Adoption and Fostering Leave Policy

<table>
<thead>
<tr>
<th>Author:</th>
<th>Head of HR – Employee Relations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Responsible Lead Executive Director:</td>
<td>HR Director</td>
</tr>
<tr>
<td>Endorsing Body:</td>
<td>Human Resources Forum</td>
</tr>
<tr>
<td>Governance or Assurance Committee</td>
<td>Staff Governance Committee</td>
</tr>
<tr>
<td>Implementation Date:</td>
<td>May 2016</td>
</tr>
<tr>
<td>Version Number:</td>
<td>3</td>
</tr>
<tr>
<td>Review Date:</td>
<td>April 2022</td>
</tr>
<tr>
<td>Responsible Person</td>
<td>Head of HR – Policy &amp; Governance</td>
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ADOPTION AND FOSTERING LEAVE POLICY

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## CONSULTATION AND DISTRIBUTION RECORD

<table>
<thead>
<tr>
<th>Contributing Author / Authors</th>
<th>• Ann Marie Campbell – Head of HR – Employee Relations</th>
</tr>
</thead>
</table>
| Consultation Process / Stakeholders: | • Liz Aims - GMB  
• Elaine Anderson – HR Manager  
• Tom Bryce – General Manager  
• Margo Cranmer – Unison  
• Sharon Hannah – RCM  
• Ruth Hibbert – Head of HR - Policy & Governance  
• Christine Jack – Operational Manager  
• Cathy McGinty - Unison  
• Gwen Macintyre – Senior Nurse  
• Annette Shorts – Senior OH Nurse Advisor  
• Sylvia Stewart - Unite  
• Tom Wilson - RCN |
| Distribution: | • NHS Lanarkshire intranet: Firstport |

## CHANGE RECORD

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<td>Audrey Bevan</td>
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<td>1</td>
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<tr>
<td>May 2013</td>
<td>Ann Marie Campbell</td>
<td></td>
<td>2</td>
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<tr>
<td>May ‘16</td>
<td>Ann Marie Campbell</td>
<td>Updated in line with PIN and legislative changes – Shared Parental Leave and reformatted</td>
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<td>May ‘18</td>
<td>Head of HR – Policy &amp; Governance</td>
<td>General Data Protection Regulations 2018 statement added into section 3 and updated name of Data Protection Act</td>
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<td>April `19</td>
<td>Head of HR – Policy &amp; Governance</td>
<td>Change of review date</td>
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ADOPTION AND FOSTERING LEAVE POLICY

1. INTRODUCTION

NHS Lanarkshire wishes to deal sensitively and sympathetically with staff who are considering being the main carer in an adopting or fostering relationship and are seeking time off to support them in the initial stages of this process.

The Adoption or Fostering Leave Policy is, therefore, to enable an employee who wishes to adopt or foster a baby/child to take a period of leave to help the baby/child settle into the family and adjust to new circumstances. Where both parents are employed by NHS Lanarkshire, leave may be shared or taken in entirety by the primary carer. However, in certain circumstances, e.g. the Adoption or Fostering of a baby/child with special needs, both parents may request leave.

Where a child has special needs or requirements, additional leave can be requested under the NHS Lanarkshire Carer Policy, if required.

It is also recognised that a single person or same sex couples may adopt/foster a baby/child.

The leave/pay outlined in the policy applies whether one or more children are being adopted or fostered at the same time.

Other Related Policies
- Shared Parental Leave
- Paternity Leave
- Parental Leave
- Flexible Working

2. AIM, PURPOSE AND OUTCOMES

The policy is designed to inform workers of the eligibility criteria, entitlement to and the process for applying for adoption or fostering leave and pay. The policy aims to implement best practice in the processing of applications and adoptive parents and foster carers and return to work arrangements. The policy aims to provide guidance to both staff and managers.

3. SCOPE

3.1 Who is the Policy intended to Benefit or Affect?

The policy applies to all directly employed staff with NHS Lanarkshire.

NHS Lanarkshire takes care to ensure your personal information is only accessible to authorised people. Our staff have a legal and contractual duty to keep personal health information secure, and confidential. In order to find out more about current data protection legislation and how we process your information, please visit the Data Protection Notice on our website at www.nhslanarkshire.scot.nhs.uk or ask a member of staff for a copy of our Data Protection Notice.
ADOPTION AND FOSTERING LEAVE POLICY

3.2 Who are the Stakeholders?

Directly employed staff of NHS Lanarkshire.

