



Surrogacy Leave and Pay statutory scheme

Date: March 2025

Review date: March 2028

Approved by Advisory Board: March 2025

Signed:

A handwritten signature in blue ink, appearing to read 'S. Day'.

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Version Control

Version	Date of review/change(s)	Page and paragraphs affected	Summary of update
New	March 2025		

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1. Introduction and scope

- 1.1 The purpose of this scheme is to outline the leave and pay provisions for teaching and support staff who are receiving a baby through a legal surrogacy arrangement (they are or will be applying for a parental order for that child)¹.
- 1.2 Where a couple receive a baby through a legal surrogacy arrangement one person can take statutory adoption leave and pay, as long as they meet the eligibility criteria. The other person will be able to take paternity leave and pay, if eligible. Both parents may be entitled to shared parental leave and pay too.
- 1.3 An employee who bears a child on behalf of a couple will be covered by the statutory maternity provisions. Occupational maternity pay may be available to the surrogate parent if they meet the eligibility criteria.

2. Equalities and support

- 2.1 The Headteacher will ensure that all reasonable adjustments or supportive measures are considered to allow equality of access and opportunity regardless of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; or sexual orientation.
- 2.2 Through the implementation of this scheme, the Directors will be mindful of their obligation to seek to maintain and protect the mental health and wellbeing of all employees as far as is reasonably practicable.

¹ Statutory adoption leave and pay are not available for people adopting a relative, or a stepparent adoption, or for any private adoption. Couples receiving a baby via a surrogacy arrangement where the parental responsibility is transferred by an adoption order should refer to the Adoption leave and pay scheme for support staff or teaching staff, as appropriate.

- 2.3 According to ACAS it is estimated one in seven people are neurodivergent, meaning that the brain functions, learns and processes information uniquely. Where an employee discloses neurodiversity, the Directors understand the employee may require extra support in relation to the application of this policy. Where reasonable adjustments are necessary and can be accommodated, the Headteacher will support these.

3. Time off for antenatal appointments

- 3.1 Employees who are in a qualifying relationship with the expected child can take unpaid time off to accompany the pregnant person to up to two ante-natal appointments. Someone is in a qualifying relationship if:
- they are the husband or civil partner of the pregnant person,
 - they live with the pregnant person in an enduring family relationship and are not a relative,
 - they are the expected child's father,
 - they are a parent of the expected child by virtue of the Human Fertilisation and Embryology Act 2008 (same sex partner treated as parent in case of assisted reproduction) or,
 - they are the potential applicant for a parental order under the Human Fertilisation and Embryology Act 2008 under a surrogacy arrangement.

- 3.2 Partners are able to take the same time off where the eligibility criteria have been met. This information is also covered in the Leave and time off policy.

4. Entitlement

4.1 Leave

The surrogate parent taking adoption leave is automatically entitled to a period of 26 weeks ordinary adoption leave and 26 weeks additional adoption leave regardless of their hours of work, where the appropriate notice has been given and the eligibility criteria are satisfied. This means they can remain on adoption leave for a total period of up to 52 weeks.

4.2 Pay

Statutory Adoption Pay (SAP) is payable for 39 weeks. During this period there are two different rates of SAP:

- the first six weeks will be at the higher rate of Statutory Maternity Pay (SMP) which is 90% of the employee's average weekly earnings,
- the remaining 33 weeks is at the lower rate of SMP or 90% of the employee's average weekly earnings where this is less than the SMP rate.

The remaining 13 weeks leave is unpaid.

For the purpose of calculating an average weeks' pay, this will include contractual allowances through the whole of an employee's statutory adoption payments.

SAP operates on a rolling week basis e.g., if adoption leave starts on a Tuesday, pay will run from Tuesday to Monday for the entire 39 weeks. SAP is subject to pension, tax and NI contributions.

The current rates for [SAP](#) and [SMP](#) are available on gov.uk

5. Eligibility

5.1 Leave

To qualify for statutory adoption leave (SAL) the employee must:

- be the/one of the child's surrogate parents,
- provide their employer with a copy of the MATB1 (from the surrogate parent) prior to the birth,
- be eligible to apply for a parental order² and intend to apply for one, with another person. The parental order must be provided to their employer within six months of the birth of the baby.

An employee's period of adoption leave is unaffected by the birth of more than one child as part of the same arrangement.

Where, after starting a period of adoption leave, the surrogate parent changes their mind and keeps the child (this is a legal right), the child dies or the child is returned to the birth parent, the employee will be entitled to continue adoption leave for a period of up to eight weeks after the week in which the disruption occurred. However, there is no extension of additional adoption leave if there is less than eight weeks remaining of the total period.

5.2 Pay

Statutory Adoption Pay (SAP)

To be eligible for statutory adoption pay the employee must:

- have completed 26 week's continuous service with their current employer continuing into the week the baby is placed with the employee,
- earn on average at least the lower earnings limit for National Insurance.

