCTION**

1.1 As part of its commitment to improving the working lives of staff, South Central Ambulance Service NHS Foundation Trust, subsequently referred to as 'the Trust', accepts that from time to time, staff may need a period of leave to care for or to provide support to their families and dependents. This policy has been written to ensure that there is clarity around the time off that staff are entitled to and also to ensure that requests for time off are dealt with in a consistent, fair and transparent manner.

1.2 The Trust values of Teamwork, Caring, Professional and Innovation underpin everything we do to support our vision of saving lives and enabling patients to get the care they need. SCAS aims to nurture a healthy culture, based on all staff demonstrating their role-relevant values-based behaviours within their working lives. All staff are expected to model their behaviours to support SCAS with its strategic aims to become an Employer, Partner and Provider of Choice.

1.3 The purpose of this policy is to outline the arrangements for the implementation of each of the following leave rights within the Trust:

- Maternity Leave
- Adoption Leave Maternity Support (Paternity) Leave Shared Parental Leave

1.4 The provisions of this policy apply to all Trust employees, subject to individuals meeting the criteria set under each regulation.

1.5 Staff and managers should use the policy to assist with determining eligibility for any of the family leave available and the processes involved with the taking and payment of that leave.

1.6 This policy has been written in partnership by Management and staff side in accordance with the relevant employment law and ACAS guidelines.

1.7 By design, this policy focuses on the rights and entitlements for someone who is planning on taking maternity, adoption or shared parental leave. This indicates a momentous event in the lives of staff and whilst it is important that staff know what their entitlements will be, it must also be recognised that these events do not always go to plan. It is therefore important that managers dealing with any such situations, recognise that a holistic approach should be taken. In the unfortunate event that things do not go as planned, staff should be supported with compassion and understanding, taking into consideration the physical and mental health of the individual involved at this difficult time.

## **2. EQUALITY STATEMENT**

2.1 The Trust is committed to promoting positive measures that eliminate all forms of unlawful or unfair discrimination on the grounds of age, marital status, disability, race, nationality, gender, religion, sexual orientation, gender reassignment, ethnic or national origin, beliefs, domestic circumstances, social and employment status, political affiliation or trade union membership, HIV status or any other basis not justified by law or relevant to the requirements of the post.

2.2 By committing to a policy encouraging equality of opportunity and diversity, the Trust values differences between members of the community and within its existing workforce, and actively seeks to benefit from their differing skills, knowledge, and experiences in order to provide an exemplary healthcare service. The Trust is committed to promoting equality and diversity best practice both within the workforce and in any other area where it has influence.

2.3 The Trust will therefore take every possible step to ensure that this procedure is applied fairly to all employees regardless of race, ethnic or national origin, colour or nationality; gender (including marital status); age; disability; sexual orientation; religion or belief; length of service, whether full or part-time or employed under a permanent or a fixed-term contract or any other irrelevant factor.

2.4 Where there are barriers to understanding e.g. an employee has difficulty in reading or writing or where English is not their first language additional support will be put in place wherever necessary to ensure that the process to be followed is understood and that the employee is not disadvantaged at any stage in the procedure. Further information on the support available can be sought from the Human Resource Department.

### **3. SCOPE**

3.1 This policy applies to all staff employed by the Trust.

3.2 This policy does not apply to Bank workers, Agency Staff, Contractors, Honorary contract holders or volunteers.

### **4. ROLES AND RESPONSIBILITIES**

#### **4.1 Employee Responsibilities**

4.1.1 Employees are responsible for ensuring that they are aware of and comply with this policy guidance.

4.1.2 Employees should inform their line manager as soon as possible of a request for any type of leave within the scope of this policy and should adhere to the relevant sections of the policy in order to make an application.

4.1.3 To provide any relevant documentation e.g. MATB1 form.

#### **4.2 Human Resources Department Responsibilities**

4.2.1 It is the responsibility of HR to provide advice, support and guidance to Managers and staff on the application of this policy in relation to: Maternity, Paternity, Adoption Leave and Shared Parental Leave keeping the provisions within this policy in line with employment legislation, best practice people management principles and NHS Agenda for Change guidelines.

4.2.2 In conjunction with the line manager and the Scheduling Department, HR must ensure individuals are given timely and accurate information on entitlements to: Maternity, Paternity Adoption Leave and Shared Parental Leave.

### **4.3 Managers' Responsibilities**

4.3.1 Ensure, in conjunction with the Human Resources and Scheduling Departments (where applicable), that the management and allocation of leave is carried out in accordance with this policy guidance and that the policy is available to all staff.

4.3.2 Managers are responsible for undertaking any necessary workplace risk assessments (in accordance with the New and Expectant Mothers policy – under Risk Management) for their staff and to ensure that they keep in touch with staff who are on extended periods of family leave.

4.3.3 Managers are responsible for informing payroll of any changes by completion of the relevant ESR form and forwarding this to the HR department.

4.3.4 Managers are responsible for responding to employees' requests for leave in accordance with this policy guidance.

### **4.4 Scheduling Department Responsibilities**

4.4.1 Ensure in conjunction with Managers and the Human Resources Department that the allocation of leave is carried out in accordance with this policy guidance.

4.4.2 Maintaining accurate leave records and ensuring that relief/bank/overtime shifts are allocated as appropriate to maintain operational/departmental cover.

## **PART I**

### **5. MATERNITY AND ADOPTION LEAVE - PRINCIPLES**

5.1 The Trust recognises its female employees right to 52 weeks' Maternity leave and related employment rights in-line with the provisions of all associated employment legislation, in particular the Employment Rights Act 1996, the Employment Relations Act 1999 and the Work and Families Act 2006 (and subsequent amendments).

5.2 This Trust policy seeks to provide clear guidelines and procedures to safeguard staff during pregnancy and explains the entitlements and rights of female employees to Maternity Leave and pay.

5.3 Maternity leave is an automatic contractual entitlement which applies to all women employed by the Trust and all applications for maternity leave will be granted in accordance with the guidelines set out within this policy document.

5.4 Adoption leave and pay is provided to enable an employee who wishes to adopt to take a period of leave to help the child settle into the family and adjust to new circumstances and to enable an employee to take time off to facilitate the formal adoption process, in-line with the Adoption Leave and Adoption Pay regulations 2006 and other associated employment legislation. The Trust's provisions mirror, as far as it is practicable, the entitlements and conditions of the Maternity Scheme.

5.5 The right to 52 weeks Adoption Leave is available to employees who have been personally matched with a child or young person under the age of 18 for adoption.

5.6 The employee will qualify for Adoption Leave if they:

- are newly matched with a child for adoption by an approved agency;
- will have primary carer responsibilities for the child
- notify their line manager using the appropriate form within 7 days of being notified by an approved adoption agency that they have been newly matched to a child for adoption.

## **6. WHEN PREGNANCY/ADOPTION IS CONFIRMED**

6.1 As soon as the member of staff is aware that she is pregnant (or an adoption placement is confirmed) they must notify their line manager and the Human Resources Department, this information will be kept confidential.