4. PRINCIPAL CONTENT

4.1 FOSTERING

NHS Lanarkshire has a flexible approach to fostering, which can be for varying lengths of time, from very short term to long term fostering. If employees are considering fostering a baby/child he/she should discuss their intention to foster with their line manager as soon as possible to ascertain the support they will need.

For very short term fostering it would be more appropriate to process time off under the Special Leave Policy. Where employees regularly foster children, managers should contact the Human Resources Department for advice. For long term fostering managers can consider providing time off in line with the arrangements for Adoption Leave/Pay detailed below, Parental Leave or Career Breaks.

Each case should be treated individually in line with specific requirements.

Managers should liaise with the Human Resources Department to determine whether time off should be granted under special leave or adoption leave.

4.2 WHAT TO DO PRIOR TO ADOPTION LEAVE

The Head of Department should be advised, in writing, as soon as the employee is notified that the Adoption Agency has accepted their application for adoption.

A maximum of 1 working weeks paid leave is available to attend court sessions, interviews and other meetings required as part of the adoption process. Where both parents are employed by NHS Lanarkshire, both will be entitled to apply for 1 working week leave.

Proof of appointment will be required for this purpose.

NB:- one working week means the number of hours the employee is contracted to work each week.

4.3 ADOPTION LEAVE / PAY ENTITLEMENTS

All employees who adopt a child under the age of 18 through an approved 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 of adoption leave whether or not they return to NHS employment.

Note: To qualify for Statutory Adoption Pay, you must be employed by NHS Lanarkshire continuously for at least 26 weeks by the week you were matched with the child and be earning enough to take you above the lower earnings limit for National Insurance contributions.
4.3.1 How to Apply for Adoption Leave/Pay

When requesting Adoption Leave an original Matching Certificate or letter of confirmation of Adoption must be submitted along with the completed application form (Appendix 1). Leave should be requested as soon as practicable as the Head of Department will already be aware of the employee’s intention to adopt a baby/child.

The Agency concerned must be one that is legally approved within the United Kingdom.

On receipt of the completed application form and original Matching Certificate, the Head of Department will sign the application form who will then input onto the eESS system.

Adoption Leave can start from the date of the baby/child’s placement or from a fixed date which can be up to 14 days before the expected date of placement and can start on any day of the week.

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

If the baby/child’s placement ends during the adoption leave period, the adopter can continue adoption leave for up to eight weeks after the end of the placement.

Adoption leave and pay is not available when a child is not newly matched for adoption (e.g. when a step-parent is adopting a partner’s child).

4.3.2 Returning to Work

Where an employee is returning to work following a period of adoption leave, their entitlement to adoption leave and pay is calculated in line with the following table:

<table>
<thead>
<tr>
<th>Service at date of placement</th>
<th>Entitlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 26 weeks service</td>
<td>A maximum of 52 weeks unpaid leave</td>
</tr>
<tr>
<td>26 weeks, but less than 1 year's service</td>
<td>A maximum of 52 weeks leave. 39 weeks Statutory Adoption Pay; weeks 1 – 6 = 90% Average Weekly Earnings, weeks 7 – 39 = 90% Average Weekly Earnings or Statutory Adoption Pay, whichever is lower, 13 weeks of unpaid leave.</td>
</tr>
</tbody>
</table>
ADOPTION AND FOSTERING LEAVE POLICY

1 or more years service | A maximum of 52 weeks leave paid as follows:
weeks 1 – 8 = Full Pay (incl. of Statutory Adoption Pay)
weeks 9 – 26 = half pay + Statutory Adoption Pay (not exceeding full pay)
weeks 27 - 39 = 90% Average Weekly Earnings or Statutory Adoption Pay, whichever is lower
weeks 40-52 = Unpaid Adoption Leave

4.3.3 Not Returning to Work

The entitlements for employees who do not intend to return to work after adoption are based on length of service as noted below:

<table>
<thead>
<tr>
<th>Service at date of placement</th>
<th>Entitlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 26 weeks service</td>
<td>A maximum of 52 weeks unpaid leave</td>
</tr>
<tr>
<td>More than 26 weeks service</td>
<td>A maximum of 52 weeks leave 39 weeks Statutory Adoption Pay; weeks 1 – 6 = 90% Average Weekly Earnings weeks 7 – 39 = 90% Average Weekly Earnings or Statutory Adoption Pay, whichever is lower 13 weeks of unpaid leave.</td>
</tr>
</tbody>
</table>

4.3.4 Undecided About Returning to Work

The entitlement to adoption pay for employees who are undecided as to whether or not they wish to return to work, will be the same as though they were not returning to work (see paragraph 4.3.3). If, however, the employee subsequently decides that they do wish to return to work, their entitlement will be in accordance with returning to work pay/leave (see paragraph 4.3.2).

