



The Shropshire Gateway Educational Trust

Adoption and Surrogacy Adoption Scheme for School Based Staff

This Policy/Procedure has been agreed by the following professional associations and Trade Unions representing Teachers, Headteachers and Support Staff:

- National Education Union
- National Association of Schoolmasters Union of Women Teachers
- National Association of Headteachers
- Association of School and College Leaders
- Unison
- GMB

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Adoption and Surrogacy Adoption Scheme for School Based Staff

1. Introduction

The Trust is fully committed to helping working parents balance the needs of work and family life, and appreciates the importance of providing choice for parents in how they arrange parental care during the first year of a child's life or following their adoption.

Eligible employees have the right to take Statutory Adoption Leave (SAL) on the adoption of children. (For the purpose of this scheme, where the term relating to 'Adoption' is referred, this will also apply to 'Surrogacy Adoption'). This may be for one child, siblings of the same pregnancy who will be placed under the same matching certificate or an unrelated child under a separate matching certificate.

Alongside Statutory Adoption Pay (SAP) the employee will also receive contractual adoption pay (this is to be checked with the employer's payroll provider to confirm what is paid, but the payment will fall inside the same adoption pay period).

2. Roles and Responsibilities

The employee has responsibility for notifying the Headteacher of their intention to take Adoption Leave (AL) within the timescales outlined. The Headteacher has responsibility to notify Employment Services (or their payroll provider) to ensure accurate payment of salary. Throughout this scheme, it implies that the Headteacher will be the Line Manager, however this is not always the case and can sometimes be another senior member of staff. Reference to Headteacher throughout this scheme includes the Executive Headteacher of an Academy Trust.

3. Scope

There is no contractual entitlement to adoption leave or pay under the Burgundy book for schoolteachers or under the Green book for school support staff. However, an Adoption Scheme has been approved for all Shropshire Gateway Educational Trust employees.

4. Legislation

The right to Adoption Leave is a statutory right, introduced by the Employment Rights Act 1996. The Paternity and Adoption Leave Regulations 1999, the Parental Leave (Amendment) Regulations 2002 and 2008. Shared Parental Leave (SPL) arrangements are covered in the Children and Families Act 2014.

5. Glossary

AAL – Additional Adoption Leave
EDP – Expected Date of Placement
OAL – Ordinary Adoption Leave
SAL – Statutory Adoption Leave
SAP – Statutory Adoption Pay
SPL – Statutory Paternity Leave

6. Eligibility

The adoption scheme applies to all Trust employees who continue to be employed until the child becomes available for placement. (For entitlement to pay see Appendix A)

The adoption scheme is not available in circumstances where a child is not newly matched for adoption for example when a stepparent is adopting a partner's child.

Qualifying employees who have been matched with a child may take up to 52 weeks adoption leave, and may be entitled to 39 weeks of statutory adoption pay. If a couple jointly adopt a child, one may take adoption leave and the other parent may be able to take paternity leave or shared parental leave (irrespective whether they are employed by the same or different employer).

7. Additional Adoptions within 52 weeks of the first adoption commencing

Should the employee notify the employer that they intend to adopt another child and have a 2nd matching certificate (this will not be of the same pregnancy to the first matching certificate but it can be a sibling to the first child or non-related child). The SAL for the first placement will cease and will be superseded by the second placement and the 52 weeks leave will commence again from the date the second child is matched with the employee.

If the employee is employed at the qualifying period for SAP, they will receive 39 weeks SAP for the second placement. (A total of 2 separate payments of SAP will be paid)

However, it will be the discretion of the employer as to whether the employee will receive contractual adoption pay for the second placement.

8. Notification Requirements

The employee must provide formal notification of their request for adoption leave by completing the 'Adoption Leave Request Form. They must inform the Headteacher within 28 days of being advised by an Adoption Agency that a child is to be made available for placement. The earliest adoptive leave and pay can commence is up to 14 days before the matching date, this being the date the child starts living with the employee (UK adoptions), or when the child arrives in the UK or within 28 days of this date (overseas adoptions), or the day the child's born or the day after (if employee used a surrogate to have a child)

Employees who have received confirmation of their matching date and intends to take adoption leave must notify their Headteacher or line manager of their Expected Date of Placement (EDP) and the date they intend to start their adoption leave. This might be the same as the Actual Date of Placement (ADP) or may be different. It is the date the child is placed with the adopter.