6.2 Under the Management of Health & Safety at Work (Amendment) Regulations 1994, the Trust is required to take into account the potential risk to the health and safety of new and expectant mothers at work. Managers and employees should refer to the Trust's 'New or Expectant Mothers' policy for further guidance.

## **7. ENTITLEMENT TO MATERNITY/ADOPTION LEAVE AND PAY**

7.1 An employee working full-time or part-time will be entitled to paid and unpaid maternity/adoption leave under the NHS contractual maternity/adoption pay scheme if:

i) they have 12 months' continuous service (in accordance with paragraphs 15.61 to 15.65 of the Agenda for Change Terms and Conditions handbook) with one or more NHS employers at the beginning of the 11<sup>th</sup> week before the expected week of childbirth or by the 11<sup>th</sup> week before placement;

and

### **ii) MATERNITY**

they notify the Trust of the following in writing before the end of the 15<sup>th</sup> week before the expected date of childbirth (or if this is not possible, as soon as is reasonably practicable thereafter).

NB: It is anticipated that most employees would be able to comply with this requirement unless they have an acceptable mitigating reason, such as not knowing they were pregnant or serious ill-health.

### **ADOPTION**

they notify the Trust of the following no later than 7 days from the date on which they receive confirmation that they have been matched with a child for the purposes of adoption, giving at least 28 days' notice (or if this is not possible, as much notice as is reasonably practicable):

- a) their intention to take maternity/adoption leave;
- b) the date they wish to start their maternity/adoption leave;



- c) that they intend to return to work with the same or another NHS employer for a minimum period of three months after their maternity/adoption leave has ended.
- d) they provide a MATB1 form from their midwife or GP giving the expected date of childbirth or an **original** 'matching certificate' from an approved adoption agency stating:
  - The name and address of the agency.
  - The name and address of the employee.
  - The date on which the employee was notified that he or she had been matched with the child, and
  - the date on which the agency expects to place the child with the employee.

The adoption agency must be one which is properly recognised in UK law. Employees have no statutory rights if they arrange a private adoption.

Eligibility for overseas adoption leave and pay are the same as if the child is adopted from within the UK.

A parental order parent in a surrogacy arrangement may be entitled to adoption leave and pay under this Policy.

7.2 An employee who satisfies the conditions in paragraph 8.1, except that they do not intend to work with the same or another NHS employer for a minimum period of three months after their maternity/adoption leave is ended, will be entitled to pay equivalent to Statutory Maternity Pay (SMP) or Statutory Adoption Pay (SAP), which is paid at 90 per cent of their average weekly earnings for the first six weeks of their maternity/adoption leave and to a flat rate sum for the following 33 weeks.

7.3 If an employee does not satisfy the conditions in paragraph 8.1 for occupational maternity/adoption pay, they may be entitled to SMP/SAP. If their earnings are too low for her to qualify for SMP/SAP or they do not qualify for another reason, they should be advised to claim Maternity/Adoption Allowance from their local Job Centre Plus or social security office. See section 30 for further information on statutory entitlements.

7.4 Adoption leave is not available to both parents. If one partner is eligible for adoption leave and pay, the other may take paternity leave and pay, or Shared Parental Leave (for babies adopted on or after 5 April 2015).

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

## **8. AMOUNT OF PAY AND DURATION OF LEAVE**

8.1 Where an employee meets the conditions defined at paragraph 7.1, the amount of contractual maternity/adoption pay receivable is as follows:

- i) for the first eight weeks of absence, the employee will receive full pay, less any SMP/SAP or Maternity Allowance (including any dependents' allowances) receivable;

- ii) for the next 18 weeks, the employee will receive half of full pay plus any SMP/SAP or Maternity Allowance (including any dependents' allowances) receivable, providing the total receivable does not exceed full pay;
- iii) for the next 13 weeks, the employee will receive any Statutory Maternity Pay/SAP or Maternity Allowance that they are entitled to under the statutory scheme;
- iv) Employees are also entitled to take a further 13 weeks as unpaid leave to bring the total of leave to 52 weeks.

8.2 NHS contractual maternity/adoption pay is in line with Section 15 National Terms and Conditions.

8.3 By prior agreement with the Trust, contractual maternity/adoption pay may be paid in a different way, for example a combination of full pay and half pay or a fixed amount spread equally over the maternity leave period. Employees should approach the HR department in order to make such a request.

8.4 There is a period of two weeks immediately after the birth of the baby which is classified as Compulsory Maternity Leave.

## **9. COMMENCEMENT AND NOTIFICATION OF LEAVE**

9.1 An employee may begin her maternity leave at any time between 11 weeks before the expected week of childbirth provided she gives the required notice.

If an employee goes off sick with a pregnancy related condition, within the 4 weeks before the baby is due, maternity leave will automatically start.

9.2 An employee may begin their adoption leave up to 14 days before the date on which the child is expected to be placed with the employee and no later than that date, provided that they notify the Trust as soon as 'matching' is confirmed and that they give the Trust at least 28 calendar days' notice.

9.3 The application form for maternity/adoption leave is attached at Appendix 1 Annex A (ESR 8). This must be completed, signed by the employee's Line Manager and returned to the relevant HR Department before the end of the 15<sup>th</sup> week before the expected date of childbirth or within 7 days of confirmation of matching and at least 28 days' before placement. If, after completion, the employee wants to change the date from which she wishes her leave to start, she should notify her line manager at least 28 days beforehand (or if this is not possible, as soon as is reasonably practicable beforehand) and complete an ESR 8 form.

9.4 An employee will accrue annual leave over their maternity leave period, this annual leave can be taken prior to commencing maternity leave and/or after the formal maternity leave period (in accordance of the Agenda for change Terms and Conditions handbook) section 15.50.

## **10. CONFIRMING MATERNITY/ADOPTION LEAVE AND PAY**

10.1 Following receipt of the maternity or adoption leave application form and MATB1 form or Matching Certificate the relevant HR Department will confirm the following to the employee in writing within 28 calendar days:

- i) the employee's paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);
- ii) unless an earlier return date has been given by the employee, their expected return date based on their 52 weeks paid and unpaid leave entitlement under this agreement; and iii) the length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal maternity/adoption leave period;
- iv) the need for the employee to give at least 8 weeks' notice if they wish to return to work before the expected return date. During this period all contractual benefits, with the exception of remuneration, will apply.

## **11. KEEPING IN TOUCH**

11.1 Before going on leave, the line manager and the employee should also discuss and agree any voluntary arrangements for keeping in touch during the employee's maternity/adoption leave, including:

- i) any voluntary arrangements that the employee may find helpful to help them keep in touch with developments at work and, nearer the time of their return, to help facilitate their return to work;
- ii) keeping the line manager in touch with any developments that may affect their intended date of return.

11.2 To facilitate the process of keeping in touch, an employee may work for up to a maximum of 10 keeping in touch (KIT) days without bringing their maternity/adoption leave to an end (working for part of any day will count as one KIT day). Any days of work will not extend the maternity/adoption leave period and cannot be taken in the compulsory maternity leave period referenced at 13.2.

