

# Notice of Meeting

---

## Delegated Officer Decisions

**Tuesday 10 December 2019**

Date of despatch of Agenda: Monday 2 December 2019

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Stephen Chard on 01635 519462  
e-mail: [stephen.chard@westberks.gov.uk](mailto:stephen.chard@westberks.gov.uk)

Further information and Minutes are also available on the Council's website at  
[www.westberks.gov.uk](http://www.westberks.gov.uk)

**Agenda - Delegated Officer Decisions to be held on Tuesday, 10 December 2019**  
*(continued)*

**To:** Nick Carter, Chief Executive

---

# Agenda

## Part I

	Page No.
1      Adoption Procedure	1 - 22
2      Maternity Procedure	23 - 40

Sarah Clarke  
Head of Legal and Strategic Support

West Berkshire Council is committed to equality of opportunity. We will treat everyone with respect, regardless of race, disability, gender, age, religion or sexual orientation.

If you require this information in a different format or translation, please contact Moira Fraser on telephone (01635) 519045.



**WestBerkshire**  
C O U N C I L

## Adoption Procedure

**Committee considering report:** Delegated Officer Decision

**Date of Committee:** 10 December 2019

**Portfolio Member:** Councillor Howard Woollaston

**Report Author:** Katie Penlington

**Forward Plan Ref:** DOD3862

### 1. Purpose of the Report

- 1.1 To seek approval for amendments to the adoption procedure which has been updated to reflect legislation and best practice as part of a scheduled review.
- 1.2 The adoption procedure details the entitlements and responsibilities that apply when employees request leave and/or pay for the purposes of adopting children. It applies to all employees of West Berkshire Council, including those in schools which adopt the procedure.
- 1.3 The availability of Statutory Adoption Pay and Statutory Adoption Leave was extended in 2015 to include foster parents who have been approved for adoption under a foster to adopt arrangements, and to intended parents of a child born in a surrogacy arrangement where they are eligible for, and intend to apply for (or have already obtained) a parental order making them the legal parents of the child. The Council's procedure has been updated to include details of foster to adopt and surrogacy. Forms notifying the Council/school of the intention to take adoption leave, and where eligible to claim adoption pay have also been revised.
- 1.4 The procedure has been updated in section 7 to reflect current rate of statutory adoption pay
- 1.5 The document has been amended at 9.2 to correct information regarding a teacher's return to work on part time hours having claimed occupational adoption pay.
- 1.6 Data Protection information has been added at section 19
- 1.7 The document has also been amended to clarify the following:
- 1.8 Payments where an employee receives essential car user allowance at 13.3
- 1.9 Occupancy and payments where an employee has an occupancy agreement at 13.5
- 1.10 KIT (Keeping in Touch) days in section 15 and returning to work following adoption leave in section 16
- 1.11 The last date of employment following resignation is the date notice expires in section 16
- 1.12 Closure of the Childcare Voucher scheme at 20.4

## 2. Recommendation

- 2.1 The Chief Executive is recommended to approve the Adoption Procedure.

## 3. Implications

- 3.1 **Financial:** There is a potential financial impact as the law has extended entitlement to adoption pay to people meeting eligibility criteria in foster to adopt arrangements and in relevant surrogacy arrangements.
- 3.2 **Policy:** Addition of wording around occupancy agreements following consultation with Legal Services
- 3.3 **Personnel:** More employees may be entitled to claim adoption leave and pay.
- 3.4 **Legal:** Amended to reflect availability to adoption leave and pay to foster parents approved to adopt under a foster to adopt arrangement and surrogacy arrangements where the employee applies for and expects to be granted a parental order.  
Addition of wording around occupancy agreements following consultation with Legal Services
- 3.5 **Risk Management:** N/A
- 3.6 **Property:** N/A
- 3.7 **Other:** N/A

## 4. Other options considered

- 4.1 None; the amendments to the Adoption Procedure are relatively minor and reflect changes in legislation and current practice.

## Appendices

- 4.2 Appendix A – Adoption Procedure

# Adoption Procedure

Reference: HRADOPT  
Version No: 3.0  
Issue Date: November 2019

## Document Control

Document Ref:	HRADOPT	Date Created:	March 2014
Version:	3	Date Modified:	April 2015, November 2019
Revision due	March 2017, November 2022		
Author:	Jane Milone, amended 2019 by Katie Penlington	Sign & Date:	
Head of Service:	Robert O'Reilly	Sign & Date:	
Equality Impact Assessment: (EIA)	Date undertaken: n/a Issues (if any):		

## Change History

Version	Date	Description	Change ID
2.0	March 2014	Revised procedure to incorporate advice notes and changes to pension buy back	
2.1	April 2015	Minor updates to refer to Shared Parental Leave and paid time off for adoption appointments	
3	July 2019	General review. Added in rights to SAP and SAL for those in a foster to adopt arrangement or for parents using a surrogate mother and to clarify details including lease cars, KIT days, returning to work and payments under occupancy agreements .	

## Related Documents

Reference	Title	Tier
	Shared Parental Leave Policy	
	Additional Leave Procedure	

# Contents

---

1.	Purpose .....	3
2.	Applicability.....	3
3.	Roles and Responsibilities .....	3
4.	Qualifying for adoption leave .....	3
5.	Documentary evidence required for adoption leave and pay .....	5
6.	Adoption leave.....	5
7.	Adoption Pay .....	6
8.	Eligibility for Statutory Adoption Pay.....	7
9.	Eligibility for Occupational Adoption Pay .....	8
10.	Notification of intention to take adoption leave and pay .....	8
11.	Time off for preparation for adoption appointments.....	10
12.	Annual and public holiday leave .....	10
13.	Other contractual entitlements.....	11
14.	Contact during adoption leave.....	12
15.	Keeping in Touch (KIT).....	12
16.	Returning to work .....	12
17.	Protection from victimisation, dismissal or detriment.....	13
18.	Fixed term contracts .....	13
19.	Data protection .....	14
20.	Further information for employees.....	14
	Appendix A – Adoption Pay Calendar .....	15
	Appendix B – Application Form for Adoption Leave and Pay (UK Adoptions including foster to adopt arrangements) .....	16
	Appendix C – Application Form for Adoption Leave and Pay (Overseas Adoptions).....	17
	Appendix C – Application Form for Adoption Leave and Pay (surrogacy arrangements) .....	19

## **1. Purpose**

1.1. The purpose of this procedure is to detail the entitlements and responsibilities that apply when employees request leave and/or pay for the purposes of adopting children.

## **2. Applicability**

2.1. This procedure applies to all employees of West Berkshire Council, including those in schools which have adopted this procedure.

2.2. The availability of Statutory Adoption Pay and Statutory Adoption Leave was extended in 2015 to include foster parents who have been approved for adoption under a foster to adopt arrangements, and to intended parents of a child born in a surrogacy arrangement where they are eligible for, and intend to apply for (or have already obtained) a parental order making them the legal parents of the child.

## **3. Roles and Responsibilities**

3.1. The Chief Executive/Governing Board has overall responsibility for ensuring that adoption leave and pay is managed appropriately in accordance with this procedure.

3.2. Managers/head teachers are responsible for;

3.2.1. Ensuring that applications for adoption leave and pay are managed in accordance with this procedure;

3.2.2. Maintaining appropriate contact with employees during adoption leave.

3.3. Employees are responsible for providing required documentation and making applications for adoption leave and pay, and for notifying their line manager of their date of return, in accordance with this procedure.

3.4. Human Resources is responsible for;

3.4.1. Keeping the procedure up to date in line with legislation changes;

3.5. Payroll is responsible for:

3.5.1. Receiving and processing applications for adoption leave and pay;

3.5.2. Making payments of occupational adoption pay (OAP) and statutory adoption pay (SAP), and for advising on pension implications of periods of nil pay.

## **4. Qualifying for adoption leave**

4.1. There is no minimum length of service required to qualify for statutory adoption leave (SAL). An employee who adopts a child through an approved adoption agency is entitled to up to 52 weeks adoption leave from day one of their employment.

4.2. The right to statutory adoption leave is available to employees who:

- Have been notified by an approved adoption agency that they (alone or jointly) have been newly matched with a child for adoption within the UK, or
- Are adopting, or is one of a couple who are adopting a child from overseas and have received official notification<sup>1</sup> from the relevant UK authority that they have been assessed and approved as suitable adoptive parents, or
- Are a local authority foster parent who is a prospective adopter and has been notified under s22 of the Children Act that a child will be placed with them in a 'foster to adopt' arrangement or
- Are becoming legal parents of a child as a result of a parental order under s54 of the Human Fertilisation and Embryology Act 2008 where the child is born under a surrogacy arrangement

4.3. To qualify for SAL an employee must:

- Have given their employer the required notice that they intend to take adoption leave (see section ten below)
- Be able to provide required documentary evidence (see section five below)

For UK adoptions including foster to adopt and overseas adoptions they must also:

- Be newly matched with a child (up to the age of 18);
- Be approved for adoption by an approved adoption agency;
- Have notified the agency that they agree to the child being placed with them and on the date of placement;

For intended parents in a surrogacy arrangement they must also intend to apply for (or have already obtained) a Parental Order

4.4. Where a couple are adopting jointly, only one may take adoption leave. The other will be entitled to take Ordinary Paternity Leave (of one or two weeks) and/or [Parental Leave](#). Either parent in a same-sex relationship may qualify for adoption leave, as may the male partner in a heterosexual relationship.

