

Bolsover District Council

# Adoption Policy

(May 2015)



### CONTROL SHEET FOR ADOPTION POLICY

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## **ADOPTION POLICY**

### **SCOPE**

This policy applies to all employees, subject to certain conditions being satisfied.

Adoption provisions will not be granted to two employees in respect of the same adoption. In such cases, the other employee will be entitled to the same provisions as maternity support leave.

Prospective adopters are legally required to be 21 years of age or older. There is no upper age limit.

Statutory adoption pay and adoption leave are also available to parents who will become the legal parents of a child under a surrogacy arrangement, and local authority foster parents who are also prospective adopters ('foster to adopt'), but are not normally available to step-parents who go on to adopt a child.

### **PURPOSE**

This Policy is intended to help managers and employees understand adoption leave and pay.

Adoption provisions can be very complex and the information contained in the policy is intended to answer the initial questions managers and employees may have. If you have any further queries regarding adoption leave and pay, please contact a member of the Human Resources Team.

For pension and salaries enquiries, please contact the Human Resources and Payroll team.

### **DEFINITIONS**

#### **Adopter**

For the purpose of this guidance, an adopter is a person who has been matched with a child for adoption or, if a couple have been matched jointly, the member of the couple who has chosen to take adoption leave and/or statutory adoption pay.

#### **Adoption Agency**

An adoption agency has the meaning given to it in section 1(4) of the Adoption Act 1976 in England and Wales. In Scotland, it has the meaning given to it in section 1(4) of the Adoption (Scotland) Act 1978.

## **Matched/Matching**

A person is matched with a child for adoption when an adoption agency decides that the person would be a suitable adoptive parent for the child, either individually or with another person.

## **Notification of Matching**

A person is notified of having been matched with a child on the date on which they receive notification of the Agency's decision that they have been matched with a child for adoption.

## **Placement**

A child is placed for adoption when the child goes to live with the adopter or adopters with a view to being adopted by them in the future.

## **Paternity**

In this guidance the term 'paternity' is used in reference to those entitlements applying either to the individual who is the member of a jointly adopting couple who has chosen not to take statutory adoption leave or pay, regardless of the sex of either, or an individual adopter's partner, regardless of the sex of either.

## **Relevant Week**

The week in which a person is notified by the adoption agency of being matched with a child.

## **Abbreviations**

**OAL** Ordinary Adoption Leave

**AAL** Additional Adoption Leave

**SAP** Statutory Adoption Pay

**CAP** Contractual Adoption Pay

## **UK ADOPTIONS**

### **1 LEAVE**

There are two types of adoption leave: ordinary and additional.

#### **1.1 Ordinary Adoption Leave (OAL) and Additional Adoption Leave (AAL)**

An employee (including those employed under the Apprenticeship Scheme) is entitled to 26 weeks' ordinary adoption leave and 26 weeks' additional adoption leave for the purpose of caring for their newly adopted child if all of the following conditions have been satisfied:

- They are the child's adopter.
- They have notified the Agency that they agree for the child to be placed with them and agree the date of placement.
- They have given notice in writing no more than seven days after notification has been received that they have been matched with a child. If it is not reasonably practicable for the employee to give notice of their intention to take OAL within seven days of the date on which they are notified of having been matched with the child, they will still qualify for such leave provided they give notice as soon as it is reasonably practicable;
- They have provided a Matching Certificate from the adoption agency.

If the above conditions have not been met, there is no entitlement to OAL and AAL.

All employees who take adoption leave have the right to return to work at any time during either ordinary adoption leave or additional adoption leave, subject to their following the correct notification procedures.

#### **1.2 Notification Requirements for Taking OAL**

In order to satisfy the notification requirements for taking ordinary adoption leave, an employee must provide the following written notification within seven days of being informed that they have been matched with the child:

- The date on which the child is expected to be placed with the employee.
- The date on which they intend to begin their OAL

On receipt of an employee's notification that they intend to take ordinary adoption leave, the employer will respond in writing within the next 28 days acknowledging the employee's intentions and informing them of the latest date on which they may return to work after their AAL. This will be 52 weeks after the start of the employee's adoption leave.

