

EMPLOYMENT MATTERS COMMITTEE 27TH APRIL 2022

ADOPTION POLICY

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Summary

The current Adoption Policy has recently been reviewed and updated in accordance with relevant legislation and government guidance to extend pay elements of the adoption policy to those who become parents through surrogacy arrangements. The proposed revisions have been consulted upon with a deadline of 04.04.2022 and no comments have been raised from the trade unions or employee forums for consideration.

1. Budget and policy framework

- 1.1 The consideration of policies for staff is a matter for the Employment Matters Committee. The Adoption Policy forms part of the Council's employee offer and must at a minimum comply with statutory legislation.
- 1.2 Following consideration and approval by the Employment Matters Committee, the draft Adoption Policy and subsequent minor changes to the Maternity/Paternity Policy as detailed in this report will be published.

2. Background

- 2.1 Parents who have made a parental order in accordance with s.54 of the Human Fertilisation and Embryology Act 2008 (i.e., surrogate parents) and intended parents in a surrogacy situation are entitled to statutory adoption pay.
- 2.2 The extension of statutory adoption pay to surrogate parents was affected by amendments to the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 by the Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations 2014 (SI 2014/2934).

- 2.3 The current Adoption Policy has been reviewed as it was noted that in section 9.2 of the current policy (Appendix 1) the policy identifies that those who have a child through surrogacy do not qualify for Statutory Adoption Leave or Pay which does not align with the extension to the adoption entitlements as detailed in 2.2 of this report.
- 2.4 When checked against current published guidance on [GOV.UK](https://www.gov.uk) it was confirmed that those who have a child through surrogacy are entitled to statutory pay and leave and they are no longer part of the exceptions which are listed in the current policy (section 9.2).
- 2.5 As an employer we cannot take a position to remove statutory entitlements. The policy has been amended to reflect the correct entitlement and to be in line with government guidance and legislation.
- 2.6 The amended policy (Appendix 2) now includes clear reference to eligibility for statutory leave and pay for those having a child through surrogacy arrangements in line with those eligible for adoption (and maternity) leave and pay – sections 11.0 through to 14.0.

3. Key Changes

- 3.1. The exemption for employees who have a child through surrogacy has been removed from section 9.2 of the current policy.
- 3.2. **Continuous service:** For the purposes of entitlements regarding Annual Leave, the Occupational Sickness Scheme and the Occupational Maternity Scheme continuous service will include continuous previous service with any public authority to which the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999 applies. (Green Book, 13 March 2019).
- 3.3. Although continuous service is recognised for occupational maternity schemes (as per 3.2) this does not explicitly apply to adoption and surrogacy arrangements. To ensure parity across these policies it is proposed continuous service will be recognised in relation to eligibility for leave and pay for both adoption and surrogacy arrangements. This proposal is reflected in section 16.2 of the revised policy.
- 3.4. Occupational pay: Although the legislation and guidance relates to the statutory element of adoption leave and pay it is proposed that an equal entitlement to the occupational element would be fair and reasonable to support employees who become parents through a surrogacy arrangement.
- 3.5. Whilst reviewing the Maternity Policy in reference to adoption it has been noted that within this policy there is no explicit reference to continuous service as impacting on entitlement to the occupational element of maternity pay. It is proposed that this will be added to clarify for employees as this is a condition of

continuous service as per GOV.UK, and as per the Green Book. This was not explicit previously.

- 3.6. The policy now recognises the same entitlements for surrogacy arrangements as with adoption, this includes shared parental leave and paternity leave (referred to as adoption support leave in the Adoption Policy).
- 3.7. For surrogates the policy now confirms that they are entitled to maternity benefits as per government guidance (see section 14.0).
- 3.8. The Maternity/Paternity Policy will be amended to include reference to surrogacy arrangements as below (changes bold and italicised):

8.0 Paternity/ Maternity Support Leave

- 8.1 A block of five or ten days paid leave of absence is granted to the child's father or the partner of the mother at or around the time of birth to provide assistance and support (this leave is also granted in relation to adoption ***and surrogacy arrangements under Adoption Support Leave***).

 - 8.4 Employees must notify their line manager of their intention to take Paternity Leave by the 15th week before the EWC. They should inform their line manager of the EWC, whether they wish to take five or ten days leave and the date they wish to start their leave (28 days notice is required for any change to this date). All employees requesting Paternity Leave should sign the self-certification and request form and supply a copy of the expectant mother's MAT B1 certificate (or Matching Certificate for an adoption/***Written Statement for surrogacy arrangements***)

 - 3.9. A Diversity Impact Assessment has been undertaken in relation to the draft policy; this is set out in Appendix 3.
- ### 4. Advice and analysis
- 4.1 At a minimum, the statutory element of the legislation must be extended to include employees who have a child through surrogacy in the Council's adoption policy in relation to statutory leave and pay.
 - 4.2 As an organisation which aims to be an exemplar in relation to equality in the workplace it would be good practice to align the occupational and continuous service elements of maternity/adoption pay to those who become parents through a surrogacy arrangement.

5. Risk management

- 5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.
- 5.2 The extension of statutory adoption pay to surrogate parents was affected by amendments to the Statutory Paternity Pay and Statutory Adoption Pay (General) Regulations 2002 by the Statutory Paternity Pay and Statutory Adoption Pay (Parental Orders and Prospective Adopters) Regulations 2014 (SI 2014/2934).
- 5.3 The Council will be in contravention of the extension cited in 5.2 if the amendments are not made to the current policy.

Risk	Description	Action to avoid or mitigate risk	Risk rating
Leaving the policy as is would mean that the Council is not fulfilling the statutory element of providing pay in line with our adoption policy. Leading to potential claims for equality/discrimination/withholding pay.	The Council is at risk of not implementing and following government guidance and legislation.	Implement changes and consider the proposals for further parity for continuous service to be recognised.	F IV

6. Consultation

- 6.1 This policy has been consulted upon with the following stakeholders:
- Trade Unions
 - Assistant Director, Legal and Governance
 - Head of Internal Audit and Counter Fraud
 - Chief Operating Officer
 - Gender Equality Forum
 - LGBTQI Workers Forum
 - Disabled Workers Forum
 - Medway Makers Forum
- 6.2 The consultation period ended on 04.04.22 with no comments to consider from those consulted.

7. Financial implications

- 7.1 Becoming a parent through a surrogacy arrangement is not something that the Council has data on so cannot forecast an accurate financial impact. Based on anecdotal evidence there have been no applications where these amendments would apply to date. As such there are no financial implications.
- 7.2 Reputational damage may also have a financial impact on several areas such as the Council's ability to attract, recruit and retain staff, funding applications/awards, this in addition to the reputational damage to the Council as an employer of choice in the area.

8. Legal implications

- 8.1 The legal implications and risk of not implementing, at a minimum, the statutory legislation would be a significant - not only to the Council's reputation but potential claims and associated costs.
- 8.2 The potential financial implication of not implementing the minimum statutory elements would include employer penalties from HMRC of up to £3,000 per employee in addition to any potential tribunal claims and associated costs.

9. Recommendation

- 9.1 Members are asked to consider and approve the revised Adoption Policy at Appendix 2 and subsequent amendments to the maternity/paternity policy as laid out in paragraph 3.8 the report.

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Appendices

Appendix 1: Current Adoption Policy
Appendix 2: Draft Adoption Policy
Appendix 3: Diversity Impact Assessment

Background papers

None