11.3 KIT days are intended to facilitate a smooth return to work for employees returning from maternity/adoption leave. The work can be consecutive or not and can include training or other activities which enable the employee to keep in touch with the workplace.

11.4 Any such work must be by mutual agreement and neither the Trust nor the employee can insist upon it.

11.5 The employee will be paid at their basic hourly rate for the hours worked and the appropriate occupational maternity leave payment will be deducted for KIT days worked. KIT days are claimed on E timesheet this will be paid one month in arrears.

Any hours worked on a particular day or shift will be recorded as 1 KIT day i.e. if an employee attends a 2 hour meeting, this will be recorded as one of their ten KIT days, however, they will only be paid for the hours worked.

11.6 Any employee who is breastfeeding must be risk assessed and facilities provided in accordance with the Trust's 'New and Expectant Mothers' policy.

## 12. RETURNING TO WORK

12.1 An employee has the right to return to their job, under their original contract which include base and band and on no less favourable terms and conditions.

12.2 Employees on maternity leave are not permitted to return to work for the first two weeks after the birth.

12.3 The employee and the employee's partner may, at any time after the end of the two week compulsory maternity leave period and provided they are eligible, take Shared Parental Leave (SPL). An employee who intends to end their maternity/adoption leave to enable her and/or the child's other parent to take SPL must follow the process and notification requirements detailed in the section **Shared Parental Leave** (part 111 point 31).

12.4 An employee who intends to return to work at the end of their full maternity/adoption leave will not be required to give any further notification to the employer, although if they wish to return earlier than the date specified, they must give at least 8 weeks' notice to their line manager.

12.5 The Trust recognises its responsibilities as an employer to provide, where reasonably practicable flexible working practices to staff returning to work following maternity/adoption leave. Such requests will be considered in accordance with the Trust's Flexible Working policy. The employee should write to their line manager giving them 8 weeks' notice of their request.

12.6 A Variation Form (VF) Appendix C will need to be completed by the Line Manager and forwarded to payroll to return an employee back to work following their maternity leave. It is important that this is completed and payroll advised of the date of return to work following maternity leave, irrespective of any other type of leave that is being taken immediately following maternity leave. The VF should be submitted 1 month in advance of the employees return to avoid any over/under payment. This is the manager's responsibility to ensure this is completed. In circumstances where it is not possible for the form to be physically signed by the individual, Line Managers can use their ESR number as signatory.

12.7 If an employee plans to take a period of annual leave following their maternity leave, the employee will need to be returned to the payroll at the end of their maternity leave and then annual leave should commence on the day that would have been their first day back from maternity leave. If an employee wishes to take any accrued annual leave after their maternity leave this should be discussed with their line manager at the earliest convenience, however, a minimum of 8 weeks' notice is required.

12.8 If an employee is reducing their hours after a period of annual leave following maternity leave, the reduction in hours should take effect after the period of annual leave has ended.

12.9 A variation form (appendix 4) will need to be completed by the Line Manager to reflect the change in hours and the process followed as outlined in the Flexible Working Policy.

The variation form should be submitted 1 month in advance of any change in hours to avoid any over/under payment. This is the line managers responsibility to ensure this is completed.

12.10 If it is agreed that the employee will return to work on a flexible basis, including changed or reduced hours, for an agreed temporary period this will not affect the employee's right to return to their job under their original contract at the end of the agreed period.

12.11 Where the employee chooses to return to a post at a lower grade, they will not be entitled to any protection of pay.

### **13. FAILURE TO RETURN TO WORK**

13.1 If an employee who has notified the Trust of their intention to return to work for the Trust or a different NHS employer, fails to do so within 15 months of the beginning of their maternity/adoption leave, they will be liable to refund the whole of their maternity/adoption pay, less any Statutory Maternity Pay or Statutory Adoption Pay, received.

13.2 In cases where it is considered that to enforce this provision would cause undue hardship or distress, Heads of Department have the discretion to waive their rights to recovery of full payment, in agreement with the appropriate HR Manager. Further guidance must be obtained from the Human Resources department in such cases.

### **14. SICKNESS PRIOR TO CHILDBIRTH**

14.1 Any sickness absence occurring prior to the last four weeks before the Estimated Week of Childbirth (EWC), which is supported by a medical statement or self-certificate, will be treated in accordance with normal sick leave provisions in accordance with the Trust's Attendance policy.

14.2 Any pregnancy related sickness absence within the last four weeks before the EWC, will result in the automatic commencement of maternity leave. In such instances, the maternity leave will start on the first day of the employee's absence falling within the last four weeks before the EWC.

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

### **15. SICKNESS FOLLOWING THE END OF MATERNITY/ADOPTION LEAVE**

In the event of illness following the date the employee was due to return to work, normal sick leave provisions will apply in accordance with the Attendance policy.

### **16. STILL BIRTH**

16.1 In the very unfortunate event, where an employee's baby is still born after the 24<sup>th</sup> week of pregnancy, the employee will be entitled to the same amount of maternity leave and pay as if her baby was born alive.

## **17. MISCARRIAGE**

17.1 Where an employee has a miscarriage before the 24<sup>th</sup> week of pregnancy, normal sick leave provisions will apply in accordance with the Trust's Attendance policy.

## **18. PRE-TERM BIRTH**

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

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

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

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

## **19. DISRUPTED ADOPTION PLACEMENT**

- 19.1 Where the employee's ordinary adoption leave period has begun and;
- the adoption agency notifies the employee that the child will not be placed with him or her, or;
  - the child dies, or;
  - the child's placement ends;

the leave will normally end 8 weeks after the end of the week in which the disruption occurs. Payment of Statutory Adoption Pay SAP will continue for 8 weeks after the end of the week in which the disruption took place or the end of the employee's SAP period if that is sooner.

## **20. ANTENATAL AND POSTNATAL CARE AND PRE-ADOPTION PLACEMENT MEETINGS**

20.1 Pregnant employees and those who have recently given birth have/adopted a child have the right to paid time off for antenatal and postnatal care or official adoption placement meetings, provided that at least one week's notice is given. This may include relaxation and parent-craft classes as well as appointments for antenatal care and attendance at health clinics. Line Managers may reasonably request to see appointment cards.

20.2 Employees who are the partner of a pregnant woman/a co-adoptee have the right to take unpaid time off to accompany his/her partner to up to two antenatal appointments/official adoption placement meetings lasting no more than 6.5 hours each.

## **21. ACCRUAL OF ANNUAL LEAVE**

21.1 Annual leave will continue to accrue during all maternity leave (both Ordinary Maternity Leave/Ordinary Adoption Leave and Additional Maternity Leave/Additional Adoption Leave) and employees will be eligible to carry their full entitlement forward into the following leave year, where applicable.

