



## Adoption and Fostering Leave Policy

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## 1. Aim

- 1.1 NHS 24 aim, therefore, to ensure that all staff members are treated in a fair and equitable manner and with dignity and respect in accordance with the organisational values set out in the NHS Scotland Workforce 2020 Vision Plan.
- 1.2 NHS 24 wishes to support staff who are considering adopting or fostering a child. The following policy sets out any statutory entitlement to leave and other support available to staff.
- 1.3 By implementing the Adoption and Fostering Leave policy (in conjunction with NHS Scotland Partnership Information Network (PIN) policies), NHS 24 aims to create an environment which will allow all staff members to utilise their skills and talents and experience, and thereby encourage a well-motivated and committed workforce. NHS 24 value the contribution made by staff, and will treat all staff with dignity and respect, as an open and accountable organisation.
- 1.4 The General Data Protection Regulation (GDPR), which is in force from 25 May 2018, requires employers to comply with principles for processing personal data, including protecting against unauthorised access of personal data. Personal data that is inappropriately accessed or disclosed may constitute a data breach. The GDPR requires organisations to keep a record of all data breaches and, where the breach is likely to result in a risk to the rights and freedoms of individuals, the organisation must notify the Information Commissioner within 72 hours of becoming aware of the breach. If the data breach results in a high risk to the rights and freedoms of individuals, those individuals must be notified without undue delay.

## 2. Scope

- 2.1 The policy applies to all staff, regardless of grade or hours worked.
- 2.2 This policy applies to all staff who adopt or foster. However, where a couple adopt jointly, the couple should choose which partner takes adoption leave and therefore is considered to be the primary carer.
- 2.3 Adoption leave and pay is not available in circumstances where a child is not newly matched for adoption, for example, when a step-parent is adopting a partner's children. In the case of a foster carer who is adopting their foster child, the foster carer will be entitled to Statutory Adoption Leave where the child is matched with them for adoption by a UK adoption agency (i.e. not from a court order).

### 3. Principles

- 3.1 NHS 24 recognises the needs of the adoptive or foster carer(s) are at least as great as those of natural parent(s) in establishing a relationship with the child and in developing new routines. The Adoption and Fostering Policy enables staff who wish to adopt or foster a baby or child to take a period of leave to help the child settle into the family and adjust to new circumstances.
- 3.2 Where both parents are employed by NHS Scotland, leave may be shared or taken in its entirety by the primary carer. However, in certain circumstances, e.g. the adoption or fostering of a child with special needs, leave may be requested by both parents.
- 3.3 NHS 24 also recognises that a single person, or same sex couple, may adopt or foster a child. All groups will be afforded the same rights as other potential adoptive parents/foster carers.

### 4. Adoption Leave

All staff members who adopt a child under the age of 18 through an approved adoption agency (or who adopt a child from overseas and have received 'official notification' in respect of that child), and who will have primary care responsibility for this child, will have the right to take 52 weeks adoption leave, whether or not they return to NHS employment.

A staff member will be entitled to paid (please see 4.4 for further information), and unpaid adoption leave under the NHS contractual adoption pay scheme if:

- (i) they have 12 months' continuous service with one or more NHS employers ending with the week in which they are notified of being matched with the child for adoption;
- (ii) they notify NHS 24 in writing no later than 7 calendar days after the date on which notification of the match with the child was provided by the adoption agency (or if this is not possible, as soon as is reasonably practicable thereafter):
  - a. of their intention to take adoption leave;
  - b. of the date the child is expected to be placed with the staff member for adoption;
  - c. of the date they wish to start their adoption leave – adoption leave can start on the day the child is placed for adoption or up to 14 days earlier (or in the case of adoption of the child from overseas, on the day on which the child enters the UK or on a chosen date no later than 28 days after that);
  - d. that they intend to return to work with the same or another NHS employer for a minimum period of 3 months after their adoption leave has ended;
  - e. and provide evidence of entitlement to adoption leave and pay by producing a 'matching certificate' from the adoption agency (or in the case of overseas adoption, a copy of the 'official notification' and, within 28 days of the

child's entry into the UK, inform the organisation of the date of entry and provide evidence of this date in the form of a plane ticket or copies of entry clearance documents).

