



Department  
for Business  
Innovation & Skills

**CHANGES TO ADOPTION  
LEAVE AND PAY FROM 5  
APRIL 2015**

Technical Guidance For  
Employers

APRIL 2015

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## Summary

This is technical guidance for employers on the changes to adoption leave and pay that came into effect on 5 April 2015.

### **Adopters are now entitled to similar rights to birth parents:**

- Adoption leave is now a 'day 1 right' (i.e. employees will not need to have a qualifying period of service); and
- Statutory adoption pay is paid at the earnings related level in the first 6 weeks – mirroring the arrangements for statutory maternity pay.
- The qualifying requirements for statutory adoption pay are unchanged see: <https://www.gov.uk/adoption-pay-leave/eligibility>

### **New groups of parents now qualify for adoption leave and pay:**

- Dual approved prospective adopters who have a child placed with them under section 22C of the Children Act 1989 with a view to them adopting that child (this is sometimes referred to as fostering for adoption); and
- The intended parents in a surrogacy arrangement where they are eligible for and intend to apply for a Parental Order (or where they have already obtained such an order) making them the legal parents of the child that they are having with the help of a surrogate mother. These parents are referred to as 'Parental Order parents' in this guidance.

### **New groups of parents now qualify for paternity leave and pay:**

- The partner of the dual approved adopter or, in the case of joint dual approved adoptions, the parent who will not take adoption leave and pay; and
- One of the Parental Order parents (the parent that doesn't take adoption leave and pay).

### **Eligible employees and agency workers with 12 weeks service are now entitled to time off to attend adoption meetings:**

- The time off to attend adoption appointment must be taken in the period between being notified of a match with a child and the date that the child joins the family:
  - Single adopters are entitled to paid time off to attend up to 5 adoption appointments.
  - In the case of joint adoptions (i.e. a couple who have been jointly matched to adopt a child) one of the adopters will be entitled to paid time off to attend up to 5 adoption

appointments. The other adopter may be entitled to unpaid time off to attend up to 2 adoption appointments.

- Where there are joint adopters, the adopter who took paid time off to attend adoption appointments cannot claim paternity leave and pay. This means that the parent who intends to take adoption leave and pay is likely to take the paid time off and the other parent is likely to take the unpaid time off.

**Parental Order parents are now entitled to time off to attend antenatal appointments:**

- On 1 October 2014 Parental Order parents became entitled to take unpaid leave to enable them to accompany the surrogate mother to up to 2 of her antenatal appointments. This is subject to meeting certain criteria, including a 12 week qualifying period of service where the Parental Order parent is an agency worker.

**Adopters and their partners and Parental Order parents may be eligible for shared parental leave and pay:**

- Working parents who adopt a child may also be eligible for shared parental leave and pay where the parent that is eligible for adoption leave and/or pay ends this early to opt into the new shared parental leave and pay system – see: Employers' Technical Guide to Shared Parental Leave and Pay at <https://www.wwww.bit.ly/1r21Xul>

# Changes to Adoption Leave and Pay

## Changes to adoption leave and pay

Eligible employees are now entitled to take adoption leave even where they have recently changed jobs (i.e. adoption leave is now a 'day 1 right' like maternity leave).

Adopters who qualify for statutory adoption pay should now be paid at the earnings related rate in the first 6 weeks. The remaining 33 weeks will be paid at the lower of the earnings related rate or the flat rate (£139.58 per week from 5 April). This mirrors the arrangements for statutory maternity pay.

The earnings related rate is calculated as 90% 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 a child.

In the case of Parental Order parents the earnings related rate is calculated as 90% of the parent's normal weekly earnings in the 8 week period leading up to their child's due date.

The qualifying requirements for statutory adoption pay are unchanged see: <https://www.gov.uk/adoption-pay-leave/eligibility>

## Parental Order parents now qualify for adoption leave and pay

Where their baby is due on or after 5 April 2015, one of the intended parents in a surrogacy arrangement may be eligible for adoption leave and pay if they intend to apply for and expect to obtain (or have already obtained) a Parental Order for their child under the Human Embryology and Fertilisation Act 2008. These parents are referred to as 'Parental Order parents' in this guidance.

For further information on Parental Orders see: <https://www.gov.uk/become-a-childs-legal-parent>

## Dual approved prospective adopters now qualify for adoption leave and pay

The Children and Families Act 2014 contains provisions which require local authorities who are looking after a child for whom they are considering adoption to place them with local authority foster parents

who are also approved prospective adopters, on a fostering basis. These carers are referred to as dual approved prospective adopters in this guidance.

