

Adoptive Parents: rights to leave and pay when a child is adopted from overseas

a guide for employers and employees

Introduction	2
Outline of the rights	3
Adoption leave and pay	5
Paternity leave and pay	12
Glossary	20
Sources of further information	22
Model letter for employers	23

Introduction

This is new guidance on a new area of law – the guidance will be revised and expanded in due course so do check that you have the current version. The latest version of this guidance will always be available from the website www.dti.gov.uk/er/overseas.pdf. The front page shows the version number and the date of publication.

The rights to adoption leave and paternity leave and pay covered in this guidance entitle eligible employees to take paid leave when they adopt a child who lives outside the United Kingdom and enters Great Britain in connection with or for the purposes of adoption from overseas. Similar rights are available to eligible employees who are adopting in Great Britain – see *Adoptive parents – rights to leave and pay when a child is placed for adoption within the UK* (PL 518).

This document gives only general guidance and should not be regarded as a complete or authoritative statement of the law. Nor can it cover every situation that may occur – the persons affected will need to take a view on how the regulations affect their particular circumstances. There may be developments in employment case law that affect the rights described.

The document describes the position which applies in England, Wales and Scotland when a child is adopted from overseas. For Northern Ireland, corresponding legislation applies. For guidance on the similar rights for employees who are adopting a child within Great Britain see *Adoptive Parents – Rights to leave and pay when a child is placed for adoption within the UK* (PL 518).

A glossary at the end of this document gives explanations of some of the terms used. Terms which are included in the glossary are shown in italics wherever they appear in the main text.

For **further help** with adoption and paternity leave and pay for employees who are adopting a child from overseas employees should call the **Department for Education and Skills Adoption Team** on 020 79 72 4014 (Monday to Friday, 9am – 1pm). Employers with queries about adoption or paternity pay should contact the **Inland Revenue** on 0845 7 143 143.

Outline of the rights

The new rights to adoption leave and paternity leave and pay which are set out here entitle eligible employees to take paid leave when they adopt a child who lives outside the United Kingdom and enters Great Britain in connection with or for the purposes of adoption which does not involve the placement of the child for adoption under the law of the United Kingdom.

Adoption leave and pay are available to:

- Individuals who adopt
- One member of a couple where a couple adopt jointly (the couple must choose which partner takes adoption leave, the other partner may be able to take paternity leave)

Paternity leave and pay are available to:

- The partner of an individual who adopts
- One member of a couple where a couple adopt jointly.

To qualify for leave and pay an employee who adopts from overseas must have received an **official notification**. The law defines official notification as a written notification, issued by or on behalf of the relevant domestic authority¹, that the authority is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, or has issued a certificate and sent it to that authority, confirming, in either case, that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent.

The adoption may be from a Convention, Designated or Non-designated Country².

Eligibility for leave and pay

This guidance gives information on rights to statutory adoption or paternity leave and Statutory Adoption Pay (SAP) and Statutory Paternity

¹ See glossary of terms at the end of this document.

² See glossary.

Pay (SPP). To be eligible for adoption or paternity leave a person must be an employee, that is to say must work under a contract of employment³. To qualify for SAP or SPP a person must be an employed earner – that is to say must work for someone who is liable to pay the employer's share of his Class 1 National Insurance contributions.

The vast majority of people who qualify for leave will also qualify for pay, and vice versa, but there are a few exceptions. For example, most agency workers are not usually classed as employees – though some may be – and therefore may not qualify for leave. However, agency workers can be treated as employed earners and may thus be entitled to SAP or SPP. Office holders – such as police officers, MPs, the judiciary and some company directors will similarly generally only qualify for pay, not leave.

Where an individual qualifies for leave but not pay they will still be able to take their leave entitlement unpaid. Where an individual qualifies for pay but not leave they may wish to speak to the person they work for about other arrangements for taking time off work. It isn't usually possible to receive SAP or SPP if you are working.

Start dates

Both paid adoption leave and paid paternity leave are available to employees where the adopter received official notification on or after 6 April 2003.

