



**Salisbury Plain**  
Academies

# ADOPTION LEAVE FOR SUPPORT STAFF FOR SALISBURY PLAIN ACADEMIES

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## **Introduction**

1. This scheme will set out the statutory minimum entitlement and then also the occupational entitlement that applies to Academy support staff which are broadly in line with the NJC terms and conditions of service for maternity leave.
2. Following the introduction of the Work and Families Act 2006, this policy sets out the rights and responsibilities of employees who are adopting a child and wish to take adoption leave, the help and support the Academy will give them and the law and conditions of service (NJC) relating to adoption entitlements. This document has been updated in accordance with existing legislation and new regulations in relation to adoption leave and pay as at 5 April 2015.
3. This model scheme sets out the eligibility, rights and responsibilities of employees who are adopting a child / children or are involved in a surrogacy situation and are entitled to a parental order.
4. Adoption leave and pay are available to:
  - Individuals who adopt;
  - One member of a couple where a couple adopts jointly (the couple must choose which partner takes adoption leave).
5. The partner of an individual who adopts, or the other member of a couple who are adopting jointly, may be entitled to paternity pay (subject to meeting qualifying criteria – please refer to paternity policy).
6. A partner means a person who lives with the adopter and the child in an enduring family relationship but is not an immediate relative. This includes males and females in a same sex relationship.

## **Scope**

### **Who is included in these arrangements?**

7. The guidance applies to all eligible support staff whether full time, part time or on a temporary contract in the Academy.

### **Who is excluded from these arrangements?**

8. The Agency Workers Regulations specifically excludes such agency workers from maternity, paternity or adoption leave pay scheme's run by the hirer.

9. Self-employed workers and consultants are also excluded from entitlements to maternity, paternity or adoption leave pay.
10. This policy will not apply to employees who do not meet the eligibility, qualifying and notification requirements. The following arrangements are also excluded from the scheme:
  - private adoption
  - special guardian or kinship carer
  - adopting a family member or stepchild
  - having a child with the help of a surrogate mother, where the intended parents are not eligible for a parental order

### **Statutory Adoption Leave Entitlement**

11. Eligible employees are entitled to take up to 26 weeks' ordinary adoption leave (OAL) followed immediately by up to 26 weeks' additional adoption leave (AAL), a total of up to 52 weeks leave.
12. To be eligible for adoption leave employees must:
  - be newly matched with a child for adoption by an approved adoption agency; or have received permission from the relevant UK authority for an adoption from overseas.
  - have notified the adoption agency that they agree that the child will be placed with them and have agreed a date for this placement.
  - give the correct notice and evidence for adoption leave as set out in this scheme;

If an employee is matched for adoption on or after 5 April 2015 then they may also be eligible if:

### 13. **Surrogacy**

- they are a parent of the expected child under the Human Fertilisation Embryology Act 2008, which deals with a pregnancy resulting from assisted reproduction; or
- they are the intended parent of a child in a surrogacy arrangement and expect to be entitled to and intend to apply for a parental order in respect of that child in accordance with the Human Fertilisation Embryology Act 2008; or

### 14. **Dual approved prospective adopter**

- they are a local authority foster parent who is a dual approved prospective adopter and has been notified of a child's placement in accordance with section 22c of the Children Act 1989, providing no adoption entitlement has previously been claimed for this child (or children).

15. There is no length of service requirement if an employee has been matched for adoption on or after 5 April 2015. If they were matched for adoption prior to this date employees should contact HR for further details.
16. In the case of a surrogacy if the baby is born early i.e. before 5 April 2015 then the intended parent needs 26 weeks service to qualify for adoption leave regardless of the expected due date.
17. Only one period of adoption leave is available irrespective of how many children are being placed for adoption as part of the same arrangement.
18. Employees may be eligible to opt in to the shared parental leave and pay policy if the eligibility criteria are met.

### **Adoption Leave Pay**

19. There are two types of Adoption pay:
  - Statutory Adoption Pay (SAP)
  - Occupational Adoption Pay (OAP)
20. The eligibility criteria for SAP and OAP are different and this means that where an employee qualifies for one type of pay they may not automatically qualify for the other.

