Study and professional leave
Study and professional leave

Study or professional leave is granted for postgraduate education or teaching purposes, and includes study (usually, but not exclusively or necessarily, on a course), research, teaching, examining or taking examinations, visiting clinics and attending professional conferences.

Although entitlement to study leave is outlined in the terms and conditions of service, there are currently many variations in study leave implementation across the UK. The granting of funding, time off and approval for study leave can depend on a junior doctor’s location and can vary between specialties.

The following information provides details on how to get more information on applying for study leave.

Definition of study leave

Study leave is available for specific educational and training needs, which cannot be obtained through the training programme.

Study leave is typically (but not exclusively) granted to include study on a course, research, teaching, examining, visiting clinics and attending professional conferences. Funding for study leave ensures that doctors continue to be paid for the time spent absent from their place of work. With prior agreement, reasonable expenses incurred by the trainee for approved study leave should also be reimbursed by the deanery.

Study leave and reimbursement of related expenses will be granted at the discretion of the LETB or Local Education Provider (in England) or deanery.
Entitlement

Foundation year 1

Foundation doctors in year 1 are not contractually entitled to take formal study leave. However, the FTPD (foundation training programme director) should ensure access to a formal taught programme of education that addresses the professional elements of the curriculum. F1s should have up to three hours per week of protected, bleep-free time set aside for a timetabled learning programme. Alternatively, this time may be aggregated to give seven days of whole day release.

In Scotland there is an understanding that from 1 April in foundation year 1, F1s can ‘borrow’ up to five days study leave from their F2 allocation in order to complete a taster period prior to applying for specialty training. In other parts of the UK there should be similar arrangements, according to the UK foundation programme office Guidance on specialty tasters for foundation trainees

www.foundationprogramme.nhs.uk/pages/home

Foundation year 2

In F2, doctors are eligible for 30 days study leave per year. Their contractual entitlement is exactly the same as for specialty trainees (see below). However, a minimum of 10 days of their study leave will be used for a formal educational programme in generic professional training and other aspects of F2 training. Study leave can also be used to complete taster periods – there may be local guidance around this. For example, in Scotland up to 10 days study leave can be used for tasters, with a maximum of five days in any four-month block.

The terms and conditions of service recommend the following standards on entry to specialty training:

Specialty training (including FTSTAs)

Either:
- day release for the equivalent of one day per week during university terms; or
- up to a maximum of 30 days in a year; and
- study leave to sit an examination for a higher qualification where it is necessary as part of a structured training programme (up to two occasions); and
- study leave to sit other examinations for a higher qualification (discretionary).
In addition, the *Gold Guide* states that:

1) trainees must be made aware of how to apply for study leave and be guided as to what courses would be appropriate and what funding is available

2) trainees must be able to take study leave up to the maximum permitted in their terms and conditions of service

3) the process for applying for study leave must be fair and transparent, and information about a deanery-level appeals process must be readily available.

**Less than full-time trainees**

Less than full-time trainees are eligible for study leave.

**Medical academic doctors**

Study, sabbatical and other leave are determined by the substantive employer, and will be agreed in consultation with the NHS where there may be an impact on clinical services.

**Applications**

The administration of how you can access the funding and time off for study leave varies between LETBs/deaneries. When starting a training programme, junior doctors should check the deanery’s policy on study leave (in Scotland, NHS Education for Scotland has published a national study leave policy). Regional postgraduate deans (or NHS Education for Scotland) have overall responsibility for managing study leave budgets.

However, in most regions budgets have been devolved to clinical tutors (training programme directors in Scotland, postgraduate deans in Northern Ireland and postgraduate organisers in Wales) or the appropriate NHS employer. Applications are usually required to be submitted locally before the leave is taken and all expenses that are likely to be incurred should be indicated on the application. The study leave application will normally require the approval of the junior doctor’s consultant or clinical director.

It is not the responsibility of the junior doctor to find or arrange any locum cover during the study leave period. Junior doctors should contact the human resources department to find out the procedure for applying for study leave in their hospital.
Details about applying for study leave in Scotland can be found at the following link: www.nes.scot.nhs.uk/education-and-training/by-discipline/medicine/help-and-support/study-leave.aspx


In Northern Ireland, hospital training study leave guidance can be found on the NIMDTA (NI Medical and Dental Training Agency) website at www.nimdta.gov.uk/hospital-medicine/study-leave/

**Expenses**

Employers should accept the natural consequences of granting study leave, so that all reasonable expenses associated with periods of approved study leave are paid. However, there are circumstances where this could be unreasonable, for example, where expenses are met wholly or partly by a sponsoring body or where a doctor holds a contract with more than one employer.