Both adoption and paternity leave and pay are also available to employees where the adopter received official notification before 6 April 2003, but the child arrives in Great Britain after 6 April 2003 (special notice arrangements apply in these circumstances – see 'Notice of intention to take adoption leave').

³ Whether a person is an employee or not is determined by a number of factors. This is explained in further detail in the booklet Contracts of employment (PL 810) available from <http://www.dti.gov.uk/er/pay/contracts-pl810.htm>

Adoption leave and pay

Eligibility for adoption leave

To qualify for adoption leave, employees must:

- Be the child's adopter - that is, a person by whom the child has been or is to be adopted or, in a case where the child has been or is to be adopted by two people jointly, whichever of them has chosen to take adoption leave in respect of the child;
- Have worked for their employer continuously for at least 26 weeks.
- Give their employer the correct notification (see '**Notice of intention to take adoption leave**' below)

Adoption leave and pay is not available to employees if they have not been assessed and approved as being a suitable adoptive parent and so have not received an official notification. Employees adopting a child from overseas who is already a relative may qualify if they have followed the due process, have been assessed and approved as being a suitable adoptive parent and have received an official notification.

Length of adoption leave

Employees are entitled to 26 weeks' ordinary adoption leave followed immediately by 26 weeks' additional adoption leave

Eligible employees receive Statutory Adoption Pay (SAP) during ordinary adoption leave.

Additional adoption leave is usually unpaid although employees may have contractual rights to pay during their period of additional adoption leave.

Employees may choose to start their leave:

- From the date the child enters Great Britain
- From a fixed date (as notified to their employer) no later than 28 days after the date the child enters Great Britain

Where employees received their official notification before 6 April 2003 and the child enters Great Britain on or after that date, they can only start leave on a predetermined date. This date must be later than the child's date of entry and, unless the employer agrees to an earlier start date, at least 28 days after the date on which the employee gave notice.

The leave can start on any day of the week.

Only one period of leave will be available irrespective of whether more than one child enters Great Britain as part of the same arrangement.

Statutory adoption leave is not meant to be used to cover the period employees spend travelling overseas to arrange the adoption or visiting the child. Employees should talk to their employers about other leave arrangements to cover this period.

If the child ceases to live with an employee during the adoption leave period, the employee can continue adoption leave for up to eight weeks after this point.

What is Statutory Adoption Pay (SAP)?

During their adoption leave, most employees are entitled to Statutory Adoption Pay (SAP) from their employer. SAP is a weekly payment made by employers for up to 26 weeks. It is usually paid at the same time and in the same way as wages or pay. From April 2004 the SAP rate is £102.80 a week or 90% of *average weekly earnings* if this is less than £102.80 (your local Inland Revenue office can advise you of the current rate).

Employers may contact **the Inland Revenue** on 08457 143 143 for further information on what they have to do to work out if their employee is entitled to SAP and how much to pay and when. The Inland Revenue Employer's Helpbook E16 and supplement sets out how to decide if an employee is eligible. The helpbook is available from the Inland Revenue Employer's Orderline on 08457 646 646.

Eligibility for SAP

To qualify for SAP employees must:

- Be the child's adopter - that is, a person by whom the child has been or is to be adopted or, in a case where the child has been or is to be adopted by two people jointly, whichever of them has chosen to receive SAP in respect of the child;
- Have worked for their employer continuously for at least 26 weeks. This is either twenty-six weeks ending with the week in which they receive their official notification or twenty-six weeks from the start of their employment;
- Have average weekly earnings which aren't less than the Lower Earnings Limit for National Insurance Contributions;

- Give the correct notification to their employer – (see **Notice of intention to take adoption leave** below);
- give the correct evidence to their employer (see **Evidence required for claiming SPP** below).

Entitlement to SAP on change of employment

This paragraph outlines the provisions governing entitlement to SAP on change of employment in general terms.

A former employer continues to be liable to pay SAP for up to six months after an employee, who qualified for SAP, has left his employment for whatever reason (including dismissal).

A new employer becomes liable to pay SAP when the employee satisfies the eligibility conditions, including completing 26 weeks' continuous employment with the new employer.