4.5. The adopter may choose to end his/her adoption leave early (before the end of 52 weeks) if he/she and/or his/her partner wish(es) to take [Shared Parental Leave](#) (see separate policy).

4.6. Employees adopting a step-child, a family member, becoming a special guardian or kinship carer or who adopt privately without permission from a UK authority or adoption agency do not qualify for adoption leave (or pay), although they may qualify for parental leave.

4.7. If more than one child is being placed as part of the same arrangement, the employee is only entitled to one period of Statutory Adoption Leave.

---

<sup>1</sup> 'Official notification' means written notification, issued by or on behalf of the Secretary of State for Health, that it is prepared to issue/has issued a certificate to the overseas authority concerned with the adoption of the child, confirming that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent.

'adoption from overseas' means the adoption of a child who enters Great Britain from outside the UK in connection with, or for the purposes of adoption that does not involve the placement of the child for adoption under the law of any part of the UK.

4.8. An employee is not entitled to take adoption leave or pay in relation to a child in the capacity as his/her adopter if the employee has already taken adoption leave as a result of a child being placed, or expected to be placed, with the employee under s22 of the Children Act 1989 (i.e. as a foster parent in a foster to adopt arrangement).

## 5. Documentary evidence required for adoption leave and pay

5.1. The Council/school requires its employees to provide the documentary proof of adoption specified in this section for both adoption leave and pay:

5.2. For surrogacy arrangements, the Council/school requires the employee to provide a written statement to confirm that in the six months after the baby's birth they intend to apply for a parental order and that they expect the order to be granted

5.3. For UK and overseas adoptions and foster to adopt the employee must provide:

- The name and address of the adoption agency on a document issued by the agency which should also include the name and address of the employee undertaking the adoption.
- The date the child was matched e.g. a matching certificate, or in cases of foster to adopt a letter from the local authority placing the child confirming the date the child was matched.
- The expected date of placement or actual date of placement where the child has already been placed. (E.g. a letter from the agency/local authority).
- In addition, for overseas adoptions the employee must also provide documentary evidence of the official notification<sup>2</sup> confirming that the employee is allowed to adopt from abroad, and of the expected date the child arrives in the UK, within 28 days of the notification or within 28 days of the employee's completion of 26 weeks continuous service – whichever is the later<sup>3</sup>. The employee must also provide evidence of the date of the child's actual entry to the UK (e.g. plane ticket) within 28 days of the date of entry. Where the employee is adopting the child with their partner they must complete an SC6 form available from the GOV.UK website and give a copy of the declaration to their employer. This states that they have decided to take statutory adoption leave and not statutory paternity pay.
- For foster to adopt arrangements, the employee must also provide documents proving that they are a local authority foster parent, have been approved as a prospective adopter and have been notified by a local authority in England that a child is to be, or is expected to be placed with the employee under section 22C of the Children Act 1989.

## 6. Adoption leave

6.1. Qualifying employees may take up to 52 weeks' adoption leave. This comprises;

---

<sup>2</sup> 'Official notification' means written notification, issued by or on behalf of the Secretary of State for Health, that it is prepared to issue/has issued a certificate to the overseas authority concerned with the adoption of the child, confirming that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent.

<sup>3</sup> Timescales set out in Regulation 17(2)(a) of the Paternity and Adoption Leave Regulations 2002, as modified by the Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003

- 6.1.1. 26 weeks' Ordinary Adoption Leave (OAL); followed by
  - 6.1.2. 26 weeks' Additional Adoption Leave (AAL)
- 6.2. An employee can decide how much of the 52 week period he/she wishes to take.
- 6.3. Where the employee is adopting from within the UK, including foster to adopt, the adoption leave can start on any day of the week, from either the actual date of the child's placement; or from a fixed date up to 14 days before the expected date of placement.
- 6.4. Where an employee is adopting from overseas, the employee can chose to start the adoption leave on the date on which the child enters Great Britain or on a predetermined date that is no later than 28 days after the date the child entered the UK.
- 6.5. Where the parents are in a surrogacy arrangement, adoption leave can start on the day the child is born or the day after.
- 6.6. If, for any reason, after the employee has begun their adoption leave, the placement does not go ahead or ends, or in a surrogacy arrangement an application for a Parental Order is refused by the courts, the employee will be allowed to continue the adoption leave for a maximum of eight weeks after the end of the week the placements ends, the date the child dies or the date the adopter is notified that the placement will not be made, the date the application for a parental order is refused or the date AML is due to end, **whichever is the sooner**.
- 6.7. If the placement is delayed once adoption leave has started, the leave cannot be stopped and started again at a later date.

## 7. Adoption Pay

- 7.1. Adoption pay will be paid for part of the 52 week period if the employee meets the qualifications for length of service and weekly earnings, and has provided the necessary notifications. Two different payments may be made – statutory adoption pay (SAP) and occupational adoption pay (OAP).
- 7.2. If both payments are made they will run concurrently. Any SAP payable will be offset against any OAP due for the first six weeks. After the first six weeks, both payments will be made, up to a maximum of full pay. See appendix A for this information in a table.
- 7.3. **SAP** is paid for up to 39 weeks. Qualifying employees receive;
- 7.3.1. For the first six weeks, 90% of average earnings; and
  - 7.3.2. For the remaining 33 weeks, standard SAP (the lower of £148.68 or 90% of gross average weekly earnings at April 2019).
- 7.4. **OAP** is paid for up to 18 weeks, with the final 12 weeks dependent upon the employee returning to work. Qualifying employees receive;

- 7.4.1. 90% of normal earnings for the first six weeks (teachers receive full pay for the first four weeks and 90% salary for the next two weeks); followed by
- 7.4.2. 12 weeks of 50% normal earnings (paid subject to a return to work as set out in section nine below).

## **8. Eligibility for Statutory Adoption Pay**

### **8.1. To qualify for SAP, an employee must**

- 8.1.1. Have specified the date on which he or she expects the payment of statutory adoption pay to begin.
- 8.1.2. Have given the required notice - the employee should provide 28 days' notice in writing that they want to claim adoption pay (or as soon as possible if this is not reasonably practicable; for example where the time between the child being matched and placed is less than that).
- 8.1.3. Have provided proof of adoption or surrogacy (see section five above).

### **8.2. For UK adoptions including foster to adopt the employee must have been continuously employed by the Council/school for at least 26 weeks up to any day in the week they were matched with a child and have earned, on average, no less than the lower earnings limit for National Insurance in the eight weeks prior to the notification<sup>4</sup> of the placement.**

### **8.3. For overseas adoptions the employee must**

- 8.3.1. Have been continuously employed by the Council/school for a minimum of 26 weeks ending with the week they received the 'official notification' (permission from a UK authority) that they can adopt from abroad or ending with the week in which the statutory pay period is to begin, whichever is later.
- 8.3.2. Have earned, on average, no less than the lower earnings limit for National Insurance in the eight weeks prior to the official notification<sup>5</sup>.
- 8.3.3. Fill in the Government's form [SC6](#) to confirm that they are not taking paternity leave or pay, if they are adopting with their partner.

### **8.4. For employees in surrogacy arrangements the employee**

- 8.4.1. Must have been continuously employed by the Council/school for at least 26 weeks up to the end of the 15<sup>th</sup> week before the baby is due.
- 8.4.2. Have earned, on average, no less than the lower earnings limit for National Insurance in the eight weeks leading up to the end of the 15<sup>th</sup> week before the expected week of birth.

---

<sup>4</sup> For foster to adopt '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 S22C of the Children Act 1989.

<sup>5</sup> 'Official notification' means written notification, issued by or on behalf of the Secretary of State for Health, that it is prepared to issue/has issued a certificate to the overseas authority concerned with the adoption of the child, confirming that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent.

- 8.4.3. Provide their manager/headteacher with a written statement that in the six months after the baby's birth they intend to apply for a parental order and that they expect the order to be granted.
- 8.5. If an employee is not entitled to SAP, the adoption agency may be able to provide advice on the financial support that may be available in these circumstances.
- 8.6. If the adoption is disrupted because the child dies or is returned to the adoption agency, or the adoption pay period has begun prior to the date the child is due to be placed for adoption, but the placement does not take place, or an application for a parental order is refused by the courts, the adoption pay period terminates eight weeks after the end of the week in which the child dies or is returned to the adoption agency or the adopter is notified that the placement will not take place.
- 8.7. For details of lower earnings limit and SAP, please see [Adoption pay and leave - Gov.uk](#)
- 8.8. Where the employee is not eligible for Statutory Adoption Pay Payroll will provide him/her with a SAP1 exclusion form within 28 days of notification of the adoption matching date.

