

**SOLIHULL METROPOLITAN BOROUGH COUNCIL**

# **Adoption Scheme**

**This policy sets out the terms of agreement reached by those participating in the Council’s Consultation and Negotiating Framework**

<b>Version</b>	<b>Date</b>	<b>Reason for change</b>
5	October 2016	Minor updates including clarification of eligibility under fostering to adopt arrangements

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## Introduction

Providing a stable home to a child who would otherwise grow up without the care and support of a family is recognised by the Council as a valuable service to the community.

As an Adoption Agency and major employer, Solihull MBC recognises that parents adopting a child will need to demonstrate that they are able to provide a caring and stable environment for the child(ren). This is especially relevant during the initial settling in period which can last a considerable period of time.

In recognition of this the Council provides an Adoption Leave Scheme as well as Shared Parental Leave, Ordinary Parental Leave, Paternity Leave and Adoption Support Leave.

Certain eligibility criteria, which are detailed, must be met to qualify for each of the schemes. For couples, it will be their decision as to which one of them will apply to be the adopter and may be eligible for Adoption Leave. The individual who will not be the adopter may be eligible for Shared Parental Leave, Paternity Leave or Adoption Support Leave subject to meeting the relevant criteria.

The adoption leave scheme will also apply for couples who are in a surrogacy arrangement or are planning to “foster to adopt”.

Unless stated, the Adoption Leave schemes do not apply in circumstances where there is a private adoption arrangement, other fostering arrangements, an already established relationship with the child(ren), for example where a step parent is adopting their partner’s child(ren), where a residence order is granted, or where the child of a close relative is being adopted.

Employees requesting Adoption Leave shall be entitled to paid leave before the placement or before the child enters the country, to attend a reasonable number of meetings and hearings in connection with the adoption.

Further information about adoption can be found at

[www.solihull.gov.uk/adoption](http://www.solihull.gov.uk/adoption) and [www.first4adoption.org.uk/adoption-support](http://www.first4adoption.org.uk/adoption-support)

Further advice in respect of all of the schemes and eligibility can be sought from your HR Manager/ Adviser.

Employees who wish to request alternative working arrangements or any other adjustments to their roles as a result of adoption, may submit an application for consideration under the Council’s Flexible Working policy.

## Adoption Definitions

The following outlines some of the terms that are used in this document:

<b>SAP</b>	<b>Statutory Adoption Pay</b> This is a rate set by the Government for the relevant tax year, or at 90% of the employee's average weekly earnings, if this figure is lower than the Government's set weekly rate. Statutory adoption pay is treated as earnings and is therefore subject to PAYE and national insurance deductions.
<b>OAL</b>	<b>Occupational Adoption Leave</b>
<b>SAL</b>	<b>Statutory Adoption Leave</b>
<b>OPL</b>	<b>Ordinary Paternity Leave</b>
<b>Average Weekly Pay</b>	The amount payable under the employee's current contract of employment. If there are significant variations in salary, the average salary over 12 weeks prior to the start of the adoption leave will be treated as a week's salary.
<b>LEL</b>	<b>Lower Earnings Limit</b>
<b>ODAL</b>	<b>ODdinary Adoption Leave</b>
<b>ADAL</b>	<b>ADditional Adoption Leave</b>
<b>Matching Certificate</b>	A 'matching certificate' letter is issued by the appropriate agency and may be used as evidence for the purposes of Statutory Leave and Pay. It confirms that the named person(s) has (have) been matched with a child for adoption.
<b>Parental Order</b>	A legal requirement that transfers the rights of the birth mother to a couple who have used a surrogate to have a child.
<b>KIT</b>	<b>Keeping In Touch day</b>
<b>SAP 1</b>	Form issued to employee by employer of non-payment of SAP and can be taken to local Job Centre Plus.
<b>ADP 1</b>	SMBC - Notification of Adoption Leave Form
<b>ADP 2</b>	SMBC – Confirmation of Adoption Leave Form

### 2015 -2016 rates

SAP (standard rate)	£139.58
LEL	£112

# Standard Adoption Scheme

Employees are entitled to take 52 weeks Adoption Leave regardless of their length of service.

## Eligibility

The employee must:

- Be the nominated adopter, a legal parent under a surrogacy arrangement or a local authority foster parent under a “foster to adopt” arrangement; **and**

For adoptions within the UK

- Have received notification from an adoption agency of a placement with a child.