The Board of Inland Revenue becomes liable to pay SAP if an employee, who qualified for SAP with his former employer, claims SAP more than six months after leaving his former employer. Employees in this position should contact their local Inland Revenue office for more information about this. The number can be found in the local phone book under Inland Revenue.

SAP will, however, cease to be payable by the Board if the employee works for an employer who is not liable to pay him statutory adoption pay. The employee is required to notify the Board within seven days of the first day during which he works during the adoption pay period.

Notice of intention to take adoption leave

There are 3 stages for giving notice of adoption leave. Employees must give the information required in writing if the employer requests it. If they are also entitled to SAP they must also give the employer the relevant evidence required - see **Evidence required for SAP** below.

First stage:

Employees must inform their employer of:

- The date on which they received official notification; and
- The date the child is expected to enter Great Britain.

In most cases (where they have the necessary 26 weeks' qualifying service at the time they receive official notification) adopters are required to give their employer this information **within 28 days of receiving official notification**. At this point it is likely that employees can, with the assistance of their adoption agency, estimate roughly when the child will enter Great Britain.

Where employees have obtained official notification before they start a term of employment or before they have completed 26 weeks' employment with an employer they must give their employer notice **within 28 days of completing 26 weeks' employment**. Again, at this point it is likely that employees will be able to estimate roughly when the child will enter Great Britain.

Second stage:

In all cases employees must then give their employer **at least 28 days'** notice of the actual date they want their adoption leave and SAP to start. This notice can be given at the first stage if the date is known.

Employees can change their mind about the date on which they want their leave to start providing they tell their employer at least 28 days in advance of the new date, or as soon as is reasonably practicable.

Third stage (after the child has entered Great Britain):

No later than 28 days after the child's entry into Great Britain, employees must tell their employer the date of entry.

Employees must tell their employer as soon as is reasonably practicable if it becomes known to them that the child will not be entering Great Britain.

NOTE: employees who received official notification before 6 April 2003 and whose child enters Great Britain on or after that date can only start leave on a predetermined date later than the date of entry and at least twenty-eight days after giving notice to their employer (unless the employer agrees that leave can start earlier). They can only change the date chosen to a different predetermined date.

Evidence required for SAP

As well as the information required for leave, to get SAP employees must give their employer the following evidence:

- A copy of the official notification 28 days before they wish to claim SAP as evidence of their entitlement;
- A declaration that they are not also claiming SPP;
- Within 28 days of the child entering Great Britain employees must give further evidence of the date of entry, such as a plane ticket or copies of entry clearance documents. The employer should keep a copy for their records.

Employers' response

Employers will have 28 days in which to respond to their employees' notification of the date they wish their leave to start. Employers are obliged to write to employees setting out the date that the (additional) adoption leave will end. A model letter which employers can use for this purpose is reproduced at the end of this guidance.

Contractual benefits

Employees are entitled to the benefit of their normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise), throughout their 26 week **ordinary adoption leave** period. However, most adopters will be entitled to SAP during this period.

If employees have a contractual right to adoption leave as well as the statutory right, they may take advantage of whichever is the more favourable. If contractual pay is more than SAP, the employer should top up the SAP to the amount of the contractual pay.

During **additional adoption leave**, the employment contract continues and some contractual benefits and obligations remain in force, for example compensation in the event of redundancy and notice periods.

Annual leave and adoption leave

Ordinary adoption leave

An employee continues to accrue annual leave while on ordinary adoption leave as if they were at work. Even if they have no rights to annual leave under their contract of employment, they will be entitled to the equivalent of four weeks' paid annual leave under the Working Time Regulations (see note below). Guidance on calculating statutory entitlement to annual leave can be found in the booklet *Your guide to the working time regulations* available from www.dti.gov.uk/er/work_time_regs/wtr0.htm

Additional adoption leave

An employee will accrue their four weeks' paid annual leave entitlement under the Working Time Regulations (see note below). An employee can only accrue their contractual leave entitlement during additional adoption leave if they agree this with their employer.