21.2 The amount of annual leave to be taken before and/or after the formal maternity/adoption leave (i.e. OML/OAL plus AML/AAL) should be agreed between the employee and their Line Manager in discussion with the Human Resources Department. Annual Leave may be taken directly after OML/OAL or after AML/AAL to extend the total period of leave but this should be agreed sufficiently in advance to enable the line manager to plan for appropriate departmental cover.

21.3 In certain circumstances the employee may elect to receive payment in lieu of a proportion of their annual leave – this will need to be agreed with their Line Manager and the relevant Head of Department and pay roll notified. The employee cannot however be required to receive their leave entitlement as a payment.

21.4 If an employee wishes to extend their maternity leave with annual leave that has been accrued please note that the official return to work date should be the date their annual leave commences in order to receive correct payment.

## **22. PENSIONS**

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

## **23. FIXED-TERM CONTRACTS**

23.1 Employees subject to fixed-term which expire after the 11<sup>th</sup> week before the expected week of childbirth and who satisfy the conditions in paragraph 7.1 shall have their contracts extended so as to allow them to receive the 52 weeks which includes paid contractual and SMP and the remaining 13 weeks of unpaid maternity leave. If there is no right of return because the contract would have ended, had pregnancy/adoption not occurred, the repayment provisions set out in paragraph 13 will not apply.

23.2 Absence due to maternity/adoption leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service.

23.3 Employees on fixed-term contracts who do not meet the 12 months' continuous service condition in accordance with paragraph 7.1 may be entitled to SMP in accordance with paragraph 7.3.

## **24. STAFF ON TRAINING/DEGREE PROGRAMMES**

24.1 Employees undertaking external training or degree programmes, as part of their Terms and Conditions of employment, e.g. Student Paramedics, will be entitled to 52 weeks' Maternity / Adoption leave and to Contractual Maternity/Adoption pay subject to

meeting the criteria defined at paragraph 7.1. This will be paid in accordance with Agenda for Change Annex 5 or Section 2 at the appropriate rate, depending upon how close they are to the completion of their training at the date that their maternity/adoption leave will commence.

24.2 Employees on training or degree programmes who do not meet the 12 months' continuous service condition in accordance with paragraph 7.1 may be entitled to SMP/SAP in accordance with paragraph 7.3.

24.3 Employees will be entitled to return to work in accordance with section 13 of this policy. However, discussions will need to take place between the employee, the Trust's Education Department and the external training provider (e.g. college/university) as to how this can be reasonably achieved, taking into account the course syllabus and timetable, the required number of 'placement' hours and the individual's circumstances e.g. how much of the course has been completed.

24.4 The employee's training contract will be extended, if necessary, to enable the employee to complete the agreed programme of training, including the required 'placement hours' in order to qualify.

## **25. INCREMENTS**

25.1 Maternity/Adoption leave, whether paid or unpaid, shall count as service for pay steps and for the purposes of any service qualification period for additional annual leave. The expectation is that an employee on maternity/adoption leave would receive their I pay step on the due date if concerns had not been raised about their performance / capability prior to maternity leave.

## **PART II**

### **26. MATERNITY SUPPORT (PATERNITY) LEAVE – PRINCIPLES**

26.1 Employees who meet the criteria for maternity support / paternity leave and have continuous service of more than 1 year with one or more NHS employers at the EWC/placement of the child are entitled to NHS Occupational Statutory Paternity Pay of 2 weeks paid leave at full pay inclusive of SSP.

### **27. ELIGIBILITY TO MATERNITY SUPPORT (PATERNITY) LEAVE AND PAY**

27.1 All Trust employees are entitled to two weeks' paternity leave, providing that they satisfy the following criteria:

- Employees must have or expect to be having responsibility for the upbringing of the child;
- Be the biological father to, and/or be married to, or partner to the child's mother or adopter;
- Give at least 28 days notice of their wish to take paternity leave by completing the request form (ESR 9) at Annex B;
- As the statutory entitlement to paternity leave is based on the relationship with the child's mother, paternity and adoption leave also apply to partnerships of the same sex.



27.2 An employee will be entitled to 2 weeks' occupational paternity leave at full pay provided they have been employed by the Trust or other NHS Employing Authority for a continuous period of 12 months (in accordance with paragraphs 15.61 to 15.65 and 35.17 of the Agenda for Change Terms and Conditions handbook) at the beginning of the week of expected childbirth or adoption placement and intend to return to work for the Trust or another NHS employer following paternity leave.

27.3 If an employee is not entitled to occupational paternity pay, there may be an entitlement to 2 weeks' statutory paternity pay (SPP) if they have been employed by the Trust or another NHS Employing Authority for a continuous period of at least 26 weeks at the Qualifying Week (QW) i.e. the week commencing the 15<sup>th</sup> week before the expected week of childbirth or adoption and are earning more than the national insurance lower earnings limit per week.

27.4 SPP will be set at the same flat rate for statutory maternity pay, or if the employee's earnings are less than the flat rate per week, 90% of the average weekly earnings.

27.5 The Trust reserves the right to request evidence of a staff member's eligibility to Paternity Leave before approving leave/pay, for example a copy of the MAT B1 form or confirmation of placement letter/matching certificate. This should be provided to the HR Team along with the ESR 9 form.

## **28. COMMENCEMENT OF MATERNITY SUPPORT (PATERNITY) LEAVE**

28.1 Maternity Support (Paternity) leave will commence on the date that the employee has notified the Trust that they intend to begin their leave. However, managers are expected to exercise flexibility and discretion around this date when a child is born prematurely and the employee wishes to bring this date forward. The employee should notify their Line Manager as soon as is reasonably practicable.

28.2 Where the child remains unborn on the expected date, the leave will be postponed accordingly and the employee should notify scheduling, their Line Manager and the HR Team.

28.3 Maternity Support (Paternity) leave may be taken either as 1 single block or 2 consecutive weeks within 56 days of the child's birth or adoption placement. If only one week within this time period is taken, the employee will forfeit the second week.

28.4 Maternity Support (Paternity) leave must be taken within 56 days (8 weeks) of the child's birth or adoption placement.

## **PART III**

### **29. SHARED PARENTAL LEAVE POLICY**

29.1 This Shared Parental Leave Policy explains the rights in relation to shared parental leave and pay in relation to the birth or adoption of a child.

29.2 This policy reflects statutory shared parental rights for parents

29.3 This policy does not form any part of any employee's contract of employment and the Trust may amend it at any time.

29.4 The law relating to shared parental leave ("SPL") and pay is complex so do not hesitate to contact your HR representative if you have any questions.

29.5 In this policy the "parent" or "parents" of the child are referred to. This is not necessarily the biological parents. It refers to the two people who will share the main responsibility for the child's upbringing (and who may be the mother, the adoptive parents, the father or the mother's partner, if not the father). "Partner" can be either spouse, civil partner or someone living in an enduring family relationship but not a sibling, child, parent, grandparent, grandchild, aunt, uncle, niece or nephew. We will refer to the partner as the co-parent throughout this policy.

