

# General maternity guidance for rotational doctors and dentists in training

March 2024



# About us

NHS Employers is the employers' organisation for the NHS in England. We support workforce leaders and represent employers to develop a sustainable workforce and be the best employers they can be. We also manage the relationships with NHS trade unions on behalf of the Secretary of State for Health and Social Care.

# Key points

- This guidance relates to doctors and dentists in rotational training programmes, employed on the 2016 terms and conditions of service (TCS).
- We recommend you use this guide in conjunction with the 2016 TCS. In addition, the funding arrangements may differ slightly to those stated in the flowcharts depending on whether there are specific local arrangements between employers and deaneries in different regions.
- Employees are always advised to speak with their employer regarding employment issues in the first instance to clarify the arrangements in place

# Maternity leave overview

## When to tell the employer

Under normal circumstances, by the end of the 15th week before the expected week of childbirth (EWC) the employee must have notified their employer of their pregnancy, the EWC, and the date they want their ordinary maternity leave (OML) to start.

## How long is maternity leave

There is a statutory period of compulsory maternity leave of two weeks starting on the date the baby is born. There is a statutory entitlement to 26 weeks of OML, beginning no earlier than the 11th week before the expected week of childbirth (EWC), followed by an entitlement to a further 26 weeks of additional maternity Leave (AML). Contractual rights, with the exception of pay, continue during OML and AML.

## When to take maternity leave

Maternity leave can start at any time after the beginning of the 11th week before the baby is due or immediately after childbirth. The 11th week is classed as starting on the Sunday at the beginning of the 11th week.

# Maternity pay

Maternity pay can have two components depending on eligibility.

- Occupational maternity pay (OMP) which depends on length of NHS service.
- Statutory maternity pay (SMP) which depends on both length of service with one employer and continuity of employment.

The qualifying criteria for each are different. Individuals who are not eligible for SMP may be eligible for maternity allowance (MA).

## Occupational maternity pay (OMP)

To qualify for OMP the employee must have had 12-months continuous service with one or more NHS employers (in the case of GP trainees this includes GP practices) by the start of the 11th week before their EWC, and be employed by the NHS at that point. The amount of OMP payable is based on the employees' average weekly earnings, averaged over a period of at least eight weeks up to and including the last payday before the end of the qualifying week. The qualifying week is currently the 15th week before the week the baby is due.

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OMP is eight weeks at full pay and 18 weeks at half pay.

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## Statutory maternity pay (SMP)

To qualify for SMP, the doctor must have been employed by the same employer for a continuous period of at least 26 weeks into the 15th week before EWC. She must also have average earnings of at least the lower earnings limit for National Insurance (NI) purposes. For SMP purposes, the employer is the person or organisation responsible for paying the employers' share of the NI contributions for that employee at the 15th week before the baby is due. Under a single lead employer arrangement, a move between posts on rotation will not break the 26-week continuity of employment requirement for SMP purposes.

This is because the organisation responsible for paying the employers' share of the NI contributions remains the same. Without a single lead employer, moves between trusts, between practices, and between trusts and practices, may break the continuity of employment and affect SMP entitlement. This is because the organisation responsible for paying the employers' share of the NI contributions changes when the doctor rotates. Although trainees on rotation retain continuity of employment for the purposes of some statutory rights under the Employment Rights Act 1996, this does not apply in relation to statutory payments such as SMP.

- If the employee satisfies the qualifying conditions and leaves their employer after the start of the 15th week before EWC, it does not matter why she left or that she may not be coming back to the NHS - she is entitled to SMP to be paid by her original employer.
- If the doctor moves to a new employer (hereafter referred to as employer B) before her baby is born, the first employer (hereafter referred to as employer A) is still liable to pay SMP. SMP payments from employer A cease at the end of the 39 weeks of SMP entitlement or on the doctor's return to work after the birth, whichever is the sooner. Should the doctor choose to return to work before the end of their SMP entitlement, she should communicate the date of her return to work to employer A as well as employer B to ensure that overpayments of SMP do

not occur. It is the employers' responsibility to recover SMP payments from HMRC.

The amount an employer is reimbursed normally depends on the total gross employer and employee Class 1 NIC's in the last complete tax year before the Saturday of the employees' qualifying week.

Further information for employers about SMP can be found on the [GOV.UK web page](#), maternity pay and leave or from the HM Revenue and Customs, [employer helpbook](#) for SMP.