### **1.3 When OAL Can Begin**

An employee may choose to start their OAL on:

- The date on which the child is placed with them for adoption. If the employee is at work on this date, their OAL will begin on the following day.
- A pre-determined date specified in writing that falls within the 14-day period immediately before the date of placement.

### **1.4 Changing the Start Date of OAL**

An employee who has already provided notification in writing of the date on which they intend to begin their ordinary adoption leave may change that date provided they give at least 28 days notice:

- Where the change is to provide for the employee's OAL to begin on the date on which the child is expected to be placed with them for adoption,
- Where the change is to provide for the employee's OAL to begin on a pre-determined date (or a different pre-determined date).

The employee must give notice in writing of the changed start date of the OAL as soon as is reasonably practicable if unable to give the minimum 28 days' notice.

On receipt of an employee's notification that they intend to change the start date of their ordinary adoption leave, the employer must respond in writing within the next 28 days acknowledging the employee's intentions and informing the employee of the new revised date on which they may return to work after their AAL.

### **1.5 Length of OAL or AAL Where the Adoption Has Been Disrupted**

Where the adoption is disrupted or fails to take place, the employee's OAL or AAL will end eight weeks after the end of the week in which the disruption occurred.

A 'disruption' will occur in the following circumstances:

- The employee is notified, before the placement, that it will not now occur;
- The child dies;
- The child is returned to the adoption agency;
- The child ceases to live with the adopter

### **1.6 Early Return from Adoption Leave**

If an employee wishes to return to work before the end of their additional adoption leave, they should give notification in writing at least eight weeks before the date of their intended return.

An employee who has notified the Council that they wish to return to work before the end of the full 52 weeks of adoption leave, as set out above, is entitled to change their mind. However, in these circumstances they should give the Council notice of this new, later, date of return at least eight weeks before the earlier date.

If an employee fails to provide the required eight weeks' notice, the Council can postpone their return to work by up to eight weeks (but not beyond the end of their AAL period).

Under the Paternity and Adoption Leave Regulations 2002 (SI 2002/2788), reg.25(4), where an employee is notified that their return to work has been postponed until a certain date, but they return to work before that date, the Council is under no contractual obligation to pay their remuneration until the date to which their return was postponed.

## **2 PAY**

There are two types of pay to which an employee may be entitled. Statutory Adoption Pay (SAP) which comes from the Government, and Contractual Adoption Pay (CAP) which is paid by the Council. Both are based on length of service.

### **2.1 Statutory Adoption Pay**

An employee is entitled to receive 39 weeks statutory adoption pay, if the following conditions have been satisfied:

- They have been continuously employed for at least 26 weeks by the week in which they are notified by the adoption agency of being matched with a child (relevant week).
- They are the person with whom a child is, or is expected to be, placed for adoption under the law of any part of the United Kingdom.
- They have taken ordinary adoption leave in order to care for the child.
- Have normal weekly earnings over the eight-week period ending with the relevant week not less than the lower earnings limit for National Insurance purposes.
- Have provided evidence of their entitlement to SAP.
- Have complied with the notification requirements for taking SAP.

SAP is payable as follows:

- 39 weeks a rate set annually by the Government or 90% of normal wage, whichever is lower.

It should be noted that SMP is regarded as earnings and therefore tax and National Insurance contributions will be deducted.

An employee is entitled to no more than 39 weeks' SAP where more than one child is placed for adoption, or is expected to be placed for adoption, as part of the same arrangement.

An employee is not entitled to receive SAP if they have exercised their entitlement to receive statutory paternity pay. (NB Please see Maternity Support Leave and Paternity Leave Policy.)

In addition to this, an employee is not entitled to receive SAP for the adoption of a child if their partner is eligible (and has elected) to receive SAP for the adoption of the same child.