29.6 Where we refer to the child's parent in this policy, we also mean the primary adopter.

### **30. WHAT IS SHARED PARENTAL LEAVE (SPL)?**

30.1 SPL is a form of leave that is available to working parents following the birth or adoption of a child and enables the parents to take time off to share the care of the child during an equivalent period to the mother's maternity or adoption leave.

30.2 The total amount of SPL available to the parents is 52 weeks, less the weeks spent by the child's mother on maternity or primary parent on adoption leave (or the weeks in which the mother has been in receipt of statutory maternity/adoption pay or maternity allowance if she is not entitled to maternity leave). Parents can take SPL at the same time as each other or at different times.

30.3 The right to SPL is in addition to the co-parent's statutory right to two weeks' paternity leave.

### **31. WHO IS ENTITLED TO TAKE SPL?**

31.1 The child's parents are entitled to take SPL.

31.2 In addition, the following conditions must also be fulfilled:

- The employee must have at least 26 weeks' continuous employment with us by the end of the 15<sup>th</sup> week before the week in which the baby is due to be born or, for adoption, when the employee were matched with your child;
- The employee must have worked (in an employed or self-employed capacity) in at least 26 of the 66 weeks before the week in which your baby is due or you were matched with a child and earned at least £390 in total in 13 of the 66 weeks which do not need to be consecutive ; and
- The employee and the co-parent must give the necessary statutory notice and declarations as summarised below, including notice to end any maternity/adoption leave, statutory maternity/adoption pay or maternity allowance period.

## **32. EVIDENCE OF ENTITLEMENT TO SPL**

32.1 After the birth of the baby, we may ask for a copy of the baby's birth certificate (or, if you the birth certificate has not been obtained, a signed declaration of the baby's date and place of birth) and the name and address of the employer/or proof of self-employment of the other parent.

32.2 If the employee is adopting a child, we may ask for a copy of documentation from the adoption agency containing the name and address of the agency, the date of notification of having been matched for adoption and the expected date of placement. We may also request the name and address of the other adoptive parent's employer/or proof of self-employment.

## **33. ENDING MATERNITY/ADOPTION LEAVE AND STARTING SPL**

### Summary

33.1 The employee or partner can only start SPL once the child has been born/adopted. The child's primary parent must have either:

- ended any maternity/adoption leave by returning to work; or
- given binding notice to their employer of the date when they plan to end any maternity/adoption leave (this is called the curtailment notice).

33.2 The child's primary parent cannot return to work before the end of the compulsory two weeks of maternity leave following the birth (or, in the case of adoption, before the end of the first two weeks of adoption leave). However, the other parent may be eligible to take SPL before the mother's maternity/adoption leave ends, provided the mother has given a curtailment notice to end their maternity leave.

### Child's Primary Parent

33.3 If you are the child's primary parent and are still on maternity/adoption leave, you must give the Trust at least eight weeks written notice to end your maternity/adoption leave (the curtailment notice) before you can take SPL, unless the adoption notice is shorter than this period in which case the Trust should be informed at the earliest opportunity with relevant evidence provided. To do this, please fill in and submit SPL Form 1 (which can be found in Appendix 8) to your line manager and HR. The notice must state the date the maternity/adoption leave will end. The employee can give notice before or after the employee has given birth/placement for adoption, but maternity leave cannot be ended until at least two weeks after birth or the first day of adoption leave.

33.4 The curtailment notice is binding. The decision to end maternity/adoption leave can only be changed if the employee's maternity/adoption leave has not yet ended and:-

- the employee realises during the eight week notice period that neither they nor the other parent is eligible for SPL or statutory shared parental pay (ShPP). In these circumstances the curtailment notice can be revoked in writing up to eight weeks after it was given;
- for maternity leave, the employee gave a curtailment notice before birth, in which case it can be revoked in writing up to eight weeks after it was given, or up to six weeks after birth, whichever is later; or

- unfortunately, the co-parent has died.

At the same time as the curtailment notice, the employee must also give us notice to opt into the SPL scheme (see Section 40) or a written declaration that the co-parent has given his or her employer an opt in notice and that you have given the necessary declarations in that notice.

### Child's father / partner

33.5 If the employee is the child's father or the mother's partner, they will only be able to take SPL once the mother has given one of the following notices:

- curtailment notice to her employer to end maternity/adoption leave;
- a curtailment notice to end her statutory maternity/adoption pay (SMP/SAP) if she is not entitled to maternity/adoption leave but is entitled to pay; or
- a curtailment notice to the benefits office to end her maternity allowance (MA) if she is not entitled to maternity leave or statutory maternity leave.

## **34. OPTING INTO SHARED PARENTAL LEAVE AND PAY**

34.1 Not less than eight weeks before the date the employee intends SPL to start, a SPL Form 2 must be completed and submitted to the line manager (this can be found in Appendix 9) and HR in order to give us written opt-in notice of the entitlement and intention to take SPL. Please refer to the optin notice to see what information needs to be provided.

34.2 The Form 2 should be submitted as early as possible (and no less than eight weeks before the date the employee intends the SPL to start). Although the indication to take SPL in Form 2 is non-binding (unless the employee also uses it to give us a "period of leave notice" by ticking the box at C4), submitting the form early means that a discussion about the proposals to take SPL at an early stage, will enable a better understanding of what is most likely to work for both parties.

## **35. NOTIFYING US OF YOUR SPL DATES**

35.1 Having opted in to the SPL system the employee will need to give us a "period of leave notice" telling us the start and end dates of the leave. To do this an SPL Form 3 must be completed and submitted to the line manager and HR (this can be found in Appendix 10). This can be given at the same time as the opt in notice (by ticking the box at C4 on Form, in which case Form 3 will not be required). Alternatively, it can be given later, as long as it is given at least eight weeks before the start of the leave. The employee must also state in their period of leave notice the dates on which they intend to claim shared parental pay, if applicable.

## **36. PROCEDURE FOR REQUESTING TO SPLIT BLOCK OF LEAVE INTO SHORTER PERIODS**

36.1 Periods of leave notice should be set out as single continuous block of leave. In some cases the Trust may be willing to consider a period of leave notice where the SPL block is split into shorter periods (of at least a week) with periods of work in between. The employee can book up to three period of leave notice, to book three separate blocks of SPL. In this case, it is best to discuss this with your manager and HR in advance of

submitting any formal period of leave notices to give the Trust more time to consider the request, and hopefully agree a pattern of leave with you from the start.

36.2 Periods of leave notice must be submitted that set out the requested pattern of leave at least eight weeks before the requested start date. If the Trust cannot approve this request straight away there will be a two week discussion period, following which the agreed arrangements will be confirmed in writing. In the event of not reaching an agreement, the employee will be entitled to take the full amount of requested SPL as one continuous block, starting on the start date given in your notice. (For example, if you requested four separate periods of one month each, the employee will be entitled to one four month period of leave). If they do not wish to do this, they may:

- choose a new start date (which must be at least eight weeks after the original period of leave notice was given), and tell us within five days of the end of the two weeks discussion period; or
- withdraw the period of leave notice within two days of the end of the two week discussion period (they may then submit a new one if you choose).