## Paying SMP

SMP is paid at 90 per cent of full pay for six weeks, and at £151.97 (from 1 April 2021) for 33 weeks (39 weeks in total). This is liable for tax and National Insurance contributions as it is treated as earnings. If OMP is payable, SMP is included in the eight weeks of full pay from the employer. SMP is also payable in addition to the 18 weeks of half pay, providing the total receivable does not exceed full pay.

## Maternity allowance (MA)

If there is no entitlement to SMP the doctor may be entitled to maternity allowance (MA). She should obtain form SMP1 from her employer to help support her claim for MA through Jobcentre Plus. Further information about MA, rates of pay and the claim form can be found on the [GOV.UK website](#).

## Paying MA

MA is paid at £151.97 a week (from 1 April 2021) for 39 weeks or 90 per cent of the employee's average gross weekly earnings (before tax), whichever is the smaller. MA is not liable for tax and National Insurance contributions and MA is not included in the eight weeks of full pay (if eligible for OMP) as it is claimed and paid for through

Jobcentre Plus and not the employer. Employers should subtract the amount of MA payable from the employee's earnings if OMP and MA are payable.



# End of training, fixed-term contracts and movement between posts

## End of training or fixed-term contract

If the employee is entitled to OMP and their contract of employment expires after the 11th week before her EWC, then the terms and conditions state that the employer must extend the contract to allow them to remain employed during the period of maternity leave, as to allow them to receive the 52 weeks, which includes paid occupational and statutory maternity / adoption / shared parental pay, and the remaining 13 weeks of unpaid maternity / adoption / shared parental leave.

In addition, the contract should be extended for any agreed additional period to enable them to complete any training missed during that leave if necessary. For GP registrars this is subject to the agreement of the director of GP education. Please also note the annual leave section below for details about annual leave in this scenario.

Regardless of the above, if all parties agree that it would be in the best interests of the doctor for her to rotate (all parties being employer A, employer B, the deanery and the doctor) then the doctor should have the option to rotate. No single party can be forced to accept the decision of the other parties if they have concerns and should there be any disagreements then the default provisions of the terms and conditions as detailed above will automatically apply.

If the doctor's contract expires before the 11th week before her EWC and she rotates then she will not meet the conditions for payment of OMP from employer A and this will be payable by employer B. Employer A's liability will be solely for SMP, subject to the employee being entitled to that benefit. If the doctor comes to the end of their training programme and her contract expires before the 11th week before her EWC then she will not meet the conditions for payment of OMP. The employer's liability will be solely for SMP, subject to the employee being entitled to that benefit.

Please note the following and see the relevant contractual documentation for further details.

## Expiration of contract and movement between posts

In NHS posts, extension of the contract of employment in certain circumstances to cover the 52 weeks of paid and unpaid maternity leave is contractual and should be automatic unless alternative arrangements are agreed by all relevant parties (see previous section). Under a single lead employer arrangement, a move between posts on rotation will not break the 26-week continuity of employment requirement for SMP purposes.

For example, without a single lead employer, moves between trusts, between practices, and between trusts and practices, may break the continuity of employment and affect SMP entitlement.

Where an employee changes employer because their training programme has required them to do so, and this means they do not have enough statutory continuous service with their current employer to access statutory maternity pay, statutory adoption pay, or statutory shared parental pay, the employee shall be paid, by their current employer, the value of statutory maternity / adoption / shared parental pay they would have otherwise received if their statutory continuity had not been broken by their change of employer.

# Annual leave

An employee shall continue to accrue their normal annual leave entitlement during their period of statutory maternity leave (SML). An employee may not take annual leave during their SML; employers should instead allow the employee to take their annual leave before and / or after her SML. It is prudent to discuss and make arrangements with employees regarding any untaken annual leave before her SML commences. The employer contracting the doctor during their maternity leave will be eligible to pay for any accrued annual leave. This is the case even when extending the contract purely for the specific purpose of contracting the employee during her maternity leave.