In addition to the Adoption leave request form a matching certificate should be provided as documentary evidence, which states the Expected Date of Placement (EDP).

9. Right to Time off from Work Pre-Placement

An employee who requests adoption leave is entitled to paid time off work to attend 5 formal adoption appointments with the Adoption Agency once approval for adoption has been granted. Apart from the first appointment, employees must produce evidence of appointments if requested to do so by their Headteacher or line manager.

Employees should also endeavour to give their Headteacher or line manager as much notice as possible of adoption appointments and, wherever possible, try to arrange them as near to the start or end of the working day as possible.

The partner who elects not to take adoption leave may be entitled to time off under the Trusts Managing Attendance Policy (Special Leave).

10. Right to Return to Work

It is assumed that the employee will return after 52 weeks absence unless the employee has previously advised the Headteacher or line manager.

- If an employee wishes to return to work earlier than expected, they must provide 8 weeks written notice of the date of the early return. If they do not give 8 weeks' notice, the Headteacher or line manager may postpone their return for up to 8 weeks, provided this does not prolong their return date beyond the original return date. The Headteacher or line manager should notify Employment Services or their payroll provider of the return to work.
- If the employee does not wish to return to work following adoption leave, a letter of resignation giving the correct contractual notice should be submitted to the Headteacher or line manager. Any Keeping in Touch (KIT) days worked will be paid prior to the employee leaving (See section 17).

11. Sickness during and after Adoption Leave

Adoption leave is not treated as sick leave and will not be taken into account for calculating entitlements to sick leave.

If the employee is sick at any time during their adoption leave, it is classed as adoption leave rather than sickness absence.

If the employee is medically unfit on the day they are due to return from adoption leave, they must inform their Headteacher or line manager. The adoption return date will not change but the employee's absence will be considered as sick leave. The normal sickness procedures will then apply and the employee will receive payments in accordance with the Trust's Managing Attendance Policy and Procedure.

If an employee is absent due to long term sickness after returning from adoption leave, an Occupational Health Service (OHS) referral should be made, in accordance with the Managing Attendance Policy & Procedure.

12. Placements not leading to Permanence

In the event that a child is placed with an employee for adoption but subsequently the child leaves the employee's care, the employee's adoption leave ends eight

weeks from the end of the week in which, either a death may have occurred, or the child was returned to the agency. For these purposes, a 'week' is the period of seven consecutive days beginning with Sunday as the start of the working week.

13. Subsequent Obligations on Employees

Category one (See Appendix A) employees are required to return to duty for a period of at least 3 months full time, or part time equivalent (inclusive of School Holidays), as a qualifying condition for the entitlement to the Adoption Scheme payment during weeks 7 – 18 described in the table.

Category one employees can receive the entitlement to the Adoption Scheme payment during weeks 7 – 18 described in the table as a lump sum when they return to work or paid monthly during their adoption leave period. Employees are required to notify HR Transaction Team of how they would like this payment to be made prior to the commencement of their Adoption Leave by completing the appropriate section on the application form.

14. Paternity Leave (this leave is available to the partner who is not exercising the right to Adoption leave.)

There is statutory entitlement to 2 weeks' paternity leave, which can be taken within 56 days of the placement of the child; these 2 weeks are paid at the rate of Statutory Paternity Pay. For current rates please refer to: <https://www.gov.uk/guidance/rates-and-thresholds-for-employers-2019-to-2020#statutory-maternity-paternity-adoption-and-shared-parental-pay>

It should be noted this amount is taxable. Statutory paternity leave can only be taking in full weeks blocks.

