MATERNITY LEAVE AND PAY

1. This letter notifies employers of changes to the General Whitley Council Agreement on maternity leave and pay in accordance with the provisions of Agenda for Change and extends these new provisions to doctors and dentists in training, SHOs, Staff Grade doctors and dentists and Associate Specialists who are not included in Agenda for Change. These new arrangements do not cover consultants who will continue to benefit from the provisions sent out in Advance Letter (GC) W 1/2003.

2. The main changes extend the period of half pay from 14 to 18 weeks and require employers to provide breast-feeding women with suitable rest facilities.

Effective Date of Change

3. The revised arrangements come into effect from 5 December 2004.

Effect of the Amendments

4. Paragraph 261 of the M&D (Wales) Handbook will now read

"261. The provisions of Section 6 of the General Council Conditions of Service as amended by Advance Letter AL(MD)(W) 1/2006 dated 30 January 2006 shall apply to all employees covered by this Handbook except Consultants, who will continue to be covered by the arrangements set out in Advance Letter (GC) W 1/2003.""

Approval

5. Employers should implement this agreement, which has been approved by the Welsh Assembly Government. A copy of the formal approval is attached.

Enquiries
6. Employers should direct enquiries about the content of this letter to the NHS Employment Policy Branch of the Health and Social Care Department at the Welsh Assembly (contact point: Gwenda.davies@wales.gsi.gov.uk, telephone 02920 825231).

7. Employees should direct their personal enquiries to their employer.

Further Copies

8. Copies of this letter can be obtained from the HOWIS web site at www.howis.wales.nhs.uk

Yours faithfully

IAN STEAD
Human Resources Director
Health & Social Care Department
NHS Wales
The Welsh Assembly Government in exercise of powers conferred by Regulation 2 and Regulation 3 of the National Health Service (Remuneration and Conditions of Service) Regulations 1991 (SI 1991 No 481) and paragraph 11 of Schedule 3 of the National Health Service Act 1997 hereby approves the Maternity Leave and Pay arrangements as set out in Advance Letter (MD)(W) 1/2006 and its appendices.

Signed by the authority of the
Welsh Assembly Government

January 2006

IAN STEAD
Human Resources Director
MATERNITY LEAVE AND PAY

Introduction

15.1 Paragraphs 15.6 to 15.43 of this Section set out the maternity leave and pay entitlements of NHS employees under the NHS contractual maternity leave scheme.

15.2 Paragraphs 15.44 to 15.47 give information about the position of staff who are not covered by this scheme because they do not have the necessary service or do not intend to return to NHS employment.

15.3 Paragraphs 15.48 to 15.52 define the service that can be counted towards the twelve month continuous service qualification set out in paragraph 15.6 (i) below and which breaks in service may be disregarded for this purpose.

15.4 Paragraphs 15.53 to 15.58 explain how to get further information about employees’ statutory entitlements.

15.5 Where locally staff and employer representatives agree arrangements which provide benefits to staff, beyond those provided by this section, those local arrangements will apply.

Eligibility

15.6 An employee working full-time or part-time will be entitled to paid and unpaid maternity leave under the NHS contractual maternity pay scheme if:

- (i) she has twelve months continuous service (see paragraphs 15.48 to 15.52) with one or more NHS employers at the beginning of the eleventh week before the expected week of childbirth;

- (ii) she notifies her employer in writing before the end of the 15th week before the expected date of childbirth (or if this is not possible, as soon as is reasonably practicable thereafter):

  a) of her intention to take maternity leave;

  b) of the date she wishes to start her maternity leave (but see paragraph 15.7 below);

  c) that she intends to return to work with the same or another NHS employer for a minimum period of three months after her maternity leave has ended;

  d) and provides a MATB1 form from her midwife or GP giving the expected date of childbirth.
Changing the Maternity Leave Start Date

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

Confirming Maternity Leave and Pay

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

- (i) the employee’s paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement);

- (ii) unless an earlier return date has been given by the employee, her expected return date based on her 52 weeks paid and unpaid leave entitlement under this agreement; and

- (iii) the length of any period of accrued annual leave which it has been agreed may be taken following the end of the formal maternity leave period (see paragraphs 15.38 and 15.39 below);

- (iv) the need for the employee to give at least 28 days notice if she wishes to return to work before the expected return date.

