

Adoption, Surrogacy and Fostering Policy and Procedures

Introduction

The Adoption, Surrogacy and Fostering Policy is part of our suite of Family Friendly policies, designed to explain the School's positive approach to helping colleagues balance their family and work commitments, and aligned to the core principle of the School, *ex corde caritas*.

Policy Aim and Statement

This policy, and the associated procedures, aims to provide clear guidance for parents in relation to adoption, surrogacy and fostering leave, including eligibility, entitlement to leave and pay, and the processes associated with requesting and taking this leave.

The purpose of the leave is to enable employees to take paid time off work as they become a parent through an adoption, surrogacy, or fostering arrangement, allowing them to make any necessary arrangements, care for, and bond with their new child or children.

Scope

The policy applies to all employees of the School who meet the eligibility criteria regardless of their sex or sexual orientation.

General Principles

In managing any family friendly leave, the School is committed to ensuring that:

- colleagues are supported before, during, and after a period of family leave
- we uphold the principles of our Equality, Diversity and Inclusion Policies, Guidance and Procedures at all times
- colleagues are never treated unfavourably, or dismissed, because they are reasonably taking, or wish to take, any family leave (i.e. maternity, paternity, adoption and surrogacy, parental or shared parental leave)

Data Protection

When managing an employee's family leave and/or pay, the School processes personal data collected in accordance with its Data Protection Policy. Data collected from the point at which an employee informs the School that they plan to take any such leave is held securely and accessed by, and disclosed to, individuals only for the purposes of managing their family leave and/or pay.

Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the School's Data Protection Policy immediately. It may also constitute a disciplinary offence, which will be dealt with under the School's disciplinary procedure.

Relevant Legislation

The following legislation is relevant in relation to the School's suite of Family Friendly policies:

- Employment Rights Act 1996 (and subsequent amendments)
- Equality Act 2010
- Maternity and Parental Leave etc. Regulations 1999 (and subsequent amendments)
- Paternity and Adoption Leave Regulations 2002 (and subsequent amendments)
- Protection from Redundancy (Pregnancy and Family Leave) Act 2023

Other Relevant Policies

Maternity Leave Policy

Paternity leave
Parental Leave Policy
Pregnancy and Baby Loss Policy
Shared Parental Leave Policy
Special Leave Policy
Equality, Diversity and Inclusion Policies, Guidance and Procedures
Grievance Policy and Procedures

Effective Date

The Adoption, Surrogacy and Fostering Policy and associated procedures are effective from **June 2024**. This policy supersedes any previous policies or procedures relating to adoption, surrogacy and fostering leave and pay.

Approval and Review

The Head of Human Resources is the owner of this policy.

The Adoption, Surrogacy and Fostering Policy has been approved by the Staff Committee of the Governing Council, following endorsement by the Principal's Leadership Team and ICE Committee.

In line with the agreed schedule, the School will review the Adoption, Surrogacy and Fostering Leave Policy at least every two years, or as soon as practicable after any change of relevant legislation, to ensure that the policy and associated procedures continue to comply with current employment legislation and to meet the School's operational needs.

Date of next review: Summer 2026

Appendices

Appendix 1 Adoption, Surrogacy and Fostering Procedures

Version 2/Issue 1/June 2024

Appendix 1

Adoption, Surrogacy and Fostering Procedures

Introduction

The following information clarifies the procedures associated with **Adoption, Surrogacy and Fostering Leave**, including eligibility and entitlement, and the various processes associated with requesting and taking this leave.

If you have any questions regarding any of this information, please do not hesitate to contact the HR Team.

Definitions

This policy assumes that where an adoption takes place that this is a UK based adoption through an approved adoption agency. Employees should be aware that the policy, procedures and entitlements may require modification in cases of adoption from abroad.

"Adopter" means the person with whom the child is, or is expected to be, placed for adoption under UK law. Where two people have been matched jointly, the adopter is whichever of them has elected to be the child's adopter for the purposes of the Paternity and Adoption Leave Regulations 2002.

