



**ORKNEY**  
ISLANDS COUNCIL

# **Adoption and Surrogacy Leave**

**April 2015**

Next scheduled for review April 2018

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## **1. Policy Statement**

1.1. This policy sets out the statutory rights and responsibilities of employees who have parental responsibility for a child through either adoption or surrogacy.

1.2. Orkney Islands Council recognises that, from time to time, employees may have questions or concerns relating to their entitlements through adoption or surrogacy. It is the Council's policy to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. Further guidance should be sought from Human Resources.

1.3. Executive Directors and the Head of Human Resources and Performance are responsible for arranging appropriate training and briefing on the use of this policy and the maintenance and updating of records to facilitate its smooth operation.

1.4. Employees should be made aware of the policy and have ready access to it.

1.5. This policy has been produced in line with existing best practice and the legislative requirements as well as the relevant provisions from National Conditions of Service including the Scottish Negotiating Committee for Teachers Handbook of Conditions of Service.

## **2. Scope of the Policy**

2.1. This policy will apply to all employees of Orkney Islands Council and its subsidiary companies including: Scottish Joint Council (SJC)/Single Status employees including Heads of Service, Teachers and other employees covered by Scottish Negotiating Committee for Teachers (SNCT) conditions of service, Orkney College Academic staff, Executive Directors and the Chief Executive.

2.2. The policy will be reviewed by the Head of Human Resources and Performance or their nominated representative in conjunction with recognised trade unions in line with the schedule for the review of all Council Human Resources Policies and Procedures, normally every 3 years. Should changes to employment law, best practice recommendations or schemes of Conditions of Service dictate, a review within this timescale can be carried out by agreement with the Head of Human Resources and Performance.

2.3. Where the provision differs for teaching and other employees covered by SNCT conditions of service this will be shown separately.

For the purpose of this policy, all "days" referred to within are calendar days.

## **3. Entitlement to leave**

3.1. All employees, regardless of length of service or weekly hours are entitled to 52 weeks leave consisting of 26 weeks Ordinary Leave and 26 Additional Leave or as much of that period as they wish to take.

3.2. If an employee has less than 26 weeks' continuous service prior to the weeks in which they receive the child, they will be entitled to 52 weeks leave without pay.

3.3. If an employee has 26 weeks or more continuous service prior to the weeks in which they receive the child, they may be entitled to 39 weeks paid leave and a further 13 weeks unpaid leave (immediately following the initial 39 weeks).

3.4. Leave for Adoption/Surrogacy can start on the day the child is placed, or from a fixed date up to 14 days before the expected date of placement.

3.5. Where more than one child is placed as part of the same adoption arrangement or for multiple births as part of the surrogacy arrangement, only one period of leave may be granted.

## **4. Entitlement to pay**

4.1. Employees with more than 26 weeks continuous service prior to the weeks in which they receive the child will qualify for the following payments provided their average weekly earning are not less than the lower earnings limit for national insurance contributions.

Pay is as follows:-

- First 6 weeks at 9/10ths pay (including Statutory Adoption Pay - SAP)
- Following 12 weeks at half pay (plus SAP1) provided the total cost does not exceed the normal full pay
- Following 21 weeks at SAP1, with any further adoption leave with no pay (up to a maximum of 13 weeks)

4.2. Payments made by the Council in excess of SAP1 after the first 6 weeks of leave will be made on the understanding that the employee will return to work for a period of at least 3 months and in the event of the employee not doing so, they will refund the monies paid excluding those elements of SAP1. Periods of annual leave, sick leave or parental leave which directly follow adoption leave will count as a return to work.

4.3. Employees who have indicated that they will not be returning to work will be paid at the higher rate for 6 weeks and then SAP1 for the remaining 33 weeks.

### **Teaching and all other SNCT employees**

4.4. Pay for Family Leave in respect of adoption or surrogacy is as follows:-

- First 13 weeks at full pay (including SAP1)
- Following 26 weeks at SAP1, with any further family leave for adoption/surrogacy with no pay (up to a maximum of 13 weeks)

## **5. Notification to take leave**

5.1. The notification of the intention to take leave for adoption/surrogacy must be given in writing to the Human Resources no later than 7 days after the date on which notification of the indented date the child is to be received.

5.2. This letter must specify the date the child is expected to be received and the date with employee intends leave for adoption/surrogacy to commence, which member of the couple is to take the leave and should include evidence to support the request for adoption leave, i.e. a Matching Certificate from the adoption agency or for surrogacy a copy of the Mat B1 issued to the birth mother (available from their GP or midwife after the 21st week of pregnancy).

5.3. In addition for surrogacy a copy of the Parental Order should be provided to confirm Parenthood as soon as it is available. It is recognised that leave in respect of surrogacy may have commenced before the Parental Order is available. Application for the Parental Order can only be made after the child is 6 weeks old and before the child is 6 months old.

5.4. The employee may change the date on which leave commences by giving no less than 28 days' notice if this is reasonably practicable.

5.5. Human Resources will reply in writing within 28 days to confirm receipt of notification confirming with the employee their rights to leave and expected date of return from leave and notifying the employees' supervisor/line manager of the intended leave arrangements

## **6. Time off in respect of adoption/surrogacy**

6.1. Prospective adoptive parents or parents entering into a surrogacy agreement will be entitled to reasonable time off with pay to attend training sessions, meetings, medical appointments etc. prior to the placement/birth of a child. Employees will need to produce an appointment card to their supervisor/manager so that the time off can be confirmed.