**Or**

For adoptions from Overseas

- Completed form SC6 (available from HM Revenue & Customs or [www.gov.uk](http://www.gov.uk))
- Have received ‘official notification’ issued by or on behalf of the UK Authority.

## Statutory Adoption Pay

Employees who take adoption leave will also qualify for statutory adoption pay, provided that they have **26 weeks'** continuous local government service at the relevant date\*

### **\*The relevant date**

For adoption within the UK, 26 weeks service calculated as at the week in which notification of placement is given by the adoption agency.

For adoption from overseas, 26 weeks service must be accrued by the date that the employee received ‘official notification’ that they can adopt from abroad.

## Entitlement under Standard Adoption Scheme

Employees are entitled to up to 52 weeks adoption leave.

From the date adoption leave commences employees are entitled to receive 39 weeks Statutory Adoption Pay (SAP).

Employees, whose average weekly earnings are not equal to or greater than the current lower earnings limit for national insurance contributions, will not be eligible to receive SAP. These employees will be provided with a SAP1 exclusion form to take to the Job Centre Plus to claim income support.

Employees who qualify for the Standard Adoption Scheme and SAP will be eligible for:

- First 6 weeks at 90% of normal weekly earnings
- Next 33 weeks at the current rate of SAP
- Final 13 weeks unpaid

Statutory Adoption Pay will be paid at the current rate or 90% of the employee's average weekly earnings before tax (or whichever is lower).

Under the Shared Parental Leave Scheme an adopter may wish to consider, depending on whether the eligibility criteria is met, to curtail their adoption leave and pay, and elect to convert any untaken balance of leave and pay as shared parental leave and pay with their partner.

### **Surrogacy Arrangements**

If you are genetically related to the child (i.e. the egg or sperm donor), you can also elect to receive [paternity leave and pay](#), however in these circumstances employees would not be able to receive benefits under this Adoption Scheme as well.

# Enhanced Occupational Adoption Scheme

The Council's Enhanced Occupational Adoption Scheme provides additional benefits in accordance with the relevant nationally agreed terms and conditions of employment.

## Eligibility

The employee must:

- Have completed at least 52 weeks continuous local government service at the relevant date\* **and**
- be the nominated adopter, a legal parent under a surrogacy arrangement or a local authority foster parent under a "foster to adopt" arrangement **and**

For adoptions within the UK

- Have received notification from an adoption agency of a placed with a child.

**Or**

For adoptions from overseas

- Completed form SC6 (available from HM Revenue & Customs or [www.gov.uk](http://www.gov.uk))
- Have received 'official notification' issued by or on behalf of the UK Authority.

## \*The relevant date

For adoption within the UK, 52 weeks service calculated as at the week in which notification of placement is given by the adoption agency.

For adoption from overseas, 52 weeks service must be accrued by the date that the employee received 'official notification' that they can adopt from abroad.

## Entitlement under Occupational Adoption Scheme

Employees are entitled to up to 52 weeks adoption leave.

From the date adoption leave commences employees are entitled to receive 39 weeks' adoption pay and 13 weeks is unpaid. This is made up of

Non – teachers\*

- First 6 weeks at 90% of normal weekly earnings

Teachers\*\*

- First 4 weeks at full Pay
- Weeks 5 and 6 at 90% of normal weekly earnings

\* NJC for Local Government Services – National Agreement

\*\* School Teachers Pay and Conditions Document

All employees

- Next 12 weeks at current rate of Statutory Adoption Pay plus half pay ( subject to total pay being no higher than 100% of normal weekly earnings)
- Next 21 weeks at current rate of SAP
- Final 13 weeks unpaid (but see leave entitlement below)

Employees, whose average weekly earnings are not equal to or greater than the current lower earnings limit for national insurance contributions, will not be eligible to receive SAP. These employees will be provided with a SAP1 exclusion form to take to the Job Centre Plus to claim income support.

The employee has two options in relation to the payment of half pay between weeks 7 and 18 of the scheme:

OPTION ONE – To receive the half pay as a lump sum on return to work

OPTION TWO – To receive half pay between weeks 7 and 18 of paid adoption leave with no balance due on return to work

The assumption under the scheme is that the employee intends to return to work at the end of the scheme (see “**Employees not returning to work**” below)

If an employee is ineligible for the Enhanced Occupational Adoption Scheme, then they may qualify for either the Standard Adoption Scheme or Adoption Support Leave Scheme.