In deciding what are ‘reasonable expenses’ employers have been told by the Department of Health that ‘it would not, in our view, be reasonable for an authority to pre-determine a given level of expenses which it was prepared to approve in connection with applications for study leave’. In other words, when employers grant study leave, they must grant pay and expenses.

Where study leave expenses are granted, the full rates of travel and subsistence set by the GWC should be paid. Examination fees are not paid.

Some deaneries/LETBs also put a limit on the study leave budget allowed for each junior. For the reasons stated in the above paragraph, the JDC regards this as inappropriate.

**Professional leave for overseas conferences etc**

Employers may at their discretion grant professional or study leave outside the UK with or without pay and with or without expenses or with any proportion thereof.
Accommodating time off for study leave

Study leave will normally be granted to trainees as long as essential hospital services are maintained in accordance with the recommended standards.

The terms and conditions of service also indicate that a rota should have a sufficient number of doctors working on it so that prospective cover can be provided for each other’s study leave. However, if a system of prospective cover is not in place, employers should find locums to cover junior doctors’ study leave requirements.

The BMA strongly advises junior doctors to get involved with rota planning. As study leave will normally be agreed a minimum of four to six weeks in advance, it should be able to be incorporated into the rota. If study leave is not granted because of rota shortages or poor rota design, this should be raised with the clinical tutor or director of medical education.

Appeals

If study leave is refused or granted without pay or expenses, junior doctors can take the following steps.

(i) Appeal to the regional study leave committee (if one exists). This is a regional committee, on which junior doctors are represented, whose job it is ‘to ensure consistent and uniform practices and to decide appeals’. If there is no study leave committee in your region you should contact your postgraduate dean. Further details of the local study leave policy may be also obtained from the postgraduate dean. It is important that junior doctors do appeal because referral of refused applications will not otherwise occur.

(ii) Small claims court (or Sheriff Court in Scotland). If study leave is granted but without pay and/or expenses, the matter may be pursued through the small claims court as long as the claim is under £5,000 (£3,000 in Scotland). Hearings are usually in private and less formal than proceedings in higher courts. However, it is possible for a case to be referred, by the registrar hearing the case, to the full County court. Costs may then be payable.
(iii) Employer’s grievance procedure. In cases where pre-determined policies are being arbitrarily imposed, it may be worth appealing to the employer under the grievance procedure.

In Scotland, the appeal procedure is outlined in the study leave operational guide, which can be found at www.nes.scot.nhs.uk/education-and-training/by-discipline/medicine/resources/policies.aspx

BMA members should seek advice from our team of advisers on 0300 123 1233 before embarking on an appeal.

**Study leave for GP trainees**

The GP trainees subcommittee of the GPC has agreed policy on study leave for GP registrars. The guidance note *Study leave for GP registrars* is available on the BMA website bma.org.uk/practical-support-at-work/contracts/leave/leave-gp-trainees

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**Further information**

- The entitlement to study leave is paras 250-53 in the terms and conditions of service. More information on study leave can be found in the following resources:
  - Rough guide to foundation programme — for all foundation year 1 and foundation year 2 trainees. www.foundationprogramme.nhs.uk/pages/home/keydocs
  - ‘*A reference guide for postgraduate specialty training in the UK*’ or the *Gold Guide* — All specialty trainees or StRs (including general practice trainees, those in core training, LTFT training and trainees in academic programmes) should refer to the *Gold Guide*. http://specialtytraining.hee.nhs.uk/the-gold-guide/
  - ‘*The guide to specialist training*’ or the *Orange Book* — SpRs (specialist registrars), SpTs (Specialist Trainees in Public Health Medicine) and GPRs (General Practice Registrars), whose training programme started before August 2007, should refer to the *Orange Book*.
– UK Foundation Programme Office Guidance on specialty tasters for foundation trainees: www.foundationprogramme.nhs.uk/pages/home/keydocs

– In Northern Ireland study leave guidelines for hospital trainees can be found on the NIMDTA (Northern Ireland Medical and Dental Training Agency) website: www.nimdta.gov.uk/hospital-medicine/study-leave/


Annual leave

15
Annual leave

Basic entitlement
The basic annual leave entitlements for junior doctors are as follows.