Note: Entitlement under the Working Time Regulations must be used during the leave year in which leave has been awarded and cannot be carried over into the next leave year. Although an employee isn't entitled to take annual leave during adoption leave, subject to the usual arrangements with their employer, there is no reason why they cannot take a period of annual leave immediately before or after adoption leave as long as this is within the leave year to which the leave is assigned. The employee can only receive payment in lieu of outstanding annual leave under the Working Time Regulations if the employment relationship has ended.

Notification of early return to work after adoption leave

Employees who intend to return to work at the end of their full adoption leave entitlement do not have to give any further notification to their employers.

Employees who want to return to work **before** they have taken their full 52 week adoption leave entitlement must give their employers 28 days' notice of the date they intend to return. This includes employees who wish to return to work at the end of their 26 week ordinary adoption leave period.

Return to work at the end of adoption leave

Employees who take ordinary adoption leave *only* are entitled to return to the same job on the same terms and conditions of employment as if they had not been absent, unless a redundancy situation has arisen. If a redundancy situation has arisen they are entitled to be offered a suitable alternative vacancy on terms and conditions that are not substantially less favourable.

At the end of additional adoption leave, employees are entitled to return to the same job on the same terms and conditions in relation to pay as if they had not been absent (but for the purposes of seniority, pension and other similar rights the period of employment before the start of additional

adoption leave will be treated as 'joined up' with the period of employment on return to work as if they were continuous).

If it is not reasonably practicable for the employee to return to the same job, they should be offered an alternative job which is both suitable and appropriate for them to do in the circumstances.

Protection from detriment and dismissal

Employees are protected from suffering detriment or from unfair dismissal for reasons related to taking, or seeking to take, adoption leave.

Employees who believe they have been treated unfairly can complain to an employment tribunal but they should first try to resolve the matter by mutual agreement – perhaps through the business's own grievance procedure, if there is one. If an employee does not try to resolve the problem in this way, any compensation awarded by an employment tribunal at a later stage may be reduced.

If the matter can't be sorted out, both employer and employee can contact Acas on 08457 47 47 47 for help. They can both seek the services of an Acas conciliator before the employee makes an application to a tribunal.

Employees should bear in mind that the time limit for making a complaint to an employment tribunal will still apply and will not normally be extended because attempts have been made to settle the matter in advance.

The time limit for making a complaint to an employment tribunal is usually three months of the refusal to allow the employee to take adoption leave or of the detriment or dismissal.

Further information about employment tribunal applications can be found in the leaflet *How to apply to an employment tribunal* which includes a copy of the application form IT1 (or IT1(Scot) in Scotland).

Employers' recovery of payments

Employers should use the money they collect for:

- PAYE tax
- National Insurance contributions
- Construction Industry scheme deductions and
- Student loan deductions

to fund the SAP they have to pay.

If they don't have enough money from this, they can apply in writing to the Inland Revenue for an advance. For more information about this, see "Where does the money come from?" in the Inland Revenue employer's help book E16 *Pay and time off work for adoptive parents* available from the Inland Revenue Orderline on 08457 646 646.

Some employers have to fund 8% of the SAP paid: this will depend on their Class 1 National Insurance liability. For more information, see "How much can I get back?" in the E16 help book.

Paternity leave and pay

Following the arrival of a child in Great Britain, the rights to paternity leave and pay give eligible employees the right to take paid leave to care for their new child or support the adopter.

Eligibility for paternity leave

Employees must satisfy the following conditions in order to qualify for paternity leave.

They must:

- have or expect to have the main responsibility (apart from the child's adopter) for the child's upbringing;
- be the adopter's spouse or partner;
- have worked for their employer continuously for at least 26 weeks.
- once they have 26 weeks' qualifying service, continue to work for the same employer up to the date of the child's entry into Great Britain;
- give the correct notification to their employer (see **Notice of intention to take paternity leave** below);
- give the correct evidence to their employer (see **Evidence required for claiming SPP** below).

Employees who received official notification before 6 April 2003 and whose child enters Great Britain on or after that date can only start leave on a predetermined date. That date must be later than the child's date of entry and at least 28 days after notice is given (unless the employer agrees that the leave can begin earlier).