## **9. Eligibility for Occupational Adoption Pay**

- 9.1. To qualify for OAP, an employee must:
  - 9.1.1. Have more than one year's continuous local government service by the week they are notified they are matched with a child (UK and foster to adopt) or by the week that they received the 'official notification' (overseas adoptions) or by the beginning of the 11<sup>th</sup> week before the expected week of childbirth (surrogacy arrangements); and
  - 9.1.2. Make a declaration that he/she intends to return to work.
- 9.2. To qualify for OAP, the employee must return to local authority/school's employment, for a period of at least three months. Teachers who return part-time must return for the equivalent of three months at their previous contracted hours (e.g. a teacher who was fulltime and who returns on a 0.5 basis would have to complete at least six months service) If this requirement is not fulfilled, the employee must repay the OAP element of adoption pay plus the NI contributions payable.
- 9.3. During adoption leave, OAP will be adjusted to take into account of any pay increases due during the absence.

## **10. Notification of intention to take adoption leave and pay**

- 10.1. Employees should provide all required notification in writing. Model notification forms can be found at appendix B
- 10.2. **Leave:** For UK adoptions including foster to adopt, the employee must notify his/her manager/headteacher of the intention to take adoption leave within seven days of being notified by an approved adoption agency that they have been newly matched with a child for adoption (or if this is not reasonably practicable, as soon as it is reasonably practicable).

10.3. For overseas adoptions, the employee must notify his/her manager/headteacher of the date of their official notification<sup>6</sup> and his/her intention to take adoption leave within 28 days of receiving the notification or within 28 days of the employee's completion of 26 weeks continual service with the Council/school whichever is the later. The employee must notify their manager/headteacher of the date that they intend adoption leave to start, giving at least 28 days' notice. The employee must also notify their manager/headteacher of the actual date the child arrives in the Great Britain within 28 days of that date.

10.4. For surrogacy arrangements the employee should inform their manager/headteacher that they intend to take adoption leave at least 15 weeks before the date that the baby is due to be born and specify the date that they want the leave to start. The employee must also inform their employer of the actual date the child is born as soon as practicable after the birth.

10.5. **Pay:** the employee should provide 28 days' notice in writing of the date that they want to claim adoption pay (or as soon as possible if this is not reasonably practicable; for example where the time between the child being matched and placed is less than that). A copy should be forwarded to Payroll.

10.6. Notification forms can be found in appendix B. Notice should contain the following details:

10.6.1. The employee's name and address;

10.6.2. That the employee intends to take adoption leave;

10.6.3. When the child is expected to be placed with him/her, or date on which the child enters the UK, in the case of overseas adoptions; or for surrogacy provide the information specified in point 10.4;

10.6.4. When she/he would like to begin their adoption leave;

10.6.5. A declaration that, where eligible, she/he would like to receive Statutory Adoption Pay;

10.6.6. Either a declaration that she/he would like to receive Occupational Adoption Pay, where applicable, which she/he will repay if she/he does not return to work for the Council/school for a period of 3 months after the adoption leave has ceased, or a declaration that she/he does not wish to receive Occupational Adoption Pay.

10.7. Notification must be forwarded to Payroll as soon as possible. Within 28 days of the Headteacher/manager receiving notification of the start date of an employee's adoption leave, Payroll will inform the employee in writing of the date on which the Additional Adoption Leave (AAL) is due to end.

10.8. If the employee wishes to change his/her mind over when she/he would like to commence the adoption leave, she/he must provide 28 days' written notice before their original start of SAL date or the new start, whichever is earlier (or if this is not reasonably practicable as soon as is reasonably practicable). A copy must

---

<sup>6</sup> 'Official notification' means written notification, issued by or on behalf of the Secretary of State for Health, that it is prepared to issue/has issued a certificate to the overseas authority concerned with the adoption of the child, confirming that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent.

be sent to Payroll who will confirm any amendments to the start and end dates within 28 days of notification by the employee of the amendment.

## **11. Time off for preparation for adoption appointments**

- 11.1. For UK adoptions including foster to adopt and for overseas adoptions:
- 11.2. A primary adopter may take **paid** time off during working hours to attend up to five appointments arranged by, or at the request of, the adoption agency for the purpose of having contact with the child or for any other purpose connected with the adoption. Up to 6.5 hours may be taken off for each appointment.
- 11.3. If the adopter has exercised this right, he or she may not then opt to take Ordinary Paternity Leave. In other words, this right only extends to prospective adoptive parents who intend to take Adoption Leave.
- 11.4. The primary adopter's partner (where his or her partner is adopting the child jointly) may take **unpaid** time off during working hours to attend up to two appointments. Up to 6.5 hours may be taken off on each occasion.
- 11.5. Appointments must be arranged by or at the request of the adoption agency, the employee's line manager may ask for proof that this is the case (e.g. a letter or email from the agency). The purpose of the appointment is to have contact with the child or for any other purpose connected with the adoption.
- 11.6. In surrogacy arrangements employees who intend to apply for a parental order to become the child's legal parents have the right to unpaid time off work to accompany the birth mother to up to two antenatal appointments of up to 6.5 hours per appointment. The employee's line manager may ask for proof of the appointment.

## **12. Annual and public holiday leave**

- 12.1. All adoption leave counts as continuous service for the purpose of entitlement to statutory and contractual benefits. This includes sick pay and leave, annual leave and public holidays. Employees are entitled to all the benefits of their contract of employment apart from pay.
- 12.2. Annual and public holiday leave accrues during adoption leave. Normal arrangements for notifying and taking annual leave apply. This means that leave should be taken in the leave year in which it is earned. Up to five days' leave may be carried forward to the next leave year with the permission of the head of service/head teacher. Payment cannot be made for outstanding leave due. Employees and their managers should therefore plan, before the start of adoption leave, when and how the leave will be taken. Annual leave may be taken immediately before or immediately after adoption leave.
- 12.3. In schools, teachers accrue the right to statutory annual leave (28 days per year) during adoption leave. Term time only employees accrue the right to contractual annual leave during adoption leave. Annual leave entitlement can be offset by any period of school closure that takes place in the relevant leave year (September to August), before and after the adoption leave period. In the unlikely event that there are insufficient school closure days to account for statutory leave

in the leave year, the teacher or term time only employee must be allowed to take his/her outstanding leave during term time in that year.

- 12.4. Where there is not enough time on the employee's return before the end of his/her annual leave year for her to take his/her remaining annual leave, he/she must be allowed to carry over her leave to the next leave year. An employee can be required to take this during the remaining periods of school closure after the employee's annual leave entitlement for that leave year has been accommodated.
- 12.5. It is recommended that schools seek further advice from Human Resources on determining whether a school employee should be able to take accrued leave entitlement during term time, if this appears to be necessary.

### **13. Other contractual entitlements**

- 13.1. Employees who are members of the Local Government Pension Scheme (LGPS) or the Teachers' Pension Scheme (TPS) will have contributions deducted from statutory and occupational adoption pay at the usual rate. For unpaid adoption leave periods the employee will be given the opportunity to elect to purchase additional pension to 'buy back' the lost service. If the employee elects, within 30 days of her return to work, to make these payments, the employer will pay 2/3rd of the cost and the employee will pay 1/3rd of the cost. Payroll will advise the employee of the cost of buying the additional pension.
- 13.2. Employees with lease cars will be invoiced for their contribution throughout the adoption leave period, including any unpaid period. WBC will continue to pay the employer subsidy. If the employee does not return to work the usual car lease termination rules apply.
- 13.3. Employees in receipt of essential car user allowance will continue to receive the full allowance during each instance of adoption leave for a period of up to a year.
- 13.4. Employees who make use of the childcare salary sacrifice scheme will continue to receive this benefit throughout the adoption leave period. The Council will cover the costs of the scheme where there is no salary to sacrifice. OAP can be sacrificed; SAP cannot be sacrificed.
- 13.5. Employees with occupancy agreements which, are a requirement of their employment, will continue to be entitled to live in the accommodation they are provided with in accordance with the terms and provisions of their occupancy agreement. The accommodation charge, as set out in the employee's occupancy agreement, will continue to be deducted from the employee's statutory and occupational adoption pay at the usual rate. Where there is no salary from which to deduct the accommodation charge, the employee will not be liable to pay the accommodation charge. If the employee does not return to work and is required to pay back the 50% pay element of their occupational adoption pay or if the employee chooses to suspend payment of the 50% pay element of their occupational adoption pay until they return to work, the accommodation charge will be reconciled to take account of this. If the employee does not return to work the usual occupancy agreement termination provisions will apply.