### **37. CHANGING THE DATES OR CANCELLING YOUR SPL**

37.1 If the employee wishes to **cancel** a period of leave they must tell us this in writing at least eight weeks before the start date of the period of leave.

37.2 Alternatively they can **change** the dates for a period of leave as long as they tell us at least eight weeks before the original start date and the new start date.

37.3 In order to cancel or vary the SPL, please fill in and submit SPL Form 4 (this can be found in Appendix 11) to the line manager and HR. They do not need to give eight weeks' notice if they are changing the dates of your SPL because their child was born or placed earlier than the expected week of childbirth/placement, where they had indicated they wished to start the SPL a period of time within eight weeks of the birth/placement. In such cases the line manager should be notified in writing as soon as possible.

37.4 A notice to cancel or change a period of leave will count as one of the three SPL period of leave notices, unless:

- variation is a result of the child being born earlier or later than the week it was expected to be born or, in the case of adoption, placed earlier or later than expected;
- variation is at our request; or
- a mutual agreement is otherwise achieved.

### **38. SHARED PARENTAL PAY (SHPP)**

38.1 If the parent has at least 26 weeks' continuous employment with us at the end of the 15<sup>th</sup> week before the week your child is expected to be born or the week were matched with a child and the average earnings are not less than the lower earnings limit set by the government each tax year.

38.2 From 1<sup>st</sup> April 2019 shared parental leave will be paid at the same enhanced rates as occupational maternity/adoption pay. This will be paid in parallel with maternity/adoption pay

and may be taken after 2 weeks compulsory maternity/adoption leave. Pay is determined by the duration of maternity/adoption leave already taken.

- ✦ mother or primary parent has taken 8 weeks maternity/adoption leave, an employee taking shared parental leave will be entitled to take SPL paid at half pay plus any statutory pay in line with maternity /adoption pay.
- ✦ after 26 weeks maternity/adoption leave, SPL taken in the next 13 weeks will be paid at the statutory rate of pay.
- ✦ if SPL is taken after 39 weeks this will be unpaid the same as maternity/adoption leave at this point in time.

## **39. KEEPING IN TOUCH**

39.1 Before the start of SPL, the manager will discuss the options for keeping in touch while the employee is away from work.

39.2 The manager will make reasonable contact with the employee from time to time during SPL, although this will be kept to a minimum. This may include contact to discuss arrangements for the return to work.

39.3 The employee may ask or be asked to work (including attending training) on up to 20 keeping in touch days ("SPLIT" days) during SPL. This is in addition to any keeping in touch days that the individual may have taken during maternity leave. SPLIT days are not compulsory and must be discussed and agreed with the line manager.

39.4 Pay will be at the normal, basic rate of pay for time spent working on a SPLIT day and this will be inclusive of any shared parental pay entitlement. Alternatively, it may be agreed with the line manager to receive the equivalent paid time off in lieu who will then advise the HR department to fill in a variation form.

## **40. OTHER TERMS AND CONDITIONS DURING SPL**

40.1 During SPL, all normal terms and conditions of employment remain unchanged, except for the terms relating to pay, as explained above.

40.2 The **annual leave** entitlement will continue to accrue at the rate provided under their contract. If SPL continues into the next holiday year, any holiday entitlement that cannot reasonably be taken before starting a new year can be carried over and must be taken immediately before returning to work unless the manager agrees otherwise. One should try to limit carry-over to one week's holiday or less. Carry-over of more than one week is at the manager's discretion. Holiday plans would be discussed with the line manager in good time before starting SPL. All holiday dates are subject to approval by the manager.

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

## **41. RETURNING TO WORK AFTER SPL**

41.1 Returning on the Expected Return Date

If the employee returns to work at the end of the shared parental leave (Expected Return Date), it is not necessary to notify the manager in writing the dates noted on the SPL paperwork as the date of return.

#### 41.2 Returning before the Expected Return Date

If the employee decides to come back to work before their Expected Return Date, they must give the Trust eight weeks' prior notice in writing to your line manager/HR of the new return date.

#### 41.3 Returning after your Expected Return Date

If the employee wishes to extend their SPL, they must submit a new period of leave notice at least eight weeks before the Expected Return Date. This can only be done if they still have SPL entitlement remaining and have not already submitted three period of leave notices. If they are unable to request more SPL, they may be able to request annual leave or ordinary parental leave. The Trust will consider the request in line with our policies and usual practice for ordinary parental and annual leave.

#### 41.4 Sickness absence

If the employee is unable to come back to work because of sickness or injury, the absence will be treated as sickness absence and our usual **Sickness Management Policy** will apply.

#### 41.5 Deciding not to return

If the employee decides they do not wish to return to work, they must give the Trust written notice of resignation, as required by the contract of employment.

#### 41.6 Rights on return to work

An employee is normally entitled to return to work in the position held before starting SPL and on the same terms of employment. However, if they have taken more than 26 weeks leave (including SPL and maternity/adoption leave) and/or combined their leave with more than four weeks of parental leave), and it is not reasonably practicable for us to allow them to return to the same position, we may give another suitable and appropriate job on terms and conditions that are not less favourable.

If the employee wants to change their hours or other working arrangements on return from SPL, they should make a request under the Flexible Working Policy. Requests should be made as early as possible.

## 42. **HELP AND ADVICE**

42.1 If more information is needed about this, the HR department will be pleased to help.

## 43. **APPEALS**

43.1 Any employee who is dissatisfied with any decision made in respect of this policy has 1 right of appeal under this policy as per the Trust's Best Practice Guidelines to hearings and appeals.

## 44. **REVIEW and MONITORING**

44.1 The effectiveness of this policy will be monitored regularly by HR who will provide data on the use of the policy as and when required. Annual report will be provided to the Trust board at the end of each financial year. The results of the annual staff survey will also provide a valuable indicator of any problems.

44.2 In advance of the review date, the HR team will review and produce recommendations which will be shared via the recognised policy approval process (HR Policy Review Group) in time for the policy review date. An early review can be triggered by the Trust Board, HR or joint staff side if they have serious concerns about the policy or its implementation

44.3 It is the responsibility of Line Managers/Department Heads and/or the Scheduling Department to ensure that full and accurate records are kept in relation to the entitlement due and amount of leave granted in respect of their staff.

44.4 A written record of all decisions taken in accordance with this policy should be retained on the employee's personnel file.

44.5 Documentation relating to employees will be treated with the utmost confidentiality and in accordance to the General Data Protection Regulation (GDPR) and the NHS Records Lifecycle Policy.

44.6 Employees have the right to access any documentation held on them in accordance with the General Data Protection Regulation (GDPR) .

44.7 Statistical analysis and reports will be provided to the relevant bodies as required and to appropriate internal departments/managers and meetings as required on a regular basis.

### **Maternity / Paternity / Adoption/ Shared Parental Leave Toolkit**

The following forms in relation to Maternity, Paternity, Adoption and Shared Leave are available for Internal use by SCAS Staff. It can be accessed internally via our [Staff Intranet](#).