### **Statutory Adoption Pay Scheme for support staff**

21. To be eligible for statutory adoption pay (SAP) an employee must:
  - Hold a contract of employment with the Academy and meet the eligibility criteria for statutory adoption leave;
  - Have at least 26 weeks' continuous service with an Academy prior to the start of the week in which:
    - they are notified of being matched with a child for adoption; or
    - by the time the employee receives official notification from a UK authority of the overseas adoption; or
    - in the case of surrogacy, the 15<sup>th</sup> week (the qualifying week) before the baby is due;
  - Produce documentary evidence of the adoption including details of the match date and the date of placement i.e. a matching certificate; and letter from the approved adoption agency;
  - Have notified the adoption agency that they agree that the child should be placed with them and that they agree with the date of placement;
  - Give the correct notice for adoption leave as set out under the section notification of adoption leave;

- Average weekly earnings of at least the lower earnings limit for NI contributions in the eight weeks ending with the week in which the adoptive parent is notified as being matched with the child(ren);
  - That where a couple jointly adopt, the other member of the couple has not elected to receive SAP;
  - That he or she has notified the Academy of the date they want SAP to start at least 28 days before this date.
22. SAP average weekly earnings calculations will be recalculated to take into account any pay rises (including increments, annual pay awards or job regrading) which occur during the adoption leave period (including the unpaid adoption leave period). Any increase will be back dated to apply from the start of paid adoption leave.
  23. SAP is payable for up to 39 weeks. The rates are fixed by law, are subject to tax and National Insurance deductions and are paid at either 90% of an employee's average earnings or the standard rate, whichever is lesser.
  24. Where an employee does not qualify for SAP they will be issued with an SAP1 form by the Payroll Administration team along with notification as to why they don't qualify for SAP. Information on eligibility to financial support such as child benefit and tax credits can be found at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).
  25. For employees who meet the eligibility criteria for SAP and have completed less than 1 year's continuous service prior to the start of the week in which they are notified of being matched with a child for adoption or; in the case of surrogacy, from the date of the child's birth, their entitlement will be as follows:
    - The higher rate of SAP, which is paid for the first 6 weeks of the adoption pay period and is based on 9/10ths of normal pay
    - The lower rate of SAP, which is paid for the next 33 weeks and is based on the flat rate of SAP per week or 90% of average earnings whichever is lower.
  26. These payments are made via payroll/payroll provider on normal pay dates.

### **The Occupational Adoption Pay Scheme for Support Staff**

27. Entitlement to occupational adoption pay for support staff is based on maternity pay entitlement set out in the NJC terms and conditions of service and depends on the employee's length of continuous employment.
28. Employees who meet the eligibility criteria for SAP and have at least 1 year's continuous local government service prior to the start of the week in which they are notified of being matched with a child for adoption or; in the case of surrogacy, from the date of the child's birth, will be entitled to:

<b>First 6 weeks</b>	Weeks 1-6	90% of pay (offset against SAP payments)
<b>Next 12 weeks</b>	Weeks 7-18	SAP plus half pay (if entitled)
<b>Next 21 weeks</b>	Weeks 19-39	SAP
<b>Next 13 weeks</b>	Weeks 40-52	Unpaid leave

### **Eligibility for Half Pay**

29. In order to qualify for 12 weeks half pay, employees must return to employment within the Academy for at least 3 months. This period may be varied by the employer on a good cause being shown. Any parental leave or unpaid leave taken within this period will not be counted towards the 3 months. Employees will need to sign an agreement stating that a failure to return to employment within the Academy will result in a recovery of the half pay.
30. The 3 month period starts from the date the employee returns to work or the date during the Academy holiday on which the employee is due to return to work.
31. The options for payment of half pay are either to be paid after the employee returns from adoption leave or, during adoption leave which commences the 7<sup>th</sup> week of adoption leave and continues for a 12-week period.