<table>
<thead>
<tr>
<th>Grade</th>
<th>Weeks</th>
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<tr>
<td>F1</td>
<td>Five</td>
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<tr>
<td>F2</td>
<td>Five</td>
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<tr>
<td>Specialist/specialty registrar, specialty registrar (core training) and specialty registrar (fixed-term) (minimum, first or second incremental point)</td>
<td>Five</td>
</tr>
<tr>
<td>Specialist/specialty registrar, specialty registrar (core training) and specialty registrar (fixed-term) (third or higher incremental point)</td>
<td>Six</td>
</tr>
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Calculating annual leave entitlement
As junior doctors work more than a standard working week, there has always been confusion as to what constitutes a week’s leave in terms of number of days off. This has led to employers adopting different ways of calculating annual leave entitlements with employers calculating annual leave on the basis of a five, six or seven-day working week.

Leave taken in complete weeks
When annual leave is taken in complete weeks, one week should be any period of seven consecutive days. This would include weekends, whether or not there is an on-call commitment.

Leave taken in odd days
When annual leave is taken in periods of one or more days, which do not correspond to complete weeks, the entitlement needs to be expressed in days. The recommended standard formula is as follows:

\[
\text{weeks’ leave} \times \text{week length}
\]

where the weeks’ leave are five or six depending on grade, and the week length is the average number of days of the week on which there is a contractual commitment irrespective of the duration or type of commitment on any particular day.
Examples

1. A FO is entitled to five weeks’ annual leave. A FO on a 1 in 4 rota would have a weekly commitment of five days (Monday to Friday) plus two weekend days divided by the number on the rota (ie 2 ÷ 4 = 0.5 days).

   This FO’s average weekly contractual commitment is therefore 5.5 days. The FO’s annual leave entitlement is therefore:
   \[5 \times 5.5 = 27.5 \text{ days pa}\]

2. A specialty registrar is entitled to six weeks’ annual leave. A specialty registrar on a 1 in 4 rota would therefore have an annual leave entitlement of:
   \[6 \times 5.5 = 33 \text{ days pa}\]

   The formula can also be applied to junior doctors working on a partial- or full-shift system.

   However, there are several other methods found in different hospitals, each of which has its advantages and disadvantages.

   – The five-day week. A complete week counts as five days, making the annual leave entitlement 25 or 30 days (depending on grade); weekdays including Fridays count as one day. Taking less than full weeks in this system may sometimes give a lower allowance than the recommended formula and should be brought to the attention of our team of advisers on 0300 123 1233.

   – The six- or seven-day week. A complete week counts as six or seven days, making the annual leave entitlement between 30 and 42 days depending on grade.

   This is usually achieved by counting Fridays as two or three days, the rationale being that this prevents the potential abuse of taking a large number of Fridays combined with requesting not to be on-call at the weekend.

Further information

– Terms and conditions of service, paras 205-17
– GWC handbook sections 1 and 2
Daytime work cover
Some departments engage locums for daytime work, some expect juniors of the same grade to cover, some expect juniors of different grades on the same firm to cover, and some have ‘floating’ juniors. Whichever method is used, junior doctors should ensure that they do not feel exploited or overworked by their colleagues’ absence. If this is the case, members should consult our team of advisers on 0300 123 1233.

Leave year
The leave year for all doctors in the training grades runs from each doctor’s incremental date.

For foundation doctors the leave period corresponds to the period of tenure of the post, and not more than four days’ leave may be carried forward from one post to subsequent appointments.

Untaken leave
Where a junior doctor has been unable to take the full allowance of annual leave before the end of the ‘leave year’ they are allowed to carry over up to five days, subject to the exigencies of the service and authorisation from the employer. Employers often restrict leave such that only one doctor per rota can be on leave at any one time. If junior doctors wait until the end of the post to take leave, they may not be able to take it. In general it is more beneficial to take the leave than to be paid in lieu, since payment in lieu for a day’s leave is normally made at only 1/31 of a month’s salary.

Transferring leave from post to post
Carry over of leave from one post to another is often contentious, and should be agreed in advance with the new employer. Foundation doctors may only transfer up to four days’ leave. The terms and conditions of service states that: ‘The leave period of an F1 or HO shall correspond with the period of tenure of a post’. Normally this will mean that the total annual leave allowance of five weeks will be divided between each individual post in the F1 year. An F1 cannot then carry forward more than four days of that allocation into the next four-month post. The previous employer is responsible for notifying the next employer about the outstanding leave, although it is prudent to check that this has been done.
Notification of leave
Junior doctors are required to notify their employer when they wish to take leave, and the granting of such leave is subject to approved arrangements having been made for cover. It is usual for employers to ask for a minimum period of six weeks’ notice of intention to take leave.

Fixed leave
Some employers have introduced planned leave arrangements in order to make it easier for them to provide locum or prospective cover. These arrangements are not well-liked but in some circumstances can be to the advantage of all junior doctors on a rota or shift. However, such schemes must be applied in a reasonable manner and command the support of the junior doctors locally.