## **14. Contact during adoption leave**

- 14.1. The manager/head teacher should maintain reasonable contact with the employee during his/her adoption leave. This may be by telephone, letter, email or personal visits agreed with the employee. Before the employee starts his/her adoption leave, it is a good idea to discuss how he/she and the manager will maintain contact with each other during the absence
- 14.2. The employee should be advised of any recruitment opportunities open to employees of the Council /school. The manager/head teacher should ensure that the employee is made aware of any other information relating to her job that he/she would normally have access to if he/she were at work, such as changes to the workplace, team structures etc.
- 14.3. The employee should be encouraged to keep in touch with his/her line manager during adoption leave.

## **15. Keeping in Touch (KIT)**

- 15.1. With the agreement of the manager/head teacher the employee may undertake up to 10 days' paid work during his/her adoption leave. 'Keeping in Touch' (KIT) days are intended to facilitate a smooth return to the workplace. They may include any work done under the contract of employment, attendance at training or other activity aimed at keeping in touch.
- 15.2. Any day on which the employee does some paid work during the adoption leave period will count as one of the 10 permissible KIT days, even where the employee only works part of a day. It is for the manager/head teacher to agree with the employee what work is done on these days.
- 15.3. The employee cannot be required to work during his/her adoption leave, nor does he/she have a right to be offered work. KIT days are therefore a matter for agreement between the employee and her manager.
- 15.4. KIT days may be worked at any time during the adoption leave period.
- 15.5. Payment will be at the employee's normal rate of pay, and for part days he/she will be paid for the actual hours worked. If he/she is receiving SAP on that day, an amount equivalent to SAP will be deducted from his/her KIT payment so that her total payment for the day (pay plus SAP) is equivalent to his/her contractual entitlement for the hours worked.

## **16. Returning to work**

- 16.1. If the employee returns to work after ordinary adoption leave, he/she is entitled to return to the same job in which he/she was employed under his/her original contract and on terms and conditions no less favourable than if he/she had not been absent, unless a redundancy situation has occurred. If the employee returns to work after a period of additional adoption leave he/she is entitled to return to the same job, or if this is not reasonably practicable to another suitable job that is on terms and conditions no less favourable.
- 16.2. 'Suitable job' for this purpose means the nature of the job he/she is employed to do and the capacity and place in which he/she is employed to do it.

- 16.3. If the employee is to return to work at the end of the additional adoption leave period (i.e. after 52 weeks) he/she does not need to give any additional notice of his/her intention to return.
- 16.4. If the employee wishes to return to work before the end of the AAL he/she must provide written notice at least eight weeks before the date on which he/she intends to return. If he/she fails to give enough notice the manager/head teacher may postpone his/her return until the end of the eight week period, or until the end of AML, whichever is sooner.
- 16.5. Employees may be able to extend their adoption leave by combining it with a period of parental leave, where the qualifying criteria are met.
- 16.6. Shared Parental Leave – the employee may choose to end his/her adoption leave early in order to share an entitlement to statutory shared parental leave (and pay if qualifying) with his/her partner. See the [Acas guide](#) to shared parental leave. The Council has a policy on [Shared Parental Leave](#).
- 16.7. Employees have the right to request flexible working arrangements on their return to work in accordance with the Council/school's Flexible Working Request Procedure.
- 16.8. If the employee decides not to return to work, he/she must provide notice of his/her resignation in writing. The employee will not be expected to return to work during his/her period of notice. His/her last day of employment will normally be the date on which his/her notice expires.

## **17. Protection from victimisation, dismissal or detriment.**

- 17.1. It is unlawful for a person to be victimised, dismissed, selected for redundancy or subjected to any other detriment for exercising their right to adoption leave on grounds relating to adoption leave.
- 17.2. Where a redundancy occurs during the adoption leave period, the employee is entitled to be offered suitable alternative employment where this exists. The alternative offered should be no less favourable than his/her previous job with regard to location, terms, conditions and status, and he/she should have the capacity for the work.
- 17.3. If a restructuring exercise takes place whilst an employee is on adoption leave, or if redundancy is possible, the manager/head teacher must make sure that the employee is consulted and kept informed of the process. Human Resources advice should be sought at the earliest opportunity.

## **18. Fixed term contracts**

- 18.1. Where an employee is on a fixed term contract, adoption rights apply for as long as he/she remains an employee. If the contract is due to end during the adoption

leave, the adoption leave will end at the same time as the contract of employment. However, any outstanding entitlement to SAP will continue to be paid.

- 18.2. If the contract is due to expire after the end of adoption leave, the employee is entitled to return to work until the expiry of the contract.
- 18.3. Non-renewal of a fixed term contract is a dismissal in law. It will therefore be unlawful not to renew a fixed term contract for a reason connected with adoption leave.

## **19. Data protection**

- 19.1. When managing an employee's adoption leave and pay the Council/School processes data collected in accordance with data protection legislation. Data is held securely and accessed by and disclosed to individuals only for the purposes of managing adoption leave and pay. Inappropriate access or disclosure should be reported to the Council/school's Data Protection Officer immediately. It may also constitute a disciplinary offence which may be handled under the Council/school's disciplinary procedure.

## **20. Further information for employees**

- 20.1. Reduced hours on return to work - You may be eligible to request to work flexibly on return from adoption leave. Please see the [Flexible Working Request Procedure](#), available on the WBC intranet/school's flexible working request procedure, for further information, or contact Human Resources. Requests to work part time following adoption leave should always be considered very carefully and agreed where operationally possible. Further advice for managers is available from Human Resources.
- 20.2. Parental leave – You may be able to extend the adoption leave by combining it with a period of unpaid parental leave. There are qualifying criteria – non-school based staff can refer to the West Berkshire Council [Additional Leave Procedure](#) for further details. School-based staff should seek advice from their head teacher or Human Resources.
- 20.3. Shared Parental Leave – You may choose to end your adoption leave early in order to share an entitlement to statutory shared parental leave (and pay if you qualify) with your partner. If you are interested in doing this, please see the [Acas guide](#) to shared parental leave. The Council has a policy on [Shared Parental Leave](#).
- 20.4. Childcare vouchers – Until 4<sup>th</sup> October 2018 West Berkshire Council operated a Childcare Scheme that enables employees to save both tax and National Insurance contributions on childcare costs. In certain circumstances an employee who took part in the scheme in the previous 12 months may be able to re-join the scheme. For more information please contact Payroll.
- 20.5. If you have additional queries, please contact Human Resources on 01635 503033 or you can visit the [Gov.uk](#) website for general information on child benefit, tax credits, and other forms of support.

## **Appendix A – Adoption Pay Calendar**

All payments depend upon the employee meeting the qualifying requirements – see section 8 above

Week	<b>Statutory Adoption Pay</b>	<b>Occupational Adoption Pay</b>	
		<b>Teachers</b>	<b>Other employees</b>
<b>1 – 4*</b>	90% of average earnings <b>or</b>	Full pay	90% normal pay
<b>5 – 6*</b>	90% of average earnings <b>or</b>	90% normal pay	90% normal pay
<b>7- 18</b>	SAP	50% normal Pay	50% normal Pay
<b>19 – 39</b>	SAP	Nil	Nil
<b>40 – 52</b>	Nil	Nil	Nil

\*During the first six weeks the employee will receive an amount equal to either SAP or OAP, whichever is the greater.

## **Appendix B – Application Form for Adoption Leave and Pay (UK Adoptions including foster to adopt arrangements)**

Please complete and send this form to your manager/Headteacher, copied to Payroll. This should be done no later than seven days after the notification of the adoptive match was given to you by the adoption agency, and at least 28 days before the date on which you wish to start your adoption pay where you are eligible to receive it. If this is not reasonably practicable, e.g. if the time between matching and placement is less than 28 days, you should do this as soon as possible.

You must also provide:

- Document/s from the adoption agency showing its name and address and your name and address, and the expected or actual date of placement.
- The matching certificate or another official document that shows the date that you were matched with the child; for example in foster to adopt circumstances a letter from the local authority placing the child with you, confirming the date the child was matched with you.