In order to qualify for Statutory Adoption Leave and/or Statutory Adoption Pay, staff must meet set criteria, dependant upon length of service and personal circumstance, including whether the child is being adopted from overseas or from within the UK.

- the Maternity and Adoption Leave (Curtailment of Statutory Rights to Leave) Regulations 2014, which came into force on 1 December 2014, allow eligible adopters to curtail their statutory adoption leave to take, or enable their partners to take shared parental leave where eligible. Shared parental leave entitles those adopters who meet eligibility requirements to end their adoption leave early and share untaken leave. Full details regarding Shared Parental Leave are available in NHS 24's Shared Parental Leave policy.
- 2 weeks paid Paternity Leave continues to be available to qualifying partners of an adopter. In cases of overseas adoptions, the right is available to adoptive parents whose child enters the UK on or after that date.
- staff have a "day 1" right to adoption leave and no longer require to have 26 weeks' continuous employment to qualify for adoption leave. This is in line with Paternity and Adoption Leave (Amendment) Regulations 2014 (SI 2014/2112).
- adoptive parents also have the right to take time off work to meet the child that they are set to adopt before the adoption placement begins, to ensure as smooth a transition for the child into their new family as possible.
- regulations introduce a new right to adoption leave to local authority foster parents who are prospective adopters and a new right to parental leave to spouses, civil partners and partners of these prospective adopters.
- some surrogate parents will become eligible for adoption leave.
- legislation provides that paternity leave or adoption leave cannot be taken where leave has already been taken in relation to that child

#### 4.1 UK Adoptions

Staff who are adopting a child from within the UK will qualify for 52 weeks Statutory Adoption Leave that is made up as follows

- 26 weeks Ordinary Adoption Leave – if a staff member returns to work during this period they have the right to return to the same job they had prior to adoption leave.
- 26 weeks Additional Adoption leave- if a staff member returns to work during this period they have the right to return to the same job, unless it is no longer available, in which case they must be given a similar job with the same pay and conditions.

They must:

- Have been matched with a child to be placed with them by a UK adoption agency
- Have notified the agency that they agree that the child should be placed with them and agreed the date of the placement
- Notify NHS 24 that they intend to take adoption leave, the date they wish to commence their Statutory Adoption Leave, and of the date the child is expected to be placed with them for adoption, no more than 7 days after they are notified that they have been matched with a child. If it is not reasonably practicable for a staff member to notify within 7 days, they should notify NHS 24 as soon as possible.

For UK adoptions, staff can choose to begin their adoption leave (and pay, where applicable) on either:

- The date on which the child is placed with them for adoption
- A pre-determined date no earlier than 14 days before the expected date of placement, and no later than the expected date of placement.

Where staff choose to start their adoption leave on the day the child is placed with them, and they are at work that day, the period of adoption leave and pay can start on the next day. The leave can start on any day of the week. Where the date of placement changes before the leave begins, staff should give as much notice as possible to change the start date, where practicable.

#### 4.2 Overseas Adoptions

Staff who have received official notification from the relevant UK authority of their eligibility to adopt a child from abroad will qualify for 52 weeks Statutory Adoption Leave that is made up as follows:

- 26 weeks Ordinary Adoption Leave – if a staff member returns to work during this period they have the right to return to the same job they had prior to adoption leave.
- 26 weeks Additional Adoption leave- if a staff member returns to work during this period they have the right to return to the same job, unless it is no longer available, in which case they must be given a similar job with the same pay and conditions.

They must:

- Provide at least 28 days notice of the actual date they want their Statutory Adoption Leave (and Statutory Adoption Pay if applicable) to start. Statutory Adoption Leave cannot start before the child enters the UK. Where the staff member decides to change the date on which they want their Statutory Adoption Leave to start, they must provide at least 28 days notice of the new date.

- Notify NHS 24 of the date that the child entered the UK within 28 days of the date of entry to the UK.

Official notification for overseas adoptions is written notification issued by or on behalf of the relevant domestic authority (usually the Department of Health) that the authority either is prepared to issue a certificate to the overseas authority dealing with the adoption of the child, or has issued a certificate and sent it to that authority.

Staff must inform NHS 24 as soon as is reasonably practicable if they find out the child will not be entering the UK.