Length of paternity leave

Eligible employees are entitled to choose to take either one week or two consecutive weeks' paid paternity leave (not odd days).

They can choose to start their leave:

- From the date the child enters Great Britain (whether this is earlier or later than expected), or
- From a chosen date after the child enters Great Britain.

Leave can start on any day of the week on or following the child's entry into Great Britain but must be completed within 56 days of the child's entry.

Only one period of leave is available to employees irrespective of whether more than one child is brought to the UK.

Where employees received their official notification before 6 April 2003 and the child enters Great Britain on or after that date, they can only start leave on a predetermined date. This date must be later than the child's date of entry and, unless the employer agrees to an earlier start date, at least 28 days after the date an employee gave notice.

What is Statutory Paternity Pay (SPP)?

During their paternity leave, most employees are entitled to Statutory Paternity Pay (SPP) from their employers. SPP is a weekly payment made by employers for one or two consecutive weeks (depending on which employees choose). It is usually paid at the same time and in the same way as wages or pay. From April 2004 the SPP rate is £102.80 a week or 90% of average weekly earnings if this is less than £102.80 (your local Inland Revenue office can advise you of the current rate).

Employers may contact **the Inland Revenue** on 08457 143 143 for further information on what they have to do to work out if their employee is entitled to SPP and how much to pay and when. The Inland Revenue Employer's Helpbook E16 and supplement sets out how to decide if an employee is eligible. The helpbook is available from the Inland Revenue Employer's Orderline on 08457 646 646.

Eligibility for SPP

To qualify for SPP employees must:

- have or expect to have the main responsibility (apart from the child's adopter) for the child's upbringing;
- be the adopter's spouse or partner;
- have worked for their employer continuously for at least 26 weeks;
- once they have 26 weeks' qualifying service, continue to work for the same employer up to the date of the child's entry into Great Britain;
- have *average weekly earnings* which aren't less than the Lower Earnings Limit for National Insurance Contributions;

- give the required notification to their employer – (see **Notice of intention to take paternity leave** and **Evidence required for SPP** below).

Notice of intention to take paternity leave

There are 3 stages for giving notice of paternity leave. Employees must give the information required in writing if the employer requests it. If they are also entitled to SPP they must also give the employer the relevant evidence required, see **Evidence required for SPP** below.

First stage:

Employees must tell their employer:

- The date on which the adopter received the official notification;
- The date the child is expected to enter Great Britain.

In most cases (where they have the necessary 26 weeks' qualifying service at the time the adopter receives official notification) employees are required to give their employers this information **within 28 days of receiving, or their spouse or partner receiving, the official notification**. At this point it is likely that employees can, with the assistance of their adoption agency, estimate roughly when the child will enter Great Britain.

Where employees have not completed 26 weeks' continuous employment with their employer at this point, they must give their employer this information **within 28 days of having completed 26 weeks' employment**. Again, at this point it is likely that employees will be able to estimate roughly when the child will enter Great Britain.

Second stage:

In all cases employees must then give their employer **at least 28 days' notice** of the actual date they want their paternity leave and SPP to start and whether they wish to take one or two weeks' leave. This notice can be given at the first stage if the date is known.

Employees can change the date on which they wish to start their leave but they must give 28 days' notice if they do so.

Employees must also tell their employers the date they expect any payments of SPP to start at least 28 days in advance.

Third stage (after the child has entered Great Britain):

No later than 28 days after the child's entry into Great Britain employees must also tell their employer the date of entry.

Employees must tell their employer as soon as practicable if it becomes known to them that the adopter will not be adopting the child.

NOTE: if an adopter receives official notification before 6 April 2003 but their child enters Great Britain on or after that date, employees taking paternity leave can only start it on a predetermined date later than the date of entry and at least twenty-eight days after giving notice to their employer (unless the employer agrees that leave can start earlier). They can only change the date chosen to a different predetermined date.