Name:	Employee number:
Job title:	Service area/school:
Home address:	

<b>I give notice of my intention to take statutory adoption leave to take care of a child who has been placed with me for adoption/under a foster to adopt arrangement from within the UK.</b> <input type="checkbox"/>	
Date on which I expect the child to be placed with me/the child was placed with me:	
Date on which I intend my adoption leave and adoption pay (where I am entitled to it) to begin: <i>(this must be no more than 14 days before the child is expected to be placed and no later than the placement date)</i>	

I attach a copy of the adoption matching certificate signed by my adoption agency/documentation proving the foster to adopt arrangement, and other documentation required as set out in section five of this procedure as proof of my entitlement to statutory adoption pay (SAP) and leave. <input type="checkbox"/>
I have elected to receive Statutory Adoption Pay and not statutory paternity pay in respect of this adoption. <input type="checkbox"/>

For employees with more than 1 years' service, please select your choice regarding **Occupational Adoption Pay**:

I elect to receive Occupational Adoption Pay and I understand that if I receive this I will have to repay the occupational adoption pay I receive (plus NI) if I do not return to work for the period required under the adoption procedure. <input type="checkbox"/>
I DO NOT wish to receive Occupational Adoption Pay during my adoption leave, but would like to receive any OAP due as a lump sum upon my return to work for the period required under the adoption procedure. <input type="checkbox"/>

Signed (employee)	Date
-------------------	------

*(Print, sign and scan before sending electronically)*

## **Appendix C – Application Form for Adoption Leave and Pay (Overseas Adoptions)**

Please complete and send this form to your manager/Headteacher, copied to Payroll. This should be done within 28 days after the notification of the adoptive match was given to you by the adoption agency (or where you have not reached 26 weeks service, within 28 days of the date you reached 26 weeks service), and at least 28 days before the date on which you wish to start your adoption leave (or as soon as possible if this is not reasonably practicable).

You must also provide:

- Document/s from the adoption agency showing its name and address and your name and address, and the expected or actual date of placement.
- The matching certificate or another official document that shows the date that you were matched with the child; for example in foster to adopt circumstances a letter from the local authority placing the child with you, confirming the date the child was matched with you.
- The official notification issued by or on behalf of the Secretary of State for Health confirming you are allowed to adopt from overseas and the expected date the child will arrive in the UK – you must provide this within 28 days of the notification, or within 28 days of completing 26 weeks continuous service with the Council/school – whichever is the later.
- Evidence of the date the child arrived in the UK (e.g. a plane ticket) – you must provide this within 28 days within 28 days of their date of entry

Name:	Employee number:
Job title:	Service area/school:
Home address:	

<b>I give notice of my intention to take statutory adoption leave to take care of a child who has been placed with me for adoption/under a foster to adopt arrangement from overseas.</b> <input type="checkbox"/>	
Date on which I received official notification:	
Date on which I expect the child to enter the UK:	
Date on which I intend my adoption leave and adoption pay (where I am entitled to it) to begin: <i>(this must be no earlier than the date on which the child is due to enter the UK and no later than the placement date)</i>	

I attach a copy of the official notification of the adoption as proof of my entitlement to statutory adoption pay (SAP) and leave. I will provide evidence of the child's date of entry into the UK, within 28 days of their entry. <input type="checkbox"/>
I have elected to receive Statutory Adoption Pay and not statutory paternity pay in respect of this adoption. <input type="checkbox"/>

For employees with more than 1 years' service, please select your choice regarding **Occupational Adoption Pay**:

I elect to receive Occupational Adoption Pay and I understand that if I receive this I will have to repay the occupational adoption pay I receive (plus NI) if I do not return to work for the period required under the adoption procedure.	<input type="checkbox"/>
I DO NOT wish to receive Occupational Adoption Pay during my adoption leave, but would like to receive any OAP due as a lump sum upon my return to work for the period required under the adoption procedure.	<input type="checkbox"/>

Signed (employee)	Date
-------------------	------

*(Print, sign and scan before sending electronically)*

## **Appendix C – Application Form for Adoption Leave and Pay (surrogacy arrangements)**

At least 15 weeks before the baby's due date you must write to your manager/Headteacher to inform them that you are the intended parent in a surrogacy arrangement and that you intend to take adoption leave, and to notify them of the due date and the date that you intend to start your leave (this can be the date the baby is born or the day after).

In addition, please complete and return this form to your manager/Headteacher, copied to Payroll, at least 28 days before the date on which you wish to start your adoption leave (or as soon as possible if this is not reasonably practicable).

Name:	Employee number:
Job title:	Service area/school:
Home address:	

Expected date of birth of the child:	
Date on which I intend my adoption leave and adoption pay (where I am entitled to it) to begin:	select

<b>I wish to give formal notification that I am the intended parent in a surrogacy arrangement</b>	<input type="checkbox"/>
<b>This is my statutory declaration that within 6 months of the baby's birth I intend to apply for a parental order and I expect the order to be granted</b>	<input type="checkbox"/>
<b>I have elected to receive Statutory Adoption Pay and not statutory paternity pay in respect of this adoption.</b>	<input type="checkbox"/>

For employees with more than 1 years' service, please select your choice regarding **Occupational Adoption Pay**:

I elect to receive Occupational Adoption Pay and I understand that if I receive this I will have to repay the occupational adoption pay I receive (plus NI) if I do not return to work for the period required under the adoption procedure.	<input type="checkbox"/>
I DO NOT wish to receive Occupational Adoption Pay during my adoption leave, but would like to receive any OAP due as a lump sum upon my return to work for the period required under the adoption procedure.	<input type="checkbox"/>

Signed (employee)	Date
-------------------	------

*(Print, sign and scan before sending electronically)*

This page is intentionally left blank

## Maternity Procedure

**Committee considering report:** Delegated Officer Decision

**Date of Committee:** 10 December 2019

**Portfolio Member:** Councillor Howard Woollaston

**Report Author:** Katie Penlington

**Forward Plan Ref:** DOD3863

### 1. Purpose of the Report

- 1.1 To seek approval for amendments to the Maternity Procedure.
- 1.2 The procedure was due a scheduled review and has been amended to reflect current legislation and best practice.
- 1.3 Amendments to the Maternity Procedure:
  - (1) Additional wording in section six to clarify that employees should inform their manager/head teacher of premature birth, and the requirement for payroll to confirm the change in end of maternity leave in cases of premature birth or where the employee decides to change their maternity leave start date
  - (2) Addition at 11.5 to state the requirement to offer suitable alternative work during the day or to suspend on full pay until the danger has passed where a medical practitioner or midwife certifies that a woman who is pregnant, is breast feeding or has given birth in the last six months should not work at night.
  - (3) Amendment to 20.7 to reflect closure of the childcare voucher scheme
  - (4) Updated the amount of statutory maternity pay to reflect the current amount
  - (5) Clarification at 13.3 around payment of essential car user allowance.
  - (6) Clarification in section 16 around returning to work and that the last date of employment following resignation is the date notice expires.
  - (7) Clarification at 13.5 around occupancy and payments where an employee has an occupancy agreement
  - (8) Addition of a data protection statement at section 19

### 2. Recommendation

- 2.1 The Chief Executive is recommended to approve the Maternity Procedure.

### 3. Implications

- 3.1 **Financial:** N/A

3.2	<b>Policy:</b>	Addition of wording around occupancy agreements following consultation with Legal Services
3.3	<b>Personnel:</b>	N/A
3.4	<b>Legal:</b>	Addition of wording around occupancy agreements following consultation with Legal Services
3.5	<b>Risk Management:</b>	N/A
3.6	<b>Property:</b>	N/A
3.7	<b>Other:</b>	N/A

#### **4. Other options considered**

4.1 None; the amendments to the Maternity Procedure are relatively minor and reflect changes in legislation and best practice.

#### **Appendices**

4.2 Appendix A – Maternity Procedure

# Maternity Procedure

Reference: HRMAT  
Version No: 2.3  
Issue Date: November 2019

## Document Control

Document Ref:	HRMAT	Date Created:	March 2014
Version:	2.3	Date Modified:	2015, November 2019
Revision due	November 2022		
Author:	Jane Milone, amended Katie Penlington	Sign & Date:	
Head of Service:	Robert O'Reilly	Sign & Date:	
Equality Impact Assessment: (EIA)	Date undertaken:	April 2014	
	Issues (if any):	This policy specifically deals with people who have a protected characteristic (pregnancy and maternity) and sets out the rights and responsibilities in law and in accordance with terms and conditions of service.	

## Change History

Version	Date	Description	Change ID
1.0	2007	Original procedure	
2.0	2014	To bring all documents associated with maternity leave (policy, procedure, guidance and forms) into one place	
2.1	2015	Minor updates to refer to Shared Parental Leave	
2.2	Oct 2015	Minor updates to administration process now being managed by Payroll rather than HR.	
2.3	November 2019	General review and minor amendment to 16.5 to clarify that the last date of employment following resignation is the date notice expires, and amendment to 19.7 to reflect closure of childcare voucher scheme. Add in clarification around essential car user allowance during maternity leave, returning from maternity leave, notification of premature birth and night work, and around occupancy agreements.	