### **Adoption Appointments**

32. Employees who are adopting a child alone are entitled to take paid time off to attend up to five adoption appointments.
33. If the employee is part of a couple jointly adopting a child, then only one of them can elect to take paid time off to attend up to five adoption appointments. The other can elect to take unpaid time off to attend up to two adoption appointments under the Maternity Support and Paternity Leave Policy.
34. The entitlement to paid time off is for up to 6.5 hours for each appointment, on five occasions. The purpose of the time off must be to attend an appointment arranged or at the request of the adoption agency who notified the employee of the placement and must be in relation to the proposed adoption.
35. Employees should be aware that they will not be entitled to take ordinary paternity leave and maternity support leave if they have taken paid leave to attend adoption appointments. This means that they may wish to allocate the paid entitlement to attend adoption appointments under this policy to the primary adopter and therefore the secondary adopter will then retain the option to take ordinary paternity leave and maternity support leave if they wish.
36. Eligible employees in a surrogacy arrangement may be entitled to unpaid leave to accompany the mother to antenatal appointments – please see the Maternity Support and Paternity Leave Policy for further information.
37. Employees who are adopting more than one child in one adoption arrangement will only be entitled to one entitlement to leave i.e. the same as if the employee

were adopting one child. Time off for adoption appointments must be taken before the placement date of the first child under the arrangement.

38. To make a request for time off, employees should complete and sign a declaration, to be submitted alongside documentary evidence – proof of appointments i.e. letter or email from the adoption agency - This declaration must be provided on the first occasion on which you request time off to attend an adoption appointment.

Employees should use the form 'Declaration form; adoption appointments'.

### **Notification of Adoption Leave**

39. The employee should inform their Principal/ line manager of their intention to take adoption leave as soon as they are approved for adoption and keep them informed to allow Principal/ line manager time to plan for the intended period of leave. To be eligible employees will need to give notice in line with the timescales set out below. Notice should include details of:

- How much adoption leave they wish to take;
- When the child is expected to be placed with them and;
- When they want their adoption leave to start.
- Documentary evidence of the adoption as set out below.

Employees should use the form AL1 "Notification of the Commencement of Adoption Leave", which includes a declaration confirming they will repay the 12 weeks' half pay if they fail to return to work for at least 3 months.

40. In the case of adoption and dual approved prospective adoption employees must:

- Give notice in writing of their intention to take leave within 7 days of being notified by the adoption agency that they have been matched with a child for adoption; or being notified by their local authority that a child will be placed with them in accordance with the section 22c of the Children's Act 1989, unless this is not reasonably practicable.

41. In the case of overseas adoption employees must:

- Give notice in writing of the date of the official notification and the estimated date that the child will arrive in the UK. This must be provided within 28 days of them receiving the official notification.
- Give notice in writing of the actual date the child arrives in the UK. This must be provided within 28 days of this date.

42. In the case of a surrogacy and parental order parents, employees must:

- Give notice in writing of their intention and entitlement to take leave by the 15<sup>th</sup> week before the expected week of birth. This notice must include the baby's expected week of birth.
- Give notice in writing of the actual date of the child's birth as soon as reasonably practicable after birth, providing evidence i.e. birth certificate.

43. In all cases, in addition to the above requirements, employees must:
- Inform their Principal/ line manager in writing at least 28 days before they wish payment of SAP to start or as soon as is reasonably practicable.
  - Provide documentary evidence of their entitlement to SAP / Adoption Leave i.e. a 'matching certificate'<sup>1</sup> from the adoption agency; or a copy of confirmation from the local authority that a child will be placed with them in accordance with section 22c of the Children's Act 1989; or the official UK authority notification (overseas)<sup>2</sup> and proof of the date the child arrived in the UK e.g. plane ticket; or statutory declaration of parental order, as below.
  - If an employee is applying for a parental order they are required to give their Principal/ line manager a statutory declaration (written statement) confirming that, as part of a couple, they and the other intended parent has applied for or will apply for a parental order in the 6 months after the child's birth. This must be signed in the presence of a legal professional.
  - Employees must also provide the expected date of placement, i.e. the date the child is expected to start living with them and the date they were told by the adoption agency/ local authority that they had been matched with a child e.g. official letter from adoption agency/local authority.
44. Within 28 days of submitting [form AL1](#) employees will receive written notification of the end date of their adoption leave period. If they qualify for ordinary and additional adoption leave, this will be at the end of the 52 week period.