Dual approved prospective adopters may be eligible for adoption leave and pay where they have agreed to have a child placed with them in accordance with section 22C of the Children Act 1989 with a view to them adopting that child. To be eligible for adoption leave and/or pay the child must be matched with the dual approved prospective adopter on or after 5 April 2015.

### **New groups of parents now qualify for paternity leave and pay**

The partner of the adopter and one of the Parental Order parents may be eligible for paternity leave and pay.

To qualify for paternity leave the adopter must have worked for their employer continuously for 26 weeks at the date that they are notified of a match with a child. In the case of Parental Order parents, the parent who claims paternity leave and pay must have been employed continuously by their employer for 26 weeks at their baby's due date.

To qualify for statutory paternity pay the employee must additionally have earned at least the lower earnings level (£112 a week) in the 8 week period leading up to the date that the adopter is notified of a match with a child or, in the case of Parental Order parents, the 8 week period leading up to the baby's due date.

### **Time off to attend adoption appointments**

Eligible employees and agency workers with 12 weeks service are now entitled to time off to attend adoption appointments in the period between being notified of a match and the child being placed with the family for adoption:

- Single adopters are entitled to paid time off to attend up to 5 adoption appointments.
- In the case of joint adoptions (i.e. a couple who have been jointly matched to adopt the child) one of the adopters will be entitled to paid time off to attend up to 5 adoption appointments. The other adopter may be entitled to unpaid time off work to attend up to 2 adoption appointments.

Up to 6.5 hours is allowed for each appointment.

Where there are joint adopters, the adopter who took paid time off to attend adoption appointments cannot claim paternity leave and pay.

### **Time off to attend antenatal appointments for parental order parents**

On 1 October 2014 Parental Order parents became entitled to take unpaid leave to enable them to accompany the surrogate mother to up to 2 of her antenatal appointments. This is subject to meeting certain criteria, including a 12 week qualifying period of service where the Parental Order parent is an agency worker.

## **Entitlement to Adoption Leave and Pay**

### **When an employee qualifies for adoption leave**

An employee will be entitled to adoption leave if they have:

- Been matched with a child for adoption.
- Notified the adoption agency that they agree that the child will be placed with them and have agreed a date for this placement.
- Given the correct notice to their employer (notice should normally be given within 7 days of the employee being notified of a match with a child).
- Complied with the evidence requirements, where they apply.

Where notice of entitlement to adoption leave is given on or after 5 April 2015 there is no qualifying period of service (i.e. adoption leave is a 'day 1 right' where the employee has given the correct notice).

Where such notice is given to the employer before 5 April, the employee needs to have 26 weeks of continuous employment at the date that they are notified of a match with a child.

### **Notification requirements for adoption leave**

To qualify for adoption leave the employee must give their employer the correct notice. This includes:

- Letting the employer know within 7 days of being matched with a child (or as soon as is reasonably practicable) that they intend to take adoption leave.
- The date that the child will come to live with the employee.

- The date they want to start their adoption leave – this will be either the date the child joins the family or a date up to 14 days before the expected date of placement.

To qualify for adoption leave the employee must also give their employer proof of the adoption if the employer asks for this.

### **When an employee can start their adoption leave**

An employee can start their adoption leave from up to 2 weeks before the date that the child is placed with them for adoption (i.e. the date the child joins the family).

The employee may be entitled to take other types of leave, e.g. annual leave, before starting their adoption leave. They may also be eligible for other types of leave, e.g. annual leave or shared parental leave after they have finished their adoption leave – but they must take at least 2 weeks of adoption leave before starting any shared parental leave. See: Employers' Technical Guide to Shared Parental Leave and Pay at <https://www. www.bit.ly/1r21Xul>

### **When an employee qualifies for statutory adoption pay**

An employee will be entitled to statutory adoption pay if they have:

- 26 weeks continuous employment with the same employer at the 'qualifying week'.
- Earned, on average, at least the lower earnings level (£112 a week) in the 8 weeks leading up to the date they were notified of a match with a child.
- Notified their employer that they are entitled to statutory adoption pay and when this is to begin.
- Stopped working for the employer.
- Has elected to receive statutory adoption pay.

### **The qualifying week for statutory adoption pay**

In the vast majority of adoptions, the qualifying week is the week in which a prospective adopter is notified they have been matched for adoption with a child.

## Statutory adoption pay rates

Adopters who qualify for statutory adoption pay will be paid at the earnings related rate in the first 6 weeks. The remaining 33 weeks will be paid at the lower of the earnings related rate or the flat rate (£139.58 per week) – mirroring the arrangements for statutory maternity pay.