## Related Documents

Reference	Title	Tier
	Additional leave procedure (for Parental and Ordinary Paternity Leave)	
	Shared Parental Leave Policy	
	Adoption Policy, Procedure and Guidance	



WestBerkshire  
COUNCIL

# Contents

---

1.	Purpose .....	3
2.	Applicability.....	3
3.	Roles and Responsibilities .....	3
4.	Glossary .....	3
5.	Maternity leave .....	4
6.	Notification.....	4
7.	Maternity pay.....	5
8.	Eligibility for maternity pay.....	6
9.	Time off for antenatal care.....	6
10.	Sickness absence.....	7
11.	Risk assessment .....	7
12.	Annual and public holiday leave and maternity leave.....	7
13.	Other contractual arrangements.....	8
14.	Contact during maternity leave.....	9
15.	Keeping in Touch (KIT).....	9
16.	Returning to work .....	10
17.	Protection from victimisation, dismissal or detriment.....	10
18.	Fixed term contracts .....	11
19.	Data protection .....	11
20.	Further information for employees.....	11
21.	Appendix A – guide to maternity pay.....	13
22.	Appendix B – Maternity Leave Application Form.....	15

## **1. Purpose**

- 1.1. This procedure sets out the entitlements and responsibilities that apply to employees who are pregnant and give birth.

## **2. Applicability**

- 2.1. This procedure applies to all employees of West Berkshire Council, including those working in schools.

## **3. Roles and Responsibilities**

- 3.1. The Chief Executive/Governing Body has overall responsibility for ensuring that maternity leave and pay is managed appropriately in accordance with this procedure.
- 3.2. Managers/head teachers are responsible for:
  - 3.2.1. Ensuring that applications for maternity leave and pay are managed in accordance with this procedure;
  - 3.2.2. Ensuring that risk assessments are undertaken and other relevant health and safety requirements are met;
  - 3.2.3. Maintaining appropriate contact with employees during maternity leave.
- 3.3. Employees are responsible for making applications for maternity leave, and notifying their line manager of their date of return, in accordance with this procedure.
- 3.4. Human Resources is responsible for:
  - 3.4.1. Keeping the procedure up to date in line with legislation changes;
- 3.5. Payroll services is responsible for:
  - 3.5.1. Receiving and processing applications for maternity leave and pay;
  - 3.5.2. Making payments of occupational maternity pay (OMP) and statutory maternity pay (SMP), and for advising on pension implications of periods of nil pay.

## **4. Glossary**

- OMP – Occupational Maternity Pay
- SMP – Statutory Maternity Pay
- EWC – Expected week of childbirth
- QW – qualifying week (15 weeks before EWC)
- OML – Ordinary Maternity Leave
- AML – Additional Maternity Leave
- MA – Maternity Allowance

## **5. Maternity leave**

- 5.1. All pregnant employees (regardless of length of service) who have a live or still birth after 24 weeks of pregnancy are entitled to take a total of 52 weeks' maternity leave. This comprises;
  - 5.1.1. 26 weeks' Ordinary Maternity Leave (OML); followed by
  - 5.1.2. 26 weeks' Additional Maternity Leave (AML)
- 5.2. It is for the employee to decide how much of this leave she wishes to take. She may choose to return to work before the end of the 52 week period. However, she must take at least two weeks maternity leave immediately following the birth.
- 5.3. Maternity leave may start no earlier than the start of the 11th week before the expected week of childbirth (EWC). The employee may continue to work up to the date of birth provided she is fit to do so.
- 5.4. If the employee gives birth before her maternity leave has started, the maternity leave and pay period will start on the day after the birth.
- 5.5. A woman who gives birth on or after 5<sup>th</sup> April 2015 may choose to end her statutory maternity leave early (before the end of the 52 week period) if she and/or her partner wish(es) to take [Shared Parental Leave](#) (see separate policy).

## **6. Notification**

- 6.1. The employee should notify her manager/head teacher as soon as reasonably practicable of her pregnancy. This will allow the manager to carry out a risk assessment and consider any health and safety implications.
- 6.2. To qualify for maternity leave and pay the employee must advise her manager/head teacher in writing that she is pregnant and the date on which she wishes to start her maternity leave.
  - 6.2.1. This notification must be received at least 21 days before the start of her absence, or as soon as reasonably practicable if this is not possible.
  - 6.2.2. Teachers must provide this notification at least 14 weeks before the expected week of childbirth.
  - 6.2.3. The notification should be accompanied by a medical certificate (normally a MAT B1) stating the expected week of childbirth.
- 6.3. A [maternity leave application form](#) can be found at the end of this procedure. It should be completed and provided to the manager/head teacher, with a copy to Payroll.
- 6.4. Payroll will write to the employee within 28 days of receipt of the completed form to advise the employee of the date on which maternity leave will end.
- 6.5. The employee can amend the date on which maternity leave will start by providing notice in writing at least 21 days before the new start date. Payroll will write to

confirm the revised end of maternity date within 28 days of the amendment being received.

- 6.6. An employee whose maternity leave commences because she gives birth prematurely must inform her manager/head teacher as soon as reasonably practicable after the birth, that she has given birth and the date on which the birth occurred. The manager/head teacher will inform Payroll so that Payroll can write to the employee within 28 days of the employee's notification of the birth to confirm the revised end of maternity date.

## 7. Maternity pay

- 7.1. Maternity pay will be paid for part of the 52 week period if the employee meets the qualifications for length of service and weekly earnings. Two different payments may be made – statutory maternity pay (SMP) and occupational maternity pay (OMP).
- 7.2. If both payments are made they will run concurrently. Any OMP payable will be offset against any SMP (or Maternity Allowance) due for the first six weeks. After the first six weeks, both payments will be made, up to a maximum of full pay. See appendix A for this information in a table.
- 7.3. **SMP** is paid for up to 39 weeks, whether or not the employee returns to work. Qualifying employees receive;
- 7.3.1. 90% of average earnings for the first six weeks; followed by
  - 7.3.2. 33 weeks of standard SMP (£148.68 at April 2019), or 90% of average earnings, whichever is the lower.
- 7.4. **OMP** is paid for up to 18 weeks, with the final 12 weeks dependent upon the employee returning to work. Qualifying employees receive;
- 7.4.1. 90% of normal earnings for the first six weeks (teachers receive full pay for the first four weeks and 90% salary for the next two weeks); followed by
  - 7.4.2. 12 weeks of 50% normal earnings (paid subject to a return to work).
- 7.5. The 50% pay element of OMP will be paid immediately following the first six weeks where the employee has provided notice in writing that she intends to return to work following maternity leave. Alternatively, she may choose to suspend payment until her return to work, when she will receive it as a lump sum.
- 7.6. If the employee receives the 12 weeks 50% payment and subsequently chooses not to return to work for the specified period, she will be required to repay the amount received plus the NI applicable. Payroll can advise on how much this will cost.
- 7.7. Both SMP and OMP are paid by the employer, through normal payroll processes. Tax, National Insurance and pension contributions will be deducted from maternity pay.

- 7.8. Occupational maternity pay will be adjusted to take account of any pay increase during the absence.

## **8. Eligibility for maternity pay**

- 8.1. To qualify for SMP, employees must have;

- 8.1.1. At least 26 weeks' continuous employment with the current employer by the end of the 15<sup>th</sup> week before the EWC (this is the qualifying week or QW);
- 8.1.2. Average weekly earnings in the eight weeks up to and including the QW of at least the lower earnings limit for National Insurance.

- 8.2. Employees not eligible for SMP may be eligible for Maternity Allowance (MA). This is administered by Jobcentre Plus. You will be notified by Payroll if you are not eligible for SMP and provided with a form to apply for MA. For further details on SMP and MA see [Maternity pay and leave - GOV.UK](#)

- 8.3. To qualify for OMP, employees must have;

- 8.3.1. At least one year's continuous local government employment at the start of the 11<sup>th</sup> week before the EWC.

- 8.4. OMP is calculated by reference to normal pay. Where this varies from week to week it is calculated on the average pay in the two months prior to the start of maternity leave.
- 8.5. All qualifying employees will receive the first six weeks of OMP. To qualify to receive a further 12 weeks' OMP at 50% of normal pay, an employee must return to work at or before the end of her maternity leave for at least three months.

- 8.6. A teacher who returns to work on a part time basis must complete the equivalent of three months at her original hours in order to retain eligibility. E.g. a full time teacher returning on a 0.5 basis would have to complete at least six months service.

## **9. Time off for antenatal care**

- 9.1. All pregnant employees are entitled to paid time off for antenatal care. This includes appointments made on the advice of a doctor, midwife or health visitor, and can include relaxation and other antenatal classes as well as medical examinations.

- 9.2. Employees should provide as much notice as possible and show their antenatal appointment card if requested by their manager/head teacher.

- 9.3. Time off will be on normal full pay, calculated as an average over the previous 12 weeks for those whose pay varies from week to week.