The following requirements are built into the statutory provisions:

- To qualify for Paternity leave an employee must have been employed by the same employer for at least 26 weeks continuously, ending with the week in which the adopter is notified of having been matched with a child.
- To take paternity leave the employee must notify the employer of their intention to take paternity leave within 7 days of the date on which the adopter is notified of being matched with a child; and
- Be taking the time off either to support the adopter or to care for the newly placed child - they cannot have the leave for any other purpose.

15. Adoption Support Leave (this leave is available to the partner who is not exercising the right to adoption leave.)

Under the Adoption Scheme there is provision for one-week adoption support leave to be granted, which is paid at an employee's normal rate of pay. Adoption support leave in these circumstances is granted to the spouse or adoption partner.

NB. These provisions allow for one-week adoption support leave and one-week statutory paternity leave or two weeks statutory paternity leave to be taken. There is

no provision to take 3 weeks leave.

16. Accrual of Annual Leave

For school support staff working a full working year, annual leave will continue to accrue during paid and unpaid adoption leave. If they are entitled to both Ordinary Adoption Leave (OAL) and Additional Adoption Leave (AAL) there is a possibility that there will be insufficient time available for them to take the annual leave entitlement within the same leave year. Annual leave can therefore be carried over into the next leave year in order to manage the situation. However, staff should be encouraged to take all pro rata leave entitlement up to the time their OAL starts.

Whilst teachers and support staff working term time only do not have a 'contractual' entitlement to paid annual leave, they do have a 'statutory' entitlement under the Working Time Regulations (WTR), which is 28 days (5.6 weeks).

This is not an additional entitlement to annual leave on top of the current school closure arrangements.

The 28 days 'statutory' annual leave entitlement should be taken at a time outside of the adoption leave period. This should be either before or after the adoption period during school closure periods.

As there are 66 days (13.2 weeks) during school closure periods within the annual leave year which the 'statutory' annual leave entitlement can be taken (see chart below) there will be few occasions when there will be insufficient school closures to accommodate the employee's leave in periods of school closure before or after adoption leave.

If there are insufficient school closures within that leave year to accommodate the employee's leave on their return from adoption leave they will be allowed to take the leave in the current leave year i.e. in school closure or in term time.

Employees cannot obtain payment in lieu of untaken annual leave instead of taking leave during the leave year (except when they are not returning to their job following their adoption leave).

Annual leave entitlement will be assessed by HR once the adoption period is known and the employee will be notified in writing.

17. Keeping in Touch (KIT) Days

An employee can work up to 10 days during their adoption leave without bringing their adoption leave to an end or the loss of SAP. Working for part of a day will count as one day. Working for any more than the 10 days will result in the employee losing their SAP for any week in which they do any further work.

Work is defined as any work done under the contract of employment and may include training or any activity undertaken for the purpose of keeping in touch with the school.

Any such work is by arrangement with the Headteacher or line manager who will keep a record of the number of days work undertaken during the adoption leave. The Headteacher or line manager cannot insist on the employee undertaking any such work and likewise the employee cannot insist on being given any work to do.

An employee will normally be reimbursed for KIT days. The rate of pay will be their normal rate of pay calculated in accordance with the formula in the Trust pay policy.

18. The Right to Work Flexibly

There is a statutory right to request Flexible Working, which allows eligible employees to request a variation in their contract so that they can work more flexibly. Further guidance is available in the Trust Flexible Working Policy.

19. Childcare Vouchers and Child Care Funding

This is a salary sacrifice scheme, enabling the employee to 'sacrifice' their salary in exchange for childcare vouchers. The employee does not pay tax or national insurance on the number of childcare vouchers they receive. The Government closed the Childcare Voucher scheme to new entrants from 4th October 2018, and employees are only eligible to continue as long as they remain with the same employer. Therefore, anyone not already registered with a Childcare Voucher scheme as at 4th October 2018 will need to access the Government's new form of funding support for working parents called, Tax Free Childcare (TFC). Employers have no role in the administration of TFC and employees apply directly for this via gov.uk website; www.gov.uk/tax-free-childcare

20. Union Membership

Employees paying union membership via payroll deductions can continue to do so, as long as there is sufficient salary to cover the monthly subscription the monthly payment will continue to be deducted. The subscription cannot be deducted from a statutory payment. Employees are advised to contact their Union on this matter.