The earnings related rate is calculated as 90% 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 a child. The employee will only be entitled to the earnings related rate in the first 6 weeks if they started receiving statutory adoption pay on or after 5 April 2015.

If notice of entitlement to statutory adoption pay is given to the employer on or before 4 April 2015 the employee will be paid at the flat rate throughout.

## Notification requirements for statutory adoption pay

The adopter must tell their employer when they want to stop work and when they want their statutory adoption pay to start (they must also provide the expected date of placement, i.e. tell their employer when the child is expected to join the family).

The employee must give their employer at least 28 days' notice of their start date for pay (the employer can ask for this to be in writing). Where 28 days' notice is not reasonably practicable the adopter must give whatever notice is reasonably practicable. The employee must also give the person who will pay the statutory adoption pay proof of the adoption.

## Proof of adoption

The employee must give their employer proof of adoption to qualify for statutory adoption pay. Proof isn't needed for adoption leave unless the employer requests this. The proof must show:

- The employee's name and address.
- The name and address of the adoption agency.
- The date on which the employee was informed that the child would be placed for adoption with them.
- The date that the child will be placed with the family (e.g. the employee could provide a letter from the adoption agency).

The employee must also provide a declaration that they have elected to receive statutory adoption pay and not statutory paternity pay.

### **Some adopters don't qualify for adoption leave and pay**

An 'adopter' will not qualify for adoption leave and pay if they:

- Arrange a private adoption.
- Become a special guardian or kinship carer.
- Adopt a stepchild.
- Have a child with the help of a surrogate mother, where the intended parents are not eligible for a Parental Order.
- Adopt a family member or stepchild.

If the 'adopter' is not eligible for adoption pay their employer must tell them why.

### **When entitlement to adoption leave and pay ends**

Entitlement to adoption leave will end in the following circumstances:

- Where the adopter has taken their full 52 weeks of adoption leave.
- When the adopter returns to work (other than in respect of keeping in touch days (KiT days)).
- Where the adoption placement does not take place or breaks down or where the child dies (the adoption leave ends 8 weeks after such an event).
- Where the adopter ends their adoption leave early (i.e. takes less than 52 weeks of leave) to opt into shared parental leave - see Employers' Technical Guide to Shared Parental Leave and Pay at <https://www. www.bit.ly/1r21Xul>

Entitlement to statutory adoption pay will end in the following circumstances:

- Where the adopter has taken their full 39 weeks of statutory adoption pay.
- When the adopter returns to work (the adopter can carry out up to 10 days work as KiT days without losing the entitlement).
- Where the adoption placement does not take place or breaks down or the where the child dies (the adoption pay ends 8 weeks after such an event).

- Where the adopter ends their adoption pay early to opt into shared parental leave and/or pay – see Employers' Technical Guide to Shared Parental Leave and Pay at <https://www. www.bit.ly/1r21Xul>

There is no entitlement to statutory adoption pay in the following circumstances:

- In a week in which the person receives statutory sick pay.
- Following the death of the person claiming pay.
- When the person claiming pay is detained in custody or in prison following sentencing (with some exceptions).

## **Paternity leave and pay for joint adopters and partners**

Where a couple are jointly adopting a child or children, only one of the adopters can take adoption leave and pay. If both of the couple are potentially eligible for adoption leave and/or pay they will need to decide which one of them will take these entitlements. The person who doesn't take adoption leave and pay may be eligible for paternity leave and/or pay.

In the case of single adopters, only the adopter will be eligible for adoption leave and pay but their spouse, civil partner or partner may be eligible for paternity leave and pay.

Paternity leave and pay is available for one or two weeks and must be taken within the first 56 days of the date that the child is placed for adoption (i.e. the date the child joins the family).

To be entitled to paternity leave the joint adopter/adopter's partner must:

- Be an employee.
- Be the spouse, civil partner or partner of the adopter.
- Have 26 weeks continuous service at the 'qualifying week'.
- Have or expect to have the main responsibility for the upbringing of their child, along with the other parent.

To qualify for statutory paternity pay the joint adopter/adopter's partner must also have earned, on average, at least the lower earnings level (£112 a week) in the 8 week period leading up to the week in which they or their partner were notified they had been matched with the child they are adopting.

In the case of joint adoptions, the adopter that claims adoption leave and/or pay will not be eligible for paternity leave and/or pay and the adopter that claims paternity leave and/or pay will not be eligible for adoption leave and/or pay.

