



Engage MAT

Adoption Procedure – support staff

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Model procedure guidance [delete once adopted]

Governing Boards and Trusts have the option of adopting this model procedure or developing their own. This model procedure includes any requirements of statute, any national and/or local conditions of service and identifies access to LA funding where this is available (maintained schools only). Any school/academy choosing not to adopt this model must ensure that any local procedure complies with the requirements of statute and any relevant national or local conditions of service. A local procedure would need to be the subject of full consultation with all the recognised trade unions before adoption.

With regard to this model, the school/academy can:-

- adopt it as their policy
- adapt it to be their policy (using the model as a basis but with changes being made), or
- ignore it (and develop or adopt an alternative policy).

Throughout the model procedure, reference is made to “Headteacher” but this should be changed on adoption where the individual school/academy leader holds the post of “Principal” (or other appropriate title). Similarly, where reference is made to “schools” this should be changed on adoption where any individual establishments within a Trust etc are known as “academies”.

Please note that 'school' in this document refers to any maintained school and 'academy' means any academy or free school. It is likely that an academy Trust will want to determine a procedure to be applied equally across any academies it is responsible for. Equally, any schools that are joined together under one governing Board should have one procedure covering all employees. However, where TUPE applies any contractual terms and conditions, which may affect this policy, should continue to apply to the group(s) of staff who have TUPE transferred.

Where there are options for the MAT to consider these will be written in blue text. Red text highlights where establishment specific information needs to be entered or existing text needs to be removed because it doesn't apply to the establishment adopting the policy. It is for the MAT to decide (using the appropriate role for this purpose, identified in the Trusts scheme of delegation) which option will be applicable within the MAT.

Where there are important points to share regarding considerations for strategy relating to the policy or guidance notes offered by Educator Solutions HR these will be shown in green text. These should be removed on adoption. Where there are important points regarding funding this will be shown in an orange box (applicable to schools only).

Academies Only: Throughout the document, references to the Board should be taken to refer to the entity that is responsible for exercising governance functions within the Trust. Depending on the Trust's Scheme of Delegation, some decisions may need to be taken by the overarching Board of Trustees, but some may be delegated to committees, local Governing Boards, the Chief Executive Officer or the Headteacher/Head of School.

Introduction

The purpose of this policy and procedure is to outline the adoption leave and pay provisions for support staff.

The policy below sets out the statutory adoption leave and pay provisions which all schools and academies must comply with. The policy also sets out the locally agreed enhanced occupational adoption provision. **Schools are expected to follow locally agreed provisions but academies may choose whether these locally agreed provisions form part of their local policy (other than for staff with TUPE protection).**

Depending on whether employees meet the applicable eligibility criteria, they may have entitlement under statutory or occupational pay and provisions.

Other school/academy policies may detail additional entitlements for the employee or employee's partner to maximise the time off they can have with their child. These additional entitlements include:

- flexible working
- parental leave
- shared parental leave

Equal Opportunities

The school expects employees to adhere to this policy in line with the school's obligations under equality legislation. Headteachers must ensure that all reasonable adjustments or supportive measures are considered to allow equality of access and opportunity regardless of age, gender, ethnicity, sexual orientation, disability, faith or religion, gender identity, pregnancy or marital status.

Scope

It is the responsibility of Headteachers to ensure that employees for whom they are responsible are made aware of the provisions of this policy and that they are applied in a consistent manner.

This policy also covers those employees who are local authority foster parents who have been approved as prospective adopters (foster-to-adopt scheme) and are notified that a child is to be placed with them.

1. Time off for adoption appointments

An employee who has been notified that a child is to be placed for adoption with them is entitled to take paid time off, during their working hours, to attend appointments up to the date of the placement of the child. For example, having contact with the child or meeting with the child's social worker or current carer. An employee is entitled to take time off on up to five occasions and appointments must have been made by, or at the request of, an adoption agency. The employee must provide a document showing that this is the case, giving details of the date and time of the appointment.