- (Annex A) - Application for Maternity Leave (ESR 8)
- Application for Adoption Leave (ESR8a)
- (Annex B) –Application for Maternity Support (Paternity) leave (ESR 9)
- Variation Form
- Entitlement to Maternity or Adoption Leave/Pay Flowchart
- Entitlement to Paternity Leave/Pay Flowchart
- Entitlement to shared Parental Leave Flowchart
- SPL Form 1 – Notice of curtailment of maternity / adoption leave
- SPL Form 2 – Opt in notice for shared parental leave and shared parental pay
- SPL Form 3 - Notice of period of shared parental leave
- SPL Form 4 - Notice to cancel or change period of shared parental leave



### **Appendix 1: Notification of Maternity Leave Form**

A 'Notification of Maternity Leave Form' (ESR8) is available for Internal use by SCAS Staff. It can be accessed internally via our [Staff Intranet](#).

### **Appendix 2: Notification of Adoption Form**

A 'Notification of Adoption Form' (ESR8A) is available for Internal use by SCAS Staff. It can be accessed internally via our [Staff Intranet](#).

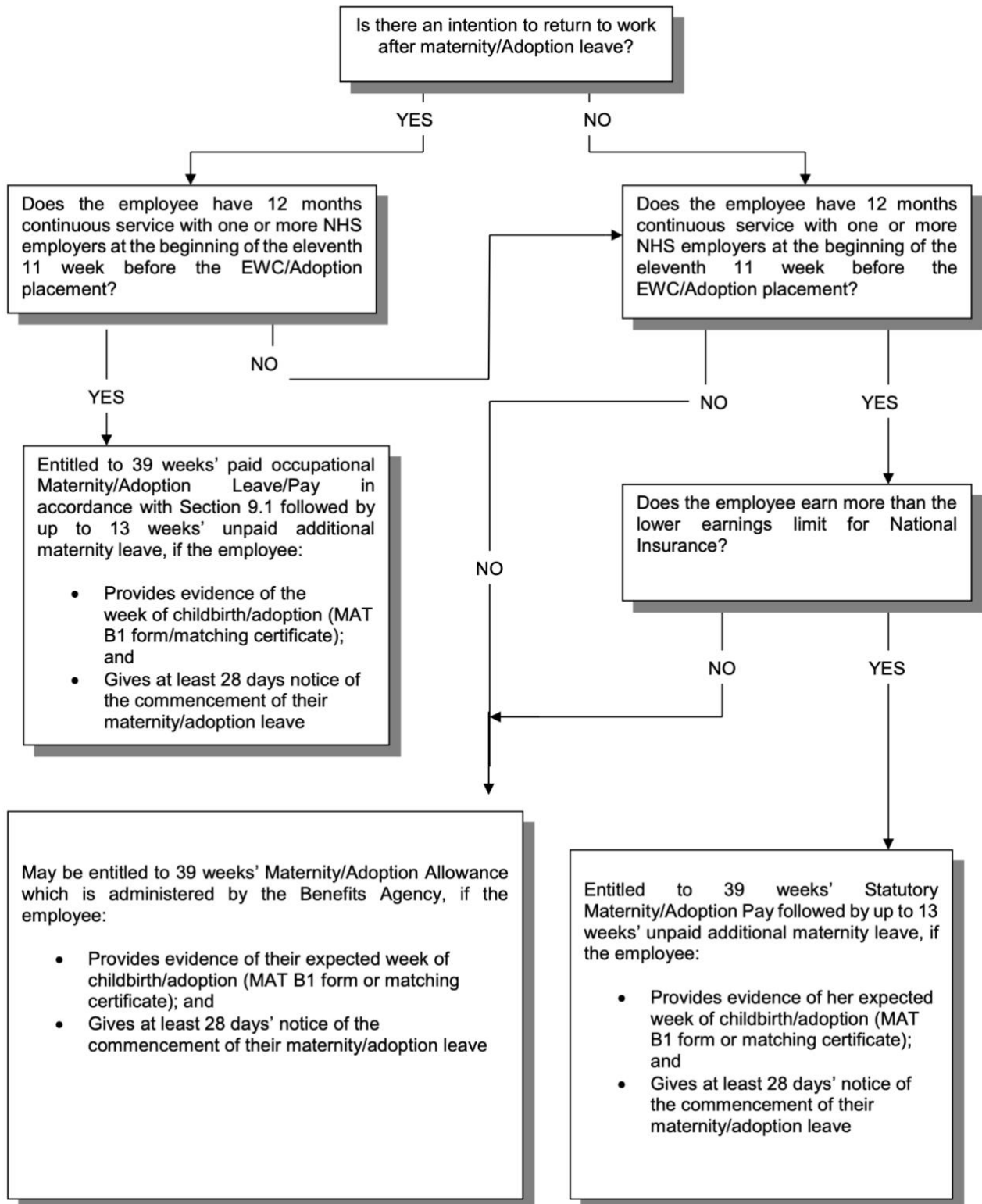
### **Appendix 3: Notification of Paternity Leave**

A 'Notification of Adoption Form' (ESR9) is available for Internal use by SCAS Staff. It can be accessed internally via our [Staff Intranet](#).