Evidence required for claiming SPP

As well as the information required to claim leave, in order to claim SPP employees must make the following declarations to their employer:

- that they are either married to or the partner of the child's adopter;
- that they are taking leave to care for the child or to support the adopter;
- that their partner or spouse has received official notification of their suitability for adoption;
- that they have or expect to have main responsibility (other than the adopter) for the upbringing of the child;
- that they have chosen to claim SPP and not SAP.

Contractual benefits

Employees are entitled to the benefit of their normal terms and conditions of employment, except for terms relating to wages or salary (unless their contract of employment provides otherwise), throughout their paternity leave. However, most employees will be entitled to SPP for this period.

If the employee has a contractual right to paternity leave as well as the statutory right, the employee may take advantage of whichever is more favourable. If their employer offers contractual pay which is more than SPP, the employer should top up the SPP to the amount of the contractual pay.

Annual leave and paternity leave

An employee continues to accrue annual leave while on paternity leave as if they were at work. Even if they have no rights to annual leave under their contract of employment, they will be entitled to the equivalent of four weeks' paid annual leave under the Working Time Regulations (see

note below). Guidance on calculating statutory entitlement to annual leave can be found in the booklet *Your guide to the working time regulations* available from http://www.dti.gov.uk/er/work_time_regs/wtr0.htm

Note: Entitlement under the Working Time Regulations must be used during the leave year in which leave has been awarded and cannot be carried over into the next leave year. Although an employee isn't entitled to take annual leave during paternity leave, subject to the usual arrangements with their employer, there is no reason why they cannot take a period of annual leave immediately before or after paternity leave as long as this is within the leave year to which the leave is assigned. The employee can only receive payment in lieu of outstanding annual leave under the Working Time Regulations if the employment relationship has ended.

Return to work at the end of paternity leave

Employees who take paternity leave on its own are entitled to return to the same job on terms and conditions no less favourable than if they had not been absent.

Protection from detriment and dismissal

Employees are protected from suffering unfair treatment or dismissal for taking, or seeking to take, paternity leave. Employees who believe they have been treated unfairly can complain to an employment tribunal but they should first try to resolve the matter by mutual agreement – perhaps through the business's own grievance procedure, if there is one. If an employee does not try to resolve the problem in this way, any compensation awarded by an employment tribunal at a later stage may be reduced.

If the matter can't be sorted out, both employer and employee can contact Acas on 08457 47 47 47 for help. They can both seek the services of an Acas conciliator before the employee makes an application to a tribunal.

Employees should bear in mind that the time limit for making a complaint to an employment tribunal will still apply and will not normally be extended because attempts have been made to settle the matter in advance.

The time limit for making a complaint to an employment tribunal is usually three months of the refusal to allow the employee to take adoption leave or of the detriment or dismissal.

Further information about employment tribunal applications can be found in the leaflet *How to apply to an employment tribunal* which includes a copy of the application form IT1 (or IT1(Scot) in Scotland).

Employer's recovery of payments

Employers should use the money they collect for:

- PAYE tax
- National Insurance contributions
- Construction Industry scheme deductions and
- Student loan deductions

to fund the SAP they have to pay.

If they don't have enough money from this, they can apply in writing to the Inland Revenue for an advance. For more information about this, see "Where does the money come from?" in the Inland Revenue employer's help book E16 *Pay and time off work for adoptive parents* available from the Inland Revenue Orderline on 08457 646 646.

Some employers have to fund 8% of the SPP paid: this will depend on their Class 1 National Insurance liability. For more information, see "How much can I get back?" in the E16 help book.

Examples

Example 1: Fred

Fred and Michelle Smith are adopting a child from China. Michelle isn't currently working so won't be entitled to adoption or paternity leave. Fred has worked with a bank for 15 years and wants to take adoption leave to care for the new child. Fred is sent a letter by the Department of Health (the official notification).

Fred remains in his job

Fred has 28 days to tell his employer he would like to take adoption leave and when he expects the child to arrive in Great Britain (at the moment it can take as long as 18 months from receipt of official notification for the child to enter Great Britain).

