



Workforce

**Adoption, Fostering and Kinship
Policy: guide for managers**

This guide will help managers to understand the Adoption, Fostering and Kinship Policy. The policy supports employees who are adopting a child, fostering or in a kinship arrangement.

The following guide forms part of the standard for workforce policies. These policies apply to all eligible staff within NHSScotland, regardless of the Board they are employed by.

NHSScotland wants to create an inclusive workplace where employees can thrive and feel confident about their ability to balance their personal and professional responsibilities.

It is recognised that policies to support this are particularly important in NHSScotland given the predominantly female workforce who largely take on primary caring roles within the family. The guide covers:

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What is the purpose of the Adoption, Fostering and Kinship Policy?

The Adoption, Fostering and Kinship Policy supports employees who are adopting a child. It makes sure they have adequate time to attend official meetings in the adoption process, and adoption leave to care for and bond with their child before returning to work. It also sets out the statutory and contractual rights employees are entitled to.

The procedures for supporting employees who are participating in a surrogacy arrangement mirror adoption unless otherwise stated.

The policy outlines the support available for fostering and kinship care.

Adoption leave

All employees adopting a child are eligible for 52 weeks of adoption leave. No minimum length of service is required for an employee to be eligible for adoption leave. You cannot refuse adoption leave or change the amount of leave the employee wants to take.

In addition to adoption leave, the employee may also be entitled to receive a combination of:

- Statutory Adoption Pay (SAP)
- Occupational Adoption Pay (OAP)
- Adoption Allowance (AA)

The eligibility requirements for each of these benefits are dependent on the employee's:

- level of earnings
- length of service with your employing Board
- length of service with the NHS

The employee is asked to provide copies of relevant documentation to confirm eligibility. This may include confirmation of the following:

- the primary carer in an adoption arrangement made by an official adoption agency
- adopting a child from overseas, and the adoption has been approved by the relevant UK authority
- the parent, through a surrogacy arrangement and committed to applying for a parental or adoption order

If adopting as a couple, only one parent can take adoption leave. The other parent may access the following:

- [New Parent Support Policy](#)
- [Shared Maternity and Shared Adoption Policy](#)

Employees currently under UK immigration control should contact the human resources department to discuss how their adoption leave may impact their visa conditions.

Statutory Adoption Pay (SAP)

An employee will be entitled to receive SAP through adoption arrangements if they have the following:

- have been employed within the current employing Board for a minimum of 26 weeks before they are matched with the child
- received earnings above the lower earnings limit for National Insurance contributions during the 8 weeks before the end of the week they are matched with the child
- followed the application procedures set out in the Adoption, Fostering and Kinship Policy

An employee will be entitled to receive SAP through surrogacy arrangements if they have the following:

- been employed within the current employing Board for a minimum of 26 weeks by the 15th week before the baby's due date
- received earnings above the lower earnings limit for National Insurance contributions during the 8 weeks before the baby's due date
- followed the application procedures set out in the Adoption, Fostering and Kinship Policy

If the employee adopts a child from overseas, the service requirement is the same. There are additional requirements, including:

- a declaration giving the date the child is expected to enter the UK
- confirmation that the employee will not also claim statutory paternity pay

If the employee is eligible for SAP, they will receive the following pay through their payroll department:

- the first 6 weeks of adoption leave will be paid at 90% of the employee's average weekly earnings
- the following 33 weeks are paid at a standard SAP rate set by the UK Government, or 90% of the employee's average weekly earnings if this is lower than SAP

SAP examples

If an employee's weekly earnings are £100, they will receive the following:

- £90 per week for the first 6 weeks
- £90 per week for the following 33 weeks, as the rate of SAP is higher than £90 per week

If an employee's weekly earnings are £500, they will receive the following:

- £450 per week for the first 6 weeks
- the rate of SAP per week for the following 33 weeks, as the rate of SAP is lower than £500 per week

Visit the UK Government website to find out more about:

- [Statutory Adoption Pay](#)
- [Adoption Leave](#)
- [Lower Earnings Limit for National Insurance contributions](#)

If the employee is not entitled to SAP, the employer must give a reason for refusal and provide you with a [Statutory Adoption Pay: non-payment explanation form - SAP1](#).

If the employee is not eligible for SAP, you may be able to claim Adoption Allowance directly from your Local Authority.