Keeping in Touch

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

- (i) any voluntary arrangements that the employee may find helpful to help her keep in touch with developments at work and, nearer the time of her return, to help facilitate her return to work;

- (ii) keeping the employer in touch with any developments that may affect her intended date of return.

Paid Maternity Leave

Amount of Pay

15.10 Where an employee intends to return to work the amount of contractual maternity pay receivable is as follows:
- (i) for the first eight weeks of absence, the employee will receive full pay, less any Statutory Maternity Pay or Maternity Allowance (including any dependents’ allowances) receivable;

- (ii) for the next 18 weeks, the employee will receive half of full pay plus any Statutory Maternity Pay or Maternity Allowance (including any dependents’ allowances) receivable, providing the total receivable does not exceed full pay.

15.11 By prior agreement with the employer occupational maternity pay may be paid in a different way, for example a combination of full pay and half pay or a fixed amount spread equally over the maternity leave period.

Calculation of Maternity Pay

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

- (i) in the event of a pay award or annual increment being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or annual increment had effect throughout the entire Statutory Maternity Pay calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;

- (ii) in the event of a pay award or annual increment being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or annual increment should be increased accordingly. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;

- (iii) in the case of an employee on unpaid sick absence or on sick absence attracting half pay during the whole or part of the period used for calculating average weekly earnings in accordance with the earnings rules for Statutory Maternity Pay purposes, average weekly earnings for the period of sick absence shall be calculated on the basis of notional full sick pay.

Unpaid Contractual Maternity Leave

15.13 Employees will also be entitled to 26 weeks’ unpaid leave.

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

Sickness Prior to Childbirth

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

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

Premature Birth

15.17 Where an employee’s baby is born alive prematurely the employee will be entitled to the same amount of maternity leave and pay as if her baby was born at full term.

15.18 Where an employee’s baby is born before the eleventh week before the expected week of childbirth and the employee has worked during the actual week of childbirth, maternity leave will start on the first day of the employee’s absence.

15.19 Where an employee’s baby is born before the eleventh week before the expected week of childbirth and the employee has been absent from work on certified sickness absence during the actual week of childbirth, maternity leave will start the day after the day of birth.

15.20 Where an employee’s baby is born before the eleventh week before the expected week of childbirth and the baby is in hospital the employee may spilt her maternity leave entitlement, taking a minimum period of two weeks’ leave immediately after childbirth and the rest of her leave following her baby’s discharge from hospital.

Still Birth
15.21 Where an employee’s baby is born dead after the 24\textsuperscript{th} week of pregnancy the employee will be entitled to the same amount of maternity leave and pay as if her baby was born alive.

**Miscarriage**

15.22 Where an employee has a miscarriage before the 25\textsuperscript{th} week of pregnancy normal sick leave provisions will apply as necessary.

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

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

15.24 These provisions also apply to an employee who is breastfeeding if it is found that her normal duties would prevent her from successfully breastfeeding her child.

**Return to Work**

15.25 An employee who intends to return to work at the end of her full maternity leave will not be required to give any further notification to the employer, although if she wishes to return early she must give at least 28 days’ notice.

15.26 An employee has the right to return to her job under her original contract and on no less favourable terms and conditions.

**Returning on Flexible Working Arrangements**

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

15.28 If it is agreed that the employee will return to work on a flexible basis, including changed or reduced hours, for an agreed temporary period this will not affect the employee’s right to
return to her job under her original contract at the end of the agreed period.

Sickness Following the End of Maternity Leave

15.29 In the event of illness following the date the employee was due to return to work normal sick leave provisions will apply as necessary.
Failure to Return to Work

15.30 If an employee who has notified her employer of her intention to return to work for the same or a different NHS employer in accordance with paragraph 15.6 (ii) (c) above fails to do so within 15 months of the beginning of her maternity leave she will be liable to refund the whole of her maternity pay, less any Statutory Maternity Pay, received. In cases where the employer considers that to enforce this provision would cause undue hardship or distress the employer will have the discretion to waive their rights to recovery.

Miscellaneous Provisions

Fixed - Term Contracts or Training Contracts

15.31 Employees subject to fixed-term or training contracts which expire after the eleventh week before the expected week of childbirth and who satisfy the conditions in paragraphs 15.6 (i), 15.6 (ii) (a), 15.6 (ii) (b) and 15.6 (ii) (d) shall have their contracts extended so as to allow them to receive the 26 weeks paid contractual maternity leave set out in paragraph 15.10 above.