For overseas adoptions, staff can choose to start their Statutory Adoption Leave from either the date the child enters the UK, or a pre-determined date no later than 28 days after the date the child enters the UK. Staff can change their intended start date for adoption leave provided they provide 28 days notice of the new start date, and provided the new start date is not more than 28 days later than the original date.

#### 4.3 Both UK and Overseas Adoptions

Upon receipt of notification that a staff member is applying for adoption leave (whether a UK or overseas adoption), NHS 24 will respond to the staff member within 28 days confirming whether the staff member is eligible for adoption leave, and/or pay, and when the adoption leave is due to end, i.e. 52 weeks following the date of commencement or a date requested by the staff member.

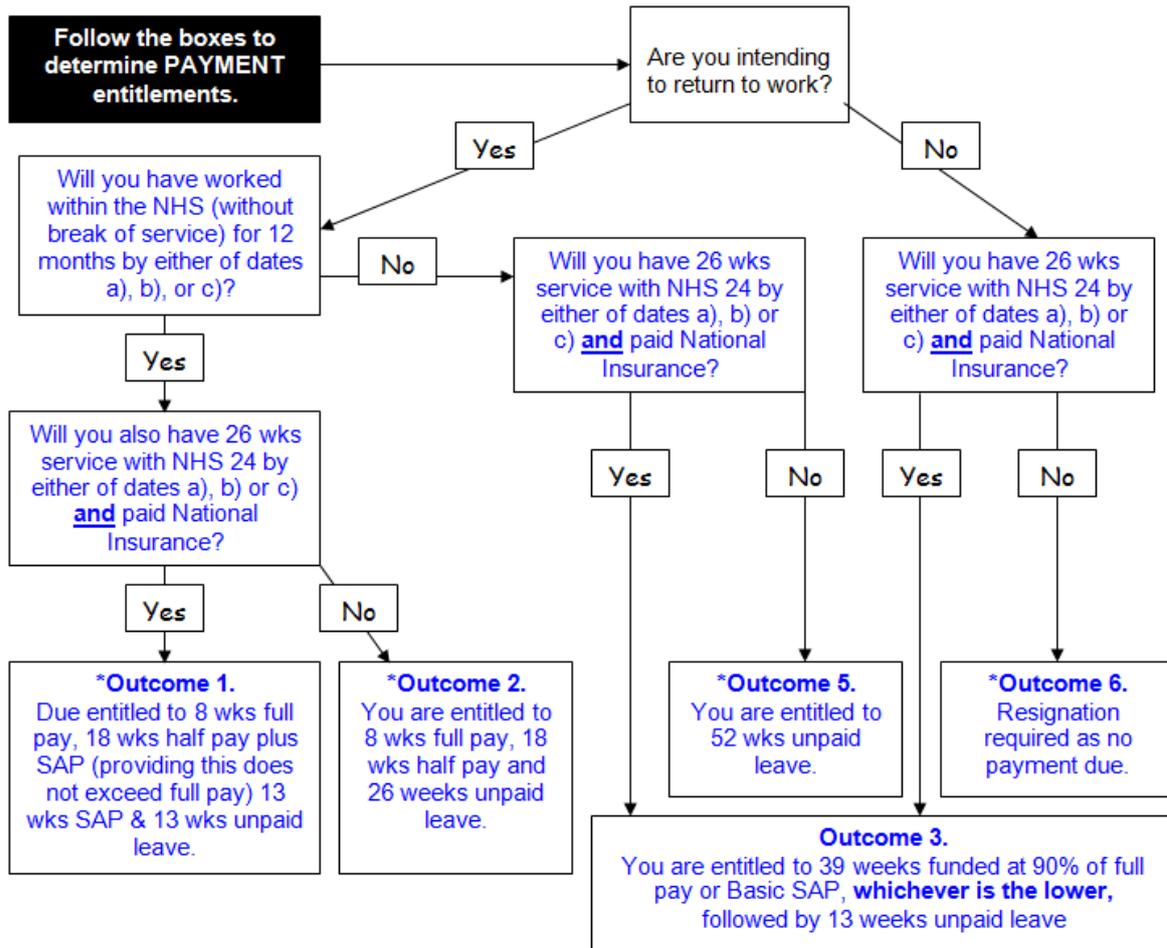
#### 4.4 Payment and Benefits During Adoption Leave

Payments during Statutory Adoption Leave is calculated using the average weekly earnings rules used for calculating Statutory Adoption Pay entitlements, subject to the qualifications set out within section 15.23 of the NHS Terms and Conditions of Service Handbook, and are depended on:

- length of service with NHS 24
- length of service with the wider NHS
- the staff members intention regarding returning to work
- whether the staff member makes National Insurance contributions.