As a junior doctor you are entitled to annual leave of between five and six weeks depending on your level of seniority. Most rotas are designed with ‘leave weeks’ built in; that is weeks where the junior doctor is on a week of normal day shifts, with no out-of-hours commitment. These weeks allow flexibility in planning annual leave as these weeks can be swapped with other junior doctors on the rota with their agreement. You can still take leave in other weeks, but this will require swapping out of the on-call/out-of-hours commitments with your colleagues. Another approach used by employers is to design a rota template with periods of annual leave factored in – junior doctors are then either allocated to a slot or given the choice of a slot which suits their leave needs. This approach is much less flexible for the junior doctors. This is often referred to as fixed leave.

Sickness during annual leave
If a junior doctor falls sick during annual leave and produces a statement to that effect at the time, (eg a self-certificate) the junior doctor should be regarded as being on sick leave from the date of the statement. Where the first statement is a self-certificate, that statement should cover the first and any subsequent days up to and including the seventh day of sickness. Medical statements should be submitted to cover the eighth and subsequent calendar days of sickness where appropriate. Further annual leave should be suspended from the date of the first statement.
Public holidays

Full-time junior doctors are entitled to eight paid statutory and public holidays each year as follows: New Year’s Day, Good Friday, Easter Monday, May Day, Spring Bank Holiday, Late Summer Holiday, Christmas Day and 26 December. A further two days, known previously as statutory (or ‘stat’) days, are available. These may either be specified by the employer or converted into annual leave. This applies to both England and Wales.

In Scotland, the statutory days consist of three public holidays at Christmas/New Year, with the remainder as determined by the employer in the light of local practice.

In Northern Ireland full-time employees are entitled to 12 paid statutory and public holidays per year. Christmas Day, 26 December, New Years Day, St Patrick’s day, Easter Monday, Easter Tuesday, May Day, Spring Bank Holiday, 12 July, Late Summer Holiday and the further two ‘statutory days’.

Part-time junior doctors are usually entitled to statutory and public holidays on a pro rata basis, although different arrangements may apply locally.

Working on public holidays

If a junior doctor is required to be on duty at any time, including between midnight and 9am on a statutory or public holiday they should receive a day off in lieu. If the junior doctor is required to continue working the normal day it may be possible to negotiate an additional day off in lieu. If it is not feasible to take these days in lieu, then pay in lieu can be given.

Further information

– GWC handbook sections 1 and 2
– Terms and conditions of service, para 214
Public holidays and zero hour days
‘Zero-hour’ days cannot be double-counted as public holidays. Where junior doctors are on a rota to do a zero-hour day on a public holiday, they should receive a day in lieu.

Annual leave for locums
Information on annual leave for locums is available in the ‘locums’ section of the handbook (see chapter 13).

Prospective cover
Information on prospective cover is available in chapter 11 of the handbook.
One to one careers coaching

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Maternity, paternity and shared parental leave
Maternity, paternity and shared parental leave

Eligibility
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:

- she has 12 months’ continuous service with one or more NHS employers at the beginning of the 11th week before the EWC (expected week of childbirth)
- 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) of her intention to take maternity leave and of the date she wishes to start her maternity leave; and 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
- and provides a MATB1 form from her midwife or GP giving the expected date of childbirth.

Changing the maternity leave start date
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
Following discussion with the employee, the employer should confirm in writing:

- the employee’s paid and unpaid leave entitlements under this agreement (or statutory entitlements if the employee does not qualify under this agreement)
- 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
- the length of any period of accrued annual leave and accrued leave for public holidays which it has been agreed may be taken following the end of the formal maternity leave period
- 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
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:

- 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
- keeping the employer informed of any developments that may affect her intended date of return.

Keeping in touch (KIT) days
KIT days have been introduced to help make it easier for employees when it is time to return to work after a period of maternity leave. KIT days may be used for training or other activities that enable the employee to keep in touch with the workplace. However, they are not compulsory and any such work must be by agreement and neither the employer nor the employee can insist upon them. An employee may work for up to a maximum of 10 KIT days, excluding the first two weeks of compulsory maternity leave immediately after the birth of the baby, without bringing her maternity leave to an end. Any days of work will not extend the maternity leave period, but will be paid at the employee’s basic daily rate for the hours worked, less appropriate maternity leave payments.