### **The qualifying week for paternity leave and pay**

In the vast majority of adoptions, the qualifying week is the week in which a prospective adopter is notified they have been matched for adoption with a child.

Different rules apply to [dual approved adopters](#), [Parental Order parents](#) and [adoptions from overseas](#).

### **Paternity leave and pay and adoption appointments**

An adopter who has taken paid time off work to attend adoption appointments is disqualified from taking paternity leave and pay but may be eligible for adoption leave and pay (i.e. up to 52 weeks of adoption leave and up to 39 weeks of statutory adoption pay).

Where a couple are jointly adopting a child and both adopters are potentially eligible for adoption leave and pay, the adopter that intends to take a longer period of time off work would normally be the person who takes paid time off work to attend adoption appointments.

The adopter who intends to take paternity leave and/or pay (i.e. one or two weeks in the first 56 days after the child joins the family) may be eligible to take unpaid time off work to attend adoption appointments. See: [Time off to attend adoption appointments](#)

### **Shared parental leave and pay for adopters**

Eligible adopters can share up to 50 weeks of leave and up to 37 weeks of pay where the adopter ends their adoption leave and/or statutory adoption pay early to opt into shared parental leave and/or pay.

Any adoption leave and pay that has been taken by the adopter (or the adopter's partner) will reduce the pool of leave and pay that can potentially be shared. For further information on shared parental leave

and pay see: Employers' Technical Guide to Shared Parental Leave and Pay at [https://www. www.bit.ly/1r21XuI](https://www.wwww.bit.ly/1r21XuI)

# Time Off For Adoption Appointments

## Time off for single adopters to attend adoption meetings

Employees and agency workers with 12 weeks service who are matched with the child for adoption on or after 5 April 2015 are entitled to time off work to attend up to 5 adoption appointments (of up to six and a half hours for each appointment).

Where a couple are both adopters of the child, only one of them can take paid time off for these appointments.

If only one of the couple is officially adopting the child, only the adopter is entitled to time off to attend adoption meetings.

## Time off for joint adopters to attend adoption appointments

In the case of adoptions by a couple (i.e. joint adoptions); one of the couple will be entitled to paid time off work to attend up to 5 adoption appointments (of up to six and a half hours for each appointment). The other adopter will be entitled to unpaid time off work to attend up to 2 adoption appointments (of up to six and a half hours for each appointment).

If an employee is eligible for and elects to take paid time off to attend adoption appointments they will not be able to take paternity leave in relation to the adoption of that child. It is, therefore, likely that the person who takes paid time off work to attend adoption appointments will also take adoption leave and pay.

## Partners are not eligible for time off for adoption appointments

The partner of an adopter is not entitled to time off work (whether paid or unpaid) to attend adoption appointments unless they are jointly adopting a child – see: [Time off for joint adopters to attend adoption appointments](#).

In the case of single adopters, the partner is not entitled to time off work to attend adoption appointments but they may be able to use their annual leave for this.

## Dual Approved Prospective Adopters

### New adoption arrangements under the Children Act 1989

Each year a small number of children (estimated to be in the low hundreds in 2014) are 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 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 does not take place; if it breaks down; or if the child dies.

### Adoption leave and pay for dual approved prospective adopters

#### Adoption leave and pay for dual approved prospective adopters

A dual approved prospective adopter is entitled to take adoption leave and pay from up to 2 weeks before the child is placed with the family in accordance with section 22C of the Children Act 1989 (i.e. from up to 2 weeks before the child joins the family, initially for fostering).

**Adoption leave and pay is not available to other types of foster carers.**

#### When a dual approved prospective adopter is eligible for leave

To be eligible for adoption leave the dual approved prospective adopter must:

- Be a local authority foster parent who has been approved as suitable to adopt the child that they will initially foster.
- Have been notified by the local authority of its decision to place a child with him/her in accordance with section 22C of the Children Act 1989.
- Have notified the local authority that they agree to the placement (initially for fostering) and the date it will take place.
- Give the correct notice to their employer (this notice must be given within 7 days of the employee being notified by the local authority in accordance with section 22C, or as soon as practicable).

The adopter's partner may qualify for paternity leave and pay. In the case of joint adoptions, if both of the dual approved prospective adopters are eligible they can decide between themselves who will take the adoption leave and pay and who will take the paternity leave and pay.

### **When a dual approved prospective adopter is eligible for pay**

The dual approved prospective adopter will only be eligible for statutory adoption pay if they meet all of the conditions for adoption leave and also have:

- 26 weeks continuous employment with the same employer at the 'qualifying week'.
- Earned, on average, at least the lower earnings level (£112 a week) in the 8 weeks leading up to the date they were notified of a match with a child.
- Notified their employer that they are entitled to statutory adoption pay and when this is to begin.
- Stopped working for the employer.
- Elected to receive statutory adoption pay.