# Notification of Adoption Leave

Adoption leave can commence either

- From the date the child starts living with the employee
- Or
- Up to 14 days before the date the child is expected to start living with the employee

To make administration as easy as possible, the employee is encouraged to discuss the timing of his/her adoption leave with their manager/ head teacher as early as possible.

## For adoptions within the UK

Employees must notify their manager/ head teacher of their intention to take Adoption leave within 7 days of being notified by their Adoption agency that they have been placed with a child for adoption, unless this is not reasonably practicable. Where an employee qualifies for SAP, 28 days' notice is preferred wherever possible.

## Fostering for Adoption

Employees can commence adoption leave (and pay if eligible) when a fostering for adoption placement is made. If an adopter chooses not to take adoption leave at this point, they may take leave at the point when the child is matched with them for adoption purposes (which may be some months later).

## For adoptions from overseas

Employees must notify their manager/ head teacher of their intention to take Adoption Leave within 28 days of receipt of the official notification of eligibility for adoption, or within 28 days of the date at which they wish to commence adoption leave, whichever is the later, unless this is not reasonable practicable.

The Notification of Adoption should include:

- The employees name and address.
- The name and address of the adoption agency.
- When the adoption leave will start.
- Expected date of placement of the child, or for overseas adoptions, the date the child is expected to enter Great Britain.
- The date on which the employee was informed by the adoption agency that the child would be placed with then for adoption.
- A copy of the Matching Certificate from the adoption agency, or for overseas adoptions, a copy of the official notification of eligibility for adoption.

- A declaration that the employee has elected to receive SAP and not Statutory Paternity Pay.

Adopters are eligible for only one set of adoption leave (and pay if eligible) per placement

**The form Notification of Adoption Leave in Appendix 1 should be used for this purpose.**

### **Surrogacy arrangements**

If employees are using a surrogate to have a baby, they must inform their manager/ head teacher of the due date and when they want to start their leave at least 15 weeks before the expected week of birth.

Notification must be in writing and include a written statement ('statutory declaration') to confirm that a [parental order](#)\* has been applied or will be applied for within 6 months after the child's birth. Evidence of this will be required and would normally be signed in the presence of a legal professional.

\*A parental order will not be granted to a single person who has, or intends to use, a surrogate, to have a child.

### **Time off to attend adoption appointments**

An employee adopting a child alone is entitled to take paid time off to attend up to five adoption appointments\*.

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 to attend up to five adoption appointments. The other parent can elect to take paid time off to attend up to two adoption appointments.

## **During Adoption Leave**

### **Keeping-in-touch days**

Employees can agree to work (or attend training) for up to 10 days during their adoption leave without that work bringing their adoption leave to an end and without loss of a week's statutory adoption pay.

A manager/ head teacher has no right to insist the employee to carry out any work and the employee should not suffer any detriment or being dismissed for refusing to do so. Equally, an employee cannot insist on being given work to do if there is no appropriate work in your department/school. Any keeping in touch days should be undertaken through mutual agreement.

Adoption leave will not be extended by working a keeping in touch day.

### **Return to work meetings**

During the 4 weeks prior to the employee's return to work, the manager/ head teacher will arrange a meeting and agree the following:

- Any training that will be required for the resumption of the job;
- Alternative working arrangements or any other adjustments that are agreed
- How any accrued leave is to be used
- Details of suitable alternative jobs (where the previous job is no longer available or suitable, but see section on "**Return to Work**" above)

It is assumed that all key communications have been sent out to the employee during their Adoption Leave.

### **Pensions**

If you are a member of the Local Government Pension Scheme (LGPS)/Teachers Pension Scheme (TPS)/ NHS Pension Scheme, we will make employer pension contributions during any period of paid Adoption Leave. This will be based on the contribution rate effective at the time and will be based on the amount of any SAP you are receiving.

During any unpaid period of SAL or OAL, LGPS/NHS employees may elect

- to buy any or all 'lost' pension through an Additional Pension Contribution (APC). If this is done within 30 days of returning to work the Council/ School shall pay two thirds of the cost of the APC (a shared cost APC) and you will pay the remaining one third. If you make your election past the 30 day deadline the Council/ School will not make a contribution to the APC and the full cost has to met by yourself.. Where you choose to

stop contributions during the same period this will not count towards reckonable service for pension purposes until contributions are resumed.

For employees who are members of Teachers Pensions Scheme, with respect to the unpaid period of maternity leave, should discuss this in further detail with Teachers' Pensions on 0845 6066166 or view their website on [www.teacherspensions.co.uk](http://www.teacherspensions.co.uk).