15.32 Absence on maternity leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service.

15.33 If there is no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred the repayment provisions set out in paragraph 15.30 above will not apply.

15.34 Employees on fixed-term contracts who do not meet the twelve months continuous service condition set out in paragraph 15.6 (i) above may still be entitled to Statutory Maternity Pay.

Rotational Training Contracts

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

Contractual rights

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

15.37 Maternity leave, whether paid or unpaid, shall count as service for annual increments and for the purposes of any service qualification period for additional annual leave.

Accrual of Annual Leave

15.38 Annual leave will continue to accrue during maternity leave, whether paid or unpaid, provided for by this agreement.

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

Pensions

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

Antenatal Care

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

Post-natal Care and Breastfeeding Mothers

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

15.43 Employers are required to provide breast-feeding women with suitable rest facilities. The Health and Safety Executive also encourages employers to provide a healthy and safe environment for women who are breast-feeding with suitable access to a private room to express and store milk.

Employees Not Returning to NHS Employment

15.44 An employee who satisfies the conditions in paragraph 15.6, except that she does not intend to work with the same or another NHS employer for a minimum period of three months after her maternity leave is ended, will be entitled to pay equivalent to Statutory Maternity Pay, which is paid at 90% of her average
weekly earnings for the first six weeks of her maternity leave and to a flat rate sum for the following 20 weeks.

**Employees with Less than Twelve Months Continuous Service**

15.45 If an employee does not satisfy the conditions in paragraph 15.6 for occupational maternity pay she may be entitled to Statutory Maternity Pay. Statutory Maternity Pay will be paid regardless of whether she satisfies the conditions in paragraph 15.6. If her earnings are too low for her to qualify for Statutory Maternity Pay, or she does not qualify for another reason, she should be advised to claim Maternity Allowance from her local Job Centre Plus or social security office.

15.46 Employees who fall into the category set out in paragraph 15.45 but intend to return to NHS employment will also be entitled to a further period of 26 weeks’ unpaid maternity leave.

15.47 Paragraphs 15.53 to 15.58 contain further information on statutory maternity entitlements.

**Continuous Service**

15.48 For the purposes of calculating whether the employee meets the twelve months continuous service with one or more NHS employers qualification set out in paragraph 15.6 (i) the following provisions shall apply:

- (i) NHS employers includes health authorities, NHS Boards, NHS Trusts, Primary Care Trusts and the Northern Ireland Health Service;

- (ii) a break in service of three months or less will be disregarded (though not count as service).

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

- (i) employment under the terms of an honorary contract;

- (ii) employment as a locum with a general practitioner for a period not exceeding twelve months;

- (iii) a period of up to twelve months spent abroad as part of a definite programme of postgraduate training on the advice of the Postgraduate Dean or College or Faculty Advisor in the speciality concerned;

- (iv) a period of voluntary service overseas with a recognised international relief organisation for a period of twelve months
which may exceptionally be extended for twelve months at the discretion of the employer which recruits the employee on her return;

- (v) absence on a employment break scheme in accordance with the provisions of Section 36 of this Handbook;

- (vi) absence on maternity leave (paid or unpaid) as provided for under this agreement.

15.50 Employers may at their discretion extend the period specified in paragraphs 15.48 (ii) and 15.49.

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

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

Information about Maternity Rights and Statutory Maternity Pay

15.53 Information about all maternity rights is contained in the following Department of Trade and Industry (DTI) booklet:-


15.54 Copies of this booklet can be obtained by telephoning 0870 - 1502 500. It is also available from the DTI website at:-

http://www.dti.gov.uk/er/individual/maternity.pdf

15.55 Information on Statutory Maternity Pay and Maternity Allowance entitlements is contained in the following Department for Work and Pensions (DWP) booklet:-

- (i) A Guide To Maternity Benefits (NI 17A)

15.56 Copies of this booklet can be obtained from local benefits offices.

15.57 Further information on Statutory Maternity Pay and Maternity Allowance entitlements is also available on the DWP website at:-

http://www.dwp.gov.uk/lifeevent/famchild/ind

15.58 Further information for new and expectant mothers at work is available on the Health and Safety Executive website at:-

www.hse.gov.uk