### **The qualifying week**

In the case of dual approved prospective adopters (i.e. prospective adopters who have a child placed with them for fostering with a view to them adopting that child), the qualifying weeks is the date that the dual approved prospective adopter is notified of a match with a child. In the case of dual approved prospective adoptions 'notified of a match' means that the employee has been notified by the local authority that a child will be placed with them in accordance with section 22C of the Children Act 1989.

### **Notification requirements for dual approved prospective adopters**

A dual approved prospective adopter must notify their employer of their intention to take adoption leave within 7 days of being matched with a child for adoption. In the case of dual approved prospective adoptions, 'matched with a child' means that the employee has been notified by the local authority that a child will be placed with them in accordance with section 22C of the Children Act 1989. If it is not possible to give notice in this timescale the employee must give the notice as soon as reasonably practicable.

The employee is entitled to take adoption leave up to two weeks before the child is expected to be placed with family (initially for fostering).

The amount of notice an employer will have will depend on the period of time between when the employee is notified of being matched with a child and when the child arrives – although the employee will know if they are being considered for adoption on this basis.

### **Cases where the 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.

The dual approved prospective adopters entitlement to statutory adoption pay will also end at this 8 week point, or earlier if they have already taken 39 weeks of statutory adoption pay.

### **Other circumstances where entitlement to adoption leave will end**

Entitlement to adoption leave will also end where the dual approved prospective adopter has taken 52 weeks of adoption leave; where they return to work (other than on a KiT day); or where they have curtailed their adoption leave to opt into shared parental leave – see: Employers' Technical Guide to Shared Parental Leave and Pay at <https://www.bit.ly/1r21XuI>

### **Other circumstances where entitlement to adoption pay will end**

Entitlement to statutory adoption pay will also end where the dual approved prospective adopter has taken 39 weeks of statutory adoption pay; or where they have given notice to curtail their statutory adoption pay to opt into statutory shared parental leave and/or pay – see: Employers' Technical Guide to Shared Parental Leave and Pay at <https://www.bit.ly/1r21XuI>

### **Entitlement to adoption leave and pay if the adoption goes ahead**

If a dual approved prospective adopter was entitled to adoption leave and pay 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).

### **Entitlement to paternity 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 leave when the child is placed with the family in accordance with section 22C of the Children Act 1989 they are not entitled to an additional one or two weeks of paternity leave when the adoption process begins.

### **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. For further information see: Employers' Technical Guide to Shared Parental Leave and Pay <https://www.bit.ly/1r21Xul>

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.

## **Cases where the adoption does not go ahead and the employee has booked shared parental leave**

Where a dual approved prospective adopter has ended their adoption leave and/or pay to opt into the shared parental leave and pay system and the adoption does not go ahead, they are entitled to take the shared parental leave that they have booked. Any leave that hasn't been booked is no longer available.

The employee may reduce a period of shared parent leave they have booked, or cancel their leave, subject to giving their employer 8 weeks' notice of the change.

No further notice can be given to book leave and only one variation notice may be given to reduce a period of leave or to aggregate discontinuous weeks of a leave into a single block of leave.

## Surrogacy and Parental Order Parents

From 5 April 2015, the intended parents in a surrogacy arrangement may be eligible for adoption leave and pay where they are eligible for and intend to apply for a Parental Order which will make them the legal parents of the child that they are having with the help of a surrogate mother.

Further information on Parental Orders and becoming a child's legal parent can be found at: <https://www.gov.uk/become-a-childs-legal-parent>

### Intended parents who aren't eligible for a Parental Order

Parents who have a child with the help of a surrogate mother and who do not meet the conditions to apply for a Parental Order (this will include single parents and parents who have no genetic link to the child) or who meet the conditions but don't intend to apply for a Parental Order, aren't eligible for adoption leave and pay.

## Adoption Leave and Pay for Parental Order Parents

The intended parents in a surrogacy arrangement may be eligible for adoption leave and pay where their baby is due on or after 5 April 2015 and they intend to apply for (or have already obtained) a Parental Order making them the legal parents of the child. The application for a Parental Order must be made within the 6 months of the child's birth and the intended parents must expect a Parental Order to be made. See: <https://www.gov.uk/become-a-childs-legal-parent>

Only couples can apply for a Parental Order and only one of the couple will be able to take adoption leave and/or pay in relation to the child, even if both meet the eligibility requirements.