"Adopter's partner" in relation to a child's adopter means the adopter's spouse, civil partner or partner at the date of the child's placement for adoption. This includes someone, of either sex, who lives with the adopter and the child in an enduring family relationship but who is not the adopter's child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew.

For simplification, the wording used throughout this policy refers to adoption, but the general principles and entitlements remain the same in instances of surrogacy and fostering to adopt unless otherwise advised, and providing the parent, or parent to be, is approved as a prospective adopter, who looks after a child as part of a "fostering to adopt" arrangement.

Throughout this policy all references to the singular word 'child' also apply in instances of multiple adoption. A multiple adoptive placement or surrogate birth does not entitle the employee to multiple periods of leave or payment.

Surrogacy rights

Every pregnant employee has the right to 52 weeks maternity leave and to return to their job after this. What a surrogate does after the baby is born does not affect their right to maternity leave. Further information about maternity rights can be found in the **Maternity Leave Policy**.

Adoption rights and benefits

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.

The employee's entitlement is to take up to 26 weeks' ordinary adoption leave followed immediately by up to 26 weeks' additional adoption leave. The employee's maximum entitlement is therefore to take up to 52 weeks' adoption leave.

All employees who take adoption leave have the right to return to work at any time during either ordinary adoption leave or additional adoption leave, subject to their following the correct notification procedures as set out below.

Notification of Intention to Adopt or become a parent through a Surrogate Arrangement

The employee is required to advise their Line Manager and the HR Department, in writing, of their intention to take adoption Leave no later than seven days after the matching notification date. The employee must specify the date

they intend to start their leave and confirm the date that the child will be placed with them. The letter must be accompanied by the original Matching Certificate from the adoption agency or the Parental Order if available (where this is not immediately available the Parental Order should be forwarded on to the School as soon as it becomes available, and no later than 6 months following the child's birth).

The employee is permitted to bring forward their adoption leave start date, provided that they advise the School in writing at least 28 days before the new start date or, if that is not possible, as soon as reasonably practicable. The employee may also postpone their adoption leave start date, provided that they advise the School in writing at least 28 days before the original proposed start date or, if that is not possible, as soon as reasonably practicable. The employee must also provide evidence of entitlement to adoption leave and pay by producing a "matching certificate" from the adoption agency.

Within 28 days of receiving the employee's notice of intention to take adoption leave, the School will write to the employee confirming the latest date on which the employee must return to work after adoption leave.

In the case of a surrogacy arrangement, the employee should notify the School as soon as practicably possible and before the birth. The employee will have obtained, or will have applied for a Parental Order, which is expected to be granted within 6 months of the child's birth.

Where other 'adoptive' situations of special guardianship, private adoption or adoption of a vulnerable adult for example take place, the School will agree with the employee what evidence may be required, timescales and notification procedures on a case by case basis.

Adoption Leave

All employees, regardless of length of service are entitled to take adoption leave provided they comply with certain qualifying conditions outlined below.

If an employee adopts a child and from the date of the placement of the child is the main carer, they may be entitled to Adoption Leave. If, in cases of joint adoption with a partner, the employee is going to take a supportive role to the main carer or take over as the main carer later on, they may be entitled to Paternity Leave and pay or Parental Leave without pay (see relevant policies).

Providing that an adoption takes place through an approved adoption agency, the employee will be entitled to 52 weeks' Adoption Leave. The first 26 weeks are referred to as Ordinary Adoption Leave (OAL) and the remaining 26 weeks are referred to as Additional Adoption Leave (AAL).

The earliest Adoption Leave can commence is 14 days prior to the placement of the child. The latest leave can start is the date on which the child is placed. If the child has been placed with the employee already (even for one day), then the employee cannot take Adoption Leave, but may be able to take time off as Ordinary Parental Leave, details of which can be found in the Ordinary Parental Leave Policy.

Time off to attend adoption appointments

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

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

The purpose of the appointment is to enable the employee [and their partner] to have contact with the child (for example, to bond with them before the placement) and for any other purpose connected with the adoption (for example, to meet with the professionals involved in the care of the child).

