

**FAMILY LEAVE:
 Adoption, Surrogacy and Fostering Policy and Procedure**



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ADOPTION/SURROGACY/FOSTERING POLICY

1. Introduction

- 1.1 This policy sets out the statutory rights and responsibilities of employees who are planning to adopt a child and gives details of the arrangements for adoption leave and pay. Adoption leave and pay is also available, subject to eligibility criteria, to employees who have a child through a surrogacy arrangement and are eligible for a Parental Order or who foster a child through the “foster to adopt” programme in accordance with section 22C of the Children Act 1989. This policy will apply in these cases.
- 1.2 This policy and procedure applies to all employees of the council. The entitlement to shared parental leave and pay will depend upon the employee’s continuous service.
- 1.3 This policy and procedure does not apply to agency workers or volunteers working in the council.

2. Eligibility

- 2.1 There are 3 main adoption rights in law:
 - The right to Statutory Adoption Pay (SAP)
 - The right to 26 weeks' adoption leave (ordinary statutory adoption leave)
 - The right to a further 26 weeks' leave (additional statutory adoption leave) where the qualifying service period has been met.
- 2.2 Statutory adoption leave may be taken by an employee when a child, up to the age of 18 years, is placed with them for adoption, provided they meet certain qualifying conditions.
- 2.3 If the employee is a local authority foster parent who is also approved as a prospective adopter and a child is placed with the employee in a “foster to adopt” situation, he or she will have the same entitlement to adoption leave or pay. Adoption leave is extended to an individual or to one member of an adopting couple.

- 2.4 Where the “foster to adopt” does not go ahead e.g. because the child or children are returned to their birth parents, the adopters entitlement to adoption leave will end 8 weeks after the child is removed or at the end of their adoption leave, whichever is earlier.
- 2.5 Where a couple are adopting jointly, only one may take statutory adoption leave and receive statutory adoption pay. The other, subject to meeting certain eligibility criteria may be entitled to take one or two weeks paid paternity leave. If an individual is adopting, they will be entitled to take statutory adoption leave and receive statutory adoption pay, subject to meeting the qualifying conditions. If they have a partner they may qualify for one or two weeks paid paternity leave. See Paternity Leave Policy [\(insert link\)](#)

3. Notification of adoption/surrogacy/fostering to adopt

- 3.1 In order to exercise their right to adoption leave, an employee must notify their line Manager in writing within 7 days of the date in which they were matched with the child;
- the date on which they intend to start their adoption leave
 - the expected week of the placement of the child
 - provide a **matching certificate** completed by the adoption agency
 - provide a **Parental Order** in cases of surrogacy as soon as possible and within 6 months of commencement of adoption leave
 - complete **Form A: Adoption/Surrogacy/Fostering to Adopt Notification Form** and forward to their line manager [\(insert link\)](#)

In the case of adopting a child from overseas the employee can choose to begin their adoption leave from the date of the child’s entry into the UK or from a predetermined date up to 28 days after the date of entry.

- 3.2 Should the employee change their mind about the date on which they intend to start their adoption leave, they must advise their line Manager of the revised start date at least 28 days before the date in question, unless it is not reasonably practical in which case the line Manager has the discretion to agree a revised date. If an employee starts adoption leave without providing the required notifications they will be treated as being on unauthorised absence.
- 3.3 The line Manager will formally respond in writing to the employee’s notification of their leave plans within 28 days, confirming the date on which they are

expected to return to work. Please refer to **Managers response letter** available on SBCinsite. [\(insert link\)](#)

- 3.4 If the date of the adoption placement changes, the employee must discuss the situation with their line manager and give appropriate notice for the change in date.
- 3.5 If an employee plans to start adoption leave at any time before the actual date of placement, they must be sure that the placement will be going ahead on the date agreed before they start their leave. If the placement is delayed for whatever reason and adoption leave has already commenced, they cannot stop and start it again at a later date.