6.2. Leave taken prior to adoption/surrogacy in the case of an incomplete adoption/surrogacy arrangement that does proceed as planned shall not count against any further application of this policy.

## **7. Returning to work after leave**

7.1. If the employee wishes to change their return to work date, 8 weeks' notice of the change must be given. For teaching and other employees covered by SNCT conditions of service wishing to return to work earlier than the end of the period or leave for adoption/surrogacy, a minimum of 28 days' notice is required.

7.2. If an employee decides during leave that they do not wish to return to work they should give written notice of resignation to the Council as soon as possible and in accordance with the terms of their contract of employment.

## **8. Right to return to the same or similar job**

8.1. During the first 26 weeks of leave for adoption/surrogacy an employee is entitled to return to exactly the same job which they left.

8.2. Beyond the first 26 weeks of leave for adoption/surrogacy an employee will normally be entitled to return to the same job as they left. However if it is not reasonably practicable, the employee will be offered another job which is both suitable and appropriate. This means, of the same terms and conditions as the job they left.

8.3. The only instance where this is not the case is during organisational change in accordance with the Council's redundancy policy. However, employees on leave due to maternity, adoption or surrogacy will be considered preferentially for redeployment opportunities should this occur. Please refer to the Council's Redundancy and Redeployment Policies for further information.

## **9. Keeping in touch days**

9.1. To assist employees to keep in touch with the workplace during their leave, they can, in agreement with their line manager, arrange to work up to 10 days. These days can be used for specific events, training, or anything which has been previously agreed by both parties.

9.2. Keeping in touch days can only be worked during the leave period and cannot be worked and claimed after the employee has returned to work or during a period of annual leave.

9.3. Any work carried out on a particular day, be it a few minutes or a full day, constitutes a whole keeping in touch day. Hours worked on these days will be paid following submission of an authorised timesheet.

9.4. Please note, that the employee is not required to work these 10 days, nor is the employer obliged to offer them. The full 10 day entitlement applies and is not dependant on the duration of maternity leave. If work is performed on more than 10 days, entitlement to statutory adoption pay ends.

## **10. Annual Leave/Public Holidays**

10.1. Annual leave which is accrued prior to going on leave should be taken before the period of leave for adoption/surrogacy commences wherever possible. Where this is not possible, this should be taken along with accrued leave from the period of leave for adoption/surrogacy following the end of the period of leave for adoption/surrogacy.

10.2. Entitlement to annual leave and public holidays is unaffected by leave for adoption or surrogacy and it is accrued as if the employee was at work. These accrued holidays should be taken, wherever possible prior to returning to work.

10.3. Should the employee return to work on reduced hours (i.e. on a part-time basis), the annual leave entitlement will be calculated based on a period of full-time service up to the date that they have returned from adoption leave and a period of part-time service, from the date that the employee commences part-time hours.

10.4. Should the employee not return to work after leave, they will be entitled to a proportion of the year's annual leave up to the end of the adoption/surrogacy leave period and to any public holidays which arose before that date.

### **Teaching staff and music instructors**

10.5. Annual leave will continue to be accrued during the entire period of Family leave.

10.6. Statutory leave (28 days pro rata for part-time) should be taken, subject to the needs of the service, and normally be taken in the term in which the return to work takes place, or within the following term.

10.7. The balance of annual leave, in excess of statutory leave (maximum 12 days pro rata), accrued during the period of family leave shall be taken following the end of the family leave period. This should be taken during school closure days, with payment in accordance with SNCT conditions of service.

## **11. Transfer of entitlement to leave**

11.1. If an employee proposes to return to work by giving proper notification in accordance with the rules set above, their spouse, civil partner or partner may be eligible to take up to 26 weeks' additional paternity leave (and additional statutory paternity pay) on their return to work.

11.2. The earliest that additional paternity leave may commence is 20 weeks after the child's placement and it must end no later than 12 months after the date of placement. The minimum period of additional paternity leave is two consecutive weeks and the maximum period is 26 weeks. The primary carer must therefore have at least two weeks of their leave for adoption/surrogacy that remains unexpired.

## **12. Ending of Adoption Placement/Surrogacy Arrangement**

12.1. Where the adoption placement/surrogacy arrangement ends, for any reason, during the period of leave, the employee should notify the Council immediately.

12.2. The employee will continue to be entitled to leave and pay for adoption/surrogacy (if applicable) for up to eight weeks after the placement/arrangement ends.

### **Teaching and all other SNCT employees**

12.3. Where the adoption placement/surrogacy arrangement ends within the first 26 weeks of family leave the employee will be entitled to remain absent from work until the end of the 26 week period.

12.4. Where the adoption placement/surrogacy arrangement ends after the 26th week of family leave the employee will be entitled to remain absent on leave for up to 8 weeks after the end of the placement/arrangement or until the end of the family leave period, whichever is sooner.

## **13. Transfer of Adoption/Surrogacy leave**

### **Shared parental leave**

13.1. Shared parental leave is available in relation to babies due on or after 5 April 2015. Shared parental leave enables mothers to commit to ending their maternity leave and pay at a future date, and to share the untaken balance of leave and pay as shared parental leave with their partner.

13.2. To be able to take shared parental leave, an employee and his/her partner must meet various eligibility requirements and have complied with the relevant curtailment, notice and evidence requirements. This includes the mother curtailing her maternity leave.

13.3. The Council provides a separate policy on shared parental leave.

13.4. Please note that shared parental leave arrangements are slightly different when adopting from out with the UK. If adopting from out with the UK please contact HR and Performance for information on Shared Parental Leave