

MAY 2021



## PATERNITY LEAVE & PAY (ADOPTION) POLICY

**HORIZONS EDUCATION TRUST, AMERICAN LANE,  
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## 1. Scope

- 1.1. The following guidance sets out the **statutory minimum** required by regulation in respect of Ordinary Statutory Paternity Leave (OSPL) and Ordinary Statutory Paternity Pay (OSPP) rights, which are applicable to all employees in the case of adoption. It also comments on relevant non-teaching contractual provisions and local arrangements. In the case of adoption of multiple children, the term child may be read as children.
- 1.2. This document applies to adoption. If this is not applicable, please refer to the Ordinary Paternity Leave and Pay (Birth) Management Guidance Notes and Employee Application Form.

## 2. Frequently Used Terms

- 2.1. The definitions in this paragraph apply in this guidance.

**Adopter:** A child's adopter is either the person who has been matched with the child for adoption or, where two people have been matched jointly, the person who has elected (at the time they are notified that they have been matched) to be the child's adopter for statutory adoption leave and pay purposes.

**Prospective adopter:** A prospective adopter is someone who has been approved as suitable to adopt a child and has been notified of that decision.

**Partner:** Spouse, civil partner or someone living with another person in an enduring family relationship, but not a sibling, child, parent, grandparent, grandchild, aunt, uncle, niece or nephew.

**Child:** A child is a person who is under the age of 18 when they are placed with the adopter for adoption.

**Adoption agency:** An adoption agency in England and Wales is defined by reference to section 2 of the Adoption and Children Act 2002 (ACA 2002) (either a local authority or registered adoption society in England and Wales).

**Matched for adoption:** A person is matched with a child for adoption when:

- An adoption agency decides that they would be a suitable adoptive parent for the child either individually or jointly with another person; or
- A decision has been made to place the child with a local authority foster parent who is also an approved prospective adopter and an adoption agency has identified them as the person with whom the child is to be placed.

**Notification of being matched for adoption:** A person is notified of having been matched with a child:

- When an adoption agency decides that they would be a suitable adoptive parent, on the date on which they receive notification of the adoption agency's decision.
- When a local authority foster parent is identified as an adoptive parent, on the date on which they receive notification of the adoption agency's decision.

**Notification of being placed for adoption:** A person is notified of a child being placed for adoption where either the child is:

- Placed for adoption under the ACA 2002; or
- Placed in accordance with section 22C of the Children Act 1989 with a local authority foster parent who is also a prospective adopter.

### 3. Eligibility for OSPL

3.1. The employee must:

- Have been employed for at least 26 weeks by the end of the week in which the child's Adopter is notified that they have been matched with a child. (For overseas adoption see 5 below); **and**
- Be either the spouse, civil partner or partner of the Adopter; **and**
- Be taking the time off to support the Adopter or care for the child and have or expect to have the main responsibility (apart from the responsibility of the child's Adopter) for the child's upbringing; **and**
- Give written notice within seven days of the date on which the Adopter is notified of their match with the child or as soon as is reasonably practicable of:
  - The date on which the Adopter was notified of having been matched with the child
  - The date on which the child is expected to be placed with the Adopter
  - The amount of OSPL that the employee intends to take (that is, either one week or two consecutive weeks)
  - When they want their OSPL to start (see below)

3.2. If the employee is eligible and gives the required written notice they are entitled to take the leave; it cannot be refused or deferred by the employer.

3.3. Where the adoption is of a child from overseas the following will apply instead of 1 and 4 above.

- The employee must still have been employed continuously for 26 weeks. However, this criterion can be met either by counting:
  - From the week in which they started their employment with the employer; or
  - Back from the week in which they received "official notification" from the relevant domestic authority that it had issued, or would

issue, a certificate to the relevant overseas adoption authority confirming the employee's eligibility to adopt and that the employee has been assessed and approved as a suitable adoptive parent.