At least 28 days before he starts his adoption leave and pay Fred tells his employer the actual date that he would like it to start and shows him the copy of the official notification. He arranges to start his adoption leave on a predetermined date.

Fred takes three weeks' annual leave to visit the child in China and bring the child to Great Britain.

Within 28 days of the child's arrival in GB, Fred tells his employer the actual date of the child's arrival and shows him some evidence of this date. The evidence may be a visa stamp or a plane ticket (or equivalent documentation).

Fred changes job

Nine months after Fred received his official notification and gave notice to his employer, he changes jobs. Once he has completed 26 weeks' continuous employment with his new employer, he should notify his new employer of his plans within 28 days. He gains eligibility for leave with the new employer and the new employer must also pay SAP.

If the child arrives in Great Britain and he has not completed 26 weeks' continuous employment with his new employer he will not be eligible for statutory leave and will need to speak to his current employer about other types of leave. His old employer will remain potentially liable for payment of SAP to Fred for the 6 months following his departure.

Fred loses his job

Fred qualifies for SAP with his first employer and is then made redundant. The old employer is still liable to pay SAP for up to 6 months after this point. At any point after this (unless he qualifies with or works for a new employer) the Inland Revenue is liable for SAP and he will need to contact his local Inland Revenue office for help. If Fred works for a new employer with whom he has not qualified for SAP he will not be eligible for

statutory leave from his new job so he must speak to his employer about other leave arrangements. In addition, he will not be able to receive SAP from the Inland Revenue for any week in which he works for his employer.

Example 2: Charles

Charles is adopting a child on his own from Kazakhstan. He has worked for one month in a supermarket and receives his official notification. At this point he does not qualify for adoption leave as he has not worked for 26 weeks. Therefore he doesn't need to tell his employer that he wants to take adoption leave at this stage, although if he is happy to let his employer know his plans it is preferable that he does so.

When he has completed 26 weeks' continuous employment he qualifies for adoption leave and must tell his employer that he wishes to take it within 28 days of having worked his 26 weeks.

Glossary

Official notification means a written notification, issued by or on behalf of the relevant domestic authority, that it is prepared to issue a certificate to the overseas authority concerned with the adoption of the child, or has issued a certificate and sent it to that authority, confirming, in either case, that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent.

A copy of the official notification is needed as proof of eligibility for SAP, and a declaration that it has been received is needed to claim SPP. This evidence must also be provided to qualify for adoption and paternity leave if the employer requests it.

The relevant domestic authority is the Secretary of State for Health except in two cases:-

- in the case of an adopter to whom the Intercountry Adoption (Hague Convention) Regulations 2003 apply and who is habitually resident in Wales, the relevant domestic authority means the National Assembly for Wales;
- in the case of an adopter to whom the Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003 apply and who is habitually resident in Scotland, the relevant domestic authority means the Scottish Ministers.

Adopter – in relation to a child, means a person by whom the child has been or is to be adopted or, in a case where the child has been or is to be adopted by two people jointly, whichever of them has elected to take adoption leave in respect of the child (as defined in The Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003).

Average weekly earnings – the employee's average weekly earnings are worked out over a period of at least eight weeks up to and including the last normal pay day to fall before the first day of the week after the week (beginning on the Sunday and ending on the Saturday) in which the adopter receives their official notification.

Designated countries – adoptions made in these countries are recognised under United Kingdom law (so there is generally no need for the parents to adopt once the child enters Great Britain, although they may want to apply to the Home Office for citizenship).

Non-designated countries – adoptions made in these countries are not recognised under United Kingdom law (so if adoptive parents wish to have their child's adoption recognised in the United Kingdom they must

formally adopt once the child enters Great Britain - the adoption order confers citizenship).

Convention countries- Countries which have ratified the Hague Convention (it is proposed that the United Kingdom will do so on 1 June 2003). The Convention aims to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights, and without any profits being made from the process. It also aims to establish a system of co-operation amongst the countries who have ratified the Convention and to secure the recognition of adoption orders between Convention countries. It is proposed that adoption orders made in these countries will be automatically recognised under United Kingdom law and, provided one or both of the adopters are British citizens, the order conveys British citizenship to the child.