## **2.2 Evidence of Entitlement to SAP**

As evidence of entitlement to SAP, an employee must provide one or more of the following documents from the adoption agency containing:

- The name and address of the person claiming SAP.
- The name and address of the adoption agency.
- The date on which the child is expected to be placed for adoption (or where the child has already been placed for adoption, the date the child was placed).
- The date on which the employee claiming SAP was informed by the adoption agency that the child would be placed for adoption with them.
- A declaration that they have elected to receive SAP (and not statutory paternity pay) for the newly adopted child.

The document(s) and the declaration must be given to the Council as least 28 days before the start of the SAP period, or as soon as is reasonably practicable thereafter.

## **2.3 Notification Requirements for SAP**

In order to satisfy the notification requirements for SAP, the employee must give at least 28 days' notice in writing of the date from which they expect to start receiving SAP or, if that is not reasonably practicable, as soon as they reasonably can.

At the same time, the employee is also required to provide notice of the date on which the child is expected to be placed with them for adoption.

Where an employee has chosen to begin their SAP period on the date the child is placed with them for adoption, they must further notify the Council as soon as is reasonably practicable of the date the child was actually placed for adoption.



## **2.4 When the SAP Period Can Begin**

The statutory adoption pay period begins at the same time as the period of ordinary adoption leave.

## **2.5 Length of the SAP Period Where the Adoption Has Been Disrupted**

Where the adoption is disrupted or fails to take place, the employee's entitlement to SAP will end eight weeks after the end of the week in which the disruption occurred.

## **2.6 Contractual Adoption Pay**

Employees with at least one year's continuous service at the time of the adoption placement will be entitled to the following Contractual Adoption Pay:

- Weeks 1 – 6 90% of a week's pay (offset against payments made by way of SAP\*).
- Weeks 7 - 18 Where an employee has declared in writing that they intend to return to work, they will receive half pay plus SAP, provided that this does not exceed full pay. This is paid on the understanding that an employee will return to local authority employment for at least three months following adoption leave. For employees not intending to return, payment will be the employee's entitlement to SAP only.

(If an employee is unsure whether or not they will return, there are two options; - to repay the half pay if they decide not to return, - or to ask the employer to withhold the half pay and receive this in a lump sum if they decide to return.)

- Weeks 19-39 For the remaining 21 weeks, the employee will receive their SAP entitlement only.

(\*This means that the statutory payments are made in addition to Contractual Adoption Pay, but the salary element will be adjusted so that the total does not exceed full pay.)

## **OVERSEAS ADOPTIONS**

Some of the criteria listed above also apply to employees who adopt a child from overseas. The eligibility criteria for UK Adoptions for Ordinary Adoption Leave, Additional Adoption Leave, Statutory Adoption pay and Contractual Adoption Pay should therefore be read taking into account the following amendments relating to Overseas Adoptions.

### **3 Leave**

#### **3.1 Ordinary Adoption Leave (OAL) and Additional Adoption Leave (AAL)**

An employee is entitled to 26 weeks' ordinary adoption leave and 26 weeks' additional adoption leave for the purpose of caring for their newly adopted child if all of the following conditions have been satisfied:

- The employee is the child's adopter.
- The employee has been continuously employed for at least 26 weeks either:
  - a) Ending with the week in which they receive official notification, or
  - b) Starting with the week in which their employment with the employer began.

"Official notification" means written notification, issued by or on behalf of the relevant domestic authority (eg the Secretary of State for Health), that it is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, or has issued a certificate and sent it to the authority confirming, in either case, that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent.

The reasoning behind option (b) (which is not available in the case of domestic adoptions) is that it can take a long time between an employee being notified as a suitable parent and actually having a child from overseas being placed with them for adoption.

- The employee has complied with a request to provide written evidence of their entitlement to OAL for a child adopted from overseas.
- The employee has complied with the notification requirement for taking OAL for a child adopted from overseas.

If the above conditions have not been met, there is no entitlement to OAL and AAL.

#### **3.2 Evidence of Entitlement to OAL**

As proof of their entitlement to ordinary adoption leave, an employee must give their employer a copy of the official notification together with evidence of the date of entry of the child into Great Britain.