Paid maternity leave
Amount of pay
Where an employee intends to return to work the amount of contractual maternity pay receivable is as follows:

- for the first eight weeks of absence, the employee will receive full pay, less any SMP (statutory maternity pay) or MA (maternity allowance) (including any dependants allowances) receivable
- for the next 18 weeks, the employee will receive half of full pay plus any SMP or MA (including any dependants allowances) receivable providing the total receivable does not exceed full pay
- for the next 13 weeks, the employee will receive any SMP or MA that they are entitled to under the statutory scheme.

By prior agreement with the employer this entitlement 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
Full pay will be calculated using the average weekly earnings rules used for calculating SMP entitlements, subject to the following qualifications.

– 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 SMP calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis.

– 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.

– 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 SMP 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
Employees will also be entitled to a further 13 weeks’ unpaid leave, bringing the total leave to 52 weeks.

Commencement and duration of leave
An employee may begin her maternity leave at any time between the 11th week before the expected week of childbirth and the expected week of childbirth provided she gives the required notice.

Sickness prior to childbirth
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 sick leave provisions. Where sickness absence is unrelated to pregnancy the normal sickness provisions will apply up until the date notified for the start of maternity leave.

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

**Pre-term birth**
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.

Where an employee’s baby is born before the 11th 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.

Where an employee’s baby is born before the 11th 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 the birth.

Where an employee’s baby is born before the 11th week before the expected week of childbirth and the baby is in hospital the employee may split 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**
Where an employee’s baby is born dead after the 24th 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**
Where an employee has a miscarriage before the 25th week of pregnancy normal sick leave provisions will apply as necessary.
Health and safety of employees pre- and post-birth
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.

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
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.

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
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 their original contractor to a post at the same grade and work of a similar nature and status to that which they held prior to their maternity absence.

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**
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**
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 the regulations 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 SMP, received. **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 above will not apply.** 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.

**Employees not returning to NHS employment**
An employee who satisfies the required eligibility conditions but who does not intend to return 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 SMP, which is paid at 90 per cent of her average weekly earnings for the first six weeks of her maternity leave and to a flat rate sum for the following 33 weeks.

**Employees with less than 12 months’ continuous service**
If an employee does not satisfy the eligibility conditions for contractual maternity pay she may still be entitled to SMP. SMP will be paid regardless of whether she satisfies the eligibility conditions above. If her earnings are too low for her to qualify for SMP, or she does not qualify for another reason, she should be advised to claim MA from her local Job Centre Plus or social security office.

**Fixed-term contracts or training contracts**
Employees subject to fixed-term or training contracts which expire after the 11th week before the expected week of childbirth, and who satisfy the required conditions, shall have their contracts extended so as to allow them to receive the 52 weeks, which includes paid contractual and statutory maternity leave and the remaining 13 weeks of unpaid maternity leave.
Absence on maternity leave (paid and unpaid) up to 52 weeks before a further NHS appointment shall not constitute a break in service. Employees on fixed-term contracts who do not meet the 12 months’ continuous service condition set out above may still be entitled to SMP.

**Rotational training contracts**
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 doctor to complete the agreed programme of training.

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

**Increments**
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 and public holidays**
Annual leave will accrue during maternity leave, whether paid or unpaid. 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 the employer.

Public holidays will also accrue during maternity leave.

**Pensions**
Pension rights and contributions shall be dealt with in accordance with the provisions of the NHS Superannuation Regulations.
Ante-natal care
Pregnant employees have the right to paid time off for ante-natal care. Ante-natal care may include relaxation and parentcraft classes as well as appointments for ante-natal care.

Post-natal care and breastfeeding mothers
Women who have recently given birth should have the right to paid time off for post-natal care. Employers are required to undertake a risk assessment and to provide breastfeeding women with suitable private rest facilities, and should consider requests for flexible working arrangements to support breastfeeding women at work.

Continuous service
For the purposes of calculating whether the employee meets the 12 months’ continuous service with one or more NHS employers qualification set out above, the following provisions shall apply:

– NHS employers includes health authorities, NHS Boards, NHS Trusts, primary care organisations and the Northern Ireland Health Service
– a break in service of three months or less will be disregarded (though not count as service).

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

– employment under the terms of an honorary contract
– employment as a locum with a GP (general practitioner) for a period not exceeding 12 months
– a period of up to 12 months spent abroad as part of a definite programme of postgraduate training on the advice of the postgraduate dean or college or faculty adviser in the specialty concerned
– a period of voluntary service overseas with a recognised international relief organisation for a period of 12 months which may exceptionally be extended for 12 months at the discretion of the employer which recruits the employee on her return
– absence on an employment break scheme in accordance with the provisions of the hospital terms and conditions of service
– absence on maternity leave (paid or unpaid) as provided for above.

