

**Human Resources**

**ADOPTION/FOSTER TO ADOPT/  
SURROGACY POLICY**

**Change History**

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# **ADOPTION/ FOSTER TO ADOPT / SURROGACY PROVISION AT THE UNIVERSITY OF SURREY**

The purpose of this document is to outline the main provisions relating to adoption leave as provided in the Work and Families Act 2006. It also covers staff who have a child through surrogacy or who foster a child through the foster to adopt programme in accordance with section 22C of the Children Act 1989.

This policy and procedure does not form part of any employee's contract of employment. It may be amended from time to time with appropriate consultation with recognised trade union representatives.

The University has other related policies that may be of interest to its employees or their partners who have adopted, or are planning to adopt children or have a child through surrogacy:-

- 1) Leave Policy
- 2) Flexible Working
- 3) Parental Leave
- 4) Paternity and Partners' Leave
- 5) Shared Parental Leave

## ***Contents***

<b>Purpose of Adoption/Surrogacy Leave Scheme</b>	<b>3</b>
<b>Eligibility</b>	<b>3</b>
<b>Pay/Benefits During Statutory Adoption/Surrogacy Leave</b>	<b>4</b>
<b>Pay/Benefits During University Adoption/Surrogacy Leave</b>	<b>5</b>
<b>Procedure for Taking Leave</b>	<b>5</b>
<b>Time Off for Appointments</b>	<b>6</b>
<b>Annual Leave Whilst on Adoption/Surrogacy Leave</b>	<b>7</b>
<b>Contact During Adoption/Surrogacy Leave</b>	<b>7</b>
<b>Returning to Work Following Adoption/Surrogacy Leave</b>	<b>8</b>
<b>Not Returning to Work</b>	<b>8</b>
<b>Returning to Work Part-Time</b>	<b>9</b>
<b>Calculation of Weekly Earnings</b>	<b>9</b>
<b>Pension Arrangements</b>	<b>9</b>
<b>Foster to Adopt Special Provisions</b>	<b>11</b>
<b>Miscellaneous Provisions</b>	<b>13</b>

## **1. Purpose of Adoption/Foster to Adopt/Surrogacy Leave Scheme**

The University 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.

The rights to Adoption Leave allow an eligible employee who is adopting a child to take time off when a child is placed with them for adoption. The provisions apply to married couples, couples in a civil partnership, unmarried couples (same and opposite sex) and single people who adopt and applies to placements for children up to 18 years old.

An eligible employee, see section 2, is entitled to 26 weeks' Ordinary Adoption Leave (OAL) and a further 26 weeks' Additional Adoption Leave (AAL), running from the end of OAL, a total of 52 weeks' Adoption Leave.

If the employee is a local authority foster parent who is also approved as a prospective adopter and a child is placed with the employee in a "foster to adopt" situation, he or she will have the same entitlement to Adoption Leave and Pay. Adoption Leave is extended to an individual or to one member of an adopting couple.

The partner of an individual who adopts, or the other member of a couple adopting jointly, may be eligible for Paternity and Partners' Leave/Pay. (Details of which are contained in the University *Paternity and Partners' Leave Policy*).

## **2. Eligibility for Adoption/Surrogacy Leave**

An eligible employee adopting a child from the UK must;

- Be newly matched with a child by an adoption agency ('matched' means that the adoption agency has provided the details of the child they think is suitable for the individual to adopt) and;
- Have commenced employment at the University of Surrey on or before the beginning of the week during which the employee is matched with a child.

### **2.1 Evidence of eligibility for adoption of a child from the UK**

An eligible individual must provide the University documentary proof to show that they have the right to paid Statutory Adoption Leave. This will usually take the form of an original matching certificate from the adoption agency. The adoption agency must be recognised in the UK. Original evidence should include the following details:

- The name and address of the agency;
- The date of which the employee was notified that he or she had been matched with the child. The date on which the agency expects to place the child with the employee.