#### **3.3 Notification Requirement for Taking OAL**

In order to satisfy the notification requirements for taking ordinary adoption leave for a child adopted from overseas, an employee must provide written notification of:

- The date on which they receive an official notification;
- The date on which the child is expected to enter the UK;

These must both be given either within 28 days of the date they received an official notification, or on the date on which they complete 26 weeks' continuous employment, whichever is later.

- The date on which they wish to begin their OAL.
- The date on which the child actually enters Great Britain. – this must be given no more than 28 days after the date of entry into Great Britain.

On receipt of an employee's notification that they intend to take ordinary adoption leave, the employer must respond in writing within the next 28 days acknowledging the employee's intentions and informing them of the latest date on which they may return to work after their AAL. This will be 52 weeks after the start of the employee's adoption leave.

### **3.4 When OAL Can Begin**

An employee may choose to start their OAL for a child adopted from overseas on:

- The date on which the child enters Great Britain. (If the employee is at work on this date, their OAL will begin on the day after that date.)
- A predetermined date specified in their notice under the notification requirements for OAL for a child adopted from overseas, that is no later than 28 days after the date on which the child enters Great Britain.

### **3.5 Changing the Start Date of OAL**

An employee who has already provided notification in writing of the date on which they intend to begin their ordinary adoption leave may change that date provided they give at least 28 days notice:

- Where the change is to provide for the employee's OAL to begin on the date on which the child enters Great Britain,
- Where the change is to provide for the employee's OAL to begin on a pre-determined date (or a different pre-determined date).

The employee must give notice in writing of the changed start date of the OAL as soon as is reasonably practicable if unable to give the minimum 28 days' notice.

On receipt of an employee's notification that they intend to change the start date of their ordinary adoption leave, the employer must respond in writing within the next 28 days acknowledging the employee's intentions and informing the employee of the new revised date on which they may return to work after their AAL.

## **4 Pay**

### **4.1 Evidence of Entitlement to SAP**

As evidence of their entitlement to statutory adoption pay in the case of an overseas adoption, an employee must provide notification in writing of:

- A copy of the official notification.
- The name and address of the person claiming SAP.
- The date on which it is expected that the child will enter Great Britain or, where the child has already entered Great Britain, the actual date of entry.
- A declaration that they have elected to receive SAP (rather than statutory paternity pay) for the child. (NB Please see Maternity Support Leave and Paternity Leave Policy.)
- Evidence of the date on which the child entered Great Britain within 28 days of that date.

### **4.2 Notification Requirements for SAP**

In order to satisfy the notification requirements for statutory adoption pay for an overseas adoption, the employee must give at least 28 days' notice in writing of the date from which they expect to start received SAP or, if that is not reasonably practicable, as soon as they reasonably can.

In addition, an employee must also give written notice of;

- The date on which official notification was received, within 28 days of that date or within 28 days of their completion of 26 weeks' continuous employment, whichever is later.
- The actual date on which the child enters Great Britain within 28 days of that date.

Where the child has not entered Great Britain on the expected date of entry, an employee who still wishes to claim SAP for that child must notify the Council as soon as is reasonably practicable that their SAP period will start on a different date.

### **4.3 When the SAP Period Can Begin**

The statutory adoption pay period for overseas adoptions begins at the same time as the period of ordinary adoption leave for overseas adoptions.

## **5 Keeping-in-Touch Days – UK or Overseas Adoptions**

Employees on ordinary or additional adoption leave may do up to 10 days' work under their contract of employment without bringing their adoption leave period to an end or losing their entitlement to statutory adoption pay. These days are known as 'keeping-in-touch' days.

The employee can go in for one hour or a whole day. This will still be a 'keeping-in-touch' day. The days of work may be separate days or a single block, as agreed between the employee and their manager. The provision can be used in a number of ways, for example to invite an employee on adoption leave to go on a training course, to attend an important team meeting, or to undergo an EDPR interview.

Line managers may not, however, oblige the employee to do any work during their adoption leave. Neither are employees entitled to be offered any work to do. The amount and type of work to be done is subject to the agreement of both parties, as is the amount of remuneration that the employee will be paid. An employee's adoption leave will not be extended due to the fact that they have carried out some work during this period.