Where a couple are adopting jointly, only one of them is entitled to take paid time off, the other person can take unpaid time off. Please see the school's Paternity leave and pay scheme.

There are no notice requirements, but employees should give as much notice as possible which will help to arrange cover.

2. Entitlement

Leave: The primary adoptive parent 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.

Pay: Statutory adoption pay (SAP): There are two weekly rates of SMP.

- The higher rate is 9/10 of the employee's average weekly earnings and is payable for the first six weeks of the period for which SAP is due
- The lower rate is a set rate payable for the remaining 33 weeks of the adoption pay period or 9/10 of the employee's average weekly earnings where this is less than the SAP rate.

The current rate is available from HR. SAP is subject to pension, tax and NI contributions.

A period of 'additional' adoption leave i.e. a further 13 weeks leave is unpaid.

Payroll will calculate average weekly earnings but broadly they are an average of the gross earnings paid in the 8 weeks before the end of the matching week.

SAP is payable for 39 weeks and 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.

Occupational adoption pay (OAP):

The decision has been taken locally by the County Council following discussion in Schools Forum, to make OAP available to support staff in Norfolk schools. This decision does NOT automatically apply to support staff in academies or free schools. Trusts who do not follow this model policy will need to adopt their own version and communicate this with staff. Support staff in academies or free schools should not assume they have an entitlement, other than for TUPE transferred staff.

Options for Academy Trusts:

Option 1: Adopt the Educator Solutions model policy below which provides occupational adoption pay for support staff.

Option 2: Adapt the Educator Solutions model policy below to provide a different occupational adoption pay scheme for support staff.

Option 3: Decide not to offer occupational adoption pay to support staff with regard to the green book statement on occupational adoption pay.

All of the above options must be consulted with trade unions at local level.

If the employee **is intending** to return to work, OAP will be paid for 18 weeks. Payments will be calculated as follows:

- For the first six weeks of absence, the employee will receive OAP at 100% of contractual weekly pay.
- For the next 12 weeks, the employee will also receive half a week's contractual pay as OAP (in addition to any entitlement to SAP provided the two combined do not exceed full pay).
- This is followed by a 21 weeks at the SAP provided the eligibility criteria is fulfilled.
- The final 13 weeks of the adoption leave period will be unpaid.

As a qualifying condition for OAP, (irrespective of whether there have been any agreed changes in working hours) the employee will be required to return to local authority employment for a period of at least 12 weeks. If the employee does not return they will be asked to repay the 12 weeks half pay and 6 weeks at 100% of pay (minus SAP). However, in cases of involuntary termination, repayment of OAP will be considered on a case by case basis.

Arrangements to have OAP payments (at both 100% and 50% of contractual weekly earnings) paid over the 33-week SAP period or as a one off lump sum may be made

where this is mutually agreed between the current employer and the employee. Alternatively it is possible, if the employee wishes, to ask for the OAP payments to be held until their return to work.

OAP will be calculated on contractual weekly pay. In some circumstances it is possible that SAP might exceed normal contractual pay and in these circumstances no additional OAP will be paid as at least 100% of contractual pay has already been achieved.

If the employee qualifies for both OAP and SAP, they will be paid whatever amount is the greater for the first six weeks.

Funding

There are centrally held funds to support schools with costs relating to adoption. Academies and Free schools will need to fund this from their own budget.

Adopting from within the UK

3. Eligibility

Eligibility for adoption leave and statutory adoption pay (SAP) will be based on the date the employee is matched with a child. This must be confirmed by the 'matching certificate', which will be issued by the adoption agency.

Where a couple is adopting, they will be able to choose which of them will take adoption leave. The other member of an adopting couple will be eligible to take paternity leave and potentially shared parental leave, providing they meet the eligibility criteria for these. Where an individual adopts they will be the parent eligible for adoption leave.

Leave:

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

- be the child's adopter
- have notified the adoption agency that they are in agreement both with the child being placed with them and with the date of placement.

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

Pay:

Statutory adoption pay eligibility criteria: 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 that they are informed by the adoption agency that they have been matched with a child
- earn on average at least the lower earnings limit for National Insurance.