21. Pension

Teachers

For members of the Teachers' Pension Scheme, contributions continue to be payable on any occupational and/or statutory adoption pay which is paid. Although the contributions may be deducted on reduced levels of pay, service for pension purposes continues to accrue during this period as though the employee was still working their normal hours.

Any period of unpaid adoption leave will count as an absence from pensionable employment and will be reflected in the service record held by Teachers Pensions as days excluded from service. For further information teachers should contact Teachers Pensions direct on www.teacherspensions.co.uk

Support Staff

Adoption pay will continue to attract Local Government Pension contributions (LGPS) on any occupational pay or Statutory Adoption Pay. The contributions will be deducted at reduced levels due to the decrease in wages.

The employee's length of service, for pension purposes, will continue to accrue as though they were still working.

Employees may wish to elect to pay pension contributions to cover any period of unpaid adoption leave to cover the period. They must ensure that they exercise this right any time up to 30 days after they return to work.

For further information on LGPS, please contact the LGPS Pensions Team by email; penisons@shropshire.gov.uk

22. Associated Policies

Managing Attendance Policy – Sickness Absence
Managing Attendance Policy – Special Leave
Paternity Leave Scheme for School Based Staff
Shared Parental Leave Scheme for School Based Staff
Parental Leave Scheme for School Based Staff
Flexible Working Policy

23. Monitor & Review

The Trust will review this scheme on an annual/bi-annual basis.

Appendices

Appendix A: Adoption Leave Entitlement & Adoption Leave Pay Entitlement
Appendix B: Adoption Leave Intension Form
Appendix C: Frequently Asked Questions (FAQ)

Appendix A

Adoption Leave Entitlement

<p><u>Category One Employees</u></p> <p>Employees who have at least one year's continuous service with the Trust.</p>	<ul style="list-style-type: none">• 26 weeks Ordinary Adoption Leave (OAL)• An additional 26 weeks leave of absence of Adoption Leave (AAL) running directly from the end of OAL.• An additional period of unpaid Parental Leave. This can be in blocks or multiples of one week (Total of 4 weeks per year).
<p><u>Category Two Employees</u></p> <p>Employees who have been working for the Trust for at least 26 weeks by the Matching Date but have less than one year's continuous service with the academy or Trust.</p>	<ul style="list-style-type: none">• 26 weeks Ordinary Adoption Leave (OAL)• An additional 26 weeks leave of absence of Adoption Leave (AAL) running directly form the end of OAL.• An additional period of unpaid Parental Leave. This can be in blocks or multiples of one week. (Total of 4 weeks per year).
<p><u>Category Three Employees</u></p> <p>Employees who have not been working for the Trust for at least 26 weeks by the Matching Date.</p>	<ul style="list-style-type: none">• 26 weeks Ordinary Adoption Leave (OAL)• An additional 26 weeks leave of absence of Adoption Leave (AAL) running directly from the end of OAL.

Adoption Leave Pay Entitlement

For all employees who comply with the above condition, entitlement to this Adoption Scheme is dependant on service. There is also set criteria for Statutory Adoption Pay some of this is paid and unpaid. Please refer to the Adoption Pay Entitlement table below.