4. **Adoption Leave**

- 4.1 All qualifying employees, irrespective of their length of service or hours are entitled to 26 weeks adoption leave (ordinary) and up to 26 weeks additional adoption leave, making a total of 52 weeks. This is regardless of the number of hours they work or their length of service. Additional adoption leave begins on the day after ordinary adoption leave ends.
- 4.2 During this period all contractual terms and conditions are maintained, with the exception of remuneration during weeks 7-26.
- 4.3 Adoption leave commences on;
 - the date the child is placed with the employee. If the employee is at work on this day, then the adoption leave will commence the following day; or
 - a pre-determined date, specified in the completed **Form A: Adoption/Surrogacy/Fostering to Adopt Notification Form** [\(insert link\)](#), that falls within a 14 day period immediately before the date of placement or in the case of adopting a child from overseas from the date of the child's entry into the UK or from a pre-determined date up to 28 days after the date of entry.
- 4.4 Employees must notify their line Manager that they wish to take advantage of the scheme within 7 days of the date in which they were matched with the child.

- 4.5 If there is a change to the date notified in Form A, employees must complete **Form B: Notification of earlier date of birth of child (in case of surrogacy) or placement of the child (in case of adoption)**. [\(Insert link\)](#)

5 Annual Leave and Bank Holidays

- 5.1 The employee will be advised before starting ordinary adoption leave whether they have any outstanding leave entitlement. The employee must, whenever possible, take any outstanding leave before commencing adoption leave. Annual leave and Bank Holidays that will accrue during the adoption leave period may be anticipated and with the line Managers agreement, may be taken prior to the start of the adoption leave period.
- 5.2 It is not normally possible to receive pay in lieu of any untaken annual leave or Bank Holidays. There may be on occasion exceptional circumstances which have prevented annual leave being taken. In these circumstances the line Manager may approve payment for a limited number of untaken days.
- 5.3 Where annual leave is taken at the end of the adoption leave period any unused annual leave or Bank Holidays may be carried over to next year.
- 5.4 If the employee decides not to return to work following adoption leave, they will be paid for any holiday entitlement accrued, equally should the employee not return to work and has taken more holiday than they have accrued, they will be required to repay the equivalent of the excess holiday taken.
- 5.5 Term time only (TTO) employees receive pay which includes a payment for annual leave and Bank Holidays in addition to salary. For instance a TTO employee working 38 weeks per year with a holiday entitlement pro rata to 25 days leave and 8 Bank Holidays (also pro rata) per year will actually receive payment equivalent to 43.3 weeks per year. This number of week's pay is paid in 12 equal instalments (i.e. payment is made every month) during the year. Adoption pay will not include full pay for pro-rata holidays and bank holidays accrued during adoption leave. The difference will be calculated by payroll and paid as a lump sum on return from adoption leave.

6 Adoption Pay

- There are two types of adoption pay;
- Statutory Adoption Pay

- Council's Occupational Adoption Pay

Statutory Adoption Pay (SAP)

- 6.1 Statutory Adoption Pay (SAP) is payable for up to 39 weeks during adoption leave. An employee is entitled to SAP if they:
- have been continuously employed by SBC for at least 26 weeks at the end of the week in which they are notified of having been matched with a child;
 - earn more than the National Insurance Lower Earnings limit;
 - have been matched with a child to be placed with them by a UK adoption agency;
 - have notified the agency that they agree that the child should be placed with them and the date of the placement;
 - notify their line manager that they wish to take advantage of the scheme within 7 days of the date in which they were matched with the child;
 - provide a matching certificate completed by the adoption agency;
 - in the case of surrogacy, a copy of the 'Parental Order' as soon as possible after the baby's birth and no later than six months after the commencement of adoption leave
- 6.2 SAP is payable for a maximum period of 39 weeks. This period is called the 'adoption pay period' and can begin from 14 days before the child is placed with the adoptive parent but no earlier. For 39 weeks SAP will be an amount set by the government each year.
- 6.3 For the first six weeks, SAP is paid at the higher rate, which is equivalent to 90% of the employee's average weekly earnings calculated over a specified period. For the purpose of calculating average weekly earnings, shift allowances and overtime payments, are all included.
- 6.4 The standard rate of SAP is paid for the remaining 33 weeks (or less if the employee returns to work sooner). This is paid at the rate set by the Government for the relevant tax year, or 90% of the employee's average weekly earnings if this is lower than the Government's set weekly rate.
- 6.5 If an employee becomes eligible for a pay rise between the start of the original calculation period and the end of their adoption leave (whether ordinary or additional leave), the higher or standard rate of SAP will be recalculated to take account of the pay rise, regardless of whether SAP has already been paid.