* Adopters who adopt from designate, non-designated and convention countries may qualify for adoption and paternity leave and pay, as long as they meet the eligibility criteria given in this guide.

Sources of further information

Department for Education and Skills Intercountry Adoption Team

Tel: 020 79 72 4014 (Mon – Fri 9 am to 1pm) – call for further information on the employment provisions described in this document.

www.doh.gov.uk/adoption

Department of Trade and Industry

www.dti.gov.uk/workingparents - for further information on support for working parents.

Overseas Adoption Helpline

Tel: 0990 168742 (Mon – Fri 9am –1pm and 2 – 5 pm) Information and advice on intercountry adoption requirements and procedures for UK and other countries.

www.oah.org.uk

OASIS www.adoptionoverseas.org

Childlink www.adoptchildlink.org.uk

Parents and Children Together www.pactcharity.org

BAAF www.baaf.org.uk

AFAA (Association of Families who have adopted from abroad)

Tel: 0170 787 2129, 30 Bradgare, Cuffley, Herts, EN6 4RL.

www.afaaf.org.uk Support group for both inter-country adoptive families and people considering adopting from overseas.

Inland Revenue employers' helpline

Tel: 08457 143 143 – call for further help with SAP and SPP

MODEL LETTER FOR EMPLOYERS TO ACKNOWLEDGE NOTIFICATION OF ADOPTION LEAVE (ADOPTION FROM OVERSEAS).

This letter is appropriate when only the statutory levels of leave and pay are provided. Employers offering more favourable terms and conditions should adapt it accordingly. Employers must respond within 28 days of receiving employees' notification of adoption leave start date.

Date:

Dear *[name of employee]*,

Thank you for telling me when you would like your adoption leave to start. I am writing to you about your adoption leave and pay.

As we have discussed, you are eligible for **26 weeks' ordinary adoption leave followed by 26 weeks' additional adoption leave / you are not eligible for adoption leave.** *[delete as appropriate]*

Given your chosen start date of *[insert date]*, your adoption leave will end on *[insert date]*. If you want to change the date your leave starts you must give me 28 days' notice, if at all possible. Please contact me if you wish to discuss this.

If you decide to return to work before *[insert date leave ends]*, you must give me at least 28 days' notice.

As we discussed you are eligible for **26 weeks' Statutory Adoption Pay / not eligible for Statutory Adoption Pay** *[delete as appropriate]*.

Your adoption pay will be £*[insert amount]* from *[insert date]* to *[insert date]*

OR

You do not qualify for Statutory Adoption Pay, because *[insert relevant text from list on Annex A]*.

If you decide not to return to work, you must still give me proper notice. Your decision will not affect your entitlement to SAP.

If you have any questions about any aspect of your adoption entitlements please do not hesitate to get in touch with me.

Yours sincerely,

Annex A

Text A

You did not give me acceptable evidence. You must give me a copy of your official notification.

Text B

You were not employed by me for long enough. To get SAP you must have worked for me continuously, for 26 weeks, by the time you notify me of the date you want your SAP to start.

Text C

Your earnings were too low. To get SAP your average earnings must be at least equal to the Lower Earnings Limit.

Text D

You did not give me the correct notice. To get SAP you must give me 28 days' notice of when you want your SAP to start.

Text E

You did not give me acceptable evidence of your entitlement soon enough, or you did not have a good reason for giving it to me late. To get SAP you must give me acceptable evidence of your entitlement at least 28 days before you want your SAP to start.

Text F

I paid you Statutory Sick Pay from *[insert date]* to *[insert date]*. You cannot get SAP during any week when you are entitled to Statutory Sick Pay.

Text G

You were in prison or detained in legal custody on *[insert date]*. You cannot get SAP from your employer if you are detained in legal custody on or after the first day of the SAP pay period. However you may be able to get SAP from the Inland Revenue after you are released. You will find the number in the phone book.

Text H

You worked from *[insert date]* to *[insert date]*. You cannot get SAP during any week when you work for your employer or if you start working for a new employer.