### **Other contractual benefits:**

The employee is entitled to all normal contractual benefits during paid adoption leave (except normal pay/salary and sick pay – see below). The position during the unpaid period the contractual rights and obligations that will remain are those applicable as if the employee had exhausted occupational sick pay. The main requirements would be:

- **Notice periods**
- **Redundancy payments**
- **Disciplinary and Grievance procedures**
- **Duty of trust and confidence**
- **Duty of good faith**
- **Leave (see below)**

All statutory rights will be upheld.

### **Leave**

The employees contractual leave entitlement will continue to accrue during Adoption leave.

Employees are encouraged to take any outstanding holiday due to them before the commencement of adoption leave.

### **Sickness**

Sickness payments will automatically and immediately cease whenever Adoption Leave commences.

## **Returning to Work**

An employee does not need to give notice to the Council/ School if they intend to return to work at the end of the 52 weeks scheme. If they wish to return earlier, then at least 21 days notice must be given. However if the employee wishes to curtail their adoption leave for the purposes of converting it to shared parental leave then at least 8 weeks notice must be given (see the shared parental leave scheme). If they wish to take advantage of the right to unpaid parental leave of up to 4 weeks, after the end of the 52 weeks, then 28 days notice is preferred (see parental leave scheme for further details).

When an employee returns to work at the end of the Ordinary Adoption Leave (ODAL), they are entitled to return to their substantive post on the same terms and conditions, unless the job has been made redundant or changed for objective business reasons, where a job on no less favourable in terms and conditions must be offered, if available.

When the employee returns to work after a period of Additional Adoption Leave (ADAL), he/she is entitled to return either to the same job or, if this is not reasonably practicable, to another suitable job that is on terms and conditions not less favourable.

If an employee requests alternative working arrangement or any other adjustment to the job on her return to work, for the purposes of child care, then these will be considered under the Council's Flexible Working policy

### **Employees not returning to work**

Employees must give contractual notice of their intention not to return to work. Any over payment of half pay will be recovered from any contractual pay due on termination (e.g. unused leave) but not from any statutory adoption pay (SAP).

Employees who have received payments under the half pay part of the scheme (during weeks 7-18) will be asked to repay the amount in question if either they fail to resume work or resume work for a period of less than 13 weeks.

### **Other Useful documents:**

For information on shared parental leave and pay (For second adoptive parent) please refer to the Council's shared parental leave scheme.

Where employees do not qualify for adoption leave or paternity leave employees may wish to refer to the adoption support leave scheme.

## Frequently asked questions

### **1. Where an employee is adopting 2 children will he or she be entitled to 2 periods of Adoption Leave?**

The Paternity and Adoption Leave Regulations 2002 (SI 2002/2788) state that an employee's entitlement to adoption leave will not be affected by the placement of more than one child as part of the same arrangement. Where more than one child is placed with an employee as part of the same placement (e.g. twins or siblings of different ages) the employee will be entitled to only one period of adoption leave.

However, if another child is placed with the employee soon after the placement of the first child (i.e. a new placement under a separate matching certificate), provided that the employee satisfies the qualifying conditions, he or she will be entitled to another period of adoption leave. In these circumstances, the adoption leave relating to the second child will supersede the first period of leave. For example, if the second period of leave begins one month after the first period, the first period will come to an end after one month and the employee will be entitled to a further 52 weeks' adoption leave from that point.

If the employee qualifies for statutory adoption pay in relation to both children, the adoption pay relating to the first child is not brought to an end by entitlement to adoption pay relating to the second child. The employee will be entitled to two payments during any weeks where the two periods of adoption pay entitlement overlap.

### **2. Do employees have a statutory right to time off work prior to the commencement of the adoption to attend placement meetings?**

Yes, employees have a statutory entitlement to take paid time to attend up to 5 adoption appointments. 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 to attend up to five adoption appointments. The other can elect to take paid time off to attend up to two adoption appointments.

### **3. I am a non-teacher what will I be paid under the statutory scheme? (see question 7 if your average weekly earnings are less than £112 per week).**

- First 6 weeks at 90% of normal weekly earnings
- Next 12 weeks at the current rate of Statutory Adoption Pay (SAP) plus Half pay (but usually subject to total pay being no higher than 100% of normal weekly earnings)
- Next 21 weeks at current rate of SAP
- Final 13 weeks unpaid (see leave entitlement below).

