

# Pay Circular (AforC) 2/2007

## Pay and conditions for NHS staff covered by the Agenda for Change agreement

To: All NHS employers

Dear Colleague,

### Summary

This pay circular informs NHS employers of changes, in respect of maternity, and related leave and pay provisions, general statement on equality and diversity, parental and carers leave provisions and flexible working arrangements from 1 April 2007 for the staff covered by the Agenda for Change agreement. It sets out the changes to the NHS Terms and Conditions of Service handbook.

### Agreement

- 1 The NHS Staff Council has approved changes to the maternity, maternity support, adoption leave and pay arrangements, parental and carers leave and flexible working arrangements in the Agenda for Change agreement to take account of the improvements to the statutory regulations introduced by the Work and Families Act from April 2007. It also approved changes to the general statement on equality and diversity.

### Action


- 2 Employers should implement, and where necessary, retrospectively apply the new arrangements in full with effect from 1 April 2007.

### Effective Date of Changes

- 3 The revised agreements apply:
  - a. In respect of maternity to all employees whose expected week of childbirth begins on or after 1 April 2007;
  - b. In respect of adoption where an adoption agency notifies the adopter of a match with a child on or after 1 April 2007.

### Enquiries

- 4 Employees should direct personal enquiries to their employer.
- 5 Employers should direct enquiries to :agendaforchange@nhsemployers.org

A part of the NHS Confederation  
working on behalf of the 



## Further copies

- 6 Copies of this circular can be downloaded from: [www.nhsemployers.org](http://www.nhsemployers.org)
- 7 A copy of the NHS Terms and Conditions of Service handbook can be downloaded from the NHS Employers website at the following address:  
[www.nhsemployers.org/payandconditions/agendaforchange.asp](http://www.nhsemployers.org/payandconditions/agendaforchange.asp)
- 8 Prior to establishment of NHS Employers in November 2004 responsibility to inform the NHS of uplifts in pay and allowances payable to non-medical staff rested with the Department of Health and was published in Advance Letters; Copies of previous Advance Letters from 1995 onwards may be obtained from the Department of Health website at the following address: [www.dh.gov.uk/letters](http://www.dh.gov.uk/letters)

## Issued by



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Head of Pay and Negotiations  
NHS Employers

## **APPENDIX**

### **Pay Circular (AforC)2/2007**

#### **NHS TERMS AND CONDITIONS OF SERVICE HANDBOOK**

The changes made effective by this circular are:

- Section 15 in this circular replaces Section 15 in the handbook
- Section 30 in this circular replaces Section 30 in the handbook
- Section 33 in this circular replaces Section 33 in the handbook
- Section 34 in this circular replaces Section 34 in the handbook
- Section 35 in this circular replaces Section 35 in the handbook

## **SECTION 15**

### **MATERNITY LEAVE AND PAY**

#### **Introduction**

- 15.1 All employees will have the right to take 52 weeks of maternity leave.
- 15.2 Paragraphs 15.7 to 15.54 of this Section set out the maternity leave and pay entitlements of NHS employees under the NHS contractual maternity leave scheme.
- 15.3 Paragraphs 15.55 to 15.59 give information about the position of staff who are not covered by this scheme because they do not have the necessary service or do not intend to return to NHS employment.
- 15.4 Paragraphs 15.60 to 15.64 define the service that can be counted towards the twelve month continuous service qualification set out in paragraph 15.7 (i) below and which breaks in service may be disregarded for this purpose.
- 15.5 Paragraph 15.65 explains how to get further information about employees' statutory entitlements.
- 15.6 Where locally staff and employer representatives agree arrangements which provide benefits to staff, beyond those provided by this section, those local arrangements will apply.

#### **Eligibility**

- 15.7 An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the NHS contractual maternity pay scheme if:
- (i) she has twelve months continuous service (see paragraphs 15.60 to 15.64) with one or more NHS employers at the beginning of the eleventh week before the expected week of childbirth;
  - (ii) she notifies her employer in writing before the end of the 15<sup>th</sup> week before the expected date of childbirth (or if this is not possible, as soon as is reasonably practicable thereafter):
    - of her intention to take maternity leave;
    - of the date she wishes to start her maternity leave – she can choose when to start her maternity leave – this can usually be any date from the beginning of the 11<sup>th</sup> week before the baby is born (but see paragraph 15.8 below);
    - that she intends to return to work with the same or another NHS employer for a minimum period of three months after her maternity leave has ended;
    - and provides a MATB1 form from her midwife or GP giving the expected date of childbirth.