#### **4 Reasonable Contact – UK or Overseas Adoptions**

Managers may make reasonable contact with employees who are on adoption leave, for example to discuss the employee's plans to return to work, significant workplace developments, job vacancies, training opportunities or whether the employee might wish to seek any changes to their working hours or pattern of work on their return. This would not constitute 'work' and would not therefore count towards the 10 days.

In the case of Apprentices, prior to going on adoption leave the Apprenticeship Officer will ascertain whether or not the Apprentice wishes to receive copies of any job vacancies or training opportunities during their adoption leave. Should there be any significant workplace developments, they will be informed of these in writing by the Apprenticeship Officer.

#### **5 Contractual Benefits – UK or Overseas Adoptions**

Apart from remuneration, an employee is entitled to benefit from the same terms and conditions of employment throughout the ordinary adoption leave and additional adoption leave period.

##### **What qualifies as remuneration?**

Examples of payments which count as remuneration are:

- Basic Pay
- Contractual overtime

##### **5.1 Car User Allowances**

An employee is entitled to receive the allowance in full (pro rata to hours worked) for the whole of the ordinary adoption leave and additional adoption leave period.

## **5.2 Mobile Phone**

Employees who are in receipt of a mobile phone will continue to have the provision of the mobile phone for the whole of the ordinary adoption leave and additional adoption leave period.

## **5.3 Childcare Vouchers**

An employee is entitled to request and receive childcare vouchers – please see intranet for further information.

## **5.4 How will adoption leave affect an employee's annual leave entitlement?**

Annual leave is a contractual benefit and therefore must be protected during the AAL period. This means that annual leave continues to accrue during the adoption leave period and will be added to their entitlement for the leave year. Therefore the time when an employee is on adoption leave will count towards their continuous service for the purposes of qualifying for additional annual leave (ie the additional five days leave after five years service) and longer sick pay entitlement.

However, it should be noted that there is no provision for carry-forward of leave from one leave year to the next. Therefore dependent on the employee's individual leave year and the timing of the adoption leave, the employee may wish to convert part of the unpaid AAL period to paid leave. For guidance on this, please speak to a member of the Human Resource Team.

Apprentices who do not return to work before the end of their Apprenticeship contract are entitled to payment for any untaken days as part of their final salary.

## **5.5 What happens to the employee's pension contributions?**

During the employee's paid adoption leave they will continue to pay superannuation contributions on the actual adoption pay they have received (including statutory pay, contractual pay and any payment in respect of KIT days). The employer's contributions will be based on the employee's assumed pensionable pay which will be calculated in accordance with the Local Government Pension Scheme rules.

No contributions will be payable by either the employee or the employer in any period of AAL in which an employee receives no pay. Any period of unpaid AAL will not count as membership unless an election is made to pay contributions for this period following return to work or resignation (see below).

When the employee returns to work, or equally if they resign or are dismissed during or after the AAL, the employee can pay the contributions relating to any period of unpaid adoption leave. If the employee wishes to buy back the amount of 'lost' pension in respect of the unpaid period of absence, they can do so through an age-related APC (Additional Pension Contribution) contract, either over a period of time or, if impracticable, Derbyshire County Council may determine that a lump sum is appropriate. If the employee elects to enter into an APC contract within 30 days of returning from the leave, the cost will be split 1/3<sup>rd</sup> employee and 2/3<sup>rds</sup> employer. If they elect for an APC contract after the 30 day period, the full cost of the APC will be borne by the employee.

An employee's membership in the pension scheme is preserved whilst their contributions are payable. Therefore employees in the Local Government Pension Scheme will have their continuity of membership preserved during OAL and for any period of the AAL in which they receive SAP and/or contractual adoption pay, or have entered into an APC contract for the unpaid period of absence.

**5.6 Can the employee request a variation to their working pattern on return?**

Yes, and employees should refer to the Council's Policies on Job-sharing, Carer's Leave and the Career Break Scheme. In addition, an employee has a statutory right to apply for flexible working. Please refer to the document entitled 'Flexible Working Arrangements within NEDDC'.