**In addition, an eligible employee adopting a child from overseas must;**

- Have given due notice (at least 28 days') of their intention to take Adoption Leave.
- Provide the University with official notification within 7 days of receipt of then notification. (Official notification means written notification, issued by, or on behalf of the relevant domestic authority, that it is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, or has issued a certificate and sent it to that authority, confirming that the adopting individual is eligible to adopt and has been assessed and approved as being a suitable adoptive parent. This official notification should be provided to the University as documentary proof of the adoption).<sup>7</sup>

### **3. University Adoption/Foster to Adopt/Surrogacy Pay**

An employee be eligible for enhanced University Adoption Pay (UAP) from day one of their employment at the University. UAP contains Statutory Adoption Pay (SAP). Employees who are adopting a child up to the age of 5 that have been matched with a child are eligible to receive the following University Adoption Pay (UAP) and leave.

- 8 weeks' full pay (including SAP)
- 16 weeks' half pay (plus SAP)
- 15 weeks' SAP
- 13 weeks unpaid

Where an employee works for fewer than 52 weeks in each year, (e.g. during semester periods only), Adoption Leave and Pay will run continuously from the date of commencement.

Where UAP is paid at the employee's full weekly rate, it will include any relevant SAP. Where it is paid at half of the employee's weekly rate, it will exclude any UAP entitlement (which is then paid in addition).

If eligibility for SAP isn't met due to length of service, the University will cover the associated payments. Please section 4 for more information on SAP.

After taking UAL, an employee needs to return to work for the University for at least three months. If they do not, the University has the right to reclaim the whole of the non-statutory element of Adoption Pay. If it is unclear whether an employee will be able to fulfil this requirement, then they may defer receipt of University Adoption Pay until they have completed three month's post Adoption Leave service.

### **4. Pay/Benefits during Statutory Adoption/Surrogacy/Foster to Adopt Leave**

Statutory Adoption Pay is payable for up to 39 weeks. Statutory Adoption Pay is payable at 90% of the adopter's normal earnings for the first six weeks (calculated on the basis of the adopter's normal weekly earnings in the 8 week period leading up to the date the adopter is notified of a match with the child), following which it is payable at the rate set by the Government for the relevant tax year (or 90% of normal earnings, if that is lower than the Government's rate). Statutory Adoption Pay is treated as earnings and is therefore subject to PAYE and national insurance deductions.

To receive Statutory Adoption Pay, an employee must;

- Have 26 weeks continuous service by the date at which they are notified by the adoption agency that they have been matched with a child (if service requirement isn't met, the University will cover the related payments);
- have been matched with a child to be placed with them by a recognised adoption agency;
- have notified the agency that they agree the child should be placed with them and the date of placement;
- have earned, on average, at least the lower earnings level in the 8 weeks leading up to the date they were notified of a match with a child.

Statutory Adoption Pay begins at the same point as Adoption Leave and runs for 39 weeks, unless an individual finishes their Statutory Adoption Leave earlier. If an individual qualifies for Statutory Adoption Pay but leaves their job for any reason (including dismissal or end of contract) they are still entitled to Statutory Adoption Pay. Pension contributions will be paid until their date of termination. Individuals will not qualify for Adoption Leave or Pay if they:

- arrange a private adoption
- become a special guardian or kinship carer
- adopt a stepchild or family member
- have a child with the help of a surrogate mother, where the intended parents are not eligible for a Parental Order.

## 5. Procedure for taking Adoption/Surrogacy Leave

Employees should inform their line manager that they have been approved as an adoptee as soon as they have been officially notified, even though they may not have been matched for adoption at this point.

An employee must provide written notice of their intention to take Adoption Leave within 7 days of being notified by their adoption agency that they have been matched with a child, unless this is not reasonably practicable.

Employees must inform their line manager both the date on which the child is expected to be placed with them and the date on which they want the Adoption Leave to start. An employee must also inform their line manager of when they want the Adoption Leave to start at least 28 days before the intended start date, or as soon as is reasonably practicable. **This advance notice is one of the requirements for eligibility for Statutory Adoption Pay.**

If an employee wishes to change the start date of their Adoption Leave, at least 28 days 'notice in writing must be given to their line manager and their HR Representative, or as soon as is reasonably practicable.