The appointment must have been arranged by or at the request of the adoption agency. The time off must be taken before the date of the child's placement for adoption with the employee.

The employee may be asked for proof of the date and time of the appointment and that the appointment has been arranged by or at the request of the adoption agency (for example, a letter or email from the adoption agency).

In addition, if the employee is adopting jointly, the School will ask the individual to sign a declaration, to be submitted alongside the documentary evidence, confirming that they have elected to exercise their right under either s.57ZJ or s.57ZL of the Employment Rights Act 1996 to take time off to attend an adoption appointment. The School will ask for the declaration on the first occasion on which the individual asks for time off to attend an adoption appointment.

Adoption pay

Employees who qualify for Adoption Leave will also qualify for Statutory Adoption Pay (SAP) providing that they have 26 weeks' service as at the date of receiving a matching notification from an adoption agency and providing that their average weekly earnings, during the eight week period up to and including the week that matching was notified, are above the statutory lower earnings limit.

In a surrogacy case, the employee will be entitled to SAP providing they have:

- 26 weeks' service as at the qualifying week of pregnancy, which is the 15th week before the week in which the baby is due; and
- has average weekly earnings during the eight week period up to and including the qualifying week above the statutory lower earnings limit; and
- has obtained, or intends to apply for a Parental Order, making them the legal parent of the child. The application for a Parental Order must be expected to be granted and must be made and received within 6 months of the child's birth.

SAP is payable for up to 39 weeks. The first 6 weeks are payable at 90% of the employee's average weekly earnings (as defined above) followed by the remaining weeks at the statutory weekly rate (or 90% of earnings if this is lower than the statutory rate).

The current statutory rates can be found on the [GOV.UK Adoption Pay and Leave](#) webpages.

In addition to this, GWC employees who have been in continuous employment with the School for at least 26 weeks prior to the date of matching notification, are entitled to Occupational Adoption Pay (OAP), whereby the school tops up SAP for the first 13 weeks of Adoption Leave to 100% of normal pay.

Employees who do not meet the qualifying criteria for SAP are not entitled to Maternity Allowance, but may be able to claim other benefits. Any OAP due would still be paid on the offset basis, as though SAP had been paid ie. less the value of SAP.

To summarise, GWC employees who meet the qualifying criteria for SAP are entitled to 13 weeks Adoption Leave at full pay, followed by 26 weeks at the lower of the standard weekly rate or 90% of their average weekly earnings. The final 13 weeks of Adoption Leave are unpaid.

Other Adoption Rights

The employee has the same rights regarding returning to work, keeping in touch days and pension contributions as an employee on Maternity Leave. These are outlined in the [Maternity Policy](#).

Holiday accrual is calculated in the same way as that indicated in the Maternity Policy. The School reserves the right to manage holidays accrued during Adoption Leave and will, in accordance with the needs of the School, require the employee to take all accrued leave as time off, or may agree to make payment for all or part of this.

Keeping-in-touch days

The employee is allowed to attend work for up to 10 days during Adoption Leave without affecting the adoption arrangement. These days are known as Keeping in Touch (KIT) days. KIT days may be used for normal work, training

or any other activity that allows the employee to keep in touch or up to date for the purpose of their role. Where Occupational Adoption payments are still being made, no additional payment for a KIT day will be made. Where SAP is being paid, the difference between the employee's actual daily salary and the daily SAP rate will be paid for KIT days worked.

There is no obligation for an employee to undertake KIT days, or for the School to agree to a request by the employee for a KIT day.

Contact during Adoption Leave

The School reserves the right to maintain reasonable contact with employees during Adoption Leave. This may be to discuss employees' plans for return to work, to discuss any special arrangements to be made or training to be given to ease their return to work or to update them on developments at work during their absence for example. The way in which this will be done will be agreed with individual colleagues before their leave begins.