# Sickness prior to childbirth

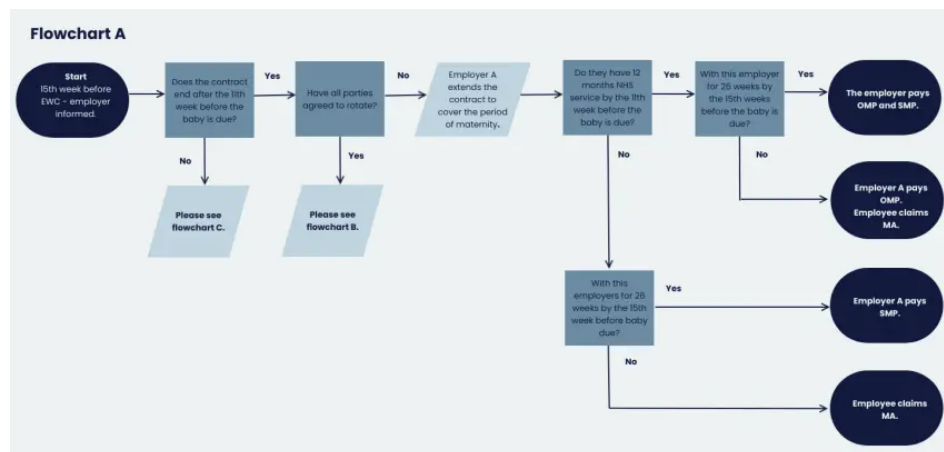
It is not uncommon for a pregnant employee to experience some form of sickness in the months leading up to the period of maternity leave. It is the responsibility of the employer to undertake a risk assessment of an employees' working conditions to assess whether the employee or her child would be at risk were she to continue with her normal duties.

Absence prior to the last four weeks before the EWC, 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. If sickness is experienced, then it should be managed under the normal sickness provisions.

However, 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 has worked, whichever is the later. 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 agreed

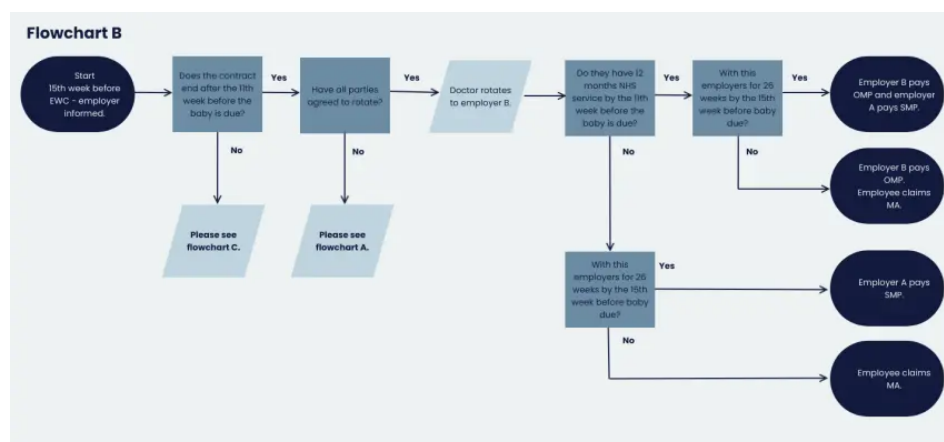
# Examples by flow charts

Flowchart A demonstrates what happens if a contract expires after the 11th week before the expected week of childbirth (EWC) and the employee is staying with employer A.

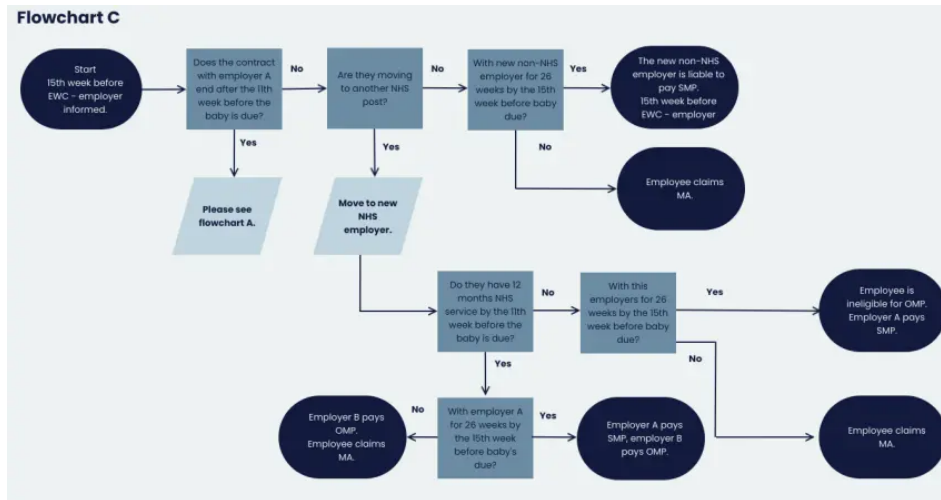


Flowchart B demonstrates what happens if a contract expires after the 11th week before the EWC and it is agreed that the employee will rotate to employer B.