An employee can start their Adoption Leave;

- from the date the child is placed with them, or
- up to 14 days before the date it is expected that the child will start living with them

The expected date of adoption must be confirmed by the employee's matching certificate (see Section 2d) which is issued by the adoption agency. An employee should present the original certificate to their HR representative.

Adoption Leave can start on any day of the week. Where an employee is eligible for Statutory Adoption Pay, Adoption Pay is paid from the first day Adoption Leave begins.

Once the request for Adoption Leave has been received, this will be acknowledged by Human Resources. This communication will set out the expected date of return (which unless advised differently will be 52 weeks after the advised commencement date).

If, during Adoption Leave, the placement does not occur, or the child is returned or dies, the employee's Adoption Leave will end eight weeks after the end of the week in which the child dies, is returned or if the placement is not made.

## 6. Time off to attend adoption appointments

Employees who are adopting a child are entitled to take time off to attend adoption appointments.

An employee adopting a child alone is entitled to take paid time off to attend up to five adoption appointments (under s.57ZJ of the Employment Rights Act 1996). Where an employee is part of a couple jointly adopting a child, the couple can elect for one of them to take paid time off to attend up to five adoption appointments (under s.57ZJ of the Employment Rights Act 1996). The other can elect to take unpaid time off to attend up to two adoption appointments (under s.57ZL of the Employment Rights Act 1996).

The purpose of the appointment is to enable the employee [and his/her partner] to have contact with the child (for example, to bond with him/her before the placement) and for any other purpose connected with the adoption (for example, to meet with the professionals involved in the care of the child). The appointment must have been arranged by or at the request of the adoption agency. The time off must be taken before the date of the child's placement for adoption with the employee.

The University may ask the employee for proof of the date and time of the appointment and that the appointment has been arranged by or at the request of the adoption agency (for example, a letter or email from the adoption agency). In addition, if the employee is adopting jointly, the University may ask the individual to sign a declaration, to be submitted alongside the documentary evidence, confirming that he/she has elected to exercise his/her right under either s.57ZJ or s.57ZL of the Employment Rights Act 1996 to take time off to attend an adoption appointment. The University may

ask for the declaration on the first occasion on which the individual asks for time off to attend an adoption appointment.

## **7. Annual Leave whilst on Adoption/Surrogacy Leave**

Employees should seek advice from their HR Representative about their annual leave entitlement, and discuss with their line manager arrangements for taking annual leave.

Annual leave should normally be taken prior to an employee going on adoption/surrogacy leave or prior to returning from leave.

Annual leave will continue to accrue for as long as the employee is on adoption/surrogacy leave, whether this is during the paid or unpaid adoption/surrogacy leave period.

Bank holidays and University days will be accrued during the adoption/surrogacy leave period.

## **8. Contact During Adoption/ Foster to Adopt /Surrogacy Leave**

Reasonable contact is permitted from time to time between an employee and their employer (for example for departmental updates or to discuss an employee's return to work).

In addition, an employee may, in agreement with their Line Manager/ Head of Department, and in conjunction with their HR Representative, undertake up to 10 days paid work, referred to as "Keeping in Touch Days" (KIT) during their Adoption Leave. Such days may be undertaken at any stage during the leave period except during the first two weeks after the child has been placed.

The type of work undertaken is a matter for agreement between the employee and their Line Manager/ Head of Department. The days may be used for any activity which would be particularly useful such as enabling an employee to attend a conference, undertake a training activity or attend a team meeting. Keeping in Touch Days are optional and will only take place where agreement is reached between both parties.

All employees are entitled to up to 10 Keeping in Touch days, regardless of whether they are full-time or part-time. Where an employee works for less than a full day, this will still be count as a one of their keeping in touch days for the purposes of the 10 days maximum, although payment will only be made for actual hours worked, where payment due exceeds the monies paid via SAP or enhanced University adoption pay.