Sharing Adoption Leave with a Partner

Subject to meeting eligibility criteria, the employee may elect to share all of their AAL entitlement, once the baby is 20 weeks old, with their partner who has, or expects to have, joint responsibility for the upbringing of the child. The employee must return to work for leave to be shared in this way. Further details about this can be found in the **Shared Parental Leave Policy**.

Returning to work after adoption leave

The employee may return to work at any time during ordinary adoption leave or additional adoption leave, provided that they give the appropriate notification. Alternatively, the employee may take their full period of adoption leave entitlement and return to work at the end of this period. If the employee wishes to return before the full period of adoption leave has elapsed, they must give at least eight weeks' notice in writing to the School of the date on which they intend to return.

The employee has the right to resume working in the same job if returning to work from ordinary adoption leave. If the employee returns to work after a period of additional adoption leave, they are entitled to return either to the same job or, if this is not reasonably practicable, to another suitable job that is on terms and conditions not less favourable.

Failure to return to work by the end of adoption leave will be treated as an unauthorised absence unless the employee is sick and produces a current medical certificate before the end of the adoption leave period.

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

Other Notifications

Notifications of returning to work, sickness absence on the first day of return to work and resignation following Adoption Leave are the same as those for an employee on Maternity Leave, and are detailed in our **Maternity Policy**.

Redundancy protection for parents

The Protection from Redundancy (Pregnancy and Family Leave) Act 2023 extends the previous redundancy safeguards to give pregnant women and new parents greater protection from being made redundant by giving them priority in being offered a suitable available vacancy.

The protections apply to parents as summarised in the following table:

	Start of protection	End of protection
Pregnancy which is followed by maternity leave	The date the School is informed of the pregnancy	The date the employee's maternity leave starts.

		<i>(NB: protection then continues in line with maternity leave, below)</i>
Pregnancy with baby loss before 24 weeks <i>(NB: employees who experience the loss of a baby after 24 weeks are entitled to maternity leave)</i>	When the School is informed of the pregnancy	Two weeks after the end of the pregnancy
Maternity Leave	Start of Maternity leave	18 months after the expected week of childbirth or the child's actual birth date (if the employee notifies the School of this before the end of the maternity leave period)
Adoption Leave	Start of Adoption leave	18 months after the child is placed with the employee for adoption or enters the country in the case of an overseas adoption
Shared Parental Leave	Start of Shared Parental Leave (ShPL)	18 months after the child was born or placed for adoption provided the employee has taken six or more consecutive weeks of Shared Parental Leave. If they have not, the protection applies only to the period they are on ShPL Leave. <i>(NB: if the employee has also taken maternity or adoption leave, those protection periods apply, rather than the ShPL one)</i>

The right to be treated fairly

Employees have the right not to be treated unfavourably or to be dismissed because they are reasonably taking, or wish to take, adoption, surrogacy, or fostering leave.

If an employee feels they have been treated unfavourably, or the policy has not been applied appropriately, they should first consider raising the issue informally with their line manager, PLT member or Human Resources. If the matter cannot be addressed or resolved informally, the School's **Grievance Policy and Procedure** should be used.

Additional Information

The School is committed to supporting our colleagues to achieve a successful work-life balance that works for them. We have therefore provided links to some other information and agencies that may be useful for parents.

- **UK Government:** Information on benefits and financial support for families: <https://www.gov.uk/browse/benefits/families>
- **Parenting across Scotland:** partnership of charities (with funding from the Scottish Government) offering support for parents and families in Scotland through their information service and partners' helplines: <https://www.parentingacrossscotland.org/>
- **NHS Inform: Ready Steady Baby:** NHS Scotland website giving advice relating to pregnancy, labour and birth, and early parenthood up to 8 weeks <https://www.nhsinform.scot/ready-steady-baby>
- **ParentClub:** Scottish Government website giving tips and advice to help with the highs and lows of parenting, information about baby boxes, as well as a directory of other trusted organisations offering health and wellbeing support (searchable by topic or child's age) <https://www.parentclub.scot/>

Although we try only to give useful sources of support and information, this is not a recommendation or endorsement by the School. We take no responsibility for the content of other websites and the services other organisations or agencies provide.