### **Starting Adoption Leave**

45. An employee can decide to take their adoption leave;
- from the date of the child's placement (whether this is earlier or later than expected); or
  - from a fixed date which can be up to 14 days before the expected date of placement.
  - in a surrogacy arrangement, from the date of the child's birth or the day after.
46. Where the child is adopted from overseas, leave cannot begin before the child enters Great Britain and must start within 28 days after the date of entry.

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<sup>1</sup> The "matching certificate" will give the expected date of placement, i.e. the date that the child is expected to start living with the adopter and the date the adopter was told by the adoption agency that they'd been matched with a child

<sup>2</sup> The "official Notification" is the permission from a UK authority for an adoption from abroad. This is provided by or on behalf of the relevant British authority (i.e. the authority that is preparing to issue a certificate to the relevant overseas authority in connection with the adoption - or has already done so).

47. In a surrogacy arrangement where the surrogate mother is based overseas or when the child is born overseas leave can be taken from the date of the child's birth.
48. Dual prospective adopters who are eligible can take leave from up to 2 weeks before the child is placed in accordance with section 22c of the Child Act 1989.
49. Adoption leave can start any day of the week. It starts on the day the employee specifies in their notice. Where an employee has chosen to start leave on the date of placement they must inform their manager as soon as is reasonably practicable.
50. If the child's placement ends during adoption leave, leave and payment of any SAP due will normally finish 8 weeks after the end of the week the placement ended or at the end of the leave period if that is sooner. An employee can return earlier than this provided they give the required notice (please refer to section 4 of this guidance).
51. If the child's placement is delayed after the employee has begun adoption leave, they cannot stop leave and start it again at a later date so employees should ensure the placement will be going ahead on the date agreed before they start their leave.

### **Changing the Start Date of Adoption Leave**

52. The employee can change their mind about when they would like their adoption leave to commence provided they give at least 28 days' notice of change unless this is not reasonably practicable; in this instance they must give as much notice as possible.

### **Working During Adoption Leave (KIT Days)**

53. Employees are able to work during adoption leave. Such days are 'keeping in touch days' (KIT days). They can be worked without bringing an end to the adoption leave or losing SAP. There is an entitlement of 10 KIT days for individuals who are on adoption leave. If a part day is worked this will count as one **complete** KIT day against the 10 day allowance. When a KIT day is worked (either fully or partly) it counts towards a whole day.
54. KIT days must be agreed in principle with the employee and the Principal, as the Academy is responsible for payment of KIT days. KIT days are an optional arrangement on **both sides**. The Principal does not have to offer these days and the employee is not obliged to accept them. Before a KIT day is worked the employee must discuss with their Principal the arrangements and basis on which the KIT day would be worked.
55. Employees will be paid for the actual hours worked on the KIT day at their standard hourly rate. Working on a KIT day should not result in the employee receiving a weekly payment that is lower than the weekly rate of SAP to which

they would have been entitled. SAP will be offset against KIT day payments during the period the employees are in receipt of SAP.

56. Employees are protected against any detrimental treatment for refusing KIT days. Statutory pay can be offset against the payment of a KIT day and therefore employees may wish to consider if they want to take a KIT day whilst they are in receipt of statutory pay.
57. Employees who work over the allowance of 10 KIT days (this includes part days counted as whole days) and are in receipt of SAP will lose SAP for the whole week in which they worked the additional day(s).
58. Adoption Leave will **not** be extended due to KIT days being agreed and taken.
59. An 'Adoption KIT day form' should be completed and sent to the Education HR Payroll and Administration team or your own payroll provider where KIT day(s) are worked.