If a KIT day falls during the paid period of Adoption/Surrogacy leave pension scheme contributions will be deducted accordingly. Where an employee is in a no pay period, but receives pay for KIT days, pension contributions may be deducted. This will be dependent on the pension scheme rules appropriate to their membership.

## **9. Returning to Work Following Adoption/ Foster to Adopt / Surrogacy Leave**

Employees who take OAL are entitled to return to the same job. Employees who take AAL are entitled to return to the same job or, if that is not reasonably practicable, to a suitable alternative.

If an employee decides that they wish to return to work earlier than planned from adoption/surrogacy leave they need to give at least 8 weeks written notice of their intention to return to work.

An employee who has notified the University they wish to return to work before the end of the 52 weeks is entitled to change their mind and extend their adoption/surrogacy leave up until the maximum 52 weeks period. However they will need to notify the University of their new return date in writing at least 8 weeks prior to their original return date.

Where a member of academic staff has been on Adoption Leave from the university their teaching load may be varied to enable a phased return to normal work levels. Each potential case will be judged on its own merits, although there is an expectation that teaching and/or administration loads will be reduced for a semester to facilitate staff reaching their research targets. The details of this will be discussed with their Head of Department (or equivalent) or Dean of Faculty as appropriate and must be considered in the light of their teaching and administrative commitments prior to them starting their period of leave. Reductions should also be discussed with Human Resources before any final revision is confirmed to the individual concerned.

## **10. Not Returning to Work Following Adoption/Foster to Adopt/Surrogacy Leave**

An employee who does not wish to return to work after the adoption of their child is still entitled to receive Statutory Adoption Pay if they qualify for this payment.

The notice period of an employee not returning to work should be in accordance with the notice requirements set out in the Staff Handbook.

Where an employee has decided not to return to work, their employment is terminated at the end of their paid adoption/surrogacy leave, unless an earlier date is requested by the employee. They will remain in the Pension Scheme until their date of termination or their date of resignation, if this is earlier.

Employees who are on short-term contracts must be able to return to work for the minimum three month period in order to qualify for leave with University Adoption Pay. If they are not able to return to work for three months, the University has the right to reclaim the whole of the non-statutory element of Adoption Pay. If it is unclear whether an employee will be able to fulfil this requirement, then they may defer receipt of University Adoption Pay until they have completed three months post Adoption Leave service.

Where the contract of employment is due to terminate during the Adoption Leave period the contract of employment will be terminated as per normal. However the University will act as an agent for the payment of Statutory Adoption Pay. Pension contributions will also be paid until the date of termination. However, if the employee starts work for a different employer they cannot receive Statutory Adoption Pay for any week in which they do work for the new employer. If the individual employment contract ends before the Statutory Adoption Pay payments begin, the payments should start 14 days before the date of placement. If the employment contract ends during those 14 days, pay begins the day following the last day of employment. Employees who do not qualify for SAP are advised to contact their Adoption Agency to learn about other financial support that may be available.

## **11. Returning to Work Part-Time**

Whilst returning to work part-time after adoption/foster to work/surrogacy leave is not an automatic right, the University will give consideration under the terms of the statutory rights to flexible working which are detailed in the separate *Flexible Working Rights* Policy. The policy is available via the HR policy page on [SurreyNet](#).

## **12. Calculation of Weekly Earnings**

Employees who take Adoption Leave will also qualify for statutory adoption pay, provided that they have average weekly earnings not less than the lower earnings limit for national insurance contributions. Statutory adoption pay is payable at 90% of the adopter's normal earnings for the first six weeks (calculated on the basis of the adopter's normal weekly earnings in the 8 week period leading up to the date the adopter is notified of a match with the child), following which it is payable at the rate set by the Government for the relevant tax year (or 90% of normal earnings, if that is lower than the Government's rate).