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

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

## **Confirming Maternity Leave and Pay**

15.9 Following discussion with the employee, the employer should confirm in writing:

- the employee's paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);
- unless an earlier return date has been given by the employee, her expected return date based on her 52 weeks paid and unpaid leave entitlement under this agreement; and
- the length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal maternity leave period (see paragraphs 15.49 and 15.50 below);
- the need for the employee to give at least 28 days notice if she wishes to return to work before the expected return date.

## **Keeping in Touch**

15.10 Before going on leave, the employer and the employee should also discuss and agree any voluntary arrangements for keeping in touch during the employee's maternity leave including:

- any voluntary arrangements that the employee may find helpful to help her keep in touch with developments at work and, nearer the time of her return, to help facilitate her return to work;
- keeping the employer in touch with any developments that may affect her intended date of return.

## **Work During the Maternity Leave Period**

### **Keeping in Touch Days**

15.11 To facilitate the process of Keeping in Touch Days (KIT days) it is important that the employer and employee have early discussion to plan and make arrangements for KIT days before the employee's maternity leave takes place.

15.12 To enable employees to take up the opportunity to work KIT days employers should consider the scope for reimbursement of reasonable childcare costs or the provision of childcare facilities.

- 15.13 KIT days are intended to facilitate a smooth return to work for women returning from maternity leave.
- 15.14 An employee may work for up to a maximum of 10 KIT days without bringing her maternity leave to an end. Any days of work will not extend the maternity leave period.
- 15.15 An employee may not work during the two weeks of compulsory maternity leave immediately after the birth of her baby
- 15.16 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.
- 15.17 Any such work must be by agreement and neither the employer nor the employee can insist upon it.
- 15.18 The employee will be paid at their basic daily rate, for the hours worked less appropriate maternity leave payment for KIT days worked.
- 15.19 Working for part of any day will count as one KIT day
- 15.20 Any employee who is breastfeeding must be risk assessed and facilities provided in accordance with paragraph 15.34.

## **Paid Maternity Leave**

### **Amount of Pay**

- 15.21 Where an employee intends to return to work the amount of contractual maternity pay receivable is as follows:
- for the first eight weeks of absence, the employee will receive full pay, less any Statutory Maternity Pay or Maternity Allowance (including any dependents' allowances) receivable;
  - for the next 18 weeks, the employee will receive half of full pay plus any Statutory Maternity Pay or Maternity Allowance (including any dependents' allowances) receivable, providing the total receivable does not exceed full pay.
  - for the next 13 weeks, the employee will receive any Statutory Maternity Pay or Maternity Allowance that they are entitled to under the statutory scheme
- 15.22 By prior agreement with the employer occupational maternity 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.

### **Calculation of Maternity Pay**

- 15.23 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Maternity Pay entitlements, subject to the following qualifications:

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

### **Unpaid Contractual Leave**

15.24 Employees are also entitled to take a further 13 weeks as unpaid leave to bring the total of leave to 52 weeks. However, this may be extended by local agreement in exceptional circumstances for example, where employees have sick pre-term babies or multiple births.

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

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

### **Sickness Prior to Childbirth**

15.26 If an employee is off work ill, or becomes ill, with a pregnancy related illness during the last four weeks before the expected week of childbirth, maternity leave will normally commence at the beginning of the fourth week before the expected week of childbirth or the beginning of the next week after the employee last worked, whichever is the later. Absence prior to the last four weeks before the expected week of childbirth, supported by a medical statement of incapacity for work, or a self-certificate, shall be treated as sick leave in accordance with normal leave provisions.

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

### **Pre-term Birth**

15.28 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.

- 15.29 Where an employee's baby is born before the eleventh week before the expected week of childbirth and the employee has worked during the actual week of childbirth, maternity leave will start on the first day of the employee's absence.
- 15.30 Where an employee's baby is born before the eleventh week before the expected week of childbirth and the employee has been absent from work on certified sickness absence during the actual week of childbirth, maternity leave will start the day after the day of birth.
- 15.31 Where an employee's baby is born before the eleventh week before the expected week of childbirth and the baby is in hospital the employee may spilt her maternity leave entitlement, taking a minimum period of two weeks' leave immediately after childbirth and the rest of her leave following her baby's discharge from hospital.