### Qualification criteria for adoption leave and pay

For Parental Order parents, the qualification criteria for adoption leave and pay relate to milestones and circumstances related to the birth of their child (e.g. the baby's due date and actual date of birth).

The qualification requirements don't relate to 'matching a child' or 'placement for adoption' as that does not happen where the parents intend to obtain or have obtained a Parental Order for the child.

### **When a Parental Order parent is eligible for adoption leave**

One of the intended parents in a surrogacy arrangement will be eligible for adoption leave if:

- The baby's expected week of birth must be on or after 5 April 2015.
- They are an employee.
- They are one of a couple who has obtained a Parental Order for the child or who have, on the day of the child's birth, applied for or intend to apply for, a Parental Order for the child.
- The application for a Parental Order must be made within 6 months of the child's birth and the intended parents must expect the Parental Order to be made.
- They have given their employer the correct notice (notice of entitlement to adoption leave must be given by the 15<sup>th</sup> week before the expected week of birth (and must be in writing if the employer asks for this)).
- If requested by the employer, they must provide a statutory declaration that they have obtained or have applied for/intend to apply for a Parental Order in respect of the child that they are having with the help of a surrogate – see: [Getting a statutory declaration](#)
- The employee must also give their employer the actual date of the child's birth as soon as reasonably practicable after birth.

If the baby is born early (i.e. before 5 April 2015), the intended parent needs 26 weeks service with their employer to qualify for adoption leave.

If the baby is born on or after 5 April 2015, adoption leave is a 'day 1 right' where the employee has given the correct notice and the employee may be entitled to adoption leave even where they have recently changed jobs (providing they meet the qualifying conditions).

### **When a Parental Order parent is eligible for statutory adoption pay**

In order to qualify for statutory adoption pay, a 'Parental Order parent' must:

- Be an employee or agency worker
- Have been employed by the same employer for 26 weeks at the 'qualifying week'.
- Have earned, on average, the lower earnings level (£112 a week) in the eight week period leading up to the end of the 15<sup>th</sup> week before the expected week of birth.
- Have not claimed paternity pay for the child.

- Be the only Parental Order parent who claims statutory adoption pay for that child.
- Comply with the notification requirements.
- Give their employer the child's actual date of birth as soon as reasonably practicable after birth.

### **Statutory adoption pay is paid at the earnings related rate**

Where their baby is born on or after 5 April 2015, a Parental Order parent who is entitled to statutory adoption pay will be paid at the earnings related rate. The earnings related rate is 90% of their salary in the first 6 weeks and then the lower of 90% of their salary or the flat rate (£139.58 a week from 5 April) for the remaining 33 weeks. In the case of Parental Order parents '90% of their salary' means 90% of the employees average weekly earnings in the 8 weeks leading up to the end of the 15<sup>th</sup> week before the baby is due to be born.

If the baby is born on or before 4 April 2015 the Parental Order parent who claims statutory adoption pay will be paid at the flat rate throughout (i.e. their pay will not be at the earnings related rate in the first 6 weeks).

### **The qualifying week**

In the case of Parental Order parents, the qualifying week is the end of the 15<sup>th</sup> week before the expected week of the child's birth.

### **Notification requirements for adoption leave and pay**

To qualify for adoption leave a Parental Order parent needs to notify their employer by the 15<sup>th</sup> week before the baby's due date of their entitlement to adoption leave and/or pay. This notice must include the baby's expected week of birth. As soon as is reasonably practicable after the child's birth, the employee must notify their employer of the baby's date of birth in writing.

An employer can request a statutory declaration from the employee confirming that they intend to apply for a Parental Order (with the other intended parent) under section 54 of the Human Fertilisation and Embryology Act 2008 within the prescribed time limit (6 months from birth) and expect that order to be made.

### **Getting a statutory declaration**

A statutory declaration is a written declaration signed by the individual making it in the presence of a

- Practising solicitor
- Notary of the Public
- Justice of the Peace
- Commissioner for Oaths
- Councillor (Scotland only)
- Any other qualified person.

The employer of the intended parent in a surrogacy arrangement who wishes to claim adoption leave and/or pay, can require the parent to provide them with a statutory declaration that they have obtained, or have applied for/intend to apply for, a Parental Order in respect of their child and expect such an order to be made (where it has not already been made).

### **When both Parental Order parents potentially qualify for leave and pay**

If both of the Parental Order parents are potentially eligible for adoption leave and/or pay they can decide between themselves who will take the leave and/or pay and who will take paternity leave and/or pay (if they are eligible for this). This is the parents' choice and it is irrelevant which of the parents has a genetic link to the child.