- 9.4. Prospective fathers and the partners of mothers to be may take unpaid time off to attend two ante-natal appointments. Up to 6.5 hours may be taken off on each occasion

## **10. Sickness absence**

- 10.1. A pregnant employee is entitled to normal sick pay and leave until the date on which her maternity leave starts.
- 10.2. If the illness is unrelated to the pregnancy, sick pay and leave will apply up to the date she notified as the start of her maternity leave, or the date of birth if that is sooner.
- 10.3. If the illness is related to the pregnancy and starts or continues after the beginning of the 4th week (Sunday to Saturday) before the EWC, maternity leave will start immediately from the first date of sickness within that period.

## **11. Risk assessment**

- 11.1. The manager should undertake a risk assessment of the pregnant employee's workplace, workstation and workload. Where a potential hazard is identified the manager/head teacher should make adjustments to the work or the working environment to remove or reduce the risk. Regular re-assessments should be carried out. A fresh risk assessment should be carried out on her return if she is breastfeeding.
- 11.2. If it is not possible to make adjustments to remove or reduce the risk to a safe level, and the work may cause harm to the pregnant woman or her unborn child, the manager should look for alternative duties for the employee.
- 11.3. If no suitable alternative work duties are available, the employee should be suspended on full pay until the risks have passed, or suitable alternative work becomes available. Suspension will not affect her rights to maternity leave and pay and her right to return to work after the birth.
- 11.4. These provisions do not apply where a doctor has signed an employee unfit to work. Normal sick leave and pay arrangements will apply in these circumstances.
- 11.5. **Night work:** If a registered medical practitioner or midwife certifies that an employee who is pregnant, is breast feeding or who has given birth to a child within six months should not work at night, her employer must either offer suitable alternative work during the day, or if this isn't reasonably practicable, suspend her on full pay until the danger has passed.
- 11.6. Advice on [risk assessments for pregnant women](#) can be found on the HR intranet pages.

## **12. Annual and public holiday leave and maternity leave**

- 12.1. All maternity leave counts as continuous service for the purpose of entitlement to statutory and contractual benefits. This includes sick pay and leave, annual leave and public holidays. Employees are entitled to all the benefits of their contract of employment apart from pay.
- 12.2. Annual and public holiday leave accrues during maternity leave. Normal arrangements for notifying and taking annual leave apply. This means that leave should be taken in the leave year in which it is earned. Up to five days' leave may

be carried forward to the next leave year with the permission of the head of service/head teacher. Payment cannot be made for outstanding leave due. Employees and their managers should therefore plan, before the start of maternity leave, when and how the leave will be taken. Annual leave may be taken immediately before or immediately after maternity leave.

- 12.3. In schools, teachers accrue the right to statutory annual leave (28 days per year) during maternity leave. Term time only employees accrue the right to contractual annual leave during maternity leave. Annual leave entitlement can be offset by any period of school closure that takes place in the relevant leave year (September to August), before and after the maternity leave period. In the unlikely event that there are insufficient school closure days to account for statutory leave in the leave year, the teacher or term time only employee must be allowed to take her outstanding leave during term time in that year.
- 12.4. Where there is not enough time on the employee's return before the end of her annual leave year for her to take her remaining annual leave, she must be allowed to carry over her leave to the next leave year. An employee can be required to take this during the remaining periods of school closure after the employee's annual leave entitlement for that leave year has been accommodated.
- 12.5. It is recommended that schools seek further advice from Human Resources on determining whether a school employee should be able to take accrued leave entitlement during term time, if this appears to be necessary.

### **13. Other contractual arrangements**

- 13.1. Employees who are members of the Local Government Pension Scheme (LGPS) or the Teachers' Pension Scheme (TPS) will have contributions deducted from statutory and occupational maternity pay at the usual rate. For unpaid maternity leave periods the employee will be given the opportunity to elect to purchase additional pension to 'buy back' the lost service. If the employee elects, within 30 days of her return to work, to make these payments, the employer will pay 2/3rd of the cost and the employee will pay 1/3rd of the cost. Payroll will advise the employee of the cost of buying the additional pension.
- 13.2. Employees with lease cars will be invoiced for their contribution throughout the maternity leave period, including any unpaid period. WBC will continue to pay the employer subsidy. If the employee does not return to work the usual car lease termination rules apply.
- 13.3. Employees in receipt of essential car user allowance will continue to receive the full allowance during each instance of maternity leave for a period of up to one year.
- 13.4. Employees who make use of the childcare salary sacrifice scheme will continue to receive this benefit throughout the maternity leave period. The Council will cover the costs of the scheme where there is no salary to sacrifice. OMP can be sacrificed; SMP cannot be sacrificed.
- 13.5. Employees with occupancy agreements which, are a requirement of their employment, will continue to be entitled to live in the accommodation they are provided with in accordance with the terms and provisions of their occupancy

agreement. The accommodation charge, as set out in the employee's occupancy agreement, will continue to be deducted from the employee's statutory and occupational maternity pay at the usual rate. Where there is no salary from which to deduct the accommodation charge, the employee will not be liable to pay the accommodation charge. If the employee does not return to work and is required to pay back the 50% pay element of their occupational maternity pay or if the employee chooses to suspend payment of the 50% pay element of their occupational maternity pay until they return to work, the accommodation charge will be reconciled to take account of this. If the employee does not return to work the usual occupancy agreement termination provisions will apply.

#### **14. Contact during maternity leave**

- 14.1. The manager/head teacher should maintain reasonable contact with the employee during her maternity leave. This may be by telephone, letter, email or personal visits agreed with the employee. Before the employee starts her maternity leave, it is a good idea to discuss how she and the manager will maintain contact with each other during the absence
- 14.2. The employee should be advised of any recruitment opportunities open to employees of the Council or school. The manager/head teacher should ensure that the employee is made aware of any other information relating to her job that she would normally have access to if she were at work, such as changes to the workplace, team structures etc.
- 14.3. The employee should be encouraged to keep in touch with her line manager during maternity leave.

#### **15. Keeping in Touch (KIT)**

- 15.1. With the agreement of the manager/head teacher the employee may undertake up to 10 days' paid work during her maternity leave. 'Keeping in Touch' (KIT) days are intended to facilitate a smooth return to the workplace. They may include attendance at training.
- 15.2. Any day on which the employee does paid work during the maternity leave period will count as one of the 10 permissible KIT days, even where the employee only works part of the day. It is for the manager/head teacher to agree with the employee what work is done on these days.
- 15.3. The employee cannot be required to work during her maternity leave, nor does she have a right to be offered work. KIT days are therefore a matter for agreement between the employee and her manager.
- 15.4. KIT days may be worked at any time during the maternity leave period, with the exception of the two weeks immediately after the birth.
- 15.5. Payment will be at the employee's normal rate of pay, and for part days she will be paid for the actual hours worked. If she is receiving SMP on that day, an amount equivalent to SMP will be deducted from her KIT payment so that her total payment for the day (pay plus SMP) is equivalent to her contractual entitlement for the hours worked.

## **16. Returning to work**

- 16.1. If the employee returns to work after ordinary maternity leave, she is entitled to return to the same job in which she was employed under her original contract and on terms and conditions no less favourable than if she had not been absent, unless a redundancy situation has occurred. If the employee returns to work after a period of additional maternity leave she is entitled to return to the same job, or if this is not reasonably practicable to another suitable job that is on terms and conditions no less favourable.
- 16.2. 'Suitable job' for this purpose means the nature of the job she is employed to do and the capacity and place in which she is employed to do it.
- 16.3. If the employee is to return to work at the end of the additional maternity leave period (i.e. after 52 weeks) she does not need to give any additional notice of her intention to return.
- 16.4. If the employee wishes to return to work before the end of the AML she must provide written notice at least 21 days before the date on which she intends to return. If she fails to give 21 days' notice the manager/head teacher may postpone her return until the end of the 21 day period, or until the end of AML, whichever is sooner.
- 16.5. Shared parental leave – the employee may choose to end her maternity leave early in order to share an entitlement to statutory shared parental leave (and pay if qualifying) with her partner. See the [ACAS guide](#) on shared parental leave. The Council has a policy on [Shared Parental Leave](#).
- 16.6. Employees have the right to request flexible working arrangements on their return to work. See the Council [Flexible Working - 'Right to ask' procedure](#) or in schools, the school's flexible working procedure.
- 16.7. If the employee decides not to return to work, she must provide notice of her resignation in writing. The employee will not be expected to return to work her period of notice. Her last day of employment will normally be the date on which her period of notice expires.

## **17. Protection from victimisation, dismissal or detriment**

- 17.1. Pregnant women are protected against victimisation, unfair dismissal and detriment for reasons relating to their pregnancy. It is unlawful for a woman to be selected for redundancy on grounds relating to pregnancy, childbirth or taking maternity leave.
- 17.2. Where a redundancy occurs during the maternity leave period, the employee is entitled to be offered suitable alternative employment where this exists. The alternative offered should be no less favourable than her previous job with regard to location, terms, conditions and status, and she should have the capacity for the work.
- 17.3. If a restructuring exercise takes place whilst an employee is on maternity leave, or if redundancy is possible, the manager/head teacher must make sure that the

employee is consulted and kept informed of the process. Human Resources advice should be sought at the earliest opportunity.