- 3.4. The employee must have received notification that the adoption has been approved by the relevant UK authority (official notification).
- 3.5. The employee must give written notice of:
  - The intention to take OSPL;
  - The date they received official notification; and
  - The date the child is expected to arrive in Great Britain
- 3.6. This notice should be given as early as possible but in any case within 28 days of receiving official notification or, if the employee has less than 26 weeks' continuous employment with the employer at the date of Official Notification, within 28 days of completing 26 weeks' continuous employment with the employer, whichever is later.
- 3.7. The employee must also give at least 28 days' notice in writing of the intended start date which can be the date the child arrives in Great Britain or a predetermined date no more than 28 days after the child's arrival in Great Britain.
- 3.8. The employee must notify the employer of the date the child arrives in Great Britain within 28 days of that date.
- 3.9. The employer may also ask for:
  - A copy of the official notification and evidence of the date the child arrived in Great Britain.
  - The amount of OSPL that the employee intends to take (that is, either one week or two consecutive weeks)
  - When they want their OSPL to start (see below)
- 3.10. If the employee is eligible and gives the required written notice they are entitled to take the leave; it cannot be refused or deferred by the employer.
- 3.11. **Please note** - non teaching staff who are employed under Green Book conditions of service may be entitled to **Maternity Support Leave**, irrespective of length of service, and relationship to the mother or child, provided that they are the 'nominated carer of an expectant mother at or around the time of birth' [see below]. This provision does not apply to teachers, but local arrangements may exist [see below]. The Green Book does not set out the same terms for adoption support leave but schools should apply this to adoption paternity leave requests in the same way.

## 4. The Entitlement to OSPL and how it can be Taken

- 4.1. OSPL is not available if the employee has taken any Shared Parental Leave in respect of the child, taken paid time off to attend up to five adoption appointments in respect of the child, or if they have already taken paternity leave in relation to the child as a result of the child being placed with a Prospective Adopter who at the same time of the placement is the employee's spouse, civil partner or partner. Therefore, taking account of any enhanced contractual entitlements they might have, parents intending to adopt should consider which right they wish the parent who is not the primary Adopter to exercise: attending paid adoption appointments or OSPL.
- 4.2. The entitlement is to up to two weeks (either one week or two consecutive weeks) paid leave, to be taken between the date on which the child is placed with the Adopter and 56 days after that date.
- 4.3. Within the 56 day period, it is for the employee to choose when they wish to take their OSPL, starting with any of:
  - The date on which the child is placed with the Adopter;
  - A date falling a specified number of days after the date on which the child is placed with the Adopter, which must have been notified to the employer;
  - A predetermined date which must be the date on which the child is expected to be placed with the Adopter, which must have been notified to the employer.

## 5. Changing the Start Date of OSPL

- 5.1. If the employee wants to change the start date they must give the following written notice:
  - **If they want to change their leave so it starts on the date when the child is placed with the Adopter**, at least 28 days before the first day of the expected adoption placement date set out in their notice of intention to take OSPL
  - **If they want to change their leave so it starts on a particular date**, 28 days before that date
  - **If they want to change their leave so it starts a specified number of days (or a different specified number of days) after the date on which the child is placed with the Adopter**, at least 28 days (minus the specified number of days) before the expected placement date set out in their notice of intention to take OSPL.
- 5.2. When it is not possible to give the required written notice, the employee should inform you as soon as reasonably practicable as to any date changes that may occur.
- 5.3. Where an employee has changed the start date of their leave, they should fill in a new application form.

## 6. The Entitlement to OSPP (Adoption)

- 6.1. The minimum OSPP for the leave will be determined in accordance with the statutory requirements in place at the time. These can be accessed at [www.gov.uk](http://www.gov.uk).
- 6.2. Any employee not entitled to OSPP will receive form SPP1 from their payroll provider explaining why they are not eligible; they may then be able to claim income support during OSPL.

## 7. Maternity Support Leave for Non-Teaching Employees

- 7.1. In accordance with the Green Book, up to 5 days maternity support leave shall be granted to the child's father or the partner or nominated carer of an expectant mother at or around the time of birth. There is no length of service requirement.
- 7.2. A nominated carer is the person nominated by the mother to assist in the care of the child and to provide support to the mother at or around the time of the birth.
- 7.3. Maternity Support Leave is paid at the rate of normal salary. An employee who qualifies for both OSPL and maternity support leave will, therefore, be entitled to the first week's leave at full normal pay based on contracted hours, inclusive of Statutory Paternity Pay (SPP) where applicable. To qualify for the second week of statutory paternity leave and pay (at SPP rate or 90% of pay whichever is lower) it is necessary for the employee to meet the statutory criteria including length of continuous service and earnings criteria.
- 7.4. If unpaid statutory parental leave, or OSPL is requested in addition to Maternity Support Leave, the Maternity Support Leave is offset against the leave, it cannot be taken in addition to it.
- 7.5. The Green Book does not set out the same terms for adoption support leave but schools should apply this to adoption paternity requests in the same way whereby the adopter nominates a carer to support them