If your break in service is not covered by the list above but spans a period approved as an OOPE (Out of Programme Experience for
Clinical Experience), it may also be possible to have it disregarded. If you are in this situation, contact the BMA for advice.

Employment as a trainee with a general medical practitioner in accordance with the provisions of the Trainee Practitioner Scheme shall similarly be disregarded and will count as service.

Employers have the discretion to count other previous NHS service or service with other employers, and to extend the periods specified above.

**University or honorary contracts**
Doctors holding university and NHS honorary contracts will be subject to the maternity leave scheme that is in operation at their place of employment. A university contract, with or without an NHS honorary contract, does not count as continuous service under the NHS maternity scheme. However, where an employee has a university contract with an NHS honorary contract this period of employment will not constitute a break in service although it cannot be counted towards service for the purposes of further maternity leave.

**Further information**
Further guidance on maternity leave and pay, including the NHS Employers guide for juniors doctors, can be found on the BMA website bma.org.uk/workingparents

**Unfair dismissal**
Regardless of length of service or hours of work it is unlawful for an employer to dismiss an employee or to select her for redundancy, solely or mainly because she is pregnant or has given birth, or for any other reason connected with her pregnancy or childbirth.

If you feel that you are being denied your employment rights contact our team of advisers on 0300 123 1233 in the first instance. They will assess your circumstances and where necessary arrange for local representation.

**Defence body subscriptions**
Doctors who take maternity leave should contact their defence body as special beneficial arrangements should apply.
Paternity leave

NHS scheme
The scheme applies equally to biological and adoptive fathers, nominated carers and same-sex partners.

Eligibility
Employees must have 12 months’ continuous service with one or more NHS employers at the beginning of the week in which the baby is due in order to qualify for the NHS paternity leave scheme. More favourable local arrangements may be agreed with staff representatives and/or may be already in place.

Benefits
There will be an entitlement to two weeks’ occupational paternity leave at full pay (less any statutory paternity pay receivable) per birth. SPP should only be deducted if the employee is eligible to receive it (see below).

Full pay will be calculated on the basis of the average weekly earnings rules used for calculating occupational maternity pay entitlements. Only one period of occupational paternity pay is ordinarily available when there is a multiple birth. However, NHS organisations have scope for agreeing more favourable arrangements where they consider it necessary or further periods of unpaid leave.

Local arrangements should specify the period during which leave can be taken and whether it must be taken in a continuous block or may be split up over a specific period.

An employee must give his or her employer a completed form SC3 ‘Becoming a parent’ at least 28 days before they want leave to start. The employer should accept later notification if there is good reason.

Paternity leave
Reasonable paid time off to attend ante-natal classes will also be given.

Those with insufficient NHS service to qualify for the occupational scheme will still be entitled to 2 weeks unpaid maternity support leave and may qualify for the statutory scheme.
Statutory scheme

Eligibility

Employees must satisfy the following conditions in order to qualify for paternity leave. They must:

- have or expect to have responsibility for the child’s upbringing
- be the biological father of the child and/or the husband or partner of the mother
- have worked continuously for the same employer for 26 weeks ending with the 15th week before the baby is due, or employed up to and including the week your wife, partner or civil partner was matched with a child for adoption.
- must be earning an average of the lower earnings limit a week (before tax).

Employers can ask their employees to provide a self-certificate form SC3 (becoming a parent) as evidence that they meet these eligibility conditions.

Length of paternity leave

Eligible employees can choose to take either one week or two consecutive weeks paternity leave (not odd days). They can choose to start their leave:

- from the date of the child’s birth (whether this is earlier or later than expected); or
- from a chosen number of days or weeks after the date of the child’s birth (whether this is earlier or later than expected); or
- from a chosen date later than the first day of the week in which the baby is expected to be born. Leave can start on any day of the week on or following the child’s birth but must be completed:
  - within 56 days of the actual date of birth of child; or
  - if the child is born early, within the period of the actual date of birth up to 56 days after the expected week of birth.

Only one period of leave is available to employees irrespective of whether more than one child is born as the result of the same pregnancy.

Statutory paternity pay

During their paternity leave, most employees are entitled to statutory paternity pay (SPP) from their employers.
SPP is paid by employers for either one or two consecutive weeks as the employee has chosen. The rate of SPP is the same as the standard rate of SMP.

**Notice of intention to take statutory paternity leave**
Employees must inform their employers of their intention to take paternity leave by the end of the 15th week before the baby is expected, unless this is not reasonably practicable. They must tell their employers:

- the expected week the baby is due
- whether they wish to take one or two weeks’ leave
- when they want their leave to start.