A further 13 weeks unpaid leave can be taken for the remaining period of adoption leave

Occupational adoption pay eligibility criteria

The occupational adoption scheme applies to employees regardless of the number of hours worked per week.

To qualify for OAP, the employee must

- have completed at least 1 years' continuous local government service when they are informed by the adoption agency that they have been matched with a child. Continuous service does not have to be with the current employer and can include other local authority employment.
- The employee must also intend to return to work following adoption leave to qualify for occupational adoption pay. (See paragraph 11 for further guidance).

If an employee has less than 1 years' continuous local government service when they are informed by the adoption agency that they have been matched with a child, then they will not qualify for OAP, but will still get SAP (where the eligibility criteria have been met).

4. Commencement of adoption leave

Employees are encouraged to informally notify their school that it is their intention to take adoption leave as soon as they are approved for adoption, although it is recognised that it is unlikely a date of commencement of leave will be known at this stage.

5. Notification

The matching certificate must be passed to the employer within 7 days of its issue at which time the adoptive parent must confirm that they intend to take adoption leave. This can be done by completing *Adoption leave and pay form – support staff (F208c)*. Wherever possible, the parent should also inform the employer at that time of the date on which they expect to commence their adoption leave, based on the anticipated date of placement. The earliest date on which an adoptive parent may begin their leave will be 14 days before the expected date of placement.

The adoptive parent must give at least 28 days notice of when they wish their adoption pay to start, unless this is not reasonably practicable. Where due notice cannot be given pay will begin on the date the child is placed for adoption.

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

The Headteacher must respond to the employee's notification of leave plans within 28 days of that 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.

Adopting from abroad

An employee who adopts a child from overseas can be eligible for adoption leave (AL) and pay if they meet the relevant criteria.

6. Eligibility

The employee will have fulfilled all of the following criteria to be eligible:

Leave

- received official notification from the relevant UK authority of their eligibility to adopt a child from abroad
- is the child's adopter or if jointly adopted be the person who has chosen to take the adoption leave
- have notified their Headteacher that they wish to take adoption leave

Pay

Statutory adoption pay

The employee will have fulfilled all of the following criteria to be eligible:

- worked for their current employer continuously for at least 26 weeks by the time the official notification is received or by the time adoption leave is due to begin, whichever is later
- earn on average at least the lower earnings limit for national insurance
- is the child's adopter, or if jointly adopting, the person who has chosen to take adoption leave

Occupational adoption pay

To qualify for OAP, the employee must:

- have completed at least 1 years' continuous local government service when they are informed by the adoption agency that they have been matched with a child. The employee must also intend to return to work following adoption leave to qualify for OAP.

If an employee has less than 1 years' continuous local government service when they are informed by The Adoption Agency that they have been matched with a child, then they will not qualify for OAP, but may get SAP (where the eligibility criteria have been met).

7. Commencement of adoption leave

The earliest date on which an adoptive parent may begin their leave will be 14 days before the expected date of placement or within 28 days of when the child arrives in the UK.

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

8. Notification

Employees adopting a child from overseas must give notice in three stages that they intend to take adoption leave.

First Stage

The employee must inform their Headteacher of the date on which they received Official Notification from the relevant UK authority.

Official Notification is written notification issued on or behalf of the relevant domestic authority that the authority is either prepared to issue a certificate to the overseas authority dealing with the adoption of the child that the adopters are classed as eligible or the notification has already been issued

Where 26 continuous weeks service has been completed they must give this information within 28 days of receiving the notification

If 26 weeks continuous service is not yet complete, once this is complete the employee then has 28 days to notify their current employer of the Official Notification

It is likely that on Official Notification the employee will know roughly the date the child is expected to enter the UK

Second Stage

In all cases the employee must give at least 28 days notice of the actual date they want to take the adoption leave (and statutory adoption pay if they qualify, and occupational adoption pay if it is available and they qualify. This notification can be given using *Adoption leave and pay form – support staff (F208c)*. If an employee wishes to change this date at least 21 days notice should be given.