### **Still Birth**

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

### **Miscarriage**

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

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

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

### **Return to Work**

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



## **Returning on Flexible Working Arrangements**

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

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

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

## **Failure to Return to Work**

- 15.41 If an employee who has notified her employer of her intention to return to work for the same or a different NHS employer in accordance with paragraph 15.7 (ii) (c) above fails to do so within 15 months of the beginning of her maternity leave she will be liable to refund the whole of her maternity pay, less any Statutory Maternity Pay, received. In cases where the employer considers that to enforce this provision would cause undue hardship or distress the employer will have the discretion to waive their rights to recovery.

## **Miscellaneous Provisions**

### **Fixed – Term Contracts or Training Contracts**

- 15.42 Employees subject to fixed-term or training contracts which expire after the eleventh week before the expected week of childbirth and who satisfy the conditions in paragraphs 15.7 (i), 15.7 (ii) (a), 15.7 (ii) (b) and 15.7 (ii) (d) shall have their contracts extended so as to allow them to receive the 52 weeks which includes paid contractual and statutory maternity pay and the remaining 13 weeks of unpaid maternity leave.
- 15.43 Absence on maternity leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service.
- 15.44 If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred the repayment provisions set out in paragraph 15.41 above will not apply.
- 15.45 Employees on fixed-term contracts who do not meet the twelve months continuous service condition set out in paragraph 15.7 (i) above may still be entitled to Statutory Maternity Pay.

## **Rotational Training Contracts**

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

## **Contractual rights**

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

## **Increments**

- 15.48 Maternity leave, whether paid or unpaid, shall count as service for annual increments and for the purposes of any service qualification period for additional annual leave. The expectation is that an employee on maternity leave would progress through a KSF gateway on the due date if concerns had not been raised about the ability to meet their KSF outline prior to maternity leave.

## **Accrual of Annual Leave**

- 15.49 Annual leave will continue to accrue during maternity leave, whether paid or unpaid, provided for by this agreement.
- 15.50 Where the amount of accrued annual leave would exceed normal carry over provisions, it may be mutually beneficial to both the employer and employee for the employee to take annual leave before and/or after the formal (paid and unpaid) maternity leave period. The amount of annual leave to be taken in this way, or carried over, should be discussed and agreed between the employee and employer. Payment in lieu may be considered as an option where accrual of annual leave exceeds normal carry over provisions.

## **Pensions**

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

## **Antenatal Care**

- 15.52 Pregnant employees have the right to paid time off for antenatal care. Antenatal care includes relaxation and parent-craft classes as well as appointments for antenatal care.

## **Post-natal Care and Breastfeeding Mothers**

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

15.54 Employers are required to undertake a risk assessment and to provide breastfeeding women with suitable private rest facilities. The Health and Safety Executive Guidance recommends that employers provide:

- a clean, healthy and safe environment for women who are breastfeeding;
- suitable access to a private room to express and store milk in an appropriate refrigerator.

Employers are reminded that they should consider requests for flexible working arrangements to support breastfeeding women at work

### **Employees Not Returning to NHS Employment**

15.55 An employee who satisfies the conditions in paragraph 15.7, except that she does not intend to work with the same or another NHS employer for a minimum period of three months after her maternity leave is ended, will be entitled to pay equivalent to Statutory Maternity Pay, which is paid at 90% of her average weekly earnings for the first six weeks of her maternity leave and to a flat rate sum for the following 33 weeks.

### **Employees With Less Than Twelve Months Continuous Service**

15.56 If an employee does not satisfy the conditions in paragraph 15.7 for occupational maternity pay she may be entitled to Statutory Maternity Pay. Statutory Maternity Pay will be paid regardless of whether she satisfies the conditions in paragraph 15.7.

15.57 If her earnings are too low for her to qualify for Statutory Maternity Pay, or she does not qualify for another reason, she should be advised to claim Maternity Allowance from her local Job Centre Plus or social security office.