Employees can change their mind about the date on which they want their leave to start providing they tell their employer at least 28 days in advance (unless this is not reasonably practicable).
Employees must tell their employers the date that they expect any payments of SPP to start at least 28 days in advance, unless this is not reasonably practicable.

**Self-certificate**
Employees must give their employers a completed self-certificate as evidence of their entitlement to SPP. A model self-certificate for employers and employees to use is available on the BIS website. Employers can also request a completed self-certificate as evidence of entitlement to paternity leave. The self-certificate must include a declaration that the employee meets certain eligibility conditions and provide the information specified above as part of the notice requirements.

By providing a completed self-certificate, employees will be able to satisfy both the notice and evidence conditions for paternity leave and pay. Employers will not be expected to carry out any further checks.

**Contractual benefits**
Employees are entitled to the benefit of their normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise), throughout their paternity leave. However, most employees will be entitled to SPP for this period. If the employee has a contractual right to paternity leave as well as the statutory right, he may take
advantage of whichever is the more favourable. Any paternity pay to which he has a contractual right reduces the amount of SPP to which he is entitled.

Return to work after paternity leave
Employees are entitled to return to the same job following paternity leave.

Protection from detriment and dismissal
Employees are protected from suffering unfair treatment or dismissal for taking, or seeking to take paternity leave. Employees who believe that they have been treated unfairly can complain to an employment tribunal.

Employers recovery of payments
Employers can recover the amount of SPP they pay out in the same way as they can claim back SMP. Employers can claim back 92 per cent of the payments they make, with those eligible for small employers relief able to claim back 100 per cent plus an additional amount in compensation for the employers portion of national insurance contributions paid on SPP.

Additional paternity leave and pay will no longer be available for babies due after 5 April. This has been replaced by shared parental leave (see below).

Further information
Further guidance on paternity leave can be found on the BMA website: bma.org.uk/practical-support-at-work/working-parents/thinking-of-having-a-baby/paternity-leave

Shared parental leave
In April 2015 the UK government introduced new legislation governing SPL (shared parental leave). This legislation allows SPL for two people who share care of a child (parent, husband, wife, civil partner, joint adopter or partner of the parent if they live with the parent and child) and allows them to share any untaken maternity leave (two weeks maternity leave is required after the birth) up to a maximum of 50 weeks. SPL can only be taken between the birth and first birthday (or the date of adoption and one year later). An overlap of
maternity leave and SPL (of the other partner) is permitted but only if 8 weeks’ notice of the end of maternity leave has been provided.

There are a number of eligibility criteria which can be viewed on the Department of Health webpage (www.gov.uk/shared-parental-leave-and-pay/overview).

SPL can be taken at different times or overlapped with the partner but the total combined leave cannot exceed the duration of any remaining maternity leave. Both parents are able to work 20 days each during SPL.

Statutory SPL pay is at the same rate as maternity pay.

Further information
- Further guidance on shared parental leave can be found at www.gov.uk/shared-parental-leave-and-pay/overview
‘Most junior doctors have little knowledge of their rights or the law and even if they do, they don’t want to cause a fuss. But having a contract is absolutely vital to ensure you are protected.’

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Simply send us your contract and our employment law experts will check it conforms to the agreed national model before you sign.

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Visit bma.org.uk/contractchecking
Call 0300 123 1233
Sick leave
Sick leave

References are made throughout this section to paragraphs in the GWC (General Whitley Council) conditions of service, which is still in use.

Further information
– Terms and conditions of service, paras 225-44
– GWC handbook section 57

Scale of allowance
Junior doctors absent from duty owing to illness, injury or other disability receive the following sick leave allowances.

During the first year of service one month’s full pay and (after completing four months’ service) two months’ half pay
During the second year of service two months’ full pay and two months’ half pay
During the third year of service four months’ full pay and four months’ half pay
During the fourth and fifth years of service five months’ full pay and five months’ half pay
After completing five years of service six months’ full pay and six months’ half pay

For junior doctors sick pay should include the banding supplement.

Employers can extend these allowances in exceptional cases. Because these periods are relatively short, junior doctors should also seek independent financial advice on income protection.