Third Stage

Employees must then notify their Headteacher of the date the child has entered the UK. They must inform their Headteacher within 28 days of the child entering the UK.

If the child does not then enter the UK the employee should inform their Headteacher as soon as is reasonably practicable.

Provisions applicable to both UK and abroad adoptions

9. Keeping in touch days

Keeping In Touch (KIT) Days are a statutory entitlement where the individual 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. Both parties must be in agreement of any such work - the individual cannot be required to attend a KIT Day, nor is the employee entitled to request a KIT Day if there is no practicable reason for them to attend the workplace i.e. work activities, training, INSET day etc. 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 day's work.

Employees who attend a KIT day will be paid any OAP and SAP due that week. Contractual pay will count towards these payments¹. Employees will only be paid any contractual pay that is over and above the SAP/OAP amount for that week. *Keeping in touch (KIT) days claim form (F208b)* on HR InfoSpace can be used for making the claim.

10. Returning to work

An employee is expected to return to work at the end of the period of adoption leave on the date notified by the employer. 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

¹ KIT days in schools are funded by the central maternity budget, managed by the LA. Academies and Free schools must fund KIT days from their own budget.

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.

Where after starting a period of adoption leave, an employee is notified that placement of the child will not go ahead, or after placement the child dies or is returned to the adoption agency, 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.

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.

When returning to work at the end of the adoption leave the individual will come back to the job in which they were employed under their original contract of employment and on terms and conditions not less favourable than those which would have applied had they not been absent. However, in the event of this position being no longer available through reason of redundancy the individual will be entitled to be offered alternative employment where available in accordance with the terms and conditions of the School's Staffing Adjustment Procedure (and Redeployment Procedure where applicable). A model *Staffing Adjustment procedure* can be found on HR InfoSpace (P318 – schools and P318a – MATs).

The employee may wish to return to work part-time or adjust their working hours on their return from adoption leave. Although there is no automatic right to do this, they do have the right to request it. *Flexible working guidance (G204)* is on HR InfoSpace. Should they wish to return to work part-time or on altered hours this should be discussed with their Headteacher, using the Flexible working request procedure, who will consider the practicalities of doing so.

Headteachers will need to inform payroll when an employee's adoption leave ends, even if they are not returning to work straight away e.g. due to being on sick or annual leave. This can be done by email and will ensure the employee is paid correctly. **For customers whose payroll provider is Norfolk County Council this can be done by email and will ensure the employee is paid correctly:**

Schools: Hrschoolspayroll@norfolk.gov.uk

Academies: hrcceexternals@norfolk.gov.uk

Please include the date of return from adoption leave and if there are any changes e.g. changes to hours.

11. Resigning from work

Resignation before adoption leave

Approved by Trust Board December 2019

If the employee states before their adoption leave, that they will not be returning to work and gives their resignation date as their last day of service, then their contract of employment ends with effect from the day after that date. They will still be entitled to SAP provided they fulfil the eligibility criteria but they will not be entitled to any OAP payments.

If an employee does not give a resignation date an appropriate date should be agreed. This will normally be their last day of service or the last day of their 39-week adoption pay period. In the latter case, the employee will be entitled to receive all contractual benefits for the adoption pay period (except remuneration).

Resignation during adoption leave

If during a period of adoption leave an employee tenders their written resignation, their last date of service would be the date of their letter. As described above, the employee will be entitled to receive all contractual benefits up to their resignation (except remuneration).

An employee who has received the full OAP entitlement and subsequently resigns from their post will be required to repay 6 weeks at 10% of weekly contracted pay and 12 weeks half pay.

12. Contractual status

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

Excess travel

If an employee is receiving excess travel payments, please see the school's Excess mileage policy for further information on what will happen to these payments once they start adoption leave. A model *Excess Mileage policy (P304f)* is available on HR InfoSpace.