## 8. Local Arrangement

- 8.1. Schools and academies may choose to determine a policy in respect of Contractual Paternity Pay (CPP) whereby they pay the employee in addition to any entitlement to OSPP. Where entitled, OSPP will be included in any payment, which must not exceed normal salary.

## 9. Employment Rights During Leave

- 9.1. An employee who takes OSPL has the right not to be dismissed or subjected to any other detriment by reason of taking the leave. Continuous service will continue to accrue during paternity leave for both teaching and non-teaching employees.
- 9.2. During OSPL an employee has a statutory right to continue to benefit from all the terms and conditions of employment which would have applied to them had they been at work, except for the terms relating to wages or salary. The employee remains bound by their obligations of good faith, as well as any contractual terms relating to the giving of notice, disclosure of confidential information, acceptance of gifts and benefits and freedom to participate in another business/work elsewhere.

## 10. The Right to Return from OSPL

- 10.1. An employee who has exercised their right to take OSPL usually has the right to return to the same job that they were employed to do immediately prior to taking the leave. This right depends on the OSPL having been one of the following under regulation 13:
  - An isolated period of leave.
  - The last of two or more consecutive periods of statutory leave (maternity, adoption, shared parental leave, parental and paternity leave) which did not include any:
    - Period of parental leave of more than four weeks; or
    - Period of statutory leave which when added to any other periods of statutory leave (excluding parental leave) taken in relation to the same child means that the total statutory leave taken in relation to that child totals more than 26 weeks.
- 10.2. If the above does not apply, and it is not reasonably practicable for the employer to return the employee to the job they were doing before their OSPL, the employer is entitled to propose an alternative job for the employee to return to which is both suitable for them and appropriate for them to do in the circumstances.
- 10.3. The employee's right to return under regulation 13 is a right to return both:
  - With their seniority, pension rights and similar rights:
    - In a case where the employee is returning from consecutive periods of statutory leave which included a period of additional maternity leave or additional adoption leave, as they would have been if the period(s) of their employment prior to the additional maternity or adoption leave [as the case may be] were continuous with the period of employment following it; and
    - In any other case, as they would have been had the employee not been absent.
  - On terms and conditions not less favourable than those which would have applied had the employee not been absent on OSPL.

## 11. Informing EPM Payroll that an Employee will be taking OSPL

11.1. Please ask the employee to complete the attached form, retain the original signed copy on the employee's personnel file and send a copy of the completed form to your designated payroll adviser at the address indicated.

11.2. Sections A to E are to be completed by the employee. Section F is to be completed by the Senior Authorising Officer, and must be signed by them to enable processing.



Application for Ordinary Statutory Paternity Leave (OSPL) and Pay (OSPP) (Adoption) and Maternity Support Leave and Pay

Section A – Employee Details (to be completed by the employee)

Employee name:	
Address for correspondence:	
Payroll reference:	
National Insurance No:	
Name of school/academy employing:	
Post title/s:	
Relevant service and notice week:	
Notification of match letter/official notification:	
Copy of evidence attached:	Yes: <input type="checkbox"/> No: <input type="checkbox"/>

Section B – Application for OSPL and/or Maternity Support Leave (where applicable)

1. I <b>[insert name]</b> _____ confirm that I meet the qualifying conditions for OSPL in that I: <b>(You MUST be able to confirm all three conditions, please tick)</b>	
a) wish to take OSPL to care for the child and/ or support the child’s adopter, <b>and</b>	<input type="checkbox"/>
b) will have or expect to have the main responsibility (apart from the responsibility of the child’s adopter) f for the child’s upbringing, <b>and</b>	<input type="checkbox"/>
c) I am either:	<input type="checkbox"/>
i) the spouse of the adopter; or	<input type="checkbox"/>
ii) the civil partner of the adopter; or	<input type="checkbox"/>
iii) partner living with the child’s adopter in an enduring relationship and am NOT the child’s mothers parent, a grandparent, sister, brother, aunt or uncle	<input type="checkbox"/>
2. I understand that, for the purposes of exercising my right to take OSPL, the “adopter” of a child is either the person who has been matched with the child for adoption or, where two people have been matched jointly, whichever of them has elected to be the child’s adopter for the purposes of taking adoption and paternity leave.	<input type="checkbox"/>