### **Adoption leave will end where the Parental Order is refused**

Where the intended parents' application for a Parental Order is refused by the court, the employee's entitlement to adoption leave will end 8 weeks later or at the end of the adoption leave, whichever is earlier.

### **Paternity leave and pay for Parental Order parents**

If one of the Parental Order parents is eligible for paternity leave and pay, they can take one week or two consecutive weeks of leave and pay. The leave and pay must be taken within the first 56 days of birth (i.e. before the baby is 9 weeks old).

To qualify for paternity leave the Parental Order parent must:

- Be an employee.
- Have worked for their employer for 26 weeks by the end of the 15th week before the expected week of birth.

- Be one of a couple who are eligible for and intend to apply for a Parental Order in respect of the child.
- Expect to have the main responsibility for the child (with the other Parental Order parent).
- Give the correct notice.

If requested by their employer, the employee must supply a declaration that:

- He or she will be on paternity leave.
- They satisfy the entitlement conditions for paternity leave.
- They are eligible for and intend to apply for a Parental Order in respect of the child (or have obtained such an order).

To qualify for statutory paternity pay the Parental Order parent must:

- Be an employee or agency worker.
- Have worked for their employer for 26 weeks by the end of the 15th week before the expected week of birth.
- Continue to be employed by that employer until the birth of the child.
- Have earned, on average, at least the lower earnings level (£112 a week) in the 8 week period leading up to 15th week before the expected week of birth.
- Be eligible for and intend to apply for a Parental Order (or have obtained such an order) in respect of the child and expect a Parental Order to be made.
- Have elected to receive statutory paternity pay, be married to, the civil partner or the partner of the other Parental Order parent and have the main responsibility for the care of the child (together with the other parent).

### **Notification requirements for paternity leave and pay**

The Parental Order parent that will take paternity leave and/or pay must notify their employer of their entitlement by the 15th week before the expected week of birth. They must provide:

- Their name.
- The baby's due date.
- The date on which the leave and/or pay will begin.
- The child's actual date of birth once the child has been born.

Where requested, the employee must supply a declaration that they meet the conditions for paternity leave and/or pay and that they have not claimed adoption leave and/or pay. (Persons who claim adoption leave

and/or pay are disqualified from claiming paternity leave and/or pay and vice versa).

### **Maternity leave and pay in surrogacy arrangements**

Maternity leave and pay, and maternity allowance, are only available to women who are pregnant or who have given birth. The birth mother is entitled to take up to 52 weeks of maternity leave and up to 39 weeks of statutory maternity pay (if she eligible for pay) or maternity allowance even where she is not genetically related to the child that she is carrying.

The intended parents in a surrogacy arrangement can never be eligible for maternity leave and pay – only the birth mother is eligible for maternity leave and pay.

The intended parents in a surrogacy arrangement may, however, be eligible for adoption leave and pay which offer broadly equivalent protections and benefits.

### **Children born to a surrogate mother who is based overseas**

If the intended parents in a surrogacy arrangement are eligible for and intend to apply for a Parental Order in respect of their child (or have already obtained such an order) they may be eligible for adoption leave and/or pay, even where the surrogate mother is based overseas or where the child is born overseas. The leave and pay can be taken from the date of the child's birth (or the day after if the parent is at work on that date) even if the child has not yet entered the country (in contrast to overseas adoptions where the adoption leave and pay can only be taken when the child comes into the country).

### **Time off to attend ante-natal appointments with the birth mother**

The Parental Order parents are entitled to take time off work to accompany the surrogate mother to her antenatal appointments.

Both of the Parental Order parents are entitled to unpaid time off to attend up to two antenatal appointments (of up to 6 and half hours each appointment).

Where the Parental Order parent is the biological father of the child they are only entitled to unpaid time off to attend up to two antenatal appointments (i.e. they don't have a right to additional time off because

they are the father and are only entitled to time off to attend up to two appointments in total).

## **Shared parental leave and pay for Parental Order Parents**

If the Parental Order parents are eligible for shared parental leave and/or pay the parent who claims adoption leave and/or pay may choose to end their leave and/or pay early to opt into the shared parental leave and pay system. Shared parental leave and pay gives parents more flexibility in terms of the amount of leave they take and when they take this leave – see Employers' Technical Guide to Shared Parental Leave and Pay at: [www.bit.ly/1r21Xul](http://www.bit.ly/1r21Xul)

## **Parental Order refused after shared parental leave has been booked**

Where the Parental Order is refused the parent is entitled to take any shared parental leave that they have booked (or taken). Any leave that hasn't been booked is no longer available.