4.4 BANK WORKERS & SESSIONAL WORKERS

In accordance with the Statutory Regulations, bank workers and sessional workers are entitled to Statutory Pay only. Payment will be made by NHS Lanarkshire dependant upon your earnings and length of service at 11 weeks prior to the expected week of childbirth.

Workers do not have an entitlement to time off for adoption interviews, attendance at court etc or KIT days.
4.5 AFTER ADOPTION LEAVE

After the employee’s return to work, any further requirements for court hearings, social work visits etc., will be unpaid or considered under the Special Leave Policy.

4.6 RETURNING TO WORK

4.6.1 Right to Return To Substantive Post

Employees, who have notified their intention to return to work, have the right to return to their job under their original contract and on no less favourable terms and conditions.

If you intend to return to work at the end of your full adoption leave (52 weeks) you will not be required to give any further notification to NHS Lanarkshire, although if you wish to return early you must give at least 28 days’ notice in writing to the your line manager. You should have previously indicated a date of return which will be held as your return date.

4.6.2 Right to Request Flexible Working Hours

It may be possible to return to work under more flexible working arrangements e.g. part-time working or job sharing. You should arrange to discuss your request with your line manager as early as possible. NHS Lanarkshire will try to accommodate your request subject to the needs of the service.

4.6.3 Failure to Return to Work

If having indicated that you will return to work with NHS Lanarkshire for at least 3 months and you do not do so, or indicated a return to another NHS employer and you fail to forward a copy of your letter of appointment within 15 months of commencement of adoption leave, you will be required to refund the whole of the occupational adoption pay received, less Statutory Adoption Pay.

4.7 KEEPING IN TOUCH (KIT)

Before going on leave, you should discuss and agree with your Line Manager any voluntary arrangements for keeping in touch during your adoption leave including:

- any voluntary arrangements that you may find helpful to help you keep in touch with developments at work and, nearer the time of your return, to help facilitate your return to work;

- keeping the Line Manager in touch with any developments that may affect your intended date of return.

**Keeping in Touch Days (KIT)**

KIT days are intended to facilitate a smooth return to work for employees returning from adoption leave, however, are not compulsory.
It is important that you have early discussions with your Line Manager to plan and make arrangements for KIT days before your adoption leave takes place.

You may work for up to a maximum of 10 KIT days without bringing your adoption leave to an end. Any days of work will not extend the adoption leave period. The work can be consecutive or not and can include training or other activities which enable you to keep in touch with the workplace. Any such work must be by agreement and neither you or your Line Manager can insist upon it.

You will be paid at the basic daily rate, for the hours worked less appropriate adoption leave payment for KIT days worked. Working for part of any day will count as one KIT day.

### 4.8 SHARED PARENTAL LEAVE (SPL)

SPL is a new legal entitlement for eligible parents of babies due, or children placed for adoption. It provides both parents with the opportunity to consider the best arrangement to care for their child during the child's first year.

The amount of leave available is calculated using the mother's entitlement to maternity/adoption leave, which allows them to take up to 52 weeks' leave. If they reduce their maternity/adoption leave entitlement then they and/or their partner may opt-in to the SPL system and take any remaining weeks as SPL. This means their partner could begin to take SPL while the mother is still on maternity/adoption leave.

SPL enables parents to share the caring responsibilities evenly or have one parent taking the main caring role, depending on their preferences and circumstances. Unlike maternity/adoption leave, eligible employees can stop and start their SPL and return to work between periods of leave.

Staff will find that having early conversations regarding leave intentions will be beneficial, enabling them and their manager to be clear regarding the entitlement, what leave arrangements are being considered and how any leave will be accommodated.

Staff will remain entitled to take maternity, paternity, adoption and parental leave. However, an eligible mother or adopter may now choose to reduce their maternity/adoption leave early and opt into SPL.

For further information refer to Shared Parental Leave PIN / Policy.

### 4.9 SICKNESS ABSENCE

Entitlement under the normal sick leave provisions will be suspended during the period of adoption leave.

**Occupational/Statutory Sick Pay**

Any sick leave that commences from the expected date of return to work after adoption leave must be covered by a fit note. If a fit note is submitted sick leave entitlement will be
ADOPTION AND FOSTERING LEAVE POLICY

in accordance with the provisions of the Sick Pay Scheme to which you are conditioned. Sick pay entitlement may be occupational or statutory depending on your length of service.