Service is calculated from the staff member's continuous NHS service date and their commencement date with NHS 24, through to the date staff member is notified of:

- a) being matched with a child or for overseas adoptions;
- b) when official notification from the relevant UK authority is received, indicating eligibility to adopt a child from abroad; or
- c) the date the staff member's Statutory Adoption Leave is due to begin.



\*The payment in Outcomes 1 and 2 exceed the statutory requirements (Outcome 3), and is paid on the basis that the staff member will return to work for at least 3 months after their Adoption leave. Should they fail to do so NHS 24 will reclaim the amounts paid in excess of the Statutory Requirements. Please also note that if the staff member does not earn a sufficient salary to pay National Insurance contributions they may not qualify for Statutory Adoption Pay (SAP).

## 5. Pre-Adoption Leave

The Employment Rights Act 1996 has a new insertion under Section 128 of the Children and Families Act 2014, which permits a primary adopter to take paid time off during working hours to allow attendance at appointments arranged by, or at the request of, the adoption agency. The primary adopter may take time off under the new provision to attend up to 5 appointments, which may last up to 6.5 hours. Where the primary adopter is adopting the child jointly, their partner may attend up to 2 appointments during working hours (subject to the same restrictions as those attended by the primary adopter). This is for the purpose of having contact with the child or for any other purpose connected with the adoption.

Where staff wish to request paid time off work in order to attend mandatory training or appointments with the sheriff court or the reporter to the children's panel, in relation to the adoption process, this will not be unreasonably refused. Requests for time off work should be processed using eESS (the line manager may wish to use Appendix A Approved Leave Information Form, which should be retained by the line manager, to collate the information prior to approving leave via eESS).. Staff should advise their Team Leader or Line Manager as soon as they have been notified by the Adoption Agency that the application for adoption has been accepted. Original proof of the staff member's requirement to attend court sessions, interviews and other meetings may be required when requesting time off as part of the adoption process. This will be granted in line with the special leave policy and will be calculated on a pro rata basis for part time staff, with a maximum of 5 working days (one working week) being made available for these purposes in normal circumstances.

## 6. Keeping in Touch

- 6.1 During adoption leave, line managers should keep in touch with their member of staff to provide updates on work, advice of any changes and enquire as to how their member of staff is getting on. The regularity of contact should be agreed between the line manager and member of staff in advance of the adoption leave commencing. HR Business Support will arrange for any member of staff on adoption leave to receive information on any vacancies within NHS 24.
- 6.2 In addition, staff may apply for up to 10 Keeping In Touch days during the period of adoption leave, without this affecting their right to adoption leave or pay. Keeping In Touch days can be used by staff to attend training, team meetings, or to carry out normal day to day work. Staff should be aware that any amount of work carried out on a Keeping In Touch day counts as a full day, i.e., if a member of staff attends a team meeting that lasts for 1 hour, this would count as one Keeping In Touch day. Keeping In Touch days must be arranged with agreement with the line manager. Staff are under no obligation to utilise these Keeping In Touch days, but might find them beneficial in keeping up to date with work developments. Further information on Keeping In Touch days can be found in the NHS 24 Maternity Leave policy.