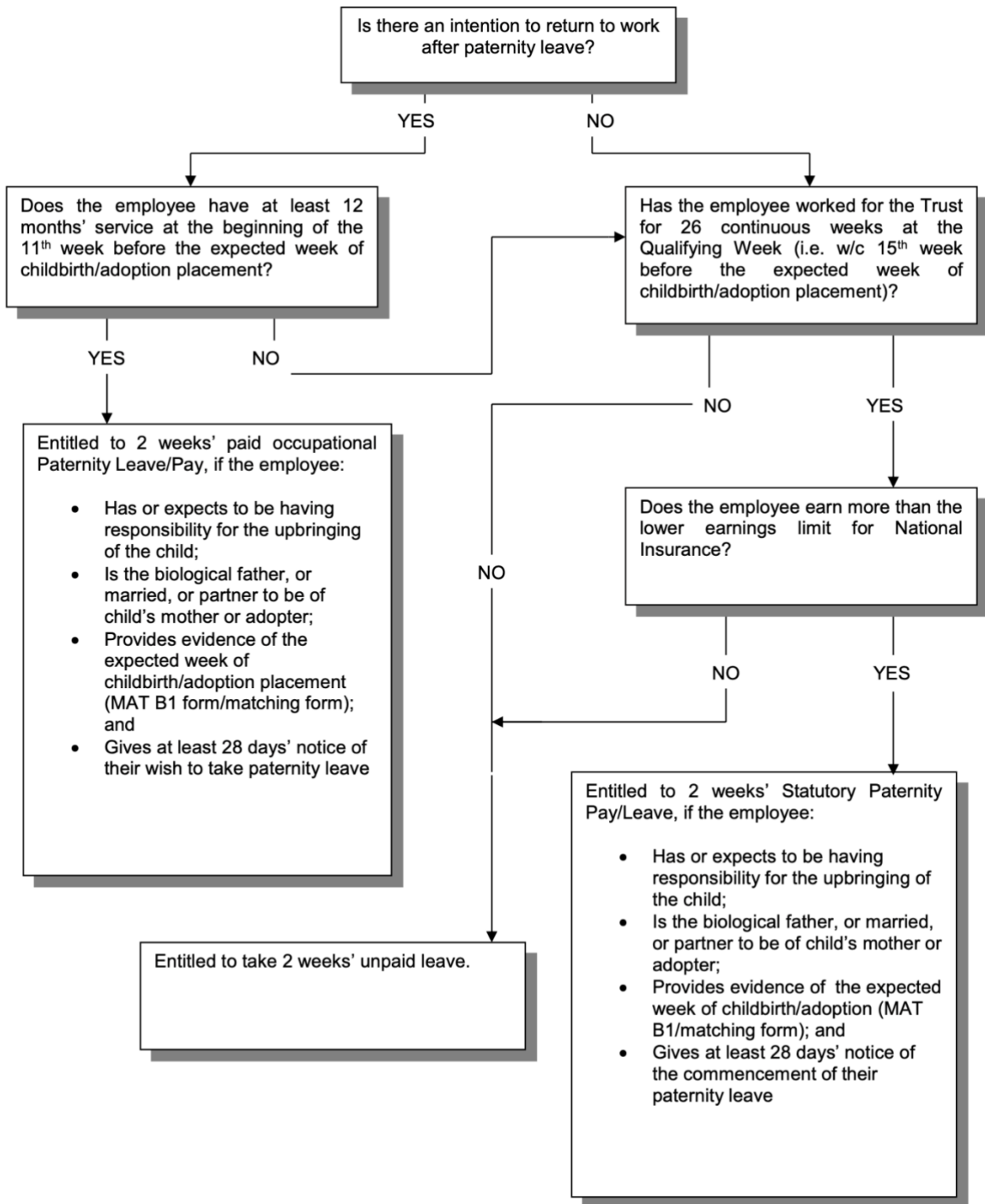
### **Appendix 4: Variation Form**

A 'Variation Form' (ESR9) is available for Internal use by SCAS Staff. It can be accessed internally via our [Staff Intranet](#).

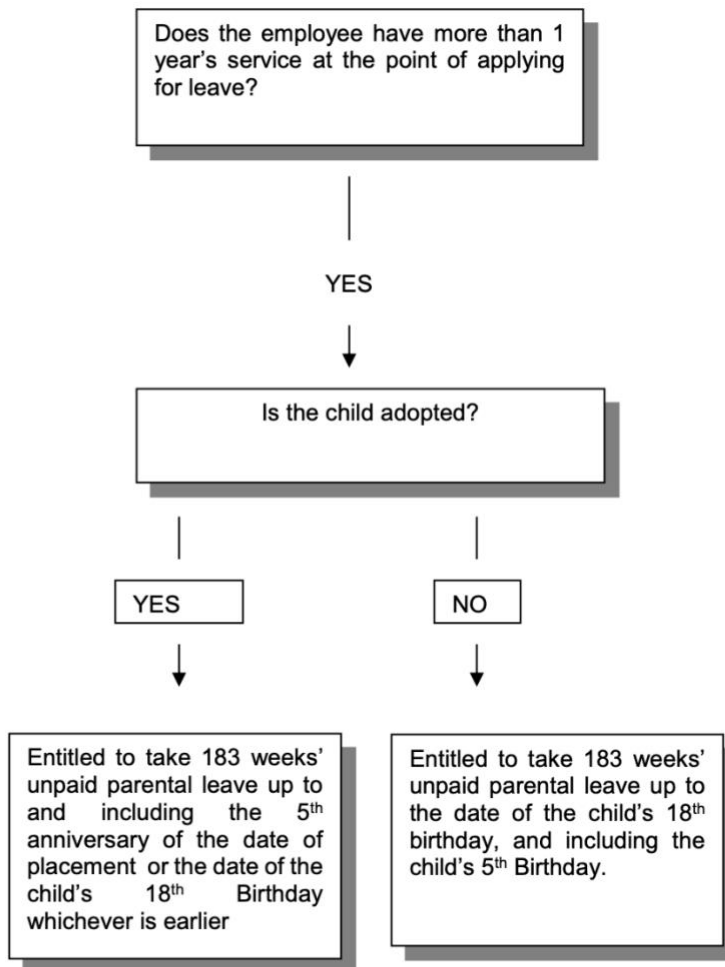
## Appendix 5: Entitlement to Maternity or Adoption Leave/Pay Flowchart



## Appendix 6: Entitlement to Paternity Leave/Pay Flowchart



## Appendix 7: Entitlement to Parental Leave Flowchart



The following must be demonstrated by the employee when applying for parental leave:

- That they are responsible for the child for whom they are taking parental leave.
- The child's date of birth or the date of formal placement for adoption.
- The child's entitlement to disability allowance.

In all circumstances, when the child is disabled (if they are entitled to a disability living allowance) unpaid parental leave may be taken up to and including the child's 18<sup>th</sup> birthday.

## **Appendix 8: SPL Form 1: Notice of curtailment of maternity/adoption leave**

A 'Notice of curtailment of maternity/adoption leave' (SPL Form 1) is available for Internal use by SCAS Staff. It can be accessed internally via our [Staff Intranet](#).

## **Appendix 9: SPL Form 2: Opt in notice for shared parental leave and shared parental pay**

A 'Opt in notice for shared parental leave and shared parental pay' (SPL Form 2) is available for Internal use by SCAS Staff. It can be accessed internally via our [Staff Intranet](#).

## **Appendix 10: SPL Form 3: Opt in notice for shared parental leave and shared parental pay**

A 'Notice of period of shared parental leave' (SPL Form 3) is available for Internal use by SCAS Staff. It can be accessed internally via our [Staff Intranet](#).

## **Appendix 11: SPL Form 4: Notice to cancel or change period of shared parental leave**

A 'Notice to cancel or change period of shared parental leave' (SPL Form 4) is available for Internal use by SCAS Staff. It can be accessed internally via our [Staff Intranet](#).

## **Equality Impact Assessment Form Section One – Screening**

A full Equality Impact Assessment has been carried out on this policy and is available on request to the public and internally via our [Staff Intranet](#).

(see also section 2 for Equality Statement)

## **Equality Impact Assessment Form Section Two – Full Assessment**

A full Equality Impact Assessment has been carried out on this policy and is available on request to the public and internally via our [Staff Intranet](#).

(see also section 2 for Equality Statement)

## **JCC**

The purpose of the Joint Consultative Committee (JCC) is to provide a forum for discussion, consultation and negotiation between senior managers and representatives of the recognised trade unions. This policy has been agreed and signed off by the committee. A copy has been forward to all parties concerned and is available on request to the public and internally via our [Staff Intranet](#).