There is no entitlement to sick pay whether occupational or statutory during paid or unpaid adoption leave.

4.10 ANNUAL LEAVE/PUBLIC HOLIDAYS

Prior to commencing adoption leave an employee should, wherever possible, take all leave accrued within the current leave year. Leave will continue to accrue during adoption leave, whether paid or unpaid adoption leave. Leave not taken in any leave year is subject to the general carry-over provisions i.e. one working week unless exceptional circumstances prevent this from happening. Employees have a responsibility prior to adoption leave to take all leave they are entitled to.

Where under exceptional circumstances the amount of leave accrued would exceed the normal carry over provisions, it may be mutually beneficial to both the line manager and employee for the employee to take leave before and/or after the formal (paid and unpaid) adoption leave period. The amount of leave to be taken in this way, or carried over, should be discussed and agreed between the employee and the line manager.

Exceptional circumstance that may arise where additional leave is accrued could be where the employees expected date of placement falls at the beginning of the new leave year where they will be unable to take any leave within that year and their date of return to work will be within the next leave year e.g. April to April.

4.11 PARENTAL LEAVE

Adoptive parents who have one year or more qualifying service are entitled to access parental leave. Adoptive parents are entitled to take parental leave up to fourteen years after the date of placement (or until the child’s 18th Birthday if that comes sooner). Please refer to the Parental Leave Policy for further guidance.

4.12 SUPERANNUATION

If an employee usually pays superannuation contributions, then these payments will continue throughout the period of leave whether they are on full pay, half pay or unpaid leave.

Whilst on unpaid leave employees will not be required to make any superannuation contributions, however upon their return to work they will be required to increase their weekly/monthly superannuation contributions to bring payments up to date within a reasonable timescale. Arrears of contributions are based on pensionable pay prior to start of maternity leave. For further advice please contact the pay department.

Employees may choose to opt out of the superannuation scheme by completing an opt out form, which is available on the Pensions Agency website www.sppa.gov.uk. However, they can re-join the scheme at a later date by informing the pay department in writing.
4.13 INCREMENTAL DATE

Absence on Adoption/Fostering Leave, whether paid or unpaid, shall count towards normal incremental progression and will not defer the employees’ normal incremental date.

4.14 CONTRACTUAL RIGHTS

During the period of Adoption/Fostering Leave, employees will retain all contractual rights, except remuneration.

4.15 FIXED TERM CONTRACTS AND TRAINING CONTRACTS

An employee on a fixed term contract, who satisfies the conditions for entitlement to Adoption Leave and whose contract expires after the eleventh week before the expected date of placement, will have their contract extended to enable them to receive their full entitlement to Adoption Leave. If the right to return to work cannot be exercised because of the termination of the contract, Adoption Pay cannot be reclaimed from the employee.

In the case of employees who have one or more years continuous service, either whole or part-time, an absence on Adoption Leave (paid or unpaid) up to 52 weeks before another NHS appointment will not constitute a break in service.

Employees who do not have enough service to receive Occupational Adoption Pay may be entitled to Statutory Adoption Pay (SAP).

In cases where the contract expires after the fifteenth week before the expected date of placement, but before fourteen weeks after the expected date of placement, the contract will be extended to allow the employee to receive SAP.

If the employee is on a planned rotation of appointments, they have the right to return to work in the same post, or in the next planned post, irrespective of whether the contract would have ended if the adoption had not occurred. In these circumstances and where it is the wish of the employee, the contract will be extended to enable them to complete the agreed programme of training.

4.16 PATERNITY LEAVE

Where both parents are employees of NHS Lanarkshire, the employee who is not designated as the main carer for the baby/child, may be able to apply for leave in accordance with the provisions of NHS Lanarkshire’s Paternity Leave Guidelines.

5. ROLES AND RESPONSIBILITIES

Employees must
- Ensure they are familiar with the policy and procedures
- Comply with the policy, seeking clarification where required
- When considering applying for maternity leave, do so timeously
- Make your manager aware of any health concerns immediately

Managers must
ADOPTION AND FOSTERING LEAVE POLICY

- Ensure they communicate with staff about the policy
- Give due consideration to applications and process timeously
- Consistently implement the policy at their local level
- Keep accurate records

Staff Side Representatives must
- Support the principles and procedures in the policy
- Act in accordance with NHS Lanarkshire’s Partnership Agreement

Human Resources Staff must
- Provide expert advice and support on the application of the policy
- Monitor and review the policy

6. RESOURCE IMPLICATIONS

None identified, additional to costs of occupational/statutory pay.