## **18. Fixed term contracts**

- 18.1. Where an employee is on a fixed term contract, maternity rights apply for as long as she remains an employee. If the contract is due to end during the maternity leave, the maternity leave will end at the same time as the contract of employment. However, any outstanding entitlement to SMP will continue to be paid.
- 18.2. If the contract is due to expire after the end of maternity leave, the employee is entitled to return to work until the expiry of the contract.
- 18.3. Non-renewal of a fixed term contract is a dismissal in law. It will therefore be unlawful not to renew a fixed term contract for a reason connected with pregnancy, childbirth or maternity leave.

## **19. Data protection**

- 19.1. When managing an employee's maternity leave and pay the Council/School processes data collected in accordance with data protection legislation. Data is held securely and accessed by and disclosed to individuals only for the purposes of managing maternity leave and pay. Inappropriate access or disclosure should be reported to the Council/school's Data Protection Officer immediately. It may also constitute a disciplinary offence which may be handled under the Council/school's disciplinary procedure.

## **20. Further information for employees**

- 20.1. Breastfeeding - If you intend to breastfeed when you return to work, you should provide written notification to your manager of your intention to do so. Your line manager can then include this in the risk assessment that should be undertaken on your return to work. If you provide written notification in advance, this also gives your line manager an opportunity to try to identify somewhere suitable where you can express milk (this should not be the toilets) and somewhere for you to store your milk. If you think you may want to ask for flexible working hours, arranged around breastfeeding/expressing milk, you should also discuss this with your line manager before you return to work.
- 20.2. Not returning to work - If you are absolutely sure that you do not want to return to work before you start your maternity leave, you can use the maternity application form to indicate that you wish to resign from your post.
- 20.3. If you intend to return to work or are unsure about whether you want to return to work after your baby is born, you should use the maternity application form to indicate that you wish to take maternity leave and expect to return to work. You can change your mind after the birth of your baby.
- 20.4. Reduced hours on return to work - You may be eligible to request to work flexibly on return from maternity leave. Please see the [Flexible Working Request Procedure](#), available on the WBC intranet/school's flexible working procedure, for further information, or contact Human Resources. Requests to work part time following maternity leave should always be considered very carefully and agreed where

operationally possible. Further advice for managers is available from Human Resources.

- 20.5. Parental leave – You may be able to extend the maternity leave by combining it with a period of unpaid parental leave. There are qualifying criteria – non-school based staff can refer to the West Berkshire Council [Additional Leave Procedure](#) for further details. School-based staff should seek advice from their head teacher or Human Resources.
- 20.6. Shared Parental Leave – You may choose to end your maternity leave early in order to share an entitlement to statutory shared parental leave (and pay if you qualify) with your partner or father of the child. If you are interested in doing this, please see the [Acas guide](#) to shared parental leave. The Council has a policy on [Shared Parental Leave](#).
- 20.7. Childcare vouchers – Until 4<sup>th</sup> October 2018 West Berkshire Council operated a Childcare Scheme that enables employees to save both tax and National Insurance contributions on childcare costs. In certain circumstances an employee who took part in the scheme in the previous 12 months may be able to re-join the scheme. For more information please contact Payroll.
- 20.8. If you have additional queries, please contact Human Resources on 01635 503033 or you can visit the [Gov.uk](#) website for general information on child benefit, tax credits, Health in Pregnancy grant and other forms of support.

## 21. Appendix A – guide to maternity pay

This guide is an indication of the benefits due. Employees are advised to check their entitlements carefully and ensure that they comply with any notification requirements.

- OMP – Occupational Maternity Pay
- SMP – Statutory Maternity Pay
- EWC – Expected week of childbirth

<b>Category 1</b>				
Employee has;				
<ul style="list-style-type: none"><li>• more than 26 weeks service with the Council by 15<sup>th</sup> week before EWC <b>AND</b></li><li>• more than 1 year's continuous Local Government service by 11<sup>th</sup> week before EWC</li></ul>				
	Weeks 1-4	Weeks 5-6	Weeks 7 – 18	Weeks 19- 39
Teachers	Full pay (includes 90% pay SMP)	90% pay (includes 90% pay SMP)	Half pay OMP plus Standard Rate SMP*	Standard Rate SMP
Other employees	90% pay (includes 90% pay SMP)	90% pay (includes 90% pay SMP)	Half pay OMP plus Standard Rate SMP*	Standard Rate SMP

\*subject to half pay plus SMP not exceeding full normal pay

<b>Category 2</b>				
Employee has;				
<ul style="list-style-type: none"><li>• less than 26 weeks service with the Council by 15<sup>th</sup> week before EWC <b>AND</b></li><li>• more than 1 year's continuous Local Government Service by 11<sup>th</sup> week before EWC.</li></ul>				
	Weeks 1-4	Weeks 5-6	Weeks 7 – 18	Weeks 19- 39
Teachers	Full pay OMP**	90% pay OMP**	Half pay OMP (plus MA where eligible)***	MA if eligible
Other employees	90% pay OMP**	90% pay OMP**	Half pay OMP (plus MA where eligible)***	MA if eligible

\*\*employees who are entitled to Maternity Allowance (MA) will have the amount of OMP in the first 6 weeks reduced by the equivalent of MA.

\*\*\* subject to half pay plus MA not exceeding full normal pay

Employees are responsible for seeking information about MA entitlement from Job Centre Plus, who will assess it on the basis of NI contributions over the period before maternity leave commences. Employees must advise Payroll when claiming MA.

### **Category 3**

Employee has;

- less than 26 weeks service with the Council by 15<sup>th</sup> week before EWC **AND**
- less than 1 year's continuous Local Government Service by 11<sup>th</sup> week before EWC.

**Employees (whether teachers or non-teachers) will not be eligible for either SMP or occupational maternity pay.**

**Employees are responsible for seeking information about MA entitlement from Job Centre Plus, who will assess it on the basis of NI contributions over the period before maternity leave commences**

### **Category 4**

Employee has;

- More than 26 weeks' service with the Council by 15<sup>th</sup> week before EWC **AND**
- Less than 1 year's continuous local government employment at the 11<sup>th</sup> week before the EWC

	<i>Weeks 1-4</i>	<i>Weeks 5-6</i>	<i>Weeks 7 – 18</i>	<i>Weeks 19- 39</i>
<i>Teachers</i>	<i>90% pay SMP</i>	<i>90% pay SMP</i>	<i>Standard rate SMP</i>	<i>Standard rate SMP</i>
<i>Other employees</i>	<i>90% pay SMP</i>	<i>90% pay SMP</i>	<i>Standard rate SMP</i>	<i>Standard rate SMP</i>

## 22. Appendix B – Maternity Leave Application Form

Please complete and send this form to your manager/Headteacher, copied to Payroll, no later than 21 days before the date on which your maternity leave will start.

Name:	
Job title:	Service area/school:
Home address:	

<b>This form is to formally advise the employer that I am pregnant</b>	
I can confirm my baby is due on:	
I intend to commence my maternity leave on:	
I confirm that my MATB1 (medical certificate confirming pregnancy): (select one)	
<input type="checkbox"/> Attached to this form	
<input type="checkbox"/> Has already been sent to Payroll	
<input type="checkbox"/> Has been sent to Jobcentre Plus and I attach a copy (if less than 26 weeks service)	

***You are not obliged at this stage to confirm whether it is your intention to return to work and, if you think you may not return, you are strongly advised not to commit yourself until after the birth of your baby. However, it would assist us greatly when arranging your maternity cover if you could give an indication of your thoughts at this stage. Indicating your choice does not commit you in any way and will in no way affect your rights to return to work or leave. You can alter your plans at any time, providing you give the appropriate notice.***

Please select your choice regarding **Maternity Leave**:

I am thinking of returning to work	<input type="checkbox"/>	If selected, anticipated date of return:
I may not return to work but will confirm my intentions at a later date	<input type="checkbox"/>	
I do not wish to give an indication of my intentions at this stage	<input type="checkbox"/>	

For employees with more than 1 years' service, please select your choice regarding **Maternity Pay**:

I elect to receive Occupational Maternity Pay during my maternity leave. I understand that if I receive this I will have to repay the occupational maternity pay I receive plus NI if I do not return to work for the period required under the maternity procedure.	<input type="checkbox"/>
I DO NOT wish to receive Occupational Maternity Pay during my maternity leave, but would like to receive any OMP due as a lump sum upon my return to work for the period required under the maternity procedure.	<input type="checkbox"/>

Signed (employee)	Date
-------------------	------

*(Print, sign and scan before sending electronically)*

This page is intentionally left blank