### **Contact with the Academy during Adoption Leave**

60. Principals are entitled to make reasonable contact with employees during their adoption leave to discuss issues which could include the return to work or if required flexible working arrangements. Such contact does not count as a KIT day and there will be no impact on adoption leave or pay if contact is made during adoption leave. The employee must be informed of any proposed changes which might affect their substantive post, such as organisational changes. If there are any re-organisation or redundancy procedures instigated etc., whilst the employee is on adoption leave, they must be consulted with in line with the relevant HR procedure.

### **Returning from Adoption Leave**

61. Employees who intend to return to work at the end of their full adoption leave entitlement will not have to give any further notification. It will be assumed that they will return to work on the first available working day after the last date of their adoption leave.
62. Employees who wish to return to work before the end of their adoption leave period must give 21 days' notice to their Principal of the date they intend to return.
63. Where an early return date has already been agreed and the employee wishes to change this date again a further period of 21 days' notice must be given.
64. Failure to give the correct notice of an early return may result in the employee's return being postponed for the period of the notice required, or until the end of their adoption leave entitlement, whichever is sooner. If the employee returns to work early, the payment of adoption pay will cease on their return.
65. If an employee is unable to return to work at the end of their adoption leave due to sickness, normal sickness procedures will apply.

## **Ending adoption leave in other circumstances**

66. Adoption leave may come to an end in the following circumstances:
- If the child's placement ends during adoption leave.
  - Where a dual prospective adopter placement by a local authority under section 22c of the Children Act 1989 does not proceed to a formal adoption.
  - In the case of a surrogacy arrangement where the intended parents' application for a Parental Order is refused by the court

If this should happen then leave and payment of any SAP due will normally finish 8 weeks after the end of the week the placement ended or at the end of the leave period if that is sooner.

67. Adoption leave and pay will end where an adopter has taken 52 weeks of adoption leave and/or 39 weeks of SAP or where adoption leave and pay has been curtailed to opt into shared parental leave and statutory shared parental pay. See [Shared Parental Leave Policy](#) for further guidance

## **Contractual Rights during Adoption Leave**

68. Subject to certain exceptions (e.g. redundancy) employees have the right to return to the job in which they were employed under the original contract of employment and on terms and conditions not less favourable than those which would have applied if they had not been absent.
69. The contract of employment continues during adoption leave. The terms and conditions relating to notice periods, redundancy rights and disciplinary and grievance procedures continue to apply.
70. Where an employee qualifies for Statutory Adoption Leave, their contractual benefits, with the exception of terms relating to remuneration (wages and salary), are preserved during ordinary and additional adoption leave. Where child care vouchers are paid as part of a salary sacrifice scheme, these will continued to be provided during statutory adoption pay period and any period of no pay.

## **Accrual of Statutory Annual Leave and bank holidays during Adoption Leave**

71. An employee is allowed to take their full annual leave entitlement before adoption leave commences provided that:
- She intends to return to work.
  - She is aware that if she does not return to work, she will have to repay any leave she was not entitled to take.
  - The leave is operationally convenient and agreed by the principal/ line manager.
  - If she subsequently decides not to return to work then the date used to calculate leave entitlement is her last day of employment.

72. Employees will continue to accrue annual leave entitlements during adoption leave. However, employees should be encouraged to take their annual leave entitlement prior to commencing their adoption leave, where their leave year ends during adoption leave. Unless operational requirements or exceptional circumstances e.g. sickness absence, prevent the employee from taking annual leave, any untaken annual leave can only be carried forward to the next leave period in line with the arrangements for all other employees, (i.e. a maximum of 5 days).
73. If an employee reduces their hours on their return to work their annual leave entitlement will be adjusted accordingly. This will be calculated from the date that the reduced hours commence.
74. If an employee resigns during adoption leave and has not taken her full leave entitlement, she will be entitled to pay in lieu of untaken leave. Payment will only be made in lieu of leave entitlement in the current leave year on a pro-rata basis to the last day of employment. If leave has been taken in excess of the contractual entitlement a repayment of the excess will be required.