Occupational Adoption Pay (OAP)

An employee will be entitled to receive OAP if they:

- intend to return to work for at least 3 months after adoption leave
- have been continuously employed by one or more NHS employers for more than 12 months, at the week the adoption agency matches them with a child or 15th week before the baby's due date if applying via a surrogacy arrangement

For example, if an employee is matched with a child by the adoption agency on 5th May, the employee must have been continuously employed by one or more NHS employers before 5th May of the previous year.

For an employee having a baby via surrogacy and the baby's due date is 5th May, the 15th week before the baby's due date is 20th January. One or more NHS employers must have continuously employed the employee before 20th January of the previous year.

If the employee is eligible for OAP, the first 8 weeks of adoption leave will be paid at their full pay rate.

The next 18 weeks will be paid at the employee's half pay rate. They will also receive any SAP they may be eligible for in addition to their half pay rate. The total amount the employee will receive will not exceed their full pay rate.

For the next 13 weeks of adoption leave, the employee will receive any SAP they may be eligible for.

If the employee takes the full 52 weeks of adoption leave, the final 13 weeks are unpaid.

If the employee is not eligible for SAP, they may be able to claim Adoption Allowance directly from the Local Authority.

OAP examples

If an eligible employee's weekly earnings are £100, they will receive the following:

- £100 per week for the first 8 weeks
- £100 per week for the following 18 weeks, as the rate of SAP is higher than £100 per week, made up of £50 half pay plus SAP capped at the employee's rate of full pay
- £100 per week for the following 13 weeks, as the rate of SAP is higher than £100 per week, capped at the employee's rate of full pay
- No pay for the final 13 weeks

If an employee is eligible for SAP, and their weekly earnings are £500, they will receive the following:

- £500 per week for the first 8 weeks
- £400 to £500 per week for the following 18 weeks:
 - half pay rate at £250
 - SAP of between £150-£200 per week
- £150 to £200 per week for the following 13 weeks, which is the rate of SAP
- No pay for the final 13 weeks

If an employee is not eligible for SAP and their weekly earnings is £500, the employee will receive the following:

- £500 per week for the first 8 weeks
- £250 per week for the following 18 weeks, plus any Adoption Allowance they have claimed directly from the Local Authority
- any Adoption Allowance they have claimed directly from the Local Authority for the following 13 weeks

It may be possible to spread adoption pay to equalise payments across your employee's adoption leave. You should advise your employee to contact your local payroll team.

Adoption Allowance (AA)

AA is a payment that may be available to employees who are adopting but are not eligible for SAP. AA is paid directly by the Local Authority into the employee's bank account. You should let the employee know to contact their local Jobcentre Plus for information on applying for AA.

Employees who the employing Board has not employed for a minimum of 26 weeks before they are matched with the child or the qualifying week in a surrogacy arrangement may be eligible for AA.

Employees should be encouraged to visit the Government websites to find out more about:

- [Adoption Allowance](#)
- [Adoption Leave](#)

Bank and agency staff

Bank staff have no entitlement to OAP or adoption leave. They may be entitled to SAP, depending on their level of earnings. The employer may review entitlement to OAP in exceptional cases, such as if the worker can demonstrate regular work patterns over an extended period.

If you have a bank worker who can demonstrate a regular work pattern over an extended period, contact your local staff bank service for advice.

Agency staff may be entitled to adoption leave, SAP, and time off for official meetings and appointments in the adoption process if they are considered an agency employee. The agency staff member should check with their agency.

Notification of adoption

Receiving a notification of adoption

You should be aware that it can take several months for an individual to be approved to become a potential adoptive parent. However, the placing of a child for an adoption placement to begin can take place with relatively short notice.

The employee can choose to start their adoption leave from the date of adoption or date of matching.

The employee should notify you that they have been matched with a child before the end of the week they are notified by the adoption agency or by the 15th week before the baby's due date if it is a surrogacy arrangement. They must submit:

- copies of relevant documentation to confirm eligibility, for example:
 - written confirmation of approval to adopt or the adoption and permanence form
 - under surrogate arrangements, a MATB1 form or evidence of an application for a parental order
- a completed [adoption leave form](#)

If you fail to meet these timescales, this could result in a delay to any pay you are eligible to receive during adoption leave.

Notification of adoption example

If the adoption agency confirms on Wednesday, 5 May, that the employee has been matched with a child, the employee should notify their manager by the end of this week.

If the employee is having a baby via surrogacy and the baby's due date is Wednesday, 5 May, they should notify their manager no later than Saturday, 22 January.