<p><u>Category One Employees</u></p> <p>Employees who have at least one year's continuous service with the Trust.</p>	<p><u>The first six weeks (1-6)</u></p> <ul style="list-style-type: none"> • They receive nine tenths of an average week's pay. <p><i>(Adoption Pay for the first six weeks is offset against payments by way of SAP)</i></p> <p><u>The next twelve weeks (7-18)</u></p> <ul style="list-style-type: none"> • They receive half an average week's pay (subject to returning to work for a period of 3 months) – plus any SAP they are entitled to. <p><u>The subsequent 21 weeks (19-39)</u></p> <ul style="list-style-type: none"> • They receive any flat rate SAP they are entitled to or 90% of earnings if this is less than SAP.
<p><u>Category Two Employees</u></p> <p>Employees who have been working for the Trust for at least 26 weeks by the Matching Date but have less than one year's continuous service.</p>	<p><u>The first six weeks (1-6)</u></p> <ul style="list-style-type: none"> • They receive nine tenths of an average week's pay. <p><i>(Adoption Pay for the first six weeks is offset against payments by way of SAP)</i></p> <p><u>The next thirty three weeks (7-39)</u></p> <ul style="list-style-type: none"> • They receive any flat rate SAP they are entitled to or 90% of earnings if this is less than SAP.
<p><u>Category Three Employees</u></p> <p>Employees who have not been working for the Trust for at least 26 weeks by the Matching Date.</p>	<p>They are entitled to no payment during the leave.</p>

Appendix B

Adoption Leave Intention Form

Surname:		Mrs / Miss / Ms
First Name(s):		
Payroll reference Number:		
Place of Employment:		
Post Title and Post Number:		
Home Address:		
Expected week of placement (EWP)		
Date commenced employment:		

Previous Local Government Service:	<u>Authority</u>	<u>From</u>	<u>To</u>
[Give Dates - including any other posts with Shropshire Council]			

ADOPTION CATEGORY 1

I wish to give notice that It is my intention not to return from Adoption leave. At the point I decide I am not going to return, I will follow normal resignation procedures

*Please tick

ADOPTION CATEGORY 2

I wish to give notice that I wish to exercise my rights to commence Adoption leave on (no earlier than the 2nd week prior to my expected date of placement): ____/____/20____
(i.e. My first day of absence on adoption leave)

And is my current intention to remain absent until (for up to 52 weeks): ____/____/20____

To be signed in all cases:-

Signature of Applicant:

Date:

Signature of Head teacher:

Date:

To be completed and returned to: HR

	Adoption Matching Certificate – attached / or to follow		
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Adoption Leave Frequently Asked Questions

- **What if the employee is on a fixed term or temporary contract:**

Employees on a fixed term or temporary contract are still entitled to take adoption leave under the scheme. If, however, their contract then terminates (and is not to be renewed) during the course of their adoption leave then their employment will come to an end.

Where a contract terminates then any eligibility for payment under this Adoption Scheme will reflect the fact that they will not be returning to work. If they qualify for SAP, however, they will be entitled to receive the full 39 weeks SAP payable.

Where a contract is due to terminate after the employee returns from adoption leave they will have the right to take adoption leave and return to work. Payment under this Adoption Scheme will still be affected if the employee is not able to then remain in post for 3 months full-time or part-time equivalent.

- **Can an employee be dismissed for being on adoption leave?**

It is automatically unfair to dismiss an employee because of adoption leave regardless to the number of hours that employee works and their length of service.

- **Can an employee be made redundant whilst on adoption leave?**

Yes, provided that a genuine redundancy situation exists. The Headteacher would however have to follow the proper consultation and selection procedures when selecting an employee for redundancy. Within any redundancy procedures employees' would have to be treated the same as any other member of staff and as though they were still at work.

- **Is the employee entitled to receive their salary increment?**

Teachers

Provided that the teacher returns to their post, their period of adoption leave is regarded as service for salary purposes and any entitlement to performance & management progression will be unaffected.

Support staff

Any entitlement to a salary increment will not be affected by adoption leave, whether the leave was paid or unpaid.

- **What if the employee wants to come back to work on a part-time or job share basis?**

Should an employee seek to return to work on either a part-time or job share basis then consideration will be given to their request. Refer to the Flexible Working Scheme. Any decision that is taken however will be done so on the clear understanding that the operational requirements of the School must be given first priority.

- **Can a teacher undertake supply teaching whilst on adoption leave?**

No, not whilst they are in receipt of SAP during their adoption leave with the intention of returning to work. Were they to undertake supply or temporary employment during their period of leave, even to assist their own school, their right to return to their post would be extinguished.