15.58 All employees will have a right to take 52 weeks of maternity leave whether or not they return to NHS Employment.

15.59 Paragraph 15.65 contains further information on statutory maternity entitlements.

### **Continuous Service**

15.60 For the purposes of calculating whether the employee meets the twelve months continuous service with one or more NHS employers qualification set out in paragraph 15.7 (i) the following provisions shall apply:

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

15.61 The following breaks in service will also be disregarded (though not count as service);

- (i) employment under the terms of an honorary contract;
- (ii) employment as a locum with a general practitioner for a period not exceeding twelve months;
- (iii) a period of up to twelve months spent abroad as part of a definite programme of postgraduate training on the advice of the Postgraduate Dean or College or Faculty Advisor in the speciality concerned;
- (iv) a period of voluntary service overseas with a recognised international relief organisation for a period of twelve months which may exceptionally be extended for twelve months at the discretion of the employer which recruits the employee on her return;
- (v) absence on a employment break scheme in accordance with the provisions of Section 36 of this Handbook;
- (vi) absence on maternity leave (paid or unpaid) as provided for under this agreement.

15.62 Employers may at their discretion extend the period specified in paragraphs 15.60 (ii) and 15.61.

15.63 Employment as a trainee with a General Medical Practitioner in accordance with the provisions of the Trainee Practitioner Scheme shall similarly be disregarded and count as service.

15.64 Employers have the discretion to count other previous NHS service or service with other employers.

### **Information About Statutory Maternity/Adoption and Paternity Leave and Pay**

15.65 There are occasions when employees are entitled to other statutory benefits/allowances and Information about all statutory maternity/adoption and paternity rights can be found using the following links:

<http://www.dti.gov.uk/employment/workandfamilies/maternity-leave-pay/guidance/page21116.html>

[http://www.dwp.gov.uk/lifeevent/benefits/statutory\\_maternity\\_pay.asp](http://www.dwp.gov.uk/lifeevent/benefits/statutory_maternity_pay.asp)

[http://jobcentreplus.gov.uk/JCP/Customers/WorkingAgeBenefits/Dev\\_008115.xml.html](http://jobcentreplus.gov.uk/JCP/Customers/WorkingAgeBenefits/Dev_008115.xml.html)

Information about Health and Safety for new and expectant mothers at work can be found using the following link:-

[www.hse.gov.uk](http://www.hse.gov.uk)

## **SECTION 30**

### **EQUAL OPPORTUNITIES**

#### **General Statement on Equality and Diversity**

- 30.1 All parties to this agreement are committed to building a NHS workforce which is valued and whose diversity reflects the communities it serves, enabling it to deliver the best possible healthcare service to those communities.
- 30.2 Everyone working in the NHS should be able to achieve his or her full potential in an environment characterised by dignity and mutual respect.
- 30.3 The past effects of institutional discrimination are recognised and all parties seek to guarantee equality of opportunity for all.
- 30.4 Equality of opportunity means that an individual's diversity is viewed positively and, in recognising that everyone is different, valuing equally the unique contribution that individual experience, knowledge and skills can make.
- 30.5 Everyone who works in the NHS, or applies to work in the NHS, should be treated fairly and valued equally. All conditions of service and job requirements should fit with the needs of the service and those who work in it, regardless of age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trade union membership.
- 30.6 The NHS should strive to be a place where people want to work, and to be a leader in good employment practice. This agreement seeks to build on the current legal framework through the establishment of good practice.

#### **Making It Happen**

- 30.7 The aim is to make equality and diversity part of everything that the NHS does. To make this happen:
- everyone who works in the NHS needs to know about the agreements which exist and what they say;
  - everyone needs to know what their responsibilities are in relation to equality and diversity;
  - steps taken to promote equality and diversity need to be monitored;
  - appropriate training should be provided;
  - there must be a willingness to recognise the need for investment to provide and spend such money as is necessary to achieve these aims;

- the Boards of NHS Trusts (of NHS Boards in Scotland) and other NHS organisations and senior managers must work for the aims of the agreements, and show that they are doing so in the decisions they take, their policies and actions;
- the NHS should encourage other organisations such as local authorities, education providers, contractors and recruitment agencies to work in partnership with the service to ensure that everyone working in and with the NHS does so in the spirit of this agreement.

30.8 It is recognised that not everybody who works for the NHS is covered by this agreement. All parties to this agreement believe that it should be a model for all employers within the service.

### **Monitoring and Review**

30.9 The NHS Staff Council will keep this agreement under review against best practice as it develops inside the NHS and elsewhere.