## **13. Pensions Arrangements**

### **Contributors to University of Surrey Pension Plan**

Employees contributing to the University of Surrey Pension Plan (UPP) are required to pay pension contributions whilst in receipt of adoption/surrogacy pay whether UAP or SAP. The employee's contributions will be calculated on the basis of the actual pay received. The University will maintain the appropriate employer contributions during the paid adoption/surrogacy period only.

No contributions are due during unpaid adoption/surrogacy leave unless the employee elects to make these contributions or works a KIT day during this period. Pension contributions will be deducted automatically, based on the level of pay received for a worked KIT day. An employee may elect to

increase their contributions for the unpaid adoption/surrogacy leave when they return to work to make up for any loss of payments while they were not contributing. Where this election is made the employer will also pay their standard contributions for the same period.

If an employee is not entitled to receive any payment during her adoption/surrogacy leave period and is not eligible for SMP, the University will pay the employer contributions to the Scheme for the statutory period.

### **Contributors to Surrey County Council (SCC) Superannuation Scheme**

Employees contributing to the Surrey County Council (SCC) Superannuation Scheme are required to pay superannuation contributions whilst in receipt of adoption/surrogacy pay whether UAP or SAP. The employee's contributions will be calculated on the basis of the actual pay received. The University will pay the appropriate employer contribution during the paid adoption/surrogacy period only.

No contributions are due during unpaid adoption/surrogacy leave unless the employee elects to make these contributions or works a KIT day during this period. Pension contributions will be deducted automatically, based on the level of pay received for a worked KIT day.

An employee may elect to pay pension contributions on unpaid adoption/surrogacy leave to buy the lost pension. Where this election is made within 30 days of their date of return to work from adoption/surrogacy leave, the cost to purchase the amount of lost pension is shared between the member and the employer. If no election to buy the lost pension is made this period will not count for pension purposes.

If an employee is not entitled to receive any payment during their adoption/surrogacy leave period and is not eligible for SAP, the University will pay the full employer contributions to the Scheme for the statutory 26 week period. The member will be credited with full benefits for this statutory period only.

### **Contributors to the Universities Superannuation Scheme (USS)**

It should be noted that pension contributions do NOT have to be paid by the employee during their adoption/surrogacy leave, and the member can elect to stop such contributions. In such a case the employer contribution will not be paid and the membership will be suspended for the period. Any election not to maintain pension scheme contributions should be made in writing to the University Pensions Department prior to the commencement of adoption/surrogacy leave.

Unless an election is made prior to the commencement of adoption/surrogacy leave not to maintain contributions, employees contributing to the Universities Superannuation Scheme (USS) are required to pay superannuation contributions whilst in receipt of adoption pay whether SAP or UAP. The employee's contributions will be calculated on the basis of the actual pay received. The University pays the shortfall of employees' contributions and continues to maintain the full employer's contributions.

No contributions are due during unpaid adoption/surrogacy leave and membership of USS is suspended. The member may elect to pay additional contributions following their return from adoption/surrogacy leave, to cover any unpaid adoption/surrogacy leave period. Application should be made to the University Pensions Department. They will calculate the cost and method of payment. If the additional contributions are not made following the employees' return from adoption/surrogacy leave, the unpaid period will be treated as non-pensionable.

If an employee is not entitled to receive any payment during their adoption/surrogacy leave period and is not eligible for SAP, the University must pay the full employee and employer contributions to the Scheme for the statutory 26 week period. These contributions will be based on the salary the member would have received if she was not absent due to adoption/surrogacy leave.

### **PensionPlus Salary Exchange Scheme**

To protect employees, anyone only receiving statutory adoption pay or long-term statutory sick pay, will be temporarily suspended out of the PensionPlus Salary Exchange Scheme. Employees will be



automatically reinstated once their earnings meet or exceed these levels.

#### **14. Transfer of Adoption Leave to Shared Parental Leave**

Shared Parental Leave enables adopters to commit to ending their Adoption Leave and Pay at a future date, and to share the untaken balance of leave and pay as Shared Parental Leave and Pay with their partner, or to return to work early from Adoption Leave and opt in to Shared Parental Leave and Pay at a later date.