Calculation of allowances
The amount of sick leave allowance and the period for which it is to be paid are worked out by taking the junior doctor’s sick leave entitlement as on the first day of sickness and subtracting the total sick leave taken in the 12 months prior to the current absence. When calculating total periods of absence, days taken as unpaid sick leave are not counted towards the final figure. Specific conditions apply to absence due to injury resulting from a violent crime. For the purposes of calculation of the allowance, 26 working days are equivalent to ‘one month’.
**Previous qualifying service**
All previous NHS service, (including locum service), university, local authority or civil service employment without any break of more than 12 months, is aggregated for sick leave purposes. There are several exceptional circumstances in which a break of more than 12 months does not mean a break in previous qualifying service. Where a junior doctor has broken their regular service in order to go overseas on a rotational appointment, or on an appointment which is considered by the postgraduate dean or college or faculty adviser in the specialty concerned (if necessary, with the advice of the consultant) to be part of a suitable programme of training, or to undertake voluntary service, their previous NHS or other approved service should be taken fully into account in assessing entitlement to sick leave allowance, provided that:

- the junior doctor has not undertaken any other work outside the NHS during the break in service, apart from limited or incidental work during the period of the training appointment or voluntary service; and
- the employer considers that there has been no unreasonable delay between the training or voluntary service abroad ending and the commencement of the NHS post.

**Limitation of allowance when insurance or other benefit is payable**
Sickness allowance, when added to sickness benefit, severe disablement allowance, invalidity benefit, statutory sick pay, compensation payments or other social benefits receivable, may not exceed the junior doctor’s normal salary for the period and the occupational sick leave allowance is restricted accordingly.

**Notification of sickness**
A junior doctor who is incapable of working because of illness should immediately notify their employer under the circumstances specified by the employer. If the sickness absence continues beyond the third calendar day, the doctor must submit a statement of the nature of the illness within the first seven calendar days of absence. Further statements must be submitted to cover any absence extending beyond the first seven calendar days. They should take the form of medical certificates completed by a doctor other than the sick doctor. Exceptionally, the employer may require statements to be submitted at more frequent intervals.
A junior doctor admitted to hospital must submit a doctor’s statement on entry and on discharge in substitution for periodical statements. However, if the period of absence is less than seven calendar days, only a self-certificate is required.

‘Fit notes’ have now replaced sickness certificates. If you have any concerns about your sick leave or payment during this period, contact our team of advisers on 0300 123 1233.

**Injury sustained on duty**
It is important to note that a period of absence due to injury that is sustained by junior doctors in the actual discharge of their duties, and is not their own fault, is not recorded for the purpose of the scheme. It is essential that all such injuries are recorded at the first opportunity in the accident book or other mechanism for recording adverse incidents that may be in place.

**Termination of employment**
When a junior doctor is receiving the sick leave allowance at the time of expiry of their contract in a regular appointment, the allowance continues to be paid during the illness, ie after the contract would have been terminated, subject to the maximum entitlements set out in the ‘Scale of allowances’ section. This is an important provision of the sick pay arrangements, which is often overlooked by employers.

**Accident due to sport or negligence**
Sickness allowance is not paid in a case of accident due to active participation in sport as a profession or in a case in which contributory negligence is proved, unless the employer decides otherwise.

**Recovering damages from a third party**
A junior doctor who is absent as a result of an accident is not entitled to an allowance if damages are recoverable from a third party, but the employer may advance to the junior doctor a sum not exceeding the sickness allowance which would have been payable, subject to the junior doctor undertaking to refund any damages received.
Where a refund is made in full, the period of absence does not count against the sick leave entitlement. These provisions do not apply to compensation awarded by the Criminal Injuries Compensation Authority.

**Medical examination**
The employer may at any time require a junior doctor who is unable to perform their duties as a result of illness to submit to an examination by a doctor nominated by the employer.

**Forfeiture of rights**
If it is reported to the employer that a junior doctor has failed to observe the conditions of this scheme or has been guilty of conduct prejudicial to their recovery, and the employer is satisfied that there is substance in the report, the payment of the allowance can be suspended until the employer has made a decision. Before making a decision, the employer must advise the doctor of the terms of the report and provide an opportunity for the doctor to submit their observations and appear or be represented at a hearing.

**SSP (statutory sick pay)**
SSP is paid by the employer to employees. The sick pay paid by an employer will usually include both SSP and occupational sick pay entitlements. Where a doctor is entitled to occupational sick pay allowance equivalent to half pay and to SSP, the occupational sick pay allowance is increased by an amount equivalent to the amount of SSP due, except that the sum of the occupational sick pay allowance and SSP payable should not exceed the doctor’s normal pay for the period.

**Medical academic doctors**
For trainees employed by higher education institutions the policies concerning sickness absence (including any qualifying period of service that may apply) are determined by the university employer who should be informed immediately according to local arrangements.
Further information

- Sections 7 to 13 of the GWC handbook: equal opportunities agreement
- PCS(GC)2000/2 (Scot) www.sehd.scot.nhs.uk/pcs/PCS(GC)2000(2).pdf