30.10 NHS employers and local staff representatives should look together at what progress they are making towards the aims of this agreement within their own local arrangements. Annual “equality audits” are recommended and these should cover:

- data on the make-up of the workforce by race, sex, age, disability and contract status (i.e. part-time);
- what equality policies and procedures are in place;
- pay and grading;
- current monitoring processes.

30.11 Based upon the results of the audit, plans should be agreed about what is to be done towards meeting the aims of the agreement over the coming year. Guidance on the conduct of an equality audit will be developed separately. Where under-representation of particular racial groups, particular age groups, disabled staff or of a particular sex is identified, employers should take advantage of the positive action provisions in the discrimination legislation, assuming that the detailed conditions in the legislation are met. Guidance on positive action will be developed separately.

### **Complaints**

30.12 An agreed complaints procedure should be available for any person who believes that this agreement is not being applied to them. All complaints will be taken seriously and dealt with quickly, and no one will be told about the complaint without appropriate permission. Agreed procedures should provide for the complaint being dealt with at local level.

## Definitions

- 30.13 Where the term “requires” is used in this agreement, this denotes a requirement set down in law.
- 30.14 Where “should” is used, this denotes that there is a national agreement to that effect.
- 30.15 The agreements contained in this Part of the Handbook should be taken as policy by NHS employers. Any advice on best practice should be taken as being recommended by the NHS Staff Council.
- 30.16 Where it is recommended that employers and local staff representatives agree arrangements, any advice on best practice is there for guidance.

## Scope

- 30.17 Each of the key areas to be addressed are contained in this Handbook at Sections 31 to 36 as follows:
- Section 31: Recruitment, Promotion and Staff Development;
  - Section 32: Dignity at Work;
  - Section 33: Caring for Children and Adults;
  - Section 34: Flexible Working Arrangements;
  - Section 35: Balancing Work and Personal Life;
  - Section 36: Employment Break Scheme.
- 30.18 This agreement has been developed based on the legal minima and best practice and policy, thereby anticipating the need for change. There still remains significant scope to develop local procedures to inform action.
- 30.19 Some NHS employers will have established procedures which have been agreed with their local staff representatives. Where such procedures are consistent with the principles outlined in this agreement, these should not be disturbed. However, local agreements should be reviewed and updated in light of legal and best practice.



## **SECTION 33**

### **CARING FOR CHILDREN AND ADULTS**

#### **General**

- 33.1 All NHS employers must have a carer's policy to address the needs of people with caring responsibilities and to meet the requirements of the "right to request" flexible working legislation for carers of children and dependant adults (see Employment Relations Act for definition of "carer"). This policy should emphasise the benefits of flexible working arrangements, balancing work and personal life and employment breaks as set out in Section 34 to 36.
- 33.2 The policy should seek to balance the requirements of delivering a first class service with the needs of employees, to find the most effective means of supporting those with carer responsibilities as part of a wider commitment by the NHS to improve the quality of working life.
- 33.3 Many of the policies related to child and dependant care will have relevance to other forms of care. For example the planning process for checking out what would help eligibility criteria and ensuring equality of access. These should be considered when drawing up a carers policy

#### **Child and Dependant Care**

- 33.4 Childcare covers a range of care choices for children from birth up to age 14 years.
- 33.5 Dependant care covers a range of options to meet the needs of dependant adults, where an employee is involved in substantial and regular care sufficient for them to seek a change in their permanent contract of employment
- 33.6 The policy should be drawn up jointly between employers and local staff side representatives. This should cover:
- the child and dependant care needs of people relative to matters such as place of work, working patterns (including shift patterns) and hours worked;
  - policy on child and dependant care support particularly related to specific difficulties in recruiting and retaining people in certain job categories;
  - equality of access to child and dependant care and affordability, respecting the diversity of personal domestic circumstances;
  - guidelines on eligibility;
  - how the policy relates to other Sections in this Part, in particular those covering leave and flexible working arrangements;
  - the range of options open to carers, i.e. crèche facilities, childminders, workplace nurseries, allowances, school and holiday play schemes, term-time contracts etc. The policy should be clear as to why certain options are available;
  - partnership options with other employers and trade unions;
  - allocation of senior management responsibility for the operation and monitoring of the policy

- 33.7 Where a decision is taken not to offer particular forms of childcare, the policy should indicate where other arrangements are available to support people with childcare responsibilities, and what alternative ways of working exist.
- 33.8 Applications and outcomes should be monitored annually, in partnership with local staff representatives.
- 33.9 Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness.
- 33.10 Applications and outcomes, from both employer and employees should be recorded and kept for a minimum of one year.