#### **4. I am a teacher what will I be paid?**

- First 4 weeks at Full Pay
- Weeks 5 and 6 at 90% of normal weekly earnings
- Next 12 weeks at the current rate of Statutory Adoption Pay (SAP) plus Half pay (but usually subject to total pay being no higher than 100% of normal weekly earnings)
- Next 21 weeks at current rate of SAP
- Final 13 weeks unpaid (see leave entitlement below).

#### **5. When do I notify my manager/ head teacher that I wish to take adoption leave?**

Within 7 days of the adoption placement being notified unless it is not practical to do so.

#### **6. Can I alter my adoption leave arrangements?**

Yes, but you should give at least 28 days notice of the change

#### **7. I am having a child placed with me under a fostering for adoption arrangement. When Can I start my leave?**

You may start your leave as soon as the child is placed with you under the fostering to adopt arrangement. Alternatively you may choose to delay your adoption leave until the child has been 'matched' for adoption. For the purposes of taking leave the relevant notification/ matching certificate will need to be provided. Adoption leave cannot be split between fostering to adopt placement and the actual adoption and you will only be eligible for one set of adoption leave per placement.

#### **8. What if my average weekly earnings are less than £112?**

To qualify for SAP your average weekly earnings must be enough for you to pay National Insurance. If your earnings are below the SAP rate, then the Council will issue you form SAP1 explaining why you can't get Statutory Adoption Pay.

#### **9. Do I need to notify my manager/ head teacher when I intend to return to work?**

Only if you wish to return before the expiry date of the 52 weeks adoption leave. If this is the case then 21 days notice must be given. If you are planning to convert your adoption leave to shared parental leave then 8 weeks notice must be given.

#### **10. I have a second job with another employer, if I continue working for them will this affect my adoption pay?**

No, each employment is treated separately for statutory adoption pay and leave purposes.

**Appendix 1**



**SMBC - NOTIFICATION OF ADOPTION LEAVE**

Surname:	Forenames:	Directorate or School:	Employee No:
Address:		Work Tel No:	
Home Tel No:		Date of Commencement with the Council/School	

**FROM: [Insert Name and work address]**

Thank you for informing the Council that you are adopting a child. Please complete this form and return it to me as soon as possible but at least 28 days before starting adoption leave in order to establish your entitlements.

1. I wish to confirm that I am taking leave of absence to adopt a child and will be stopping work on:

Day	Month	Year

2. The expected date of placement/ or date the child is expected to enter Great Britain

Day	Month	Year

3. I enclose a copy of the matching certificate issued by the Adopting agency/ or official notification of eligibility of adoption/ fostering for adoption

YES	NO
<input type="checkbox"/>	<input type="checkbox"/>

Note: If not sending the certificate at this time, please forward as soon as possible

**4. Will you have 12 months continuous local government service at the date you are notified of the adoption match? (If YES, please read this section. If NO, go to (5) overleaf)**

You appear to qualify for the Council's Enhanced Occupational Adoption Leave Scheme Three, which provides for half pay on top of your statutory adoption pay (SAP) between weeks 7 and 18 of your paid adoption leave. You must return to work following paid or unpaid

adoption leave, otherwise you will have to repay the extra salary. You have two options as to how this pay is received. Please tick the appropriate box.

**OPTION ONE** – To receive the half pay as a lump sum on your return to work.

**OPTION TWO** – To receive half pay between weeks 7 and 18 of paid adoption leave with no balance due on your return to work.

*Note: If you fail to tick one of the options, the Council will pay the Option One arrangement.*

The Council will assume you will be returning to work after 52 weeks adoption leave. I will advise you when I acknowledge your request, of the notice you must give if you wish to return earlier. **[Now, sign declaration below]**

**5. Will you have more than 6 months but less than 12 months continuous local government service at the date of notification of a match? (If YES, please read this section. If NO, go to 6 below)**

You appear to qualify for the Council's Standard Adoption Leave Scheme. You will be entitled to 52 weeks leave and the Council will assume that you will be returning to work after this leave. The first 39 weeks is paid and the final 13 is unpaid. I will advise you when I acknowledge your request, of the notice you must give if you wish to return earlier. **[Now, sign declaration below]**

**6. Employee Declaration**

I wish to apply for adoption leave starting on the date at Section 1 above and confirm that:

I am the person who will have principle responsibility for the day to day care of the adopted child.

I have received a copy of Solihull MBC Adoption Scheme

**Your Signature:**

**Date:**