- 6.6 Statutory adoption pay is treated as earnings and is therefore subject to PAYE and national insurance deductions.
- 6.7 Employees who are not entitled to SAP may be entitled to receive an allowance, payable by the Government.

Occupational Adoption Pay (OAP)

- 6.8 Occupational Adoption Pay (OAP) is more generous than SAP. An employee is entitled to OAP if they have;
- at least 12 months continuous service with Local Government by the week in which they are notified by the adoption agency that they have been matched with a child
 - return to work for a minimum of 3 months immediately after adoption leave. (This period will be extended proportionately if they return to work on a reduced hour's basis).
 - give proper notification of the adoption in accordance with the rules set out above
 - provide a Matching Certificate from the adoption agency
 - give at least 8 weeks written notice if they wish to change their agreed return date by completing **Form C: Request to change return date**, available on SBCinsite. [\(insert link\)](#)
- 6.9 OAP is payable for up to 18 weeks after an employee ceases work due to adoption. It may commence any time after 14 days before the date of the placement.
- 6.10 For the first 6 weeks, OAP is paid at the equivalent of 90% of the employees average weekly earnings calculated over a specified period. For the purpose of calculating average weekly earnings, shift allowances and overtime payments are included.
- 6.11 For weeks 7 – 18 at 50% of weekly pay plus any entitlement to SAP or Adoption Allowance up to a maximum of full pay.
- 6.12 For weeks 19 – 39 at standard SAP rate, (SBC service must meet the qualifying periods).
- 6.13 Employees who have claimed OAP but who do not return to work for a minimum period of 3 months will be required to repay the OAP (net of their entitlement to SAP).

7 Other Entitlements

Time off for appointments

- 7.1 Employees who are adopting a child are entitled to take paid time off to attend up to five adoption appointments after being matched with a child. Where an employee is part of a couple jointly adopting a child, the couple can elect for one of them to take paid time off for up to five appointments and the other can elect to take unpaid time off to attend up to two adoption appointments. The time off must be taken before the date of the child's placement for adoption with the employee.

Pension

- 7.2 Employees will continue to pay the same percentage pension contributions to the pension scheme during their paid adoption leave. On their return from adoption leave they have the option to make up pension contributions for any period of unpaid leave, however their request to repay these contributions to avoid a break in pensionable service must be within 30 days of returning to work. Payroll will send a **Pension Buy Back Form** [\(insert link\)](#) on the employee's return which must be completed and returned to Payroll within the stipulated 30 days.

8 Contact during Adoption Leave

- 8.1 Shortly before an employee's adoption leave starts, the manager will discuss the arrangements for them to keep in touch during their leave. Whilst contact should be minimal and respect privacy during adoption leave, it may be necessary to contact the employee from time to time during their adoption leave. This may be to discuss changes within the organisation e.g. restructure, the employee's plans for return to work, to discuss any special arrangements to be made or training to be given to ease their return to work or simply to update them on developments at work during their absence.

9 Keeping in touch days (KIT)

- 9.1 An employee can agree to work or to attend training for up to 10 days during either ordinary adoption leave or additional adoption leave, without that work bringing the period of their adoption leave to an end and without a loss of a week's SAP. These are known as "keeping-in-touch" days. Any work carried out on a day shall constitute a day's work for these purposes. Payment is for hours attended only and will be paid at their current salary rate.

- 9.2 Any keeping in touch days worked will not extend the total period of adoption leave.
- 9.3 Keeping in touch days are optional and there is no requirement for an employee on adoption leave to carry out work during their adoption leave. Equally there are no obligations on the council to offer keeping in touch days during the period of adoption leave.
- 9.4 If an employee undertakes work for the council and all keeping in touch days have been exhausted, they will lose a week's SAP for any week in which they agree to work.
- 9.5 The employee's manager must notify Payroll of any keeping in touch days worked [\(insert link\)](#) and the employee will receive payment on the next available monthly pay date.