We would only expect this happen if the trainees rotates to another NHS employer. If they rotate to a non-NHS employer their entitlement to occupational maternity pay (OMP) may be affected.



Flowchart C demonstrates what happens if a contract expires between the 15th and 11th week before the EWC and the employee has rotated to employer B.



# Nodal point pay progression - section 15 NHS TCS

Section 15 leave refers to maternity leave, adoption leave, and shared parental leave within the NHS terms and conditions of service handbook.

This guidance document provides clarity for employers and trainee doctors regarding when a planned and anticipated move to a higher pay point under the 2016 TCS, should be reflected within the doctor's pay for section 15 leave.

The guidance states that where a doctor has received an annual review of competency progression (ARCP) outcome prior to commencing their leave, or during their leave, which would have enabled them to progress to the next training grade and would have resulted in a move to a higher nodal point, then this higher nodal point should be reflected within the doctor's pay for their section 15 leave.

## Pay under section 15 NHS TCS for doctors

This guidance has been developed to clarify whether an anticipated move from one grade to another, for example, from a CT2 to ST3 would constitute a move to a higher pay point, as per the provisions set out in paragraph 15.22 of the [NHS staff handbook](#). The way training grade is linked to pay point under the 2016 TCS potentially suggests that doctors in training may not meet the requirements set out in 15.22 and 15.92 of the NHS staff handbook. This guidance document clarifies when an anticipated move to a higher nodal point should be reflected within a doctor's pay when they have taken leave in accordance with the provisions

of, Section 15: Leave and Pay for New Parents, of the NHS staff handbook.

This guidance document was necessitated following queries relating to maternity pay and whether anticipated moves to higher nodal points should be recognised within maternity pay. The principles of this guidance document also applies to doctors who take adoption leave and shared parental leave, and the interpretation of the relevant paragraphs for these provisions, which are 15.39 and 15.63 respectively. Paragraph 15.91 of the staff handbook, see below, highlights that a consistent approach should be taken.

## What the NHS handbook states

### Calculation of maternity, adoption and shared parental leave

#### Calculation of maternity pay

15.22 Full pay will be calculated using the average weekly earnings rules used for calculating SMP entitlements, subject to the following qualifications:

1. In the event of a pay award or move to a higher pay point being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or new pay point had effect throughout the entire SMP calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;
2. In the event of a pay award or move to a higher pay point being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or new pay point should be increased accordingly. If such a pay award was



agreed retrospectively the maternity pay should be re-calculated on the same basis.

## Calculation of adoption pay

15.39 Full pay will be calculated using the average weekly earnings rules used for calculating statutory adoption pay entitlements, subject to the following qualifications:

1. In the event of a pay award or move to a higher pay point being implemented before the paid adoption leave period begins, the adoption pay should be calculated as though the pay award or new pay point had effect throughout the entire Statutory Adoption Pay calculation period. If such a pay award was agreed retrospectively, the adoption pay should be re-calculated on the same basis;
2. In the event of a pay award or move to a higher pay point being implemented during the paid adoption leave period, the adoption pay due from the date of the pay award or new pay point should be increased accordingly. If such a pay award was agreed retrospectively the adoption pay should be re-calculated on the same basis.

## Calculation of shared parental leave pay

15.63 Full pay will be calculated using the average weekly earnings rules used for calculating statutory shared parental pay entitlements, subject to the following qualifications:

1. In the event of a pay award or move to a higher pay point being implemented before the paid shared parental leave period begins, the shared parental pay should be calculated as though the pay award or new pay point had effect throughout the entire Statutory Shared Parental Pay calculation period. If such a pay award was agreed retrospectively, the shared parental pay should be re-calculated on the same basis;

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2. In the event of a pay award or move to a higher pay point being implemented during the paid shared parental leave period, the shared parental pay due from the date of the pay award or new pay point should be increased accordingly. If such a pay award was agreed retrospectively the shared parental pay should be re-calculated on the same basis.

## Pay progression

15.91 An employee on maternity / adoption / shared parental leave will progress through their pay step on the date the pay step is due unless a pay-step review meeting has taken place prior to the commencement of leave which confirmed that the required standards for pay progression would not be met. If a pay-step review cannot be conducted prior to the pay-step date the pay-step point should be automatically applied in the individual's absence. Refer to Annex 23 (England) for further information.