## **7. Length of Fostering Leave**

- 7.1 Fostering can be for varying lengths of time ranging from temporary to permanent fostering arrangements. Permanent fostering applies where there is no expectation that the child will return to their parents and in such circumstances, foster carers will be provided with a permanence order. Staff should note however, that permanent fostering is distinct from adoption. Within this policy, the term 'temporary fostering' is applicable in all instances where a permanence order has not been granted.
- 7.2 NHS 24 will, wherever possible, adopt a flexible approach to staff who foster. For temporary fostering placements, leave will be considered under NHS 24's Special Leave Policy. This leave can be extended by 5 consecutive working days (pro rata for part time staff), either on a paid or unpaid basis, where authorised by the relevant Director or Associate Director of Operations and Nursing.
- 7.3 For permanent fostering the line manager will consider providing time off in line with the arrangements for Adoption Leave/Pay as detailed throughout this policy. In such circumstances, the staff member should submit the request in writing giving as much notice as possible (this should be a minimum of 28 days notice, where possible) and providing as much detail as possible in support of the request. The line manager will forward the request to the Director of Workforce who will provide final authorisation for any such leave and payment and will consider each request on a case by case basis.
- 7.4 For staff who foster on an on-going temporary basis, leave considerations will be considered in line with the needs of the service. Where leave is requested within two months of the first leave request being granted, staff will be required to consider taking annual leave or unpaid leave.

## **8. Notification of intention to take Adoption or Fostering Leave**

- 8.1 Applications to take adoption or fostering leave should be submitted using the attached form (Appendix A). Supporting documentary evidence must be submitted in conjunction with any request for adoption or fostering leave which should specify whether the staff member is the primary or secondary carer. NHS 24 will not hold any personal data relating to the child/children. Any delay in providing supporting documentary evidence may result in delays of any applicable payments.
- 8.2 Staff should make a request for Adoption/Fostering Leave to their appropriate line manager or, if unavailable, duty-line manager. Staff should formally request Adoption/Foster Leave on eESS (please see the Standard Operating Procedure available on the intranet within the Knowledge Lab).

Evidence of any relevant appointments will be required when requesting leave to attend court sessions, interviews and other necessary meetings as part of the adoption/fostering process.

- 8.3 The line manager must ascertain the full circumstances relating to the request and determine the amount of leave to grant in accordance with this policy. For fostering leave, staff should be advised in writing, using the Approved Authorised Leave Form, of the duration of the leave granted and details as to whether it is paid or unpaid. The line manager must obtain authorisation from the relevant Director or Associate Director of Operations and Nursing where further periods of extended fostering leave is being sought, whether paid or unpaid. Requests for extended leave for permanent fostering should be made in line with section 7.3.
- 8.4 Line managers should approve Adoption/Foster leave via eESS, upon receipt of the staff members eESS request and, thereafter, SSTS (the line manager should follow the Standard Operating Procedure available on the intranet within the Knowledge Lab).

## 9. Disrupted Placement

If a staff member begins a period of adoption leave and the placement is disrupted through:

- Notification that the child will no longer be placed with the staff member;
- The child dies;
- The child is returned to the adoption agency;

The adoption leave, and pay where applicable, will end 8 weeks after the end of the Statutory Adoption Pay week in which the child dies, or stops living with the adopter, or at the expiry of the period of agreed adoption leave, whichever is sooner.

## 10. Returning to Work after Adoption Leave

- 10.1 Should staff wish to amend this return to work date, they must notify their line manager in writing at least 8 weeks prior to the new return to work date. Where staff return to work after 39 weeks i.e. the end of the paid period of leave, any further leave required for court hearings, social work visits etc will be unpaid. The line manager should update the staff member's Adoption/Fostering absence on eESS, upon receipt of the change.
- 10.2 The staff member will retain the right to return to work on no less favourable terms and conditions of employment than prior to taking the adoption leave.
- 10.3 In normal circumstances, if the staff member does not return to work, for a period of 3 calendar months, within the specified time limit having said that he

or she will, or does not submit a copy of his or her letter of appointment to a new NHS employer to NHS 24 within 15 months of the date the staff member began adoption leave, the staff member must repay any occupational adoption pay he or she may have received on the basis that he or she were returning to work.

- 10.4 Staff who are uncertain whether they will return to work may opt to defer payment until they can make a more informed decision.

## **11. Redundancy**

- 11.1 Should the post of a member of staff who is on adoption leave become redundant, at the end of the adoption leave, NHS 24 intends that the staff member will return to the position held prior to leave or a suitable alternative position on the terms applying prior to leave. However, circumstances may arise where your current position is subject to organisational change. In these circumstances, the Board's policies on Organisational Change and Redeployment will apply. The staff member will be entitled to the same rights, including consultation, as a member of staff who is in a redundancy situation and not on adoption leave.