10 Returning to work

- 10.1 The employee will have been formally advised in writing of the date on which they are expected to return to work – **Managers response letter on SBCinsite** [\(insert link\)](#). The employee is expected to return on this date, unless they notify their line Manager otherwise. If they are unable to attend work at the end of their adoption leave due to sickness or injury, the Council's normal arrangements for sickness absence will apply. In any other case, late return without prior authorisation will be treated as unauthorised absence.
- 10.2 While the employee is under no obligation to do so, it would be most helpful if they confirmed as soon as convenient during adoption leave that they will be returning to work as expected.
- 10.3 If the employee wishes to return to work earlier than the expected return date, they must give their line Manager at least eight weeks' notice of their date of early return, by completing **Form C: Request to change return to work date** available on SBCinsite [\(insert link\)](#). If they fail to do so their line Manager may postpone their return to such a date as will give eight weeks' notice, provided that this is not later than the expected return date.
- 10.4 Alternatively, if they wish to return to work later than the notified end of adoption leave period, they must give their line Manager at least 8 weeks notice prior to their original agreed return date by completing **Form C: Request to change**

return to work date available on SBCinsite [\(insert link\)](#). The notice requirement applies during both ordinary and additional adoption leave. The adoption leave period cannot be extended beyond the maximum 52 weeks entitlement.

- 10.5 If the employee decides not to return to work after adoption leave, they must give notice of resignation as soon as possible and in accordance with the terms of their contract of employment. If the notice period would expire after adoption leave has ended, SBC may require the employee to return to work for the remainder of the notice period.

Right to return to same job/role

- 10.6 On resuming work after ordinary adoption leave, the employee is entitled to return to the same job as they occupied before commencing adoption leave, on the same terms and conditions of employment as if they had not been absent.
- 10.7 It is also anticipated that in the vast majority of cases, employees returning from additional adoption leave will also return to the same position as they occupied before starting adoption leave. However in exceptional cases it may not be reasonably practicable for the employee to return to the same position in which case the council will offer a suitable alternative position on similar terms and conditions.

Working Patterns/Part time

- 10.8 An employee who worked full-time prior to adoption leave has no automatic right to return to work on a part-time basis or to make other changes to their working patterns. However, the council will endeavour to be flexible on working patterns for all employees. All requests for part-time work or other flexible working arrangements will be considered in line with the operational requirements of the service. If an employee would like this option to be considered, they should write to their line Manager setting out their proposals as soon as possible in advance of their return date, so that there is adequate time for full consideration of the request. Please refer to the **Flexible Working Policy and Procedure** available at [\(insert link\)](#).

11 Resignation

- 11.1 If the employee decides not to return to work after adoption leave, they must give notice of resignation as soon as possible and provide notice in accordance with the terms of their contract of employment. If the notice period would expire after adoption leave has ended, the council may require the employee to return

to work for the remainder of the notice period.

Employees who have claimed OAP but who do not return to work for a minimum period of 3 months will be required to repay the OAP.

12 Summary

12.1 The table below summarises the various forms and steps that should be completed prior to, during and after return from adoption leave.

FORM/ACTION	PURPOSE	WHO ACTIONS	When
Matching Certificate - adoption	Confirming match with a child	Employee to Manager	Within 7 days of being matched with a child
Parental Order		Employee to manager	Within 6 months of commencement of adoption leave
Form A: Adoption/Surrogacy/ Fostering to Adopt Notification Form	To confirm when employee will be commencing adoption leave	Employee to Manager	Within 7 days of being matched with child or birth of child
Manager response letter	To confirm the date of start of adoption leave	Manager to employee	Within 28 days of receiving Form A from employee
Form B	To confirm date of amended adoption leave if baby arrives early/child placed earlier than notified	Employee to Manager	Only required if there is a change to notification date provided in Form A
Form C	Request to change agreed return to work date, giving 8	Employee to manager	8 weeks notice

APPENDIX 1

	weeks notice		
Form D	To confirm the return of employee from adoption leave	Manager to payroll (Arvato)	Prior to return to work
Contact and "keeping-in touch" days	To agree arrangements for keeping in touch and any KIT days	Line Manager/ employee	Prior to commencement of adoption leave and during adoption leave in respect of KIT days
Pension Buy Back Form	For employees who wish to repay pension contributions to avoid a break in pensionable service	Employee to Payroll (Arvato)	Within 30 days of return to work