3. The adopter was notified that they had been matched for adoption with _____ [name of child, if known] on _____ [date]	
4. _____ [name of child] [is expected to be OR was] (please delete as appropriate) placed with the adopter on _____ [insert date]	
5. I would like to take [one week OR two consecutive weeks'] (Please delete as appropriate) OSPL.	
a) On the date on which the child is placed with the adopter.	<input type="checkbox"/>
b) _____ [insert number] days after the date on which the child is placed with the adopter.	<input type="checkbox"/>
c) On _____ [insert date] (note that this date must be later than the date on which the child is expected to be placed with the adopter.)	<input type="checkbox"/>

**Non-Teaching Employees Only – Maternity Support Leave Employed Under Green Book Terms**

6. I confirm I fulfil the eligibility criteria for paternity leave above. I wish to take 5 days paid maternity support leave in order to provide care for the child and support the adopter commencing on [date] _____ I also meet the qualifying condition for OSPL indicated under 1 above and wish to take 1 week's OSPL following this to commence on [date] _____	
7. I am not eligible for maternity support leave. I intend to take (please tick):	
1 week OSPL	<input type="checkbox"/>
2 consecutive weeks OSPL	<input type="checkbox"/>
Commencing on [date] _____ which is:	
A predetermined date which must be the date on which the child is expected to be placed with the adopter, which must have been notified to the employer.	

a) _____ [insert date] which is the date on which the child is expected to be placed with the adopter; or	<input type="checkbox"/>
b) _____ [insert number of days] after the date on which the child is expected to be born placed with the adopter, which I understand, must be notified to the employer; or	<input type="checkbox"/>
8. I understand that I must provide 28 days' written notice if I wish to change the start date of my OSPL.	<input type="checkbox"/>
9. I understand that all my OSPL must be taken within 56 days of the date on which the child is placed with the adopter.	<input type="checkbox"/>
10. I understand that OSPL is not available if, in adoption cases, I have taken any shared parental leave in respect of the child, taken paid time off to attend adoption appointments in respect of that child, or they have already taken paternity leave in relation to the child as a result of the child being placed with a prospective adopter who at the time of the placement was my spouse, civil partner or partner.	<input type="checkbox"/>

<b>Section C– Application for Ordinary Statutory Paternity Pay (OSPP)</b>	
Please refer to the attached guidance document 'the entitlement to OSPP' and tick the <b>one</b> applicable statement.	
a) I understand that I am not entitled to OSPP as I do not meet the earnings threshold. I am applying for OSPL only. (You will be sent form SPP1 to confirm)	<input type="checkbox"/>
b) I understand that I am entitled to OSPP. Please arrange payment of my 1 week.	<input type="checkbox"/>
c) I understand that I am entitled to OSPP. Please arrange payment of my 2 weeks.	<input type="checkbox"/>
If you have elected under Section B to take your entitlement to maternity support leave this will be paid.	

<b>Section D – Application for Contractual Paternity Pay (CPP) (where applicable)</b>	
I understand that in accordance with my contract I am entitled to CPP. Therefore, please arrange payment of my entitlement to:	
1 week CPP	<input type="checkbox"/>
2 weeks' CPP	<input type="checkbox"/>
I understand that this payment will be inclusive of any entitlement that I have to the payment of OSPP.	

<b>Section E – Declaration</b>	
<b>All of the information I have provided on this form is accurate</b>	
Print name:	
Signed:	
Date:	
Please return this form to the Senior Authorising Officer.	

<b>Section F – Authorisation (to be completed by the Senior Authorising Officer)</b>	
<b>I authorise the paternity leave and pay as detailed above.</b>	
Print name:	
Signed:	
Date:	
<b>This form should be retained on the employee's personnel file. Please forward a copy for payroll processing.</b>	