## **12. Staff Not Intending to Return to Work**

- 12.2 Staff who do not intend to return to work and have more than 26 weeks continuous service with NHS 24 by either the date:

- a) being matched with a child or for overseas adoptions;
- b) when official notification from the relevant UK authority is received, indicating eligibility to adopt a child from abroad; or
- c) the date the staff member's Statutory Adoption Leave is due to begin.

will be entitled to 39 weeks funded at 90% of full pay or Basic SAP, whichever is lower, followed by 13 weeks unpaid leave.

Staff who do not intend to return to work and do not meet this criteria will not be entitled to this payment prior to resignation.

## **13. Paternity Leave**

- 13.1 Secondary adoptive carers can apply for paternity leave in accordance with NHS 24's Paternity Leave policy.

## **14. Annual Leave**

- 14.1 Staff accrue all annual leave entitlement throughout their adoption leave period, whether it is paid or unpaid leave. Annual leave cannot be taken

during the period of adoption leave, therefore staff must make arrangements with their line manager to take their annual leave either before their adoption leave commences, or at the end of the leave period. Staff members can carry forward the full undertaken annual leave days, as normal carry forward arrangements do not apply.

- 14.2 Wherever possible, staff should take all annual leave due before commencing adoption leave. This should be fully discussed with the line manager prior to commencement leave. Where working hours are reducing following the return to work, this will affect annual leave entitlement from the date of return and for the remainder of the leave year. It is important that this is discussed with the line manager in more detail to clarify the implications of this before returning to work.

## **15. Superannuation**

Pension contributions will continue throughout the period of paid adoption leave, (i.e. a maximum of 39 weeks, where applicable).

Superannuation contributions for any unpaid adoption leave must be repaid by the member of staff on their return to work. If more than 6 months' unpaid leave is taken, the staff member is liable for both staff member and employer contributions. The amount will be deducted in full from the member of staff's first pay after their return to work, unless they request that this be paid back in instalments. Any such request should be made to the HR Business Support Team no later than the 10<sup>th</sup> of the month after returning to work.

## **16. Incremental Date**

Adoption leave whether paid or unpaid, shall count towards the normal increment and will not defer the normal incremental date.

## **17. Fixed Term Contracts**

Staff on a fixed term contract, satisfying the conditions for paid entitlement to leave, and whose contract expires between 11 weeks before and 6 weeks after the adoption, will have their contracts extended to enable them to receive 39 weeks paid leave, and an additional 13 weeks unpaid adoption leave. If the right to return to work cannot be exercised because of the termination of the contract, pay will not be reclaimed.

## **18. Monitoring and Review**

NHS 24 will monitor this policy and review in Partnership on a 2-year basis, to ensure achievement of the aims of the policy.

**Appendix A**  
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**ADOPTION LEAVE INFORMATION FORM**

**1 SECTION A**

*(to be completed by staff member)*

1. Full Name.....

2. Home Address

3. Staff Pay Number

5. Job Title/Grade.....

6. I am the:

Primary Adopter

Secondary Adopter

7. I would like my Adoption Leave to commence on \_\_\_/\_\_\_/\_\_\_.

8. Returning to Work (please tick relevant box)

- I anticipate returning to work on \_\_\_/\_\_\_/\_\_\_
- At present, I am unsure of what date I will return to work (maximum of 1 year from date of commencement)

I enclose my adoption certificate\* and understand that if I do not return to work for a period of at least three months, I am required to repay any payments made to me as set out within the Adoption and Fostering Leave policy.

\*matching certificate or, for overseas adoption "official notification".

Signed.....Date.....

Name (print).....

**Section B**  
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*(To be completed by Line Manager. Please tick as appropriate)*

I have reviewed the Adoption Certificate and confirm that the above application for Adoption Leave is in line with the Adoption and Fostering Leave policy.

Line Manager Signature.....Date.....

Line Manager Name (print).....

**Having discussed this leave request, the staff member should now officially apply for Adoption/Fostering leave on eESS, following the Standard Operating Procedure (SOP). Upon receipt of this request, the line manager will approve on eESS and update SSTS.**

**This form is for the manager's information only.**