15.92 For staff on medical or dental contracts that are covered by this section the general principle will apply that there should be no detriment to pay progression or annual leave accrual as a result of taking maternity/adoption/shared parental leave.

### **Issue**

Due to the way the 2016 TCS, pay is structured (linked to training grade), the above paragraphs are not clear on how the provisions apply to a planned progression to a new nodal point, for example, if a trainee is not working at the relevant grade they cannot be paid at that grade. Paragraph 15.92 could be interpreted as where a trainee was expecting to move to a higher nodal point and this move was planned (for example, an agreed specific date) then the move to the higher pay point should be reflected within their maternity pay.

## **NHS Employers' and BMA's position**

NHS Employers and the BMA agree that where a doctor has received an ARCP outcome prior to commencing their leave, or during their leave, which would have enabled them to progress to the next training grade and would have resulted in a move to a higher nodal point, then this higher nodal point should be reflected within the doctor's pay for their section 15 leave.

Where a doctor has been unable to undertake their ARCP as a result of their section 15 leave, but return to work in their next planned post, rather than the post from which they took leave. Then upon receipt of a successful ARCP outcome, they should have the impact of the move to a higher nodal point retrospectively applied to the pay for their section 15 leave to the date at which they would otherwise have moved to that nodal point. Where a doctor has returned from their section 15 leave and moved to their next planned post with the new employer, any retrospective payment to the doctor should be paid by the

previous employer that the doctor was employed by when they took their leave.

## Impact of different contractual arrangements on application of contractual provisions

NHS Employers and the BMA agree that the interpretation of paragraph 15.92 could be impacted by the contractual arrangement that the doctor was employed under. Therefore, below we set out how we believe different contractual arrangements could affect the application of these contractual provisions:

### Employed under lead employer contract

As pay progression is occurring under the same contract, and the doctor has met the criteria for the progression, it would be reasonable to apply the higher nodal point.

### Employed under separate contracts for the posts, but with the same employer

With this arrangement the doctor is covered by separate contracts. Therefore, the doctor would be asking for the pay only associated with their prospective post (and contract) to be applied to their current post, which is being extended for the purposes of their parental leave. Due these posts being with the same employer, it would be reasonable to apply the higher nodal point to the doctor's section 15 pay.

### Employed under separate contracts for the posts and with different employers

In this circumstance it is at the doctor's existing employer's discretion to apply the higher nodal point, there is no contractual requirement for the employer to honour the arrangements of their prospective contract and pay, which they are only due to have with their next employer.

However, NHS Employers and the BMA would advise, in the interest of providing equity and potential unlawful deduction of wages, that employers honour the higher nodal point where the above criteria has been met.

- The prospective employer fulfils what can be reasonably expected of them by allowing the doctor to defer their start date and guarantee their post upon their return from section 15 leave.

## Application

NHS Employers and the BMA are in agreement that where a trainee has a planned and expected move to a higher nodal point, and this was only prevented due to the doctor going on section 15 leave, the value of the higher nodal point should be reflected within the trainee's pay for their section 15 leave, from the date this would have been expected to have been applied.

The doctor would have to receive a satisfactory ARCP outcome, which confirmed that they were eligible to progress to the next training grade / post. If a doctor has been prevented from moving to a higher nodal point as a result of their section 15 leave, this move to the higher nodal point should be reflected in their pay from the date they would have been paid according to this higher nodal point, had they not taken their section 15 leave.

The application of this higher nodal point to a doctor's pay should be applied in the same manner as pay awards are applied to the pay of doctors on section 15 leave, when a pay award is implemented after the doctor's pay calculation reference period.

## Scenario

A doctor who is contracted as a CT2 in England and is currently on maternity leave which is due to end on 25 May 2022 and her annual leave period will begin. The doctor started maternity leave on 26 May 2021 while in her CT2 post. The doctor was offered an ST3 post on 11 June 2021.

She was then notified of her ARCP outcome 6, on 17 June 2021. The doctor's CT2 contract was set to end on 3 August 2021 but was extended to cover her maternity leave. In this scenario, the doctor's maternity leave pay should reflect their anticipated move to the next training grade, and the associated higher nodal pay point from the date that they would have started receiving this higher pay had it not been for being maternity leave.

Therefore, from 4 August 2021 onwards, the doctor's maternity leave pay should be revalued to reflect the value of nodal point 4, rather than nodal point 3.

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