Salary sacrifice arrangements

Employees should be aware that if they are participating in a salary sacrifice arrangement e.g. for childcare vouchers, or thinking of doing so, payments for adoption pay may be affected due to reductions in national insurance contributions and income tax.

Childcare vouchers

Where the employee is in receipt of childcare vouchers via salary sacrifice they can either:

- suspend their childcare vouchers during adoption leave – the employee will need to contact their childcare voucher provider to inform them of this.
- continue to receive childcare vouchers during adoption leave providing their occupational adoption pay covers the cost of the vouchers – this is the default position.

The provision of childcare vouchers will be suspended if an employee's occupational adoption pay does not cover the cost of providing their childcare vouchers. Statutory Payments such as statutory adoption pay cannot be exchanged for childcare vouchers.

Annual leave (all year round staff)

Contractual annual leave entitlement, including Bank Holidays, continues to accrue throughout the adoption leave period. Annual leave may not be taken during adoption leave.

An employee going on adoption leave should be encouraged to take all the annual leave they have accrued before starting their adoption leave. The timing of this leave should be discussed with the employee as soon as possible, after they inform the school of the expected date of placement.

An employee who starts and finishes their adoption leave during the same leave year is entitled to take during that leave year all of their annual leave they would have had if they had been at work instead of on adoption leave.

An employee whose adoption leave crosses two leave years is entitled:

- in the first leave year to whatever leave they would have had, had they not been on adoption leave and,
- In the second leave year when they return to work they are entitled to their full annual leave entitlement.

Where an employee does not return to work after the placement and they have taken annual leave exceeding their pro-rata entitlement up to the point in the leave year when their employment ends, the cost should be recovered from the employee. Where this provision is applied generally to employees leaving and not just to those leaving after adoption leave, it is unlikely to amount to unlawful sex discrimination.

Sickness during adoption leave

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 School and Payroll as soon as possible and provide a medical certificate as they may be entitled to statutory sick pay.

Pensions

If the individual is a member of the Local Government Pension Scheme, contributions will be deducted on all OAP and SAP payments made to them. Pensionable Pay for calculating LGPS pensions during periods of paid adoption leave is assumed to be equal to average pay before the leave commenced. During unpaid adoption leave, the employee will have the option of making up the "lost" pension. **Customers whose payroll provider is Norfolk County Council - an option form will be sent to employees if they are going to be in a period of unpaid adoption leave.**

13. Adoption Support Leave (Support staff only)

(applicable to schools and academies following green book provisions)

In accordance with the National Conditions of Service for NJC for Local Government Services (Green Book), eligible support staff can take Adoption Support Leave. This provides for 5 days' paid leave (pro rata for part time employees) at contractual pay for nominated carers at or around the time of the placement of a child, or children.

In most cases such care and support would be provided by the partner of the primary parent and therefore their first week of statutory paternity pay will be 'topped up'. However, the role can otherwise be fulfilled by a relative or someone who has a caring relationship with the primary parent and/or child e.g. grandparent. Please see the school's Paternity leave and pay scheme for further information and how to apply for adoption support leave. *A model Paternity leave and pay scheme (P208e) can be found on HR InfoSpace.*

14. Data Protection

When managing an employee's adoption leave and pay, the school processes personal data collected in accordance with its data protection policy. Data collected from the point at which an employee informs the school that they plan to take adoption leave is held securely and accessed by, and disclosed to, individuals only for the purposes of managing their adoption leave and pay. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the school's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the school's disciplinary procedure.

15. Associated documents

- Adoption leave and pay form (AP1) – support staff (F208c)
- Keeping in touch (KIT) days claim form (F208b)
- Adoption support leave (support staff) form (F208p)
- Paternity leave and pay form – Adoption – support staff (F208n)

Appendix 1 – Table of changes

Date of change	Paragraphs affected	Summary of update
11/05/2018	14	New para added to take account of the General data protection regulations in force from 25 May 2018.
01/03/2017	All	New formatting due to launch of new HR website, HR InfoSpace – no change to content
01/06/2017	Para 12	Change to the payment of childcare vouchers during adoption leave.