6. Commencement of adoption leave as a surrogate parent

The earliest date on which a surrogate parent may begin their leave will be 14 days before the expected date of birth.

An employee may vary the date on which they intend to commence their adoption leave by giving 21 days' notice of the amended date where this is reasonably practicable.

7. Notification

7.1 Employees are encouraged to informally notify the Headteacher that it is their intention to become a parent of a child through surrogacy as soon as they have committed to a surrogacy arrangement, although it is recognised that it is unlikely a date of commencement of leave will be known at this stage.

7.2 The employee must give at least 28 days' notice of when they wish their adoption pay to start, unless this is not reasonably practicable. Where notice cannot be given, the leave will begin

² The parental order must be applied for by two people, who are either married, in a civil partnership or an enduring family relationship. At least one of the applicants must be biologically related to the child.

on the date the baby is received. This can be done using *Surrogacy leave and pay form (SP1)* Where due notice cannot be given the leave will begin on the date the baby is received.

- 7.3 The Headteacher must respond to the employee's notification of leave plans within 28 days of receiving the notification. This response should set out the expected date of return in the event of the full statutory leave entitlement being taken. Failure to do this can have implications for the employer in the same way as with maternity leave cases.

8. Keeping in touch (KIT) days

- 8.1 KIT days are a statutory entitlement where the employee may work for up to 10 days during their adoption leave without the loss of statutory adoption payments for that week, or their adoption leave being terminated.
- 8.2 Both parties must be in agreement of any such work - the employee cannot be required to attend a KIT day, nor is the employee entitled to request a KIT day if there is no reason for them to attend the workplace.
- 8.3 KIT days do not have to be consecutive and can be used for work activities, training or any other activity such as a team meeting that enables the employee to keep in touch with the workplace. Working for part of a day will count as one of the 10 KIT days.
- 8.4 Employees who attend a KIT day will claim for the actual hours that they have worked on each KIT day taken. KIT day payments will be paid at the employee's normal hourly rate, offsetting any OAP for that day, SAP is not affected.**
- 8.5 As a matter of good practice, Headteachers are advised to maintain reasonable contact with their employees throughout their leave, to let them know of changes occurring in the workplace and to keep informed about changes to the employee's plans. This contact does not count towards the 10 KIT days.

9. Returning to work

- 9.1 An employee is expected to return to work at the end of the period of adoption leave on the date notified by the employer.
- 9.2 An employee wishing to return before the end of the adoption leave period is required to give at least 21 days' notice of the date on which they intend to return. Employers have the right to postpone an employee's return only to ensure that the required notice period is given. However, it should be noted that this postponement should not extend the return date beyond the end of the full adoption leave period.
- 9.3 In the event of disruption to the adoption leave period, the minimum period of 21 days' notice of early return to work must still be given by the employee. The employer may postpone the return to work date where insufficient notice of early return is given provided the required notice of end of adoption leave date was given to the employee
- 9.4 The Headteacher will inform the Director when an employee's surrogacy leave ends, even if they are not returning to work straight away e.g., due to being on sick leave or annual leave.

9.5 Returning to work on a part-time basis

Some employees may wish to return to work on reduced hours after their period of adoption leave. There is no automatic right to do this but employees do have a right to request it. Employers have a statutory duty to give such requests full consideration and have an obligation to formally respond to the request. It follows that the Headteacher should assess the practicalities of allowing a return on this basis and not unreasonably refuse it. The Headteacher will be required to justify any decision not to allow such a return.

10. Contractual status during adoption leave

An employee's contractual benefits and status will mirror those of an employee taking a period of adoption leave.

10.4 Sickness during adoption leave as a surrogate parent

If an employee is sick during their paid adoption leave, it does not affect their adoption pay and they need not comply with the sickness notification procedures. If, however, they are sick during their unpaid adoption leave, they should inform the Headteacher, who, in turn, will notify the payroll provider as soon as possible. The employee should obtain a medical certificate as they may be entitled to statutory sick pay.

10.5 Pensions

Pension contributions will be made in line with Auto Enrolment rules.

11. Abuse of the surrogacy scheme

Any abuse, including fraudulently claiming leave and/or pay, of the surrogacy scheme will be treated as misconduct in accordance with the Disciplinary policy.

12. Data Protection

Personal data collected and processed for the purpose of this scheme will be handled in accordance with the data protection policy and applicable statutory obligations. Any personal data collected is held securely and accessed by, and disclosed to, individuals only for the purposes of employee management or to comply with statutory reporting obligations. Inappropriate access to, or disclosure of, employee data constitutes a data breach and should be reported without delay, in accordance with the data protection policy. It may also constitute a disciplinary offence in which case it would be dealt with under the disciplinary policy and procedure.