#### **Employees working term time only**

75. Employees working on term time only contracts are required to take their annual leave during periods of Academy closure. The annual leave year for support staff is the anniversary of their start date.
76. Academy's should calculate how much annual leave entitlement i.e. Academy holidays (closures) in the current annual leave year, the employee has had prior to adoption leave commencing and assess whether any additional annual leave is owed due to the accrual of leave during the rest of the current leave year on adoption leave.
77. Where adoption leave crosses over from one annual leave year to another, Academy's should again ensure that any accrued annual leave on adoption leave in that leave year is offset against periods of Academy closure on return from adoption leave.
78. If there are insufficient Academy closures to accommodate outstanding annual leave the employee should either be allowed to take the leave during term time or carry leave forward in to the next leave year.

#### **Bank holidays**

79. During ordinary and additional adoption leave, employees will accrue a leave entitlement for any bank holidays that fall in this period. Any bank holiday leave accrued will be pro rata to contracted hours. This entitlement will not be lost if the employee's leave year ends during adoption leave but the time off should be taken at the end of the adoption leave period. Where an employee resigns during adoption leave please see above in relation to pay in lieu of untaken leave.

#### **Pensions information for adoption leave for support staff**

80. Employees who are members of the Local Government Pension Scheme (LGPS) will continue to pay pension contributions during paid adoption leave. Pension

contributions during a period of unpaid adoption leave will not be paid unless employees elect to pay these in the form of an Additional Pension Contribution (APC). Employees must confirm their decision whether to pay contributions via an APC for this period on the Notification of start of adoption leave form (AL1).

81. If employees wish to pay an APC and elect to do so within 30 days of returning to work, they will fund 1/3 and the Academy as the employer will fund the other 2/3 of the cost. If employees do not elect to pay an APC within 30 days of returning to work, they will solely be responsible for funding the pension contribution cost.
82. The payroll administration team will calculate the employee's additional pension contribution and confirm this with them. The additional contribution will be deducted from their pay once they return to work over a period of time, or as a lump sum payment. A rough estimate of the costs can be calculated using the LGPS 2014 online calculator which can be found on the LGPS website under additional pension contributions.
83. If employees do not elect to pay an APC, they will not pay pension contributions on the period of unpaid maternity leave and this period will not count towards their pensionable service

#### **Adoption Leave and Unfair Dismissal**

84. All employees are protected against unfair dismissal for reasons related to taking adoption leave. Academies are advised to seek HR advice before taking any action to dismiss an employee who is on adoption leave

#### **Employees who choose not to return**

85. Employees who decide not to return to work should resign in writing, giving the notice required by their contract of employment.

#### **Right to Request Flexible Working**

86. Employees who meet the qualifying conditions have a right to make requires in line with the Right to request flexible working policy.

#### **Additional unpaid leave**

87. Additional unpaid leave may be available to employees under the provisions of the parental leave policy.

## Frequently asked Questions

### 88. **Who can take adoption leave?**

The scheme is open to one member of a couple where a couple adopt jointly. The couple may choose which partner takes adoption leave and the other partner may be entitled to take maternity paternity leave and pay. An employee must be newly matched for adoption and have at least 26 weeks continuous service with Academy's or academies in the local authority area. The scheme does not apply where a step-parent is adopting a partner's existing children.

### 89. **Can an employee take adoption leave if they are adopting a child from overseas?**

Yes, they can take adoption leave in these circumstances as long as they meet the additional qualifying conditions and notification requirements of the adoption scheme which apply in the case of those adopting a child from overseas.

### 90. **What can an employee do if they are not eligible for Statutory Adoption Pay?**

HR and payroll admin or your alternative payroll provider will issue them with an SP1 form which will advise them why they are not eligible for SAP. Employees can contact their adoption agency to see if they can get any further help. They might also want to check their eligibility to child benefit and tax credits. For further information go to HM revenue and customs tax credits website.

### **Related Information for support staff**

- Paternity Leave policy
- Maternity Leave Scheme - Support Staff
- Parental Leave Policy
- Right to Request Flexible Working Policy
- Leave of Absence Policy