7. COMMUNICATION PLAN

The policy and process will be communicated via the NHSL internet and intranet. Articles referring to the policy will be carried in the staff briefs. The policy will also be discussed at management team meetings.

8. QUALITY IMPROVEMENT – Monitoring and Review

This policy will be monitored by the HR directorate and reviewed in conjunction with the Joint Policy Forum and the Human Resources Forum.

9. EQUALITY AND DIVERSITY IMPACT ASSESSMENT

This policy meets NHS Lanarkshire’s EDIA. A completed copy has been sent to hina.sheikh@lanarkshire.scot.nhs.uk

10. SUMMARY

This policy covers eligibility criteria, entitlement to and the process for adoption and fostering leave and pay

11. REFERENCES

- Work/life Balance Partnership Information Network (PIN) policy
- General Data Protection Regulations 2018
- Shared Parental Leave Partnership Information Network (PIN) policy
### APPENDIX 1 - APPLICATION FOR ADOPTION OR FOSTERING LEAVE/PAY

**Part A – To be completed by Employee**

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<td>Designation</td>
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<td></td>
<td>Ward/Department</td>
</tr>
<tr>
<td></td>
<td>Hospital</td>
</tr>
<tr>
<td>Tel. Number</td>
<td></td>
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</table>

<table>
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<tr>
<th>No. of Hours worked per week</th>
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</table>

Date of continuous employment within the National Health Service

Date of commencement with NHS Lanarkshire

Expected date of *Adoption/Fostering*

Annual leave dates agreed

Proposed return date

I wish to apply for *Adoption/Fostering Leave/Pay on the conditions contained in the policy, which accompanied this form. I confirm I intend to commence Adoption or Fostering Leave

Please indicate which option you have chosen by ticking one of the undernoted boxes.

a. I undertake to return to work (see section 4.3.2)  
   [ ]

b. I do not wish to return to work (see section 4.3.3)  
   [ ]

c. I am undecided as to whether I wish to return to work (see paragraph 4.3.4)  
   [ ]

d. I am on a Fixed Term Contract Starting .................. Ending ..................  
   [ ]

I wish/do not wish my pay to be spread over .......... months (excluding SAP)

I am a member of the pension scheme and will make arrangements upon my return to work to increase my contributions to bring my payments up to date.

YES  [ ] Not in pension scheme  [ ]

Signature of Employee ...................................... Date ......................

Signature of Head of Department  ...................... Date ......................

PRINT NAME: ..............................................

* Delete as appropriate
APPLICATION FOR ADOPTION OR FOSTERING LEAVE/PAY

**Part B – To be completed by the Human Resources Department**

I confirm that the above employee is eligible for Adoption or Fostering Leave/Pay, as indicated below.

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</tr>
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<tbody>
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<td>1 year service or more</td>
<td></td>
</tr>
<tr>
<td>Returning</td>
<td>39 weeks paid + 13 weeks unpaid</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Less than 1 years service but more than 26 weeks</td>
<td></td>
</tr>
<tr>
<td>Returning</td>
<td>52 weeks unpaid leave</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>Less than 26 weeks continuous service</td>
<td></td>
</tr>
<tr>
<td>Not Returning</td>
<td>39 weeks SAP</td>
<td>□</td>
</tr>
<tr>
<td></td>
<td>26 weeks or more service</td>
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</tr>
<tr>
<td>Not Returning</td>
<td>52 weeks unpaid leave</td>
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</tr>
<tr>
<td></td>
<td>Less than 26 weeks service</td>
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<tr>
<td>Adoption or Fostering Certificate received</td>
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<td></td>
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<td>Copy sent to Pay Department</td>
<td>..........................................................</td>
<td></td>
</tr>
<tr>
<td>Copy to Head of Department</td>
<td>..........................................................</td>
<td></td>
</tr>
<tr>
<td>Copy to Employee (including original certificate)</td>
<td>..........................................................</td>
<td></td>
</tr>
<tr>
<td>28 days before end of paid Adoption or Fostering leave</td>
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**Part C – To be completed by Human Resources Department**

<table>
<thead>
<tr>
<th>Type of Absence</th>
<th>First Day</th>
<th>Last Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paid</td>
<td>/ /</td>
<td>/ /</td>
</tr>
<tr>
<td>Unpaid</td>
<td>/ /</td>
<td>/ /</td>
</tr>
</tbody>
</table>

Signature ........................................ Date ........................................