Shared Parental Leave must be taken in blocks of at least one week. The employee can request to take Shared Parental Leave in one continuous block (in which case the organisation is required to accept the request as long as the employee meets the eligibility and notice requirements), or as a number of separate blocks of leave (in which case the employee needs the organisation's agreement).

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. The adopter and the partner should ensure that they are each liaising with their own employer when making requests for Shared Parental Leave.

#### **15. Special Provisions Relating to Foster to Adopt (Foster Parents that Adopt a child) under the Children Act 1989**

A child may be placed with local authority foster parents, in accordance with section 22C of the Children Act 1989 with the expectation that they will adopt that child. The foster to adopt right applies for employees who were notified of the decision to place the child with them on or after 5 April 2015.

The dual approved prospective adopter may be eligible for Adoption Leave and Pay and can take this from up to 2 weeks before the child is placed with the family in accordance with section 22C (i.e. when the child joins the family, initially for fostering).

The leave and pay must be taken within 52 weeks of this placement and will cease if the placement is disrupted; if it breaks down; or if the child dies. If the employee is a local authority foster parent who is approved as a dual approved prospective adopter and a child is placed with the employee in a 'foster to adopt' situation, he or she may also be entitled to enhanced university Adoption Leave and Pay.

The 'foster to adopt' Adoption Leave and Pay relates to the actual matching for foster to adopt adoption; if this is approved, the standard terms of this policy relating to adoption will apply. Any other period of foster caring does not count for Adoption Leave or Adoption Pay.

##### **15.1 Cases where the 'foster to adopt' adoption doesn't go ahead**

Where a placement by a local authority under section 22C of the Children Act 1989 does not proceed to a formal adoption, e.g. because the child or children are returned to their birth parents or will be cared for by a family member or friend, the dual approved prospective adopter's entitlement to Adoption Leave will end 8 weeks after the child is removed from their family or at the end of their Adoption Leave, whichever is earlier.

##### **15.2 Entitlement to further Adoption Leave and Pay if the adoption goes ahead**

If a dual approved prospective adopter was entitled to Adoption Leave and Pay (statutory or university) when the child was placed with the family in accordance with section 22C of the Children Act 1989 (i.e. when the child joined the family, initially for fostering), they cannot access further Adoption Leave and Pay in respect of the same child or children if the adoption goes ahead (i.e. there can only be one entitlement to Adoption Leave and Pay in respect of that child).

##### **15.3 Entitlement to Paternity and Partners' Leave and Pay where the adoption goes ahead**

If the partner of a dual approved prospective adopter, or one of the dual approved prospective adopters in the case of joint adoptions, takes Paternity and Partners' Leave when the child is placed with the family in accordance with section 22C of the Children Act 11989 they are not entitled to an additional one or two weeks of Paternity and Partners' Leave when the adoption process begins.

#### **15.4 Shared Parental Leave and Pay for dual approved prospective adopters**

Dual approved prospective adopters can end their Adoption Leave and Pay early (i.e. take less than 52 weeks of Adoption Leave and/or less than 39 weeks of Statutory Adoption Pay) to opt into Shared Parental Leave and/or pay if they are eligible for this. If the dual approved prospective adopter is eligible for Shared Parental Leave and/or pay they can share up to 50 weeks of leave and up to 37 weeks of pay with their partner/the other dual approved prospective adopter (in the case of joint adoptions). Any Adoption Leave and Pay that has been taken by the dual approved prospective adopter will reduce the pool of leave and pay that can potentially be shared.

#### **16. Miscellaneous Provisions**

An employee has the right not to suffer any detriment on the grounds of Adoption Leave. The Employment Rights Act 1996 provides that where an employee exercises their right to return to work their continuity of employment is not broken by absence on Adoption/Surrogacy Leave. In this connection, it is agreed that Pension rights and contributions shall be dealt with in accordance with the provisions of the relevant superannuation scheme. The employee shall be entitled to receive the normal annual increment on their scale in accordance with their contract of employment to take effect from the normal incremental date.