The employee may wish to inform you of their adoption before submitting their adoption form and confirmation of their eligibility.

You should respond in writing to the employee in a timely manner. You should follow local procedures for processing the completed form.

Pre-adoption leave

As a manager, you are asked to take a person-centred approach depending on the employee's individual circumstances.

Employees are entitled to paid time off to attend official meetings in the adoption process, such as court sessions and interviews. This includes meetings with the child.

Employees should provide reasonable notice of these meetings or appointments. You may ask the employee to provide evidence of the appointment where available.

You should advise the employee that there is a maximum of 5 working days pro rata available to attend these meetings.

Employees are encouraged to arrange appointments outside working hours or at the start or end of the working day. However, this may not always be possible, and you should be as flexible as possible.

Antenatal care

Intended parents who are eligible and intending to apply for a parental order are entitled to unpaid time off to accompany the surrogate to antenatal appointments.

You may ask the employee to provide evidence of the appointment where available.

Employees are encouraged to arrange appointments outside working hours or at the start or end of the working day. However, this may not always be possible, and you should be as flexible as possible.

Preparing for adoption leave

Before the employee starts their adoption leave, you should discuss arrangements to keep in touch during their absence from the workplace. These arrangements should include methods to inform the employee about departmental updates, organisational updates, and career development opportunities.

Keeping in Touch (KIT) days

An employee can ask to return to work for a maximum of 10 days during their adoption leave. KIT days can be consecutive or not. If the employee works more than 10 days, their maternity leave will automatically end.

If the employee is on an unpaid period of leave, they should be paid the relevant enhancements for the shift worked. If the KIT day falls within the full pay period, they will receive one day in lieu once they have returned to work. If the KIT day falls within the half-pay period, they will receive a half day in lieu once they have returned to work.

Working for part of any day will count as one KIT day from the 10-day allowance.

Any KIT days should be agreed between you and the employee. You are encouraged to support these requests wherever possible.

The employee does not have to work KIT days. You cannot force the employee to take them.

Working when on adoption leave

An employee is permitted to work 10 KIT days in their substantive or bank role within their organisation. If the employee works for more than 10 days, their adoption leave will automatically end.

An employee may be permitted to work with a second employer whilst on adoption leave. Both employers must employ the employee at the qualifying week.

There is no limit to the number of hours or days an employee can work with their secondary employer.

If the employee takes up secondary employment after the qualifying week, their statutory adoption pay from their primary employer will stop.

As Health Boards are separate employers, the employee may be able to work for another Health Board while on adoption leave.

Returning to work

You should plan with the employee for their return to work. The plan should include their return date, use of annual leave, equipment, and systems access. The agreed return date should be entered on eESS, or payroll advised in line with local procedures, to ensure salary is correct on return.

Employees may want to change their hours or other working arrangements on their return from adoption leave. If so, they should request the change under our flexible working policies:

- [Flexible Work Pattern Policy](#)
- [Flexible Work Location Policy](#)

The employee has the right to return to their job under their original contract of employment. If this is not possible, because the post no longer exists, you should follow your employing Board's organisational change policy.

If the employee wishes to return to work earlier than previously agreed, they must provide you with at least 28 days' notice of their intention to return.

In the case of adoption disruption, you should take a person-centred approach to allow the employee to return to work earlier if they wish to.

In the case of pregnancy loss for employees entering a surrogacy arrangement, you should take a person-centred approach to allow the employee to return to work earlier if they wish to.

Employees entitled to OAP must return to NHS paid employment for a minimum of 3 months. Their employment does not have to be with the same employing Board. It can be any NHS employer in the UK. You should ask the employee who changes NHS employer to provide a copy of their appointment letter. You should send this to the payroll

department. Bank and agency work does not count as a return to employment.

If the employee has more than one post, entitlement to OAP is not affected, providing they are returning to one of their substantive posts.

Employees not returning to NHS employment

If the employee decides to resign, they must provide you with written notice as specified in their employment contract. The employee can resign and leave at any point during their adoption leave.

If an employee does not return to NHS paid employment for a minimum of 3 months after their adoption leave has ended, they must repay their OAP. You can discuss the option to use accrued annual leave to count as paid employment with the employee.

In cases where the repayment of OAP would cause undue hardship or distress, employers have the discretion to waive the rights to recovery.

Annual leave and public holidays during adoption leave

Annual leave and public holidays will accrue as normal during adoption leave. Your employee may use accrued annual leave before or following adoption leave to either delay the start of adoption leave or their return date.