## SECTION 34

### FLEXIBLE WORKING ARRANGEMENTS

#### General

- 34.1 NHS employers in partnership with staff organisations will develop positive flexible working arrangements which allow people to balance work responsibilities with other aspects of their lives. In considering the provisions of this paragraph employers should also have regard to the provisions in Section 2 “Working Outside Normal Hours”.
- 34.2 Employers are required to consider flexible working options as part of their duty to make reasonable adjustments for disabled staff and job applicants under the Disability Discrimination Act, and staff returning from maternity leave (see Section 15).
- 34.3 New working arrangements should only be introduced by mutual agreement, whether sought by the employee or the employer.
- 34.4 Flexible working should be part of an integrated approach to the organisation of work and the healthy work/life balance of staff.
- 34.5 Policies for flexible working should be made clear to all employees.
- 34.6 Employers should develop policies on flexible working which, as far as is practicable, should include:
- part-time working, where a person works to a pattern and number of hours by mutual agreement;
  - job sharing, where two or more people share the responsibilities of one or more full-time job(s), dividing the hours, duties and pay between them;
  - flexi-time, where employees can choose their own start and finish time around fixed core hours;
  - annual hours contracts, where people work a specific number of hours each year, with the hours being unevenly distributed throughout the year;
  - flexible rostering, using periods of work of differing lengths within an agreed overall period;
  - term-time working, where people work during the school term but not during school holidays;
  - school-time contracts;

- tele-working, where people work from home for all or part of their hours with a computer or telecommunication link to their organisation;
- voluntary reduced working time, where people work reduced hours by agreement at a reduced salary;
- fixed work patterns, where, by agreement, days off can be irregular to enable, for example, access by separated parents to their children and flexible rostering.
- Flexible retirement

34.7 Flexible working arrangements should be available to all employees.

34.8 All jobs should be considered for flexible working if this is not possible the employer must provide written, objectively justifiable reasons for this and give a clear, demonstrable operational reason why this is not practicable.

34.9 There should be a clear procedure for application for flexible working, agreed by employers and local staff representatives.

34.10 All people with flexible working arrangements should have access to standard terms and conditions of employment, on an equal or pro-rata basis, unless different treatment can be justified for operational reasons.

### **Monitoring and Review**

34.11 Applications and outcomes should be monitored annually, in partnership with local staff representatives.

34.12 Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness.

34.13 Applications and outcomes, from both employer and employees, should be recorded and kept for a minimum of one year.

## **SECTION 35**

### **BALANCING WORK AND PERSONAL LIFE**

#### **GENERAL**

- 35.1 NHS employers should provide employees with access to leave arrangements which support them in balancing their work responsibilities with their personal commitments.
- 35.2 Leave arrangements should be part of an integrated policy of efficient and employee friendly employment practices, and this Section should be seen as operating in conjunction with other provisions particularly the Employment Break Scheme, Flexing Work Positively and the Caring for Children and Adults Sections.
- 35.3 Arrangements should be agreed between employers and local staff representatives.
- 35.4 A dependent is someone who is married to, or is a partner or civil partner, “a near relative” or someone who lives at the same address as the employee. A relative for this purpose includes: parents, parents-in-law, adult children, adopted adult children, siblings (including those who are in-laws), uncles, aunts, grandparents and step relatives or is someone who relies on the employee in a particular emergency.

#### **FORMS OF LEAVE**

##### **Parental Leave**

- 35.5 This should be a separate provision from either maternity or maternity support leave and should provide a non transferable individual right to at least 13 weeks’ leave (18 weeks if child is disabled). Leave is normally unpaid, but may be paid by local agreement.
- 35.6 Parental leave should be applicable to any employee in the NHS who has nominated caring responsibility for a child under age 14 (18 in cases of adoption or disabled children).
- 35.7 Leave arrangements need to be as flexible as possible, so that the leave may be taken in a variety of ways by local agreement. Parental leave can be added to periods of maternity support or maternity leave.
- 35.8 Notice periods should not be unnecessarily lengthy and should reflect the period of leave required. Employers should only postpone leave in exceptional circumstances and give written reasons. Employees may also postpone or cancel leave that has been booked with local agreement.
- 35.9 During parental leave the employee retains all of his/her contractual rights, except remuneration and should return to the same job after it.