The employee may vary the end date of a period of leave booked to reduce that period, subject to giving their employer 8 weeks' notice, or cancel a period of leave.

No further notice can be given to book leave and only one variation notice may be given.

# Adoptions from Overseas

## Entitlement to adoption leave and pay for overseas adopters

To qualify for adoption leave and/or pay, an 'overseas adopter' must:

- Tell their employer the date of the official notification and the estimated date that the child will arrive in Great Britain. This must be done within 28 days of receipt of the official notification.
- Tell their employer the actual date the child arrives in Great Britain within 28 days of this date.
- Give their employer at least 28 days' notice of when they want to start their adoption leave and pay (leave and pay can only be taken from when the child enters Great Britain).

To qualify for adoption leave the employee must also give their employer proof of the adoption if the employer asks for this.

Where notice of entitlement to adoption leave is given on or after 5 April 2015 there is no qualifying period of service (i.e. adoption leave is a 'day 1 right' where the employee has given the correct notice).

Where such notice is given to the employer before 5 April, the employee needs to have 26 weeks of continuous employment at the date of the official notification.

## When an overseas adopter qualifies for statutory adoption pay

An overseas adopter will be entitled to statutory adoption pay if they have:

- 26 weeks continuous employment with the same employer at the 'qualifying week'.
- Earned, on average, at least the lower earnings level (£112 a week) in the 8 weeks leading up to the date of the official notification.
- Notified their employer that they are entitled to statutory adoption pay and when this is to begin (the pay can't start until the .
- Stopped working for the employer.
- Has elected to receive statutory adoption pay.

To qualify for statutory adoption pay the overseas adopter must have worked continuously for their employer for at least 26 weeks by the time they receive the official notification and have earned at least the lower

earnings level (£112 a week) in the 8 weeks leading up to the date of the official notification.

### **When an overseas adopter can start their adoption leave**

An employee can start their adoption leave from up to 2 weeks before the date that the child joins the family but they can't start their adoption leave until the child is in Great Britain.

The employee may be entitled to take other types of leave, e.g. annual leave, before starting their adoption leave. They may also be eligible for other types of leave, e.g. annual leave or shared parental leave after they have finished their adoption leave – but they must take at least 2 weeks of adoption leave before starting any shared parental leave. See: Employers' Technical Guide to Shared Parental Leave and Pay at <https://www. www.bit.ly/1r21Xul>

### **The qualifying week for statutory adoption pay**

In the vast majority of adoptions, the qualifying week is the week in which a prospective adopter is notified they have been matched for adoption with a child.

### **Statutory adoption pay is paid at the earnings related rate**

Adopters who qualify for statutory adoption pay should now be paid at the earnings related rate in the first 6 weeks. The remaining 33 weeks will be paid at the lower of the earnings related rate or the flat rate (£139.58 per week from 5 April). This mirrors the arrangements for statutory maternity pay.

For overseas adopters, the earnings related rate is calculated as 90% of the adopter's normal weekly earnings in the 8 week period leading up to the date the adopter received the official notification.

### **The official notification**

The official notification is 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 it is prepared to issue a certificate to the

relevant overseas authority in connection with the adoption - or has already done so).

### **Joint overseas adoptions**

As with other types of adoption, where a couple are adopting a child from overseas and they are both potentially eligible for adoption leave and pay they will need to decide which one of them will take the leave and pay. The overseas adopter who will take adoption leave and pay must confirm that they will not take paternity leave or pay (the other adopter may be eligible for paternity leave and/or pay).

### **Proof of adoption for overseas adoptions**

The employee must give their employer evidence of their entitlement to receive statutory adoption pay. The employee must give their employer:

- Their name and address.
- A copy of the official notification.
- The date on which the child is expected to enter Great Britain or the date of entry if the child is already here.
- Evidence of the date the child arrived in Great Britain within 28 days of that date.
- A declaration that the employee is taking adoption leave and/or pay, not paternity leave and/or pay.

### **Shared parental leave and pay for overseas adopters**

If the overseas adopter is eligible for shared parental leave and/or pay they can choose to end their adoption leave and/or pay early (i.e. take less than 52 weeks adoption leave and less than 39 weeks adoption pay) to opt into the shared parental leave and pay system. This gives working parents more flexibility in terms of the amount of leave they take and when they take this leave – see Employers' Technical Guide to Shared Parental Leave and Pay at: [www.bit.ly/1r21XuI](http://www.bit.ly/1r21XuI)



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