Annual leave must be taken and will not be paid in lieu. The employee should discuss this with you and request leave in line with your Board's annual leave policy. You may wish to use the [annual leave calculator](#).

Employees on a fixed-term or training contract

Employees on a fixed-term or training contract that expires between 11 weeks before and 6 weeks after the requested date for adoption leave to begin, will have their contract extended. This can be the date of adoption or date of matching at the request of the employee. The extension period will be up to the end of their adoption leave to allow them access

to OAP entitlements. Employees will continue to accrue annual leave entitlements during any extension period.

Employees whose contract ends before 11 weeks prior to the date of adoption will not have their contract extended or receive OAP. However, they may be entitled to SAP or AA. The employer must confirm a reason for refusal and provide you with a [Statutory Adoption Pay: non-payment explanation form – SAP1](#).

Employees applying via a surrogacy arrangement who are on a fixed-term or training contract that expires after the 15th week before the baby's due date will have their contract extended. The extension period will be up to the end of their adoption leave to allow them access to OAP entitlements.

Employees applying via a surrogacy agreement whose contract ends before 15 weeks prior to the baby's due date will not have their contract extended or receive OAP. However, they may be entitled to SAP or AA. The employer must confirm a reason for refusal and provide you with a [Statutory Adoption Pay: non-payment explanation form – SAP1](#).

Rotational training contracts

If you are a manager of an employee on a rotational training contract, you must make sure the employing Board is aware of the employee's intention to take adoption leave.

Where there is a planned rotation of appointments with one or more NHS employers as part of an agreed programme of training, the employee has the right to return to work after adoption leave in the same post or the next planned post. You must make the employee aware of this.

Adoption disruption

If you become aware of the employee's adoption placement breakdown, you should support your employee during the difficult time. You should discuss support mechanisms, which may include occupational health services and employee counselling. Further information is available:

- [employee support](#)
- [support organisations](#)

The employee is entitled to access their adoption leave and pay entitlements. If the employee wishes to return to work earlier, they should discuss this with you.

Child bereavement

If you are notified of the employee losing a child, you should support your employee during the difficult time. You should discuss support mechanisms, which may include occupational health services, employee counselling, and support organisations. Further information is available:

- [employee support](#)
- [support organisations](#)

You should make the employee aware of child bereavement leave provisions within the [Special Leave Policy](#). This leave can only be accessed once adoption leave has ended.

Pension contributions

SPPA pension contributions will continue during SAP and OAP. Normally, the employee will pay any outstanding contributions for their unpaid period of adoption leave on their return to work. If they do not repay these contributions, they will not be credited with pensionable service for this period.

For private or other pensions, the employee will need to check with their pension provider.

Professional registration

The employee is required to maintain their professional registration during adoption leave as they continue to be employed by the organisation. It is the employee's responsibility to consider how they will maintain their professional competence. However, you should support them in this through access to KIT days.

Salary sacrifice arrangements during the OAP and SAP period of adoption leave

The employee is entitled to the benefit of the terms and conditions of employment, which would have applied had they not been absent.

Examples include:

- Cycle to Work scheme
- credit union arrangement

The employee should seek advice from the payroll department.

Fostering

As a manager, you are asked to take a person-centred approach depending on the employee's individual circumstances.

You should meet with your employee to discuss their intention to foster as soon as possible to determine the appropriate level of support required.

For very short-term fostering, you should consider providing time off under the [Special Leave Policy](#). However, approval is not guaranteed.

For longer-term fostering, you should consider providing time off under the arrangements for:

- adoption leave where the placement of the child is prior to formal adoption
- [new parent support leave](#)
- [career break](#)

Kinship

As a manager, you are asked to take a person-centred approach depending on the employee's individual circumstances.

You should meet with your employee to discuss their kinship arrangements as soon as possible to determine the appropriate level of support required.

Employees who need time off should request it under the following policies:

- [Special Leave Policy](#)
- [Flexible Work Location Policy](#)
- [Flexible Work Pattern Policy](#)
- [Career Break Policy](#)

Links to other policies

You may need to cross-reference with other policies, including:

- [Maternity Policy](#)
- [New Parent Support Policy](#)
- [Shared Maternity and Shared Adoption Policy](#)
- [Parental Leave Policy](#)
- [Special Leave Policy](#)
- [Flexible Work Location Policy](#)
- [Flexible Work Pattern Policy](#)
- [Career Break Policy](#)