Pension rights and contributions shall be dealt with in accordance with NHS Superannuation Regulations. Periods of parental leave should be regarded as continuous service.

35.10 It is good practice for employers to maintain contact (within agreed protocols) with employees while they are on parental leave.

### **Maternity Support (Paternity) Leave and Pay and Ante-Natal Leave**

35.11 This will apply to biological and adoptive fathers, nominated carers and same sex partners.

35.12 There will be an entitlement to two weeks' occupational maternity support pay. Full pay will be calculated on the basis of the average weekly earnings rules used for calculating occupational maternity pay entitlements. The employee will receive full pay less any statutory paternity pay receivable. Only one period of occupational paternity pay is ordinarily available when there is a multiple birth. However, NHS organisations have scope for agreeing locally more favourable arrangements where they consider it necessary, or further periods of unpaid leave.

35.13 Eligibility for occupational paid maternity support pay will be twelve months' continuous service with one or more NHS employers at the beginning of the week in which the baby is due. More favourable local arrangements may be agreed with staff representatives and/or may be already in place.

35.14 Local arrangements should specify the period during which leave can be taken and whether it must be taken in a continuous block or may be split up over a specific period.

35.15 An employee must give his employer a completed form SC3 "Becoming a Parent" at least 28 days before they want leave to start. The employer should accept later notification if there is good reason.

35.16 Reasonable paid time off to attend ante-natal classes will also be given.

35.17 All employees are entitled to two weeks maternity support leave. Employees who are not eligible for occupational maternity support pay may still be entitled to Statutory Paternity Pay (SPP) subject to the qualifying conditions. The rate of SPP is the same as for Statutory Maternity Pay (SMP).

### **Adoption Leave and Pay**

35.18 All employees are entitled to take 52 weeks adoption leave.

35.19 There will be entitlement to paid occupational adoption leave for employees wishing to adopt a child who is newly placed for adoption.

35.20 It will be available to people wishing to adopt a child who has primary carer responsibilities for that child.

- 35.21 Where the child is below the age of 18 adoption leave and pay will be in line with the maternity leave and pay provisions as set out in this agreement.
- 35.22 Eligibility for occupational adoption pay will be twelve months' continuous NHS service ending with the week in which they are notified of being matched with the child for adoption. This will cover the circumstances where employees are newly matched with the child by an adoption agency.
- 35.23 If there is an established relationship with the child, such as fostering prior to the adoption, or when a step-parent is adopting a partner's children there is scope for local arrangements on the amount of leave and pay in addition to time off for official meetings.
- 35.24 If the same employer employs both parents the period of leave and pay may be shared. One parent should be identified as the primary carer and be entitled to the majority of the leave. The partner of the primary carer is entitled to occupational paternity leave and pay.
- 35.25 Reasonable time off to attend official meetings in the adoption process should also be given.
- 35.26 Employees who are not eligible for occupational adoption pay, may still be entitled to Statutory Adoption Pay (SAP) subject to the qualifying conditions. The rate of SAP is the same as for Statutory Maternity Pay.

## **Keeping in Touch**

### **Work During the Adoption Leave Period**

#### **Keeping in Touch Days**

- 35.27 Employees will be entitled to Keep in Touch Days (KIT) in line with the maternity leave and pay provisions as set out in Section 15 of this agreement.

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

- 35.28 This form of leave should cover a range of needs, from genuine domestic emergencies through to bereavement.
- 35.29 These provisions should cover all employees.
- 35.30 Payment may be made by local agreement, but the expectation is that relatively short periods of leave for emergencies will be paid.
- 35.31 If the need for time off continues, other options may be considered, such as a career break.
- 35.32 Applicants for the above forms of leave should be entitled to a written explanation if the application is declined.
- 35.33 Appeals against decisions to decline an application for leave should be made through the Grievance Procedure.

## **Monitoring and Review**

- 35.34 All applications and outcomes should be recorded, and each leave provision should be annually reviewed by employers in partnership with local staff representatives
- 35.35 Applications and outcomes should be monitored annually, in partnership with local staff representatives.
- 35.36 Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness
- 35.37 Applications and outcomes, from both employer and employees should be recorded and kept for a minimum of one year.